

SECOND REGULAR SESSION

HOUSE BILL NO. 2194

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE VEIT.

4675H.02I

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To repeal sections 287.610, 287.615, and 287.812, RSMo, and to enact in lieu thereof three new sections relating to workers' compensation.

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

Section A. Sections 287.610, 287.615, and 287.812, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 287.610, 287.615, and 287.812, to read as follows: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. ~~[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 law business and shall devote their whole time to the duties of their office. The director of the division of workers' compensation shall publish and maintain on the division's website the appointment dates or initial dates of service for all administrative law judges.]~~

2. ~~[The thirteen administrative law judges with the most years of service shall be subject to a retention vote on August 28, 2008. The next thirteen administrative law judges with the most years of service in descending order shall be subject to a retention vote on August 28, 2012. Administrative law judges appointed and not previously referenced in this subsection shall be subject to a retention vote on August 28, 2016. Subsequent retention votes shall be held every twelve years. Any administrative law judge who has received two or more votes of no confidence under performance audits by the committee shall not receive a vote of retention.]~~

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.

17 ~~3. The administrative law judge review committee members shall not have any direct~~
18 ~~or indirect employment or financial connection with a workers' compensation insurance~~
19 ~~company, claims adjustment company, health care provider nor be a practicing workers'~~
20 ~~compensation attorney. All members of the committee shall have a working knowledge of~~
21 ~~workers' compensation.~~

22 ~~4. The committee shall within thirty days of completing each performance audit make~~
23 ~~a recommendation of confidence or no confidence for each administrative law judge.] In~~
24 **addition to any other mechanism for removal of an administrative law judge as**
25 **provided under these statutes, removal of an administrative law judge may be initiated**
26 **by the division director of workers' compensation for gross inefficiency; incapacity;**
27 **neglect of duties; malfeasance, misfeasance, or nonfeasance in office; incompetence; or**
28 **for any offense involving moral turpitude or oppression in office. No dismissal of an**
29 **administrative law judge shall take effect unless, prior to the effective date of removal,**
30 **the division director gives to the administrative law judge a written statement setting**
31 **forth, in substance, the reasons for removal; informs the administrative law judge of**
32 **appeal rights; provides the administrative law judge with a copy of the form for appeal**
33 **to the labor and industrial relations commission; and provides the administrative law**
34 **judge with an opportunity to respond to the reasons prior to the effective date of**
35 **removal to the director of the department of labor and industrial relations.**

36 **3. Removal of an administrative law judge shall be appealable to the labor and**
37 **industrial relations commission. Within fourteen days after the written statement has**
38 **been delivered to the administrative law judge, the administrative law judge affected**
39 **thereby may object in writing to the determination of the division director by filing a**
40 **written notice with the labor and industrial relations commission stating the specific**
41 **grounds of the objection. Upon the receipt of the objection, the labor and industrial**
42 **relations commission shall set a date for a hearing on the objection. Written notice of**
43 **the time and place of the hearing shall be given to the administrative law judge prior to**
44 **the date set for the hearing. At the hearing, the division director, or his or her designee,**
45 **shall first introduce in evidence the investigation he or she instituted and the other facts**
46 **that were considered at the time of the original determination that formed the basis for**
47 **the division director's determination. The administrative law judge or the department**
48 **thereafter may introduce any evidence that is material to the issues. Within forty-five**
49 **days of the conclusion of the hearing, the labor and industrial relations commission shall**
50 **rule on the written objection and make the final determination that it believes the**
51 **evidence warrants. The labor and industrial relations commission shall serve a copy of**
52 **its final determination on all parties to the proceedings by personal service or by**
53 **registered mail.**

54 **4. Appropriations shall be based upon necessity, measured by the requirements**
55 **and needs of each division office. Administrative law judges shall be duly licensed**
56 **lawyers under the laws of this state. Administrative law judges shall not practice law or**
57 **conduct outside legal business and shall devote their whole time to the duties of their**
58 **office. The director of the division of workers' compensation shall publish and maintain**
59 **on the division's website the appointment dates or initial dates of service for all**
60 **administrative law judges.**

61 5. The administrative law judges appointed by the division shall only have
62 jurisdiction to hear and determine claims upon original hearing and shall have no jurisdiction
63 upon any review hearing, either in the way of an appeal from an original hearing or by way of
64 reopening any prior award, except to correct a clerical error in an award or settlement if the
65 correction is made by the administrative law judge within twenty days of the original award
66 or settlement. The labor and industrial relations commission may remand any decision of an
67 administrative law judge for a more complete finding of facts. The commission may also
68 correct a clerical error in awards or settlements within thirty days of its final award. With
69 respect to original hearings, the administrative law judges shall have such jurisdiction and
70 powers as are vested in the division of workers' compensation under other sections of this
71 chapter, and wherever in this chapter the word "commission", "commissioners" or "division"
72 is used in respect to any original hearing, those terms shall mean the administrative law
73 judges appointed under this section. When a hearing is necessary upon any claim, the
74 division shall assign an administrative law judge to such hearing. Any administrative law
75 judge shall have power to approve contracts of settlement, as provided by section 287.390,
76 between the parties to any compensation claim or dispute under this chapter pending before
77 the division of workers' compensation. Any award by an administrative law judge upon an
78 original hearing shall have the same force and effect, shall be enforceable in the same manner
79 as provided elsewhere in this chapter for awards by the labor and industrial relations
80 commission, and shall be subject to review as provided by section 287.480.

81 6. Any of the administrative law judges employed pursuant to this section may be
82 assigned on a temporary basis to the branch offices as necessary in order to ensure the proper
83 administration of this chapter.

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

91 8. ~~[(1) The administrative law judge review committee shall conduct a performance~~
92 ~~audit of all administrative law judges every two years. The audit results, stating the~~
93 ~~committee's recommendation of confidence or no confidence of each administrative law~~
94 ~~judge shall be sent to the governor no later than the first week of each legislative session~~
95 ~~immediately following such audit. Any administrative law judge who has received three or~~
96 ~~more votes of no confidence under two successive performance audits by the committee may~~
97 ~~have their appointment immediately withdrawn.~~

98 (2) ~~The review committee shall consist of one member appointed by the president pro~~
99 ~~tem of the senate, one member appointed by the minority leader of the senate, one member~~
100 ~~appointed by the speaker of the house of representatives, and one member appointed by the~~
101 ~~minority leader of the house of representatives. The governor shall appoint to the committee~~
102 ~~one member selected from the commission on retirement, removal, and discipline of judges.~~
103 ~~This member shall act as a member ex officio and shall not have a vote in the committee. The~~
104 ~~committee shall annually elect a chairperson from its members for a term of one year. The~~
105 ~~term of service for all members shall be two years. The review committee members shall all~~
106 ~~serve without compensation. Necessary expenses for review committee members and all~~
107 ~~necessary support services to the review committee shall be provided by the division.~~

108 9.] ~~No rule or portion of a rule promulgated pursuant to the authority of this section~~
109 ~~shall become effective unless it has been promulgated pursuant to the provisions of chapter~~
110 ~~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]~~ **of employees, including**
3 **administrative law judges and chief administrative law judges**, shall be fixed by the
4 division ~~[and approved by the labor and industrial relations commission. Beginning January~~
5 ~~1, 2006, the annual salary of each administrative law judge, administrative law judge in~~
6 ~~charge, and chief legal counsel shall be as follows:~~

7 (1) ~~For any chief legal counsel located at the division office in Jefferson City,~~
8 ~~Missouri, compensation at two thousand dollars above eighty percent of the rate at which an~~
9 ~~associate 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]. **Pay for administrative law judges**~~
14 ~~shall be set at the same rate for all administrative law judges, excluding chief~~
15 ~~administrative law judges. **Pay for chief administrative law judges shall be set at the**~~
16 ~~same rate for all chief administrative law judges.~~

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

 287.812. As used in sections 287.812 to 287.855, unless the context clearly requires
2 otherwise, the following terms shall mean:

3 (1) "Administrative law judge", any person appointed pursuant to section 287.610 or
4 section 621.015, or any person who hereafter may have by law all of the powers now vested
5 by law in administrative law judges appointed under the provisions of the workers'
6 compensation law;

7 (2) "Beneficiary", a surviving spouse married to the deceased administrative law
8 judge or legal advisor of the division of workers' compensation continuously for a period of at
9 least two years immediately preceding the administrative law judge's or legal advisor's death
10 and also on the day of the last termination of such person's employment as an administrative
11 law judge or legal advisor for the division of workers' compensation, or if there is no
12 surviving spouse eligible to receive benefits, any minor child of the deceased administrative
13 law judge or legal advisor, or any child of the deceased administrative law judge or legal
14 advisor who, regardless of age, is unable to support himself because of intellectual disability,
15 disease or disability, or any physical handicap or disability, who shall share in the benefits on
16 an equal basis with all other beneficiaries;

17 (3) "Benefit", a series of equal monthly payments payable during the life of an
18 administrative law judge or legal advisor of the division of workers' compensation retiring
19 pursuant to the provisions of sections 287.812 to 287.855 or payable to a beneficiary as
20 provided in sections 287.812 to 287.850;

21 (4) "Board", the board of trustees of the Missouri state employees' retirement system;

22 (5) ~~["Chief legal counsel", any person appointed or employed under section 287.615
23 to serve in the capacity of legal counsel to the division;~~

24 ~~(6)~~ "Division", the division of workers' compensation of the state of Missouri;

25 ~~[(7)]~~ (6) "Legal advisor", any person appointed or employed pursuant to section
26 287.600, 287.615, or 287.616 to serve in the capacity as a legal advisor or an associate
27 administrative law judge and any person appointed pursuant to section 286.010 or pursuant to
28 section 295.030, and any attorney or legal counsel appointed or employed pursuant to section
29 286.070;

30 ~~[(8)]~~ (7) "Salary", the total annual compensation paid for personal services as an
31 administrative law judge or legal advisor, or both, of the division of workers' compensation
32 by the state or any of its political subdivisions.

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