

As Amended by House Committee

Session of 2011

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

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

7 *Be it enacted by the Legislature of the State of Kansas:*

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

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

20 (c) No person appointed pursuant to subsection (a) shall assume
21 the office of judge of the court of appeals until the senate, by an
22 affirmative vote of the majority of all members of the senate then
23 elected or appointed and qualified, consents to such appointment. The
24 senate shall vote to consent to any such appointment not later than ~~30~~
25 **60** days after such appointment is received by the senate. If the senate
26 is not in session and will not be in session within the ~~30-day~~ **60-day**
27 time limitation, the president of the senate shall convene the senate for
28 the sole purpose of voting on such appointment and no other action
29 shall be in order during such session. In the event a majority of the
30 senate does not vote to consent to the appointment, the governor, within
31 ~~30~~ **60** days after the senate vote on the previous appointee, shall appoint

1 another person possessing the qualifications of office and such
2 subsequent appointment shall be considered by the senate in the same
3 procedure as provided in this section. The same appointment and
4 consent procedure shall be followed until a valid appointment has been
5 made. No person who has been previously appointed but did not
6 receive the consent of the senate shall be appointed again for the same
7 vacancy. If the senate fails to vote on an appointment within the ~~30-day~~
8 **60-day** time limitation, the senate shall be deemed to have given
9 consent to such appointment.

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

16 ~~(e) Judges of the court of appeals appointed and consented to on~~
17 ~~and after July 1, 2011:~~

18 ~~(1) Shall hold their offices during good behavior;~~

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

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

24 ~~(4) shall not be subject to a retention election. Any person~~
25 **appointed shall be a person of recognized integrity, character,**
26 **ability, experience and judicial temperament, to the end that**
27 **persons serving as judges of the court of appeals will be the best**
28 **qualified therefor.**

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

36 (b) Judges of the court of appeals shall be ~~selected~~*appointed* in the
37 manner provided by ~~K.S.A. 20-3003 through 20-3010~~*section 1*, and
38 amendments thereto. Each judge of the court of appeals shall receive an
39 annual salary in the amount prescribed by law. No judge of the court of

1 appeals may receive additional compensation for official services
2 performed by the judge. Each such judge shall be reimbursed for
3 expenses incurred in the performance of such judge's official duties in
4 the same manner and to the same extent justices of the supreme court
5 are reimbursed for such expenses.

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

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

12 Sec. 3. K.S.A. 20-3006 is hereby amended to read as follows: 20-
13 3006. ~~(a) Persons who are appointed as judges of the court of appeals~~
14 ~~pursuant to K.S.A. 20-3005 and amendments thereto shall commence~~
15 ~~the duties of office upon appointment, and each judge shall have all the~~
16 ~~rights, privileges, powers and duties prescribed by law for the office of~~
17 ~~judge of the court of appeals.~~

18 ~~(b)(1)(a) Not~~For judges of the court of appeals holding office on
19 ~~June 30, 2011,~~ *Not* less than 60 days prior to the holding of the general
20 election next preceding the expiration of the term of any *such* judge of
21 the court of appeals, the judge may file in the office of the secretary of
22 state a declaration of candidacy for retention in office. If a declaration
23 is not filed as provided in this section, the position held by the judge
24 shall be vacant upon the expiration of the judge's term of office. If such
25 declaration is filed, the judge's name shall be submitted at the next
26 general election to the electors of the state on a separate judicial ballot,
27 without party designation, reading substantially as follows:

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

31
32 ~~(2)(b)~~ If a majority of those voting on the question votes against
33 retaining the judge in office, the position which the judge holds shall be
34 vacant upon the expiration of the judge's term of office. Otherwise,
35 unless the judge is removed for cause, the judge shall remain in office
36 for a term of four years from the second Monday in January following
37 the election. At the expiration of each term, unless by law the judge is
38 compelled to retire, the judge ~~holding office on June 30, 2011~~ shall be
39 eligible for retention in office by election in the manner prescribed in
40 this section.

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

9 ~~(4)~~(d) Election laws applicable to the general election of other
10 state officers shall apply to elections upon the question of retention of
11 judges of the court of appeals pursuant to this section, to the extent that
12 they are not in conflict with and are consistent with the provisions of
13 this ~~act~~ *section*.

14 **Sec. 4. K.S.A. 20-3010 is hereby amended to read as follows:**
15 **20-3010. (a) Any person appointed to the office of judge of the**
16 **court of appeals pursuant to K.S.A. 20-3009 shall commence upon the**
17 **duties of his or her office on the date such appointment takes effect, and**
18 **any person so appointed shall have all the rights, privileges, powers and**
19 **duties prescribed by law for the office of judge of the court of appeals.**
20 **Any such judge who is so appointed to fill a vacancy or appointed by**
21 **reason of the expiration of a term of office, shall serve until the**
22 **second Monday in January following the next general election**
23 **which occurs after one year in office and shall be eligible to succeed**
24 **himself or herself *be retained* in office for a full term of four ~~(4)~~**
25 **years as provided in K.S.A. 20-3006, and amendments thereto, for**
26 **the retention of judges first appointed to the court of appeals.**

27 **(b) If a majority of the votes cast and counted at such election**
28 **is in favor of retaining such judge in office, ~~he or she~~ *the judge* shall**
29 **remain in office for a regular term of four years from the second**
30 **Monday in January next following such election. Thereafter, such**
31 **judge shall be subject to retention in office as provided in K.S.A.**
32 **20-3006, and amendments thereto. If a majority of the votes cast and**
33 **counted at such election is against retaining such judge in office,**
34 **such judge's position on the court of appeals shall become vacant**
35 **on the second Monday in January next following the election, and a**
36 **successor shall be appointed pursuant to ~~K.S.A. 20-3007, 20-3008~~**
37 **~~and 20-3009~~ *section 1, and amendments thereto. If such judge does***
38 **not declare his or her *such judge's* candidacy for election to succeed**
39 **himself or herself *be retained* in office, such judge's position on the**

1 **court of appeals shall be vacant on the second Monday in January**
2 **next following such election.**

3 ~~Sec. 4.~~ **5.** K.S.A. 20-3004, 20-3005, 20-3006, 20-3007, 20-3008,
4 20-3009 and 20-3010 and K.S.A. 2010 Supp. 20-3002 are hereby
5 repealed.

6 ~~Sec. 5.~~ **6.** This act shall take effect and be in force from and after
7 its publication in the statute book.