

HOUSE BILL No. 2531

By Committee on Commerce and Economic Development

1-25

1 AN ACT creating the workers compensation and employment security
2 boards nominating committee; amending K.S.A. 2011 Supp. 44-551,
3 44-555c and 44-709 and repealing the existing sections.
4

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

6 New Section 1. (a) There is hereby established the workers
7 compensation and employment security boards nominating committee
8 which shall be composed of seven members who are appointed by the
9 governor. Each of the following shall select one member to serve on the
10 nominating committee by giving written notice of the selection to the
11 governor who shall appoint such representatives to the committee:

- 12 (1) The Kansas secretary of labor;
- 13 (2) the Kansas chamber of commerce;
- 14 (3) the national federation of independent business;
- 15 (4) the Kansas AFL-CIO;
- 16 (5) the society for human resource management;
- 17 (6) the Kansas self-insurers association; and
- 18 (7) the secretary of labor whose selection shall be selected from
19 either an employee organization as defined in K.S.A. 75-4322, and
20 amendments thereto, or a professional employees' organization as defined
21 in K.S.A. 72-5413, and amendments thereto.

22 In the event the governor refuses to appoint a member selected by one
23 of the organizations in this subsection, the organization may replace that
24 selection with another, subject to the same appointment requirements.

25 (b) Members of the nominating committee shall serve a term of four
26 years. Members may not serve more than two consecutive terms.

27 (c) In the event of a vacancy on the nominating committee occurring
28 for any reason, the respective member whose position becomes vacant
29 shall be replaced by the selecting organization by submitting written notice
30 of the replacement selection to the governor within 30 days of such
31 vacancy. The governor shall either appoint or reject the replacement
32 selection as provided in this section.

33 (d) The committee shall meet as needed to provide the workers
34 compensation and employment security board of review appointing
35 authorities with nominees for appointments to the position of workers
36 compensation administrative law judge or board member and employment

1 security board of review. No action of the committee shall be effective
2 unless approved by two-thirds of the committee.

3 (e) When notified of a vacancy on the employment security board of
4 review, the committee shall convene and submit a list of three nominees to
5 the governor for each vacancy on the board of review. The governor shall
6 either accept and appoint a person nominated by the nominating
7 committee to the board of review or reject the nomination and request the
8 nominating committee to nominate another person for that position.

9 (f) When notified of a vacancy in the position of workers
10 compensation administrative law judge or on the workers compensation
11 review board or of the need to appoint a member pro tem to the workers
12 compensation review board, the committee shall review all qualified
13 applicants as submitted by the director of workers compensation to
14 nominate a qualified person to fill the vacancy and submit that nomination
15 to the secretary of labor. The secretary shall either accept and appoint the
16 person nominated by the nominating committee to the position for which
17 the nomination was made or reject the nomination and request the
18 nominating committee to nominate another person for that position. Upon
19 receipt of any such request for the nomination of another person, the
20 nominating committee shall nominate another person for that position in
21 the same manner.

22 Sec. 2. K.S.A. 2011 Supp. 44-551 is hereby amended to read as
23 follows: 44-551. (a) The duties of the assistant directors of workers
24 compensation may include but not be limited to acting in the capacity of
25 an administrative law judge.

26 (b) Each administrative law judge shall be an attorney regularly
27 admitted to practice law in Kansas. Such attorney shall have at least five
28 years of experience as an attorney, ~~with at least one year of experience~~
29 practicing law in the area of workers compensation.

30 (c) Except as provided in subsection (g), the annual salary of each
31 administrative law judge shall be an amount equal to 75% of the annual
32 salary paid by the state to a district judge, other than a district judge
33 designated as a chief judge. Administrative law judges shall devote full
34 time to the duties of such office and shall not engage in the private practice
35 of law during their term of office. No administrative law judge may
36 receive additional compensation for official services performed by the
37 administrative law judge. Each administrative law judge shall be
38 reimbursed for expenses incurred in the performance of such official duties
39 under the same circumstances and to the same extent as district judges are
40 reimbursed for such expenses.

41 (d) Applications for administrative law judge positions shall be
42 submitted to the director of workers compensation. The director shall
43 determine if an applicant meets the qualifications for an administrative law

1 judge as prescribed in subsection (b). Qualified applicants for a position of
2 administrative law judge shall be submitted by the director to the workers
3 compensation ~~administrative law judge nominating and review and~~
4 ~~employment security boards nominating~~ committee for consideration.

5 ~~(e) There is hereby established the workers compensation~~
6 ~~administrative law judge nominating and review committee which shall be~~
7 ~~composed of two members appointed as follows: The Kansas AFL-CIO~~
8 ~~and the Kansas chamber of commerce and industry shall each select one~~
9 ~~representative to serve on the workers compensation administrative law~~
10 ~~judge nominating and review committee and shall each give written notice~~
11 ~~of such selection to the secretary who shall appoint such selected persons~~
12 ~~to the committee. In the event of a vacancy occurring for any reason on the~~
13 ~~workers compensation administrative law judge nominating and review~~
14 ~~committee, the vacating member shall be replaced by the organization~~
15 ~~which originally selected such member with written notice provided to the~~
16 ~~secretary within 30 days of such vacancy.~~

17 ~~(f) (1) Upon being notified of any vacancy in the position of~~
18 ~~administrative law judge, the administrative law judge nominating and~~
19 ~~review committee shall consider all qualified applicants submitted by the~~
20 ~~director for the vacant position of administrative law judge and nominate a~~
21 ~~person qualified therefor. The administrative law judge nominating and~~
22 ~~review committee shall be required to reach unanimous agreement on any~~
23 ~~nomination to the position of administrative law judge. With respect to~~
24 ~~each person nominated, the secretary either shall accept and appoint the~~
25 ~~person nominated by the administrative law judge nominating and review~~
26 ~~committee to the position of administrative law judge for which the~~
27 ~~nomination was made or shall reject the nomination and request the~~
28 ~~administrative law judge nominating and review committee to nominate~~
29 ~~another person for that position. Upon receipt of any such request for the~~
30 ~~nomination of another person, the administrative law judge nominating~~
31 ~~and review committee shall nominate another person for that position in~~
32 ~~the same manner.~~

33 ~~(2) (1) Each administrative law judge shall hold office for a term of~~
34 ~~four years and may be reappointed. Each administrative law judge shall~~
35 ~~continue to serve for the term of the appointment or until a successor is~~
36 ~~appointed. Successors to such administrative law judge positions shall be~~
37 ~~appointed for terms of four years.~~

38 ~~(3) (2) If a vacancy should occur in the position of an administrative~~
39 ~~law judge during the term of an administrative law judge, the~~
40 ~~administrative law judge nominating and review workers compensation~~
41 ~~and employment security boards nominating~~ committee shall nominate an
42 individual from the qualified applicants submitted by the director to
43 complete the remainder of the unexpired portion of the term.

1 ~~(g)~~ (f) Except as otherwise provided in this subsection, administrative
2 law judges appointed on and after July 1, 2006, shall serve a term of office
3 of four years. Administrative law judges hired before July 1, 2006, may
4 continue as administrative law judges under the classified service under
5 the Kansas civil service act at the salary provided under the civil service
6 act or may elect to be appointed to a term and receive the annual salary
7 equal to 75% of the salary prescribed for a district judge if the currently
8 employed administrative law judge within 60 days of the effective date of
9 this section notifies the director in writing that the administrative law
10 judge elects to serve an appointed term of office rather than continuing in
11 the classified service. The term of office for an administrative law judge
12 who elects a term of office shall begin on the date the written election is
13 received by the director and the first term of office for such person shall be
14 for two, three or four years as specified by the secretary so that
15 administrative law judges appointed under this subsection serve staggered
16 terms. Thereafter, any such person if reappointed as an administrative law
17 judge shall be appointed for a term of four years.

18 ~~(h)~~ (g) ~~Following the completion of a term, an administrative law~~
19 ~~judge who wishes to be considered for reappointment to such judge's~~
20 ~~position shall be deemed to have met the qualification requirements for~~
21 ~~appointment as administrative law judge and shall be considered for~~
22 ~~renomination by the workers compensation administrative law judge~~
23 ~~nominating and review committee~~ *Following the completion of a term, an*
24 *administrative law judge who wishes to be considered for reappointment*
25 *to such judge's position shall be deemed to have met the qualification*
26 *requirements for appointment as administrative law judge. If such*
27 *administrative law judge wishes to be considered for renomination by the*
28 *workers compensation and employment security boards nominating*
29 *committee, such administrative law judge shall submit an application as*
30 *provided in subsection (d).*

31 ~~(i)~~ (h) (1) Administrative law judges shall have power to administer
32 oaths, certify official acts, take depositions, issue subpoenas, compel the
33 attendance of witnesses and the production of books, accounts, papers,
34 documents and records to the same extent as is conferred on the district
35 courts of this state, and may conduct an investigation, inquiry or hearing
36 on all matters before the administrative law judges. All final orders,
37 awards, modifications of awards, or preliminary awards under K.S.A. 44-
38 534a, and amendments thereto, made by an administrative law judge shall
39 be subject to review by the board upon written request of any interested
40 party within 10 days. Intermediate Saturdays, Sundays and legal holidays
41 shall be excluded in the time computation. Review by the board shall be a
42 prerequisite to judicial review as provided for in K.S.A. 44-556, and
43 amendments thereto. On any such review, the board shall have authority to

1 grant or refuse compensation, or to increase or diminish any award of
2 compensation or to remand any matter to the administrative law judge for
3 further proceedings. The orders of the board under this subsection shall be
4 issued within 30 days from the date arguments were presented by the
5 parties.

6 (2) (A) If an administrative law judge has entered a preliminary
7 award under K.S.A. 44-534a, and amendments thereto, a review by the
8 board shall not be conducted under this section unless it is alleged that the
9 administrative law judge exceeded the administrative law judge's
10 jurisdiction in granting or denying the relief requested at the preliminary
11 hearing. Such an appeal from a preliminary award may be heard and
12 decided by a single member of the board. Members of the board shall hear
13 such preliminary appeals on a rotating basis and the individual board
14 member who decides the appeal shall sign each such decision. The orders
15 of the board under this subsection shall be issued within 30 days from the
16 date arguments were presented by the parties.

17 (B) If an order on review is not issued by the board within the
18 applicable time period prescribed by subsection ~~(i)~~~~(+)~~ *(h)(1)*, medical
19 compensation and any disability compensation as provided in the award of
20 the administrative law judge shall be paid commencing with the first day
21 after such time period and shall continue to be paid until the order of the
22 board is issued, except that no payments shall be made under this
23 provision for any period before the first day after such time period.
24 Nothing in this section shall be construed to limit or restrict any other
25 remedies available to any party to a claim under any other statute.

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

34 ~~(j)~~ *(i)* Each assistant director and each administrative law judge or
35 special administrative law judge shall be allowed all reasonable and
36 necessary expenses actually incurred while in the actual discharge of
37 official duties in administering the workers compensation act, but such
38 expenses shall be sworn to by the person incurring the same and be
39 approved by the secretary.

40 ~~(k)~~ *(j)* In case of emergency the director may appoint special local
41 administrative law judges and assign to them the examination and hearing
42 of any designated case or cases. Such special local administrative law
43 judges shall be attorneys and admitted to practice law in the state of

1 Kansas and shall, as to all cases assigned to them, exercise the same
2 powers as provided by this section for the regular administrative law
3 judges. Special local administrative law judges shall receive a fee
4 commensurate with the services rendered as fixed by rules and regulations
5 adopted by the director. The fees prescribed by this section prior to the
6 effective date of this act shall be effective until different fees are fixed by
7 such rules and regulations.

8 ~~(h)~~ (k) All special local administrative law judge's fees and expenses,
9 with the exception of settlement hearings, shall be paid from the workers
10 compensation administration fee fund, as provided in K.S.A. 74-712, and
11 amendments thereto. Where there are no available funds or where the
12 special local administrative law judge conducted a settlement hearing, the
13 fees shall be taxed as costs in each case heard by such special local
14 administrative law judge and when collected shall be paid directly to such
15 special local administrative law judge by the party charged with the
16 payment of the same.

17 ~~(m)~~ (l) Except as provided for judicial review under K.S.A. 44-556,
18 and amendments thereto, the decisions and awards of the board shall be
19 final.

20 Sec. 3. K.S.A. 2011 Supp. 44-555c is hereby amended to read as
21 follows: 44-555c. (a) There is hereby established the workers
22 compensation board. The board shall have exclusive jurisdiction to review
23 all decisions, findings, orders and awards of compensation of
24 administrative law judges under the workers compensation act. The review
25 by the board shall be upon questions of law and fact as presented and
26 shown by a transcript of the evidence and the proceedings as presented,
27 had and introduced before the administrative law judge. The board shall be
28 within the division of workers compensation of the department of labor
29 and all budgeting, personnel, purchasing and related management
30 functions of the board shall be administered under the supervision and
31 direction of the secretary of labor. The board shall consist of five members
32 who shall be appointed by the secretary in accordance with this section
33 and who shall each serve for a term of four years, except as provided for
34 the first members appointed to the board under subsection (f).

35 (b) Each board member shall be an attorney regularly admitted to
36 practice law in Kansas for a period of at least seven years *with at least five*
37 *years experience practicing law in the area of workers compensation* and
38 shall have engaged in the active practice of law during such period as a
39 lawyer, judge of a court of record or any court in Kansas or a full-time
40 teacher of law in an accredited law school, or any combination of such
41 types of practice.

42 (c) Each board member shall receive an annual salary in an amount
43 equal to the salary prescribed by law for a district judge, except that the

1 member who is the chairperson of the workers compensation board shall
2 receive an annual salary in an amount equal to the salary prescribed for a
3 district judge designated as chief judge of a district court of Kansas. The
4 board members shall devote full time to the duties of such office and shall
5 not engage in the private practice of law during their term of office. No
6 board member may receive additional compensation for official services
7 performed by the board member. Each board member shall be reimbursed
8 for expenses incurred in the performance of such official duties under the
9 same circumstances and to the same extent as judges of the district court
10 are reimbursed for such expenses.

11 (d) Applications for membership on the board shall be submitted to
12 the director of workers compensation. The director shall determine if an
13 applicant meets the qualifications for membership on the board prescribed
14 in subsection (b). Qualified applicants for the board will be submitted by
15 the director to the workers compensation board and employment security
16 boards nominating committee for consideration.

17 ~~(e) There is hereby established the workers compensation board~~
18 ~~nominating committee which shall be composed of two members~~
19 ~~appointed as follows: The Kansas AFL-CIO and the Kansas chamber of~~
20 ~~commerce and industry shall each select one representative to serve on the~~
21 ~~workers compensation board nominating committee and shall give written~~
22 ~~notice of the selection to the secretary who shall appoint such~~
23 ~~representatives to the committee. In the event of a vacancy occurring for~~
24 ~~any reason on the nominating committee, the respective member shall be~~
25 ~~replaced by the appointing organization with written notice of the~~
26 ~~appointment to the secretary of labor within 30 days of such vacancy.~~

27 ~~(f) (1) Upon being notified of any vacancy on the board or of the~~
28 ~~need to appoint a member pro tem under subsection (i), the nominating~~
29 ~~committee shall consider all qualified applicants submitted by the director~~
30 ~~for the vacant position on the board or the member pro tem position and~~
31 ~~nominate a person qualified therefor. The nominating committee shall be~~
32 ~~required to reach unanimous agreement on any nomination to the board.~~
33 ~~With respect to each person nominated, the secretary either shall accept~~
34 ~~and appoint the person nominated by the nominating committee to the~~
35 ~~position on the board for which the nomination was made or shall reject~~
36 ~~the nomination and request the nominating committee to nominate another~~
37 ~~person for that position. Upon receipt of any such request for the~~
38 ~~nomination of another person, the nominating committee shall nominate~~
39 ~~another person for that position in the same manner.~~

40 ~~(2) The first members of the board established by this section are~~
41 ~~hereby appointed as follows: Each person who was a member of the~~
42 ~~workers compensation board which was in existence on January 12, 1995,~~
43 ~~is hereby appointed, effective January 13, 1995, as a member of the board~~

1 established by this section. The term of office of each person so appointed
2 as a member of the board established by this section is for the period equal
3 to the remainder of the term of office such person had as of January 12,
4 1995, as a member of the workers compensation board which was in
5 existence on January 12, 1995.

6 (3) Each member of the board shall hold office for the term of the
7 appointment and until the successor shall have been appointed. Successors
8 to such members shall be appointed for terms of four years.

9 ~~(4) If a vacancy should occur on the board during the term of a~~
10 ~~member, the nominating committee shall nominate an individual from the~~
11 ~~qualified applicants submitted by the director to complete the remainder of~~
12 ~~the unexpired portion of the term. With respect to each person so~~
13 ~~nominated, the secretary either shall accept and appoint the person~~
14 ~~nominated to the board or shall reject the nomination and request the~~
15 ~~nominating committee to nominate another person for the position. Upon~~
16 ~~receipt of any such request for the nomination of another person, the~~
17 ~~nominating committee shall nominate another person for the position in~~
18 ~~the same manner.~~

19 ~~(g) (f)~~ Following the completion of a term, board members who wish
20 to be considered for reappointment to the board shall be deemed to have
21 met the qualification requirements for selection to the board and shall be
22 considered for renomination by the workers compensation board and
23 employment security boards nominating committee.

24 ~~(h) (g)~~ The members of the board shall annually elect one member to
25 serve as chairperson.

26 ~~(i) (h)~~ If illness or other temporary disability of a member of the
27 board will not permit the member to serve during a case or in any case in
28 which a member of the board must be excused from serving because of a
29 conflict or is otherwise disqualified with regard to such case, the director
30 shall notify the workers compensation and employment security boards
31 nominating committee of the need to appoint a member pro tem. Upon
32 receipt of such notice, the committee shall act as soon as possible and
33 nominate a qualified person to serve as member pro tem in such case in
34 accordance with subsection (f). Each member pro tem shall receive
35 compensation at the same rate as a member of the board receives, prorated
36 for the hours of actual service as a member pro tem and shall receive
37 expenses under the same circumstances and to the same extent as a
38 member of the board receives. Each member pro tem shall have all the
39 powers, duties and functions of a member of the board with regard to the
40 case.

41 ~~(j) (i)~~ The board shall maintain principal offices in Topeka, Kansas,
42 and the board may conduct hearings at a courthouse of any county in
43 Kansas or at another location specified by the board. The secretary of labor

1 shall provide a courtroom and other suitable quarters in Topeka, Kansas,
2 for the use of the board and its staff. When the board conducts hearings at
3 any location other than in Topeka, Kansas, the director shall make suitable
4 arrangements for such hearings. Subject to the provisions of appropriation
5 acts, the director shall provide such supplies and equipment and shall
6 appoint such support personnel as may be necessary for the board to fulfill
7 the duties imposed by this act, subject to approval by the secretary.

8 ~~(k)~~ (j) For purposes of hearing cases, the board may sit together or in
9 panels of ~~two~~ three members or more, designated by the chairperson of the
10 board, except that an appeal from a preliminary award entered under
11 K.S.A. 44-534a, and amendments thereto, may be heard by a panel of one
12 member designated by the chairperson. ~~All members of the board shall~~
13 ~~determine each matter before the board.~~ All decisions, reviews and
14 determinations by the board shall be approved in writing by ~~at least three~~
15 ~~board members~~ a majority comprised of not less than three of the members
16 hearing the case. Whenever the board enters a final order in any
17 proceeding, the board shall make written findings of fact and conclusions
18 of law forming the basis of the board's determination and final order. The
19 findings of fact and conclusions of law of the board shall be made a part of
20 the final order. The board shall mail a copy of the final order of the board
21 to all parties to the proceeding within three days following the issuance of
22 the final order.

23 Sec. 4. K.S.A. 2011 Supp. 44-709 is hereby amended to read as
24 follows: 44-709. (a) *Filing.* Claims for benefits shall be made in
25 accordance with rules and regulations adopted by the secretary. The
26 secretary shall furnish a copy of such rules and regulations to any
27 individual requesting them. Each employer shall post and maintain printed
28 statements furnished by the secretary without cost to the employer in
29 places readily accessible to individuals in the service of the employer.

30 (b) *Determination.* (1) Except as otherwise provided in this
31 subsection (b)(1), a representative designated by the secretary, and
32 hereinafter referred to as an examiner, shall promptly examine the claim
33 and, on the basis of the facts found by the examiner, shall determine
34 whether or not the claim is valid. If the examiner determines that the claim
35 is valid, the examiner shall determine the first day of the benefit year, the
36 weekly benefit amount and the total amount of benefits payable with
37 respect to the benefit year. If the claim is determined to be valid, the
38 examiner shall send a notice to the last employing unit who shall respond
39 within 10 days by providing the examiner all requested information
40 including all information required for a decision under K.S.A. 44-706 and
41 amendments thereto. The information may be submitted by the employing
42 unit in person at an employment office of the secretary or by mail, by
43 telefacsimile machine or by electronic mail. If the required information is

1 not submitted or postmarked within a response time limit of 10 days after
2 the examiner's notice was sent, the employing unit shall be deemed to have
3 waived its standing as a party to the proceedings arising from the claim
4 and shall be barred from protesting any subsequent decisions about the
5 claim by the secretary, a referee, the board of review or any court, except
6 that the employing unit's response time limit may be waived or extended
7 by the examiner or upon appeal, if timely response was impossible due to
8 excusable neglect. In any case in which the payment or denial of benefits
9 will be determined by the provisions of subsection (d) of K.S.A. 44-706,
10 and amendments thereto, the examiner shall promptly transmit the claim to
11 a special examiner designated by the secretary to make a determination on
12 the claim after the investigation as the special examiner deems necessary.
13 The parties shall be promptly notified of the special examiner's decision
14 and any party aggrieved by the decision may appeal to the referee as
15 provided in subsection (c). The claimant and the claimant's most recent
16 employing unit shall be promptly notified of the examiner's or special
17 examiner's decision.

18 (2) The examiner may for good cause reconsider the examiner's
19 decision and shall promptly notify the claimant and the most recent
20 employing unit of the claimant, that the decision of the examiner is to be
21 reconsidered, except that no reconsideration shall be made after the
22 termination of the benefit year.

23 (3) Notwithstanding the provisions of any other statute, a decision of
24 an examiner or special examiner shall be final unless the claimant or the
25 most recent employing unit of the claimant files an appeal from the
26 decision as provided in subsection (c). The appeal must be filed within 16
27 calendar days after the mailing of notice to the last known addresses of the
28 claimant and employing unit or, if notice is not by mail, within 16 calendar
29 days after the delivery of the notice to the parties.

30 (c) *Appeals.* Unless the appeal is withdrawn, a referee, after affording
31 the parties reasonable opportunity for fair hearing, shall affirm or modify
32 the findings of fact and decision of the examiner or special examiner. The
33 parties shall be duly notified of the referee's decision, together with the
34 reasons for the decision. The decision shall be final, notwithstanding the
35 provisions of any other statute, unless a further appeal to the board of
36 review is filed within 16 calendar days after the mailing of the decision to
37 the parties' last known addresses or, if notice is not by mail, within 16
38 calendar days after the delivery of the decision.

39 (d) *Referees.* The secretary shall appoint, in accordance with
40 subsection (c) of K.S.A. 44-714, and amendments thereto, one or more
41 referees to hear and decide disputed claims.

42 (e) *Time, computation and extension.* In computing the period of time
43 for an employing unit response or for appeals under this section from the

1 examiner's or the special examiner's determination or from the referee's
2 decision, the day of the act, event or default from which the designated
3 period of time begins to run shall not be included. The last day of the
4 period shall be included unless it is a Saturday, Sunday or legal holiday, in
5 which event the period runs until the end of the next day which is not a
6 Saturday, Sunday or legal holiday.

7 (f) *Board of review.* (1) There is hereby created a board of review,
8 hereinafter referred to as the board, consisting of three members. Except as
9 provided by paragraph (2) of this subsection, each member of the board
10 shall be appointed for a term of four years as provided in this subsection.
11 ~~Two members shall be appointed by the governor, subject to confirmation~~
12 ~~by the senate as provided in K.S.A. 75-4315b and amendments thereto.~~
13 ~~Except as provided by K.S.A. 46-2601, and amendments thereto, no~~
14 ~~person appointed to the board, whose appointment is subject to~~
15 ~~confirmation by the senate, shall exercise any power, duty or function as a~~
16 ~~member until confirmed by the senate. One member shall be representative~~
17 ~~of employees, one member shall be representative of employers, and one~~
18 ~~member shall be representative of the public in general. The appointment~~
19 ~~of the employee representative member of the board shall be made by the~~
20 ~~governor from a list of three nominations submitted by the Kansas A.F.L.-~~
21 ~~C.I.O. The appointment of the employer representative member of the~~
22 ~~board shall be made by the governor from a list of three nominations~~
23 ~~submitted by the Kansas chamber of commerce and industry. The~~
24 ~~appointment of the public representative member of the board, who,~~
25 ~~because of vocation, occupation or affiliation may be deemed not to be~~
26 ~~representative of either management or labor, shall be made by the~~
27 ~~members appointed by the governor as employee representative and~~
28 ~~employer representative. If the two members do not agree and fail to make~~
29 ~~the appointment of the public member within 30 days after the expiration~~
30 ~~of the public member's term of office, the governor shall appoint the~~
31 ~~representative of the public. Each member shall be appointed by the~~
32 ~~governor, subject to confirmation by the senate as provided in K.S.A. 75-~~
33 ~~4315b, and amendments thereto. Except as provided by K.S.A. 46-2601,~~
34 ~~and amendments thereto, no person appointed to the board, whose~~
35 ~~appointment is subject to confirmation by the senate, shall exercise any~~
36 ~~power, duty or function as a member until confirmed by the senate. The~~
37 ~~appointment of each member of the board shall be made by the governor~~
38 ~~from a list of three nominations submitted by the workers compensation~~
39 ~~and employment security boards nominations committee. Not more than~~
40 two members of the board shall belong to the same political party.

41 (2) The terms of members who are serving on the board on the
42 effective date of this act shall expire on March 15, of the year in which
43 such member's term would have expired under the provisions of this

1 section prior to amendment by this act. Thereafter, members shall be
2 appointed for terms of four years and until their successors are appointed
3 and confirmed.

4 (3) Each member of the board shall serve until a successor has been
5 appointed and confirmed. Any vacancy in the membership of the board
6 occurring prior to expiration of a term shall be filled by appointment for
7 the unexpired term in the same manner as provided for original
8 appointment of the member. ~~Each member shall be appointed as~~
9 ~~representative of the same special interest group represented by the~~
10 ~~predecessor of the member.~~

11 (4) Each member of the board shall be entitled to receive as
12 compensation for the member's services at the rate of \$15,000 per year,
13 together with the member's travel and other necessary expenses actually
14 incurred in the performance of the member's official duties in accordance
15 with rules and regulations adopted by the secretary. Members'
16 compensation and expenses shall be paid from the employment security
17 administration fund.

18 (5) The board shall organize annually by the election of a chairperson
19 from among its members. The chairperson shall serve in that capacity for a
20 term of one year and until a successor is elected. The board shall meet on
21 the first Monday of each month or on the call of the chairperson or any
22 two members of the board at the place designated. The secretary of labor
23 shall appoint an executive secretary of the board and the executive
24 secretary shall attend the meetings of the board.

25 (6) The board, on its own motion, may affirm, modify or set aside any
26 decision of a referee on the basis of the evidence previously submitted in
27 the case; may direct the taking of additional evidence; or may permit any
28 of the parties to initiate further appeal before it. The board shall permit
29 such further appeal by any of the parties interested in a decision of a
30 referee which overrules or modifies the decision of an examiner. The board
31 may remove to itself the proceedings on any claim pending before a
32 referee. Any proceedings so removed to the board shall be heard in
33 accordance with the requirements of subsection (c). The board shall
34 promptly notify the interested parties of its findings and decision.

35 (7) Two members of the board shall constitute a quorum and no
36 action of the board shall be valid unless it has the concurrence of at least
37 two members. A vacancy on the board shall not impair the right of a
38 quorum to exercise all the rights and perform all the duties of the board.

39 (g) *Procedure.* The manner in which disputed claims are presented,
40 the reports on claims required from the claimant and from employers and
41 the conduct of hearings and appeals shall be in accordance with rules of
42 procedure prescribed by the board for determining the rights of the parties,
43 whether or not such rules conform to common law or statutory rules of

1 evidence and other technical rules of procedure. A full and complete
2 record shall be kept of all proceedings and decisions in connection with a
3 disputed claim. All testimony at any hearing upon a disputed claim shall be
4 recorded, but need not be transcribed unless the disputed claim is further
5 appealed. In the performance of its official duties, the board shall have
6 access to all of the records which pertain to the disputed claim and are in
7 the custody of the secretary of labor and shall receive the assistance of the
8 secretary upon request.

9 (h) *Witness fees.* Witnesses subpoenaed pursuant to this section shall
10 be allowed fees and necessary travel expenses at rates fixed by the board.
11 Such fees and expenses shall be deemed a part of the expense of
12 administering this act.

13 (i) *Court review.* Any action of the board is subject to review in
14 accordance with the Kansas judicial review act. No bond shall be required
15 for commencing an action for such review. In the absence of an action for
16 such review, the action of the board shall become final 16 calendar days
17 after the date of the mailing of the decision. In addition to those persons
18 having standing pursuant to K.S.A. 77-611, and amendments thereto, the
19 examiner shall have standing to obtain judicial review of an action of the
20 board. The review proceeding, and the questions of law certified, shall be
21 heard in a summary manner and shall be given precedence over all other
22 civil cases except cases arising under the workers compensation act.

23 (j) Any finding of fact or law, judgment, determination, conclusion or
24 final order made by the board of review or any examiner, special examiner,
25 referee or other person with authority to make findings of fact or law
26 pursuant to the employment security law is not admissible or binding in
27 any separate or subsequent action or proceeding, between a person and a
28 present or previous employer brought before an arbitrator, court or judge
29 of the state or the United States, regardless of whether the prior action was
30 between the same or related parties or involved the same facts.

31 (k) In any proceeding or hearing conducted under this section, a party
32 to the proceeding or hearing may appear before a referee or the board
33 either personally or by means of a designated representative to present
34 evidence and to state the position of the party. Hearings may be conducted
35 in person, by telephone or other means of electronic communication. The
36 hearing shall be conducted by telephone or other means of electronic
37 communication if none of the parties requests an in-person hearing. If only
38 one party requests an in-person hearing, the referee shall have the
39 discretion of requiring all parties to appear in person or allow the party not
40 requesting an in-person hearing to appear by telephone or other means of
41 electronic communication. The notice of hearing shall include notice to the
42 parties of their right to request an in-person hearing and instructions on
43 how to make the request.

1 Sec. 5. K.S.A. 2011 Supp. 44-551, 44-555c and 44-709 are hereby
2 repealed.

3 Sec. 6. This act shall take effect and be in force from and after its
4 publication in the statute book.

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