

## House Concurrent Resolution No. 5002

By Committee on Judiciary

1-16

1 A PROPOSITION to amend the constitution of the state of Kansas by  
2 revising article 3 thereof, relating to the judiciary.

3  
4 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*  
5 *members elected (or appointed) and qualified to the House of*  
6 *Representatives and two-thirds of the members elected (or appointed)*  
7 *and qualified to the Senate concurring therein:*

8 Section 1. The following proposition to amend the constitution of  
9 the state of Kansas shall be submitted to the qualified electors of the state  
10 for their approval or rejection: Article 3 of the constitution of the state of  
11 Kansas is hereby amended to read as follows:

### "Article 3.—JUDICIAL

12  
13 **"§ 1. Judicial power; seals; rules.** The judicial power of  
14 this state shall be vested exclusively in one court of justice,  
15 which shall be divided into one supreme court, one court of  
16 appeals, district courts, and such other courts as are provided by  
17 law; and all courts of record shall have a seal. The supreme  
18 court shall have general administrative authority over all courts  
19 in this state.

20 **"§ 2. Supreme court.** The supreme court shall consist of  
21 not less than seven justices who shall be selected as provided by  
22 this article. All cases shall be heard with not fewer than four  
23 justices sitting and the concurrence of a majority of the justices  
24 sitting and of not fewer than four justices shall be necessary for  
25 a decision. The term of office of the justices shall be six years  
26 except as hereinafter provided. The justice who is senior in  
27 continuous term of service shall be chief justice, and in case two  
28 or more have continuously served during the same period the  
29 senior in age of these shall be chief justice. A justice may  
30 decline or resign from the office of chief justice without  
31 resigning from the court. Upon such declination or resignation,  
32 the justice who is next senior in continuous term of service shall  
33 become chief justice. During incapacity of a chief justice, the  
34 duties, powers and emoluments of the office shall devolve upon  
35 the justice who is next senior in continuous service.

36 **"§ 3. Jurisdiction and terms.** The supreme court shall

1 have original jurisdiction in proceedings in quo warranto,  
2 mandamus, and habeas corpus; and such appellate jurisdiction  
3 as may be provided by law. It shall hold one term each year at  
4 the seat of government and such other terms at such places as  
5 may be provided by law, and its jurisdiction shall be co-  
6 extensive with the state.

7 **"§ 4. Reporter; clerk.** There shall be appointed, by the  
8 justices of the supreme court, a reporter and clerk of such court,  
9 who shall hold their offices two years, and whose duties shall be  
10 prescribed by law.

11 **"§ 5. Selection of justices of the supreme court.** (a) (1)  
12 Any vacancy occurring in the office of any justice of the  
13 supreme court and any position to be open on the supreme court  
14 as a result of enlargement of such court, or the retirement or  
15 failure of an incumbent to file such justice's declaration of  
16 candidacy to be retained in office as hereinafter required, or  
17 failure of a justice to be elected to be retained in office, shall be  
18 filled by appointment by the governor, with the consent of the  
19 senate, of a person possessing the qualifications of office.

20 (2) Whenever a vacancy occurs, will occur or position  
21 opens on the supreme court, the clerk of the supreme court shall  
22 promptly give notice to the governor.

23 (3) In event of the failure of the governor to make the  
24 appointment within 60 days from the date such vacancy  
25 occurred or position became open, the chief justice of the  
26 supreme court, with the consent of the senate, shall make the  
27 appointment of a person possessing the qualifications of office.

28 (4) Whenever a vacancy in the office of justice of the  
29 supreme court exists at the time the appointment to fill such  
30 vacancy is made pursuant to this section, the appointment shall  
31 be effective at the time it is made, but where an appointment is  
32 made pursuant to this section to fill a vacancy which will occur  
33 at a future date, such appointment shall not take effect until  
34 such date.

35 (b) No person appointed pursuant to subsection (a) shall  
36 assume the office of justice of the supreme court until the  
37 senate, by an affirmative vote of the majority of all members of  
38 the senate then elected or appointed and qualified, consents to  
39 such appointment. The senate shall vote to consent to any such  
40 appointment not later than 60 days after such appointment is  
41 received by the senate. If the senate is not in session and will  
42 not be in session within the 60-day time limitation, the senate  
43 shall vote to consent to any such appointment not later than 20

1 days after the senate begins its next session. In the event a  
2 majority of the senate does not vote to consent to the  
3 appointment, the governor, within 60 days after the senate vote  
4 on the previous appointee, shall appoint another person  
5 possessing the qualifications of office and such subsequent  
6 appointment shall be considered by the senate in the same  
7 procedure as provided in this article. The same appointment and  
8 consent procedure shall be followed until a valid appointment  
9 has been made. No person who has been previously appointed  
10 but did not receive the consent of the senate shall be appointed  
11 again for the same vacancy. If the senate fails to vote on an  
12 appointment within the time limitation imposed by this  
13 subsection, the senate shall be deemed to have given consent to  
14 such appointment.

15 (c) (1) Each justice of the supreme court appointed  
16 pursuant to subsection (a) and consented to pursuant to  
17 subsection (b) shall hold office for an initial term ending on the  
18 second Monday in January following the first general election  
19 that occurs after the expiration of 12 months in office.

20 (2) Not less than 60 days prior to the holding of the general  
21 election next preceding the expiration of the term of any justice  
22 of the supreme court, the justice may file in the office of the  
23 secretary of state a declaration of candidacy for retention in  
24 office. If a declaration is not filed as provided in this section,  
25 the position held by the justice shall be vacant upon the  
26 expiration of the justice's term of office. If such declaration is  
27 filed, the justice's name shall be submitted at the next general  
28 election to the electors of the state on a separate judicial ballot,  
29 without party designation, reading substantially as follows:

30 "Shall (Here insert name of justice.), Justice of the Supreme  
31 Court, be retained in office?"

32 (3) If a majority of those voting on the question vote  
33 against retaining the justice in office, the position which the  
34 justice holds shall be vacant upon the expiration of the justice's  
35 term of office. Otherwise, unless the justice is removed for  
36 cause, the justice shall remain in office for the regular term of  
37 six years from the second Monday in January following the  
38 election. At the expiration of each term, unless by law the  
39 justice is compelled to retire, the justice shall be eligible for  
40 retention in office by election in the manner prescribed in this  
41 section.

42 (4) If a majority of those voting on the question vote  
43 against the justice's retention, the secretary of state, following

1 the final canvass of votes on the question, shall certify the  
2 results to the clerk of the supreme court. Any such justice who  
3 has not been retained in office pursuant to this section shall not  
4 be eligible for nomination or appointment to the office of justice  
5 of the supreme court prior to the expiration of six years after the  
6 expiration of the justice's term of office.

7 **"§ 6. Court of appeals.** (a) (1) The court of appeals shall  
8 consist of 14 judges whose positions shall be numbered one to  
9 14. Any vacancy occurring in the office of any judge of the  
10 court of appeals and any position to be open on the court of  
11 appeals as a result of enlargement of such court, or the  
12 retirement or failure of an incumbent to file such judge's  
13 declaration of candidacy to be retained in office as hereinafter  
14 required, or failure of a judge to be elected to be retained in  
15 office, shall be filled by appointment by the governor, with the  
16 consent of the senate, of a person possessing the qualifications  
17 of office.

18 (2) Whenever a vacancy occurs, will occur or position  
19 opens on the court of appeals, the clerk of the supreme court  
20 shall promptly give notice to the governor.

21 (3) In event of the failure of the governor to make the  
22 appointment within 60 days from the date such vacancy  
23 occurred or position became open, the chief justice of the  
24 supreme court, with the consent of the senate, shall make the  
25 appointment of a person possessing the qualifications of office.

26 (4) Whenever a vacancy in the office of judge of the court  
27 of appeals exists at the time the appointment to fill such  
28 vacancy is made pursuant to this section, the appointment shall  
29 be effective at the time it is made, but where an appointment is  
30 made pursuant to this section to fill a vacancy which will occur  
31 at a future date, such appointment shall not take effect until  
32 such date.

33 (b) No person appointed pursuant to subsection (a) shall  
34 assume the office of judge of the court of appeals until the  
35 senate, by an affirmative vote of the majority of all members of  
36 the senate then elected or appointed and qualified, consents to  
37 such appointment. The senate shall vote to consent to any such  
38 appointment not later than 60 days after such appointment is  
39 received by the senate. If the senate is not in session and will  
40 not be in session within the 60-day time limitation, the senate  
41 shall vote to consent to any such appointment not later than 20  
42 days after the senate begins its next session. In the event a  
43 majority of the senate does not vote to consent to the

1 appointment, the governor, within 60 days after the senate vote  
2 on the previous appointee, shall appoint another person  
3 possessing the qualifications of office and such subsequent  
4 appointment shall be considered by the senate in the same  
5 procedure as provided in this article. The same appointment and  
6 consent procedure shall be followed until a valid appointment  
7 has been made. No person who has been previously appointed  
8 but did not receive the consent of the senate shall be appointed  
9 again for the same vacancy. If the senate fails to vote on an  
10 appointment within the time limitation imposed by this  
11 subsection, the senate shall be deemed to have given consent to  
12 such appointment.

13 (c) (1) Each judge of the court of appeals appointed  
14 pursuant to subsection (a) and consented to pursuant to  
15 subsection (b) shall hold office for an initial term ending on the  
16 second Monday in January following the first general election  
17 that occurs after the expiration of 12 months in office.

18 (2) Not less than 60 days prior to the holding of the general  
19 election next preceding the expiration of the term of any judge  
20 of the court of appeals, the judge may file in the office of the  
21 secretary of state a declaration of candidacy for retention in  
22 office. If a declaration is not filed as provided in this section,  
23 the position held by the judge shall be vacant upon the  
24 expiration of the judge's term of office. If such declaration is  
25 filed, the judge's name shall be submitted at the next general  
26 election to the electors of the state on a separate judicial ballot,  
27 without party designation, reading substantially as follows:

28 "Shall (Here insert name of judge.), Judge of the Court of  
29 Appeals, be retained in office?"

30 (3) If a majority of those voting on the question vote  
31 against retaining the judge in office, the position which the  
32 judge holds shall be vacant upon the expiration of the judge's  
33 term of office. Otherwise, unless the judge is removed for  
34 cause, the judge shall remain in office for the regular term of  
35 four years from the second Monday in January following the  
36 election. At the expiration of each term, unless by law the judge  
37 is compelled to retire, the judge shall be eligible for retention in  
38 office by election in the manner prescribed in this section.

39 (4) If a majority of those voting on the question vote  
40 against the judge's retention, the secretary of state, following the  
41 final canvass of votes on the question, shall certify the results to  
42 the clerk of the supreme court. Any such judge who has not  
43 been retained in office pursuant to this section shall not be

1 eligible for nomination or appointment to the office of judge of  
2 the court of appeals prior to the expiration of four years after the  
3 expiration of the judge's term of office.

4 (d) The supreme court may assign a judge of the court of  
5 appeals to serve temporarily on the supreme court.

6 (e) The supreme court or the court of appeals may assign a  
7 district judge to serve temporarily on the court of appeals.

8 **"§ 7. District courts.** (a) The state shall be divided into  
9 judicial districts as provided by law. Each judicial district shall  
10 have at least one district judge. The term of office of each judge  
11 of the district court shall be four years. District court shall be  
12 held at such times and places as may be provided by law. The  
13 district judges shall be elected by the electors of the respective  
14 judicial districts unless the electors of a judicial district have  
15 adopted and not subsequently rejected a method of nonpartisan  
16 selection. The legislature shall provide a method of nonpartisan  
17 selection of district judges and for the manner of submission  
18 and resubmission thereof to the electors of a judicial district. A  
19 nonpartisan method of selection of district judges may be  
20 adopted, and once adopted may be rejected, only by a majority  
21 of electors of a judicial district voting on the question at an  
22 election in which the proposition is submitted. Whenever a  
23 vacancy occurs in the office of district judge, it shall be filled  
24 by appointment by the governor until the next general election  
25 that occurs more than 30 days after such vacancy, or as may be  
26 provided by such nonpartisan method of selection.

27 (b) The district courts shall have such jurisdiction in their  
28 respective districts as may be provided by law.

29 (c) The legislature shall provide for clerks of the district  
30 courts.

31 (d) Provision may be made by law for judges pro tem of  
32 the district court.

33 (e) The supreme court or any justice thereof shall have the  
34 power to assign judges of district courts temporarily to other  
35 districts.

36 (f) The supreme court may assign a district judge to serve  
37 temporarily on the supreme court.

38 (g) The supreme court or the court of appeals may assign a  
39 district judge to serve temporarily on the court of appeals.

40 **"§ 8. Qualifications of justices and judges.** Justices of  
41 the supreme court, judges of the court of appeals and judges of  
42 the district courts shall be at least 30 years of age and shall be  
43 duly authorized by the supreme court of Kansas to practice law

1 in the courts of this state and shall possess such other  
2 qualifications as may be prescribed by law.

3 **"§ 9. Prohibition of political activity by justices and**  
4 **certain judges.** No justice of the supreme court who is  
5 appointed or retained under the procedure of section 5 of this  
6 article, nor any judge of the court of appeals who is appointed  
7 or retained under the procedure of section 6 of this article, nor  
8 any judge of the district court holding office under a  
9 nonpartisan method authorized in subsection (a) of section 7 of  
10 this article, shall directly or indirectly make any contribution to  
11 or hold any office in a political party or organization or take  
12 part in any political campaign.

13 **"§ 10. Extension of terms until successor qualified.** All  
14 judicial officers shall hold their offices until their successors  
15 shall have qualified.

16 **"§ 11. Compensation of justices and judges; certain**  
17 **limitation.** The justices of the supreme court, judges of the  
18 court of appeals and judges of the district courts shall receive  
19 for their services such compensation as may be provided by  
20 law, which shall not be diminished during their terms of office,  
21 unless by general law applicable to all salaried officers of the  
22 state. Such justices or judges shall receive no fees or perquisites  
23 nor hold any other office of profit or trust under the authority of  
24 the state, or the United States except as may be provided by law,  
25 or practice law during their continuance in office.

26 **"§ 12. Removal of justices and judges.** Justices of the  
27 supreme court may be removed from office by impeachment  
28 and conviction as prescribed in article 2 of this constitution. In  
29 addition to removal by impeachment and conviction, justices  
30 may be retired after appropriate hearing, upon certification to  
31 the governor, by the supreme court that such justice is so  
32 incapacitated as to be unable to perform adequately such  
33 justice's duties. Other judges shall be subject to retirement for  
34 incapacity, and to discipline, suspension and removal for cause  
35 by the supreme court after appropriate hearing.

36 **"§ 13. Savings clause.** Nothing contained in this  
37 amendment to the constitution shall: (a) Shorten the term of  
38 office or abolish the office of any justice of the supreme court,  
39 any judge of the court of appeals, any judge of the district court,  
40 or any other judge of any other court who is holding office at  
41 the time this amendment becomes effective, or who is holding  
42 office at the time of adoption, rejection, or resubmission of a  
43 nonpartisan method of selection of district judges as provided in

1 subsection (a) of section 7 of this article, and all such justices  
2 and judges shall hold their respective offices for the terms for  
3 which elected or appointed unless sooner removed in the  
4 manner provided by law; (b) repeal any statute of this state  
5 relating to the supreme court, the supreme court nominating  
6 commission, the court of appeals, district courts, or any other  
7 court, or relating to the justices or judges of such courts, and  
8 such statutes shall remain in force and effect until amended or  
9 repealed by the legislature."

10 Sec. 2. The following statement shall be printed on the ballot with  
11 the amendment as a whole:

12 "*Explanatory statement.* The purpose of this amendment is to  
13 place the law concerning the court of appeals into the  
14 constitution and to do away with the supreme court  
15 nominating commission. The governor will appoint a  
16 qualified person, or if the governor fails to act, the chief  
17 justice of the supreme court would appoint a qualified  
18 person, and such person's appointment would be required to  
19 be confirmed by the senate. A procedure is established  
20 whereby senate confirmation would occur within 60 days of  
21 receiving the appointment. If the senate does not confirm the  
22 appointment a majority vote, the governor would then  
23 appoint another qualified person, and such person's  
24 appointment would again go to the senate for confirmation.  
25 The same appointment and confirmation procedure would be  
26 followed until a valid appointment is made. If the senate  
27 fails to vote on an appointment within 60 days, it will be  
28 considered that the senate has confirmed the appointment.

29 "A vote for this proposition would provide a procedure whereby  
30 the governor or chief justice would appoint a person to be a  
31 supreme court justice or court of appeals judge and the  
32 senate, by majority vote, would confirm the appointment of  
33 the supreme court justice or court of appeals judge.

34 "A vote against this proposition would continue in effect the  
35 current provision whereby the supreme court nominating  
36 commission nominates three persons for the office of the  
37 supreme court or court of appeals and the governor appoints  
38 one of such persons."

39 Sec. 3. This resolution, if approved by two-thirds of the members  
40 elected (or appointed) and qualified to the House of Representatives, and  
41 two-thirds of the members elected (or appointed) and qualified to the  
42 Senate shall be entered on the journals, together with the yeas and nays.  
43 The secretary of state shall cause this resolution to be published as



1 provided by law and shall cause the proposed amendment to be submitted  
2 to the electors of the state at the election in August in the year 2014  
3 unless a special election is called at a sooner date by concurrent  
4 resolution of the legislature, in which case it shall be submitted to the  
5 electors of the state at the special election.