

## HOUSE BILL No. 2101

By Representatives Kinzer, Collins, Gregory, Huebert, Kelley, Mast, Meigs,  
O'Brien, O'Hara, Patton, Peck, Rhoades, Rubin, Ryckman, Siegfried, Suellentrop  
and B. Wolf

1-26

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1 AN ACT concerning the courts; relating to the court of appeals;  
2 appointment of judges; amending K.S.A. 20-3006 and and K.S.A.  
3 2010 Supp. 20-3002 and repealing the existing sections; also repealing  
4 K.S.A. 20-3004, 20-3005, 20-3007, 20-3008, 20-3009 and 20-3010.  
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6 *Be it enacted by the Legislature of the State of Kansas:*

7 New Section 1. (a) On and after July 1, 2011, any vacancy  
8 occurring in the office of any judge of the court of appeals and any  
9 position to be open on the court of appeals as a result of enlargement of  
10 such court pursuant to K.S.A. 20-3002, and amendments thereto, or the  
11 retirement or failure of an incumbent to file such judge's declaration of  
12 candidacy to be retained in office pursuant to K.S.A. 20-3006, and  
13 amendments thereto, or failure of a judge to be elected to be retained in  
14 office, shall be filled by appointment by the governor, with the consent of  
15 the senate.

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

19 (c) No person appointed pursuant to subsection (a) shall assume the  
20 office of judge of the court of appeals until the senate, by an affirmative  
21 vote of the majority of all members of the senate then elected or  
22 appointed and qualified, consents to such appointment. The senate shall  
23 vote to consent to any such appointment not later than 30 days after such  
24 appointment is received by the senate. If the senate is not in session and  
25 will not be in session within the 30-day time limitation, the president of  
26 the senate shall convene the senate for the sole purpose of voting on such  
27 appointment and no other action shall be in order during such session. In  
28 the event a majority of the senate does not vote to consent to the  
29 appointment, the governor, within 30 days after the senate vote on the  
30 previous appointee, shall appoint another person possessing the  
31 qualifications of office and such subsequent appointment shall be  
32 considered by the senate in the same procedure as provided in this  
33 section. The same appointment and consent procedure shall be followed  
34 until a valid appointment has been made. No person who has been

1 previously appointed but did not receive the consent of the senate shall be  
2 appointed again for the same vacancy. If the senate fails to vote on an  
3 appointment within the 30-day time limitation, the senate shall be deemed  
4 to have given consent to such appointment.

5 (d) Persons who are appointed as judges of the court of appeals  
6 pursuant to K.S.A. 20-3005, prior to its repeal, and section 1, and  
7 amendments thereto, shall commence the duties of office upon  
8 appointment and consent, and each judge shall have all the rights,  
9 privileges, powers and duties prescribed by law for the office of judge of  
10 the court of appeals.

11 (e) Judges of the court of appeals appointed and consented to  
12 on and after July 1, 2011:

13 (1) Shall hold their offices during good behavior;

14 (2) shall be subject to the discipline, suspension and removal for  
15 cause provisions of section 15 of article 3 of the constitution of the state  
16 of Kansas, and amendments thereto;

17 (3) shall be subject to the retirement provisions of K.S.A 20-2608,  
18 and amendments thereto; and

19 (4) shall not be subject to a retention election.

20 Sec. 2. K.S.A. 2010 Supp. 20-3002 is hereby amended to read as  
21 follows: 20-3002. (a) On and after January 1, 2008, through December  
22 31, 2011, the court of appeals shall consist of 13 judges whose positions  
23 shall be numbered one to 13. On and after January 1, 2012, the court of  
24 appeals shall consist of 14 judges whose positions shall be numbered one  
25 to 14. Judges of the court of appeals shall possess the qualifications  
26 prescribed by law for justices of the supreme court.

27 (b) Judges of the court of appeals shall be ~~selected~~*appointed* in the  
28 manner provided by ~~K.S.A. 20-3003 through 20-3010~~*section 1*, and  
29 amendments thereto. Each judge of the court of appeals shall receive an  
30 annual salary in the amount prescribed by law. No judge of the court of  
31 appeals may receive additional compensation for official services  
32 performed by the judge. Each such judge shall be reimbursed for  
33 expenses incurred in the performance of such judge's official duties in the  
34 same manner and to the same extent justices of the supreme court are  
35 reimbursed for such expenses.

36 (c) The supreme court may assign a judge of the court of appeals to  
37 serve temporarily on the supreme court.

38 (d) Any additional court of appeals judge position created by this  
39 section shall be considered a position created by the supreme court and  
40 not a civil appointment to a state office pursuant to K.S.A. 46-234, and  
41 amendments thereto.

42 Sec. 3. K.S.A. 20-3006 is hereby amended to read as follows: 20-  
43 3006. (a) ~~Persons who are appointed as judges of the court of appeals~~

1 pursuant to K.S.A. 20-3005 and amendments thereto shall commence the  
2 duties of office upon appointment, and each judge shall have all the  
3 rights, privileges, powers and duties prescribed by law for the office of  
4 judge of the court of appeals.

5 ~~(b)~~ ~~(1)~~(a) NotFor judges of the court of appeals holding office on  
6 June 30, 2011, not less than 60 days prior to the holding of the general  
7 election next preceding the expiration of the term of any *such* judge of the  
8 court of appeals, the judge may file in the office of the secretary of state a  
9 declaration of candidacy for retention in office. If a declaration is not  
10 filed as provided in this section, the position held by the judge shall be  
11 vacant upon the expiration of the judge's term of office. If such  
12 declaration is filed, the judge's name shall be submitted at the next  
13 general election to the electors of the state on a separate judicial ballot,  
14 without party designation, reading substantially as follows:

15  
16 "Shall \_\_\_\_\_ (Here insert name of judge.) \_\_\_\_\_, Judge of the Court of Appeals, be  
17 retained in office?"  
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19 ~~(2)~~(b) If a majority of those voting on the question votes against  
20 retaining the judge in office, the position which the judge holds shall be  
21 vacant upon the expiration of the judge's term of office. Otherwise, unless  
22 the judge is removed for cause, the judge shall remain in office for a term  
23 of four years from the second Monday in January following the election.  
24 At the expiration of each term, unless by law the judge is compelled to  
25 retire, the judge *holding office on June 30, 2011* shall be eligible for  
26 retention in office by election in the manner prescribed in this section.

27 ~~(3)~~(c) If a majority of those voting on the question votes against the  
28 judge's retention, the secretary of state, following the final canvass of  
29 votes on the question, shall certify the results to the clerk of the supreme  
30 court. Any such judge who has not been retained in office pursuant to this  
31 section shall not be eligible for nomination or appointment to the office of  
32 judge of the court of appeals prior to the expiration of four years after the  
33 expiration of the judge's term of office.

34 ~~(4)~~(d) Election laws applicable to the general election of other state  
35 officers shall apply to elections upon the question of retention of judges  
36 of the court of appeals pursuant to this section, to the extent that they are  
37 not in conflict with and are consistent with the provisions of this  
38 ~~act.~~section.

39 Sec. 4. K.S.A. 20-3004, 20-3005, 20-3006, 20-3007, 20-3008, 20-  
40 3009 and 20-3010 and and K.S.A. 2010 Supp. 20-3002 are hereby  
41 repealed.

42 Sec. 5. This act shall take effect and be in force from and after its  
43 publication in the statute book.