

KANSAS TRIAL LAWYERS ASSOCIATION



To: Representative Fred Patton, Chairman
Members of the House Judiciary Committee

From: Callie Jill Denton, Executive Director

Date: January 28, 2019

Re: HB 2020 An act concerning attorneys; relating to the supreme court nominating commission and judicial district nominating commissions -- SUPPORT

The Kansas Trial Lawyers Association is a non-profit, professional organization of trial lawyers with members across the state. I am here to testify on behalf of KTLA in support of HB 2020.

The Legislature passed H. Sub. for SB 128 in 2016. The new law made several significant changes affecting the administration of Kansas' constitutional process for selecting Supreme Court justices and district court judges; HB 2020 repeals the 2016 amendments. KTLA recommends that repeal is necessary and appropriate.

Selection of the Lawyer Members of Nominating Commissions

Under HB 2020 administration of the selection process would be returned to the judicial branch and the Clerk of the Appellate Courts, a constitutional officer. As the official record keeper of the court, the Clerk maintains the current roster of Kansas licensed attorneys that are in good standing and reside in Kansas. The Clerk is in the best position to conduct elections and determine whether an attorney is qualified to nominate or vote.

The process established in the 2016 H. Sub. for SB 128 creates a conflict with the separation of powers. The new law grants authority to both the Secretary of State and the Attorney General to count ballots and tabulate results as canvassers. The Clerk is also required to create and report to the Secretary of State certified lists of attorneys qualified to vote, including a list of each attorney that voted along with the attorney's residential address. Only the judicial branch may regulate the practice of law and attorneys; HB 2020 restores the necessary separation between the branches of government.

Application of KOMA and KORA

KTLA is a strong proponent of transparency in government. But the new 2016 law does not strike a good balance.

Under the 2016 law, nominating commissions are deemed to be “public bodies”, and subject to KOMA. However, the requirements passed in 2016 for nominating commissions are more stringent. KOMA permits public bodies to close meetings and go into executive session for specific purposes set out in statute, including discussion of personnel matters. The 2016 law does not permit nominating commissions to go into executive session for the purposes permitted in KOMA at all except to discuss sensitive financial information contained within the personal financial records or official background check.

The 2016 law goes too far. Without the ability to assure confidentiality and non-disclosure, nominating commissions will not obtain nor fully consider information that is relevant to the selection of the most qualified judicial candidates.

Commission members must be able to privately discuss not only financial records and the background check, but also other information such as opinions received from private citizens relating to a candidate’s integrity, professional competence, and judicial temperament, and the basis for those opinions.

Such opinions, offered by a candidate’s colleagues, friends, family, or members of the public, may offer valuable insights about a candidate’s qualifications, but they cannot be held in confidence under the 2016 law. If there is no assurance of confidentiality, private citizens may offer their opinions less freely. The current law also chills commission members’ discussion of such information since the discussions must be held in a public meeting.

Open meetings were the standard before the 2016 law was passed; repealing the 2016 law’s KOMA provisions will not change the established standard. Prior to 2016, nominating commissions were already operating in an open fashion. Information about judicial candidates was available to the press and public; candidate interviews were opened so the public and press could attend. Repealing the KOMA provisions will protect privacy and confidentiality of sensitive discussions, opinions, and disclosures and assure that a judicial candidate’s qualifications are fully considered.

The 2016 law requires that the following information be disclosed upon a KORA request for each attorney listed on a certified roster of attorneys eligible to nominate or cast a ballot: the attorney’s name, residential address, date of birth, unique voter identification number, date of licensure to practice law in Kansas, and the qualification certificate that was returned with the attorney’s ballot. A list of all attorneys returning a ballot and their residential addresses is also subject to a KORA request.

Again, the 2016 law goes too far, especially by requiring public disclosure of residential address and date of birth. Unlike laws permitting access to voter registration lists, the 2016 law does not

contain exceptions allowing an attorney to list an alternative address or to request that their information be concealed altogether due to invasion of personal privacy or safety concerns.

The Clerk of the Court has the discretion to disclose information to the public but may protect certain information when necessary. Prior to enactment of the 2016 law, a list of attorneys eligible to vote in the elections was available by applying to the Clerk. There is also information available online that is relevant to a Kansas license to practice law (name, business address and phone number, registration number, status of license, and date of Kansas admission). This information is available on the judicial branch website in a searchable database of all Kansas attorneys that are licensed and in good standing. The application of KORA to lists of attorneys voting in commission elections along with their personal information is duplicative and invasive.

On behalf of the members of the Kansas Trial Lawyers Association, I respectfully request the Committee's support for HB 2020.