

*As Amended by Senate Committee*

Session of 2005

**SENATE BILL No. 259**

By Committee on Commerce

2-11

10 AN ACT concerning workers compensation; relating to administrative  
11 law judges; compensation; amending K.S.A. 2004 Supp. 44-551, ~~44-~~  
12 **596** and 75-5708 and repealing the existing sections.

13

14 *Be it enacted by the Legislature of the State of Kansas:*

15 Section. 1. K.S.A. 2004 Supp. 44-551 is hereby amended to read as  
16 follows: 44-551. ~~(a) The duties of the assistant directors of workers com-~~  
17 ~~pen-sation shall include but not be limited to acting in the capacity of an~~  
18 ~~administrative law judge.~~

19 ~~(b)~~ **(a)** *Each administrative law judge shall be an attorney regularly*  
20 *admitted to practice law in Kansas. Such attorney shall have at least five*  
21 *years of experience, with at least one year of experience practicing law in*  
22 *the area of workers compensation.*

23 ~~(c)~~ **(b)** *The annual salary of each administrative law judge shall be*  
24 *an amount equal to 80% of the annual salary paid by the state to a district*  
25 *judge, other than a district judge designated as chief judge. Administrative*  
26 *law judges shall devote full time to the duties of such office and shall not*  
27 *engage in the private practice of law during their term of office. No ad-*  
28 *ministrative law judge may receive additional compensation for official*  
29 *services performed by the administrative law judge. Each administrative*  
30 *law judge shall be reimbursed for expenses incurred in the performance*  
31 *of such official duties under the same circumstances and to the same extent*  
32 *as judges of the district court are reimbursed for such expenses.*

33 ~~(d)~~ **(c)** *Applications for administrative law judge positions shall be*  
34 *submitted to the director of workers compensation. The director shall*  
35 *determine if an applicant meets the qualifications for an administrative*  
36 *law judge as prescribed in subsection (b). Qualified applicants for a po-*  
37 *sition of administrative law judge will be submitted by the director to the*  
38 *workers compensation ALJ nominating committee for consideration.*

39 ~~(e)~~ **(d)** *There is hereby established the workers compensation ALJ*  
40 *nominating committee which shall be composed of two members ap-*  
41 *pointed as follows: The Kansas AFL-CIO and the Kansas chamber of*  
42 *commerce and industry shall each select one representative to serve on*  
43 *the workers compensation ALJ nominating committee and shall give writ-*

1 *ten notice of the selection to the secretary who shall appoint such repre-*  
2 *sentatives to the committee. In the event of a vacancy occurring for any*  
3 *reason on the nominating committee, the respective member shall be re-*  
4 *placed by the appointing organization with written notice of the appoint-*  
5 *ment to the secretary of labor within 30 days of such vacancy.*

6 ~~(f)~~ **(e)** (1) *Upon being notified of any vacancy in the position of ad-*  
7 *ministrative law judge, the nominating committee shall consider all qual-*  
8 *ified applicants submitted by the director for the vacant position of ad-*  
9 *ministrative law judge and nominate a person qualified therefor. The*  
10 *nominating committee shall be required to reach unanimous agreement*  
11 *on any nomination to the position of administrative law judge. With re-*  
12 *spect to each person nominated, the secretary either shall accept and*  
13 *appoint the person nominated by the nominating committee to the posi-*  
14 *tion of administrative law judge for which the nomination was made or*  
15 *shall reject the nomination and request the nominating committee to nom-*  
16 *inate another person for that position. Upon receipt of any such request*  
17 *for the nomination of another person, the nominating committee shall*  
18 *nominate another person for that position in the same manner.*

19 (2) *Each administrative law judge shall hold office for a term of four*  
20 *years and may be reappointed. Each administrative law judge shall con-*  
21 *tinue to serve for the term of the appointment ~~or~~ and until a successor*  
22 *shall have been appointed. Successors to such administrative law judge*  
23 *positions shall be appointed for terms of four years.*

24 (3) *If a vacancy should occur in the position of an administrative law*  
25 *judge during the term of an administrative law judge, the nominating*  
26 *committee shall nominate an individual from the qualified applicants sub-*  
27 *mitted by the director to complete the remainder of the unexpired portion*  
28 *of the term. With respect to each person so nominated, the secretary either*  
29 *shall accept and appoint the person nominated to the board or shall reject*  
30 *the nomination and request the nominating committee to nominate an-*  
31 *other person for the position. Upon receipt of any such request for the*  
32 *nomination of another person, the nominating committee shall nominate*  
33 *another person for the position in the same manner.*

34 ~~(g)~~ **(f)** *Following the completion of a term, administrative law judges*  
35 *who wish to be considered for reappointment to their positions shall be*  
36 *deemed to have met the qualification requirements for appointment as*  
37 *administrative law judge and shall be considered for renomination by the*  
38 *workers compensation ALJ nominating committee.*

39 **(g)** *Administrative law judges appointed before the effective*  
40 *date of this section shall serve a term of office of four years and*  
41 *receive an annual salary in an amount equal to 80% of the salary*  
42 *prescribed for a district judge if the administrative law judge within*  
43 *60 days of the effective date of this section notifies the director in*

1 *writing that the administrative law judge elects to serve an ap-*  
2 *pointed term of office rather than an appointment in the classified*  
3 *service. The term of office for an administrative law judge who*  
4 *elects a term of office shall begin on the date the written election is*  
5 *received by the director. In the event any administrative law judge*  
6 *appointed before the effective date of this section does not elect to*  
7 *serve an appointed term of office, then the secretary of labor shall*  
8 *reassign said administrative law judge within one year from the end*  
9 *of the 60 day election period described herein. The reassignment*  
10 *shall be to a classified position of equal or greater compensation*  
11 *and shall be without any interruption of years of service. The va-*  
12 *cancy created by the reassignment shall be filled in accordance with*  
13 *the provisions of (e)(1) set forth above.*

14 ~~(h)~~ (h) (1) Administrative law judges shall have power to administer  
15 oaths, certify official acts, take depositions, issue subpoenas, compel the  
16 attendance of witnesses and the production of books, accounts, papers,  
17 documents and records to the same extent as is conferred on the district  
18 courts of this state, and may conduct an investigation, inquiry or hearing  
19 on all matters before the administrative law judges. All final orders,  
20 awards, modifications of awards, or preliminary awards under K.S.A. 44-  
21 534a and amendments thereto made by an administrative law judge shall  
22 be subject to review by the board upon written request of any interested  
23 party within 10 days. Intermediate Saturdays, Sundays and legal holidays  
24 shall be excluded in the time computation. Review by the board shall be  
25 a prerequisite to judicial review as provided for in K.S.A. 44-556 and  
26 amendments thereto. On any such review, the board shall have authority  
27 to grant or refuse compensation, or to increase or diminish any award of  
28 compensation or to remand any matter to the administrative law judge  
29 for further proceedings. The orders of the board under this subsection  
30 shall be issued within 30 days from the date arguments were presented  
31 by the parties.

32 (2) (A) If an administrative law judge has entered a preliminary  
33 award under K.S.A. 44-534a and amendments thereto, a review by the  
34 board shall not be conducted under this section unless it is alleged that  
35 the administrative law judge exceeded the administrative law judge's ju-  
36 risdiction in granting or denying the relief requested at the preliminary  
37 hearing. Such an appeal from a preliminary award may be heard and  
38 decided by a single member of the board. Members of the board shall  
39 hear such preliminary appeals on a rotating basis and the individual board  
40 member who decides the appeal shall sign each such decision. The orders  
41 of the board under this subsection shall be issued within 30 days from  
42 the date arguments were presented by the parties.

43 (B) If an order on review is not issued by the board within the ap-

1 plicable time period prescribed by subsection (b) (1), medical compen-  
 2 sation and any disability compensation as provided in the award of the  
 3 administrative law judge shall be paid commencing with the first day after  
 4 such time period and shall continue to be paid until the order of the  
 5 board is issued, except that no payments shall be made under this pro-  
 6 vision for any period before the first day after such time period. Nothing  
 7 in this section shall be construed to limit or restrict any other remedies  
 8 available to any party to a claim under any other statute.

9 (C) In any case in which the final award of an administrative law judge  
 10 is appealed to the board for review under this section and in which the  
 11 compensability is not an issue to be decided on review by the board,  
 12 medical compensation shall be payable in accordance with the award of  
 13 the administrative law judge and shall not be stayed pending such review.  
 14 The employee may proceed under K.S.A. 44-510k and amendments  
 15 thereto and may have a hearing in accordance with that statute to enforce  
 16 the provisions of this subsection.

17 ~~(e)~~ (i) Each ~~assistant director and each~~ administrative law judge or  
 18 special administrative law judge shall be allowed all reasonable and nec-  
 19 essary expenses actually incurred while in the actual discharge of official  
 20 duties in administering the workers compensation act, but such expenses  
 21 shall be sworn to by the person incurring the same and be approved by  
 22 the secretary.

23 (j) *Administrative law judges shall be subject to the authority and*  
 24 *direction of the director of workers compensation, and comply with such*  
 25 *performance standards and requirements as shall have been established*  
 26 *by agency administrative regulations.*

27 ~~(k)~~ (k) In case of emergency the director may appoint special local  
 28 administrative law judges and assign to them the examination and hearing  
 29 of any designated case or cases. Such special local administrative law  
 30 judges shall be attorneys and admitted to practice law in the state of  
 31 Kansas and shall, as to all cases assigned to them, exercise the same pow-  
 32 ers as provided by this section for the regular administrative law judges.  
 33 Special local administrative law judges shall receive a fee commensurate  
 34 with the services rendered as fixed by rules and regulations adopted by  
 35 the director. The fees prescribed by this section prior to the effective date  
 36 of this act shall be effective until different fees are fixed by such rules  
 37 and regulations.

38 ~~(l)~~ (l) All special local administrative law judge's fees and expenses,  
 39 with the exception of settlement hearings, shall be paid from the workers  
 40 compensation administration fee fund, as provided in K.S.A. 74-712 and  
 41 amendments thereto. Where there are no available funds or where the  
 42 special local administrative law judge conducted a settlement hearing, the  
 43 fees shall be taxed as costs in each case heard by such special local ad-

1   ministrative law judge and when collected shall be paid directly to such  
2   special local administrative law judge by the party charged with the pay-  
3   ment of the same.

4   ~~(f)~~ (m) Except as provided for judicial review under K.S.A. 44-556  
5   and amendments thereto, the decisions and awards of the board shall be  
6   final.

7   Sec. 2. K.S.A. 2004 Supp. 75-5708 is hereby amended to read as  
8   follows: 75-5708. (a) There is hereby established within and as a part of  
9   the department of labor a division of workers compensation. The division  
10   shall be administered, under the supervision of the secretary of labor, by  
11   the director of workers compensation, who shall be the chief administra-  
12   tive officer of the division. The director of workers compensation shall  
13   be appointed by the secretary of labor and shall serve at the pleasure of  
14   the secretary. The director shall be in the unclassified service under the  
15   Kansas civil service act and shall receive an annual salary fixed by the  
16   secretary of labor, with the approval of the governor. The director of  
17   workers compensation shall be an attorney admitted to practice law in  
18   the state of Kansas. The director shall devote full time to the duties of  
19   such office and shall not engage in the private practice of law during the  
20   director's term of office.

21   (b) The director of workers compensation may appoint ~~two assistant~~  
22   ~~directors of workers compensation and also may appoint not to exceed~~  
23   **up to** 10 administrative law judges. Such ~~assistant directors and admin-~~  
24   ~~istrative law judges shall be in the classified unclassified service. The as-~~  
25   ~~stant directors shall act for and exercise the powers of the director of~~  
26   ~~workers compensation to the extent authority to do so is delegated by the~~  
27   ~~director.~~ The ~~assistant directors and~~ administrative law judges shall be  
28   attorneys admitted to practice law in the state of Kansas, and shall have  
29   such powers, duties and functions as are assigned to them by the director  
30   or are prescribed by law. The ~~assistant directors and~~ administrative law  
31   judges shall devote full time to the duties of their offices and shall not  
32   engage in the private practice of law during their terms of office.

33   (c) ~~Assistant directors and administrative~~ **Administrative** law judges  
34   shall be selected by the director of workers compensation, with the ap-  
35   ~~proval of the secretary of labor~~ **as provided by K.S.A. 44-551, and**  
36   **amendments thereto.** Each appointee shall be subject to either dismissal  
37   or suspension of up to 30 days for any of the following:

38   (1) Failure to conduct oneself in a manner appropriate to the ap-  
39   pointee's professional capacity;

40   (2) failure to perform duties as required by the workers compensation  
41   act; or

42   (3) any reason set out for dismissal or suspension in the Kansas civil  
43   service act or rules and regulations adopted pursuant thereto.

1 No appointee shall be appointed, dismissed or suspended for political,  
2 religious or racial reasons or by reason of the appointee's sex.

3 **Sec. 3. K.S.A. 2004 Supp. 44-596 is hereby amended to read as**  
4 **follows: 44-596. (a) There is hereby established the workers com-**  
5 **ensation advisory council. The advisory council shall be composed**  
6 **of the director of workers compensation, or the director's designee**  
7 **from the division of workers compensation, a representative of the**  
8 **insurance industry appointed by the commissioner of insurance,**  
9 **and 10 members who shall be appointed by the secretary of labor**  
10 **in accordance with this section. Five members of the advisory coun-**  
11 **cil shall be broadly representative of employers throughout Kansas**  
12 **that are under the workers compensation act and shall be appointed**  
13 **as follows: One member shall be appointed from a list of nominees**  
14 **submitted to the secretary of labor by the Kansas chamber of com-**  
15 **merce and industry and four members shall be appointed from nom-**  
16 **inees submitted to the secretary of labor by employers or other**  
17 **representatives of employers or other employer organizations. Five**  
18 **members of the advisory council shall be broadly representative of**  
19 **employees throughout Kansas that are under the workers compen-**  
20 **sation act and shall be appointed as follows: One member shall be**  
21 **appointed from a list of nominees submitted to the secretary of labor**  
22 **by the Kansas A.F.L.-C.I.O. and four members shall be appointed**  
23 **from nominees submitted to the secretary of labor by employees or**  
24 **other representatives of employees or other employee organiza-**  
25 **tions. The representative of the insurance industry shall be knowl-**  
26 **edgeable of insurance underwriting practices. The director of work-**  
27 **ers compensation and the representative of the insurance industry**  
28 **shall be nonvoting members of the advisory council.**

29 (b) Each member of the advisory council shall serve at the plea-  
30 sure of the secretary of labor. Any vacancy on the advisory council  
31 shall be filled by nomination and appointment in the same manner  
32 as the original appointment of the member creating the vacancy.

33 (c) The advisory council shall study the workers compensation  
34 act, proposed amendments to the act and such other matters relating  
35 thereto that may be recommended by the secretary of labor or the  
36 director of workers compensation and shall advise the secretary and  
37 the director thereon. The advisory council shall also review and  
38 report its recommendations on any legislative bill amending, sup-  
39 plementing or affecting the workers compensation act or rules and  
40 regulations adopted thereunder or affecting the administration of  
41 such act or rules and regulations, which is introduced in the legis-  
42 lature and which is requested to be reviewed and reported on to a  
43 standing committee of either house of the legislature to which the

1 *bill is currently referred, upon the request of the chairperson of*  
2 *such committee.*

3 *(d) The advisory council shall organize annually by electing a*  
4 *chairperson and a vice-chairperson and shall meet upon the call of*  
5 *the chairperson. All actions of the advisory council adopting rec-*  
6 *ommendations regarding the workers compensation act or any other*  
7 *matter referred to the advisory committee under subsection (c) shall*  
8 *be by motion adopted by the affirmative vote in open meeting of*  
9 ~~four~~ *three of the five voting members who are appointed as repre-*  
10 *sentative of employers and ~~four~~ three of the five voting members who*  
11 *are appointed as representative of employees. All other actions of*  
12 *the advisory council shall be by motion adopted by the affirmative*  
13 *vote of at least six voting members in open meeting.*

14 *(e) The advisory council, in accordance with K.S.A. 74-4319,*  
15 *and amendments thereto, may recess for a closed or executive meet-*  
16 *ing of the members representing employers or of the members rep-*  
17 *resenting employees, or of both such groups of members meeting*  
18 *separately, to separately discuss the matters being studied by the*  
19 *advisory council, except that no binding action shall be taken dur-*  
20 *ing any such closed or executive meeting.*

21 *(f) The members of the advisory council shall serve without*  
22 *compensation, but, when attending meetings of the advisory com-*  
23 *mission, or subcommittee meetings thereof authorized by the advi-*  
24 *sory commission, shall be paid subsistence allowances, mileage and*  
25 *other expenses as provided in K.S.A. 75-3223 and amendments*  
26 *thereto.*

27 *(g) In addition to other matters for study prescribed pursuant*  
28 *to this section, the advisory council shall review the following:*

29 *(1) Competitive state workers compensation funds, including*  
30 *small business competitive funds;*

31 *(2) effectiveness and cost of safety programs;*

32 *(3) safety-based insurance premium rate discounts;*

33 *(4) fees for attorneys representing all parties in workers com-*  
34 *penetration claims; and*

35 *(5) group-funded self-insurance pools for small businesses.*

36 *Each of the studies prescribed by this subsection shall be re-*  
37 *viewed and reported to the standing committees of the senate and*  
38 *house of representatives having workers compensation subject mat-*  
39 *ter jurisdiction, except that the study of competitive state workers com-*  
40 *penetration funds shall be completed and reported to the legislative coor-*  
41 *ordinating council not later than December 15, 1993.*

42 *Sec. 34. K.S.A. 2004 Supp. 44-551, 44-596 and 75-5708 are hereby*  
43 *repealed.*

1     Sec. **45**. This act shall take effect and be in force from and after its  
2     publication in the statute book.