

House Concurrent Resolution No. 5019

By Committee on Federal and State Affairs

5-16

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.** (a) The supreme court shall consist
21 of not less than seven justices who shall be selected as provided
22 by 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 justice who is senior in continuous term of
26 service shall be chief justice, and in case two or more have
27 continuously served during the same period the senior in age of
28 these shall be chief justice. A justice may decline or resign from
29 the office of chief justice without resigning from the court.
30 Upon such declination or resignation, the justice who is next
31 senior in continuous term of service shall become chief justice.
32 During incapacity of a chief justice, the duties, powers and
33 emoluments of the office shall devolve upon the justice who is
34 next senior in continuous service.

35 (b) Justices of the supreme court: (1) Shall hold their
36 offices during good behavior; (2) shall be subject to the

1 retirement, discipline and removal for cause provisions of
2 section 12 of this article; and (3) shall not be subject to a
3 retention election.

4 **"§ 3. Jurisdiction and terms.** The supreme court shall
5 have original jurisdiction in proceedings in quo warranto,
6 mandamus, and habeas corpus; and such appellate jurisdiction
7 as may be provided by law. It shall hold one term each year at
8 the seat of government and such other terms at such places as
9 may be provided by law, and its jurisdiction shall be co-
10 extensive with the state.

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

15 **"§ 5. Selection of justices of the supreme court.** (a) (1)
16 Any vacancy occurring in the office of any justice of the
17 supreme court and any position to be open on the supreme court
18 as a result of enlargement of such court, or the retirement of an
19 incumbent, shall be filled by appointment by the governor, with
20 the consent of the senate, of a person possessing the
21 qualifications of office.

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

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

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

37 (b) (1) No person appointed pursuant to this section shall
38 assume the office of justice of the supreme court until the
39 senate, by an affirmative vote of the majority of all members of
40 the senate then elected or appointed and qualified, consents to
41 such appointment.

42 (2) The senate shall vote to consent to any such
43 appointment not later than 60 days after such appointment is

1 received by the senate. If the senate is not in session and will
2 not be in session within the 60-day time limitation, the senate
3 shall vote to consent to any such appointment not later than 20
4 days after the senate begins its next session.

5 (3) In the event a majority of the senate does not vote to
6 consent to the appointment, the governor, within 60 days after
7 the senate vote on the previous appointee, shall appoint another
8 person possessing the qualifications of office and such
9 subsequent appointment shall be considered by the senate in the
10 same procedure as provided in this article. In the event of the
11 failure of the governor to make the appointment within 60 days
12 from the date such vacancy occurred or position became open,
13 the chief justice of the supreme court, with the consent of the
14 senate, shall make the appointment of a person possessing the
15 qualifications of office and such subsequent appointment shall
16 be considered by the senate in the same procedure as provided
17 in this article. The same appointment and consent procedure
18 shall be followed until a valid appointment has been made. No
19 person who has been previously appointed but did not receive
20 the consent of the senate shall be appointed again for the same
21 vacancy.

22 (4) If the senate fails to vote on an appointment within the
23 time limitation imposed by this subsection, the senate shall be
24 deemed to have given consent to such appointment.

25 (c) No justice of the supreme court serving on the supreme
26 court on the date of ratification of this amendment by the
27 electors of the state shall be required to stand for a retention
28 election in order to be retained in office on such date or anytime
29 thereafter.

30 **"§ 6. Court of appeals.** (a) The court of appeals shall
31 consist of not less than 14 judges who shall be selected as
32 provided by this article. Judges of the court of appeals: (1) Shall
33 hold their offices during good behavior; (2) shall be subject to
34 the retirement, discipline and removal for cause provisions of
35 section 12 of this article; and (3) shall not be subject to a
36 retention election.

37 (b) The court of appeals shall be a part of the court of
38 justice in which the judicial power of the state is vested by
39 section 1 of this article and shall be subject to the general
40 administrative authority of the supreme court. The court of
41 appeals shall have such jurisdiction over appeals in civil and
42 criminal cases and from administrative bodies and officers of
43 the state as may be prescribed by law, and shall have such

1 original jurisdiction as may be necessary to the complete
2 determination of any cause on review. During the pendency of
3 any appeal, the court of appeals, on such terms as may be just,
4 may make an order suspending further proceedings in the court
5 below, until the decision of the court of appeals.

6 (c) (1) Any vacancy occurring in the office of any judge of
7 the court of appeals and any position to be open on the court of
8 appeals as a result of enlargement of such court, or the
9 retirement of an incumbent, shall be filled by appointment by
10 the governor, with the consent of the senate, of a person
11 possessing the qualifications of office.

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

15 (3) In the event of the failure of the governor to make the
16 appointment within 60 days from the date such vacancy
17 occurred or position became open, the chief justice of the
18 supreme court, with the consent of the senate, shall make the
19 appointment of a person possessing the qualifications of office.

20 (4) Whenever a vacancy in the office of judge of the court
21 of appeals exists at the time the appointment to fill such
22 vacancy is made pursuant to this section, the appointment shall
23 be effective at the time it is made, but where an appointment is
24 made pursuant to this section to fill a vacancy which will occur
25 at a future date, such appointment shall not take effect until
26 such date.

27 (d) (1) No person appointed pursuant to this section shall
28 assume the office of judge of the court of appeals until the
29 senate, by an affirmative vote of the majority of all members of
30 the senate then elected or appointed and qualified, consents to
31 such appointment.

32 (2) The senate shall vote to consent to any such
33 appointment not later than 60 days after such appointment is
34 received by the senate. If the senate is not in session and will
35 not be in session within the 60-day time limitation, the senate
36 shall vote to consent to any such appointment not later than 20
37 days after the senate begins its next session.

38 (3) In the event a majority of the senate does not vote to
39 consent to the appointment, the governor, within 60 days after
40 the senate vote on the previous appointee, shall appoint another
41 person possessing the qualifications of office and such
42 subsequent appointment shall be considered by the senate in the
43 same procedure as provided in this article. In the event of the

1 failure of the governor to make the appointment within 60 days
2 from the date such vacancy occurred or position became open,
3 the chief justice of the supreme court, with the consent of the
4 senate, shall make the appointment of a person possessing the
5 qualifications of office and such subsequent appointment shall
6 be considered by the senate in the same procedure as provided
7 in this article. The same appointment and consent procedure
8 shall be followed until a valid appointment has been made. No
9 person who has been previously appointed but did not receive
10 the consent of the senate shall be appointed again for the same
11 vacancy.

12 (4) If the senate fails to vote on an appointment within the
13 time limitation imposed by this subsection, the senate shall be
14 deemed to have given consent to such appointment.

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

20 (f) The supreme court may assign a judge of the court of
21 appeals to serve temporarily on the supreme court.

22 **"§ 7. District courts.** (a) The state shall be divided into
23 judicial districts as provided by law. Each judicial district shall
24 have at least one district judge. The term of office of each judge
25 of the district court shall be four years. District court shall be
26 held at such times and places as may be provided by law. The
27 district judges shall be elected by the electors of the respective
28 judicial districts unless the electors of a judicial district have
29 adopted and not subsequently rejected a method of nonpartisan
30 selection. The legislature shall provide a method of nonpartisan
31 selection of district judges and for the manner of submission
32 and resubmission thereof to the electors of a judicial district. A
33 nonpartisan method of selection of district judges may be
34 adopted, and once adopted may be rejected, only by a majority
35 of electors of a judicial district voting on the question at an
36 election in which the proposition is submitted. Whenever a
37 vacancy occurs in the office of district judge, it shall be filled
38 by appointment by the governor until the next general election
39 that occurs more than 30 days after such vacancy, or as may be
40 provided by such nonpartisan method of selection.

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

43 (c) The legislature shall provide for clerks of the district

1 courts.

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

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

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

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

11 **"§ 8. Qualifications of justices and judges.** Justices of
12 the supreme court, judges of the court of appeals and judges of
13 the district courts shall be at least 30 years of age and shall be
14 duly authorized by the supreme court of Kansas to practice law
15 in the courts of this state and shall possess such other
16 qualifications as may be prescribed by law.

17 **"§ 9. Prohibition of political activity by justices and
18 certain judges.** No justice of the supreme court who is
19 appointed and consented to under the procedure of section 5 of
20 this article, nor any judge of the court of appeals who is
21 appointed and consented to under the procedure of section 6 of
22 this article, nor any judge of the district court holding office
23 under a nonpartisan method authorized in subsection (a) of
24 section 7 of this article, shall directly or indirectly make any
25 contribution to or hold any office in a political party or
26 organization or take part in any political campaign.

27 **"§ 10. Extension of terms until successor qualified.** All
28 judicial officers shall hold their offices until their successors
29 shall have qualified.

30 **"§ 11. Compensation of justices and judges; certain
31 limitation.** The justices of the supreme court, judges of the
32 court of appeals and judges of the district courts shall receive
33 for their services such compensation as may be provided by
34 law, which shall not be diminished during their terms of office,
35 unless by general law applicable to all salaried officers of the
36 state. Such justices or judges shall receive no fees or perquisites
37 nor hold any other office of profit or trust under the authority of
38 the state, or the United States except as may be provided by law,
39 or practice law during their continuance in office.

40 **"§ 12. Removal of justices and judges.** Justices of the
41 supreme court may be removed from office by impeachment
42 and conviction as prescribed in article 2 of this constitution. In
43 addition to removal by impeachment and conviction, justices

1 may be retired after appropriate hearing, upon certification to
2 the governor, by the supreme court that such justice is so
3 incapacitated as to be unable to perform adequately such
4 justice's duties. Other judges shall be subject to retirement for
5 incapacity, and to discipline, suspension and removal for cause
6 by the supreme court after appropriate hearing.

7 **"§ 13. Savings clause.** Nothing contained in this
8 amendment to the constitution shall: (a) Shorten the term of
9 office or abolish the office of any justice of the supreme court,
10 any judge of the court of appeals, any judge of the district court,
11 or any other judge of any other court who is holding office at
12 the time this amendment becomes effective, or who is holding
13 office at the time of adoption, rejection, or resubmission of a
14 nonpartisan method of selection of district judges as provided in
15 subsection (a) of section 7 of this article, and all such justices
16 and judges shall hold their respective offices for the terms for
17 which elected or appointed unless sooner removed in the
18 manner provided by law; (b) repeal any statute of this state
19 relating to the supreme court, the supreme court nominating
20 commission, the court of appeals, district courts, or any other
21 court, or relating to the justices or judges of such courts, and
22 such statutes shall remain in force and effect until amended or
23 repealed by the legislature."

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

26 *"Explanatory statement.* The purpose of this amendment is to
27 place the law concerning the court of appeals into the
28 constitution and to do away with the supreme court
29 nominating commission. Further, supreme court justices and
30 court of appeals judges would hold office for life, subject to
31 the retirement, discipline and removal for cause provisions
32 of section 15 of article 3 of the Kansas constitution, and
33 would no longer be subject to a retention election. The
34 governor would appoint a qualified person, or if the
35 governor fails to act, the chief justice of the supreme court
36 would appoint a qualified person, and such person's
37 appointment would be required to be confirmed by the
38 senate. A procedure is established whereby senate
39 confirmation would occur within 60 days of receiving the
40 appointment. If the senate does not confirm the appointment
41 by a majority vote, the governor would then appoint another
42 qualified person, and such person's appointment would again
43 go to the senate for confirmation. The same appointment and

1 confirmation procedure would be followed until a valid
2 appointment is made. If the senate fails to vote on an
3 appointment within 60 days, it would be considered that the
4 senate has confirmed the appointment.

5 "A vote for this proposition would provide a procedure whereby
6 the governor or chief justice would appoint a person to be a
7 supreme court justice or court of appeals judge and the
8 senate, by majority vote, would confirm the appointment of
9 the supreme court justice or court of appeals judge. Supreme
10 court justices and court of appeals judges would hold office
11 for life, subject to the retirement, discipline and removal for
12 cause provisions of section 15 of article 3 of the Kansas
13 constitution, and would no longer be subject to a retention
14 election.

15 "A vote against this proposition would continue in effect the
16 current provision whereby the supreme court nominating
17 commission nominates three persons for the office of the
18 supreme court or court of appeals and the governor appoints
19 one of such persons. Supreme court justices would continue
20 to hold six-year terms and be subject to retention elections,
21 and court of appeals judges would continue to hold four-year
22 terms and be subject to retention elections."

23 Sec. 3. This resolution, if approved by two-thirds of the members
24 elected (or appointed) and qualified to the House of Representatives, and
25 two-thirds of the members elected (or appointed) and qualified to the
26 Senate shall be entered on the journals, together with the yeas and nays.
27 The secretary of state shall cause this resolution to be published as
28 provided by law and shall cause the proposed amendment to be submitted
29 to the electors of the state at the election in August in the year 2014
30 unless a special election is called at a sooner date by concurrent
31 resolution of the legislature, in which case it shall be submitted to the
32 electors of the state at the special election.