

SECOND REGULAR SESSION

# HOUSE BILL NO. 2517

101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE RILEY.

5108H.011

DANA RADEMAN MILLER, Chief Clerk

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## 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.

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*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Section A. Sections 287.610, 287.615, and 287.812, RSMo, are repealed and three  
2 new sections enacted in lieu thereof, to be known as sections 287.610, 287.615, and 287.812,  
3 to 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 judges.  
3 **Notwithstanding the provisions of section 36.025 to the contrary, as of January 1, 2023,**  
4 **all administrative law judges currently serving and thereafter all administrative law**  
5 **judges appointed by the division shall be subject to a defined term as provided in this**  
6 **section. The initial terms of those serving as of January 1, 2023, shall be staggered**  
7 **based on their total months of service as an administrative law judge. The terms of the**  
8 **thirteen administrative law judges with the most months of service shall be two years**  
9 **and fall into tier I. The terms of the thirteen administrative law judges with the next**  
10 **most months of service shall be four years and fall into tier II. The terms of the**  
11 **administrative law judges appointed and not previously referenced in this subsection**  
12 **shall be four years and fall into tier III. Thereafter, all terms of service shall be for four**  
13 **years.**

14 2. Every administrative law judge appointed shall be designated to serve within  
15 a specific tier pursuant to subsection 1 of this section and any administrative law judge  
16 appointed to fill a vacancy occurring prior to the expiration of the term for which the

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 **person's predecessor was appointed shall be appointed by the division director for the**  
18 **remainder of such term. In no case shall an administrative law judge serve beyond his**  
19 **or her term unless reappointed by the division director. In addition to any other**  
20 **mechanism for removal of an administrative law judge as provided in this chapter, an**  
21 **administrative law judge may be removed by the division director prior to the end of his**  
22 **or her term for gross inefficiency; incapacity; neglect of duties; malfeasance,**  
23 **misfeasance, or nonfeasance in office; incompetence; or for any offense involving**  
24 **moral turpitude or oppression in office.**

25       **3.** Appropriations shall be based upon necessity, measured by the requirements and  
26 needs of each division office. Administrative law judges shall be duly licensed lawyers under  
27 the laws of this state. Administrative law judges shall not practice law or do law business and  
28 shall devote their whole time to the duties of their office. The director of the division of  
29 workers' compensation shall publish and maintain on the division's website the appointment  
30 dates or initial dates of service for all administrative law judges.

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

39       ~~[3-]~~ **4.** The administrative law judge review committee members shall not have any  
40 direct or indirect employment or financial connection with a workers' compensation insurance  
41 company, claims adjustment company, health care provider nor be a practicing workers'  
42 compensation attorney. All members of the committee shall have a working knowledge of  
43 workers' compensation.

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

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

54 respect to original hearings, the administrative law judges shall have such jurisdiction and  
55 powers as are vested in the division of workers' compensation under other sections of this  
56 chapter, and wherever in this chapter the word "commission", "commissioners" or "division"  
57 is used in respect to any original hearing, those terms shall mean the administrative law  
58 judges appointed under this section. When a hearing is necessary upon any claim, the  
59 division shall assign an administrative law judge to such hearing. Any administrative law  
60 judge shall have power to approve contracts of settlement, as provided by section 287.390,  
61 between the parties to any compensation claim or dispute under this chapter pending before  
62 the division of workers' compensation. Any award by an administrative law judge upon an  
63 original hearing shall have the same force and effect, shall be enforceable in the same manner  
64 as provided elsewhere in this chapter for awards by the labor and industrial relations  
65 commission, and shall be subject to review as provided by section 287.480.

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

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

76 8. (1) The administrative law judge review committee shall conduct a performance  
77 ~~[audit]~~ **review** of all administrative law judges **by November thirtieth of every [two years]**  
78 **odd-numbered year**. The ~~[audit]~~ **review** results, stating the committee's recommendation of  
79 confidence or no confidence of each administrative law judge shall be sent to the governor  
80 **and the division director** no later than ~~[the first week of each legislative session immediately~~  
81 ~~following such audit. Any administrative law judge who has received three or more votes of~~  
82 ~~no confidence under two successive performance audits by the committee may have their~~  
83 ~~appointment immediately withdrawn]~~ **three days following such performance review. The**  
84 **criteria for performance reviews shall be set forth in rule and made available to**  
85 **administrative law judges.**

86 (2) The review committee shall consist of one member appointed by the president pro  
87 tem of the senate, one member appointed by the minority leader of the senate, one member  
88 appointed by the speaker of the house of representatives, ~~[and]~~ one member appointed by the  
89 minority leader of the house of representatives, **and one member appointed by the**  
90 **governor.** ~~[The governor shall appoint to the committee one member selected from the~~

91 ~~commission on retirement, removal, and discipline of judges. This member shall act as a~~  
92 ~~member ex officio and shall not have a vote in the committee.]~~ The committee shall annually  
93 elect a chairperson from its members for a term of one year. The term of service for all  
94 members shall be two years. The review committee members shall all serve without  
95 compensation. Necessary expenses for review committee members and all necessary support  
96 services to the review committee shall be provided by the division.

97 **(3) The deliberations of the committee shall be in closed session and the contents**  
98 **of performance reviews, except for the final recommendation of confidence or no**  
99 **confidence, shall be considered a closed record under chapter 610.**

100 **(4) A quorum shall be established when a simple majority of committee**  
101 **members are present in a session.**

102 9. No rule or portion of a rule promulgated pursuant to the authority of this section  
103 shall become effective unless it has been promulgated pursuant to the provisions of chapter  
104 536.

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**, shall be fixed by the division and ~~[approved by the labor and~~  
4 ~~industrial relations commission. Beginning January 1, 2006, the annual salary of each~~  
5 ~~administrative law judge, administrative law judge in charge, and chief legal counsel shall be~~  
6 ~~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] shall be subject to appropriation.~~

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