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TESTIMONY OF KANSAS AFL-CIO IN OPPOSITION TO SB 187 PRESENTED TO THE SENATE COMMERCE COMMITTEE

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Madam Chairperson and Members of the Committee:

The Kansas AFL CIO opposes the passage of Senate Bill 187. It is a significant and unwarranted change from current law which is BOTH unnecessary and unfair.

Prior to 1993, the "judicial process" in workers compensation was political in nature. At that time, the Director of Workers Compensation was in a "judicial" as opposed to an "administrative" role. That is, the Director of Workers Compensation reviewed decisions from the administrative law judges. From those decisions, appeals were taken to the district court in the county where the accident occurred.

Also at that time, the Director was a political appointee essentially selected through the Governor's office. Whenever there was a change in the Governor's office, it led to a change in the Director's office. Therefore, decisions from the Director's office had very little precedential value. Decisions were seen as political decisions and not legal decisions. In addition, inconsistent decisions led to excessive litigation because there was no "settled law."

Finally, there was no centralized law because each district court decided cases based on the individual judges. This lack of consistency likewise led to excessive litigation.

None of the "stakeholders" were satisfied with the pre-1993 process. Therefore, the opposing parties came together to create the current process. It was a monumental effort and compromise. The goals were to remove the political influences, create consistency, and have a process of appointing fair and impartial judges. All of this, in turn, would



dramatically reduce litigation and give the decisions rendered credibility.

Bringing the parties together to create the current system was extremely difficult. However, the result produced has been highly successful. Simply stated, the goals identified above were met. There is no reason to believe that such results will not continue. We are not aware of any complaints about the current system when viewed from an objective and "outcomes based" perspective. The Appeals Board and judges have created a consistent body of law without swings from the left to the right totally dependent upon political influences. In fact, just last year, the Director of Workers Compensation testified that the Department of Labor was unaware of any problems relative to the selection process. Furthermore, the process was so successful after its initial years, the Kansas Chamber and other business interests proposed and agreed to adopting the same selection method for the administrative law judges.

Senate Bill 187 changes the process and places the judicial process under and subordinate to the executive branch for both workers compensation and unemployment compensation. Not only will legal arbitrators be again subject to political influence, one side of the litigation formula (business) will always hold an unfair advantage. Business will always have a majority influence on the nominating committee.

The very essence of the judicial process is impartiality. Business is a litigant in this system with a vested interest in the outcome. Allowing one of the litigants to hand select the judges (and to fire them) makes a mockery of the system. There is not even the appearance of propriety.

The concept of bipolar interests coming together to negotiate a compromise is admittedly unique, but it has been highly successful. The AFL-CIO is opposed to destroying this system which has a proven record of success. We are not opposed to expanding the nominating committee, so long as it does not vest undue power in one of the litigants who come before the court.

In conclusion, the integrity of the judicial process needs to be preserved. SB 187 simply does not do that.

Respectfully submitted,

KANSAS AFL-CIO