

{As Amended by Senate Committee of the Whole}

As Amended by Senate Committee

Session of 2013

SENATE BILL No. 187

By Committee on Commerce

2-13

Proposed Amendments for SB 187
March 1, 2013
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Office of the Revisor of Statutes

Terminology Adjustments

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 (e) (f), 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~~

Note: Amend K.S.A. 75-5708 for terminology

1 ~~renomination by the workers compensation administrative law judge-~~
2 ~~nominating and review committee.~~

3 ~~(f)(1)~~ (1) Administrative law judges shall have power to administer
4 oaths, certify official acts, take depositions, issue subpoenas, compel the
5 attendance of witnesses and the production of books, accounts, papers,
6 documents and records to the same extent as is conferred on the district
7 courts of this state, and may conduct an investigation, inquiry or hearing
8 on all matters before the administrative law judges. All final orders,
9 awards, modifications of awards, or preliminary awards under K.S.A. 44-
10 534a, and amendments thereto, made by an administrative law judge shall
11 be subject to review by the board upon written request of any interested
12 party within 10 days. Intermediate Saturdays, Sundays and legal holidays
13 shall be excluded in the time computation. Review by the board shall be a
14 prerequisite to judicial review as provided for in K.S.A. 44-556, and
15 amendments thereto. On any such review, the board shall have authority to
16 grant or refuse compensation, or to increase or diminish any award of
17 compensation or to remand any matter to the administrative law judge for
18 further proceedings. The orders of the board under this subsection shall be
19 issued within 30 days from the date arguments were presented by the
20 parties.

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

32 (B) If an order on review is not issued by the board within the
33 applicable time period prescribed by subsection ~~(f)(1)~~ (D)(1), medical
34 compensation and any disability compensation as provided in the award of
35 the administrative law judge shall be paid commencing with the first day
36 after such time period and shall continue to be paid until the order of the
37 board is issued, except that no payments shall be made under this
38 provision for any period before the first day after such time period.
39 Nothing in this section shall be construed to limit or restrict any other
40 remedies available to any party to a claim under any other statute.

41 (C) In any case in which the final award of an administrative law
42 judge is appealed to the board for review under this section and in which
43 the compensability is not an issue to be decided on review by the board,

workers compensation appeals

(D)(1)

1 medical compensation shall be payable in accordance with the award of
2 the administrative law judge and shall not be stayed pending such review.
3 The employee may proceed under K.S.A. 44-510k, and amendments
4 thereto, and may have a hearing in accordance with that statute to enforce
5 the provisions of this subsection.

6 ~~(f)(m)~~ Each assistant director and each administrative law judge or
7 special administrative law judge shall be allowed all reasonable and
8 necessary expenses actually incurred while in the actual discharge of
9 official duties in administering the workers compensation act, but such
10 expenses shall be sworn to by the person incurring the same and be
11 approved by the secretary.

12 ~~(f)(n)~~ In case of emergency the director may appoint special local
13 administrative law judges and assign to them the examination and hearing
14 of any designated case or cases. Such special local administrative law
15 judges shall be attorneys and admitted to practice law in the state of
16 Kansas and shall, as to all cases assigned to them, exercise the same
17 powers as provided by this section for the regular administrative law
18 judges. Special local administrative law judges shall receive a fee
19 commensurate with the services rendered as fixed by rules and regulations
20 adopted by the director. The fees prescribed by this section prior to the
21 effective date of this act shall be effective until different fees are fixed by
22 such rules and regulations.

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

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

35 Sec. 2. K.S.A. 2012 Supp. 44-555c is hereby amended to read as
36 follows: 44-555c. (a) There is hereby established the workers
37 compensation appeals board. *Whenever the workers compensation
38 board, or words of like effect, is referred to or designated by a statute,
39 contract or other document, such reference or designation shall be
40 deemed to apply to the workers compensation appeals board.* The board
41 shall have exclusive jurisdiction to review all decisions, findings, orders
42 and awards of compensation of administrative law judges under the
43 workers compensation act. The review by the appeals board shall be upon

Note: Amend K.S.A. 44-508 and 44-510j for terminology

1 questions of law and fact as presented and shown by a transcript of the
2 evidence and the proceedings as presented, had and introduced before the
3 administrative law judge. The *appeals* board shall be within the division of
4 workers compensation of the department of labor and all budgeting,
5 personnel, purchasing and related management functions of the board shall
6 be administered under the supervision and direction of the secretary of
7 labor. The *appeals* board shall consist of five members who shall be
8 appointed by the secretary in accordance with this section and who shall
9 each serve for a term of four years ~~except as provided for the first~~
10 ~~members appointed to the board under subsection (f)~~

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

18 (c) Each board member shall receive an annual salary in an amount
19 equal to the salary prescribed by law for a district judge, except that the
20 member who is the chairperson of the workers compensation board shall
21 receive an annual salary in an amount equal to the salary prescribed for a
22 district judge designated as chief judge of a district court of Kansas. The
23 board members shall devote full time to the duties of such office and shall
24 not engage in the private practice of law during their term of office. No
25 board member may receive additional compensation for official services
26 performed by the board member. Each board member shall be reimbursed
27 for expenses incurred in the performance of such official duties under the
28 same circumstances and to the same extent as judges of the district court
29 are reimbursed for such expenses.

30 (d) Applications for membership on the board shall be submitted to
31 the director of workers compensation. The director shall determine if an
32 applicant meets the qualifications for membership on the board prescribed
33 in subsection (b). Qualified applicants for the board will be submitted by
34 the director to the workers compensation board and nominating committee for
35 consideration.

36 (e) ~~There is hereby established the workers compensation board~~
37 ~~nominating committee which shall be composed of two members~~
38 ~~appointed as follows: The Kansas AFL-CIO and the Kansas chamber of~~
39 ~~commerce and industry shall each select one representative to serve on the~~
40 ~~workers compensation board nominating committee and shall give written~~
41 ~~notice of the selection to the secretary who shall appoint such~~
42 ~~representatives to the committee. In the event of a vacancy occurring for~~
43 ~~any reason on the nominating committee, the respective member shall be~~

and employment security boards

1 shall be deemed to have met the qualification requirements for
2 appointment as a board member. If a board member wishes to be
3 considered for reappointment by the nominating committee, such board
4 member shall submit an application as provided in subsection (d) no
5 sooner than 150 days before and no later than 90 days prior to the
6 expiration of such member's term. No later than thirty days prior to the
7 expiration of the term, the nominating committee shall convene to vote on
8 the reappointment of the board member. The board member shall be
9 submitted to the secretary for reappointment unless $\frac{2}{3}$ of the nominating
10 committee votes not to submit the board member's name for
11 reappointment.

12 ~~(f)~~(g) The members of the board shall annually elect one member to
13 serve as chairperson.

14 ~~(f)~~(h) If illness or other temporary disability of a member of the board
15 will not permit the member to serve during a case or in any case in which a
16 member of the board must be excused from serving because of a conflict
17 or is otherwise disqualified with regard to such case, the director shall
18 notify the workers compensation nominating committee of the need to
19 appoint a member pro tem. Upon receipt of such notice, the committee
20 shall act as soon as possible and nominate a qualified person to serve as
21 member pro tem in such case in accordance with subsection (f). Each
22 member pro tem shall receive compensation at the same rate as a member
23 of the board receives, prorated for the hours of actual service as a member
24 pro tem and shall receive expenses under the same circumstances and to
25 the same extent as a member of the board receives. Each member pro tem
26 shall have all the powers, duties and functions of a member of the board
27 with regard to the case.

28 (i) The board shall maintain principal offices in Topeka, Kansas, and
29 the board may conduct hearings at a courthouse of any county in Kansas or
30 at another location specified by the board. The secretary of labor shall
31 provide a courtroom and other suitable quarters in Topeka, Kansas, for the
32 use of the board and its staff. When the board conducts hearings at any
33 location other than in Topeka, Kansas, the director shall make suitable
34 arrangements for such hearings. Subject to the provisions of appropriation
35 acts, the director shall provide such supplies and equipment and shall
36 appoint such support personnel as may be necessary for the board to fulfill
37 the duties imposed by this act, subject to approval by the secretary.

38 (k) For purposes of hearing cases, the board may sit together or in
39 panels of ~~two~~ ~~three~~ ~~two~~ members or more, designated by the chairperson
40 of the board, except that an appeal from a preliminary award entered under
41 K.S.A. 44-534a, and amendments thereto, may be heard by a panel of one
42 member designated by the chairperson. All members of the board shall
43 determine each matter before the board. All decisions, reviews and

1 person appointed to the board, whose appointment is subject to
2 confirmation by the senate, shall exercise any power, duty or function as a
3 member until confirmed by the senate. One member shall be representative
4 of employees, one member shall be representative of employers, and one
5 member shall be representative of the public in general. The appointment
6 of the employer representative member of the board shall be made by the
7 governor from a list of three nominations submitted by the Kansas A.F.L.-
8 C.I.O. The appointment of the employer representative member of the
9 board shall be made by the governor from a list of three nominations
10 submitted by the Kansas chamber of commerce and industry. The
11 appointment of the public representative member of the board, who,
12 because of vocation, occupation or affiliation may be deemed not to be
13 representative of either management or labor, shall be made by the
14 members appointed by the governor as employer representative and
15 employer representative. If the two members do not agree and fail to make
16 the appointment of the public member within 30 days after the expiration
17 of the public member's term of office, the governor shall appoint the
18 representative of the public. Not more than two members of the board shall
19 belong to the same political party.

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

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

39 (3)(4) Each member of the board shall serve until a successor has
40 been appointed and confirmed. Any vacancy in the membership of the
41 board occurring prior to expiration of a term shall be filled by appointment
42 for the unexpired term in the same manner as provided for original
43 appointment of the member. Each member shall be appointed as

workers compensation and employment security boards