

HOUSE BILL No. 2636

By Representative Carmichael

2-8

1 AN ACT concerning labor and employment; relating to the workers
2 compensation and employment security boards nominating committee;
3 open meetings and open records; amending K.S.A. 2015 Supp. 44-551
4 and repealing the existing section.

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

7 Section 1. K.S.A. 2015 Supp. 44-551 is hereby amended to read as
8 follows: 44-551. (a) The duties of the assistant directors of workers
9 compensation may include, but not be limited to, acting in the capacity of
10 an administrative law judge.

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

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

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

33 (e) There is hereby established the workers compensation and
34 employment security boards nominating committee. Whenever the
35 workers compensation administrative law judge nominating and review
36 committee or the workers compensation board nominating committee, or

1 words of like effect, is referred to or designated by a statute, contract or
2 other document, such reference or designation shall be deemed to apply to
3 the workers compensation and employment security boards nominating
4 committee. The workers compensation and employment security boards
5 nominating committee shall be composed of seven members who are
6 appointed by the governor. Each of the following shall select one member
7 to serve on the nominating committee by giving written notice of the
8 selection to the governor who shall appoint such representatives to the
9 committee:

- 10 (1) The Kansas secretary of labor;
- 11 (2) the Kansas chamber of commerce;
- 12 (3) the national federation of independent business;
- 13 (4) the Kansas AFL-CIO;
- 14 (5) the Kansas state council of the society for human resource
15 management (KS SHRM);
- 16 (6) the Kansas self-insurers association; and
- 17 (7) the secretary of labor, who shall select a nominee from either an
18 employee organization as defined in K.S.A. 75-4322, and amendments
19 thereto, or a professional employees' organization as defined in K.S.A. 72-
20 5413, and amendments thereto.

21 In the event the governor refuses to appoint a member selected by one
22 of the organizations in this subsection, the organization may replace that
23 selection with another, subject to the same appointment requirements.

24 (f) Of the members first appointed to the workers compensation and
25 employment security boards nominating committee, three shall be
26 appointed for terms of two years and four shall be appointed for terms of
27 four years as specified by the governor. Thereafter, members of the
28 nominating committee shall be appointed for a term of four years.
29 Members may not serve more than two consecutive terms.

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

36 (h) (I) The nominating committee shall meet as needed to provide the
37 workers compensation and employment security board of review
38 appointing authorities with nominees for appointments to the position of:

- 39 ~~(A)~~ (A) Workers compensation administrative law judge;
- 40 ~~(B)~~ (B) workers compensation appeals board member; and
- 41 ~~(C)~~ (C) employment security board of review.

42 No action of the committee shall be effective unless approved by two-
43 thirds of the committee.

1 (2) (A) *The Kansas open meetings act shall apply to all meetings of*
2 *the committee for the purpose of interviewing, reviewing, considering or*
3 *nominating an applicant for the position of workers compensation*
4 *administrative law judge, workers compensation appeals board member*
5 *or employment security board of review member, except that no meetings*
6 *for such purposes shall be closed to the public pursuant to K.S.A. 75-*
7 *4319(b)(1), and amendments thereto.*

8 (B) *The Kansas open records act shall apply to all records or*
9 *materials provided to the committee by an applicant for the position of*
10 *workers compensation administrative law judge, workers compensation*
11 *appeals board member or employment security board of review member,*
12 *or received and considered by the committee in interviewing, reviewing,*
13 *considering or nominating an applicant for the position of workers*
14 *compensation administrative law judge, workers compensation appeals*
15 *board member or employment security board of review member, except*
16 *that no such records or materials shall be withheld from public disclosure*
17 *pursuant to K.S.A. 45-221(a)(4), (a)(6) or (a)(14), and amendments*
18 *thereto.*

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

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

1 law judge shall be submitted to the secretary for reappointment unless ²/₃
2 of the nominating committee votes not to submit the administrative law
3 judge for reappointment.

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

9 (k) Except as otherwise provided in this subsection, administrative
10 law judges appointed on and after July 1, 2006, shall serve a term of office
11 of four years. Administrative law judges hired before July 1, 2006, may
12 continue as administrative law judges under the classified service under
13 the Kansas civil service act at the salary provided under the civil service
14 act or may elect to be appointed to a term and receive the annual salary
15 equal to 85% of the salary prescribed for a district judge if the currently
16 employed administrative law judge within 60 days of the effective date of
17 this section notifies the director in writing that the administrative law
18 judge elects to serve an appointed term of office rather than continuing in
19 the classified service. The term of office for an administrative law judge
20 who elects a term of office shall begin on the date the written election is
21 received by the director and the first term of office for such person shall be
22 for two, three or four years as specified by the secretary so that
23 administrative law judges appointed under this subsection serve staggered
24 terms. Thereafter, any such person if reappointed as an administrative law
25 judge shall be appointed for a term of four years.

26 (l) (1) Administrative law judges shall have power to administer
27 oaths, certify official acts, take depositions, issue subpoenas, compel the
28 attendance of witnesses and the production of books, accounts, papers,
29 documents and records to the same extent as is conferred on the district
30 courts of this state, and may conduct an investigation, inquiry or hearing
31 on all matters before the administrative law judges. All final orders,
32 awards, modifications of awards, or preliminary awards under K.S.A. 44-
33 534a, and amendments thereto, made by an administrative law judge shall
34 be subject to review by the workers compensation appeals board upon
35 written request of any interested party within 10 days. Intermediate
36 Saturdays, Sundays and legal holidays shall be excluded in the time
37 computation. Review by the board shall be a prerequisite to judicial review
38 as provided for in K.S.A. 44-556, and amendments thereto. On any such
39 review, the board shall have authority to grant or refuse compensation, or
40 to increase or diminish any award of compensation or to remand any
41 matter to the administrative law judge for further proceedings. The orders
42 of the board under this subsection shall be issued within 30 days from the
43 date arguments were presented by the parties.

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

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

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

29 (m) Each assistant director and each administrative law judge or
30 special administrative law judge shall be allowed all reasonable and
31 necessary expenses actually incurred while in the actual discharge of
32 official duties in administering the workers compensation act, but such
33 expenses shall be sworn to by the person incurring the same and be
34 approved by the secretary.

35 (n) In case of emergency the director may appoint special local
36 administrative law judges and assign to them the examination and hearing
37 of any designated case or cases. Such special local administrative law
38 judges shall be attorneys and admitted to practice law in the state of
39 Kansas and shall, as to all cases assigned to them, exercise the same
40 powers as provided by this section for the regular administrative law
41 judges. Special local administrative law judges shall receive a fee
42 commensurate with the services rendered as fixed by rules and regulations
43 adopted by the director. The fees prescribed by this section prior to the

1 effective date of this act shall be effective until different fees are fixed by
2 such rules and regulations.

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

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

14 Sec. 2. K.S.A. 2015 Supp. 44-551 is hereby repealed.

15 Sec. 3. This act shall take effect and be in force from and after its
16 publication in the statute book.