

PROPOSED TECHNICAL AMENDMENTS
SENATE COMMERCE COMMITTEE

NORM FURGE/CHARLES REIMER
OFFICE OF REVISOR OF STATUTES
2-27-2013

Session of 2013

SENATE BILL No. 187

By Committee on Commerce

2-13

AN ACT concerning workers; relating to the workers compensation and employment security boards nominating committee; administrative law judge appointments; workers compensation appeals board; amending K.S.A. 2012 Supp. 44-551, 44-555c and 44-709 and repealing the existing sections.

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

Section 1. K.S.A. 2012 Supp. 44-551 is hereby amended to read as follows: 44-551. (a) The duties of the assistant directors of workers compensation may include but not be limited to acting in the capacity of an administrative law judge.

(b) Each administrative law judge shall be an attorney regularly admitted to practice law in Kansas. Such attorney shall have at least five years of experience as an attorney, with at least one year of experience practicing law in the area of workers compensation.

(c) Except as provided in subsection ~~(g)~~ (k), the annual salary of each administrative law judge shall be an amount equal to ~~75%~~ 85% of the annual salary paid by the state to a district judge, other than a district judge designated as a chief judge. Administrative law judges shall devote full time to the duties of such office and shall not engage in the private practice of law during their term of office. No administrative law judge may receive additional compensation for official services performed by the administrative law judge. Each administrative law judge shall be reimbursed for expenses incurred in the performance of such official duties under the same circumstances and to the same extent as district judges are reimbursed for such expenses.

(d) Applications for administrative law judge positions shall be submitted to the director of workers compensation. The director shall determine if an applicant meets the qualifications for an administrative law judge as prescribed in subsection (b). Qualified applicants for a position of administrative law judge shall be submitted by the director to the workers compensation ~~administrative law judge nominating and review committee and employment security boards nominating committee~~ for consideration.

(e) ~~There is hereby established the workers compensation administrative law judge nominating and review committee which shall be composed of two members appointed as follows: The Kansas AFL-CIO~~

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and the Kansas chamber of commerce and industry shall each select one representative to serve on the workers compensation administrative law judge nominating and review committee and shall each give written notice of such selection to the secretary who shall appoint such selected persons to the committee. In the event of a vacancy occurring for any reason on the workers compensation administrative law judge nominating and review committee, the vacating member shall be replaced by the organization which originally selected such member with written notice provided to the secretary within 30 days of such vacancy.

(f) (1) Upon being notified of any vacancy in the position of administrative law judge, the administrative law judge nominating and review committee shall consider all qualified applicants submitted by the director for the vacant position of administrative law judge and nominate a person qualified therefor. The administrative law judge nominating and review committee shall be required to reach unanimous agreement on any nomination to the position of administrative law judge. With respect to each person nominated, the secretary either shall accept and appoint the person nominated by the administrative law judge nominating and review committee to the position of administrative law judge for which the nomination was made or shall reject the nomination and request the administrative law judge nominating and review committee to nominate another person for that position. Upon receipt of any such request for the nomination of another person, the administrative law judge nominating and review committee shall nominate another person for that position in the same manner. *There is hereby established the workers compensation and employment security boards nominating committee. **Whenever the workers compensation administrative law judge nominating and review committee or the workers compensation board nominating committee, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the workers compensation and employment security boards nominating committee.** ~~which~~ **The workers compensation and employment security boards nominating committee** shall be composed of seven members who are appointed by the governor. Each of the following shall select one member to serve on the nominating committee by giving written notice of the selection to the governor who shall appoint such representatives to the committee:*

- (1) *The Kansas secretary of labor;*
- (2) *the Kansas chamber of commerce;*
- (3) *the national federation of independent business;*
- (4) *the Kansas AFL-CIO;*
- (5) *the Kansas state council of the society for human resource management (KS SHRM);*
- (6) *the Kansas self-insurers association; and*
- (7) *the secretary of labor, who shall select a nominee from either an employee organization as defined in K.S.A. 75-4322, and amendments thereto, or a professional employees' organization as defined in K.S.A. 72-5413, and amendments thereto.*

In the event the governor refuses to appoint a member selected by one of the organizations in this subsection, the organization may replace that

of any designated case or cases. Such special local administrative law judges shall be attorneys and admitted to practice law in the state of Kansas and shall, as to all cases assigned to them, exercise the same powers as provided by this section for the regular administrative law judges. Special local administrative law judges shall receive a fee commensurate with the services rendered as fixed by rules and regulations adopted by the director. The fees prescribed by this section prior to the effective date of this act shall be effective until different fees are fixed by such rules and regulations.

(H)(o) All special local administrative law judge's fees and expenses, with the exception of settlement hearings, shall be paid from the workers compensation administration fee fund, as provided in K.S.A. 74-712, and amendments thereto. Where there are no available funds or where the special local administrative law judge conducted a settlement hearing, the fees shall be taxed as costs in each case heard by such special local administrative law judge and when collected shall be paid directly to such special local administrative law judge by the party charged with the payment of the same.

(M)(p) Except as provided for judicial review under K.S.A. 44-556, and amendments thereto, the decisions and awards of the board shall be final.

Sec. 2. K.S.A. 2012 Supp. 44-555c is hereby amended to read as follows: 44-555c. (a) There is hereby established the workers compensation *appeals* board. **Whenever the workers compensation board, or words of like effect, is referred to or designated by a statute, contract or other document, such reference or designation shall be deemed to apply to the workers compensation appeals board.** The board shall have exclusive jurisdiction to review all decisions, findings, orders and awards of compensation of administrative law judges under the workers compensation act. The review by the *appeals* board shall be upon questions of law and fact as presented and shown by a transcript of the evidence and the proceedings as presented, had and introduced before the administrative law judge. The *appeals* board shall be within the division of workers compensation of the department of labor and all budgeting, personnel, purchasing and related management functions of the board shall be administered under the supervision and direction of the secretary of labor. The *appeals* board shall consist of five members who shall be appointed by the secretary in accordance with this section and who shall each serve for a term of four years, except as provided for the first members appointed to the board under subsection (f).

(b) Each board member shall be an attorney regularly admitted to practice law in Kansas for a period of at least seven years *with at least five years experience practicing law in the area of workers compensation* and shall have engaged in the active practice of law during such period as a lawyer, judge of a court of record or any court in Kansas or a full-time teacher of law in an accredited law school, or any combination of such

of the public member's term of office, the governor shall appoint the representative of the public. Not more than two members of the board shall belong to the same political party.

(2) ~~The terms of members who are serving on the board on the effective date of this act shall expire on March 15 of the year in which such member's term would have expired under the provisions of this section prior to amendment by this act. Thereafter, members shall be appointed for terms of four years and until their successors are appointed and confirmed. When a vacancy on the employment security board of review occurs, the nominating committee established under K.S.A. 44-551, and amendments thereto, shall convene and submit a nominee to the governor for appointment to each vacancy on the board of review, subject to confirmation by the senate as provided by K.S.A. 75-4315b, and amendments thereto. The governor shall either: (A) Accept and submit to the senate for confirmation the person nominated by the nominating committee; or (B) reject the nomination and request the nominating committee to nominate another person for that position. Except as provided by K.S.A. 46-2601, and amendments thereto, no person appointed to the board, whose appointment is subject to confirmation by the senate, shall exercise any power, duty or function as a member until confirmed by the senate.~~

(3) *No board member shall serve more than two consecutive terms.*

~~(3)(4) Each member of the board shall serve until a successor has been appointed and confirmed. Any vacancy in the membership of the board occurring prior to expiration of a term shall be filled by appointment for the unexpired term in the same manner as provided for original appointment of the member. Each member shall be appointed as representative of the same special interest group represented by the predecessor of the member.~~

(4)(5) Each member of the board shall be entitled to receive as compensation for the member's services at the rate of \$15,000 per year, together with the member's travel and other necessary expenses actually incurred in the performance of the member's official duties in accordance with rules and regulations adopted by the secretary. Members' compensation and expenses shall be paid from the employment security administration fund.

(5)(6) The board shall organize annually by the election of a chairperson from among its members. The chairperson shall serve in that capacity for a term of one year and until a successor is elected. The board shall meet on the first Monday of each month or on the call of the chairperson or any two members of the board at the place designated. The secretary of labor shall appoint an executive secretary of the board and the executive secretary shall attend the meetings of the board.

(6)(7) The board, on its own motion, may affirm, modify or set aside any decision of a referee on the basis of the evidence previously submitted