

SENATE BILL No. 413

By Committee on Commerce

2-9

1 AN ACT ~~concerning employment; creating the professional employer~~  
2 ~~organization registration act~~ **creating the workers compensation and**  
3 **employment security boards nominating committee; amending**  
4 **K.S.A. 2011 Supp. 44-551, 44-555c and 44-709 and repealing the**  
5 **existing sections.**

6  
7 *Be it enacted by the Legislature of the State of Kansas:*

8 ~~Section 1. The provisions of sections 1 through 10 *II*, and~~  
9 ~~amendments thereto, shall be known and may be cited as the professional~~  
10 ~~employer organization registration act.~~

11 ~~Sec. 2. As used in sections 1 through 10 *II*, and amendments thereto:~~

12 ~~(a) "Client" means any person who enters into a professional~~  
13 ~~employer agreement with a professional employer organization.~~

14 ~~(b) "Co-employer" means either a professional employer organization~~  
15 ~~or a client.~~

16 ~~(c) "Co-employment relationship" means a relationship which is~~  
17 ~~intended to be an ongoing relationship rather than a temporary or project-~~  
18 ~~specific relationship, and wherein the rights, duties and obligations of an~~  
19 ~~employer which arise out of an employment relationship have been~~  
20 ~~allocated between the employer and a professional employer organization~~  
21 ~~as co-employers pursuant to a professional employer agreement entered~~  
22 ~~into in accordance with the provisions of sections 1 through 10 *II*, and~~  
23 ~~amendments thereto. Under a co-employment relationship:~~

24 ~~(1) The professional employer organization is entitled to enforce only~~  
25 ~~those employer rights, and is subject to only those employer obligations,~~  
26 ~~that are specifically allocated to the professional employer organization by~~  
27 ~~the professional employer agreement or by the provisions of sections 1~~  
28 ~~through 10 *II*, and amendments thereto;~~

29 ~~(2) the client is entitled to enforce those employer rights, and is~~  
30 ~~obligated to provide and perform those employer obligations, that are~~  
31 ~~allocated to such client by the professional employer agreement or by the~~  
32 ~~provisions of sections 1 through 10 *II*, and amendments thereto; and~~

33 ~~(3) the client also is entitled to enforce any employer right, and is~~  
34 ~~obligated to perform any obligation of an employer, that is not specifically~~

1 ~~allocated to the professional employer organization by the professional~~  
2 ~~employer agreement or by the provisions of sections 1 through 10 *II*, and~~  
3 ~~amendments thereto.~~

4 ~~(d) (1) "Covered employee" means an individual having a co-~~  
5 ~~employment relationship with a professional employer organization and a~~  
6 ~~client, who has received written notice of the co-employment relationship~~  
7 ~~with the professional employer organization and the client, and such co-~~  
8 ~~employment relationship was entered into pursuant to a professional~~  
9 ~~employer agreement entered into in accordance with the provisions of~~  
10 ~~sections 1 through 10 *II*, and amendments thereto.~~

11 ~~(2) The term "covered employee" shall include individuals who are~~  
12 ~~officers, directors, shareholders, partners or managers of the client, or~~  
13 ~~members of a limited liability company that is a client, if: (A) The~~  
14 ~~professional employer organization and the client have expressly agreed in~~  
15 ~~the professional employer agreement that such individuals are covered~~  
16 ~~employees; (B) such individuals satisfy the provisions of paragraph (1);~~  
17 ~~and (C) such individuals act as operational managers or perform day-to-~~  
18 ~~day operational services for the client.~~

19 ~~(e) "Department" means the department of labor.~~

20 ~~(f) "Person" means any individual, partnership, corporation, limited~~  
21 ~~liability company, association or any other form of legally recognized~~  
22 ~~entity.~~

23 ~~(g) "Professional employer agreement" means a written contract~~  
24 ~~entered into between a client and a professional employer organization that~~  
25 ~~provides:~~

26 ~~(1) For the co-employment of covered employees;~~

27 ~~(2) for the allocation of employer rights and obligations between the~~  
28 ~~client and the professional employer organization with respect to covered~~  
29 ~~employees; and~~

30 ~~(3) for the professional employer organization and the client to~~  
31 ~~assume the responsibilities required by the provisions of sections 1~~  
32 ~~through 10 *II*, and amendments thereto.~~

33 ~~(h) (1) "Professional employer organization" means any person~~  
34 ~~engaged in the business of providing professional employer services. A~~  
35 ~~person engaged in the business of providing professional employer~~  
36 ~~services shall be considered a "professional employer organization"~~  
37 ~~regardless of such person's use of the term staff leasing company,~~  
38 ~~administrative employer, employee leasing company or any name other~~  
39 ~~than professional employer organization in describing such person's~~  
40 ~~business.~~

41 ~~(2) For purposes of sections 1 through 10 *II*, and amendments~~  
42 ~~thereto, the following shall not be considered a "professional employer~~  
43 ~~organization," or as providing "professional employment services":~~

1 ~~(A) Arrangements wherein a person, whose principal business~~  
2 ~~activity is not entering into professional employer agreements, and which~~  
3 ~~does not hold itself out as a professional employer organization, shares~~  
4 ~~employees with a commonly owned company within the meaning of~~  
5 ~~section 414(b) and (c) of the internal revenue code;~~

6 ~~(B) independent contractor arrangements by which a person assumes~~  
7 ~~responsibility for the product produced or service performed by such~~  
8 ~~person or such person's agents and retains and exercises primary direction~~  
9 ~~and control over the work performed by the individuals whose services are~~  
10 ~~supplied under such arrangements; and~~

11 ~~(C) providing temporary help services;~~

12 ~~(i) "Professional employer group" means two or more professional~~  
13 ~~employer organizations that are majority owned or commonly controlled~~  
14 ~~by the same entity, parent or controlling person;~~

15 ~~(j) "Professional employer services" means the service of entering~~  
16 ~~into co-employment relationships;~~

17 ~~(k) "Registrant" means a professional employer organization~~  
18 ~~registered under the provisions of sections 1 through 10 *II*, and~~  
19 ~~amendments thereto;~~

20 ~~(l) "Secretary" means the secretary of the department of labor;~~

21 ~~(m) "Temporary help services" means services consisting of a person:~~

22 ~~(1) Recruiting and hiring such person's own employees;~~

23 ~~(2) locating other organizations that need the services of such~~  
24 ~~employees;~~

25 ~~(3) assigning such employees: (A) To perform work at or services for~~  
26 ~~such other organizations to support or supplement such other~~  
27 ~~organizations' workforces; (B) to provide assistance in special work~~  
28 ~~situations, including employee absences, skill shortages or seasonal~~  
29 ~~workloads; or (C) to perform special assignments or projects; and~~

30 ~~(4) customarily attempting to reassign such employees to other~~  
31 ~~organizations when such employees finish an assignment;~~

32 ~~(n) "Working capital" means current assets less current liabilities, as~~  
33 ~~such terms are used by generally accepted accounting principles;~~

34 ~~Sec. 3. (a) Nothing in the provisions of sections 1 through 10 *II*,~~  
35 ~~and amendments thereto, or in any professional employer agreement shall:~~

36 ~~(1) Affect, modify or amend any collective bargaining agreement, or~~  
37 ~~the rights or obligations of any client, professional employer organization~~  
38 ~~or covered employee under the national labor relations act, 29 U.S.C. §~~  
39 ~~151 et seq., or the railway labor act, 45 U.S.C. § 151 et seq.;~~

40 ~~(2) diminish, abolish or remove the rights of covered employees as to~~  
41 ~~a client, or the obligations of such client to a covered employee, whether~~  
42 ~~existing prior to or after the effective date of the professional employer~~  
43 ~~agreement, including, but not limited to, rights and obligations arising~~

1 ~~from civil rights laws guaranteeing nondiscrimination in employment~~  
2 ~~practices:~~

3 ~~(3) affect, modify or amend any contractual relationship or restrictive~~  
4 ~~covenant between a covered employee and any client in effect at the time a~~  
5 ~~professional employer agreement becomes effective, nor prohibit or amend~~  
6 ~~any contractual relationship or restrictive covenant that is entered into~~  
7 ~~subsequently between a client and a covered employee. A professional~~  
8 ~~employer organization shall have no responsibility or liability in~~  
9 ~~connection with, or arising out of, any such existing or new contractual~~  
10 ~~relationship or restrictive covenant unless the professional employer~~  
11 ~~organization has specifically agreed otherwise in writing; or~~

12 ~~(4) create any new or additional enforceable right of a covered~~  
13 ~~employee against a professional employer organization that is not~~  
14 ~~specifically provided by the professional employer agreement or by the~~  
15 ~~provisions of sections 1 through 10 *II*, and amendments thereto.~~

16 ~~(b) (1) Nothing in the provisions of sections 1 through 10 *II*, and~~  
17 ~~amendments thereto, or in any professional employer agreement shall~~  
18 ~~affect, modify or amend any local, state or federal licensing, registration or~~  
19 ~~certification requirement applicable to any client or covered employee.~~

20 ~~(2) A covered employee who is required to be licensed, registered or~~  
21 ~~certified pursuant to local, state or federal law or rules and regulations~~  
22 ~~shall be deemed to be an employee solely of the client for purposes of any~~  
23 ~~such license, registration or certification requirement.~~

24 ~~(3) A professional employer organization shall not be deemed to~~  
25 ~~engage in any occupation, trade, profession or other activity that is subject~~  
26 ~~to licensing, registration or certification requirements, or is otherwise~~  
27 ~~regulated by a governmental entity solely by entering into and maintaining~~  
28 ~~a co-employment relationship with a *client or* covered employee who is~~  
29 ~~subject to such requirements or regulations.~~

30 ~~(4) A client shall have the sole right to direct and control the~~  
31 ~~professional or licensed activities of covered employees and of the client's~~  
32 ~~business. Such covered employees and clients shall remain subject to~~  
33 ~~regulation by the regulatory or governmental entity responsible for~~  
34 ~~licensing, registration or certification of such covered employees or~~  
35 ~~clients.~~

36 ~~(c) With respect to a bid, contract, purchase order or agreement~~  
37 ~~entered into with the state or a political subdivision of the state, a client's~~  
38 ~~status or certification as a small, minority-owned, disadvantaged or~~  
39 ~~woman-owned business enterprise, or as a historically underutilized~~  
40 ~~business, shall not be affected because the client has entered into a~~  
41 ~~professional employer agreement with a professional employer~~  
42 ~~organization, or uses the services of a professional employer organization.~~

43 ~~Sec. 4. (a) A person engaged in the business of providing~~

1 ~~professional employer services pursuant to co-employment relationships in~~  
2 ~~which all or a majority of the employees of a client are covered employees~~  
3 ~~shall be registered pursuant to this section.~~

4 ~~(b) A person who is not registered pursuant to this section shall not~~  
5 ~~offer or provide professional employer services in this state, and shall not~~  
6 ~~use the names PEO, professional employer organization, staff leasing~~  
7 ~~company, employee leasing company, administrative employer or any~~  
8 ~~other name or title representing professional employer services.~~

9 ~~(c) Each applicant for registration shall submit an application to the~~  
10 ~~secretary in such form and manner as prescribed by the secretary. The~~  
11 ~~application shall contain the following information:~~

12 ~~(1) The name or names under which the professional employer~~  
13 ~~organization conducts business;~~

14 ~~(2) the address of the principal place of business of the professional~~  
15 ~~employer organization, and the address of each office the professional~~  
16 ~~employer organization maintains in this state;~~

17 ~~(3) the professional employer organization's taxpayer or employer~~  
18 ~~identification number;~~

19 ~~(4) a list, by jurisdiction, of each name under which the professional~~  
20 ~~employer organization has operated in the preceding five years, including~~  
21 ~~any alternative names, names of predecessors and, if known, successor~~  
22 ~~business entities;~~

23 ~~(5) a statement of ownership, which shall include the name and~~  
24 ~~evidence of the business experience of any person that, individually, or~~  
25 ~~acting in concert with one or more other persons, owns or controls,~~  
26 ~~directly or indirectly, 25% 15% or more of the equity interest of the~~  
27 ~~professional employer organization;~~

28 ~~(6) a statement of management, which shall include the name and~~  
29 ~~evidence of the business experience of any individual who serves as~~  
30 ~~president, chief executive officer or otherwise has the authority to act as~~  
31 ~~senior executive officer of the professional employer organization; and~~

32 ~~(7) a financial statement setting forth the financial condition of the~~  
33 ~~professional employer organization or professional employer group, which~~  
34 ~~shall comply with the provisions of subsection (h).~~

35 ~~(d) (1) Each professional employer organization operating within this~~  
36 ~~state as of the effective date of this act shall complete its initial registration~~  
37 ~~not later than 180 days after the effective date of this act. Such initial~~  
38 ~~registration shall be valid until 180 days from the end of the professional~~  
39 ~~employer organization's first fiscal year that is more than one year after the~~  
40 ~~effective date of this act.~~

41 ~~(2) Each professional employer organization not operating within this~~  
42 ~~state as of the effective date of this act shall complete its initial registration~~  
43 ~~prior to initiating operations within this state. If a professional employer~~

~~1 organization not registered in this state becomes aware that an existing  
2 client, not based in this state, has employees and operations in this state;  
3 the professional employer organization shall either decline to provide  
4 professional employer services for those employees, or notify the secretary  
5 within five business days of the professional employer organization's  
6 knowledge of this fact and file a limited registration application pursuant  
7 to subsection (g), or a full registration if there are more than 50 covered  
8 employees employed by such client. The secretary may issue an interim  
9 operating permit for the period of time the application is pending if the  
10 professional employer organization is currently registered or licensed by  
11 another state, and the secretary determines it is in the best interests of the  
12 potential covered employees.~~

~~13 (e) Within 180 days after the end of a registrant's fiscal year, such  
14 registrant shall renew its registration by notifying the secretary of any  
15 changes in the information provided in such registrant's most recent  
16 registration or renewal. A registrant's existing registration shall remain in  
17 effect for the period of time the renewal application is pending.~~

~~18 (f) Professional employer organizations in a professional employer  
19 group may satisfy any reporting and financial requirements of this section  
20 on a combined or consolidated basis, provided that each member of the  
21 professional employer group guarantees the financial capacity obligations  
22 required by section 5-6, and amendments thereto, of each other member of  
23 the professional employer group. In the case of a professional employer  
24 group that submits a combined or consolidated audited financial statement,  
25 including entities that are not professional employer organizations or that  
26 are not in the professional employer group, the controlling entity of the  
27 professional employer group under the consolidated or combined  
28 statement must guarantee the obligations of the professional employer  
29 organizations in the professional employer group.~~

~~30 (g) (1) A professional employer organization is eligible for a limited  
31 registration if such professional employer organization:~~

~~32 (A) Submits a written request for limited registration in such form  
33 and manner as prescribed by the secretary;~~

~~34 (B) is domiciled outside this state, and is licensed or registered as a  
35 professional employer organization in another state;~~

~~36 (C) does not maintain an office in this state, or directly solicit clients  
37 located or domiciled within this state; and~~

~~38 (D) does not have more than 50 covered employees employed or  
39 domiciled in this state on any given day.~~

~~40 (2) A limited registration is valid for one year, and may be renewed.~~

~~41 (3) A professional employer organization requesting limited  
42 registration under this subsection shall provide the secretary with such  
43 information and documentation as required by the secretary to show that~~

1 ~~the professional employer organization qualifies for a limited registration.~~

2 ~~(4) The provisions of section 5-6, and amendments thereto, shall not~~  
3 ~~apply to applicants for limited registration.~~

4 ~~(h) At the time of initial registration, the applicant shall submit the~~  
5 ~~most recent audit of the applicant or such applicant's parent holding~~  
6 ~~company, which audit shall not be older than 13 months. Thereafter, a~~  
7 ~~professional employer organization or professional employer group shall~~  
8 ~~file on an annual basis, within 180 days after the end of the professional~~  
9 ~~employer organization's or parent holding company's fiscal year, a~~  
10 ~~succeeding audit. An applicant may apply to the secretary for an extension~~  
11 ~~of time to submit such audit, but any such request shall be accompanied by~~  
12 ~~a letter from the auditor stating the reasons for the delay and the~~  
13 ~~anticipated audit completion date. For the initial application, if the closing~~  
14 ~~date of the audited financial statements required by this section is older~~  
15 ~~than three months from the date of the application, the application also~~  
16 ~~shall include updated, though unaudited, financial statements for the most~~  
17 ~~recent quarter. The financial statement shall be prepared in accordance~~  
18 ~~with generally accepted accounting principles and audited by an~~  
19 ~~independent certified public accountant licensed to practice in the~~  
20 ~~jurisdiction in which such accountant is located, and shall be without~~  
21 ~~qualification as to the going concern status of the professional employer~~  
22 ~~organization. A professional employer group may submit combined or~~  
23 ~~consolidated audited financial statements to meet the requirements of this~~  
24 ~~section. A professional employer organization that has not had sufficient~~  
25 ~~operating history to have audited financials based upon at least 12 months~~  
26 ~~of operating history shall meet the financial capacity requirements of~~  
27 ~~subsection (f) and present financial statements reviewed by a certified~~  
28 ~~public accountant.~~

29 ~~(i) The department shall maintain a list of professional employer~~  
30 ~~organizations registered under this section, and such list shall be readily~~  
31 ~~available to the public by electronic or other means.~~

32 ~~(j) The secretary, to the extent practical, shall permit the acceptance~~  
33 ~~of electronic filings, including applications, documents, reports and other~~  
34 ~~filings required by the secretary under this section. The secretary may~~  
35 ~~provide for the acceptance of electronic filings and other assurance~~  
36 ~~documents by an independent and qualified entity approved by the~~  
37 ~~secretary that provides satisfactory assurance of compliance acceptable to~~  
38 ~~the secretary consistent with, or in lieu of, the requirements of this section~~  
39 ~~and section 5-6, and amendments thereto. The secretary shall permit a~~  
40 ~~professional employer organization to authorize such entity approved by~~  
41 ~~the secretary to act on the professional employer organization's behalf in~~  
42 ~~complying with the registration requirements of this section, including~~  
43 ~~electronic filings of information and payment of registration fees. Use of~~

1 ~~such an approved entity shall be optional and not mandatory for a~~  
2 ~~registrant. Nothing in this subsection shall limit or change the secretary's~~  
3 ~~authority to register or terminate registration of a professional employer~~  
4 ~~organization, or to investigate or enforce any provision of sections 1~~  
5 ~~through 10 *II*, and amendments thereto.~~

6 ~~(k) All records, reports and other information obtained from a~~  
7 ~~professional employer organization under this section, except to the extent~~  
8 ~~necessary for the proper administration of the provisions of sections 1~~  
9 ~~through 10 *II*, and amendments thereto, by the secretary, shall be~~  
10 ~~confidential and shall not be published or open to public inspection other~~  
11 ~~than to employees of the department in the performance of such~~  
12 ~~employee's official duties.~~

13 ~~*Sec. 5. (a) Upon filing an initial application for registration, a*~~  
14 ~~*professional employer organization shall pay a fee in an amount not to*~~  
15 ~~*exceed \$1,000.*~~

16 ~~*(b) Upon filing a renewal application for registration, a*~~  
17 ~~*professional employer organization shall pay a fee in an amount not to*~~  
18 ~~*exceed \$500.*~~

19 ~~*(c) Upon filing an initial or a renewal application for limited*~~  
20 ~~*registration, a professional employer organization shall pay a fee in an*~~  
21 ~~*amount not to exceed \$500.*~~

22 ~~*(d) Upon filing an initial or a renewal application for registration, a*~~  
23 ~~*professional employer group shall pay a fee in an amount determined by*~~  
24 ~~*the secretary and adopted by rules and regulations.*~~

25 ~~*(e) The secretary shall adopt rules and regulations establishing the*~~  
26 ~~*fees to be charged pursuant to this section in such amounts as deemed*~~  
27 ~~*reasonably necessary by the secretary for the administration of the*~~  
28 ~~*provisions of sections 1 through 11, and amendments thereto, subject to*~~  
29 ~~*the limitations on fee amounts set forth in subsections (a), (b) and (c).*~~

30 ~~*(f) There is hereby created the professional employer organization*~~  
31 ~~*fee fund. The secretary shall remit all moneys received from fees or*~~  
32 ~~*penalties to the state treasurer in accordance with the provisions of*~~  
33 ~~*K.S.A. 75-4215, and amendments thereto. Upon receipt of each such*~~  
34 ~~*remittance, the state treasurer shall deposit the entire amount in the*~~  
35 ~~*state treasury to the credit of the professional employer organization fee*~~  
36 ~~*fund. All expenditures from the professional employer organization fee*~~  
37 ~~*fund shall be for the purposes of the administration of the provisions of*~~  
38 ~~*sections 1 through 11, and amendments thereto, and shall be made in*~~  
39 ~~*accordance with appropriation acts upon warrants of the director of*~~  
40 ~~*accounts and reports issued pursuant to vouchers approved by the*~~  
41 ~~*secretary, or the secretary's designee.*~~

42 ~~*Sec. 5. 6. Except as provided by subsections (g) and (j) of section 4,*~~  
43 ~~*and amendments thereto, each professional employer organization, or*~~



1 ~~collectively each professional employer group shall either:~~

2 ~~(a) Maintain positive working capital upon registration as reflected in~~  
3 ~~the financial statements submitted to the secretary with the initial~~  
4 ~~registration application and each renewal application; or~~

5 ~~(b) for a professional employer organization or professional employer~~  
6 ~~group that does not have sufficient positive working capital as required in~~  
7 ~~subsection (a), submit a bond, irrevocable letter of credit or securities with~~  
8 ~~a minimum market value in an amount equal to the sum of the amount that~~  
9 ~~would be necessary for such professional employer organization or~~  
10 ~~professional employer group to comply with subsection (a) plus \$100,000~~  
11 ~~to the secretary at such time as the professional employer organization or~~  
12 ~~professional employer group does not have sufficient working capital.~~  
13 ~~Such bond shall be held by a depository designated by the secretary,~~  
14 ~~securing payment by the professional employer organization of all taxes,~~  
15 ~~wages, benefits or other entitlement due to or with respect to covered~~  
16 ~~employees, if the professional employer organization does not make such~~  
17 ~~payments when due.~~

18 ~~Sec. 6. 7. (a) No person shall knowingly enter into a co-~~  
19 ~~employment relationship in which less than a majority of the employees of~~  
20 ~~the client in this state are covered employees, or in which less than half of~~  
21 ~~the payroll of the client in this state is attributable to covered employees.~~

22 ~~(b) Except as otherwise provided in sections 1 through 10 II, and~~  
23 ~~amendments thereto, or in the professional employer agreement, in each~~  
24 ~~co-employment relationship:~~

25 ~~(1) The client shall be entitled to exercise all rights and shall be~~  
26 ~~obligated to perform all duties and responsibilities otherwise applicable to~~  
27 ~~an employer in an employment relationship;~~

28 ~~(2) the professional employer organization shall be entitled to~~  
29 ~~exercise only those rights and obligated to perform only those duties and~~  
30 ~~responsibilities specifically required by the provisions of sections 1~~  
31 ~~through 10 II, and amendments thereto, or in the professional employer~~  
32 ~~agreement. The rights, duties and obligations of the professional employer~~  
33 ~~organization as co-employer with respect to any covered employee shall be~~  
34 ~~limited to those arising pursuant to the professional employer agreement or~~  
35 ~~as required by the provisions of sections 1 through 10 II, and amendments~~  
36 ~~thereto, during the term of co-employment by the professional employer~~  
37 ~~organization of such covered employee; and~~

38 ~~(3) the client retains the exclusive right to direct and control the~~  
39 ~~covered employees as is necessary to conduct the client's business, to~~  
40 ~~discharge any of the client's fiduciary responsibilities or to comply with~~  
41 ~~any licensure requirements applicable to the client or to the covered~~  
42 ~~employees.~~

43 ~~(c) Except as otherwise provided in sections 1 through 10 II, and~~

1 ~~amendments thereto, the co-employment relationship between the client~~  
2 ~~and the professional employer organization, and between each co-~~  
3 ~~employer and each covered employee, shall be governed by the~~  
4 ~~professional employer agreement. Each professional employer agreement~~  
5 ~~shall include the following:~~

6 ~~(1) The allocation of rights, duties and obligations as described in this~~  
7 ~~section;~~

8 ~~(2) that the professional employer organization shall have the~~  
9 ~~responsibility to pay wages to covered employees, to withhold, collect,~~  
10 ~~report and remit payroll-related and unemployment taxes and, to the extent~~  
11 ~~the professional employer organization has assumed such responsibility in~~  
12 ~~the professional employer agreement, to make payments for employee~~  
13 ~~benefits for covered employees;~~

14 ~~(3) that, in addition to the client's right to hire, discipline and~~  
15 ~~terminate a covered employee, the professional employer organization~~  
16 ~~shall have a right to hire, discipline and terminate a covered employee~~  
17 ~~only as may be necessary to fulfill the professional employer~~  
18 ~~organization's responsibilities under the provisions of sections 1 through~~  
19 ~~10-H, and amendments thereto, or the professional employer agreement.~~

20 ~~(d) For purposes of this section, wages do not include any obligation~~  
21 ~~between a client and a covered employee for payments beyond, or in~~  
22 ~~addition to, the covered employee's salary, draw or regular rate of pay,~~  
23 ~~such as bonuses, commissions, severance pay, deferred compensation,~~  
24 ~~profit sharing or vacation, sick or other paid time off pay, unless the~~  
25 ~~professional employer organization has expressly agreed to assume~~  
26 ~~liability for such payments in the professional employer agreement.~~

27 ~~(e) With respect to each professional employer agreement entered~~  
28 ~~into by a professional employer organization, such professional employer~~  
29 ~~organization shall provide written notice to each covered employee~~  
30 ~~affected by such agreement. The professional employer organization shall~~  
31 ~~provide and the client is required to post the following notices in a~~  
32 ~~conspicuous place at the client's worksite:~~

33 ~~(1) Notice of the general nature of the co-employment relationship~~  
34 ~~between and among the professional employer organization, the client and~~  
35 ~~such covered employees; and~~

36 ~~(2) any notices required by the state relating to unemployment~~  
37 ~~compensation and minimum wages.~~

38 ~~(f) Except as otherwise provided in the professional employer~~  
39 ~~agreement:~~

40 ~~(1) A client shall be solely responsible for the quality, adequacy or~~  
41 ~~safety of the goods or services produced or sold in the client's business;~~

42 ~~(2) a client shall be solely responsible for directing, supervising,~~  
43 ~~training and controlling the work of the covered employees with respect to~~

1 ~~the business activities of the client and solely responsible for the acts,~~  
2 ~~errors or omissions of the covered employees with regard to such~~  
3 ~~activities;~~

4 ~~(3) a client shall not be liable for the acts, errors or omissions of a~~  
5 ~~professional employer organization, or of any covered employee of the~~  
6 ~~client and a professional employer organization when such covered~~  
7 ~~employee is acting under the express direction and control of the~~  
8 ~~professional employer organization;~~

9 ~~(4) nothing in this subsection shall limit any contractual liability or~~  
10 ~~obligation specifically provided in a professional employer agreement;~~

11 ~~(5) a covered employee is not, solely as the result of being a covered~~  
12 ~~employee of a professional employer organization, an employee of the~~  
13 ~~professional employer organization for purposes of general liability~~  
14 ~~insurance, fidelity bonds, surety bonds, employer's liability which is not~~  
15 ~~covered by workers' compensation or any other liability insurance carried~~  
16 ~~by the professional employer organization unless the covered employee is~~  
17 ~~included for such purposes by specific reference in the professional~~  
18 ~~employer agreement and in any applicable prearranged employment~~  
19 ~~contract, insurance contract or bond;~~

20 ~~(6) in its capacity as sponsoring employer of a benefit program, a~~  
21 ~~professional employer organization shall not sell, solicit or negotiate~~  
22 ~~insurance on behalf of a client, covered employee or other employee of a~~  
23 ~~client except through a person or entity licensed to do so pursuant state~~  
24 ~~law;~~

25 ~~(7) a professional employer organization shall sponsor health and~~  
26 ~~workers' compensation plans for its covered employees only on a fully~~  
27 ~~insured basis from an insurance carrier admitted to do business in this~~  
28 ~~state;~~

29 ~~(8) for purposes of this state or any county, municipality or other~~  
30 ~~political subdivision thereof;~~

31 ~~(A) Covered employees whose services are subject to sales tax shall~~  
32 ~~be deemed the employees of the client for purposes of collecting and~~  
33 ~~levying sales tax on the services performed by the covered employee, and~~  
34 ~~nothing in the provisions of sections 1 through 10 *II*, and amendments~~  
35 ~~thereto, shall be construed to relieve a client of any sales tax liability with~~  
36 ~~respect to such client's goods or services;~~

37 ~~(B) any tax or assessment imposed upon professional employer~~  
38 ~~services or any business license or other fee which is based upon gross~~  
39 ~~receipts shall allow a deduction from the gross income or receipts of the~~  
40 ~~business derived from performing professional employer services that is~~  
41 ~~equal to that portion of the fee charged to a client that represents the actual~~  
42 ~~cost of wages and salaries, benefits, workers' compensation, payroll taxes,~~  
43 ~~withholding or other assessments paid to or on behalf of a covered~~

1 ~~employee by the professional employer organization under a professional~~  
2 ~~employer agreement;~~

3 ~~(C) any tax assessed or assessment or mandated expenditure on a per~~  
4 ~~capita or per employee basis shall be assessed against the client for~~  
5 ~~covered employees and against the professional employer organization for~~  
6 ~~its employees who are not covered employees co-employed with a client,~~  
7 ~~and any benefits or monetary consideration that meets the requirements of~~  
8 ~~mandates imposed on a client and that are received by covered employees~~  
9 ~~through the professional employer organization either through payroll or~~  
10 ~~through benefit plans sponsored by the professional employer organization~~  
11 ~~shall be credited against the client's obligation to fulfill such mandates;~~  
12 ~~and~~

13 ~~(D) in the case of a tax or an assessment imposed or calculated upon~~  
14 ~~the basis of total payroll, the professional employer organization shall be~~  
15 ~~eligible to apply any small business allowance or exemption available to~~  
16 ~~the client for the covered employees for the purpose of computing the tax.~~

17 ~~Sec. 7. 8. A client and a professional employer organization shall~~  
18 ~~each be deemed an employer under the laws of this state for purposes of~~  
19 ~~sponsoring retirement and employee welfare benefit plans for its covered~~  
20 ~~employees.~~

21 ~~Sec. 8. 9. (a) It shall be a violation of the provisions of sections 1~~  
22 ~~through 10 *II*, and amendments thereto:~~

23 ~~(1) For a person to knowingly offer or provide professional employer~~  
24 ~~services or use the names PEO, professional employer organization, staff~~  
25 ~~leasing, employee leasing, administrative employer or other title~~  
26 ~~representing professional employer services without registering in~~  
27 ~~accordance with section 4, and amendments thereto;~~

28 ~~(2) for a person to knowingly provide false or fraudulent information~~  
29 ~~to the secretary in conjunction with any registration application, renewal or~~  
30 ~~in any report required under the provisions of sections 4 or 5 6, and~~  
31 ~~amendments thereto;~~

32 ~~(3) for a person to knowingly make a material misrepresentation to~~  
33 ~~the secretary, or other governmental agency to which such person is~~  
34 ~~required to submit a report or information;~~

35 ~~(4) for a professional employer organization or a controlling person~~  
36 ~~of a professional employer organization to be convicted of a crime: ~~(A)~~~~  
37 ~~That relates to the operation of a professional employer organization, or :~~  
38 ~~~~(B) that~~ relates to the ability of the professional employer organization or a~~  
39 ~~controlling person of a professional employer organization to operate a~~  
40 ~~professional employer organization; or ~~(C) pursuant to 18 U.S.C. § 1033;~~~~  
41 ~~or~~

42 ~~(5) for a person to willfully violate any provision of sections 1-~~  
43 ~~through 10 *II*, and amendments thereto, or any rule or regulation adopted~~

1 ~~by the secretary pursuant thereto.~~

2 ~~(b) Upon a finding, and after notice and an opportunity for a hearing,~~  
3 ~~that a professional employer organization, or a controlling person of a~~  
4 ~~professional employer organization, or a person offering professional~~  
5 ~~employer services has committed a violation under this section, the~~  
6 ~~secretary may:~~

7 ~~(1) Deny the application for registration;~~

8 ~~(2) revoke, restrict or refuse to renew a registration;~~

9 ~~(3) impose a civil fine in an amount not to exceed \$1,000 **\$10,000** for~~  
10 ~~each material violation of the provisions of sections 1 through 10 **II**, and~~  
11 ~~amendments thereto;~~

12 ~~(4) place the registrant on probation for such period of time and~~  
13 ~~subject to such conditions as the secretary shall specify; or~~

14 ~~(5) issue an order to cease and desist those professional employer~~  
15 ~~organization activities and services specified in such order.~~

16 ~~(c) The provisions of this section shall be subject to the Kansas~~  
17 ~~judicial review act.~~

18 ~~Sec. 9. **10.** The secretary shall adopt such rules and regulations as the~~  
19 ~~secretary deems necessary to implement and enforce the provisions of~~  
20 ~~sections 1 through 10 **II**, and amendments thereto.~~

21 ~~Sec. 10. **II.** If any provision of sections 1 through 10 **II**, and~~  
22 ~~amendments thereto, or any portion thereof, is declared invalid or~~  
23 ~~unconstitutional, such invalidity shall not affect the validity or~~  
24 ~~constitutionality of the remaining provisions of sections 1 through 10 **II**,~~  
25 ~~and amendments thereto.~~

26 **New Section 1. (a) There is hereby established the workers**  
27 **compensation and employment security boards nominating committee**  
28 **which shall be composed of seven members who are appointed by the**  
29 **governor. Each of the following shall select one member to serve on**  
30 **the nominating committee by giving written notice of the selection to**  
31 **the governor who shall appoint such representatives to the committee:**

32 **(1) The Kansas secretary of labor;**

33 **(2) the Kansas chamber of commerce;**

34 **(3) the national federation of independent business;**

35 **(4) the Kansas AFL-CIO;**

36 **(5) the Kansas state council of the society for human resource**  
37 **management (KS SHRM);**

38 **(6) the Kansas self-insurers association; and**

39 **(7) the secretary of labor whose selection shall be selected from**  
40 **either an employee organization as defined in K.S.A. 75-4322, and**  
41 **amendments thereto, or a professional employees' organization as**  
42 **defined in K.S.A. 72-5413, and amendments thereto.**

43 **In the event the governor refuses to appoint a member selected by**

1 one of the organizations in this subsection, the organization may  
2 replace that selection with another, subject to the same appointment  
3 requirements.

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

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

12 (d) The committee shall meet as needed to provide the workers  
13 compensation and employment security board of review appointing  
14 authorities with nominees for appointments to the position of workers  
15 compensation administrative law judge or board member and  
16 employment security board of review. No action of the committee shall  
17 be effective unless approved by two-thirds of the committee.

18 (e) When notified of a vacancy on the employment security board  
19 of review, the committee shall convene and submit a list of three  
20 nominees to the governor for each vacancy on the board of review.  
21 The governor shall either accept and appoint a person nominated by  
22 the nominating committee to the board of review or reject the  
23 nomination and request the nominating committee to nominate  
24 another person for that position.

25 (f) When notified of a vacancy in the position of workers  
26 compensation administrative law judge or on the workers  
27 compensation review board or of the need to appoint a member pro  
28 tem to the workers compensation review board, the committee shall  
29 review all qualified applicants as submitted by the director of workers  
30 compensation to nominate a qualified person to fill the vacancy and  
31 submit that nomination to the secretary of labor. The secretary shall  
32 either accept and appoint the person nominated by the nominating  
33 committee to the position for which the nomination was made or reject  
34 the nomination and request the nominating committee to nominate  
35 another person for that position. Upon receipt of any such request for  
36 the nomination of another person, the nominating committee shall  
37 nominate another person for that position in the same manner.

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

42 (b) Each administrative law judge shall be an attorney regularly  
43 admitted to practice law in Kansas. Such attorney shall have at least

1 ~~five years of experience as an attorney, with at least one year of~~  
2 ~~experience~~ practicing law in the area of workers compensation.

3 (c) Except as provided in subsection (g), the annual salary of each  
4 administrative law judge shall be an amount equal to 75% of the  
5 annual salary paid by the state to a district judge, other than a district  
6 judge designated as a chief judge. Administrative law judges shall  
7 devote full time to the duties of such office and shall not engage in the  
8 private practice of law during their term of office. No administrative  
9 law judge may receive additional compensation for official services  
10 performed by the administrative law judge. Each administrative law  
11 judge shall be reimbursed for expenses incurred in the performance of  
12 such official duties under the same circumstances and to the same  
13 extent as district judges are reimbursed for such expenses.

14 (d) Applications for administrative law judge positions shall be  
15 submitted to the director of workers compensation. The director shall  
16 determine if an applicant meets the qualifications for an  
17 administrative law judge as prescribed in subsection (b). Qualified  
18 applicants for a position of administrative law judge shall be  
19 submitted by the director to the workers compensation ~~administrative~~  
20 ~~law judge nominating and review and employment security boards~~  
21 ~~nominating committee for consideration.~~

22 ~~(e) There is hereby established the workers compensation~~  
23 ~~administrative law judge nominating and review committee which shall be~~  
24 ~~composed of two members appointed as follows: The Kansas AFL-CIO~~  
25 ~~and the Kansas chamber of commerce and industry shall each select one~~  
26 ~~representative to serve on the workers compensation administrative law~~  
27 ~~judge nominating and review committee and shall each give written notice~~  
28 ~~of such selection to the secretary who shall appoint such selected persons~~  
29 ~~to the committee. In the event of a vacancy occurring for any reason on the~~  
30 ~~workers compensation administrative law judge nominating and review~~  
31 ~~committee, the vacating member shall be replaced by the organization~~  
32 ~~which originally selected such member with written notice provided to the~~  
33 ~~secretary within 30 days of such vacancy.~~

34 ~~(f) (1) Upon being notified of any vacancy in the position of~~  
35 ~~administrative law judge, the administrative law judge nominating and~~  
36 ~~review committee shall consider all qualified applicants submitted by the~~  
37 ~~director for the vacant position of administrative law judge and nominate a~~  
38 ~~person qualified therefor. The administrative law judge nominating and~~  
39 ~~review committee shall be required to reach unanimous agreement on any~~  
40 ~~nomination to the position of administrative law judge. With respect to~~  
41 ~~each person nominated, the secretary either shall accept and appoint the~~  
42 ~~person nominated by the administrative law judge nominating and review~~  
43 ~~committee to the position of administrative law judge for which the~~

~~1 nomination was made or shall reject the nomination and request the  
2 administrative law judge nominating and review committee to nominate  
3 another person for that position. Upon receipt of any such request for the  
4 nomination of another person, the administrative law judge nominating  
5 and review committee shall nominate another person for that position in  
6 the same manner.~~

~~(2)(1)~~ **Each administrative law judge shall hold office for a term  
8 of four years and may be reappointed. Each administrative law judge  
9 shall continue to serve for the term of the appointment or until a  
10 successor is appointed. Successors to such administrative law judge  
11 positions shall be appointed for terms of four years.**

~~(3)(2)~~ **If a vacancy should occur in the position of an  
13 administrative law judge during the term of an administrative law  
14 judge, the administrative law judge nominating and review *workers  
15 compensation and employment security boards nominating committee*  
16 shall nominate an individual from the qualified applicants submitted  
17 by the director to complete the remainder of the unexpired portion of  
18 the term.**

~~(e)(f)~~ **Except as otherwise provided in this subsection,  
20 administrative law judges appointed on and after July 1, 2006, shall  
21 serve a term of office of four years. Administrative law judges hired  
22 before July 1, 2006, may continue as administrative law judges under  
23 the classified service under the Kansas civil service act at the salary  
24 provided under the civil service act or may elect to be appointed to a  
25 term and receive the annual salary equal to 75% of the salary  
26 prescribed for a district judge if the currently employed  
27 administrative law judge within 60 days of the effective date of this  
28 section notifies the director in writing that the administrative law  
29 judge elects to serve an appointed term of office rather than  
30 continuing in the classified service. The term of office for an  
31 administrative law judge who elects a term of office shall begin on the  
32 date the written election is received by the director and the first term  
33 of office for such person shall be for two, three or four years as  
34 specified by the secretary so that administrative law judges appointed  
35 under this subsection serve staggered terms. Thereafter, any such  
36 person if reappointed as an administrative law judge shall be  
37 appointed for a term of four years.**

~~(h)(g)~~ **Following the completion of a term, an administrative law  
39 judge who wishes to be considered for reappointment to such judge's  
40 position shall be deemed to have met the qualification requirements for  
41 appointment as administrative law judge and shall be considered for  
42 renomination by the workers compensation administrative law judge  
43 nominating and review committee *Following the completion of a term, an***



1 *administrative law judge who wishes to be considered for reappointment*  
2 *to such judge's position shall be deemed to have met the qualification*  
3 *requirements for appointment as administrative law judge. If such*  
4 *administrative law judge wishes to be considered for renomination by the*  
5 *workers compensation and employment security boards nominating*  
6 *committee, such administrative law judge shall submit an application as*  
7 *provided in subsection (d).*

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

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

39 **(B) If an order on review is not issued by the board within the**  
40 **applicable time period prescribed by subsection ~~(i)~~ ~~(1)~~ (h)(1), medical**  
41 **compensation and any disability compensation as provided in the**  
42 **award of the administrative law judge shall be paid commencing with**  
43 **the first day after such time period and shall continue to be paid until**

1 the order of the board is issued, except that no payments shall be  
2 made under this provision for any period before the first day after  
3 such time period. Nothing in this section shall be construed to limit or  
4 restrict any other remedies available to any party to a claim under any  
5 other statute.

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

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

20 ~~(j)~~ In case of emergency the director may appoint special local  
21 administrative law judges and assign to them the examination and  
22 hearing of any designated case or cases. Such special local  
23 administrative law judges shall be attorneys and admitted to practice  
24 law in the state of Kansas and shall, as to all cases assigned to them,  
25 exercise the same powers as provided by this section for the regular  
26 administrative law judges. Special local administrative law judges  
27 shall receive a fee commensurate with the services rendered as fixed  
28 by rules and regulations adopted by the director. The fees prescribed  
29 by this section prior to the effective date of this act shall be effective  
30 until different fees are fixed by such rules and regulations.

31 ~~(k)~~ All special local administrative law judge's fees and  
32 expenses, with the exception of settlement hearings, shall be paid from  
33 the workers compensation administration fee fund, as provided in  
34 K.S.A. 74-712, and amendments thereto. Where there are no available  
35 funds or where the special local administrative law judge conducted a  
36 settlement hearing, the fees shall be taxed as costs in each case heard  
37 by such special local administrative law judge and when collected  
38 shall be paid directly to such special local administrative law judge by  
39 the party charged with the payment of the same.

40 ~~(m)~~ Except as provided for judicial review under K.S.A. 44-  
41 556, and amendments thereto, the decisions and awards of the board  
42 shall be final.

43 Sec. 3. K.S.A. 2011 Supp. 44-555c is hereby amended to read as

1 follows: 44-555c. (a) There is hereby established the workers  
2 compensation board. The board shall have exclusive jurisdiction to  
3 review all decisions, findings, orders and awards of compensation of  
4 administrative law judges under the workers compensation act. The  
5 review by the board shall be upon questions of law and fact as  
6 presented and shown by a transcript of the evidence and the  
7 proceedings as presented, had and introduced before the  
8 administrative law judge. The board shall be within the division of  
9 workers compensation of the department of labor and all budgeting,  
10 personnel, purchasing and related management functions of the board  
11 shall be administered under the supervision and direction of the  
12 secretary of labor. The board shall consist of five members who shall  
13 be appointed by the secretary in accordance with this section and who  
14 shall each serve for a term of four years, except as provided for the  
15 first members appointed to the board under subsection (f).

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

23 (c) Each board member shall receive an annual salary in an  
24 amount equal to the salary prescribed by law for a district judge,  
25 except that the member who is the chairperson of the workers  
26 compensation board shall receive an annual salary in an amount equal  
27 to the salary prescribed for a district judge designated as chief judge  
28 of a district court of Kansas. The board members shall devote full  
29 time to the duties of such office and shall not engage in the private  
30 practice of law during their term of office. No board member may  
31 receive additional compensation for official services performed by the  
32 board member. Each board member shall be reimbursed for expenses  
33 incurred in the performance of such official duties under the same  
34 circumstances and to the same extent as judges of the district court  
35 are reimbursed for such expenses.

36 (d) Applications for membership on the board shall be submitted  
37 to the director of workers compensation. The director shall determine  
38 if an applicant meets the qualifications for membership on the board  
39 prescribed in subsection (b). Qualified applicants for the board will be  
40 submitted by the director to the workers compensation ~~board~~ and  
41 *employment security boards nominating committee for consideration.*

42 ~~(e) There is hereby established the workers compensation board~~  
43 ~~nominating committee which shall be composed of two members~~

1 ~~appointed as follows: The Kansas AFL-CIO and the Kansas chamber of~~  
2 ~~commerce and industry shall each select one representative to serve on the~~  
3 ~~workers compensation board nominating committee and shall give written~~  
4 ~~notice of the selection to the secretary who shall appoint such~~  
5 ~~representatives to the committee. In the event of a vacancy occurring for~~  
6 ~~any reason on the nominating committee, the respective member shall be~~  
7 ~~replaced by the appointing organization with written notice of the~~  
8 ~~appointment to the secretary of labor within 30 days of such vacancy.~~

9 ~~(f) (1) Upon being notified of any vacancy on the board or of the~~  
10 ~~need to appoint a member pro tem under subsection (i), the nominating~~  
11 ~~committee shall consider all qualified applicants submitted by the director~~  
12 ~~for the vacant position on the board or the member pro tem position and~~  
13 ~~nominate a person qualified therefor. The nominating committee shall be~~  
14 ~~required to reach unanimous agreement on any nomination to the board.~~  
15 ~~With respect to each person nominated, the secretary either shall accept~~  
16 ~~and appoint the person nominated by the nominating committee to the~~  
17 ~~position on the board for which the nomination was made or shall reject~~  
18 ~~the nomination and request the nominating committee to nominate another~~  
19 ~~person for that position. Upon receipt of any such request for the~~  
20 ~~nomination of another person, the nominating committee shall nominate~~  
21 ~~another person for that position in the same manner.~~

22 ~~(2) The first members of the board established by this section are~~  
23 ~~hereby appointed as follows: Each person who was a member of the~~  
24 ~~workers compensation board which was in existence on January 12, 1995,~~  
25 ~~is hereby appointed, effective January 13, 1995, as a member of the board~~  
26 ~~established by this section. The term of office of each person so appointed~~  
27 ~~as a member of the board established by this section is for the period equal~~  
28 ~~to the remainder of the term of office such person had as of January 12,~~  
29 ~~1995, as a member of the workers compensation board which was in~~  
30 ~~existence on January 12, 1995.~~

31 ~~(3) Each member of the board shall hold office for the term of the~~  
32 ~~appointment and until the successor shall have been appointed.~~  
33 ~~Successors to such members shall be appointed for terms of four~~  
34 ~~years.~~

35 ~~(4) If a vacancy should occur on the board during the term of a~~  
36 ~~member, the nominating committee shall nominate an individual from the~~  
37 ~~qualified applicants submitted by the director to complete the remainder of~~  
38 ~~the unexpired portion of the term. With respect to each person so~~  
39 ~~nominated, the secretary either shall accept and appoint the person~~  
40 ~~nominated to the board or shall reject the nomination and request the~~  
41 ~~nominating committee to nominate another person for the position. Upon~~  
42 ~~receipt of any such request for the nomination of another person, the~~  
43 ~~nominating committee shall nominate another person for the position in~~

1 ~~the same manner.~~

2 ~~(g)(f)~~ Following the completion of a term, board members who  
3 wish to be considered for reappointment to the board shall be deemed  
4 to have met the qualification requirements for selection to the board  
5 and shall be considered for renomination by the workers  
6 compensation—~~board~~ and employment security boards nominating  
7 committee.

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

10 ~~(i)(h)~~ If illness or other temporary disability of a member of the  
11 board will not permit the member to serve during a case or in any case  
12 in which a member of the board must be excused from serving  
13 because of a conflict or is otherwise disqualified with regard to such  
14 case, the director shall notify the workers compensation and  
15 employment security boards nominating committee of the need to  
16 appoint a member pro tem. ~~Upon receipt of such notice, the committee~~  
17 ~~shall act as soon as possible and nominate a qualified person to serve as~~  
18 ~~member pro tem in such case in accordance with subsection (f).~~ Each  
19 member pro tem shall receive compensation at the same rate as a  
20 member of the board receives, prorated for the hours of actual service  
21 as a member pro tem and shall receive expenses under the same  
22 circumstances and to the same extent as a member of the board  
23 receives. Each member pro tem shall have all the powers, duties and  
24 functions of a member of the board with regard to the case.

25 ~~(j)(i)~~ The board shall maintain principal offices in Topeka,  
26 Kansas, and the board may conduct hearings at a courthouse of any  
27 county in Kansas or at another location specified by the board. The  
28 secretary of labor shall provide a courtroom and other suitable  
29 quarters in Topeka, Kansas, for the use of the board and its staff.  
30 When the board conducts hearings at any location other than in  
31 Topeka, Kansas, the director shall make suitable arrangements for  
32 such hearings. Subject to the provisions of appropriation acts, the  
33 director shall provide such supplies and equipment and shall appoint  
34 such support personnel as may be necessary for the board to fulfill the  
35 duties imposed by this act, subject to approval by the secretary.

36 ~~(k)(j)~~ For purposes of hearing cases, the board may sit together or  
37 in panels of ~~two~~ three members or more, designated by the chairperson  
38 of the board, except that an appeal from a preliminary award entered  
39 under K.S.A. 44-534a, and amendments thereto, may be heard by a  
40 panel of one member designated by the chairperson. ~~All members of~~  
41 ~~the board shall determine each matter before the board.~~ All decisions,  
42 reviews and determinations by the board shall be approved in writing  
43 ~~by at least three board members~~ a majority comprised of not less than

1 *three of the members hearing the case. Whenever the board enters a*  
2 **final order in any proceeding, the board shall make written findings of**  
3 **fact and conclusions of law forming the basis of the board's**  
4 **determination and final order. The findings of fact and conclusions of**  
5 **law of the board shall be made a part of the final order. The board**  
6 **shall mail a copy of the final order of the board to all parties to the**  
7 **proceeding within three days following the issuance of the final order.**

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

16 **(b) Determination. (1) Except as otherwise provided in this**  
17 **subsection (b)(1), a representative designated by the secretary, and**  
18 **hereinafter referred to as an examiner, shall promptly examine the**  
19 **claim and, on the basis of the facts found by the examiner, shall**  
20 **determine whether or not the claim is valid. If the examiner**  
21 **determines that the claim is valid, the examiner shall determine the**  
22 **first day of the benefit year, the weekly benefit amount and the total**  
23 **amount of benefits payable with respect to the benefit year. If the**  
24 **claim is determined to be valid, the examiner shall send a notice to the**  
25 **last employing unit who shall respond within 10 days by providing the**  
26 **examiner all requested information including all information required**  
27 **for a decision under K.S.A. 44-706, and amendments thereto. The**  
28 **information may be submitted by the employing unit in person at an**  
29 **employment office of the secretary or by mail, by telefacsimile**  
30 **machine or by electronic mail. If the required information is not**  
31 **submitted or postmarked within a response time limit of 10 days after**  
32 **the examiner's notice was sent, the employing unit shall be deemed to**  
33 **have waived its standing as a party to the proceedings arising from the**  
34 **claim and shall be barred from protesting any subsequent decisions**  
35 **about the claim by the secretary, a referee, the board of review or any**  
36 **court, except that the employing unit's response time limit may be**  
37 **waived or extended by the examiner or upon appeal, if timely response**  
38 **was impossible due to excusable neglect. In any case in which the**  
39 **payment or denial of benefits will be determined by the provisions of**  
40 **subsection (d) of K.S.A. 44-706, and amendments thereto, the**  
41 **examiner shall promptly transmit the claim to a special examiner**  
42 **designated by the secretary to make a determination on the claim**  
43 **after the investigation as the special examiner deems necessary. The**

1 parties shall be promptly notified of the special examiner's decision  
2 and any party aggrieved by the decision may appeal to the referee as  
3 provided in subsection (c). The claimant and the claimant's most  
4 recent employing unit shall be promptly notified of the examiner's or  
5 special examiner's decision.

6 (2) The examiner may for good cause reconsider the examiner's  
7 decision and shall promptly notify the claimant and the most recent  
8 employing unit of the claimant, that the decision of the examiner is to  
9 be reconsidered, except that no reconsideration shall be made after the  
10 termination of the benefit year.

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

19 (c) Appeals. Unless the appeal is withdrawn, a referee, after  
20 affording the parties reasonable opportunity for fair hearing, shall  
21 affirm or modify the findings of fact and decision of the examiner or  
22 special examiner. The parties shall be duly notified of the referee's  
23 decision, together with the reasons for the decision. The decision shall  
24 be final, notwithstanding the provisions of any other statute, unless a  
25 further appeal to the board of review is filed within 16 calendar days  
26 after the mailing of the decision to the parties' last known addresses  
27 or, if notice is not by mail, within 16 calendar days after the delivery of  
28 the decision.

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

32 (e) Time, computation and extension. In computing the period of  
33 time for an employing unit response or for appeals under this section  
34 from the examiner's or the special examiner's determination or from  
35 the referee's decision, the day of the act, event or default from which  
36 the designated period of time begins to run shall not be included. The  
37 last day of the period shall be included unless it is a Saturday, Sunday  
38 or legal holiday, in which event the period runs until the end of the  
39 next day which is not a Saturday, Sunday or legal holiday.

40 (f) Board of review. (1) There is hereby created a board of review,  
41 hereinafter referred to as the board, consisting of three members.  
42 Except as provided by paragraph (2) of this subsection, each member  
43 of the board shall be appointed for a term of four years as provided in

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

32 (2) **The terms of members who are serving on the board on the**  
33 **effective date of this act shall expire on March 15, of the year in which**  
34 **such member's term would have expired under the provisions of this**  
35 **section prior to amendment by this act. Thereafter, members shall be**  
36 **appointed for terms of four years and until their successors are**  
37 **appointed and confirmed.**

38 (3) **Each member of the board shall serve until a successor has**  
39 **been appointed and confirmed. Any vacancy in the membership of the**  
40 **board occurring prior to expiration of a term shall be filled by**  
41 **appointment for the unexpired term in the same manner as provided**  
42 **for original appointment of the member.** ~~Each member shall be~~  
43 ~~appointed as representative of the same special interest group represented~~



1 ~~by the predecessor of the member.~~

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

9 (5) The board shall organize annually by the election of a  
10 chairperson from among its members. The chairperson shall serve in  
11 that capacity for a term of one year and until a successor is elected.  
12 The board shall meet on the first Monday of each month or on the call  
13 of the chairperson or any two members of the board at the place  
14 designated. The secretary of labor shall appoint an executive secretary  
15 of the board and the executive secretary shall attend the meetings of  
16 the board.

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

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

33 (g) *Procedure.* The manner in which disputed claims are  
34 presented, the reports on claims required from the claimant and from  
35 employers and the conduct of hearings and appeals shall be in  
36 accordance with rules of procedure prescribed by the board for  
37 determining the rights of the parties, whether or not such rules  
38 conform to common law or statutory rules of evidence and other  
39 technical rules of procedure. A full and complete record shall be kept  
40 of all proceedings and decisions in connection with a disputed claim.  
41 All testimony at any hearing upon a disputed claim shall be recorded,  
42 but need not be transcribed unless the disputed claim is further  
43 appealed. In the performance of its official duties, the board shall have

1 access to all of the records which pertain to the disputed claim and are  
2 in the custody of the secretary of labor and shall receive the assistance  
3 of the secretary upon request.

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

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

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

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

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

1        ~~Sec. 11.12.~~ **Sec. 6.** This act shall take effect and be in force from and  
2 after ~~January 1, 2014, and~~ its publication in the statute book.