SENATE BILL No. 197

By Committee on Judiciary

2-11

AN ACT concerning attorneys; relating to the supreme court nominating commission and judicial district nominating commissions; selection of chairperson and members; applicability of open meetings act; attorney licensure and information; applicability of open records act; amending K.S.A. 20-122, 20-123, 20-128, 20-130, 20-132, 20-2904 and 20-2907 and K.S.A. 2014 Supp. 7-127 and repealing the existing sections.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 2014 Supp. 7-127 is hereby amended to read as follows: 7-127. (a) Each applicant for admission to practice law in this state, in submitting the application, shall provide to the clerk of the supreme court the information enumerated in K.S.A. 2014 Supp. 25-2309(b)(1) through (5), and amendments thereto. Whenever any person whose application for admission to practice law in this state is pending shall move from the residential address listed on such person's application, or when the name of any such person is changed by marriage or otherwise, such person, within 10 days thereafter, shall notify the clerk of the supreme court in writing of such person's old and new residential address or of such person's former and new name.

- (b) Any person whose application to practice law in Kansas is pending as of the effective date of this act, and for whom the information enumerated in K.S.A. 2014 Supp. 25-2309(b)(1) through (5), and amendments thereto, is not correct on such application as of the effective date of this act, shall provide the information enumerated in K.S.A. 2014 Supp. 25-2309(b)(1) through (5), and amendments thereto, in writing to the clerk of the supreme court within 60 days after the effective date of this act. The clerk of the supreme court, within 30 days after the effective date of this act, shall send notice to all persons whose applications to practice law in Kansas are pending as of the effective date of this act, that such persons are required by law to provide the information enumerated in K.S.A. 2014 Supp. 25-2309(b)(1) through (5), and amendments thereto, in writing to the clerk of the supreme court within 60 days after the effective date of this act.
- (c) The supreme court may require an applicant for admission to practice law in this state to be fingerprinted and submit to a national criminal history record check. The fingerprints shall be used to identify the

 applicant and to determine whether the applicant has a record of criminal arrests and convictions in this state or other jurisdictions. The supreme court and the state board of law examiners are authorized to submit the fingerprints to the Kansas bureau of investigation and the federal bureau of investigation for a state and national criminal history record check. The state board of law examiners and the supreme court may use the information obtained from fingerprinting and the applicant's criminal history only for purposes of verifying the identification of any applicant and in the official determination of character and fitness of the applicant for admission to practice law in this state.

- (b) (d) Local and state law enforcement officers and agencies shall assist the supreme court in taking and processing of fingerprints of applicants seeking admission to practice law in this state and shall release all records of an applicant's arrests and convictions to the supreme court and the state board of law examiners.
- New Sec. 2. (a) The clerk of the supreme court shall maintain in the clerk's office a roster of attorneys licensed to practice law in Kansas. Such roster shall include the information enumerated in K.S.A. 2014 Supp. 25-2309(b)(1) through (5), and amendments thereto, the congressional district of residence and the judicial district of residence for each person licensed to practice law in Kansas. Whenever any person licensed to practice law in Kansas moves from the residential address listed for such person on such roster, or when the name of any such person is changed by marriage or otherwise, such person, within 10 days thereafter, shall notify the clerk of the supreme court in writing of such person's old and new residential address or of such person's former and new name.
- (b) Each person on the roster of attorneys licensed to practice law in Kansas on the effective date of this act, and for whom the information enumerated in K.S.A. 2014 Supp. 25-2309(b)(1) through (5), and amendments thereto, is not correct on such roster on the effective date of this act, shall provide the information enumerated in K.S.A. 2014 Supp. 25-2309(b)(1) through (5), and amendments thereto, in writing to the clerk of the supreme court within 60 days after the effective date of this act. The clerk of the supreme court, within 30 days after the effective date of this act, shall send notice to all persons listed on the roster of attorneys licensed to practice law in Kansas on the effective date of this act, that such persons are required by law to provide the information enumerated in K.S.A. 2014 Supp. 25-2309(b)(1) through (5), and amendments thereto, in writing to the clerk of the supreme court within 60 days of the effective date of this act.
- (c) Only attorneys licensed to practice law in Kansas and residing in Kansas on or before the 15th day of February preceding the selection of the chairperson of the supreme court nominating commission as provided in

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 K.S.A. 20-119, and amendments thereto, and only attorneys so licensed and residing in the congressional district on or before the 15th day of February preceding the selection of the members of the supreme court nominating commission to be chosen from among the members of the bar of such congressional district as provided in K.S.A. 20-120, and amendments thereto, and, in either event, only attorneys for whom the roster of attorneys licensed to practice law in Kansas contains the information enumerated in K.S.A. 2014 Supp. 25-2309(b)(1) through (5), and amendments thereto, shall be entitled to make nominations or receive and cast ballots in such selections.

- (d) (1) On or before the 20th day of February preceding the selection of a chairperson of the supreme court nominating commission, the clerk of the supreme court shall transmit a certified copy of the roster of attorneys licensed to practice law in Kansas to the secretary of state. Such certified copy shall include the information enumerated in K.S.A. 2014 Supp. 25-2309(b)(1) through (5), and amendments thereto, for each person listed on the roster and having a residential address within Kansas as of the preceding 15th day of February.
- (2) On or before the 20th day of February preceding the selection of a member of the supreme court nominating commission to be chosen from among the members of the bar of a congressional district, the clerk of the supreme court shall transmit a certified copy of the roster of attorneys licensed to practice law in Kansas to the secretary of state. Such certified copy shall include the information enumerated in K.S.A. 2014 Supp. 25-2309(b)(1) through (5), and amendments thereto, for each person listed on the roster and having a residential address within the congressional district as of the preceding 15th day of February.
- (3) The certified copy of the roster shall be transmitted in a format prescribed by the secretary of state. Upon receipt of such certified roster, the secretary of state shall append thereto the unique voter identification number for each person listed on the roster having such a number, as contained in the centralized voter registration database described in K.S.A. 2014 Supp. 25-2304, and amendments thereto.
- (e) Notwithstanding any other provision of law, the names, residential addresses, dates of birth, unique voter identification numbers and dates of licensure to practice law in Kansas of all persons listed on the certified roster of attorneys licensed to practice law in Kansas created pursuant to subsection (d), including the information as appended to the roster pursuant to subsection (d), shall be disclosed upon proper request submitted to the clerk of the supreme court or to the secretary of state pursuant to the open records act, K.S.A. 45-215 et seq., and amendments thereto.

Sec. 3. K.S.A. 20-122 is hereby amended to read as follows: 20-122.

(a) The clerk of the supreme court—may shall use the certified roster of attorneys—in the clerk's office licensed to practice law in Kansas, as provided to the secretary of state pursuant to section 2, and amendments thereto, for ascertaining the names and places of residence of those entitled to receive ballots and for ascertaining the qualifications of those nominated for membership on the commission. The clerk shall supply with each ballot distributed a certificate to be signed and returned by the member of the bar voting such ballot, evidencing the qualifications of such member of the bar, and certifying that the ballot was voted by the certifying voter.

- (b) To the end In order to insure that the vote cast may be secret, the clerk shall provide a separate envelope-shall be provided for the ballot, in which the voted ballot only shall be placed, and the envelope containing the voted ballot shall be returned in an placed in another envelope, also to be supplied by the clerk, together with the signed certificate. No A ballot not accompanied by the signed certificate of the voter shall *not* be counted. When the voted ballots are received by the clerk they shall be separated from the certificates by the canvassers, and after the ballots are counted and the results certified-both, the ballots-and the certificates shall be preserved by the clerk for a period of six months and the certificates shall be preserved by the clerk for a period of five years. No one shall be permitted to inspect-them the ballots received pursuant to this section except on order of the supreme court. Unless otherwise ordered by the supreme court, at the end of such six months six-month period the clerkunless otherwise ordered by the supreme court; shall destroy them the ballots received pursuant to this section, and at the end of such five-year period the clerk shall destroy the certificates received pursuant to this section.
- (c) Within 14 days after the results of a selection are certified pursuant to this section, the clerk of the supreme court shall: (1) Create a list designating the position and year for which the selection was held and containing the names and residential addresses of all persons who returned a ballot with a signed certificate as described in subsection (b); and (2) transmit a certified copy of the list to the secretary of state. The list described in this subsection shall be transmitted in a format prescribed by the secretary of state. Upon receipt of the list described in this subsection, the secretary of state shall append the information contained therein to the roster for such selection as described in section 2, and amendments thereto.
- (d) Notwithstanding any other provision of law, the certificates received for a selection pursuant to this section shall be disclosed upon proper request submitted to the clerk of the supreme court pursuant to the

 open records act, K.S.A. 45-215 et seq., and amendments thereto.

- (e) Notwithstanding any other provision of law, the lists described in subsection (c) shall be disclosed upon proper request submitted to the clerk of the supreme court or to the secretary of state pursuant to the open records act, K.S.A. 45-215 et seq., and amendments thereto.
- (f) The provisions of this section shall apply to all selections held under K.S.A. 20-119 and 20-120, and amendments thereto, which have not been canvassed pursuant to K.S.A. 20-130, and amendments thereto, regardless of whether such selections are scheduled, upcoming or pending as on the effective date of this act.
- Sec. 4. K.S.A. 20-123 is hereby amended to read as follows: 20-123. (a) When the chairperson and other members of the commission chosen by the members of the bar have been elected, and after the names of the nonlawyer members appointed by the governor have been certified to the clerk of the supreme court as provided in this act, the clerk shall make a record thereof in the clerk's office and shall notify the members of the commission of their election and appointment. The commission shall meet from time to time as may be necessary to discharge the responsibilities of the commission. Such meetings shall be held at such place as the clerk of the supreme court may arrange. Such meeting shall be held upon the call of the chairperson, or in the event of the chairperson's failure to call a meeting when a meeting is necessary, upon the call of any four members of the commission. The commission shall act only at a meeting, and may act only by the concurrence of a majority of its members. The commission shall have power to adopt such reasonable and proper rules and regulations for the conduct of its proceedings and the discharge of its duties as are consistent with this act and the constitution of the state of Kansas.
- (b) The supreme court nominating commission shall be and is hereby deemed to be a public body and shall be subject to the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto.
- Sec. 5. K.S.A. 20-128 is hereby amended to read as follows: 20-128. Any vacancy occurring from any cause in the office of chairman of the commission or among the lawyer members from the congressional districts shall be filled by appointment by the chief justice of the supreme court of Kansas, governor within 10 days after the governor has been given notice of such vacancy. Any appointment made by the governor pursuant to this section shall be without regard to political affiliation of the appointee. Such appointee-to shall hold office until the first day of July following the expiration of four months after such appointment is made. During the four months immediately preceding the termination of such appointive term an election shall be held in the manner by this act provided for other elections of subsequent members of the commission, for the unexpired term, if any, of the member whose vacancy is being filled. Appointments to fill such

vacancies shall be certified to the clerk of the supreme court.

Sec. 6. K.S.A. 20-130 is hereby amended to read as follows: 20-130. The canvassers at any election held pursuant to this act shall consist of the clerk of the supreme court-and two (2) or more persons who are members of the bar residing in Kansas, either practicing lawyers, justices or judges, designated to act as such by the chief justice, the secretary of state and the attorney general. The canvassers shall open and canvass the ballots and shall tabulate and sign the results as a record in the office of the clerk.

Sec. 7. K.S.A. 20-132 is hereby amended to read as follows: 20-132. When a vacancy occurs in the supreme court, the clerk of such court shall promptly notify the chairman of the commission of such vacancy, and the commission shall make nominations of three persons to fill such vacancy and certify the names of the nominees to the governor. When it is known that a vacancy will occur at a definite future date, but the vacancy has not yet occurred, the clerk shall notify the chairman of the commission thereof, and the commission may, within—sixty—(60) days prior to the occurrence of such vacancy, make its nominations and submit to the governor the names of three—(3) persons nominated for such forthcoming vacancy. To the end that the administration of justice may be facilitated and that no vacancy on the supreme court may be permitted to exist unduly, the commission shall make its nominations for each vacancy and certify them to the governor as promptly as possible, and in any event not later than-sixty—(60) days from the time such vacancy occurs.

New Sec. 8. (a) Only attorneys licensed to practice law in Kansas and residing in the judicial district on or before the 15th day of November preceding the election of a lawyer member of the district judicial nominating commission, and for whom the roster of attorneys licensed to practice law in Kansas contains the information enumerated in K.S.A. 2014 Supp. 25-2309(b)(1) through (5), and amendments thereto, shall be entitled to make nominations or receive and cast ballots in such elections.

(b) On or before the 20th day of November preceding the election of a lawyer member of the district judicial nominating commission, the clerk of the supreme court shall transmit a certified copy of the roster of attorneys licensed to practice law in Kansas to the secretary of state. Such certified copy shall include the information enumerated in K.S.A. 2014 Supp. 25-2309(b)(1) through (5), and amendments thereto, for each person listed on the roster and having a residential address within the judicial district as of the preceding 15th day of November. The certified copy of the roster shall be transmitted in a format prescribed by the secretary of state. Upon receipt of such certified roster, the secretary of state shall append thereto the unique voter identification number for each person listed on the roster having such a number, as contained in the centralized voter registration database described in K.S.A. 2014 Supp. 25-2304, and amendments

thereto.

- (c) Notwithstanding any other provision of law, the names, residential addresses, dates of birth, unique voter identifications numbers and dates of licensure to practice law in Kansas of all persons listed on the certified roster of attorneys licensed to practice law in Kansas created pursuant to subsection (b), including the information as appended to the roster pursuant to subsection (b), shall be disclosed upon proper request submitted to the clerk of the supreme court or to the secretary of state pursuant to the open records act, K.S.A. 45-215 et seq., and amendments thereto.
- Sec. 9. K.S.A. 20-2904 is hereby amended to read as follows: 20-2904. (a) Lawyer members of the district judicial nominating commission shall be elected by the lawyers who are qualified electors of the judicial district and who are registered with the elerk of the supreme court pursuant to rule 208 of such court. Each lawyer member of a district judicial nominating commission shall be a qualified elector of such judicial district pursuant to this section. The clerk of the supreme court shall use the certified roster of attorneys licensed to practice law in Kansas, as provided to the secretary of state pursuant to section 8, and amendments thereto, for ascertaining the names and places of residence of those entitled to receive ballots and for ascertaining the qualifications of those nominated for membership on the district judicial nominating commission.
- (b) The number of lawyer members to be elected to the district judicial nominating commission of a judicial district shall be as follows:
- (1) In a judicial district consisting of a single county, the number of members elected shall be equal to the number of nonlawyer members appointed pursuant to subsection (a)(1) of K.S.A. 20-2905, and amendments thereto.
- (2) In a judicial district consisting of two counties, four members shall be elected.
- (3) In a judicial district consisting of three or more counties, the number of members elected shall equal the number of counties in such judicial district.
- (b) (c) (1) Between December 1 and December 15 of the year in which nonpartisan selection of judges of the district court is approved by the electors of the judicial district as provided in K.S.A. 20-2901, and amendments thereto, the clerk of the supreme court shall send to each lawyer by ordinary first class mail a form for nominating one lawyer for election to the commission. Any such nomination shall be received in the office of the clerk of the supreme court on or before January 1 of the following year, together with the written consent of the nominee. After receipt of all nominations which are timely submitted, the clerk shall prepare a ballot containing the names of all lawyers so nominated and

shall mail one such ballot and instructions for voting such ballot to each registered lawyer in the judicial district. Ballots shall be prepared in such manner that each lawyer receiving the same shall be instructed to vote for not more than the number of positions to be filled. Each such ballot shall be accompanied by a certificate to be signed and returned by the lawyer voting such ballot, evidencing the qualifications of such lawyer to vote, including the name and residential address of such lawyer; and certifying that the ballot was voted by such person. In any judicial district in which the number of nominees does not exceed the number of positions to be filled, the clerk shall declare those nominees to be elected without preparation of a ballot.

- (2) In order to insure that the election of lawyer members is by secret ballot, the clerk shall provide a separate envelope for the ballot, in which the voted ballot only shall be placed, and the envelope containing the voted ballot shall be placed in another envelope, also to be supplied by the clerk, together with the signed certificate, and received in the office of the clerk of the supreme court on or before February 15 of such year. A ballot not accompanied by the signed certificate of the voter shall not be counted. The ballots returned as provided in this section shall be canvassed within-five 10 days thereafter. The canvassers shall consist of the clerk of the supreme court and two or more persons who are registered members of the bar residing in Kansas, either practicing lawyers, justices or judges, designated to act as such by the chief justice, the secretary of state and the attorney general. The canvassers shall open and canvass the ballots and shall tabulate and sign the results as a record in the office of the clerk. After the ballots are counted and the results certified, the ballots shall be preserved by the clerk for a period of six months, and the certificates shall be preserved by the clerk for a period of five years. No one shall be permitted to inspect the ballots received pursuant to this section except upon order by the supreme court. Unless otherwise ordered by the supreme court, at the end of such six-month period the clerk shall destroy the ballots received pursuant to this section, and at the end of such fiveyear period the clerk shall destroy the certificates received pursuant to this section.
- (c) Within 14 days after the results of an election are certified pursuant to this section, the clerk of the supreme court shall: (1) Create a list designating the positions and year for which the selection was held and containing the names and residential addresses of all persons who returned a ballot with a signed certificate as described in subsection (b); and (2) transmit a certified copy of the list to the secretary of state. The list described in this subsection shall be transmitted in a format prescribed by the secretary of state. Upon receipt of the list described in this subsection, the secretary of state shall append the information contained

 therein to the roster for such election as described in section 8, and amendments thereto.

- (d) Notwithstanding any other provision of law, the certificates received for an election pursuant to this section shall be disclosed upon proper request submitted to the clerk of the supreme court pursuant to the open records act, K.S.A. 45-215 et seq., and amendments thereto.
- (e) Notwithstanding any other provision of law, the lists described in subsection (c) shall be disclosed upon proper request submitted to the clerk of the supreme court or to the secretary of state pursuant to the open records act, K.S.A. 45-215 et seq., and amendments thereto.
- (e) (f) After the ballots are counted and tabulated in descending order from the nominee receiving the highest number of votes the canvassers shall declare to be elected those nominees who are equal in number to the number of lawyers to be elected and who have the greatest number of votes. In the event of a tie creating more nominees to be elected than there are positions to be filled, the canvassers shall determine the person or persons to be elected by lot. In the event that less than the required number of lawyers is elected, the positions for which lawyers have not been elected shall be declared vacant and the vacancies filled in the manner prescribed by—subsection (e) of K.S.A. 20-2906(e), and amendments thereto.
- (d) (g) The procedure provided in this section for election of lawyers to serve as members of the first district judicial nominating commission established in a judicial district shall apply to the election of lawyers to succeed lawyer members of the commission whose terms of office expire, except that the form for submitting a nomination shall be sent between December 1 and December 15 of the year preceding the year in which such terms of office expire, and the dates prescribed for submission of nominations and the mailing, returning and canvassing of ballots shall apply in the year in which such terms of office expire.
- Sec. 10. K.S.A. 20-2907 is hereby amended to read as follows: 20-2907. (a) Prior to taking office, each member of a district judicial nominating commission shall take and subscribe an oath of office as provided by law for public officers, and shall file the same with the clerk of the supreme court. After the members of the first commission established in a judicial district have commenced their terms of office, the chairman shall call a meeting of the commission to be held within the judicial district at a time and place designated by the chairman. At such meeting, the commission shall determine a regular meeting place or places, and the commission shall have the power to adopt such reasonable and proper rules and regulations as are necessary for the conduct of its proceedings and the discharge of its duties, consistent with the provisions of this act and the constitution and laws of this state.

(b) The commission shall meet only upon call of the chairman, and the commission shall not take any final action except at such meeting. A majority of the members of the commission shall constitute a quorum to do business, but no final action shall be taken except upon a vote of the majority of the members of the commission.

- (c) Members of the commission shall receive no compensation, but shall be reimbursed for their actual and necessary expenses incurred in performing their official duties, as provided in subsections (b), (c) and (d) of K.S.A. 75-3223 (b), (c) and (d). Such expenses shall be paid from the judicial nominating commission fund as provided in K.S.A. 20-138, as amended and amendments thereto
- (d) The board of county commissioners of each county in a judicial district shall cooperate with the district judicial nominating commission of such judicial district, and shall make available to the commission wherever possible the facilities and services of such county, in order to expedite the business of the commission.
- (e) A district judicial nominating commission shall be and is hereby deemed to be a public body and shall be subject to the open meetings act, K.S.A. 75-4317 et seq., and amendments thereto.
- New Sec. 11. If any provision of this bill or the application thereof to any person or circumstances is held unconstitutional or otherwise invalid, such unconstitutionality or invalidity shall not affect other provisions or applications of the bill which can be given effect without the unconstitutional or invalid portion or application, and, to this end, the provisions of this bill are severable.
- Sec. 12. K.S.A. 20-122, 20-123, 20-128, 20-130, 20-132, 20-2904 and 20-2907 and K.S.A. 2014 Supp. 7-127 are hereby repealed.
 - Sec. 13. This act shall take effect and be in force from and after its publication in the Kansas register.