

**As Amended by House Committee**

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*Session of 2012*

**HOUSE BILL No. 2531**

By Committee on Commerce and Economic Development

1-25

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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~~ **the Kansas state**  
17 **council of the society for human resource management (KS SHRM);**  
18 (6) the Kansas self-insurers association; and  
19 (7) the secretary of labor whose selection shall be selected from  
20 either an employee organization as defined in K.S.A. 75-4322, and  
21 amendments thereto, or a professional employees' organization as defined  
22 in K.S.A. 72-5413, and amendments thereto.

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

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

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

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

1 compensation administrative law judge or board member and employment  
2 security board of review. No action of the committee shall be effective  
3 unless approved by two-thirds of the committee.

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

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

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

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

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

42 (d) Applications for administrative law judge positions shall be  
43 submitted to the director of workers compensation. The director shall

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

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

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

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

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

1 complete the remainder of the unexpired portion of the term.

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

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

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

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

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

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

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

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

41 ~~(+)~~ *(j)* In case of emergency the director may appoint special local  
42 administrative law judges and assign to them the examination and hearing  
43 of any designated case or cases. Such special local administrative law

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

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

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

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

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

43 (c) Each board member shall receive an annual salary in an amount

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

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

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

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

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

1 is hereby appointed, effective January 13, 1995, as a member of the board  
2 established by this section. The term of office of each person so appointed  
3 as a member of the board established by this section is for the period equal  
4 to the remainder of the term of office such person had as of January 12,  
5 1995, as a member of the workers compensation board which was in  
6 existence on January 12, 1995.

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

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

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

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

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

42 ~~(j)~~ (i) The board shall maintain principal offices in Topeka, Kansas,  
43 and the board may conduct hearings at a courthouse of any county in



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

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

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

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

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

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

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

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

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

43 (e) *Time, computation and extension*. In computing the period of time

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

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

43 (2) The terms of members who are serving on the board on the

1 effective date of this act shall expire on March 15, of the year in which  
2 such member's term would have expired under the provisions of this  
3 section prior to amendment by this act. Thereafter, members shall be  
4 appointed for terms of four years and until their successors are appointed  
5 and confirmed.

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

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

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

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

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

41 (g) *Procedure.* The manner in which disputed claims are presented,  
42 the reports on claims required from the claimant and from employers and  
43 the conduct of hearings and appeals shall be in accordance with rules of

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

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

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

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

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

1 parties of their right to request an in-person hearing and instructions on  
2 how to make the request.

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

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

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