

## LEGISLATIVE BILL 303

Approved by the Governor May 10, 1995

Introduced by Schimek, 27; Hartnett, 45

AN ACT relating to courts; to amend section 24-808, Reissue Revised Statutes of Nebraska, and sections 24-802, 24-803, 24-806, 24-807, and 24-809, Revised Statutes Supplement, 1994; to change provisions relating to judicial nominating commissions; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 24-802, Revised Statutes Supplement, 1994, is amended to read:

24-802. Except for the member judge of the Supreme Court who is required to be a member of a judicial nominating commission, each member or alternate member of a commission shall be a resident of the judicial district or area of the state served by such commission except as provided in subsection (2) of section 24-806. Except for the Chief Justice, the member of the Supreme Court designated to serve on a particular nominating commission shall not be a member who was originally selected from the district served by such nominating commission.

Sec. 2. Section 24-803, Revised Statutes Supplement, 1994, is amended to read:

24-803. (1) As Except as provided in subsection (3) of this section, as the term of a member of a judicial nominating commission initially appointed or selected expires, the term of office of each successor member shall be for a period of four years. The Governor shall appoint all successor members of each nominating commission who are judges of the Supreme Court and citizen members or alternate citizen members. The Governor shall appoint two alternate citizen members, not of the same political party, to each nominating commission. The term of office of an alternate citizen member of a commission shall be for a period of four years except that the initial appointments shall terminate on December 31, 1999. The lawyers residing in the judicial district or area of the state served by a judicial nominating commission shall select all successor and alternate lawyer members of such commission in the manner prescribed in section 24-806. The term of office of an alternate lawyer member of a commission shall be for a period of two four years. No member of any nominating commission, including the Supreme Court member of any such commission, shall serve more than a total of eight consecutive years as a member of the commission, and if such member has served for more than six years as a member of the commission, he or she shall not be eligible for reelection or reappointment. Alternate lawyer and citizen members shall be selected to fill vacancies in their order of election or appointment.

(2) For purposes of this section and Article V, section 21, of the Constitution of Nebraska, a member of a judicial nominating commission shall be deemed to have served on such commission if he or she was a member of the commission at the time of the publication of the notice required by subsection (5) of section 24-810.

(3) On and after January 1, 1997, members of the judicial nominating commissions for the office of judge of the district court shall also serve as members of the judicial nominating commissions for the office of judge of the county court for counties located within the district court judicial districts served, except that members of the judicial nominating commissions for district judge and county judge in districts 1, 3, 4, and 10 shall be appointed or selected separately to serve on such commissions.

Sec. 3. Section 24-806, Revised Statutes Supplement, 1994, is amended to read:

24-806. (1) Lawyer members and alternate lawyer members of any judicial nominating commission shall be members of the bar of the State of Nebraska and shall reside in the judicial district or area of the state served by the commission except as provided in subsection (2) of this section. Not more than two lawyer members of each commission shall be registered members of the same political party or category, and not more than two alternate lawyer members shall be registered members of the same political party or category. Nominations for lawyer members of each commission shall be solicited in writing by the Clerk of the Supreme Court from all the lawyers of the district or area served on or before September 1 of each even-numbered year. Nominations of lawyer members shall be made in writing and filed in the office of the Clerk of the Supreme Court on or before October 1 of each even-numbered

year. Each nomination of a lawyer member shall be accompanied by a written consent of the nominee to serve as a member of the commission if elected. The nominations shall be solicited and distributed on the ballot by the Clerk of the Supreme Court from the legally recognized political parties and in such a manner as will permit the final selection to be made within the required political party. At least two qualified lawyers shall be nominated for each position.

(2) If insufficient nominations are made to provide two candidates from the permissible political parties for each vacancy, the Executive Council of the Nebraska State Bar Association, within ten days after the last day for filing nominations, shall nominate additional candidates for the position so that there shall be two qualified candidates for each position. Such candidates need not reside in the judicial district or area served by such judicial nominating commission.

(3) The Clerk of the Supreme Court shall mail a ballot with the names name of each nominee to all members of the bar of Nebraska residing in the judicial district or area designating a date at least ten days and not more than fourteen days after the date of such mailing by the Clerk of the Supreme Court when the ballots will be opened and counted. The ballots shall be counted by a board consisting of the Clerk of the Supreme Court, the Secretary of State, and the Attorney General or by alternates designated by any of them to serve in his or her place. The Clerk of the Supreme Court shall insure that the election is so conducted as to maintain the secrecy of the ballot and the validity of the results. The candidate of the required political party receiving the highest number of votes shall be considered as having been elected to the commission. The candidate of the required political party receiving the next highest number of votes shall be considered as having been elected an alternate lawyer member of the commission and shall serve as a lawyer member of the commission in the event of a lawyer member vacancy of the same political party or category on the commission created either by resignation or disqualification. In the case of a resignation, such an alternate lawyer member shall continue to serve as a member of the commission until the term of office of his or her predecessor expires.

(4) In any election when more than one lawyer member of a judicial nominating commission is to be elected, the nominees shall be submitted without designation of the term. Each voter shall be instructed to vote for as many nominees as there are vacancies to be filled. The candidate receiving the highest number of votes shall be considered as having been elected for the longest term. The candidate receiving the next highest number of votes shall be deemed to have been elected for next to the longest term, and if an alternate lawyer member ~~is~~ or members are to be elected, the candidate or candidates receiving the third and fourth highest number of votes shall be deemed elected as the alternate lawyer member or members. In case of ties the determination shall be made by lot by the counting board.

Sec. 4. Section 24-807, Revised Statutes Supplement, 1994, is amended to read:

24-807. Upon the selection of any lawyer member or alternate lawyer member of any judicial nominating commission, the Clerk of the Supreme Court shall promptly certify his or her selection to the Governor and the Secretary of State.

Sec. 5. Section 24-808, Reissue Revised Statutes of Nebraska, is amended to read:

24-808. Each year, on or before September 1, the Clerk of the Supreme Court shall determine what, if any, vacancies exist on any judicial nominating commission and shall report the status of each judicial nominating commission to the Governor. Vacancies relating to any members or alternate citizen members of such commissions appointed by the Governor shall be filled promptly by appointment by the Governor for the unexpired term. Vacancies of lawyer members or alternate lawyer members of ~~said~~ the judicial nominating commission shall be filled promptly by a special election for the unexpired term, conducted by the Clerk of the Supreme Court in the manner applicable to the regular election of lawyer members of ~~said~~ the commissions.

Sec. 6. Section 24-809, Revised Statutes Supplement, 1994, is amended to read:

24-809. The judge of the Supreme Court on each judicial nominating commission shall be the chairperson of the commission and shall preside at all of its meetings. He or she shall not be entitled to vote. In selecting or rejecting judicial nominees, the members of the commission shall vote by oral roll call vote. When it is determined that a judicial vacancy exists in a particular district, the chairperson of the commission shall determine whether there will be eight qualified members of the appropriate judicial nominating commission, including alternate members. If it is determined that there will

not be eight members present and capable of voting at the time the commission meets to vote, the chairperson of the commission shall inform the Governor of the number of citizen members which need to be appointed and shall inform the Executive Director of the Nebraska State Bar Association of the number of lawyer members which need to be elected. The Governor shall promptly make such number of citizen appointments as are necessary. The Executive Council of the Nebraska State Bar Association shall nominate two lawyer candidates for each vacancy on the nominating commission which needs to be filled. The nominations shall be sent to the Clerk of the Supreme Court, and the lawyer vacancies shall be filled by election as provided in section 24-806. There shall be eight qualified commission members present and capable of voting at the time the vote is taken. In the event that a nominating commission public hearing is postponed due to the lack of a full complement of commission members entitled to vote, the time limits specified in subsections (8) and (9) of section 24-810 shall be extended for an additional thirty days for each such postponement. The chairperson of the commission shall cause appropriate notice of the time and place of the newly scheduled judicial nominating commission public hearing to be published as provided in subsection (5) of section 24-810. The postponement of a commission hearing shall not extend the initial application filing deadline of twenty-one days prior to the initial public hearing. Each candidate shall receive a majority vote of five votes from the voting members of the nominating commission to have his or her name submitted to the Governor.

Sec. 7. Original section 24-808, Reissue Revised Statutes of Nebraska, and sections 24-802, 24-803, 24-806, 24-807, and 24-809, Revised Statutes Supplement, 1994, are repealed.