

House Concurrent Resolution No. 5012

By Committee on Judiciary

2-10

1 A PROPOSITION to amend section 5 of article 3 of the constitution of
2 the state of Kansas; relating to justices of the supreme court and
3 retention in office.

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: Section 5 of article 3 of the constitution of
12 the state of Kansas is hereby amended to read as follows:

13 "§ 5. **Selection of justices of the supreme court.** (a) (1) Any
14 vacancy occurring in the office of any justice of the supreme court
15 and any position to be open thereon as a result of enlargement of
16 the court, or the retirement or failure of an incumbent to file ~~his~~
17 *such justice's declaration of candidacy to-sueeed himself be*
18 *retained in office* as hereinafter required, or failure of a justice to
19 be elected ~~to-sueeed himself be retained in office~~, shall be filled
20 by appointment by the governor, *with the consent of the senate*, of
21 one of three persons possessing the qualifications of office who
22 shall be nominated and whose names shall be submitted to the
23 governor by ~~the supreme court nominating commission established~~
24 *standing house committee on judiciary, or the successor to such*
25 *committee*, as hereinafter provided.

26 (2) *Whenever a vacancy occurs or will occur or a position*
27 *opens on the supreme court, the clerk of the supreme court shall*
28 *promptly give notice to the standing house committee on judiciary,*
29 *or the successor to such committee.*

30 (b) (3) In event of the failure of the governor to make the
31 appointment within ~~sixty~~ 60 days from the time the names of the
32 nominees are submitted to ~~him~~ the governor, the chief justice of
33 the supreme court shall make the appointment from such
34 nominees, *with the consent of the senate*.

35 (b) *No person appointed pursuant to subsection (a) shall*
36 *assume the office of justice of the supreme court until the senate,*

by an affirmative vote of the majority of all members of the senate then elected or appointed and qualified, consents to such appointment. The senate shall vote to consent to any such appointment not later than 60 days after such appointment is received by the senate. If the senate is not in session and will not be in session within the 60-day time limitation, the senate shall vote to consent to any such appointment not later than 20 days after the senate begins its next session. In the event a majority of the senate does not vote to consent to the appointment, the governor, within 60 days after the senate vote on the previous appointee, shall appoint another person possessing the qualifications of office from the names submitted to the governor by the standing house committee on judiciary, or the successor to such committee, and such subsequent appointment shall be considered by the senate in the same procedure as provided in this article. The same appointment and consent procedure shall be followed until a valid appointment has been made. No person who has been previously appointed but did not receive the consent of the senate shall be appointed again for the same vacancy. If the senate fails to vote on an appointment within the time limitation imposed by this subsection, the senate shall be deemed to have given consent to such appointment.

(c) Each justice of the supreme court appointed pursuant to provisions of subsection (a)~~of this section and consented to pursuant to subsection (b)~~ shall hold office for an initial term ending on the second Monday in January following the first general election that occurs after the expiration of twelve 12 months in office. Not less than sixty 60 days prior to the holding of the general election next preceding the expiration of ~~his~~ such justice's term of office, ~~any~~ the justice of the supreme court may file in the office of the secretary of state a declaration of candidacy for ~~election to succeed himself~~ retention in office. If a declaration is not so filed, the position held by such justice shall be open from the expiration of ~~his~~ such justice's term of office. If such declaration is filed, ~~his~~ such justice's name shall be submitted at the next general election to the electors of the state on a separate judicial ballot, without party designation, reading substantially as follows:

"Shall

(Here insert name of justice.)

(Here insert the title of the court.)
be retained in office?"

If a majority of those voting on the question vote against

1 retaining ~~him~~ *the justice* in office, the position or office which ~~he~~ he
2 *the justice* holds shall be open upon the expiration of ~~his such~~ his such
3 *justice's* term of office. Otherwise ~~he~~ *the justice* shall, unless
4 removed for cause, remain in office for the regular term of six
5 years from the second Monday in January following such election.
6 At the expiration of each term ~~he~~ *the justice* shall, unless by law ~~he~~ he
7 *the justice* is compelled to retire, be eligible for retention in office
8 by election in the manner prescribed in this section.

9 (d) ~~A nonpartisan nominating commission whose duty it shall~~
10 ~~be to The standing house committee on judiciary, or the successor~~
11 ~~to such committee, shall nominate and submit to the governor the~~
12 names of persons for appointment to fill vacancies in the office of
13 any justice of the supreme court is hereby established, and shall be
14 known as the "supreme court nominating commission." Said
15 commission shall be organized as hereinafter provided.

16 (e) ~~The supreme court nominating commission shall be~~
17 composed as follows: One member, who shall be chairman, chosen
18 from among their number by the members of the bar who are
19 residents of and licensed in Kansas; one member from each
20 congressional district chosen from among their number by the
21 resident members of the bar in each such district; and one member,
22 who is not a lawyer, from each congressional district, appointed by
23 the governor from among the residents of each such district.

24 (f) ~~The terms of office, the procedure for selection and~~
25 ~~certification of the members of the commission and provision for~~
26 ~~their compensation or expenses shall be as provided by the~~
27 legislature.

28 (g) ~~No member of the supreme court nominating commission~~
29 ~~shall, while he is a member, hold any other public office by~~
30 ~~appointment or any official position in a political party or for six~~
31 ~~months thereafter be eligible for nomination for the office of~~
32 ~~justice of the supreme court. The commission committee may act~~
33 ~~only by the concurrence of a majority of its members."~~

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

36 "Explanatory statement. The purpose of this amendment is to
37 do away with the supreme court nominating commission,
38 assign the commission's duties to the standing house
39 committee on judiciary and make supreme court justice
40 appointments subject to senate confirmation. The standing
41 house committee on judiciary would submit the names of
42 three persons to the governor and the governor would
43 appoint one of such persons. A procedure is established

1 whereby senate confirmation would occur within 60 days of
2 receiving the appointment. If the senate does not confirm the
3 appointment by a majority vote, the governor would then
4 appoint another qualified person from the names submitted
5 to the governor by the standing house committee on
6 judiciary, and such person's appointment would again go to
7 the senate for confirmation. The same appointment and
8 confirmation procedure would be followed until a valid
9 appointment is made. If the senate fails to vote on an
10 appointment within 60 days, it will be considered that the
11 senate has confirmed the appointment.

12 "A vote for this proposition would change the procedure for
13 selection of justices of the supreme court whereby the
14 standing house committee on judiciary would nominate three
15 persons for the office of justice of the supreme court, the
16 governor would appoint one of such persons and the senate,
17 by majority vote, would confirm the appointment.

18 "A vote against this proposition would continue in effect the
19 current procedure for selection of justices of the supreme
20 court whereby the supreme court nominating commission
21 nominates three persons for the office of justice of the
22 supreme court and the governor appoints one of such
23 persons."

24 Sec. 3. This resolution, if approved by two-thirds of the members
25 elected (or appointed) and qualified to the House of Representatives, and
26 two-thirds of the members elected (or appointed) and qualified to the
27 Senate shall be entered on the journals, together with the yeas and nays.
28 The secretary of state shall cause this resolution to be published as
29 provided by law and shall cause the proposed amendment to be submitted
30 to the electors of the state at the general election in November in the year
31 2016 unless a special election is called at a sooner date by concurrent
32 resolution of the legislature, in which case it shall be submitted to the
33 electors of the state at the special election.