

## House Concurrent Resolution No. 5005

By Committee on Judiciary

1-28

9 A PROPOSITION to amend section 5 of article 3 of the constitution of  
10 the state of Kansas, relating to the selection of justices of the supreme  
11 court.

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13 *Be it resolved by the Legislature of the State of Kansas, two-thirds of the*  
14 *members elected (or appointed) and qualified to the House of Repre-*  
15 *sentatives and two-thirds of the members elected (or appointed) and*  
16 *qualified to the Senate concurring therein:*

17 Section 1. The following proposition to amend the constitution of the  
18 state of Kansas shall be submitted to the qualified electors of the state  
19 for their approval or rejection: Section 5 of article 3 of the constitution  
20 of the state of Kansas is hereby amended to read as follows:

21 “§ 5. **Selection of justices of the supreme court.** (a) Any  
22 vacancy occurring in the office of any justice of the supreme court  
23 and any position to be open thereon as a result of enlargement of  
24 the court, or the retirement or failure of an incumbent to file ~~his~~  
25 *such justice's* declaration of candidacy to ~~succeed himself~~ *be re-*  
26 *tained in office* as hereinafter required, or failure of a justice to be  
27 elected to ~~succeed himself~~ *be retained in office*, shall be filled by  
28 appointment by the governor ~~of one of three persons possessing the~~  
29 ~~qualifications of office who shall be nominated and whose names~~  
30 ~~shall be submitted to the governor by the supreme court nominating~~  
31 ~~commission established as hereinafter provided, subject to confir-~~  
32 ~~mation by the senate, of a person possessing the qualifications of~~  
33 ~~office. The supreme court nominating commission, established as~~  
34 ~~hereinafter provided, shall nominate and submit the names of three~~  
35 ~~qualified persons to the governor. The governor shall appoint one~~  
36 ~~of the nominated persons or elect not to appoint one of the nomi-~~  
37 ~~nated persons and request that the nominating commission submit~~  
38 ~~the names of three new qualified persons to the governor. Such~~  
39 ~~subsequent nominations shall be by the same procedure as provided~~  
40 ~~in this article and law not in conflict with this article.~~

41 (b) ~~In event of the failure of the governor to make the appoint-~~  
42 ~~ment within sixty days from the time the names of the nominees~~  
43 ~~are submitted to him, the chief justice of the supreme court shall~~

1 ~~make the appointment from such nominees.~~ *No person appointed*  
 2 *pursuant to subsection (a) of this section shall assume the office of*  
 3 *justice of the supreme court until confirmed by the senate as pro-*  
 4 *vided in this article and law not in conflict with this article. The*  
 5 *senate shall consider and act upon the appointment not later than*  
 6 *30 days after such appointment is received by the senate, if the*  
 7 *senate is in session during a regular legislative session. If the senate*  
 8 *is not in session and will not be in session within the 30-day time*  
 9 *period, the vacancy shall remain open until the next regular legis-*  
 10 *lative session. A special session of the legislature shall not be con-*  
 11 *vened for the sole purpose of considering and acting on such ap-*  
 12 *pointment. In the event the senate does not confirm the*  
 13 *appointment, the commission, within 30 days after the senate vote*  
 14 *on the previous appointee, shall meet to submit to the governor a*  
 15 *panel of three nominees possessing the qualifications of office. Such*  
 16 *three nominees may include a person or persons who were previ-*  
 17 *ously nominated for such vacancy but not appointed by the gover-*  
 18 *nor. Such subsequent appointment shall be considered by the senate*  
 19 *in the same procedure as provided in this article and law not in*  
 20 *conflict with this article. The same appointment and confirmation*  
 21 *procedure shall be followed until a valid appointment has been*  
 22 *made. No person who has been previously appointed but was not*  
 23 *confirmed by the senate shall be appointed again for the same va-*  
 24 *cancy. If the senate fails to vote on an appointment within the 30-*  
 25 *day time limitation during a regular legislative session, the senate*  
 26 *shall be deemed to have given consent to such appointment.*

27 (c) Each justice of the supreme court appointed pursuant to  
 28 provisions of subsection (a) of this section *and confirmed pursuant*  
 29 *to the provisions of subsection (b) of this section* shall hold office  
 30 for an initial term ending on the second Monday in January follow-  
 31 ing the first general election that occurs after the expiration of  
 32 twelve months in office. Not less than sixty days prior to the holding  
 33 of the general election next preceding the expiration of ~~his~~ *such*  
 34 *justice's* term of office, any justice of the supreme court may file in  
 35 the office of the secretary of state a declaration of candidacy for  
 36 election to ~~succeed himself~~ *be retained in office*. If a declaration is  
 37 not so filed, the position held by such justice shall be open from  
 38 the expiration of ~~his~~ *such justice's* term of office. If such declaration  
 39 is filed, ~~his~~ *such justice's* name shall be submitted at the next general  
 40 election to the electors of the state on a separate judicial ballot,  
 41 without party designation, reading substantially as follows:

42 "Shall \_\_\_\_\_

43 (Here insert name of justice.)

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(Here insert the title of the court.)

be retained in office?”  
If a majority of those voting on the question vote against retaining ~~him~~ *such justice* in office, the position or office which ~~he~~ *such justice* holds shall be open upon the expiration of ~~his~~ *such justice’s* term of office; otherwise ~~he~~ *such justice* shall, unless removed for cause, remain in office for the regular term of six years from the second Monday in January following such election. At the expiration of each term ~~he~~ *such justice* shall, unless by law ~~he~~ *such justice* is compelled to retire, be eligible for retention in office by election in the manner prescribed in this section.

(d) A nonpartisan nominating commission whose duty it shall be to nominate and submit to the governor the names of persons for appointment to fill vacancies in the office of any justice of the supreme court is hereby established, and shall be known as the “supreme court nominating commission.” Said commission shall be organized as hereinafter provided.

(e) The supreme court nominating commission shall be composed as follows: ~~One member, who shall be chairman, chosen from among their number by the members of the bar who are residents of and licensed in Kansas; one member from each congressional district chosen from among their number by the resident members of the bar in each such district, and one member, who is not a lawyer, from each congressional district, appointed by the governor from among the residents of each such district. Three members appointed by the speaker of the house of representatives, three members appointed by the president of the senate and three members appointed by the governor. Only one such member from each of the three appointing authorities shall be a member of the bar who resides and is licensed in Kansas. The chairperson shall be selected by members of the commission.~~

(f) The terms of office, the procedure for selection and certification of the members of the commission and provision for their compensation or expenses shall be as provided by the legislature.

(g) No member of the supreme court nominating commission shall, while ~~he is~~ a member, hold any other public office by appointment or any official position in a political party or for six months thereafter be eligible for nomination for the office of justice of the supreme court. The commission may act only by the concurrence of a majority of its members.”

Sec. 2. The following statement shall be printed on the ballot with the amendment as a whole:

1       “*Explanatory statement.* The purpose of this amendment is to allow  
2       the governor to appoint a qualified person to the office of justice  
3       of the supreme court, and such person’s appointment would be  
4       required to be confirmed by the senate. The nonpartisan su-  
5       preme court nominating commission membership would be  
6       changed to include appointments by the speaker of the house of  
7       representatives and the president of the senate. Only one of each  
8       such appointments would be a licensed attorney. The gubernatorial  
9       appointments to the commission would be reduced from  
10       four members to three members. The members of the bar would  
11       no longer elect members of the commission. The commission  
12       would continue to nominate three persons for appointment by  
13       the governor. A procedure is established whereby senate confir-  
14       mation would occur within 30 days of receiving the appointment  
15       during the regular legislative session. If the senate does not con-  
16       firm, the governor would then select an appointment from three  
17       nominated persons by the commission which would again go to  
18       the senate for confirmation. The same appointment and confir-  
19       mation procedure would be followed until a valid appointment  
20       is made. If the senate fails to vote on an appointment within 30  
21       days during the regular legislative session, it will be considered  
22       that the senate confirmed the appointment.

23       “A vote for this proposition would provide a procedure whereby the  
24       governor would appoint a person to be a supreme court justice  
25       and the senate would confirm the appointment of supreme court  
26       justices. The supreme court nominating commission would con-  
27       tinue to nominate three qualified persons to the governor. The  
28       governor would appoint from the three nominated persons.

29       “A vote against this proposition would continue in effect the current  
30       provision whereby the supreme court nominating commission  
31       nominates three persons for the office of the supreme court and  
32       the governor appoints one of such persons.

33       Sec. 3. This resolution, if approved by two-thirds of the members  
34       elected (or appointed) and qualified to the House of Representatives, and  
35       two-thirds of the members elected (or appointed) and qualified to the  
36       Senate shall be entered on the journals, together with the yeas and nays.  
37       The secretary of state shall cause this resolution to be published as pro-  
38       vided by law and shall cause the proposed amendment to be submitted  
39       to the electors of the state at the general election in the year 2010 unless  
40       a special election is called at a sooner date by concurrent resolution of  
41       the legislature, in which case it shall be submitted to the electors of the  
42       state at the special election.