

FIRST REGULAR SESSION

# HOUSE BILL NO. 343

101ST GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE SCHROER.

1183H.011

DANA RADEMAN MILLER, Chief Clerk

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## AN ACT

To repeal sections 287.610, 287.615, and 287.812, RSMo, and to enact in lieu thereof three new sections relating to workers' compensation.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 287.610, 287.615, and 287.812, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 287.610, 287.615, and 287.812, to read as follows:

287.610. 1. After August 28, 2005, the division may appoint additional administrative law judges for a maximum of forty authorized administrative law judges. **Notwithstanding the provisions of section 36.025 to the contrary, beginning August 28, 2021, all administrative law judges currently serving and all administrative law judges appointed by the division shall be subject to a defined term as provided in this section. The terms of administrative law judges serving as of August 28, 2021, shall be staggered based on their total months of service. The terms of the thirteen administrative law judges with the most months of service shall be two years in length, and such judges shall be classified as "Tier I" judges. The terms of the thirteen administrative law judges with the next most months of service shall be four years in length, and such judges shall be classified as "Tier II" judges. The terms of the administrative law judges appointed and not previously referenced in this subsection shall be six years in length, and such judges shall be classified as "Tier III" judges. Thereafter, all terms of service for administrative law judges shall be for six years in length.**

2. Every administrative law judge appointed shall be designated to serve within a specific tier under subsection 1 of this section, and any administrative law judge appointed

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 to fill a vacancy occurring prior to the expiration of the term for which the judge's  
18 predecessor was appointed shall be appointed by the division director for the remainder  
19 of such predecessor's term. In no case shall an administrative law judge serve beyond his  
20 or her term unless reappointed by the division director. In addition to any other  
21 mechanism for removal of an administrative law judge as provided in this chapter, an  
22 administrative law judge may be removed by the division director prior to the end of his  
23 or her term for gross inefficiency; incapacity; neglect of duties; malfeasance, misfeasance,  
24 or nonfeasance in office; incompetence; or for any offense involving moral turpitude or  
25 oppression in office.

26 3. Appropriations shall be based upon necessity, measured by the requirements and needs  
27 of each division office. Administrative law judges shall be duly licensed lawyers under the laws  
28 of this state. Administrative law judges shall not practice law or do law business and shall  
29 devote their whole time to the duties of their office. The director of the division of workers'  
30 compensation shall publish and maintain on the division's website the appointment dates or  
31 initial dates of service for all administrative law judges.

32 ~~[2. The thirteen administrative law judges with the most years of service shall be subject~~  
33 ~~to a retention vote on August 28, 2008. The next thirteen administrative law judges with the~~  
34 ~~most years of service in descending order shall be subject to a retention vote on August 28, 2012.~~  
35 ~~Administrative law judges appointed and not previously referenced in this subsection shall be~~  
36 ~~subject to a retention vote on August 28, 2016. Subsequent retention votes shall be held every~~  
37 ~~twelve years. Any administrative law judge who has received two or more votes of no~~  
38 ~~confidence under performance audits by the committee shall not receive a vote of retention.~~

39 ~~3.]~~ 4. Administrative law judges in Tier I shall be subject to a retention vote no  
40 later than August 28, 2023, and shall receive a retention vote every four years thereafter.  
41 Administrative law judges in Tier II shall be subject to a retention vote no later than  
42 August 28, 2025, and shall receive a retention vote every four years thereafter.  
43 Administrative law judges in Tier III shall be subject to a retention vote no later than  
44 August 28, 2027, and shall receive a retention vote every four years thereafter. Any  
45 administrative law judge not receiving an affirmative majority vote for retention by the  
46 administrative law judge review committee may have his or her appointment withdrawn  
47 immediately by the division director.

48 5. The administrative law judge review committee members shall not have any direct or  
49 indirect employment or financial connection with a workers' compensation insurance company,  
50 claims adjustment company, health care provider nor be a practicing workers' compensation  
51 attorney. All members of the committee shall have a working knowledge of workers'  
52 compensation.

53           ~~[4. The committee shall within thirty days of completing each performance audit make~~  
54 ~~a recommendation of confidence or no confidence for each administrative law judge.~~

55           ~~5.]~~ 6. The administrative law judges appointed by the division shall only have  
56 jurisdiction to hear and determine claims upon original hearing and shall have no jurisdiction  
57 upon any review hearing, either in the way of an appeal from an original hearing or by way of  
58 reopening any prior award, except to correct a clerical error in an award or settlement if the  
59 correction is made by the administrative law judge within twenty days of the original award or  
60 settlement. The labor and industrial relations commission may remand any decision of an  
61 administrative law judge for a more complete finding of facts. The commission may also correct  
62 a clerical error in awards or settlements within thirty days of its final award. With respect to  
63 original hearings, the administrative law judges shall have such jurisdiction and powers as are  
64 vested in the division of workers' compensation under other sections of this chapter, and  
65 wherever in this chapter the word "commission", "commissioners" or "division" is used in  
66 respect to any original hearing, those terms shall mean the administrative law judges appointed  
67 under this section. When a hearing is necessary upon any claim, the division shall assign an  
68 administrative law judge to such hearing. Any administrative law judge shall have power to  
69 approve contracts of settlement, as provided by section 287.390, between the parties to any  
70 compensation claim or dispute under this chapter pending before the division of workers'  
71 compensation. Any award by an administrative law judge upon an original hearing shall have  
72 the same force and effect, shall be enforceable in the same manner as provided elsewhere in this  
73 chapter for awards by the labor and industrial relations commission, and shall be subject to  
74 review as provided by section 287.480.

75           ~~[6.]~~ 7. Any of the administrative law judges employed pursuant to this section may be  
76 assigned on a temporary basis to the branch offices as necessary in order to ensure the proper  
77 administration of this chapter.

78           ~~[7.]~~ 8. All administrative law judges shall be required to participate in, on a continuing  
79 basis, specific training that shall pertain to those elements of knowledge and procedure necessary  
80 for the efficient and competent performance of the administrative law judges' required duties and  
81 responsibilities. Such training requirements shall be established by the division subject to  
82 appropriations and shall include training in medical determinations and records, mediation and  
83 legal issues pertaining to workers' compensation adjudication. Such training may be credited  
84 toward any continuing legal education requirements.

85           ~~[8.]~~ 9. (1) The administrative law judge review committee shall conduct a performance  
86 audit of all administrative law judges **by August twenty-eighth of every [two years] odd-**  
87 **numbered year.** The audit results, stating the committee's recommendation of confidence or  
88 no confidence of each administrative law judge shall be sent to the governor **and the division**

89 **director** no later than the first week of each legislative session immediately following such audit.  
90 ~~[Any administrative law judge who has received three or more votes of no confidence under two~~  
91 ~~successive performance audits by the committee may have their appointment immediately~~  
92 ~~withdrawn.]~~

93 (2) The review committee shall consist of one member appointed by the president pro  
94 tem of the senate, one member appointed by the minority leader of the senate, one member  
95 appointed by the speaker of the house of representatives, ~~[and]~~ one member appointed by the  
96 minority leader of the house of representatives, **and one member appointed by the governor.**  
97 ~~[The governor shall appoint to the committee one member selected from the commission on~~  
98 ~~retirement, removal, and discipline of judges. This member shall act as a member ex officio and~~  
99 ~~shall not have a vote in the committee.]~~ The committee shall annually elect a chairperson from  
100 its members for a term of one year. The term of service for all members shall be two years. The  
101 review committee members shall all serve without compensation. Necessary expenses for  
102 review committee members and all necessary support services to the review committee shall be  
103 provided by the division.

104 (3) **The deliberations of the committee shall be in closed session and the contents**  
105 **of performance audits, except for the final recommendation of "confidence" or "no**  
106 **confidence", shall be considered a closed performance rating record under section 610.021.**

107 ~~[9.]~~ 10. No rule or portion of a rule promulgated pursuant to the authority of this section  
108 shall become effective unless it has been promulgated pursuant to the provisions of chapter 536.

287.615. 1. The division may appoint or employ such persons as may be necessary to  
2 the proper administration of this chapter. All salaries ~~[to clerical]~~ of employees **including, but**  
3 **not limited to, administrative law judges** shall be fixed by the division ~~[and approved by the~~  
4 ~~labor and industrial relations commission. Beginning January 1, 2006, the annual salary of each~~  
5 ~~administrative law judge, administrative law judge in charge, and chief legal counsel shall be as~~  
6 ~~follows:~~

7 ~~—— (1) For any chief legal counsel located at the division office in Jefferson City, Missouri;~~  
8 ~~compensation at two thousand dollars above eighty percent of the rate at which an associate~~  
9 ~~circuit judge is compensated;~~

10 ~~—— (2) For each administrative law judge, compensation at ninety percent of the rate at~~  
11 ~~which an associate division circuit judge is compensated;~~

12 ~~—— (3) For each administrative law judge in charge, compensation at the same rate as an~~  
13 ~~administrative law judge plus five thousand dollars].~~

14 2. The salary of the director of the division of workers' compensation shall be set by the  
15 director of the department of labor and industrial relations, but shall not be less than the salary  
16 plus two thousand dollars of an administrative law judge in charge. The appointees in each

17 classification shall be selected as nearly as practicable in equal numbers from each of the two  
18 political parties casting the highest and the next highest number of votes for governor in the last  
19 preceding state election.

287.812. As used in sections 287.812 to 287.855, unless the context clearly requires  
2 otherwise, the following terms shall mean:

3 (1) "Administrative law judge", any person appointed pursuant to section 287.610 or  
4 section 621.015, or any person who hereafter may have by law all of the powers now vested by  
5 law in administrative law judges appointed under the provisions of the workers' compensation  
6 law;

7 (2) "Beneficiary", a surviving spouse married to the deceased administrative law judge  
8 or legal advisor of the division of workers' compensation continuously for a period of at least two  
9 years immediately preceding the administrative law judge's or legal advisor's death and also on  
10 the day of the last termination of such person's employment as an administrative law judge or  
11 legal advisor for the division of workers' compensation, or if there is no surviving spouse eligible  
12 to receive benefits, any minor child of the deceased administrative law judge or legal advisor,  
13 or any child of the deceased administrative law judge or legal advisor who, regardless of age, is  
14 unable to support himself because of intellectual disability, disease or disability, or any physical  
15 handicap or disability, who shall share in the benefits on an equal basis with all other  
16 beneficiaries;

17 (3) "Benefit", a series of equal monthly payments payable during the life of an  
18 administrative law judge or legal advisor of the division of workers' compensation retiring  
19 pursuant to the provisions of sections 287.812 to 287.855 or payable to a beneficiary as provided  
20 in sections 287.812 to 287.850;

21 (4) "Board", the board of trustees of the Missouri state employees' retirement system;

22 ~~(5) "Chief legal counsel", any person appointed or employed under section 287.615 to~~  
23 ~~serve in the capacity of legal counsel to the division;~~

24 ~~—(6) "Division", the division of workers' compensation of the state of Missouri;~~

25 ~~[(7)]~~ (6) "Legal advisor", any person appointed or employed pursuant to section  
26 287.600, 287.615, or 287.616 to serve in the capacity as a legal advisor or an associate  
27 administrative law judge and any person appointed pursuant to section 286.010 or pursuant to  
28 section 295.030, and any attorney or legal counsel appointed or employed pursuant to section  
29 286.070;

30 ~~[(8)]~~ (7) "Salary", the total annual compensation paid for personal services as an  
31 administrative law judge or legal advisor, or both, of the division of workers' compensation by  
32 the state or any of its political subdivisions.

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