

## HOUSE BILL No. 2192

By Committee on Judiciary

2-7

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1 AN ACT concerning the court of appeals; relating to appointment of  
2 judges; amending K.S.A. 2018 Supp. 20-3002, 20-3006 and 20-3010  
3 and repealing the existing sections; also repealing K.S.A. 2018 Supp.  
4 20-3020.

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

7 New Section 1. (a) In addition to the powers and duties prescribed by  
8 K.S.A. 20-119 through 20-131, and amendments thereto, the supreme  
9 court nominating commission established by section 5 of article 3 of the  
10 constitution of the state of Kansas shall nominate persons to serve as  
11 judges of the court of appeals as provided in this act. To carry out its duties  
12 under this act, the commission shall meet only upon call of the  
13 chairperson, and the commission shall not take any final action except at  
14 such meeting. For the purpose of this act, a majority of the commission  
15 shall constitute a quorum to do business, but no final action shall be taken  
16 except upon a vote of the majority of the members of the commission.

17 (b) Any person nominated by the commission to serve as a judge of  
18 the court of appeals shall have the qualifications prescribed by K.S.A. 20-  
19 3002(a), and amendments thereto, and shall be a person of recognized  
20 integrity, character, ability, experience and judicial temperament, to the  
21 end that persons serving as judges of the court of appeals will be the best  
22 qualified therefor. In order to obtain the best qualified persons as  
23 nominees, the commission shall not be limited in its consideration of  
24 potential nominees to those persons whose names have been submitted to  
25 the commission or who have expressed a willingness to serve.

26 (c) The commission may authorize one or more members of the  
27 commission to tender a nomination to any qualified person in order to  
28 ascertain such person's willingness to serve if nominated, but any such  
29 tender of nomination shall be subject to final action of the commission  
30 under the conditions prescribed by subsection (a).

31 (d) No member of the supreme court nominating commission shall be  
32 eligible for nomination for the office of judge of the court of appeals while  
33 a member of such commission or for six months thereafter.

34 New Sec. 2. On the respective July 1, pursuant to K.S.A. 20-3002(a),  
35 and amendments thereto, the clerk of the supreme court shall notify the  
36 chairperson of the supreme court nominating commission of the number of

1 vacant positions on the court of appeals to be filled by appointment. Upon  
2 receipt of such notice, the chairperson shall call a meeting of the  
3 commission and submit to the governor a panel of three nominees for the  
4 lowest numbered position on the court of appeals for which an  
5 appointment is to be made. The governor shall appoint one of such  
6 nominees to the position on the court of appeals for which the nominee  
7 was nominated within 60 days from the time the panel of nominations for  
8 such position is submitted to the governor. If the governor fails to make  
9 the appointment within such time, the chief justice of the supreme court  
10 shall make such appointment from among the persons nominated as  
11 provided in this section. When the appointment has been made and the  
12 person has informed the clerk of the supreme court in writing of the  
13 person's acceptance of such appointment, the clerk of the supreme court  
14 shall notify the chairperson of the supreme court nominating commission  
15 who again shall call a meeting of the commission and submit to the  
16 governor another panel of three nominees for the lowest numbered  
17 position remaining on the court of appeals for which no appointment has  
18 been made. The process of nomination and appointment provided in this  
19 section shall be repeated until nominations and appointments have been  
20 made for all positions on the court of appeals for which appointments are  
21 to be made. Each appointment to the court of appeals shall be made from a  
22 separate panel of nominees, and the appointment to each position shall be  
23 made and accepted before any other panel of nominees is submitted to the  
24 governor. The nomination of a person on an earlier panel shall not  
25 preclude the person's nomination on a subsequent panel.

26 New Sec. 3. (a) Whenever a vacancy shall occur in the office of judge  
27 of the court of appeals, or whenever a vacancy will occur in such office on  
28 a specified future date, the clerk of the supreme court promptly shall give  
29 notice of such vacancy to the chairman of the supreme court nominating  
30 commission. Such chairman shall call a meeting of the commission for the  
31 purpose of nominating persons for appointment to such office. It shall be  
32 the duty of the commission to nominate three such persons for each office  
33 which is vacant and to submit the names of the persons so nominated to  
34 the governor.

35 (b) In order that a vacancy in the office of judge of the court of  
36 appeals does not exist for an inordinate length of time, the commission  
37 shall conduct the business of selecting nominees for appointment to such  
38 office and certifying the same to the governor as promptly and  
39 expeditiously as possible, having due regard for the importance of  
40 selecting the best possible nominees, and in no event shall the commission  
41 submit its nominations to the governor more than 60 days prior to nor  
42 more than 60 days after the date a vacancy occurs or will occur.

43 New Sec. 4. (a) After the supreme court nominating commission has

1 nominated and submitted to the governor the required number of nominees  
2 for appointment to fill a vacancy in the office of judge of the court of  
3 appeals, and prior to the appointment of a successor to such office, any  
4 nomination may be withdrawn for cause of a substantial nature affecting  
5 the nominee's qualifications to hold office, and another nominee may be  
6 substituted therefor. If a nominee dies or requests in writing that their  
7 name be withdrawn, the commission shall nominate another person to  
8 replace such nominee.

9 (b) Whenever there are existing at the same time two or more  
10 vacancies in the office of judge of the court of appeals and the supreme  
11 court nominating commission has submitted to the governor the required  
12 number of nominees for each of such vacancies, the commission may  
13 withdraw the lists of nominations, prior to any appointment being made,  
14 and change any of the persons so nominated from one list to another and  
15 resubmit them as so changed, or may substitute a new nominee for any of  
16 those previously nominated. The action of the commission in withdrawing  
17 nominations may be taken at the same meeting at which nominations are  
18 made, or at any later meeting called for such purpose.

19 New Sec. 5. (a) Whenever the supreme court nominating commission  
20 has submitted to the governor the required number of nominations for  
21 appointment to fill a vacancy in the office of judge of the court of appeals,  
22 it shall be the duty of the governor to make such appointment within 60  
23 days after such nominations are submitted or resubmitted. If the governor  
24 fails to make the appointment within such 60-day period, the chief justice  
25 of the supreme court shall make the appointment from among such  
26 nominees. Whenever any change in the nominations is made pursuant to  
27 section 4, and amendments thereto, such 60-day period commences on the  
28 day the nominations are resubmitted.

29 (b) Whenever a vacancy in the office of judge of the court of appeals  
30 exists at the time the appointment to fill such vacancy is made pursuant to  
31 this section, the appointment shall be effective at the time it is made, but  
32 where an appointment is made pursuant to this section to fill a vacancy  
33 which will occur at a future date, such appointment shall not take effect  
34 until such date.

35 Sec. 6. K.S.A. 2018 Supp. 20-3002 is hereby amended to read as  
36 follows: 20-3002. (a) The court of appeals shall consist of 14 judges whose  
37 positions shall be numbered one to 14. *Judges of the court of appeals shall*  
38 *possess the qualifications prescribed by law for justices of the supreme*  
39 *court.*

40 (b) Judges of the court of appeals shall be ~~appointed~~ *selected* in the  
41 manner provided by ~~K.S.A. 2018 Supp. 20-3020, sections 1 through 5,~~ and  
42 amendments thereto. Each judge of the court of appeals shall receive an  
43 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 expenses  
3 incurred in the performance of such judge's official duties in the same  
4 manner and to the same extent justices of the supreme court are  
5 reimbursed for such expenses.

6 (c) The supreme court may assign a judge of the court of appeals to  
7 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 not  
10 a civil appointment to a state office pursuant to K.S.A. 46-234, and  
11 amendments thereto.

12 Sec. 7. K.S.A. 2018 Supp. 20-3006 is hereby amended to read as  
13 follows: 20-3006. (a) *Any person appointed to the office of judge of the*  
14 *court of appeals pursuant to section 2, and amendments thereto, shall*  
15 *commence the duties of office upon appointment, and any person so*  
16 *appointed shall have all the rights, privileges, powers and duties*  
17 *prescribed by law for the office of judge of the court of appeals.*

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

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

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

37 ~~(e)~~(d) If a majority of those voting on the question votes against the  
38 judge's retention, the secretary of state, following the final canvass of votes  
39 on the question, shall certify the results to the clerk of the supreme court.  
40 Any such judge who has not been retained in office pursuant to this section  
41 shall not be eligible for nomination or appointment to the office of judge  
42 of the court of appeals prior to the expiration of four years after the  
43 expiration of the judge's term of office.

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

5        Sec. 8. K.S.A. 2018 Supp. 20-3010 is hereby amended to read as  
6 follows: 20-3010. (a) Any person appointed to the office of judge of the  
7 court of appeals *pursuant to section 5, and amendments thereto, shall*  
8 *commence the duties of office on the date such appointment takes effect,*  
9 *and any person so appointed shall have all the rights, privileges, powers*  
10 *and duties prescribed by law for the office of judge of the court of appeals.*  
11 *Any such judge who is so appointed to fill a vacancy or appointed by*  
12 *reason of the expiration of a term of office, shall serve until the second*  
13 *Monday in January following the next general election which occurs after*  
14 *one year in office and shall be eligible to be retained in office for a full*  
15 *term of four years as provided in K.S.A. 20-3006, and amendments*  
16 *thereto, for the retention of judges first appointed to the court of appeals.*

17        (b) If a majority of the votes cast and counted at such election is in  
18 favor of retaining such judge in office, the judge shall remain in office for  
19 a regular term of four years from the second Monday in January next  
20 following such election. Thereafter, such judge shall be subject to retention  
21 in office as provided in K.S.A. 20-3006, and amendments thereto. If a  
22 majority of the votes cast and counted at such election is against retaining  
23 such judge in office, such judge's position on the court of appeals shall  
24 become vacant on the second Monday in January next following the  
25 election, and a successor shall be appointed pursuant to ~~K.S.A. 2018 Supp.~~  
26 ~~20-3020~~ *sections 3 through 5, and amendments thereto.* If such judge does  
27 not declare such judge's candidacy for election to be retained in office,  
28 such judge's position on the court of appeals shall be vacant on the second  
29 Monday in January next following such election.

30        Sec. 9. K.S.A. 2018 Supp. 20-3002, 20-3006, 20-3010 and 20-3020  
31 are hereby repealed.

32        Sec. 10. This act shall take effect and be in force from and after its  
33 publication in the statute book.