

**{As Amended by House Committee of the Whole}**

**As Amended by House Committee**

*Session of 2011*

**SENATE BILL No. 83**

By Committee on Judiciary

2-3

1 AN ACT concerning judges and justices; relating to the employment of retirants;  
2 **{relating to the appointments of court of appeals judge;}** amending  
3 K.S.A. 20-2622 ~~and repealing the existing section of,~~ **20-3006 and 20-3010**  
4 **and K.S.A. 2010 Supp. 20-3002 and repealing the existing sections;**  
5 **also repealing K.S.A. 20-3004, 20-3005, 20-3007, 20-3008 and 20-**  
6 **3009}.**

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

9 {Section 1. K.S.A. 20-2622 is hereby amended to read as follows: 20-  
10 2622. (a) On and after ~~the effective date of this act~~ *July 1, 1995*, a retirant  
11 who retires as provided in K.S.A. 20-2608, and amendments thereto, may  
12 return to temporary judicial duties while receiving service retirement  
13 benefits. Upon written agreement with the Kansas supreme court ~~prior to~~  
14 ~~retirement~~, such retirant shall be available to perform assigned judicial  
15 duties for not more than 104 days or 40% of each year. Notwithstanding  
16 the provisions of law in effect on the retirement date of a retirant, such  
17 retirant shall receive a stipend, payable monthly, equal to 25% of the  
18 current monthly salary of judges or justices serving in the same position as  
19 that held by the retirant at the time of retirement. Such agreement shall be  
20 for a period of not more than two years. A retirant may enter into  
21 subsequent agreements, except that the aggregate of these agreements shall  
22 not exceed 12 years. The supreme court is hereby authorized and may pay  
23 on behalf of such retirant the amount specified by the Kansas state  
24 employees health care commission under K.S.A. 75-6508, and  
25 amendments thereto, as if the retirant is serving as a full-time employee of  
26 the judicial branch and participating in the state health care benefits  
27 program to provide for such participation of the retirant. Any retirant  
28 entering into a written agreement with the Kansas supreme court to be  
29 available to perform assigned judicial duties for less than 104 days or 40%  
30 of each year for a proportionally reduced stipend shall be considered as if  
31 the retirant is serving under a part-time appointment as an employee of the  
32 judicial branch and participating in the state health care benefits program  
33 to provide for such participation of the employee and the supreme court

1 may pay on behalf of the retirant the amount specified by the Kansas state  
2 employees health care commission and K.S.A. 75-6508, and amendments  
3 thereto. **Any written agreement entered into pursuant to the provisions**  
4 **of this subsection shall be signed by the chief justice, or the chief**  
5 **justice's designee, with the approval of a majority of justices of the**  
6 **Kansas supreme court.**

7 ~~(b)~~—Within five years after retirement, a retirant who did not enter into  
8 an agreement as provided for in subsection (a) prior to retirement may  
9 enter into such a written agreement within 30 days prior to any anniversary  
10 date of retirement. Agreements shall be signed by the chief justice with the  
11 approval of a majority of the justices of the Kansas supreme court.

12 ~~(e)~~(b) If a written agreement is entered into pursuant to the provisions  
13 of subsection (a), and notice is received by the chief justice of the refusal  
14 of the retirant to accept a temporary assignment without just cause, the  
15 written agreement shall be terminated.

16 ~~(d)~~(c) Nothing in this act shall be construed to require a retirant of the  
17 retirement system for judges to enter into an agreement to perform  
18 temporary judicial duties.

19 ~~(e)~~(d) Nothing in this act shall be construed to limit the supreme  
20 court's ability to make judicial assignments pursuant to the provisions of  
21 K.S.A. 20-310b and 20-2616, and amendments thereto; and the stipend  
22 provided by this act shall not be counted toward the annual limitation on  
23 compensation provided in K.S.A. 20-2616, and amendments thereto.

24 ~~(f)~~(e) Any retirant who has fulfilled the requirements of an agreement  
25 entered into pursuant to this act may continue to accept judicial  
26 assignments and shall be compensated for such subsequent assignments in  
27 accordance with the provisions of K.S.A. 20-310b and 20-2616, and  
28 amendments thereto.

29 ~~(g)~~(f) If an assignment given to a retirant in accordance with this act  
30 will require the retirant to exceed the 104 day limitation provided in  
31 subsection (a), the retirant shall be compensated in accordance with the  
32 provisions of K.S.A. 20-2616, and amendments thereto.

33 ~~(h)~~(g) For purposes of this act, "retirant" shall include any justice of  
34 the Kansas supreme court, judge of the Kansas court of appeals, and  
35 district judge of any district court of Kansas who retired pursuant to the  
36 provisions of the retirement system for judges. Retirant shall not include  
37 any district magistrate judge.

38 *New Sec. 2. (a) On and after July 1, 2011, any vacancy occurring in*  
39 *the office of any judge of the court of appeals and any position to be open*  
40 *on the court of appeals as a result of enlargement of such court pursuant*  
41 *to K.S.A. 20-3002, and amendments thereto, or the retirement or failure of*  
42 *an incumbent to file such judge's declaration of candidacy to be retained*  
43 *in office pursuant to K.S.A. 20-3006, and amendments thereto, or failure*

1 of a judge to be elected to be retained in office, shall be filled by  
2 appointment by the governor, with the consent of the senate.

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

6 (c) No person appointed pursuant to subsection (a) shall assume the  
7 office of judge of the court of appeals until the senate, by an affirmative  
8 vote of the majority of all members of the senate then elected or appointed  
9 and qualified, consents to such appointment. The senate shall vote to  
10 consent to any such appointment not later than 60 days after such  
11 appointment is received by the senate. If the senate is not in session and  
12 will not be in session within the 60-day time limitation, the president of the  
13 senate shall convene the senate for the sole purpose of voting on such  
14 appointment and no other action shall be in order during such session. In  
15 the event a majority of the senate does not vote to consent to the  
16 appointment, the governor, within 60 days after the senate vote on the  
17 previous appointee, shall appoint another person possessing the  
18 qualifications of office and such subsequent appointment shall be  
19 considered by the senate in the same procedure as provided in this section.  
20 The same appointment and consent procedure shall be followed until a  
21 valid appointment has been made. No person who has been previously  
22 appointed but did not receive the consent of the senate shall be appointed  
23 again for the same vacancy. If the senate fails to vote on an appointment  
24 within the 60-day time limitation, the senate shall be deemed to have given  
25 consent to such appointment.

26 (d) Persons who are appointed as judges of the court of appeals  
27 pursuant to K.S.A. 20-3005, prior to its repeal, and this section, shall  
28 commence the duties of office upon appointment and consent, and each  
29 judge shall have all the rights, privileges, powers and duties prescribed by  
30 law for the office of judge of the court of appeals.

31 **{(e) Any person appointed shall be a person of recognized**  
32 **integrity, character, ability, experience and judicial temperament, to**  
33 **the end that persons serving as judges of the court of appeals will be**  
34 **the best qualified therefor. }**

35 {Sec. 3. K.S.A. 2010 Supp. 20-3002 is hereby amended to read as  
36 follows: 20-3002. (a) On and after January 1, 2008, through December  
37 31, 2011, the court of appeals shall consist of 13 judges whose positions  
38 shall be numbered one to 13. On and after January 1, 2012, the court  
39 of appeals shall consist of 14 judges whose positions shall be numbered  
40 one to 14. Judges of the court of appeals shall possess the  
41 qualifications prescribed by law for justices of the supreme court.

42 **{(b) Judges of the court of appeals shall be}** selected ~~appointed in~~  
43 ~~the manner provided by} K.S.A. 20-3003 through 20-3010 {section 2,~~

1 and amendments thereto. Each judge of the court of appeals shall  
2 receive an annual salary in the amount prescribed by law. No judge of  
3 the court of appeals may receive additional compensation for official  
4 services performed by the judge. Each such judge shall be reimbursed  
5 for expenses incurred in the performance of such judge's official  
6 duties in the same manner and to the same extent justices of the  
7 supreme court are reimbursed for such expenses.}

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

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

14 {Sec. 4. K.S.A. 20-3006 is hereby amended to read as follows: 20-  
15 3006.} (a) ~~Persons who are appointed as judges of the court of appeals~~  
16 ~~pursuant to K.S.A. 20-3005 and amendments thereto shall commence the~~  
17 ~~duties of office upon appointment, and each judge shall have all the rights,~~  
18 ~~privileges, powers and duties prescribed by law for the office of judge of~~  
19 ~~the court of appeals.~~

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

31  
32 "Shall           (Here insert name of judge.)          , Judge of the Court of  
33 Appeals, be retained in office?"

34  
35 ~~(2)(b)~~ (b) If a majority of those voting on the question votes against  
36 retaining the judge in office, the position which the judge holds shall  
37 be vacant upon the expiration of the judge's term of office. Otherwise,  
38 unless the judge is removed for cause, the judge shall remain in office  
39 for a term of four years from the second Monday in January following  
40 the election. At the expiration of each term, unless by law the judge is  
41 compelled to retire, the judge ~~holding office on June 30, 2011~~ shall be  
42 eligible for retention in office by election in the manner prescribed in  
43 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 state  
 10 officers shall apply to elections upon the question of retention of judges of  
 11 the court of appeals pursuant to this section, to the extent that they are not  
 12 in conflict with and are consistent with the provisions of this ~~aet.~~section.}

13       **{Sec. 5. K.S.A. 20-3010 is hereby amended to read as follows: 20-**  
 14 **3010. (a)** Any person appointed to the office of judge of the court of  
 15 appeals pursuant to K.S.A. 20-3009 shall commence upon the duties of his  
 16 or her office on the date such appointment takes effect, and any person so  
 17 appointed shall have all the rights, privileges, powers and duties prescribed  
 18 by law for the office of judge of the court of appeals. Any such judge who  
 19 is so appointed to fill a vacancy or appointed by reason of the expiration of  
 20 a term of office, shall serve until the second Monday in January following  
 21 the next general election which occurs after one year in office and shall be  
 22 eligible to ~~succeed himself or herself~~ *be retained* in office for a full term of  
 23 four (4) years as provided in K.S.A. 20-3006, *and amendments thereto*, for  
 24 the retention of judges first appointed to the court of appeals.

25       (b) If a majority of the votes cast and counted at such election is  
 26 favor of retaining such judge in office, ~~he or she~~ *the judge* shall remain in  
 27 office for a regular term of four years from the second Monday in January  
 28 next following such election. Thereafter, such judge shall be subject to  
 29 retention in office as provided in K.S.A. 20-3006, *and amendments*  
 30 *thereto*. If a majority of the votes cast and counted at such election is  
 31 against retaining such judge in office, such judge's position on the court of  
 32 appeals shall become vacant on the second Monday in January next  
 33 following the election, and a successor shall be appointed pursuant to  
 34 K.S.A. 20-3007, 20-3008 and 20-3009 *section 2, and amendments thereto*.  
 35 If such judge does not declare ~~his or her~~ *such judge's* candidacy for  
 36 election to ~~succeed himself or herself~~ *be retained* in office, such judge's  
 37 position on the court of appeals shall be vacant on the second Monday in  
 38 January next following such election.}

39       ~~Sec. 6.~~ {6.} K.S.A. 20-2622 ~~is~~, 20-3004, 20-3005, 20-3006, 20-3007,  
 40 20-3008, 20-3009 and 20-3010 and K.S.A. 2010 Supp. 20-3002 are}  
 41 hereby repealed.

42       ~~Sec. 7.~~ {7.} This act shall take effect and be in force from and after its  
 43 publication in the statute book.