

FIRST REGULAR SESSION

SENATE BILL NO. 248

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

Read 1st time January 14, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1395S.011

AN ACT

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Section A. Sections 287.610 and 287.615, RSMo, are repealed and two new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

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

18 2. Appropriations shall be based upon necessity, measured by the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

19 requirements and needs of each division office. Administrative law judges shall
20 be duly licensed lawyers under the laws of this state. Administrative law judges
21 shall not practice law or **[do] engage in the business of law [business]** and
22 shall devote their whole time to the duties of their office. The director of the
23 division of workers' compensation shall publish and maintain on the division's
24 website the appointment dates or initial dates of service for all administrative
25 law judges.

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

40 **[3.] 4.** The administrative law judge review committee members shall not
41 have any direct or indirect employment or financial connection with a workers'
42 compensation insurance company, claims adjustment company, health care
43 provider nor be a practicing workers' compensation attorney. All members of the
44 committee shall have a working knowledge of workers' compensation.

45 **[4.** The committee shall within thirty days of completing each performance
46 audit make a recommendation of confidence or no confidence for each
47 administrative law judge.]

48 **5.** The administrative law judges appointed by the division shall only have
49 jurisdiction to hear and determine claims upon original hearing and shall have
50 no jurisdiction upon any review hearing, either in the way of an appeal from an
51 original hearing or by way of reopening any prior award, except to correct a
52 clerical error in an award or settlement if the correction is made by the
53 administrative law judge within twenty days of the original award or
54 settlement. The labor and industrial relations commission may remand any

55 decision of an administrative law judge for a more complete finding of facts. The
56 commission may also correct a clerical error in awards or settlements within
57 thirty days of its final award. With respect to original hearings, the
58 administrative law judges shall have such jurisdiction and powers as are vested
59 in the division of workers' compensation under other sections of this chapter, and
60 wherever in this chapter the word "commission", "commissioners" or "division" is
61 used in respect to any original hearing, those terms shall mean the
62 administrative law judges appointed under this section. When a hearing is
63 necessary upon any claim, the division shall assign an administrative law judge
64 to such hearing. Any administrative law judge shall have power to approve
65 contracts of settlement, as provided by section 287.390, between the parties to
66 any compensation claim or dispute under this chapter pending before the division
67 of workers' compensation. Any award by an administrative law judge upon an
68 original hearing shall have the same force and effect, shall be enforceable in the
69 same manner as provided elsewhere in this chapter for awards by the labor and
70 industrial relations commission, and shall be subject to review as provided by
71 section 287.480.

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

75 7. All administrative law judges shall be required to participate in, on a
76 continuing basis, specific training that shall pertain to those elements of
77 knowledge and procedure necessary for the efficient and competent performance
78 of the administrative law judges' required duties and responsibilities. Such
79 training requirements shall be established by the division subject to
80 appropriations and shall include training in medical determinations and records,
81 mediation and legal issues pertaining to workers' compensation
82 adjudication. Such training may be credited toward any continuing legal
83 education requirements.

84 8. (1) The administrative law judge review committee shall conduct a
85 performance audit of all administrative law judges every two years. [The audit
86 results, stating the committee's recommendation of confidence or no confidence
87 of each administrative law judge shall be sent to the governor no later than the
88 first week of each legislative session immediately following such audit.] **The**
89 **committee shall, within thirty days of completing each performance**
90 **audit, make a recommendation of confidence or no confidence for each**

91 **administrative law judge. If the committee fails to present such**
92 **recommendation within the time limit prescribed, such**
93 **recommendation shall be made within thirty days thereafter by the**
94 **director of the division of workers' compensation based on his or her**
95 **own review. Failure of both parties to make a recommendation shall**
96 **be deemed to be a recommendation of no confidence for purposes of**
97 **this section.** Any administrative law judge who has received [three] **two** or
98 more [votes of no confidence under two successive performance audits by the
99 committee] **successive recommendations of no confidence under**
100 **performance audits by the committee, performance audits by the**
101 **director of the division of workers' compensation, or by operation of**
102 **law, or by a combination of any such methods,** may have [their] **his or her**
103 appointment immediately withdrawn.

104 (2) The review committee shall consist of one member appointed by the
105 president pro tem of the senate, one member appointed by the minority leader of
106 the senate, one member appointed by the speaker of the house of representatives,
107 and one member appointed by the minority leader of the house of
108 representatives. The governor shall appoint to the committee one member
109 selected from the commission on retirement, removal, and discipline of
110 judges. This member shall act as a member ex officio and shall not have a vote
111 in the committee. The committee shall annually elect a chairperson from its
112 members for a term of one year. The term of service for all members shall be two
113 years **and members shall be eligible for reappointment. Upon the**
114 **expiration of such term, the position shall be vacant until a new**
115 **appointment is made.** The review committee members shall all serve without
116 compensation. Necessary expenses for review committee members and all
117 necessary support services to the review committee shall be provided by the
118 division.

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

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

6 administrative law judge, administrative law judge in charge, and chief legal
7 counsel shall be as follows:

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

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

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

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

Bill ✓

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