

## House Concurrent Resolution No. 5005

By Committee on Judiciary

1-17

1 A PROPOSITION to amend sections 2, 5 and 8 of article 3 of the  
2 constitution of state of Kansas; relating to the selection and term of  
3 office of supreme court justices.  
4

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

9 Section 1. The following proposition to amend the constitution of  
10 the state of Kansas shall be submitted to the qualified electors of the state  
11 for their approval or rejection: Sections 2, 5 and 8 of article 3 of the  
12 constitution of the state of Kansas is hereby amended to read as follows:

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

29 (b) *Justices of the supreme court: (1) Shall hold their offices*  
30 *during good behavior; (2) shall be subject to the retirement,*  
31 *discipline and removal for cause provisions of section 15 of article*  
32 *3 of the constitution of the state of Kansas; and (3) shall not be*  
33 *subject to a retention election.*

34 "**§ 5. Selection of justices of the supreme court.** (a) Any  
35 vacancy occurring in the office of any justice of the supreme court  
36 and any position to be open thereon as a result of enlargement of

1 the court, or the retirement or ~~failure~~ of an incumbent to file his  
 2 declaration of candidacy to succeed himself as hereinafter required,  
 3 or failure of a justice to be elected to succeed himself, shall be  
 4 filled by appointment by the governor, *with the consent of the*  
 5 *senate*, of one of three persons possessing the qualifications of  
 6 office who shall be nominated and whose names shall be submitted  
 7 to the governor by the supreme court nominating commission  
 8 established as hereinafter provided.

9 (b) In event of the failure of the governor to make the  
 10 appointment within ~~sixty~~ 60 days from the time the names of the  
 11 nominees are submitted to ~~him~~ *the governor*, the chief justice of the  
 12 supreme court shall make the appointment from such nominees,  
 13 *with the consent of the senate.*

14 (c) ~~Each justice of the supreme court appointed pursuant to~~  
 15 ~~provisions of subsection (a) of this section shall hold office for an~~  
 16 ~~initial term ending on the second Monday in January following the~~  
 17 ~~first general election that occurs after the expiration of twelve~~  
 18 ~~months in office. Not less than sixty days prior to the holding of~~  
 19 ~~the general election next preceding the expiration of his term of~~  
 20 ~~office, any justice of the supreme court may file in the office of the~~  
 21 ~~secretary of state a declaration of candidacy for election to succeed~~  
 22 ~~himself. If a declaration is not so filed, the position held by such~~  
 23 ~~justice shall be open from the expiration of his term of office. If~~  
 24 ~~such declaration is filed, his name shall be submitted at the next~~  
 25 ~~general election to the electors of the state on a separate judicial~~  
 26 ~~ballot, without party designation, reading substantially as follows:~~  
 27 "Shall \_\_\_\_\_

28 (Here insert name of justice.)

29 \_\_\_\_\_  
 30 (Here insert the title of the court.)

31 be retained in office?"

32 If a majority of those voting on the question vote against  
 33 retaining him in office, the position or office which he holds shall  
 34 be open upon the expiration of his term of office; otherwise he  
 35 shall, unless removed for cause, remain in office for the regular  
 36 term of six years from the second Monday in January following  
 37 such election. At the expiration of each term he shall, unless by law  
 38 he is compelled to retire, be eligible for retention in office by  
 39 election in the manner prescribed in this section. *Whenever a*  
 40 *vacancy occurs or will occur or a position opens on the supreme*  
 41 *court, the clerk of the supreme court shall promptly give notice to*  
 42 *the governor.*

43 (d) *No person appointed pursuant to subsection (a) or (b) of*  
 44 *this section shall assume the office of justice of the supreme court*

1        *until the senate, by an affirmative vote of the majority of all*  
2        *members of the senate then elected or appointed and qualified,*  
3        *consents to such appointment. The senate shall vote to consent to*  
4        *any such appointment not later than 30 days after such*  
5        *appointment is received by the senate. If the senate is not in*  
6        *session and will not be in session within the 30-day time limitation,*  
7        *the president of the senate shall convene the senate for the sole*  
8        *purpose of voting on such appointment and no other action shall*  
9        *be in order during such session. In the event a majority of the*  
10       *senate does not vote to consent to the appointment, the governor,*  
11       *within 30 days after the senate vote on the previous appointee,*  
12       *shall appoint another person possessing the qualifications of*  
13       *office, whose name has been submitted to the governor by the*  
14       *supreme court nominating commission, and such subsequent*  
15       *appointment shall be considered by the senate by the same*  
16       *procedure as provided in this section. The same appointment and*  
17       *consent procedure shall be followed until a valid appointment has*  
18       *been made. No person who has previously been appointed but did*  
19       *not receive the consent of the senate shall be appointed again for*  
20       *the same vacancy. If the senate fails to vote on an appointment*  
21       *within the 30-day time limitation set forth herein, the senate shall*  
22       *be deemed to have given consent to such appointment.*

23       (e) A nonpartisan nominating commission whose duty it shall  
24       be to nominate and submit to the governor the names of persons for  
25       appointment to fill vacancies in the office of any justice of the  
26       supreme court is hereby established, and shall be known as the  
27       "supreme court nominating commission." ~~Said~~ Such commission  
28       shall be organized as hereinafter provided.

29       ~~(e) (f)~~ (f) The supreme court nominating commission shall be  
30       composed as follows: ~~One member, who shall be chairman, chosen~~  
31       ~~from among their number by the members of the bar who are~~  
32       ~~residents of and licensed in Kansas; one member from each~~  
33       ~~congressional district chosen from among their number by the~~  
34       ~~resident members of the bar in each such district; and one member,~~  
35       ~~who is not a lawyer, from each congressional district, appointed by~~  
36       ~~the governor from among the residents of each such district. Three~~  
37       *members shall be appointed by the speaker of the house of*  
38       *representatives, three members shall be appointed by the president*  
39       *of the senate and three members shall be appointed by the*  
40       *governor. All members shall be residents of Kansas. At least one*  
41       *member appointed by the speaker of the house of representatives,*  
42       *at least one member appointed by the president of the senate and*  
43       *at least one member appointed by the governor shall be members*

1 of the bar in good standing and licensed in Kansas. The governor  
2 shall appoint one of the nine members of the supreme court  
3 nominating commission to serve as such commission's  
4 chairperson.

5 (f) (g) The terms of office, the procedure for selection and  
6 certification of the members of the commission and provision for  
7 their compensation or expenses shall be as provided by the  
8 legislature.

9 (g) (h) No member of the supreme court nominating  
10 commission shall, while ~~he is~~ a member, hold any other public  
11 office by appointment or any official position in a political party or  
12 for six months thereafter be eligible for nomination for the office of  
13 justice of the supreme court. The commission may act only by the  
14 concurrence of a majority of its members.

15 (i) No justice of the supreme court serving on the supreme  
16 court on the date of ratification of this amendment by the electors  
17 of the state shall be required to stand for a retention election in  
18 order to be retained in office on such date or anytime thereafter.

19 **"§ 8. Prohibition of political activity by justices and certain**  
20 **judges.** No justice of the supreme court who is appointed ~~or~~  
21 ~~retained~~ under the procedure of section 5 of this article, nor any  
22 judge of the district court holding office under a nonpartisan  
23 method authorized in subsection (a) of section 6 of this article,  
24 shall directly or indirectly make any contribution to or hold any  
25 office in a political party or organization or take part in any  
26 political campaign."

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

29 *"Explanatory statement.* The purpose of this amendment is to  
30 allow the governor to appoint a qualified person to the office  
31 of justice of the supreme court, and such person's  
32 appointment would be required to be consented to by the  
33 senate. If the governor fails to act, the chief justice of the  
34 supreme court would appoint a qualified person, and such  
35 person's appointment would also be required to be consented  
36 to by the senate. The nonpartisan supreme court nominating  
37 commission membership would be changed to include  
38 appointments by the speaker of the house of representatives  
39 and the president of the senate. The gubernatorial  
40 appointments to the commission would be reduced from four  
41 members to three members. The members of the bar would  
42 no longer elect members of the commission. The  
43 commission would continue to nominate three persons for

1 appointment by the governor. A procedure is established  
2 whereby senate consent would occur within 30 days of  
3 receiving the appointment. If the senate does not consent by  
4 a majority vote, the governor would then select an  
5 appointment which would again go to the senate for consent.  
6 The same appointment and consent procedure would be  
7 followed until a valid appointment is made. If the senate  
8 fails to vote on an appointment within 30 days, it will be  
9 considered that the senate has consented to the appointment.  
10 Further, the supreme court justices would hold the office  
11 during good behavior, be subject to the retirement, discipline  
12 and removal for cause provisions of section 15 of article 3 of  
13 the Kansas constitution and would no longer be subject to a  
14 retention election.

15 "A vote for this proposition would provide a procedure whereby  
16 the governor or chief justice would appoint a person to be a  
17 supreme court justice and the senate, by majority vote,  
18 would consent to the appointment of supreme court justices.  
19 The supreme court nominating commission would continue  
20 to nominate three qualified persons to the governor. The  
21 supreme court justices would hold the office during good  
22 behavior, be subject to the retirement, discipline and removal  
23 for cause provisions of section 15 of article 3 of the Kansas  
24 constitution and would no longer be subject to a retention  
25 election.

26 "A vote against this proposition would continue in effect the  
27 current provision whereby the supreme court nominating  
28 commission nominates three persons for the office of the  
29 supreme court and the governor appoints one of such  
30 persons. Further, the justices of the supreme court would  
31 continue to hold six-year terms and be subject to retention  
32 elections."

33 Sec. 3. This resolution, if approved by two-thirds of the members  
34 elected (or appointed) and qualified to the House of Representatives, and  
35 two-thirds of the members elected (or appointed) and qualified to the  
36 Senate shall be entered on the journals, together with the yeas and nays.  
37 The secretary of state shall cause this resolution to be published as  
38 provided by law and shall cause the proposed amendment to be submitted  
39 to the electors of the state at the election in August of the year 2014  
40 unless a special election is called at a sooner date by concurrent  
41 resolution of the legislature, in which case it shall be submitted to the  
42 electors of the state at the special election.