

**HOUSE BILL No. 2104**

By Committee on Elections

1-23

1 AN ACT concerning elections; relating to filling vacancies of nominees;  
2 amending K.S.A. 22a-102, 25-306b and 25-3905 and K.S.A. 2014  
3 Supp. 25-3904 and 25-3904a and repealing the existing sections.

4  
5 *Be it enacted by the Legislature of the State of Kansas:*

6 Section 1. K.S.A. 22a-102 is hereby amended to read as follows: 22a-  
7 102. No person shall be eligible for nomination to the office of district  
8 attorney unless such person shall have been regularly admitted to practice  
9 law in the state of Kansas for five years next preceding his nomination for  
10 such office. An attorney who shall have been a county attorney, assistant  
11 county attorney or assistant district attorney for the three years  
12 immediately preceding nomination as district attorney shall be eligible for  
13 nomination. A person so qualified may become a candidate for election to  
14 the office of district attorney by either one of the following methods:

15 (a) Any person who is a qualified elector of any judicial district in  
16 which a district attorney is to be elected and who is otherwise qualified  
17 under this act may petition to be a candidate for district attorney of such  
18 judicial district by filing in the office of the secretary of state a petition for  
19 candidacy, signed by not less than 5% of the qualified electors of such  
20 judicial district who voted for the office of secretary of state at the last  
21 preceding general election; or

22 (b) Any person who is a qualified elector of any judicial district in  
23 which a district attorney is to be elected and who is otherwise qualified  
24 under this act may become a candidate for district attorney of such judicial  
25 district by filing in the office of the secretary of state a declaration of intent  
26 to be such a candidate and payment therewith of a filing fee in an amount  
27 equal to 1% of the annual salary for such office.

28 (c) Any such petition or declaration of intent filed by a candidate to  
29 run in the primary election held in accordance with K.S.A. 25-203, and  
30 amendments thereto, shall be filed no later than ~~12:00~~ 12 noon, ~~June 10,~~  
31 ~~prior to such primary election, or if such date falls on Saturday, Sunday or~~  
32 ~~a holiday, then before 12:00 noon of the next following day that is not a~~  
33 ~~Saturday, Sunday or a holiday~~ on the date described in K.S.A. 25-205(a),  
34 and amendments thereto. Any such petition or declaration of intent filed by  
35 an independent candidate for the office of district attorney shall be filed no  
36 later than ~~12:00~~ 12 noon on the Monday preceding the date fixed for the

1 holding of primary elections in accordance with K.S.A. 25-203, and  
2 amendments thereto. All laws applicable to the election of other state  
3 officers shall apply to elections of district attorneys to the extent the same  
4 are not in conflict with this act.

5 Sec. 2. K.S.A. 25-306b is hereby amended to read as follows: 25-  
6 306b. (a) Except as provided by this section, no person who has been  
7 nominated by any means for any national, state, county or township office  
8 may ~~cause such person's name to~~ be withdrawn from nomination after the  
9 day of the primary election.

10 (b) ~~Any person who has been nominated by any means for any~~  
11 ~~national, state, county or township office who declares that they are~~  
12 ~~incapable of fulfilling the duties of office if elected may cause such~~  
13 ~~person's name to be withdrawn from nomination by a request in writing,~~  
14 ~~signed by the person and acknowledged before an officer qualified to take~~  
15 ~~acknowledgments of deeds. Any such request shall be filed with the~~  
16 ~~secretary of state in the case of national and state offices and with the~~  
17 ~~county election officer in the case of county and township offices. Except~~  
18 ~~as provided in subsection (d), in the case of national and state offices, any~~  
19 ~~such request shall be filed within seven days, including Saturdays,~~  
20 ~~Sundays and holidays, after the meeting of the state board of canvassers~~  
21 ~~for the final canvass of primary election provided for in K.S.A. 25-3205,~~  
22 ~~and amendments thereto. Except as provided in subsection (d), in the case~~  
23 ~~of county and township offices, any such request shall be filed within 10~~  
24 ~~days after the meeting of the county board of canvassers to canvass the~~  
25 ~~primary election as provided in K.S.A. 25-3104, and amendments thereto.~~  
26 ~~No name withdrawn as provided in this section shall be printed on the~~  
27 ~~ballots for such office for the general election.~~

28 (c) In the case of the death of a person who has been nominated for  
29 any national, state, county or township office, ~~the county chairperson of~~  
30 ~~the political party of which such nominee was a member may cause which~~  
31 ~~occurs on or before the first day of September following a primary~~  
32 ~~election, such nominee's name to shall be withdrawn from nomination by a~~  
33 ~~request in writing, signed by the chairperson and acknowledged before an~~  
34 ~~officer qualified to take acknowledgements of deeds. Any such request~~  
35 ~~shall be filed with the secretary of state in the case of national and state~~  
36 ~~offices and with the county election officer in the case of county and~~  
37 ~~township offices. Except as provided in subsection (d), in the case of~~  
38 ~~national and state offices, any such request shall be filed within seven~~  
39 ~~days, including Saturdays, Sundays and holidays, after the meeting of the~~  
40 ~~state board of canvassers for the final canvass of primary election provided~~  
41 ~~for in K.S.A. 25-3205, and amendments thereto. Except as provided in~~  
42 ~~subsection (d), in the case of county and township offices, any such~~  
43 ~~request shall be filed within 10 days after the meeting of the county board~~

1 of canvassers to canvass the primary election as provided in K.S.A. 25-  
2 3104, and amendments thereto. No name withdrawn as provided in this  
3 section shall be printed on the ballots for such office for the general  
4 election.

5 ~~(d) Whenever there has been a vacancy which occurred from a~~  
6 ~~withdrawal under this section, and such vacancy was filled according to~~  
7 ~~law, the person filling the vacancy may cause such person's name to be~~  
8 ~~withdrawn from nomination in the manner provided in subsection (b) or~~  
9 ~~(c) of this section at any time prior to the 40<sup>th</sup> day before the general~~  
10 ~~election and such nominee's name shall not be printed on the ballots for~~  
11 ~~such office for the general election. The secretary of state in the case of~~  
12 ~~national and state offices, or the county election officer in the case of~~  
13 ~~county or township offices, shall notify the chairperson or the vice-~~  
14 ~~chairperson of the party committee of the congressional district, county or~~  
15 ~~state, as the case may be, of such vacancy within 48 hours of receiving~~  
16 ~~notification of such death.~~

17 Sec. 3. K.S.A. 2014 Supp. 25-3904 is hereby amended to read as  
18 follows: 25-3904. (a) When a district convention is provided by law to be  
19 held to elect a person to fill a vacancy in a party candidacy for a district  
20 office, the county chairperson designated in subsection (b) or (c), within  
21 ~~21~~ 14 days of the receipt of the notice that the vacancy has occurred or will  
22 occur shall call and convene a convention of all committeemen and  
23 committeewomen of the political party from the precincts in such district.  
24 If such county chairperson is absent or for any reason is unable to call, or  
25 refuses to call such convention, then the corresponding county vice-  
26 chairperson shall call the convention and perform the other duties under  
27 this section required of such chairperson.

28 (b) If the district lies within a single county, the county chairperson of  
29 such county shall call the convention by mailing a notice at least seven  
30 days before the date of the convention to the committeemen and  
31 committeewomen in such county who are entitled to vote at such  
32 convention pursuant to subsection (e).

33 (c) If all or part of more than one county lies within the district, the  
34 county chairperson of the county in which the greatest number of qualified  
35 voters of the district reside shall call the convention by mailing a notice of  
36 such convention to each county chairperson of the party in each such  
37 county, at least ~~10~~ seven days before the date of the convention. Such  
38 convention shall be held at a location within the district selected by the  
39 chairperson calling the convention. Such county chairpersons shall, within  
40 three days after receipt of such notice, mail notice of such convention to  
41 the committeemen and committeewomen in their counties who are entitled  
42 to vote at such convention pursuant to subsection (e).

43 (d) The notice of such convention shall state: (1) The place where the

1 convention is to be held; (2) the time when the convention will convene;  
2 and (3) the purpose for which the convention is to be held.

3 (e) At the time and place fixed for holding the convention, the county  
4 chairperson who called the convention shall act as temporary chairperson  
5 and shall call the convention to order. One-third of the eligible members of  
6 the convention shall constitute a quorum for such election. In the event a  
7 quorum is not present at the time and place that such convention is called,  
8 the members present shall adjourn the convention to a day and time  
9 certain, which shall not be later than ~~14~~ six days after such adjournment of  
10 such convention, and provide for notification of the time and place of such  
11 adjourned convention to be given to the eligible members not present. The  
12 convention shall organize by electing a permanent chairperson and such  
13 other officers as necessary. After the convention is organized, it shall elect  
14 a person to fill such vacancy in the party candidacy. Such election shall be  
15 by secret ballot and the person elected shall be the one who receives the  
16 majority of all the votes cast. If no person receives a majority of all votes  
17 cast on any ballot, the balloting shall continue until some person receives a  
18 majority of all the votes cast. Each committeeman and committeewoman  
19 of the party of the precincts in such district shall be entitled to vote. Except  
20 as provided in subsection (f), no precinct committeeman or  
21 committeewoman shall be represented or shall vote by proxy. The  
22 convention may adopt rules as necessary to govern its procedure in making  
23 nominations, voting, counting and canvassing votes and for the conduct of  
24 any business which may properly be brought before the convention, but  
25 such rules shall not be in conflict with the provisions of this section.

26 (f) (1) A precinct committeeman or committeewoman may vote by  
27 proxy at a convention called pursuant to this section whenever such  
28 precinct committeeman or committeewoman is unable to attend the  
29 convention and cast such precinct committeeman's or committeewoman's  
30 ballot.

31 (2) A precinct committeeman or committeewoman may designate  
32 another precinct committeeman or committeewoman to cast such precinct  
33 committeeman's or precinct committeewoman's ballot at such convention  
34 by proxy. Any proxy authorized by this subsection shall:

35 (A) Designate the precinct committeeman or committeewoman who  
36 shall cast the precinct committeeman's or precinct committeewoman's vote  
37 by proxy;

38 (B) be signed by the precinct committeeman or precinct  
39 committeewoman authorizing the proxy; and

40 (C) contain an acknowledgment of such precinct committeeman's or  
41 precinct committeewoman's signature which complies with K.S.A. 53-509,  
42 and amendments thereto.

43 (g) After a person has been elected to fill a vacancy in a party

1 candidacy for a district office, the chairperson or vice-chairperson of the  
2 convention shall execute a certificate, under oath, stating that such person  
3 has been duly elected to fill such vacancy and *that such person has agreed*  
4 *to accept the nomination. The person elected to fill such vacancy shall*  
5 *execute a notarized written statement stating that such person agrees to*  
6 *accept the nomination. The chairperson or vice-chairperson shall transmit*  
7 *such certificate to the secretary of state or appropriate county election*  
8 *officer, as the case may be, within 21 days of receipt of the notice that the*  
9 *vacancy has occurred or will occur.*

10 (h) *For the purposes of this section, the word "shall" imposes a*  
11 *mandatory duty and no court may construe that word in any other way.*

12 Sec. 4. K.S.A. 2014 Supp. 25-3904a is hereby amended to read as  
13 follows: 25-3904a. (a) When a vacancy occurs in a party candidacy for the  
14 office of member of the state board of education, the county chairperson  
15 designated in subsection (b), (c) or (d), within ~~21~~ 10 days of receipt of  
16 notice that the vacancy has occurred or will occur, shall call and convene a  
17 district convention for the purpose of electing a person to fill such  
18 vacancy. If such county chairperson is absent or for any reason is unable to  
19 call or refuses to call such convention, then the county vice-chairperson  
20 shall call the convention and perform the other duties required of such  
21 chairperson under this section.

22 (b) If the board member district lies within a single county, the county  
23 chairperson of such county shall call a convention of all precinct  
24 committeemen and committeewomen of the party of the precincts in such  
25 district in the manner provided by ~~subsections (b) and (d)~~ of K.S.A. 25-  
26 3904(b) and (d), and amendments thereto, and such convention shall be  
27 conducted in the manner provided in ~~subsection (e)~~ of K.S.A. 25-3904(e),  
28 and amendments thereto.

29 (c) If all or part of more than one and less than five counties lie within  
30 the board member district, the county chairperson of the county in which  
31 the greatest number of qualified voters of the district reside shall call a  
32 convention of all precinct committeemen and committeewomen of the  
33 party of the precincts in such district in the manner provided by  
34 ~~subsections (c) and (d)~~ of K.S.A. 25-3904(c) and (d), and amendments  
35 thereto, and such convention shall be conducted as provided in ~~subsection~~  
36 ~~(e)~~ of K.S.A. 25-3904(e), and amendments thereto. Such convention shall  
37 be held at a location within the district selected by the chairperson calling  
38 the convention.

39 (d) If all or part of five or more counties lie within the board member  
40 district, the county chairperson of the county in which the greatest number  
41 of qualified voters of the district reside shall call a convention of all county  
42 chairpersons and vice-chairpersons of the party of the counties in such  
43 district. Such convention shall be held at a location within the district

1 selected by the chairperson calling the convention. Such county  
2 chairperson shall call the convention by mailing a notice to each such  
3 county chairperson and vice-chairperson at least seven days before the  
4 date of the convention. Such notice shall state: (1) The place where the  
5 convention is to be held; (2) the time when the convention will convene;  
6 and (3) the purpose for which the convention is to be held.

7 (e) At the time and place fixed for holding the convention, the county  
8 chairperson who called the convention shall act as temporary chairperson  
9 and shall call the convention to order. One-third of the eligible members of  
10 the convention shall constitute a quorum for such election. In the event a  
11 quorum is not present at the time and place that such convention is called,  
12 the members present shall adjourn the convention to a day and time  
13 certain, which shall be not later than ~~14~~ *three* days after such adjournment  
14 of such convention and provide for notification of the time and place of  
15 such adjourned convention to be given to the eligible members not present.  
16 The convention shall proceed to organize by electing a permanent  
17 chairperson and such other officers as necessary. After the convention is  
18 organized, it shall proceed to elect a person to fill the vacancy in the party  
19 candidacy. Such election shall be by secret ballot and the person elected  
20 shall be the one who shall receive the majority of all the votes cast. If no  
21 person receives a majority of all votes cast on any ballot, the balloting  
22 shall continue until some person receives a majority of all the votes cast.  
23 Each county chairperson and vice-chairperson of the party of the counties  
24 in such district shall be entitled to vote. Except as provided in subsection  
25 (f), no county chairperson or vice-chairperson shall be represented or shall  
26 vote by proxy. The convention may adopt rules necessary to govern its  
27 procedure in making nominations, voting, counting and canvassing votes  
28 and for the conduct of any business which may properly be brought before  
29 the convention, but such rules shall not be in conflict with the provisions  
30 of this section.

31 (f) (1) A precinct committeeman or committeewoman who serves as  
32 county chairperson or vice-chairperson may vote by proxy at a convention  
33 called pursuant to this section whenever such precinct committeeman or  
34 committeewoman is unable to attend the convention and cast such precinct  
35 committeeman's or committeewoman's ballot.

36 (2) A precinct committeeman or committeewoman may designate  
37 another precinct committeeman or committeewoman to cast such precinct  
38 committeeman's or precinct committeewoman's ballot at such convention  
39 by proxy. Any proxy authorized by this subsection shall:

40 (A) Designate the precinct committeeman or committeewoman who  
41 shall cast the precinct committeeman's or precinct committeewoman's vote  
42 by proxy;

43 (B) be signed by the precinct committeeman or precinct

1 committeewoman authorizing the proxy; and

2 (C) contain an acknowledgment of such precinct committeeman's or  
3 precinct committeewoman's signature which complies with K.S.A. 53-509,  
4 and amendments thereto.

5 (g) After a person has been elected to fill a vacancy in a party  
6 candidacy for the office of member of the state board of education, the  
7 chairperson or vice-chairperson of the convention shall execute a  
8 certificate, under oath, stating that such person has been duly elected to fill  
9 such vacancy and *that such person has agreed to accept the nomination.*  
10 *The person elected to fill such vacancy shall execute a notarized written*  
11 *statement stating that such person agrees to accept the nomination. The*  
12 *chairperson or vice-chairperson shall transmit such certificate to the*  
13 *secretary of state, within 14 days of receipt of the notice that the vacancy*  
14 *has occurred or will occur.*

15 (h) *For the purposes of this section, the word "shall" imposes a*  
16 *mandatory duty and no court may construe that word in any other way.*

17 Sec. 5. K.S.A. 25-3905 is hereby amended to read as follows: 25-  
18 3905. (a) When a vacancy occurs after a primary election in a party  
19 candidacy, such vacancy shall be filled by the party committee of the  
20 congressional district, county or state, as the case may be, except if the  
21 vacancy is in a party candidacy for a district office or for the office of  
22 member of the state board of education, it shall be filled by district  
23 convention held as provided in K.S.A. 25-3904, and amendments thereto,  
24 or as provided in K.S.A. 25-3904a, and amendments thereto, and except as  
25 otherwise provided in subsection (c).—~~Such~~ *The meeting or* convention  
26 shall be called *and convened by the party committee chairperson or vice-*  
27 *chairperson* within 10 days of receipt of the notice that the vacancy has  
28 occurred or will occur. If only one political party nominates a candidate at  
29 the primary election and thereafter a vacancy occurs in such party  
30 candidacy, any political party may fill such vacancy in the manner  
31 specified in this section.

32 (b) In addition to other vacancies in party candidacies to which this  
33 section applies, this section shall also apply when a vacancy occurs in an  
34 office, and it is provided by law that such vacancy shall be filled by  
35 appointment until the next general election at which time a person is to be  
36 elected to fill the unexpired term, or words of like effect, and such vacancy  
37 occurs after the primary election.

38 (c) When a vacancy occurs after a primary election in a party  
39 candidacy for governor or lieutenant governor, a vacancy shall thereby  
40 also occur for the other of such two offices. Such vacancies shall be filled  
41 by a state party delegate convention. The convention shall be called by the  
42 state party chairperson. The delegates to the convention shall be the state  
43 party committee members, and the officers of the convention shall be the

1 officers of the state party committee. At such convention the vote to fill  
2 such vacancies shall be taken such that each convention vote shall be for a  
3 candidate for governor and lieutenant governor running together. If the  
4 initial vacancy that has occurred is for the office of lieutenant governor,  
5 the person who is the candidate for governor of such pair of candidates  
6 shall be the only governor candidate at such convention.

7 *(d) After a person has been elected to fill a vacancy in a party*  
8 *candidacy pursuant to this section, the chairperson or vice-chairperson of*  
9 *the party committee shall execute a certificate, under oath, stating that*  
10 *such person has been duly elected to fill such vacancy and that such*  
11 *person has agreed to accept the nomination. The person elected to fill*  
12 *such vacancy shall execute a notarized written statement stating that such*  
13 *person agrees to accept the nomination. The chairperson or vice-*  
14 *chairperson shall transmit such certificate and the nominee's written*  
15 *statement accepting the nomination to the secretary of state or appropriate*  
16 *county election officer, as the case may be, within 14 days of receipt of the*  
17 *notice that the vacancy has occurred or will occur.*

18 *(e) For the purposes of this section, the word "shall" imposes a*  
19 *mandatory duty and no court may construe that word in any other way.*

20 Sec. 6. K.S.A. 22a-102, 25-306b and 25-3905 and K.S.A. 2014 Supp.  
21 25-3904 and 25-3904a are hereby repealed.

22 Sec. 7. This act shall take effect and be in force from and after its  
23 publication in the statute book.