

SECOND REGULAR SESSION

SENATE BILL NO. 752

100TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR BROWN.

Pre-filed December 1, 2019, and ordered printed.

ADRIANE D. CROUSE, Secretary.

3389S.01I

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Section A. Sections 287.610 and 287.615, RSMo, are repealed and two new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 **all administrative law judges appointed by the division and all**
5 **administrative law judges serving as of August 28, 2020, shall be subject**
6 **to a defined term the span of which shall be measured from October**
7 **first of the appropriate year as further provided in this section. The**
8 **term of office of each administrative law judge shall be six years,**
9 **except that the terms of those serving as of August 28, 2020, shall be**
10 **staggered based on their total months of service as an administrative**
11 **law judge. The terms of the thirteen administrative law judges with the**
12 **most months of service shall be two years. The terms of the thirteen**
13 **administrative law judges with the next most months of service shall**
14 **be four years. The terms of the administrative law judges appointed**
15 **and not previously referenced in this subsection shall be six**
16 **years. Thereafter, in like manner, all terms of service shall be for six**
17 **years beginning on October first. Every administrative law judge shall**
18 **be appointed to a term by the director of the division of workers'**

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

19 compensation, by and with the advice and consent of the senate. Any
20 administrative law judge appointed to fill a vacancy occurring prior to
21 the expiration of the term for which the person's predecessor was
22 appointed shall be appointed by the director of the division of workers'
23 compensation, by and with the advice and consent of the senate, for the
24 remainder of such term. No administrative law judge shall serve
25 beyond his or her term unless reappointed by the division. An
26 administrative law judge may be removed prior to the end of his or her
27 term as further provided in this section for gross inefficiency, mental
28 or physical incapacity, neglect of duties, malfeasance, misfeasance, or
29 nonfeasance in office, incompetence, or for any offense involving moral
30 turpitude or oppression in office.

31 2. Appropriations shall be based upon necessity, measured by the
32 requirements and needs of each division office. Administrative law judges shall
33 be duly licensed lawyers under the laws of this state. Administrative law judges
34 shall not practice law or [do] **engage in the business of law [business]** and
35 shall devote their whole time to the duties of their office. The director of the
36 division of workers' compensation shall publish and maintain on the division's
37 website the appointment dates or initial dates of service for all administrative
38 law judges.

39 [2.] 3. The thirteen administrative law judges with the most [years]
40 **months** of service shall be subject to a retention vote [on August 28, 2008] **in**
41 **September 2020**. The next thirteen administrative law judges with the most
42 [years] **months** of service in descending order shall be subject to a retention vote
43 [on August 28, 2012] **in September 2023**. Administrative law judges appointed
44 and not previously referenced in this subsection shall be subject to a retention
45 vote [on August 28, 2016] **in September 2026**. Subsequent retention votes **for**
46 **each administrative law judge** shall be held **in like manner** every [twelve]
47 **three years thereafter**. Pursuant to subsection 8 of this section, any
48 administrative law judge who has received two or more [votes]
49 **recommendations** of no confidence under performance audits by the committee,
50 **or performance audits by the director of the division of workers'**
51 **compensation, or by a combination of either**, shall not receive a vote of
52 retention.

53 [3.] 4. The administrative law judge review committee members shall not
54 have any direct or indirect employment or financial connection with a workers'

55 compensation insurance company, claims adjustment company, health care
56 provider nor be a practicing workers' compensation attorney. All members of the
57 committee shall have a working knowledge of workers' compensation.

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

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

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

88 7. All administrative law judges shall be required to participate in, on a
89 continuing basis, specific training that shall pertain to those elements of
90 knowledge and procedure necessary for the efficient and competent performance

91 of the administrative law judges' required duties and responsibilities. Such
92 training requirements shall be established by the division subject to
93 appropriations and shall include training in medical determinations and records,
94 mediation and legal issues pertaining to workers' compensation
95 adjudication. Such training may be credited toward any continuing legal
96 education requirements.

97 8. (1) The administrative law judge review committee shall conduct a
98 performance audit of all administrative law judges every two years. **The**
99 **committee shall, within thirty days of completing each performance**
100 **audit, make a recommendation of confidence or no confidence for each**
101 **administrative law judge.** The audit results, stating the committee's
102 recommendation of confidence or no confidence of each administrative law judge
103 shall be sent to the governor no later than [the first week of each legislative
104 session immediately following such audit] **August first of each such year. If**
105 **the committee fails to present such recommendation within the time**
106 **limit prescribed, such recommendation shall be made and sent to the**
107 **governor within thirty days thereafter by the director of the division**
108 **of workers' compensation based on his or her own review.** Any
109 administrative law judge who has received [three] **two** or more [votes of no
110 confidence under two successive performance audits by the committee]
111 **recommendations of no confidence under performance audits by the**
112 **committee or performance audits by the director of the division of**
113 **workers' compensation, or by a combination of either, may have [their]**
114 **his or her** appointment immediately withdrawn **by the director of the**
115 **division of workers' compensation.**

116 (2) The review committee shall consist of **the director of the division**
117 **of workers' compensation,** one member appointed by the president pro tem of
118 the senate, one member appointed by the minority leader of the senate, one
119 member appointed by the speaker of the house of representatives, and one
120 member appointed by the minority leader of the house of representatives. The
121 governor shall appoint to the committee one member selected from the
122 commission on retirement, removal, and discipline of judges. This member shall
123 act as a member ex officio and shall not have a vote in the committee. [The
124 committee shall annually elect a chairperson from its members for a term of one
125 year.] **The director of the division of workers' compensation shall serve**
126 **as the chairperson of the committee, and shall serve on the committee**

127 **during the time of employment in such position.** The term of service for
128 all **other** members shall be two years **and members shall be eligible for**
129 **reappointment. Upon the expiration of such term, the position shall be**
130 **vacant until a new appointment is made.** The review committee members
131 shall [all] serve without compensation. Necessary expenses for review committee
132 members and all necessary support services to the review committee shall be
133 provided by the division.

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

138 9. No rule or portion of a rule promulgated pursuant to the authority of
139 this section shall become effective unless it has been promulgated pursuant to the
140 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 **of employees, including administrative law judges,** shall be fixed by the
4 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 **and**
17 **any chief legal counsel located at the division's main office** shall be set
18 by the director of the department of labor and industrial relations[, but]. **The**
19 **salary of the director of the division of workers' compensation** shall not
20 be less than the salary plus two thousand dollars of an administrative law judge
21 in charge. [The appointees in each classification shall be selected as nearly as
22 practicable in equal numbers from each of the two political parties casting the

23 highest and the next highest number of votes for governor in the last preceding
24 state election.]

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