

HOUSE BILL No. 2245

By Representatives Highberger and Becker

2-1

1 AN ACT concerning attorneys; relating to the supreme court nominating
2 commission and judicial district nominating commissions; selection of
3 chairperson and members; attorney licensure and information;
4 applicability of open records act; amending K.S.A. 2016 Supp. 7-127,
5 20-122, 20-123, 20-130, 20-2904 and 20-2907 and repealing the
6 existing sections; also repealing K.S.A. 2016 Supp. 20-170, 20-171 and
7 20-2917.
8

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

10 Section 1. K.S.A. 2016 Supp. 7-127 is hereby amended to read as
11 follows: 7-127. (a) ~~Each applicant for admission to practice law in this~~
12 ~~state, in submitting the application, shall provide to the clerk of the~~
13 ~~supreme court the information enumerated in K.S.A. 2016 Supp. 25-~~
14 ~~2309(b)(1) through (5), and amendments thereto. Whenever any person~~
15 ~~whose application for admission to practice law in this state is pending~~
16 ~~shall move from the residential address listed on such person's application,~~
17 ~~or when the name of any such person is changed by marriage or otherwise,~~
18 ~~such person, within 10 days thereafter, shall notify the clerk of the~~
19 ~~supreme court in writing of such person's old and new residential~~
20 ~~addresses or of such person's former and new names.~~

21 (b) ~~Any person whose application to practice law in Kansas is~~
22 ~~pending as of the effective date of this act, and for whom the information~~
23 ~~enumerated in K.S.A. 2016 Supp. 25-2309(b)(1) through (5), and~~
24 ~~amendments thereto, is not correct on such application as of the effective~~
25 ~~date of this act, shall provide the information enumerated in K.S.A. 2016~~
26 ~~Supp. 25-2309(b)(1) through (5), and amendments thereto, in writing to~~
27 ~~the clerk of the supreme court within 60 days after the effective date of this~~
28 ~~act. The clerk of the supreme court, within 30 days after the effective date~~
29 ~~of this act, shall send notice to all persons whose applications to practice~~
30 ~~law in Kansas are pending as of the effective date of this act, that such~~
31 ~~persons are required by law to provide the information enumerated in~~
32 ~~K.S.A. 2016 Supp. 25-2309(b)(1) through (5), and amendments thereto, in~~
33 ~~writing to the clerk of the supreme court within 60 days after the effective~~
34 ~~date of this act.~~

35 (e) ~~The supreme court may require an applicant for admission to~~
36 ~~practice law in this state to be fingerprinted and submit to a national~~

1 criminal history record check. The fingerprints shall be used to identify the
2 applicant and to determine whether the applicant has a record of criminal
3 arrests and convictions in this state or other jurisdictions. The supreme
4 court and the state board of law examiners are authorized to submit the
5 fingerprints to the Kansas bureau of investigation and the federal bureau of
6 investigation for a state and national criminal history record check. The
7 state board of law examiners and the supreme court may use the
8 information obtained from fingerprinting and the applicant's criminal
9 history only for purposes of verifying the identification of any applicant
10 and in the official determination of character and fitness of the applicant
11 for admission to practice law in this state.

12 ~~(d)~~(b) Local and state law enforcement officers and agencies shall
13 assist the supreme court in taking and processing of fingerprints of
14 applicants seeking admission to practice law in this state and shall release
15 all records of an applicant's arrests and convictions to the supreme court
16 and the state board of law examiners.

17 Sec. 2. K.S.A. 2016 Supp. 20-122 is hereby amended to read as
18 follows: 20-122. (a) The clerk of the supreme court ~~shall~~ *may* use the
19 ~~certified~~ roster of attorneys licensed to practice law in Kansas, ~~as provided~~
20 ~~to the secretary of state pursuant to K.S.A. 2016 Supp. 20-170, and~~
21 ~~amendments thereto, in the clerk's office~~ for ascertaining the names and
22 places of residence of those entitled to receive ballots and for ascertaining
23 the qualifications of those nominated for membership on the commission.
24 The clerk shall supply with each ballot distributed a certificate to be signed
25 and returned by the member of the bar voting such ballot, evidencing the
26 qualifications of such member of the bar to vote, ~~including the name and~~
27 ~~residential address of such member of the bar,~~ and certifying that the ballot
28 was voted by the certifying voter.

29 (b) In order to ensure that the vote cast may be secret, the clerk shall
30 provide a separate envelope for the ballot, in which the voted ballot only
31 shall be placed, and the envelope containing the voted ballot shall be
32 placed in another envelope, also to be supplied by the clerk, together with
33 the signed certificate. A ballot not accompanied by the signed certificate of
34 the voter shall not be counted. When the voted ballots are received by the
35 clerk they shall be separated from the certificates by the canvassers, and
36 after the ballots are counted and the results certified, *both* the ballots *and*
37 *the certificates* shall be preserved by the clerk for a period of six months
38 ~~and the certificates shall be preserved by the clerk for a period of five~~
39 ~~years. no one shall be permitted to inspect the ballots received pursuant to~~
40 ~~this section or the certificates~~ except on order of the supreme court. Unless
41 otherwise ordered by the supreme court, at the end of such six-month
42 period the clerk shall destroy the ballots ~~received pursuant to this section,~~
43 ~~and at the end of such five-year period, the clerk shall destroy the~~

1 certificates received pursuant to this section.

2 ~~(e) Within 14 days after the results of a selection are certified~~
3 ~~pursuant to this section, the clerk of the supreme court shall: (1) Create a~~
4 ~~list designating the position and year for which the selection was held and~~
5 ~~containing the names and residential addresses of all persons who returned~~
6 ~~a ballot with a signed certificate as described in subsection (b); and (2)~~
7 ~~transmit a certified copy of the list to the secretary of state. The list~~
8 ~~described in this subsection shall be transmitted in a format prescribed by~~
9 ~~the secretary of state. Upon receipt of the list described in this subsection,~~
10 ~~the secretary of state shall append the information contained therein to the~~
11 ~~roster for such selection as described in K.S.A. 2016 Supp. 20-170, and~~
12 ~~amendments thereto.~~

13 ~~(d) Notwithstanding any other provision of law, the certificates~~
14 ~~received for a selection pursuant to this section shall be disclosed upon~~
15 ~~proper request submitted to the clerk of the supreme court pursuant to the~~
16 ~~open records act, K.S.A. 45-215 et seq., and amendments thereto.~~

17 ~~(e) Notwithstanding any other provision of law, the lists described in~~
18 ~~subsection (c) shall be disclosed upon proper request submitted to the clerk~~
19 ~~of the supreme court or to the secretary of state pursuant to the open~~
20 ~~records act, K.S.A. 45-215 et seq., and amendments thereto.~~

21 ~~(f) The provisions of this section shall apply to all selections held~~
22 ~~under K.S.A. 20-119 and 20-120, and amendments thereto, which have not~~
23 ~~been canvassed pursuant to K.S.A. 20-130, and amendments thereto,~~
24 ~~regardless of whether such selections are scheduled, upcoming or pending~~
25 ~~as on the effective date of this act.~~

26 Sec. 3. K.S.A. 2016 Supp. 20-123 is hereby amended to read as
27 follows: 20-123. (a) When the chairperson and other members of the
28 commission chosen by the members of the bar have been elected, and after
29 the names of the nonlawyer members appointed by the governor have been
30 certified to the clerk of the supreme court as provided in this act, the clerk
31 shall make a record thereof in the clerk's office and shall notify the
32 members of the commission of their election and appointment. The
33 commission shall meet from time to time as may be necessary to discharge
34 the responsibilities of the commission. Such meetings shall be held at such
35 place as the clerk of the supreme court may arrange. Such meeting shall be
36 held upon the call of the chairperson, or in the event of the chairperson's
37 failure to call a meeting when a meeting is necessary, upon the call of any
38 four members of the commission. The commission shall act only at a
39 meeting, and may act only by the concurrence of a majority of its
40 members. The commission shall have power to adopt such reasonable and
41 proper rules and regulations for the conduct of its proceedings and the
42 discharge of its duties as are consistent with this act and the constitution of
43 the state of Kansas.

1 (b)-(1) The supreme court nominating commission shall be and is
2 hereby deemed to be a public body and shall be subject to the open
3 meetings act, K.S.A. 75-4317 et seq., and amendments thereto.

4 ~~(2) Except as provided further, the commission shall not recess for a~~
5 ~~closed or executive meeting for any purpose. The commission, in~~
6 ~~accordance with K.S.A. 75-4319, and amendments thereto, may recess for~~
7 ~~a closed or executive meeting only for the purpose of discussing sensitive~~
8 ~~financial information contained within the personal financial records or~~
9 ~~official background check of a candidate for judicial nomination.~~

10 (3) Nothing in this subsection shall be construed to supersede the
11 commission's discretion to close a record or portion of a record submitted
12 to the commission pursuant to any applicable exception to public
13 disclosure under the open records act.

14 Sec. 4. K.S.A. 2016 Supp. 20-130 is hereby amended to read as
15 follows: 20-130. The canvassers at any election held pursuant to this act
16 shall consist of the clerk of the supreme court, ~~the secretary of state or the~~
17 ~~secretary of state's designee and the attorney general or the attorney~~
18 ~~general's designee and two or more persons who are members of the bar~~
19 ~~residing in Kansas, either practicing lawyers, justices or judges,~~
20 ~~designated to act as such by the chief justice.~~ The canvassers shall open
21 and canvass the ballots and shall tabulate and sign the results as a record in
22 the office of the clerk.

23 Sec. 5. K.S.A. 2016 Supp. 20-2904 is hereby amended to read as
24 follows: 20-2904. (a) Lawyer members of the district judicial nominating
25 commission shall be elected ~~pursuant to this section. The clerk of the~~
26 ~~supreme court shall use the certified roster of attorneys licensed to practice~~
27 ~~law in Kansas, as provided to the secretary of state pursuant to K.S.A.~~
28 ~~2016 Supp. 20-2917, and amendments thereto, for ascertaining the names~~
29 ~~and places of residence of those entitled to receive ballots and for~~
30 ~~ascertaining the qualifications of those nominated for membership on the~~
31 ~~district judicial nominating commission by the lawyers who are qualified~~
32 ~~electors of the judicial district and who are registered with the clerk of the~~
33 ~~supreme court pursuant to rule 208 of such court. Each lawyer member of~~
34 ~~a district judicial nominating commission shall be a qualified elector of~~
35 ~~such judicial district.~~

36 (b) The number of lawyer members to be elected to the district
37 judicial nominating commission of a judicial district shall be as follows:

38 (1) In a judicial district consisting of a single county, the number of
39 members elected shall be equal to the number of nonlawyer members
40 appointed pursuant to K.S.A. 20-2905(a)(1), and amendments thereto.

41 (2) In a judicial district consisting of two counties, four members
42 shall be elected.

43 (3) In a judicial district consisting of three or more counties, the

1 number of members elected shall equal the number of counties in such
2 judicial district.

3 (c) (1) Between December 1 and December 15 of the year in which
4 nonpartisan selection of judges of the district court is approved by the
5 electors of the judicial district as provided in K.S.A. 20-2901, and
6 amendments thereto, the clerk of the supreme court shall send to each
7 lawyer by ordinary first class mail a form for nominating one lawyer for
8 election to the commission. Any such nomination shall be received in the
9 office of the clerk of the supreme court on or before January 1 of the
10 following year, together with the written consent of the nominee. After
11 receipt of all nominations which are timely submitted, the clerk shall
12 prepare a ballot containing the names of all lawyers so nominated and
13 shall mail one such ballot and instructions for voting such ballot to each
14 registered lawyer in the judicial district. Ballots shall be prepared in such
15 manner that each lawyer receiving the same shall be instructed to vote for
16 not more than the number of positions to be filled. Each such ballot shall
17 be accompanied by a certificate to be signed and returned by the lawyer
18 voting such ballot, evidencing the qualifications of such lawyer to vote,
19 ~~including the name and residential address of such lawyer,~~ and certifying
20 that the ballot was voted by such person. In any judicial district in which
21 the number of nominees does not exceed the number of positions to be
22 filled, the clerk shall declare those nominees to be elected without
23 preparation of a ballot.

24 (2) In order to insure that the election of lawyer members is by secret
25 ballot, the clerk shall provide a separate envelope for the ballot, in which
26 the voted ballot only shall be placed, and the envelope containing the
27 voted ballot shall be placed in another envelope, also to be supplied by the
28 clerk, together with the signed certificate, and received in the office of the
29 clerk of the supreme court on or before February 15 of such year. A ballot
30 not accompanied by the signed certificate of the voter shall not be counted.
31 The ballots returned as provided in this section shall be canvassed within
32 ~~40~~ *five* days thereafter. The canvassers shall consist of the clerk of the
33 supreme court, ~~the secretary of state or the secretary of state's designee and~~
34 ~~the attorney general or the attorney general's designee~~ *and two or more*
35 *persons who are members of the bar residing in Kansas, either practicing*
36 *lawyers, justices or judges, designated to act as such by the chief justice.*
37 The canvassers shall open and canvass the ballots and shall tabulate and
38 sign the results as a record in the office of the clerk. ~~After the ballots are~~
39 ~~counted and the results certified, the ballots shall be preserved by the clerk~~
40 ~~for a period of six months, and the certificates shall be preserved by the~~
41 ~~clerk for a period of five years. No one shall be permitted to inspect the~~
42 ~~ballots received pursuant to this section except upon order by the supreme~~
43 ~~court. Unless otherwise ordered by the supreme court, at the end of such~~

1 six-month period, the clerk shall destroy the ballots received pursuant to
2 this section, and at the end of such five-year period, the clerk shall destroy
3 the certificates received pursuant to this section.

4 ~~(c) Within 14 days after the results of an election are certified~~
5 ~~pursuant to this section, the clerk of the supreme court shall: (1) Create a~~
6 ~~list designating the positions and year for which the selection was held and~~
7 ~~containing the names and residential addresses of all persons who returned~~
8 ~~a ballot with a signed certificate as described in subsection (b); and (2)~~
9 ~~transmit a certified copy of the list to the secretary of state. The list~~
10 ~~described in this subsection shall be transmitted in a format prescribed by~~
11 ~~the secretary of state. Upon receipt of the list described in this subsection,~~
12 ~~the secretary of state shall append the information contained therein to the~~
13 ~~roster for such election as described in section 8, and amendments thereto.~~

14 ~~(d) Notwithstanding any other provision of law, the certificates~~
15 ~~received for an election pursuant to this section shall be disclosed upon~~
16 ~~proper request submitted to the clerk of the supreme court pursuant to the~~
17 ~~open records act, K.S.A. 45-215 et seq., and amendments thereto.~~

18 ~~(e) Notwithstanding any other provision of law, the lists described in~~
19 ~~subsection (e) shall be disclosed upon proper request submitted to the clerk~~
20 ~~of the supreme court or to the secretary of state pursuant to the open~~
21 ~~records act, K.S.A. 45-215 et seq., and amendments thereto.~~

22 ~~(f)~~(d) After the ballots are counted and tabulated in descending order
23 from the nominee receiving the highest number of votes the canvassers
24 shall declare to be elected those nominees who are equal in number to the
25 number of lawyers to be elected and who have the greatest number of
26 votes. In the event of a tie creating more nominees to be elected than there
27 are positions to be filled, the canvassers shall determine the person or
28 persons to be elected by lot. In the event that less than the required number
29 of lawyers is elected, the positions for which lawyers have not been
30 elected shall be declared vacant and the vacancies filled in the manner
31 prescribed by K.S.A. 20-2906(e), and amendments thereto.

32 ~~(g)~~(e) The procedure provided in this section for election of lawyers
33 to serve as members of the first district judicial nominating commission
34 established in a judicial district shall apply to the election of lawyers to
35 succeed lawyer members of the commission whose terms of office expire,
36 except that the form for submitting a nomination shall be sent between
37 December 1 and December 15 of the year preceding the year in which
38 such terms of office expire, and the dates prescribed for submission of
39 nominations and the mailing, returning and canvassing of ballots shall
40 apply in the year in which such terms of office expire.

41 Sec. 6. K.S.A. 2016 Supp. 20-2907 is hereby amended to read as
42 follows: 20-2907. (a) Prior to taking office, each member of a district
43 judicial nominating commission shall take and subscribe an oath of office

1 as provided by law for public officers, and shall file the same with the
2 clerk of the supreme court. After the members of the first commission
3 established in a judicial district have commenced their terms of office, the
4 chairman shall call a meeting of the commission to be held within the
5 judicial district at a time and place designated by the chairman. At such
6 meeting, the commission shall determine a regular meeting place or
7 places, and the commission shall have the power to adopt such reasonable
8 and proper rules and regulations as are necessary for the conduct of its
9 proceedings and the discharge of its duties, consistent with the provisions
10 of this act and the constitution and laws of this state.

11 (b) The commission shall meet only upon call of the chairman, and
12 the commission shall not take any final action except at such meeting. A
13 majority of the members of the commission shall constitute a quorum to
14 do business, but no final action shall be taken except upon a vote of the
15 majority of the members of the commission.

16 (c) Members of the commission shall receive no compensation, but
17 shall be reimbursed for their actual and necessary expenses incurred in
18 performing their official duties, as provided in K.S.A. 75-3223(b), (c) and
19 (d), and amendments thereto. Such expenses shall be paid from the judicial
20 nominating commission fund as provided in K.S.A. 20-138, and
21 amendments thereto.

22 (d) The board of county commissioners of each county in a judicial
23 district shall cooperate with the district judicial nominating commission of
24 such judicial district, and shall make available to the commission wherever
25 possible the facilities and services of such county, in order to expedite the
26 business of the commission.

27 (e)-(1) A district judicial nominating commission shall be and is
28 hereby deemed to be a public body and shall be subject to the open
29 meetings act, K.S.A. 75-4317 et seq., and amendments thereto.

30 ~~(2) Except as provided further, the commission shall not recess for a~~
31 ~~closed or executive meeting for any purpose. The commission, in~~
32 ~~accordance with K.S.A. 75-4319, and amendments thereto, may recess for~~
33 ~~a closed or executive meeting only for the purpose of discussing sensitive~~
34 ~~financial information contained within the personal financial records or~~
35 ~~official background check of a candidate for judicial nomination.~~

36 ~~(3) Nothing in this subsection shall be construed to supersede the~~
37 ~~commission's discretion to close a record or portion of a record submitted~~
38 ~~to the commission pursuant to any applicable exception to public~~
39 ~~disclosure under the open records act.~~

40 Sec. 7. K.S.A. 2016 Supp. 7-127, 20-122, 20-123, 20-130, 20-170,
41 20-171, 20-2904, 20-2907 and 20-2917 are hereby repealed.

42 Sec. 8. This act shall take effect and be in force from and after its
43 publication in the Kansas register.