

SENATE COMMITTEE SUBSTITUTE

FOR

SENATE BILL NO. 248

AN ACT

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

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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Section A. Sections 287.610 and 287.615, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 287.610 and 287.615, to read as follows: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, 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 the span of which shall be measured from October first of the appropriate year as further provided in this section. The term of office of each administrative law judge shall be six years, except that 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, in like manner, all terms of service shall be for six years beginning on October first. Every administrative law judge shall be appointed to a term by the director of the division of workers' compensation, by and with the advice and consent of the senate. Any administrative law judge appointed to fill a vacancy occurring prior to the expiration of the term for which the person's predecessor was appointed shall be appointed by the director of the division of workers' compensation, by and with the advice and consent of the senate, for the remainder of such term. No administrative law judge shall serve beyond his or her term unless reappointed by the division. An administrative law judge may be removed prior to the end of his or her term as further provided in this section for gross inefficiency, mental or physical incapacity, neglect of duties, malfeasance, misfeasance, or nonfeasance in office, incompetence, or for any offense involving moral turpitude or oppression in office.

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

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

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

5. The administrative law judges appointed by the division shall only have jurisdiction to hear and determine claims upon

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

6. Any of the administrative law judges employed pursuant

to this section may be assigned on a temporary basis to the branch offices as necessary in order to ensure the proper administration of this chapter.

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

8. (1) The administrative law judge review committee shall conduct a performance audit of all administrative law judges every two years. The committee shall, within thirty days of completing each performance audit, make a recommendation of confidence or no confidence for each administrative law judge. The audit results, stating the committee's recommendation of confidence or no confidence of each administrative law judge shall be sent to the governor no later than [the first week of each legislative session immediately following such audit] August first of each such year. If the committee fails to present such recommendation within the time limit prescribed, such recommendation shall be made and sent to the governor within thirty days thereafter by the director of the division of workers' compensation based on his or her own review. Any administrative law judge who has received [three] two or more

[votes of no confidence under two successive performance audits by the committee] recommendations of no confidence under performance audits by the committee or performance audits by the director of the division of workers' compensation, or by a combination of either, may have [their] his or her appointment immediately withdrawn by the director of the division of workers' compensation.

(2) The review committee shall consist of the director of the division of workers' compensation, one member appointed by the president pro tem of the senate, one member appointed by the minority leader of the senate, one member appointed by the speaker of the house of representatives, and one member appointed by the minority leader of the house of representatives. The governor shall appoint to the committee one member selected from the commission on retirement, removal, and discipline of judges. This member shall act as a member ex officio and shall not have a vote in the committee. [The committee shall annually elect a chairperson from its members for a term of one year.] The director of the division of workers' compensation shall serve as the chairperson of the committee, and shall serve on the committee during the time of employment in such position. The term of service for all other members shall be two years and members shall be eligible for reappointment. Upon the expiration of such term, the position shall be vacant until a new appointment is made. The review committee members shall [all] serve without compensation. Necessary expenses for review committee members and all necessary support services to the review committee shall be provided by the division.

(3) The deliberations of the committee shall be in closed session and the contents of the performance audit, except for the final recommendation of confidence or no confidence, shall be considered a closed performance rating record under section 610.021.

9. No rule or portion of a rule promulgated pursuant to the authority of this section shall 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 the proper administration of this chapter. All salaries ~~to clerical employees~~ of employees, including administrative law judges, shall be fixed by the division and ~~approved by the labor and industrial relations commission~~. Beginning January 1, 2006, the annual salary of each administrative law judge, administrative law judge in charge, and chief legal counsel shall be as follows:

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

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

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

2. The salary of the director of the division of workers' compensation and any chief legal counsel located at the

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