

SENATE BILL NO. 784

101ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR ESLINGER.

4226S.02I

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Section A. Sections 287.610, 287.615, and 287.812, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 287.610, 287.615, and 287.812, to read as follows: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, as of January 1, 2023, all administrative law judges currently serving and thereafter all administrative law judges appointed by the division shall be subject to a defined term as provided in this section. The initial terms of those serving as of January 1, 2023, 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 and fall into tier I. The terms of the thirteen administrative law judges with the next most months of service shall be four years and fall into tier II. The terms of the administrative law judges appointed and not 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 reviews,**
151 **except for the final recommendation of confidence or no**
152 **confidence, shall be considered a closed record under**
153 **chapter 610.**

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

156 9. No rule or portion of a rule promulgated pursuant
157 to the authority of this section shall become effective
158 unless it has been promulgated pursuant to the provisions of
159 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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