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

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

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

Sec. 2. As used in sections 1 through 10, and amendments thereto:
(a) "Client" means any person who enters into a professional employer organization agreement with a professional employer organization.
(b) "Co-employer" means either a professional employer organization or a client.
(c) "Co-employment relationship" means a relationship which is intended to be an ongoing relationship rather than a temporary or project-specific relationship, and wherein the rights, duties and obligations of an employer which arise out of an employment relationship have been allocated between the employer and a professional employer organization as co-employers pursuant to a professional employer agreement entered into in accordance with the provisions of sections 1 through 10, and amendments thereto. Under a co-employment relationship:
(1) The professional employer organization is entitled to enforce only those employer rights, and is subject to only those employer obligations, that are specifically allocated to the professional employer organization by the professional employer agreement or by the provisions of sections 1 through 10, and amendments thereto;
(2) the client is entitled to enforce those employer rights, and is obligated to provide and perform those employer obligations, that are allocated to such client by the professional employer agreement or by the provisions of sections 1 through 10, and amendments thereto; and
(3) the client also is entitled to enforce any obligation of an employer, that is not specifically
allocated to the professional employer organization by the professional employer agreement or by the provisions of sections 1 through 10, and amendments thereto.

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

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

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

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

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

(1) for the co-employment of covered employees;

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

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

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

(2) For purposes of sections 1 through 10, and amendments thereto, the following shall not be considered a "professional employer organization," or as providing "professional employment services":
(A) Arrangements wherein a person, whose principal business activity is not entering into professional employer agreements, and which does not hold itself out as a professional employer organization, shares employees with a commonly owned company within the meaning of section 414(b) and (c) of the internal revenue code;

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

(C) providing temporary help services.

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

(j) "Professional employer services" means the service of entering into co-employment relationships.

(k) "Registrant" means a professional employer organization registered under the provisions of sections 1 through 10, and amendments thereto.

(l) "Secretary" means the secretary of the department of labor.

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

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

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

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

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

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

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

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

(2) diminish, abolish or remove the rights of covered employees as to a client, or the obligations of such client to a covered employee, whether existing prior to or after the effective date of the professional employer agreement, including, but not limited to, rights and obligations arising—
from civil rights laws guaranteeing nondiscrimination in employment practices:

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

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

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

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

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

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

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

Sec. 4. (a) A person engaged in the business of providing—
professional employer services pursuant to co-employment relationships in
which all or a majority of the employees of a client are covered employees
shall be registered pursuant to this section.

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

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

1. The name or names under which the professional employer-
organization conducts business;

2. The address of the principal place of business of the professional-
employer organization, and the address of each office the professional-
employer organization maintains in this state;

3. The professional employer organization’s taxpayer or employer-
identification number;

4. A list, by jurisdiction, of each name under which the professional-
employer organization has operated in the preceding five years, including
any alternative names, names of predecessors and, if known, successor-
business entities;

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

6. A statement of management, which shall include the name and
evidence of the business experience of any individual who serves as
president, chief executive officer or otherwise has the authority to act as
senior executive officer of the professional employer organization; and

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

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

(2) Each professional employer organization not operating within this
state as of the effective date of this act shall complete its initial registration
prior to initiating operations within this state. If a professional employer-
organization not registered in this state becomes aware that an existing client, not based in this state, has employees and operations in this state, the professional employer organization shall either decline to provide professional employer services for those employees, or notify the secretary within five business days of the professional employer organization's knowledge of this fact and file a limited registration application pursuant to subsection (g), or a full registration if there are more than 50 covered employees employed by such client. The secretary may issue an interim operating permit for the period of time the application is pending if the professional employer organization is currently registered or licensed by another state, and the secretary determines it is in the best interests of the potential covered employees.

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

(f) Professional employer organizations in a professional employer group may satisfy any reporting and financial requirements of this section on a combined or consolidated basis, provided that each member of the professional employer group guarantees the financial capacity obligations required by section 5, and amendments thereto, of each other member of the professional employer group. In the case of a professional employer group that submits a combined or consolidated audited financial statement, including entities that are not professional employer organizations or that are not in the professional employer group, the controlling entity of the professional employer group under the consolidated or combined statement must guarantee the obligations of the professional employer organizations in the professional employer group.

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

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

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

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

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

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

(3) A professional employer organization requesting limited registration under this subsection shall provide the secretary with such information and documentation as required by the secretary to show that
the professional employer organization qualifies for a limited registration.

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

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

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

(j) The secretary, to the extent practical, shall permit the acceptance of electronic filings, including applications, documents, reports and other filings required by the secretary under this section. The secretary may provide for the acceptance of electronic filings and other assurance documents by an independent and qualified entity approved by the secretary that provides satisfactory assurance of compliance acceptable to the secretary consistent with, or in lieu of, the requirements of this section and section 5-6, and amendments thereto. The secretary shall permit a professional employer organization to authorize such entity approved by the secretary to act on the professional employer organization's behalf in complying with the registration requirements of this section, including electronic filings of information and payment of registration fees. Use of
such an approved entity shall be optional and not mandatory for a
registrant. Nothing in this subsection shall limit or change the secretary’s
authority to register or terminate registration of a professional employer
organization, or to investigate or enforce any provision of sections 1-
through 10, and amendments thereto.

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

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

(b) Upon filing a renewal application for registration, a
professional employer organization shall pay a fee in an amount not to:
exceed $500.

(c) Upon filing an initial or a renewal application for limited-
registration, a professional employer organization shall pay a fee in an:
amount not to exceed $500.

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

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

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

Sec. 5.6. Except as provided by subsections (g) and (i) of section 4:
and amendments thereto, each professional employer organization, or
collectively each professional employer group shall either:

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

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

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

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

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

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

(3) the client retains the exclusive right to direct and control the covered employees as is necessary to conduct the client’s business, to discharge any of the client’s fiduciary responsibilities or to comply with any licensure requirements applicable to the client or to the covered employees;

(c) Except as otherwise provided in sections 1 through 10, and
amendments thereto, the co-employment relationship between the client and the professional employer organization, and between each co-employer and each covered employee, shall be governed by the professional employer agreement. Each professional employer agreement shall include the following:

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

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

(3) that, in addition to the client's right to hire, discipline and terminate a covered employee, the professional employer organization shall have a right to hire, discipline and terminate a covered employee only as may be necessary to fulfill the professional employer organization’s responsibilities under the provisions of sections 1 through 11, and amendments thereto, or the professional employer agreement.

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

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

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

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

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

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

(2) a client shall be solely responsible for directing, supervising, training and controlling the work of the covered employees with respect to
the business activities of the client and solely responsible for the acts, errors or omissions of the covered employees with regard to such activities;

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

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

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

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

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

(8) for purposes of this state or any county, municipality or other political subdivision thereof:

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

(B) any tax or assessment imposed upon professional employer services or any business license or other fee which is based upon gross receipts shall allow a deduction from the gross income or receipts of the business derived from performing professional employer services that is equal to that portion of the fee charged to a client that represents the actual cost of wages and salaries, benefits, workers’ compensation, payroll taxes, withholding or other assessments paid to or on behalf of a covered
employee by the professional employer organization under a professional employer agreement;

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

and

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

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

Sec. 8. 9. (a) It shall be a violation of the provisions of sections 1 through 10 H, and amendments thereto:

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

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

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

(4) For a professional employer organization or a controlling person of a professional employer organization to be convicted of a crime: (A) that relates to the operation of a professional employer organization, or (B) that relates to the ability of the professional employer organization or a controlling person of a professional employer organization to operate a professional employer organization; or (C) pursuant to 18 U.S.C. § 1033;

or

(5) For a person to willfully violate any provision of sections 1 through 10 H, and amendments thereto, or any rule or regulation adopted.
by the secretary pursuant thereto.

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

(1) Deny the application for registration;
(2) revoke, restrict or refuse to renew a registration;
(3) impose a civil fine in an amount not to exceed $10,000 for each material violation of the provisions of sections 1 through 10, and amendments thereto;
(4) place the registrant on probation for such period of time and subject to such conditions as the secretary shall specify; or
(5) issue an order to cease and desist those professional employer organization activities and services specified in such order.

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

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

Sec. 10. If any provision of sections 1 through 10, and amendments thereto, or any portion thereof, is declared invalid or unconstitutional, such invalidity shall not affect the validity or constitutionality of the remaining provisions of sections 1 through 10, and amendments thereto.

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

(1) The Kansas secretary of labor;
(2) the Kansas chamber of commerce;
(3) the national federation of independent business;
(4) the Kansas AFL-CIO;
(5) the Kansas state council of the society for human resource management (KS SHRM);
(6) the Kansas self-insurers association; and
(7) the secretary of labor whose selection shall be selected from either an employee organization as defined in K.S.A. 75-4322, and amendments thereto, or a professional employees’ organization as defined in K.S.A. 72-5413, and amendments thereto.

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) (1) Upon being notified of any vacancy in the position of administrative law judge, the administrative law judge nominating and review committee shall consider all qualified applicants submitted by the director for the vacant position of administrative law judge and nominate a person qualified therefor. The administrative law judge nominating and review committee shall be required to reach unanimous agreement on any nomination to the position of administrative law judge. With respect to each person nominated, the secretary either shall accept and appoint the person nominated by the administrative law judge nominating and review committee to the position of administrative law judge for which the
nomination was made or shall reject the nomination and request the
administrative law judge nominating and review committee to nominate
another person for that position. Upon receipt of any such request for the
nomination of another person, the administrative law judge nominating
and review committee shall nominate another person for that position in
the same manner.

Each administrative law judge shall hold office for a term
of four years and may be reappointed. Each administrative law judge
shall continue to serve for the term of the appointment or until a
successor is appointed. Successors to such administrative law judge
positions shall be appointed for terms of four years.

If a vacancy should occur in the position of an
administrative law judge during the term of an administrative law
judge, the administrative law judge nominating and review workers
compensation and employment security boards nominating committee
shall nominate an individual from the qualified applicants submitted
by the director to complete the remainder of the unexpired portion of
the term.

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

Following the completion of a term, an administrative law
judge who wishes to be considered for reappointment to such judge's
position shall be deemed to have met the qualification requirements for
appointment as administrative law judge and shall be considered for
renomination by the workers compensation administrative law judge
nominating and review committee Following the completion of a term, an
administrative law judge who wishes to be considered for reappointment to such judge's position shall be deemed to have met the qualification requirements for appointment as administrative law judge. If such administrative law judge wishes to be considered for renomination by the workers compensation and employment security boards nominating committee, such administrative law judge shall submit an application as provided in subsection (d).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Board of review. (1) There is hereby created a board of review, hereinafter referred to as the board, consisting of three members. Except as provided by paragraph (2) of this subsection, each member of the board shall be appointed for a term of four years as provided in
this subsection. Two members shall be appointed by the governor, subject
to confirmation by the senate as provided in K.S.A. 75-4315b and
amendments thereto. Except as provided by K.S.A. 46-2601, and
amendments thereto, no person appointed to the board, whose appointment
is subject to confirmation by the senate, shall exercise any power, duty or
function as a member until confirmed by the senate. One member shall be
representative of employees, one member shall be representative of
employers, and one member shall be representative of the public in
general. The appointment of the employee representative member of the
board shall be made by the governor from a list of three nominations
submitted by the Kansas A.F.L.-C.I.O. The appointment of the employer
representative member of the board shall be made by the governor from a
list of three nominations submitted by the Kansas chamber of commerce
and industry. The appointment of the public representative member of the
board, who, because of vocation, occupation or affiliation may be deemed
not to be representative of either management or labor, shall be made by
the members appointed by the governor as employee representative and
employer representative. If the two members do not agree and fail to make
the appointment of the public member within 30 days after the expiration
of the public member's term of office, the governor shall appoint the
representative of the public. Each member shall be appointed by the
governor, subject to confirmation by the senate as provided in K.S.A. 75-
4315b, and amendments thereto. Except as provided by K.S.A. 46-2601,
and amendments thereto, no person appointed to the board, whose
appointment is subject to confirmation by the senate, shall exercise any
power, duty or function as a member until confirmed by the senate. The
appointment of each member of the board shall be made by the governor
from a list of three nominations submitted by the workers compensation
and employment security boards nominations committee. Not more than
two members of the board shall belong to the same political party. No
board member shall serve more than two consecutive terms.

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

(3) Each member of the board shall serve until a successor has
been appointed and confirmed. Any vacancy in the membership of the
board occurring prior to expiration of a term shall be filled by
appointment for the unexpired term in the same manner as provided
for original appointment of the member. Each member shall be
appointed as representative of the same special interest group represented.
(4) Each member of the board shall be entitled to receive as compensation for the member's services at the rate of $15,000 per year, together with the member's travel and other necessary expenses actually incurred in the performance of the member's official duties in accordance with rules and regulations adopted by the secretary. Members' compensation and expenses shall be paid from the employment security administration fund.

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

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

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

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

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

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

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

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

Sec. 5. K.S.A. 2011 Supp. 44-551, 44-555c and 44-709 are hereby
repealed.
Sec. 6. This act shall take effect and be in force from and after January 1, 2014, and its publication in the statute book.