

FIRST REGULAR SESSION

HOUSE BILL NO. 248

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SCHROER.

0756H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 287.610 and 287.615, RSMo, and to enact in lieu thereof two new sections relating to workers' compensation law.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 287.610 and 287.615, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 287.610 and 287.615, to read as follows:

287.610. 1. After August 28, 2005, the division may appoint additional administrative law judges for a maximum of forty authorized administrative law judges. **Notwithstanding the provisions of section 36.025 to the contrary, after August 28, 2019, all administrative law judges appointed by the division and all administrative law judges serving as of August 28, 2019, shall be subject to a defined term as provided in this section. The terms of those serving as of August 28, 2019, shall be staggered based on their total months of service as an administrative law judge. The terms of the thirteen administrative law judges with the most months of service shall be two years. The terms of the thirteen administrative law judges with the next most months of service shall be four years. The terms of the administrative law judges appointed and not previously referenced in this subsection shall be six years. Thereafter, all terms of service shall be for six years. No administrative law judge shall serve beyond his or her term unless reappointed by the division. Any person appointed to fill a vacancy remaining in any term may complete such term.**

2. Appropriations shall be based upon necessity, measured by the requirements and needs of each division office. Administrative law judges shall be duly licensed lawyers under the laws of this state. Administrative law judges shall not practice law or ~~do~~ **engage in the business of law [business]** and shall devote their whole time to the duties of their office. The director of

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 the division of workers' compensation shall publish and maintain on the division's website the
19 appointment dates or initial dates of service for all administrative law judges.

20 ~~[2-]~~ **3.** The thirteen administrative law judges with the most ~~[years]~~ **months** of service
21 shall be subject to a retention vote ~~[on August 28, 2008]~~ **in September 2019**. The next thirteen
22 administrative law judges with the most ~~[years]~~ **months** of service in descending order shall be
23 subject to a retention vote ~~[on August 28, 2012]~~ **in September 2022**. Administrative law judges
24 appointed and not previously referenced in this subsection shall be subject to a retention vote ~~[on~~
25 ~~August 28, 2016]~~ **in September 2025**. Subsequent retention votes **for each administrative law**
26 **judge shall be held in like manner every ~~[twelve]~~ three years thereafter. Under subsection**
27 **8 of this section**, any administrative law judge who has received two or more ~~[votes]~~ **successive**
28 **recommendations** of no confidence under performance audits by the committee, **performance**
29 **audits by the director of the division of workers' compensation, or by operation of law, or**
30 **by a combination of any such methods**, shall not receive a vote of retention.

31 ~~[3-]~~ **4.** The administrative law judge review committee members shall not have any direct
32 or indirect employment or financial connection with a workers' compensation insurance
33 company, claims adjustment company, health care provider nor be a practicing workers'
34 compensation attorney. All members of the committee shall have a working knowledge of
35 workers' compensation.

36 ~~[4. The committee shall within thirty days of completing each performance audit make~~
37 ~~a recommendation of confidence or no confidence for each administrative law judge.]~~

38 **5.** The administrative law judges appointed by the division shall only have jurisdiction
39 to hear and determine claims upon original hearing and shall have no jurisdiction upon any
40 review hearing, either in the way of an appeal from an original hearing or by way of reopening
41 any prior award, except to correct a clerical error in an award or settlement if the correction is
42 made by the administrative law judge within twenty days of the original award or settlement.
43 The labor and industrial relations commission may remand any decision of an administrative law
44 judge for a more complete finding of facts. The commission may also correct a clerical error in
45 awards or settlements within thirty days of its final award. With respect to original hearings, the
46 administrative law judges shall have such jurisdiction and powers as are vested in the division
47 of workers' compensation under other sections of this chapter, and wherever in this chapter the
48 word "commission", "commissioners" or "division" is used in respect to any original hearing,
49 those terms shall mean the administrative law judges appointed under this section. When a
50 hearing is necessary upon any claim, the division shall assign an administrative law judge to such
51 hearing. Any administrative law judge shall have power to approve contracts of settlement, as
52 provided ~~[by]~~ **under** section 287.390, between the parties to any compensation claim or dispute
53 under this chapter pending before the division of workers' compensation. Any award by an

54 administrative law judge upon an original hearing shall have the same force and effect, shall be
55 enforceable in the same manner as provided elsewhere in this chapter for awards by the labor and
56 industrial relations commission, and shall be subject to review as provided ~~by~~ **under** section
57 287.480.

58 6. Any of the administrative law judges employed ~~pursuant to~~ **under** this section may
59 be assigned on a temporary basis to the branch offices as necessary in order to ensure the proper
60 administration of this chapter.

61 7. All administrative law judges shall be required to participate in, on a continuing basis,
62 specific training that shall pertain to those elements of knowledge and procedure necessary for
63 the efficient and competent performance of the administrative law judges' required duties and
64 responsibilities. Such training requirements shall be established by the division subject to
65 appropriations and shall include training in medical determinations and records, mediation and
66 legal issues pertaining to workers' compensation adjudication. Such training may be credited
67 toward any continuing legal education requirements.

68 8. (1) The administrative law judge review committee shall conduct a performance audit
69 of all administrative law judges every two years. ~~[The audit results, stating the committee's~~
70 ~~recommendation of confidence or no confidence of each administrative law judge shall be sent~~
71 ~~to the governor no later than the first week of each legislative session immediately following~~
72 ~~such audit.] **The committee shall, within thirty days of completing each performance audit,**~~
73 **make a recommendation of confidence or no confidence for each administrative law judge.**
74 **If the committee fails to present such recommendation within the time limit prescribed,**
75 **such recommendation shall be made within thirty days thereafter by the director of the**
76 **division of workers' compensation based on his or her own review. Failure of both parties**
77 **to make a recommendation shall be deemed to be a recommendation of no confidence for**
78 **purposes of this section.** Any administrative law judge who has received ~~three~~ **two** or more
79 ~~[votes of no confidence under two successive performance audits by the committee]~~ **successive**
80 **recommendations of no confidence under performance audits by the committee,**
81 **performance audits by the director of the division of workers' compensation, or by**
82 **operation of law, or by a combination of any such methods, may have ~~their~~ his or her**
83 appointment immediately withdrawn.

84 (2) The review committee shall consist of one member appointed by the president pro
85 tem of the senate, one member appointed by the minority leader of the senate, one member
86 appointed by the speaker of the house of representatives, and one member appointed by the
87 minority leader of the house of representatives. The governor shall appoint to the committee one
88 member selected from the commission on retirement, removal, and discipline of judges. This
89 member shall act as a member ex officio and shall not have a vote in the committee. The

90 committee shall annually elect a chairperson from its members for a term of one year. The term
91 of service for all members shall be two years **and members shall be eligible for**
92 **reappointment. Upon the expiration of such term, the position shall be vacant until a new**
93 **appointment is made.** The review committee members shall all serve without compensation.
94 Necessary expenses for review committee members and all necessary support services to the
95 review committee shall be provided by the division.

96 9. No rule or portion of a rule promulgated pursuant to the authority of this section shall
97 become effective unless it has been promulgated pursuant to the provisions of chapter 536.

287.615. 1. The division may appoint or employ such persons as may be necessary to
2 the proper administration of this chapter. All salaries [~~to clerical employees~~] **of employees,**
3 **including administrative law judges,** shall be fixed by the division and [~~approved by the labor~~
4 ~~and industrial relations commission.~~ Beginning January 1, 2006, the annual salary of each
5 administrative law judge, administrative law judge in charge, and chief legal counsel shall be as
6 follows:

7 ~~———— (1) For any chief legal counsel located at the division office in Jefferson City, Missouri,~~
8 ~~compensation at two thousand dollars above eighty percent of the rate at which an associate~~
9 ~~circuit judge is compensated;~~

10 ~~———— (2) For each administrative law judge, compensation at ninety percent of the rate at~~
11 ~~which an associate division circuit judge is compensated;~~

12 ~~———— (3) For each administrative law judge in charge, compensation at the same rate as an~~
13 ~~administrative law judge plus five thousand dollars] **shall be subject to appropriation.**~~

14 2. The salary of the director of the division of workers' compensation shall be set by the
15 director of the department of labor and industrial relations, but shall not be less than the salary
16 plus two thousand dollars of an administrative law judge in charge. The appointees in each
17 classification shall be selected as nearly as practicable in equal numbers from each of the two
18 political parties casting the highest and the next highest number of votes for governor in the last
19 preceding state election.

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