

SENATE BILL No. 187

By Committee on Commerce

2-13

1 AN ACT concerning workers; relating to the workers compensation and
2 employment security boards nominating committee; administrative law
3 judge appointments; workers compensation appeals board; amending
4 K.S.A. 2012 Supp. 44-551, 44-555c and 44-709 and repealing the
5 existing sections.
6

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

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

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

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

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

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

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

10 (f) (1) Upon being notified of any vacancy in the position of
11 administrative law judge, the administrative law judge nominating and
12 review committee shall consider all qualified applicants submitted by the
13 director for the vacant position of administrative law judge and nominate a
14 person qualified therefor. The administrative law judge nominating and
15 review committee shall be required to reach unanimous agreement on any
16 nomination to the position of administrative law judge. With respect to
17 each person nominated, the secretary either shall accept and appoint the
18 person nominated by the administrative law judge nominating and review
19 committee to the position of administrative law judge for which the
20 nomination was made or shall reject the nomination and request the
21 administrative law judge nominating and review committee to nominate
22 another person for that position. Upon receipt of any such request for the
23 nomination of another person, the administrative law judge nominating
24 and review committee shall nominate another person for that position in
25 the same manner. *There is hereby established the workers compensation
26 and employment security boards nominating committee which shall be
27 composed of seven members who are appointed by the governor. Each of
28 the following shall select one member to serve on the nominating
29 committee by giving written notice of the selection to the governor who
30 shall appoint such representatives to the committee:*

- 31 (1) *The Kansas secretary of labor;*
- 32 (2) *the Kansas chamber of commerce;*
- 33 (3) *the national federation of independent business;*
- 34 (4) *the Kansas AFL-CIO;*
- 35 (5) *the Kansas state council of the society for human resource
36 management (KS SHRM);*
- 37 (6) *the Kansas self-insurers association; and*
- 38 (7) *the secretary of labor, who shall select a nominee from either an
39 employee organization as defined in K.S.A. 75-4322, and amendments
40 thereto, or a professional employees' organization as defined in K.S.A. 72-
41 5413, and amendments thereto.*

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

1 *selection with another, subject to the same appointment requirements.*

2 *(f) Members of the nominating committee shall serve a term of four*
3 *years. Members may not serve more than two consecutive terms.*

4 *(g) In the event of a vacancy on the nominating committee occurring*
5 *for any reason, the respective member whose position becomes vacant*
6 *shall be replaced by the selecting organization by submitting written*
7 *notice of the replacement selection to the governor within 30 days of such*
8 *vacancy. The governor shall either appoint or reject the replacement*
9 *selection as provided in this section.*

10 *(h) The nominating committee shall meet as needed to provide the*
11 *workers compensation and employment security board of review*
12 *appointing authorities with nominees for appointments to the position of:*

13 *(1) Workers compensation administrative law judge;*

14 *(2) workers compensation appeals board member; and*

15 *(3) employment security board of review.*

16 *No action of the committee shall be effective unless approved by two-*
17 *thirds of the committee.*

18 *(i) When notified of a vacancy in the position of workers*
19 *compensation administrative law judge or workers compensation appeals*
20 *board member, the committee shall review all qualified applicants as*
21 *submitted by the director of workers compensation. The committee shall*
22 *nominate a qualified person to fill the vacancy and submit that nomination*
23 *to the secretary of labor. The secretary shall either accept and appoint the*
24 *person nominated by the nominating committee to the position for which*
25 *the nomination was made or reject the nomination and request the*
26 *nominating committee to nominate another person for that position. Upon*
27 *receipt of any such request for the nomination of another person, the*
28 *nominating committee shall nominate another person for that position in*
29 *the same manner as set forth above.*

30 ~~(j)~~ *(1) Each administrative law judge shall hold office for a term of*
31 *four years and may be reappointed. Each administrative law judge shall*
32 *continue to serve for the term of the appointment or until a successor is*
33 *appointed. ~~Successors to such administrative law judge positions shall be~~*
34 *~~appointed for terms of four years~~ An administrative law judge who wishes*
35 *to be considered for reappointment shall be deemed to have met the*
36 *qualification requirements for appointment as administrative law judge. If*
37 *such administrative law judge wishes to be considered for reappointment*
38 *by the nominating committee, such administrative law judge shall submit*
39 *an application as provided in subsection (d) no sooner than 150 days*
40 *before and no later than 90 days prior to the expiration of such judge's*
41 *term. Within sixty days prior to the expiration of the term of the*
42 *administrative law judge seeking reappointment, the nominating*
43 *committee described above shall meet to vote on reappointment of the*

1 *administrative law judge. The administrative law judge shall be submitted*
 2 *to the secretary for reappointment unless $\frac{2}{3}$ of the nominating committee*
 3 *votes not to submit the administrative law judge for reappointment.*

4 ~~(g)~~ (2) If a vacancy should occur in the position of an administrative
 5 law judge during the term of an administrative law judge, ~~the~~
 6 ~~administrative law judge nominating and review committee~~ *the*
 7 *nominating committee* shall nominate an individual from the qualified
 8 applicants submitted by the director to complete the remainder of the
 9 unexpired portion of the term.

10 ~~(g)~~(k) Except as otherwise provided in this subsection, administrative
 11 law judges appointed on and after July 1, 2006, shall serve a term of office
 12 of four years. Administrative law judges hired before July 1, 2006, may
 13 continue as administrative law judges under the classified service under
 14 the Kansas civil service act at the salary provided under the civil service
 15 act or may elect to be appointed to a term and receive the annual salary
 16 equal to 75% of the salary prescribed for a district judge if the currently
 17 employed administrative law judge within 60 days of the effective date of
 18 this section notifies the director in writing that the administrative law
 19 judge elects to serve an appointed term of office rather than continuing in
 20 the classified service. The term of office for an administrative law judge
 21 who elects a term of office shall begin on the date the written election is
 22 received by the director and the first term of office for such person shall be
 23 for two, three or four years as specified by the secretary so that
 24 administrative law judges appointed under this subsection serve staggered
 25 terms. Thereafter, any such person if reappointed as an administrative law
 26 judge shall be appointed for a term of four years.

27 ~~(h)~~ ~~Following the completion of a term, an administrative law judge~~
 28 ~~who wishes to be considered for reappointment to such judge's position~~
 29 ~~shall be deemed to have met the qualification requirements for~~
 30 ~~appointment as administrative law judge and shall be considered for~~
 31 ~~renomination by the workers compensation administrative law judge~~
 32 ~~nominating and review committee.~~

33 ~~(i)~~(l) (1) Administrative law judges shall have power to administer
 34 oaths, certify official acts, take depositions, issue subpoenas, compel the
 35 attendance of witnesses and the production of books, accounts, papers,
 36 documents and records to the same extent as is conferred on the district
 37 courts of this state, and may conduct an investigation, inquiry or hearing
 38 on all matters before the administrative law judges. All final orders,
 39 awards, modifications of awards, or preliminary awards under K.S.A. 44-
 40 534a, and amendments thereto, made by an administrative law judge shall
 41 be subject to review by the board upon written request of any interested
 42 party within 10 days. Intermediate Saturdays, Sundays and legal holidays
 43 shall be excluded in the time computation. Review by the board shall be a

1 prerequisite to judicial review as provided for in K.S.A. 44-556, and
2 amendments thereto. On any such review, the board shall have authority to
3 grant or refuse compensation, or to increase or diminish any award of
4 compensation or to remand any matter to the administrative law judge for
5 further proceedings. The orders of the board under this subsection shall be
6 issued within 30 days from the date arguments were presented by the
7 parties.

8 (2) (A) If an administrative law judge has entered a preliminary
9 award under K.S.A. 44-534a, and amendments thereto, a review by the
10 board shall not be conducted under this section unless it is alleged that the
11 administrative law judge exceeded the administrative law judge's
12 jurisdiction in granting or denying the relief requested at the preliminary
13 hearing. Such an appeal from a preliminary award may be heard and
14 decided by a single member of the board. Members of the board shall hear
15 such preliminary appeals on a rotating basis and the individual board
16 member who decides the appeal shall sign each such decision. The orders
17 of the board under this subsection shall be issued within 30 days from the
18 date arguments were presented by the parties.

19 (B) If an order on review is not issued by the board within the
20 applicable time period prescribed by subsection (i)(1), medical
21 compensation and any disability compensation as provided in the award of
22 the administrative law judge shall be paid commencing with the first day
23 after such time period and shall continue to be paid until the order of the
24 board is issued, except that no payments shall be made under this
25 provision for any period before the first day after such time period.
26 Nothing in this section shall be construed to limit or restrict any other
27 remedies available to any party to a claim under any other statute.

28 (C) In any case in which the final award of an administrative law
29 judge is appealed to the board for review under this section and in which
30 the compensability is not an issue to be decided on review by the board,
31 medical compensation shall be payable in accordance with the award of
32 the administrative law judge and shall not be stayed pending such review.
33 The employee may proceed under K.S.A. 44-510k, and amendments
34 thereto, and may have a hearing in accordance with that statute to enforce
35 the provisions of this subsection.

36 ~~(j)~~(m) Each assistant director and each administrative law judge or
37 special administrative law judge shall be allowed all reasonable and
38 necessary expenses actually incurred while in the actual discharge of
39 official duties in administering the workers compensation act, but such
40 expenses shall be sworn to by the person incurring the same and be
41 approved by the secretary.

42 ~~(k)~~(n) In case of emergency the director may appoint special local
43 administrative law judges and assign to them the examination and hearing

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

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

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

22 Sec. 2. K.S.A. 2012 Supp. 44-555c is hereby amended to read as
23 follows: 44-555c. (a) There is hereby established the workers
24 compensation *appeals* board. The board shall have exclusive jurisdiction
25 to review all decisions, findings, orders and awards of compensation of
26 administrative law judges under the workers compensation act. The review
27 by the *appeals* board shall be upon questions of law and fact as presented
28 and shown by a transcript of the evidence and the proceedings as
29 presented, had and introduced before the administrative law judge. The
30 *appeals* board shall be within the division of workers compensation of the
31 department of labor and all budgeting, personnel, purchasing and related
32 management functions of the board shall be administered under the
33 supervision and direction of the secretary of labor. The *appeals* board shall
34 consist of five members who shall be appointed by the secretary in
35 accordance with this section and who shall each serve for a term of four
36 years, except as provided for the first members appointed to the board
37 under subsection (f).

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

1 types of practice.

2 (c) Each board member shall receive an annual salary in an amount
3 equal to the salary prescribed by law for a district judge, except that the
4 member who is the chairperson of the workers compensation board shall
5 receive an annual salary in an amount equal to the salary prescribed for a
6 district judge designated as chief judge of a district court of Kansas. The
7 board members shall devote full time to the duties of such office and shall
8 not engage in the private practice of law during their term of office. No
9 board member may receive additional compensation for official services
10 performed by the board member. Each board member shall be reimbursed
11 for expenses incurred in the performance of such official duties under the
12 same circumstances and to the same extent as judges of the district court
13 are reimbursed for such expenses.

14 (d) Applications for membership on the board shall be submitted to
15 the director of workers compensation. The director shall determine if an
16 applicant meets the qualifications for membership on the board prescribed
17 in subsection (b). Qualified applicants for the board will be submitted by
18 the director to the workers compensation board nominating committee for
19 consideration.

20 ~~(e) There is hereby established the workers compensation board~~
21 ~~nominating committee which shall be composed of two members~~
22 ~~appointed as follows: The Kansas AFL-CIO and the Kansas chamber of~~
23 ~~commerce and industry shall each select one representative to serve on the~~
24 ~~workers compensation board nominating committee and shall give written~~
25 ~~notice of the selection to the secretary who shall appoint such~~
26 ~~representatives to the committee. In the event of a vacancy occurring for~~
27 ~~any reason on the nominating committee, the respective member shall be~~
28 ~~replaced by the appointing organization with written notice of the~~
29 ~~appointment to the secretary of labor within 30 days of such vacancy.~~

30 ~~(f) (1) Upon being notified of any vacancy on the board or of the~~
31 ~~need to appoint a member pro tem under subsection (i), the nominating~~
32 ~~committee shall consider all qualified applicants submitted by the director~~
33 ~~for the vacant position on the board or the member pro tem position and~~
34 ~~nominate a person qualified therefor. The nominating committee shall be~~
35 ~~required to reach unanimous agreement on any nomination to the board.~~
36 ~~With respect to each person nominated, the secretary either shall accept~~
37 ~~and appoint the person nominated by the nominating committee to the~~
38 ~~position on the board for which the nomination was made or shall reject~~
39 ~~the nomination and request the nominating committee to nominate another~~
40 ~~person for that position. Upon receipt of any such request for the~~
41 ~~nomination of another person, the nominating committee shall nominate~~
42 ~~another person for that position in the same manner.~~

43 ~~(2) The first members of the board established by this section are~~

1 hereby appointed as follows: Each person who was a member of the
2 workers compensation board which was in existence on January 12, 1995,
3 is hereby appointed, effective January 13, 1995, as a member of the board
4 established by this section. The term of office of each person so appointed
5 as a member of the board established by this section is for the period equal
6 to the remainder of the term of office such person had as of January 12,
7 1995, as a member of the workers compensation board which was in
8 existence on January 12, 1995.

9 (3) Each member of the board shall hold office for the term of the
10 appointment and until the successor shall have been appointed. Successors
11 to such members shall be appointed for terms of four years.

12 (4) If a vacancy should occur on the board during the term of a
13 member, the nominating committee shall nominate an individual from the
14 qualified applicants submitted by the director to complete the remainder of
15 the unexpired portion of the term. With respect to each person so
16 nominated, the secretary either shall accept and appoint the person
17 nominated to the board or shall reject the nomination and request the
18 nominating committee to nominate another person for the position. Upon
19 receipt of any such request for the nomination of another person, the
20 nominating committee shall nominate another person for the position in
21 the same manner.

22 (g) Following the completion of a term, board members who wish to
23 be considered for reappointment to the board shall be deemed to have met
24 the qualification requirements for selection to the board and shall be
25 considered for renomination by the workers compensation board
26 nominating committee.

27 (f) *A board member who wishes to be considered for reappointment
28 shall be deemed to have met the qualification requirements for
29 appointment as a board member. If a board member wishes to be
30 considered for reappointment by the nominating committee, such board
31 member shall submit an application as provided in subsection (d) no
32 sooner than 150 days before and no later than 90 days prior to the
33 expiration of such member's term. No later than thirty days prior to the
34 expiration of the term, the nominating committee shall convene to vote on
35 the reappointment of the board member. The board member shall be
36 submitted to the secretary for reappointment unless $\frac{2}{3}$ of the nominating
37 committee votes not to submit the board member's name for
38 reappointment.*

39 (h)(g) The members of the board shall annually elect one member to
40 serve as chairperson.

41 (i)(h) If illness or other temporary disability of a member of the board
42 will not permit the member to serve during a case or in any case in which a
43 member of the board must be excused from serving because of a conflict

1 or is otherwise disqualified with regard to such case, the director shall
2 ~~notify the workers compensation nominating committee of the need to~~
3 ~~appoint a member pro tem. Upon receipt of such notice, the committee~~
4 ~~shall act as soon as possible and nominate a qualified person to serve as~~
5 ~~member pro tem in such case in accordance with subsection (f).~~ Each
6 member pro tem shall receive compensation at the same rate as a member
7 of the board receives, prorated for the hours of actual service as a member
8 pro tem and shall receive expenses under the same circumstances and to
9 the same extent as a member of the board receives. Each member pro tem
10 shall have all the powers, duties and functions of a member of the board
11 with regard to the case.

12 (j) The board shall maintain principal offices in Topeka, Kansas, and
13 the board may conduct hearings at a courthouse of any county in Kansas or
14 at another location specified by the board. The secretary of labor shall
15 provide a courtroom and other suitable quarters in Topeka, Kansas, for the
16 use of the board and its staff. When the board conducts hearings at any
17 location other than in Topeka, Kansas, the director shall make suitable
18 arrangements for such hearings. Subject to the provisions of appropriation
19 acts, the director shall provide such supplies and equipment and shall
20 appoint such support personnel as may be necessary for the board to fulfill
21 the duties imposed by this act, subject to approval by the secretary.

22 (k) For purposes of hearing cases, the board may sit together or in
23 panels of ~~two~~ *three* members or more, designated by the chairperson of the
24 board, except that an appeal from a preliminary award entered under
25 K.S.A. 44-534a, and amendments thereto, may be heard by a panel of one
26 member designated by the chairperson. All members of the board shall
27 determine each matter before the board. All decisions, reviews and
28 determinations by the board shall be approved in writing by ~~at least three~~
29 ~~board members~~ *a majority comprised of not less than three of the members*
30 *hearing the case.* Whenever the board enters a final order in any
31 proceeding, the board shall make written findings of fact and conclusions
32 of law forming the basis of the board's determination and final order. The
33 findings of fact and conclusions of law of the board shall be made a part of
34 the final order. The board shall mail a copy of the final order of the board
35 to all parties to the proceeding within three days following the issuance of
36 the final order.

37 Sec. 3. K.S.A. 2012 Supp. 44-709 is hereby amended to read as
38 follows: 44-709. (a) *Filing.* Claims for benefits shall be made in
39 accordance with rules and regulations adopted by the secretary. The
40 secretary shall furnish a copy of such rules and regulations to any
41 individual requesting them. Each employer shall post and maintain printed
42 statements furnished by the secretary without cost to the employer in
43 places readily accessible to individuals in the service of the employer.

1 (b) *Determination.* (1) Except as otherwise provided in this
2 subsection (b)(1), a representative designated by the secretary, and
3 hereinafter referred to as an examiner, shall promptly examine the claim
4 and, on the basis of the facts found by the examiner, shall determine
5 whether or not the claim is valid. If the examiner determines that the claim
6 is valid, the examiner shall determine the first day of the benefit year, the
7 weekly benefit amount and the total amount of benefits payable with
8 respect to the benefit year. If the claim is determined to be valid, the
9 examiner shall send a notice to the last employing unit who shall respond
10 within 10 days by providing the examiner all requested information
11 including all information required for a decision under K.S.A. 44-706, and
12 amendments thereto. The information may be submitted by the employing
13 unit in person at an employment office of the secretary or by mail, by
14 telefacsimile machine or by electronic mail. If the required information is
15 not submitted or postmarked within a response time limit of 10 days after
16 the examiner's notice was sent, the employing unit shall be deemed to have
17 waived its standing as a party to the proceedings arising from the claim
18 and shall be barred from protesting any subsequent decisions about the
19 claim by the secretary, a referee, the board of review or any court, except
20 that the employing unit's response time limit may be waived or extended
21 by the examiner or upon appeal, if timely response was impossible due to
22 excusable neglect. In any case in which the payment or denial of benefits
23 will be determined by the provisions of subsection (d) of K.S.A. 44-706,
24 and amendments thereto, the examiner shall promptly transmit the claim to
25 a special examiner designated by the secretary to make a determination on
26 the claim after the investigation as the special examiner deems necessary.
27 The parties shall be promptly notified of the special examiner's decision
28 and any party aggrieved by the decision may appeal to the referee as
29 provided in subsection (c). The claimant and the claimant's most recent
30 employing unit shall be promptly notified of the examiner's or special
31 examiner's decision.

32 (2) The examiner may for good cause reconsider the examiner's
33 decision and shall promptly notify the claimant and the most recent
34 employing unit of the claimant, that the decision of the examiner is to be
35 reconsidered, except that no reconsideration shall be made after the
36 termination of the benefit year.

37 (3) Notwithstanding the provisions of any other statute, a decision of
38 an examiner or special examiner shall be final unless the claimant or the
39 most recent employing unit of the claimant files an appeal from the
40 decision as provided in subsection (c). The appeal must be filed within 16
41 calendar days after the mailing of notice to the last known addresses of the
42 claimant and employing unit or, if notice is not by mail, within 16 calendar
43 days after the delivery of the notice to the parties.

1 (c) *Appeals*. Unless the appeal is withdrawn, a referee, after affording
2 the parties reasonable opportunity for fair hearing, shall affirm or modify
3 the findings of fact and decision of the examiner or special examiner. The
4 parties shall be duly notified of the referee's decision, together with the
5 reasons for the decision. The decision shall be final, notwithstanding the
6 provisions of any other statute, unless a further appeal to the board of
7 review is filed within 16 calendar days after the mailing of the decision to
8 the parties' last known addresses or, if notice is not by mail, within 16
9 calendar days after the delivery of the decision.

10 (d) *Referees*. The secretary shall appoint, in accordance with
11 subsection (c) of K.S.A. 44-714, and amendments thereto, one or more
12 referees to hear and decide disputed claims.

13 (e) *Time, computation and extension*. In computing the period of time
14 for an employing unit response or for appeals under this section from the
15 examiner's or the special examiner's determination or from the referee's
16 decision, the day of the act, event or default from which the designated
17 period of time begins to run shall not be included. The last day of the
18 period shall be included unless it is a Saturday, Sunday or legal holiday, in
19 which event the period runs until the end of the next day which is not a
20 Saturday, Sunday or legal holiday.

21 (f) *Board of review*. (1) There is hereby created a board of review,
22 hereinafter referred to as the board, consisting of three members. ~~Except as~~
23 ~~provided by paragraph (2) of this subsection,~~ Each member of the board
24 shall be appointed for a term of four years as provided in this subsection.
25 ~~Two members shall be appointed by the governor, subject to confirmation~~
26 ~~by the senate as provided in K.S.A. 75-4315b, and amendments thereto.~~
27 ~~Except as provided by K.S.A. 46-2601, and amendments thereto, no~~
28 ~~person appointed to the board, whose appointment is subject to~~
29 ~~confirmation by the senate, shall exercise any power, duty or function as a~~
30 ~~member until confirmed by the senate. One member shall be representative~~
31 ~~of employees, one member shall be representative of employers, and one~~
32 ~~member shall be representative of the public in general. The appointment~~
33 ~~of the employee representative member of the board shall be made by the~~
34 ~~governor from a list of three nominations submitted by the Kansas A.F.L.-~~
35 ~~C.I.O. The appointment of the employer representative member of the~~
36 ~~board shall be made by the governor from a list of three nominations~~
37 ~~submitted by the Kansas chamber of commerce and industry. The~~
38 ~~appointment of the public representative member of the board, who,~~
39 ~~because of vocation, occupation or affiliation may be deemed not to be~~
40 ~~representative of either management or labor, shall be made by the~~
41 ~~members appointed by the governor as employee representative and~~
42 ~~employer representative. If the two members do not agree and fail to make~~
43 ~~the appointment of the public member within 30 days after the expiration~~

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

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

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

21 ~~(3)(4) Each member of the board shall serve until a successor has~~
22 ~~been appointed and confirmed. Any vacancy in the membership of the~~
23 ~~board occurring prior to expiration of a term shall be filled by appointment~~
24 ~~for the unexpired term in the same manner as provided for original~~
25 ~~appointment of the member. Each member shall be appointed as~~
26 ~~representative of the same special interest group represented by the~~
27 ~~predecessor of the member.~~

28 ~~(4)(5) Each member of the board shall be entitled to receive as~~
29 ~~compensation for the member's services at the rate of \$15,000 per year,~~
30 ~~together with the member's travel and other necessary expenses actually~~
31 ~~incurred in the performance of the member's official duties in accordance~~
32 ~~with rules and regulations adopted by the secretary. Members'~~
33 ~~compensation and expenses shall be paid from the employment security~~
34 ~~administration fund.~~

35 ~~(5)(6) The board shall organize annually by the election of a~~
36 ~~chairperson from among its members. The chairperson shall serve in that~~
37 ~~capacity for a term of one year and until a successor is elected. The board~~
38 ~~shall meet on the first Monday of each month or on the call of the~~
39 ~~chairperson or any two members of the board at the place designated. The~~
40 ~~secretary of labor shall appoint an executive secretary of the board and the~~
41 ~~executive secretary shall attend the meetings of the board.~~

42 ~~(6)(7) The board, on its own motion, may affirm, modify or set aside~~
43 ~~any decision of a referee on the basis of the evidence previously submitted~~

1 in the case; may direct the taking of additional evidence; or may permit
2 any of the parties to initiate further appeal before it. The board shall permit
3 such further appeal by any of the parties interested in a decision of a
4 referee which overrules or modifies the decision of an examiner. The board
5 may remove to itself the proceedings on any claim pending before a
6 referee. Any proceedings so removed to the board shall be heard in
7 accordance with the requirements of subsection (c). The board shall
8 promptly notify the interested parties of its findings and decision.

9 ~~(7)~~(8) Two members of the board shall constitute a quorum and no
10 action of the board shall be valid unless it has the concurrence of at least
11 two members. A vacancy on the board shall not impair the right of a
12 quorum to exercise all the rights and perform all the duties of the board.

13 (g) *Procedure.* The manner in which disputed claims are presented,
14 the reports on claims required from the claimant and from employers and
15 the conduct of hearings and appeals shall be in accordance with rules of
16 procedure prescribed by the board for determining the rights of the parties,
17 whether or not such rules conform to common law or statutory rules of
18 evidence and other technical rules of procedure. A full and complete
19 record shall be kept of all proceedings and decisions in connection with a
20 disputed claim. All testimony at any hearing upon a disputed claim shall be
21 recorded, but need not be transcribed unless the disputed claim is further
22 appealed. In the performance of its official duties, the board shall have
23 access to all of the records which pertain to the disputed claim and are in
24 the custody of the secretary of labor and shall receive the assistance of the
25 secretary upon request.

26 (h) *Witness fees.* Witnesses subpoenaed pursuant to this section shall
27 be allowed fees and necessary travel expenses at rates fixed by the board.
28 Such fees and expenses shall be deemed a part of the expense of
29 administering this act.

30 (i) *Court review.* Any action of the board is subject to review in
31 accordance with the Kansas judicial review act. No bond shall be required
32 for commencing an action for such review. In the absence of an action for
33 such review, the action of the board shall become final 16 calendar days
34 after the date of the mailing of the decision. In addition to those persons
35 having standing pursuant to K.S.A. 77-611, and amendments thereto, the
36 examiner shall have standing to obtain judicial review of an action of the
37 board. The review proceeding, and the questions of law certified, shall be
38 heard in a summary manner and shall be given precedence over all other
39 civil cases except cases arising under the workers compensation act.

40 (j) Any finding of fact or law, judgment, determination, conclusion or
41 final order made by the board of review or any examiner, special examiner,
42 referee or other person with authority to make findings of fact or law
43 pursuant to the employment security law is not admissible or binding in

1 any separate or subsequent action or proceeding, between a person and a
2 present or previous employer brought before an arbitrator, court or judge
3 of the state or the United States, regardless of whether the prior action was
4 between the same or related parties or involved the same facts.

5 (k) In any proceeding or hearing conducted under this section, a party
6 to the proceeding or hearing may appear before a referee or the board
7 either personally or by means of a designated representative to present
8 evidence and to state the position of the party. Hearings may be conducted
9 in person, by telephone or other means of electronic communication. The
10 hearing shall be conducted by telephone or other means of electronic
11 communication if none of the parties requests an in-person hearing. If only
12 one party requests an in-person hearing, the referee shall have the
13 discretion of requiring all parties to appear in person or allow the party not
14 requesting an in-person hearing to appear by telephone or other means of
15 electronic communication. The notice of hearing shall include notice to the
16 parties of their right to request an in-person hearing and instructions on
17 how to make the request.

18 Sec. 4. K.S.A. 2012 Supp. 44-551, 44-555c and 44-709 are hereby
19 repealed.

20 Sec. 5. This act shall take effect and be in force from and after its
21 publication in the statute book.