

SENATE BILL No. 187

By Committee on Commerce

2-13

1 AN ACT concerning workers; relating to the workers compensation and
2 employment security boards nominating committee; administrative law
3 judge appointments; workers compensation appeals board; amending
4 K.S.A. 2012 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. K.S.A. 2012 Supp. 44-551 is hereby amended to read as
9 follows: 44-551. (a) The duties of the assistant directors of workers
10 compensation may include but not be limited to acting in the capacity of
11 an administrative law judge.

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

16 (c) Except as provided in subsection ~~(g)~~ (k), the annual salary of each
17 administrative law judge shall be an amount equal to ~~75%~~ 85% of the
18 annual salary paid by the state to a district judge, other than a district judge
19 designated as a chief judge. Administrative law judges shall devote full
20 time to the duties of such office and shall not engage in the private practice
21 of law during their term of office. No administrative law judge may
22 receive additional compensation for official services performed by the
23 administrative law judge. Each administrative law judge shall be
24 reimbursed for expenses incurred in the performance of such official duties
25 under the same circumstances and to the same extent as district judges are
26 reimbursed for such expenses.

27 (d) Applications for administrative law judge positions shall be
28 submitted to the director of workers compensation. The director shall
29 determine if an applicant meets the qualifications for an administrative law
30 judge as prescribed in subsection (b). Qualified applicants for a position of
31 administrative law judge shall be submitted by the director to the workers
32 compensation ~~administrative law judge nominating and review committee~~
33 ~~and employment security boards nominating committee~~ for consideration.

34 (e) ~~There is hereby established the workers compensation~~

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

12 (f) (1) Upon being notified of any vacancy in the position of
13 administrative law judge, the administrative law judge nominating and
14 review committee shall consider all qualified applicants submitted by the
15 director for the vacant position of administrative law judge and nominate a
16 person qualified therefor. The administrative law judge nominating and
17 review committee shall be required to reach unanimous agreement on any
18 nomination to the position of administrative law judge. With respect to
19 each person nominated, the secretary either shall accept and appoint the
20 person nominated by the administrative law judge nominating and review
21 committee to the position of administrative law judge for which the
22 nomination was made or shall reject the nomination and request the
23 administrative law judge nominating and review committee to nominate
24 another person for that position. Upon receipt of any such request for the
25 nomination of another person, the administrative law judge nominating
26 and review committee shall nominate another person for that position in
27 the same manner *There is hereby established the workers compensation
28 and employment security boards nominating committee which. Whenever
29 the workers compensation administrative law judge nominating and
30 review committee or the workers compensation board nominating
31 committee, or words of like effect, is referred to or designated by a
32 statute, contract or other document, such reference or designation shall
33 be deemed to apply to the workers compensation and employment
34 security boards nominating committee. The workers compensation and
35 employment security boards nominating committee shall be composed of
36 seven members who are appointed by the governor. Each of the following
37 shall select one member to serve on the nominating committee by giving
38 written notice of the selection to the governor who shall appoint such
39 representatives to the committee:*

- 40 (1) *The Kansas secretary of labor;*
- 41 (2) *the Kansas chamber of commerce;*
- 42 (3) *the national federation of independent business;*
- 43 (4) *the Kansas AFL-CIO;*

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

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

4 (7) *the secretary of labor, who shall select a nominee from either an*
5 *employee organization as defined in K.S.A. 75-4322, and amendments*
6 *thereto, or a professional employees' organization as defined in K.S.A. 72-*
7 *5413, and amendments thereto.*

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

11 ***(f) {Of the members first appointed to the workers compensation***
12 ***and employment security boards nominating committee, three shall be***
13 ***appointed for terms of two years and four shall be appointed for terms of***
14 ***four years as specified by the governor. Thereafter,}*** *members of the*
15 *nominating committee shall ~~serve~~ {be appointed for} a term of four years.*
16 *Members may not serve more than two consecutive terms.*

17 (g) *In the event of a vacancy on the nominating committee occurring*
18 *for any reason, the respective member whose position becomes vacant*
19 *shall be replaced by the selecting organization by submitting written*
20 *notice of the replacement selection to the governor within 30 days of such*
21 *vacancy. The governor shall either appoint or reject the replacement*
22 *selection as provided in this section.*

23 (h) *The nominating committee shall meet as needed to provide the*
24 *workers compensation and employment security board of review*
25 *appointing authorities with nominees for appointments to the position of:*

26 (1) *Workers compensation administrative law judge;*

27 (2) *workers compensation appeals board member; and*

28 (3) *employment security board of review.*

29 *No action of the committee shall be effective unless approved by two-*
30 *thirds of the committee.*

31 (i) *When notified of a vacancy in the position of workers*
32 *compensation administrative law judge or workers compensation appeals*
33 *board member, the committee shall review all qualified applicants as*
34 *submitted by the director of workers compensation. The committee shall*
35 *nominate a qualified person to fill the vacancy and submit that nomination*
36 *to the secretary of labor. The secretary shall either accept and appoint the*
37 *person nominated by the nominating committee to the position for which*
38 *the nomination was made or reject the nomination and request the*
39 *nominating committee to nominate another person for that position. Upon*
40 *receipt of any such request for the nomination of another person, the*
41 *nominating committee shall nominate another person for that position in*
42 *the same manner as set forth above.*

43 ~~(2)~~(j) (1) *Each administrative law judge shall hold office for a term of*

1 four years and may be reappointed. Each administrative law judge shall
2 continue to serve for the term of the appointment or until a successor is
3 appointed. ~~Successors to such administrative law judge positions shall be~~
4 ~~appointed for terms of four years~~ *An administrative law judge who wishes*
5 *to be considered for reappointment shall be deemed to have met the*
6 *qualification requirements for appointment as administrative law judge. If*
7 *such administrative law judge wishes to be considered for reappointment*
8 *by the nominating committee, such administrative law judge shall submit*
9 *an application as provided in subsection (d) no sooner than 150 days*
10 *before and no later than 90 days prior to the expiration of such judge's*
11 *term. Within sixty days prior to the expiration of the term of the*
12 *administrative law judge seeking reappointment, the nominating*
13 *committee described above shall meet to vote on reappointment of the*
14 *administrative law judge. The administrative law judge shall be submitted*
15 *to the secretary for reappointment unless $\frac{2}{3}$ of the nominating committee*
16 *votes not to submit the administrative law judge for reappointment.*

17 ~~(2)~~ (2) If a vacancy should occur in the position of an administrative
18 law judge during the term of an administrative law judge, ~~the~~
19 ~~administrative law judge nominating and review committee~~ *the*
20 *nominating committee* shall nominate an individual from the qualified
21 applicants submitted by the director to complete the remainder of the
22 unexpired portion of the term.

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

40 ~~(h)~~ Following the completion of a term, an administrative law judge
41 ~~who wishes to be considered for reappointment to such judge's position~~
42 ~~shall be deemed to have met the qualification requirements for~~
43 ~~appointment as administrative law judge and shall be considered for~~

1 ~~renomination by the workers compensation administrative law judge~~
2 ~~nominating and review committee.~~

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

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

32 (B) If an order on review is not issued by the board within the
33 applicable time period prescribed by subsection (i)(1), medical
34 compensation and any disability compensation as provided in the award of
35 the administrative law judge shall be paid commencing with the first day
36 after such time period and shall continue to be paid until the order of the
37 board is issued, except that no payments shall be made under this
38 provision for any period before the first day after such time period.
39 Nothing in this section shall be construed to limit or restrict any other
40 remedies available to any party to a claim under any other statute.

41 (C) In any case in which the final award of an administrative law
42 judge is appealed to the board for review under this section and in which
43 the compensability is not an issue to be decided on review by the board,

1 medical compensation shall be payable in accordance with the award of
2 the administrative law judge and shall not be stayed pending such review.
3 The employee may proceed under K.S.A. 44-510k, and amendments
4 thereto, and may have a hearing in accordance with that statute to enforce
5 the provisions of this subsection.

6 ~~(j)~~(m) Each assistant director and each administrative law judge or
7 special administrative law judge shall be allowed all reasonable and
8 necessary expenses actually incurred while in the actual discharge of
9 official duties in administering the workers compensation act, but such
10 expenses shall be sworn to by the person incurring the same and be
11 approved by the secretary.

12 ~~(k)~~(n) In case of emergency the director may appoint special local
13 administrative law judges and assign to them the examination and hearing
14 of any designated case or cases. Such special local administrative law
15 judges shall be attorneys and admitted to practice law in the state of
16 Kansas and shall, as to all cases assigned to them, exercise the same
17 powers as provided by this section for the regular administrative law
18 judges. Special local administrative law judges shall receive a fee
19 commensurate with the services rendered as fixed by rules and regulations
20 adopted by the director. The fees prescribed by this section prior to the
21 effective date of this act shall be effective until different fees are fixed by
22 such rules and regulations.

23 ~~(l)~~(o) All special local administrative law judge's fees and expenses,
24 with the exception of settlement hearings, shall be paid from the workers
25 compensation administration fee fund, as provided in K.S.A. 74-712, and
26 amendments thereto. Where there are no available funds or where the
27 special local administrative law judge conducted a settlement hearing, the
28 fees shall be taxed as costs in each case heard by such special local
29 administrative law judge and when collected shall be paid directly to such
30 special local administrative law judge by the party charged with the
31 payment of the same.

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

35 Sec. 2. K.S.A. 2012 Supp. 44-555c is hereby amended to read as
36 follows: 44-555c. (a) There is hereby established the workers
37 compensation *appeals* board. ***Whenever the workers compensation***
38 ***board, or words of like effect, is referred to or designated by a statute,***
39 ***contract or other document, such reference or designation shall be***
40 ***deemed to apply to the workers compensation appeals board.*** The board
41 shall have exclusive jurisdiction to review all decisions, findings, orders
42 and awards of compensation of administrative law judges under the
43 workers compensation act. The review by the *appeals* board shall be upon

1 questions of law and fact as presented and shown by a transcript of the
2 evidence and the proceedings as presented, had and introduced before the
3 administrative law judge. The *appeals* board shall be within the division of
4 workers compensation of the department of labor and all budgeting,
5 personnel, purchasing and related management functions of the board shall
6 be administered under the supervision and direction of the secretary of
7 labor. The *appeals* board shall consist of five members who shall be
8 appointed by the secretary in accordance with this section and who shall
9 each serve for a term of four years, except as provided for the first
10 members appointed to the board under subsection (f).

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

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

30 (d) Applications for membership on the board shall be submitted to
31 the director of workers compensation. The director shall determine if an
32 applicant meets the qualifications for membership on the board prescribed
33 in subsection (b). Qualified applicants for the board will be submitted by
34 the director to the workers compensation board nominating committee for
35 consideration.

36 ~~(e) There is hereby established the workers compensation board~~
37 ~~nominating committee which shall be composed of two members~~
38 ~~appointed as follows: The Kansas AFL-CIO and the Kansas chamber of~~
39 ~~commerce and industry shall each select one representative to serve on the~~
40 ~~workers compensation board nominating committee and shall give written~~
41 ~~notice of the selection to the secretary who shall appoint such~~
42 ~~representatives to the committee. In the event of a vacancy occurring for~~
43 ~~any reason on the nominating committee, the respective member shall be~~

1 replaced by the appointing organization with written notice of the
2 appointment to the secretary of labor within 30 days of such vacancy.

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

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

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

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

38 (g) ~~Following the completion of a term, board members who wish to~~
39 ~~be considered for reappointment to the board shall be deemed to have met~~
40 ~~the qualification requirements for selection to the board and shall be~~
41 ~~considered for renomination by the workers compensation board~~
42 ~~nominating committee.~~

43 (f) *A board member who wishes to be considered for reappointment*

1 shall be deemed to have met the qualification requirements for
2 appointment as a board member. If a board member wishes to be
3 considered for reappointment by the nominating committee, such board
4 member shall submit an application as provided in subsection (d) no
5 sooner than 150 days before and no later than 90 days prior to the
6 expiration of such member's term. No later than thirty days prior to the
7 expiration of the term, the nominating committee shall convene to vote on
8 the reappointment of the board member. The board member shall be
9 submitted to the secretary for reappointment unless $\frac{2}{3}$ of the nominating
10 committee votes not to submit the board member's name for
11 reappointment.

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

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

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

38 (k) For purposes of hearing cases, the board may sit together or in
39 panels of ~~two~~ ~~three~~ ~~two~~ members or more, designated by the chairperson
40 of the board, except that an appeal from a preliminary award entered under
41 K.S.A. 44-534a, and amendments thereto, may be heard by a panel of one
42 member designated by the chairperson. All members of the board shall
43 determine each matter before the board. All decisions, reviews and

1 determinations by the board shall be approved in writing by ~~at least three~~
2 ~~board members~~ *a majority comprised of not less than three of the members*
3 *hearing the case at least three board members*. Whenever the board enters
4 a final order in any proceeding, the board shall make written findings of
5 fact and conclusions of law forming the basis of the board's determination
6 and final order. The findings of fact and conclusions of law of the board
7 shall be made a part of the final order. The board shall mail a copy of the
8 final order of the board to all parties to the proceeding within three days
9 following the issuance of the final order.

10 Sec. 3. K.S.A. 2012 Supp. 44-709 is hereby amended to read as
11 follows: 44-709. (a) *Filing*. Claims for benefits shall be made in
12 accordance with rules and regulations adopted by the secretary. The
13 secretary shall furnish a copy of such rules and regulations to any
14 individual requesting them. Each employer shall post and maintain printed
15 statements furnished by the secretary without cost to the employer in
16 places readily accessible to individuals in the service of the employer.

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

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

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

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

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

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

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

37 (f) *Board of review*. (1) There is hereby created a board of review,
38 hereinafter referred to as the board, consisting of three members. ~~Except as~~
39 ~~provided by paragraph (2) of this subsection,~~ Each member of the board
40 shall be appointed for a term of four years as provided in this subsection.
41 ~~Two members shall be appointed by the governor, subject to confirmation~~
42 ~~by the senate as provided in K.S.A. 75-4315b, and amendments thereto.~~
43 ~~Except as provided by K.S.A. 46-2601, and amendments thereto, no~~

1 person appointed to the board, whose appointment is subject to
2 confirmation by the senate, shall exercise any power, duty or function as a
3 member until confirmed by the senate. One member shall be representative
4 of employees, one member shall be representative of employers, and one
5 member shall be representative of the public in general. The appointment
6 of the employee representative member of the board shall be made by the
7 governor from a list of three nominations submitted by the Kansas A.F.L.-
8 C.I.O. The appointment of the employer representative member of the
9 board shall be made by the governor from a list of three nominations
10 submitted by the Kansas chamber of commerce and industry. The
11 appointment of the public representative member of the board, who,
12 because of vocation, occupation or affiliation may be deemed not to be
13 representative of either management or labor, shall be made by the
14 members appointed by the governor as employee representative and
15 employer representative. If the two members do not agree and fail to make
16 the appointment of the public member within 30 days after the expiration
17 of the public member's term of office, the governor shall appoint the
18 representative of the public. Not more than two members of the board shall
19 belong to the same political party.

20 (2) The terms of members who are serving on the board on the
21 effective date of this act shall expire on March 15 of the year in which
22 such member's term would have expired under the provisions of this
23 section prior to amendment by this act. Thereafter, members shall be
24 appointed for terms of four years and until their successors are appointed
25 and confirmed. *When a vacancy on the employment security board of
26 review occurs, the nominating committee established under K.S.A. 44-551,
27 and amendments thereto, shall convene and submit a nominee to the
28 governor for **appointment to each vacancy on the board of review, subject
29 to confirmation by the senate as provided by K.S.A. 75-4315b, and
30 amendments thereto.** The governor shall either: (A) Accept and submit to
31 the senate for confirmation the person nominated by the nominating
32 committee; or (B) reject the nomination and request the nominating
33 committee to nominate another person for that position. Except as
34 provided by K.S.A. 46-2601, and amendments thereto, no person
35 appointed to the board, whose appointment is subject to confirmation by
36 the senate, shall exercise any power, duty or function as a member until
37 confirmed by the senate.*

38 (3) No board member shall serve more than two consecutive terms.

39 ~~(3)~~(4) Each member of the board shall serve until a successor has
40 been appointed and confirmed. Any vacancy in the membership of the
41 board occurring prior to expiration of a term shall be filled by appointment
42 for the unexpired term in the same manner as provided for original
43 appointment of the member. ~~Each member shall be appointed as~~

1 ~~representative of the same special interest group represented by the~~
2 ~~predecessor of the member.~~

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

10 (5)(6) The board shall organize annually by the election of a
11 chairperson from among its members. The chairperson shall serve in that
12 capacity for a term of one year and until a successor is elected. The board
13 shall meet on the first Monday of each month or on the call of the
14 chairperson or any two members of the board at the place designated. The
15 secretary of labor shall appoint an executive secretary of the board and the
16 executive secretary shall attend the meetings of the board.

17 (6)(7) 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 submitted
19 in the case; may direct the taking of additional evidence; or may permit
20 any of the parties to initiate further appeal before it. The board shall permit
21 such further appeal by any of the parties interested in a decision of a
22 referee which overrules or modifies the decision of an examiner. The board
23 may remove to itself the proceedings on any claim pending before a
24 referee. Any proceedings so removed to the board shall be heard in
25 accordance with the requirements of subsection (c). The board shall
26 promptly notify the interested parties of its findings and decision.

27 (7)(8) Two members of the board shall constitute a quorum and no
28 action of the board shall be valid unless it has the concurrence of at least
29 two members. A vacancy on the board shall not impair the right of a
30 quorum to exercise all the rights and perform all the duties of the board.

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

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

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

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

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

36 Sec. 4. K.S.A. 2012 Supp. 44-551, 44-555c and 44-709 are hereby
37 repealed.

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