

FIRST REGULAR SESSION

# SENATE BILL NO. 581

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR ESLINGER.

1799S.03I

ADRIANE D. CROUSE, Secretary

## 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,  
2 are repealed and three new sections enacted in lieu thereof, to  
3 be known as sections 287.610, 287.615, and 287.812, to read as  
4 follows:

287.610. 1. After August 28, 2005, the division may  
2 appoint additional administrative law judges for a maximum  
3 of forty authorized administrative law judges.  
4 **Notwithstanding the provisions of section 36.025 to the**  
5 **contrary, as of January 1, 2022, all administrative law**  
6 **judges currently serving and thereafter all administrative**  
7 **law judges appointed by the division shall be subject to a**  
8 **defined term as provided in this section. The initial terms**  
9 **of those serving as of January 1, 2022, shall be staggered**  
10 **based on their total months of service as an administrative**  
11 **law judge. The terms of the thirteen administrative law**  
12 **judges with the most months of service shall be two years**  
13 **and fall into tier I. The terms of the thirteen**  
14 **administrative law judges with the next most months of**  
15 **service shall be four years and fall into tier II. The**  
16 **terms of the administrative law judges appointed and not**  
17 **previously referenced in this subsection shall be four years**

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

18 and fall into tier III. Thereafter, all terms of service  
19 shall be for four years.

20 2. Every administrative law judge appointed shall be  
21 designated to serve within a specific tier pursuant to  
22 subsection 1 of this section and any administrative law  
23 judge appointed to fill a vacancy occurring prior to the  
24 expiration of the term for which the person's predecessor  
25 was appointed shall be appointed by the division director  
26 for the remainder of such term. In no case shall an  
27 administrative law judge serve beyond his or her term unless  
28 reappointed by the division director. In addition to any  
29 other mechanism for removal of an administrative law judge  
30 as provided in this chapter, an administrative law judge may  
31 be removed by the division director prior to the end of his  
32 or her term for gross inefficiency; incapacity; neglect of  
33 duties; malfeasance, misfeasance, or nonfeasance in office;  
34 incompetence; or for any offense involving moral turpitude  
35 or oppression in office.

36 3. Appropriations shall be based upon necessity,  
37 measured by the requirements and needs of each division  
38 office. Administrative law judges shall be duly licensed  
39 lawyers under the laws of this state. Administrative law  
40 judges shall not practice law or do law business and shall  
41 devote their whole time to the duties of their office. The  
42 director of the division of workers' compensation shall  
43 publish and maintain on the division's website the  
44 appointment dates or initial dates of service for all  
45 administrative law judges.

46 [2. The thirteen administrative law judges with the  
47 most years of service shall be subject to a retention vote  
48 on August 28, 2008. The next thirteen administrative law  
49 judges with the most years of service in descending order

50 shall be subject to a retention vote on August 28, 2012.  
51 Administrative law judges appointed and not previously  
52 referenced in this subsection shall be subject to a  
53 retention vote on August 28, 2016. Subsequent retention  
54 votes shall be held every twelve years. Any administrative  
55 law judge who has received two or more votes of no  
56 confidence under performance audits by the committee shall  
57 not receive a vote of retention.]

58 [3.] 4. The administrative law judge review committee  
59 members shall not have any direct or indirect employment or  
60 financial connection with a workers' compensation insurance  
61 company, claims adjustment company, health care provider nor  
62 be a practicing workers' compensation attorney. All members  
63 of the committee shall have a working knowledge of workers'  
64 compensation.

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

69 5. The administrative law judges appointed by the  
70 division shall only have jurisdiction to hear and determine  
71 claims upon original hearing and shall have no jurisdiction  
72 upon any review hearing, either in the way of an appeal from  
73 an original hearing or by way of reopening any prior award,  
74 except to correct a clerical error in an award or settlement  
75 if the correction is made by the administrative law judge  
76 within twenty days of the original award or settlement. The  
77 labor and industrial relations commission may remand any  
78 decision of an administrative law judge for a more complete  
79 finding of facts. The commission may also correct a  
80 clerical error in awards or settlements within thirty days  
81 of its final award. With respect to original hearings, the

82 administrative law judges shall have such jurisdiction and  
83 powers as are vested in the division of workers'  
84 compensation under other sections of this chapter, and  
85 wherever in this chapter the word "commission",  
86 "commissioners" or "division" is used in respect to any  
87 original hearing, those terms shall mean the administrative  
88 law judges appointed under this section. When a hearing is  
89 necessary upon any claim, the division shall assign an  
90 administrative law judge to such hearing. Any  
91 administrative law judge shall have power to approve  
92 contracts of settlement, as provided by section 287.390,  
93 between the parties to any compensation claim or dispute  
94 under this chapter pending before the division of workers'  
95 compensation. Any award by an administrative law judge upon  
96 an original hearing shall have the same force and effect,  
97 shall be enforceable in the same manner as provided  
98 elsewhere in this chapter for awards by the labor and  
99 industrial relations commission, and shall be subject to  
100 review as provided by section 287.480.

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

105 7. All administrative law judges shall be required to  
106 participate in, on a continuing basis, specific training  
107 that shall pertain to those elements of knowledge and  
108 procedure necessary for the efficient and competent  
109 performance of the administrative law judges' required  
110 duties and responsibilities. Such training requirements  
111 shall be established by the division subject to  
112 appropriations and shall include training in medical  
113 determinations and records, mediation and legal issues

114 pertaining to workers' compensation adjudication. Such  
115 training may be credited toward any continuing legal  
116 education requirements.

117 8. (1) The administrative law judge review committee  
118 shall conduct a performance [audit] **review** of all  
119 administrative law judges **by November thirtieth of** every  
120 [two years] **odd-numbered year**. The [audit] **review** results,  
121 stating the committee's recommendation of confidence or no  
122 confidence of each administrative law judge shall be sent to  
123 the governor **and the division director** no later than [the  
124 first week of each legislative session immediately following  
125 such audit. Any administrative law judge who has received  
126 three or more votes of no confidence under two successive  
127 performance audits by the committee may have their  
128 appointment immediately withdrawn] **three days following such**  
129 **performance review. The criteria for performance reviews**  
130 **shall be set forth in rule and made available to**  
131 **administrative law judges.**

132 (2) The review committee shall consist of one member  
133 appointed by the president pro tem of the senate, one member  
134 appointed by the minority leader of the senate, one member  
135 appointed by the speaker of the house of representatives,  
136 [and] one member appointed by the minority leader of the  
137 house of representatives, **and one member appointed by the**  
138 **governor.** [The governor shall appoint to the committee one  
139 member selected from the commission on retirement, removal,  
140 and discipline of judges. This member shall act as a member  
141 ex officio and shall not have a vote in the committee.] The  
142 committee shall annually elect a chairperson from its  
143 members for a term of one year. The term of service for all  
144 members shall be two years. The review committee members  
145 shall all serve without compensation. Necessary expenses

146 for review committee members and all necessary support  
147 services to the review committee shall be provided by the  
148 division.

149 **(3) The deliberations of the committee shall be in**  
150 **closed session and the contents of performance audits,**  
151 **except for the final recommendation of confidence or no**  
152 **confidence, shall be considered a closed record under**  
153 **chapter 610.**

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

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

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

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

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

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

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

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

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

23 shall share in the benefits on an equal basis with all other  
24 beneficiaries;

25 (3) "Benefit", a series of equal monthly payments  
26 payable during the life of an administrative law judge or  
27 legal advisor of the division of workers' compensation  
28 retiring pursuant to the provisions of sections 287.812 to  
29 287.855 or payable to a beneficiary as provided in sections  
30 287.812 to 287.850;

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

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

36 (6)] "Division", the division of workers' compensation  
37 of the state of Missouri;

38 [(7)] (6) "Legal advisor", any person appointed or  
39 employed pursuant to section 287.600, 287.615, or 287.616 to  
40 serve in the capacity as a legal advisor or an associate  
41 administrative law judge and any person appointed pursuant  
42 to section 286.010 or pursuant to section 295.030, and any  
43 attorney or legal counsel appointed or employed pursuant to  
44 section 286.070;

45 [(8)] (7) "Salary", the total annual compensation paid  
46 for personal services as an administrative law judge or  
47 legal advisor, or both, of the division of workers'  
48 compensation by the state or any of its political  
49 subdivisions.

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