

## HOUSE BILL No. 2179

By Representatives Crum, Stogsdill, Alcalá, Arnberger, Ballard, Bishop, Burroughs, Carlin, Carmichael, Curtis, Deere, Elliott, Ellis, Finney, Frownfelter, Gartner, Good, Henderson, Highberger, Hodge, Holscher, Kessinger, Koesten, Kuether, Lusk, Lusker, Murnan, Neighbor, Ohaebosim, Ousley, Parker, Phelps, Pittman, Ruiz, Sawyer, A. Smith, Tarwater, Terrell, Trimmer, Victors, Ward, Weigel, Whipple, Winn and Wolfe Moore

1-26

1 AN ACT concerning teachers; relating to contracts; amending K.S.A. 2016  
2 Supp. 72-5436, 72-5438, 72-5439 and 72-5445 and repealing the  
3 existing sections.  
4

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

6 Section 1. K.S.A. 2016 Supp. 72-5436 is hereby amended to read as  
7 follows: 72-5436. As used in ~~this act~~ K.S.A. 72-5436 and 72-5438 through  
8 72-5446, and amendments thereto: (a) "Teacher" means *any professional*  
9 *employee who is required to hold a certificate to teach in any school*  
10 *district and any teacher or instructor in any technical college, the institute*  
11 *of technology at Washburn university or community college. The term*  
12 *"teacher" does not include within its meaning any supervisors, principals,*  
13 *superintendents or any person employed under the authority of K.S.A. 72-*  
14 *8202b, and amendments thereto, or any persons employed in an*  
15 *administrative capacity by any technical college, the institute of*  
16 *technology at Washburn university or community college.*

17 (b) "Board" means *the board of education of any school district, the*  
18 *governing body of any technical college or the institute of technology at*  
19 *Washburn university, and the board of trustees of any community college.*

20 Sec. 2. K.S.A. 2016 Supp. 72-5438 is hereby amended to read as  
21 follows: 72-5438. (a) Whenever a teacher is given written notice of  
22 intention by a board to not renew or to terminate the contract of the teacher  
23 as provided in K.S.A. 72-5437, and amendments thereto, the written notice  
24 of the proposed nonrenewal or termination shall include: (1) A statement  
25 of the reasons for the proposed nonrenewal or termination; and (2) a  
26 statement that the teacher may have the matter heard by a hearing officer  
27 upon written request filed with *the clerk of the board of education or the*  
28 *board of control or the secretary of the board of trustees within 15 calendar*  
29 *days from the date of such notice of nonrenewal or termination.*

30 (b) Within 10 calendar days after the filing of any written request of a  
31 teacher to be heard as provided in subsection (a), the board shall notify the  
32 commissioner of education that a list of qualified hearing officers is

1 required. Such notice shall contain the mailing address of the teacher.  
2 Within 10 days after receipt of notification from the board, the  
3 commissioner shall provide to the board and to the teacher, a list of five  
4 randomly selected, qualified hearing officers.

5 (c) Within five days after receiving the list from the commissioner,  
6 each party shall eliminate two names from the list, and the remaining  
7 individual on the list shall serve as hearing officer. In the process of  
8 elimination, each party shall eliminate no more than one name at a time,  
9 the parties alternating after each name has been eliminated. The first name  
10 to be eliminated shall be chosen by the teacher within five days after the  
11 teacher receives the list. The process of elimination shall be completed  
12 within five days thereafter.

13 (d) Either party may request that one new list be provided within five  
14 days after receiving the list. If such a request is made, the party making the  
15 request shall notify the commissioner and the other party, and the  
16 commissioner shall generate a new list and distribute it to the parties in the  
17 same manner as the original list.

18 (e) In lieu of using the process provided in subsections (b) and (c), if  
19 the parties agree, they may make a request to the American arbitration  
20 association for an arbitrator to serve as the hearing officer. Any party  
21 desiring to use this alternative procedure shall so notify the other party in  
22 the notice required under subsection (a). If the parties agree to use this  
23 procedure, the parties shall make a joint request to the American  
24 arbitration association for a hearing officer within 10 days after the teacher  
25 files a request for a hearing. If the parties choose to use this procedure, the  
26 parties shall each pay one-half of the cost of the arbitrator and of the  
27 arbitrator's expenses.

28 (f) The commissioner of education shall compile and maintain a list  
29 of hearing officers comprised of residents of this state who are attorneys at  
30 law. Such list shall include a statement of the qualifications of each  
31 hearing officer.

32 (g) Attorneys interested in serving as hearing officers under the  
33 provisions of this act shall submit an application to the commissioner of  
34 education. The commissioner shall determine if the applicant is eligible to  
35 serve as a hearing officer pursuant to the provisions of subsection (h).

36 (h) An attorney shall be eligible for appointment to the list if the  
37 attorney has: (1) Completed a minimum of 10 hours of continuing legal  
38 education credit in the area of education law, due process, administrative  
39 law or employment law within the past five years; or (2) previously served  
40 as the chairperson of a due process hearing committee prior to the effective  
41 date of this act. An attorney shall not be eligible for appointment to the list  
42 if the attorney has been employed to represent a board or a teacher in a due  
43 process hearing within the past five years.

1       Sec. 3. K.S.A. 2016 Supp. 72-5439 is hereby amended to read as  
2 follows: 72-5439. The hearing provided for under K.S.A. 72-5438, and  
3 amendments thereto, shall commence within 45 calendar days after the  
4 hearing officer is selected unless the hearing officer grants an extension of  
5 time. The hearing shall afford procedural due process, including the  
6 following:

7       (a) The right of each party to have counsel of such party's own choice  
8 present and to receive the advice of such counsel or other person whom  
9 such party may select;

10       (b) the right of each party or such party's counsel to cross-examine  
11 any person who provides information for the consideration of the hearing  
12 officer, except those persons whose testimony is presented by affidavit;

13       (c) the right of each party to present such party's own witnesses in  
14 person, or their testimony by affidavit or deposition, except that testimony  
15 of a witness by affidavit may be presented only if such witness lives more  
16 than 100 miles from the location of *the unified school district office*, the  
17 technical college, institute of technology at Washburn university or  
18 community college, or is absent from the state, or is unable to appear  
19 because of age, illness, infirmity or imprisonment. When testimony is  
20 presented by affidavit the same shall be served upon *the clerk of the board*  
21 *of education*, the board of control, the secretary of the board of trustees or  
22 the agent of the board and upon the teacher in person or by first-class mail  
23 to the address of the teacher which is on file with the board not less than  
24 10 calendar days prior to presentation to the hearing officer;

25       (d) the right of the teacher to testify in the teacher's own behalf and  
26 give reasons for the teacher's conduct, and the right of the board to present  
27 its testimony through such persons as the board may call to testify in its  
28 behalf and to give reasons for its actions, rulings or policies;

29       (e) the right of the parties to have an orderly hearing; and

30       (f) the right of the teacher to a fair and impartial decision based on  
31 substantial evidence.

32       Sec. 4. K.S.A. 2016 Supp. 72-5445 is hereby amended to read as  
33 follows: 72-5445. (a) *Except as otherwise provided in this section*, the  
34 provisions of K.S.A. 72-5438 through 72-5443, and amendments thereto,  
35 apply only to:

36       (1) Teachers who have completed not less than three consecutive  
37 years of employment, and been offered a fourth contract, in *the school*  
38 *district*, the technical college, institute of technology at Washburn  
39 university or community college by which any such teacher is currently  
40 employed; and

41       (2) teachers who have completed not less than two consecutive years  
42 of employment, and been offered a third contract, in *the school district*, the  
43 technical college, institute of technology at Washburn university or

1 community college by which any such teacher is currently employed if at  
2 any time prior to the current employment the teacher has completed the  
3 years of employment requirement of paragraph (1) of this subsection in  
4 any *school district*, technical college, the institute of technology at  
5 Washburn university or community college in this state.

6 (b) Any board may waive, at any time, the years of employment  
7 requirements of subsection (a)(1) for any teacher employed by it.

8 (c) The provisions of this ~~subsection~~ *section* are subject to the  
9 provisions of K.S.A. 72-5446, and amendments thereto.

10 (d) *The provisions of K.S.A. 72-5438 through 72-5443, and*  
11 *amendments thereto, do not apply to any teacher whose license has been*  
12 *non-renewed or revoked by the state board of education because the*  
13 *teacher has:*

14 (1) *Been convicted of a felony under K.S.A. 2010 Supp. 21-36a01*  
15 *through 21-36a17, prior to their transfer, or article 57 of chapter 21 of the*  
16 *Kansas Statutes Annotated, and amendments thereto, or any felony*  
17 *violation of any provision of the uniform controlled substances act prior to*  
18 *July 1, 2009;*

19 (2) *been convicted of a felony described in any section of article 34*  
20 *of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or*  
21 *article 54 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2016*  
22 *Supp. 21-6104, 21-6325, 21-6326 or 21-6418, and amendments thereto, or*  
23 *an act described in K.S.A. 21-3412, prior to its repeal, or K.S.A. 2016*  
24 *Supp. 21-5413(a), or K.S.A. 21-3412a, prior to its repeal, or K.S.A. 2016*  
25 *Supp. 21-5414, and amendments thereto, if the victim is a minor or*  
26 *student;*

27 (3) *been convicted of a felony described in any section of article 35*  
28 *of chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or*  
29 *article 55 of chapter 21 of the Kansas Statutes Annotated, or K.S.A. 2016*  
30 *Supp. 21-6419 through 21-6421, and amendments thereto, or has been*  
31 *convicted of an act described in K.S.A. 21-3517, prior to its repeal, or*  
32 *K.S.A. 2016 Supp. 21-5505(a), and amendments thereto, if the victim is a*  
33 *minor or student;*

34 (4) *been convicted of any act described in any section of article 36 of*  
35 *chapter 21 of the Kansas Statutes Annotated, prior to their repeal, or*  
36 *article 56 of chapter 21 of the Kansas Statutes Annotated, and*  
37 *amendments thereto;*

38 (5) *been convicted of a felony described in article 37 of chapter 21 of*  
39 *the Kansas Statutes Annotated, prior to their repeal, or article 58 of*  
40 *chapter 21 of the Kansas Statutes Annotated or K.S.A. 2016 Supp. 21-*  
41 *6412(a)(6), and amendments thereto;*

42 (6) *been convicted of an attempt under K.S.A. 21-3301, prior to its*  
43 *repeal, or K.S.A. 2016 Supp. 21-5301, and amendments thereto, to commit*

1 *any act specified in this subsection;*

2 *(7) been convicted of any act which is described in K.S.A. 21-4301,*  
3 *21-4301a or 21-4301c, prior to their repeal, or K.S.A. 2016 Supp. 21-6401*  
4 *or 21-6402, and amendments thereto;*

5 *(8) been convicted in another state or by the federal government of*  
6 *an act similar to any act described in this subsection; or*

7 *(9) has entered into a criminal diversion agreement after having been*  
8 *charged with any offense described in this subsection.*

9 Sec. 5. K.S.A. 2016 Supp. 72-5436, 72-5438, 72-5439 and 72-5445  
10 are hereby repealed.

11 Sec. 6. This act shall take effect and be in force from and after its  
12 publication in the statute book.