

HOUSE BILL No. 2635

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 office of chairperson; amending K.S.A. 2015 Supp. 44-551 and
4 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. *Beginning in*
30 *July, 2016, and annually thereafter, a member of the nominating*
31 *committee shall be elected to the office of chairperson by the members of*
32 *the committee in the manner provided by this subsection. The office of*
33 *chairperson shall be for a term of one year and shall rotate between a*
34 *member selected by the representatives of the secretary of labor, the*
35 *Kansas chamber of commerce, the national federation of independent*
36 *business, the Kansas state council of the society for human resource*
37 *management (KS SHRM) and the Kansas self-insurers association and a*
38 *member selected by the representatives of the Kansas AFL-CIO and the*
39 *employee organization, as defined in K.S.A. 75-4322, and amendments*
40 *thereto, or the professional employees' organization, as defined in K.S.A.*
41 *72-5413, and amendments thereto. The nominating committee shall*
42 *choose which group of representatives will elect the chairperson for the*
43 *initial term in the rotation by chance, with each group having equal odds,*

1 *in a manner mutually acceptable to all members.*

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

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

11 (1) Workers compensation administrative law judge;

12 (2) workers compensation appeals board member; and

13 (3) employment security board of review.

14 No action of the committee shall be effective unless approved by two-
15 thirds of the committee.

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

28 (j) (1) Each administrative law judge shall hold office for a term of
29 four years and may be reappointed. Each administrative law judge shall
30 continue to serve for the term of the appointment or until a successor is
31 appointed. An administrative law judge who wishes to be considered for
32 reappointment shall be deemed to have met the qualification requirements
33 for appointment as administrative law judge. If such administrative law
34 judge wishes to be considered for reappointment by the nominating
35 committee, such administrative law judge shall submit an application as
36 provided in subsection (d) no sooner than 150 days before and no later
37 than 90 days prior to the expiration of such judge's term. Within sixty days
38 prior to the expiration of the term of the administrative law judge seeking
39 reappointment, the nominating committee described above shall meet to
40 vote on reappointment of the administrative law judge. The administrative
41 law judge shall be submitted to the secretary for reappointment unless $\frac{2}{3}$
42 of the nominating committee votes not to submit the administrative law
43 judge for reappointment.

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

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

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

41 (2) (A) If an administrative law judge has entered a preliminary
42 award under K.S.A. 44-534a, and amendments thereto, a review by the
43 board shall not be conducted under this section unless it is alleged that the

1 administrative law judge exceeded the administrative law judge's
2 jurisdiction in granting or denying the relief requested at the preliminary
3 hearing. Such an appeal from a preliminary award may be heard and
4 decided by a single member of the board. Members of the board shall hear
5 such preliminary appeals on a rotating basis and the individual board
6 member who decides the appeal shall sign each such decision. The orders
7 of the board under this subsection shall be issued within 30 days from the
8 date arguments were presented by the parties.

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

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

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

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

43 (o) All special local administrative law judge's fees and expenses,

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

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

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

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