Approved: March 12, 2004
Date

MINUTES OF THE HOUSE COMMERCE AND LABOR COMMITTEE

The meeting was called to order by Chairman Don Dahl at 9:00 a.m. on February 18, 2004 in Room 241-N of the Capitol.

All members were present.

Committee staff present:
Jerry Ann Donaldson, Legislative Research Department
Norm Furse, Revisor of Statutes
Renae Jefferies, Revisor of Statutes
June Evans, Committee Secretary

Conferees appearing before the committee: John Ostrowski, AFL-CIO
Terri Roberts, Executive Director, Kansas State Nurses Assn.
Mark Desetti, Kansas National Education Association
Tim Short, Kansas Trial Lawyers Association
Troy Leinen, Supervisor, Employee Benefits, Bombardier Aerospace Learjet
Terry Leatherman, Kansas Chamber of Commerce

Others Attending: See Attached List

The Chairman stated there would be continuation of the hearing on the work disability topic in **Sub SB 181 - Workers Compensation - work disability.**

John M. Ostrowski, AFL-CIO, testified as an opponent to **Sub-SB 181**, and stated the problem on page 5, lines 5-13, appears to be to prevent an economic layoff from resulting in an award of "work disability" under certain circumstances; i.e., if the employee did not have permanent restrictions at the time of the layoff.

The Kansas AFL-CIO feels that the language for the change in **Sub-SB 181,** page 5, is totally unnecessary based on *Tallman.* We would also point out that the language in the bill does not appear to accomplish the intent of the drafters. Specifically, the "trigger" for a finding of no work disability is a lack of "work restrictions at the time of separation from employment."

Therefore, if a worker was recovering from the injury at the time of his receipt of the pink slip, the worker would be barred from work disability, even though following the recovery period, he or she was left with severe restrictions. Consider the worker at home recovering from a back fusion and the plant closes. This injured worker would be covered by the current language, which does not seem consistent, again, with the intent of the legislation.

Many doctors are reluctant to impose permanent work restrictions until three to six months after a worker has returned to work and attempted to perform his/her duties. Indeed, the protocol for a functional capacity evaluation to test a worker's abilities is not recommended until several months after the injured worker has reached maximum medical improvement. A layoff occurring while the employee is being "tested" could result in an inappropriate denial of benefits under the current language (Attachment 1).

Terri Roberts, Executive Director, Kansas State Nurses Association, testified as an opponent to the topic of work disability in **Sub SB 181**, stating the proposed changes related to work disability would deny work disability benefit/ compensation to an injured worker who agrees to return to work without restrictions for their employer and then is laid off. This would encourage "adverse selection" targeting previously injured employees for dismissal. These changes would open the door for business to take advantage of injured workers by discarding them when they make good faith efforts to return to work, leaving them without recourse or resources (Attachment 2).

Mark Desetti, testified as an opponent to the topic of work disability on **Sub SB 181**. Under current law, when an injured worker has a disability that prevents her from returning to the same job, she is entitled to

benefits that bridge the difference between what she earned before the injury and what she is earning after the injury. That just makes sense. If a person can no longer work at their chosen career because of an on-the-job injury and now working in a different position at a lower wage, it is only fair that the person be compensated. The person is receiving benefits because they were injured on the job and the resulting disability prevents them from returning to the same position. Benefits to injured workers would be reduced. The truth about Kansas right now is that premiums and benefits are low. There is no need for changes in the law (Attachment 3).

Tim Short, Kansas Trial Lawyers Association, testified as an opponent to work disability on **Sub SB 181**. Prior to the 1987 amendment, work disability was defined as the extent to which an injured worker had lost the ability to perform the job he or she was doing at the time of the injury. Under the 1987 amendment, work disability was determined by considering two factors: (1) the extent to which an injured worker's ability to obtain and perform work in the open labor market was reduced by the injury; and (2) the extent to which the injured worker's ability to earn a comparable wage as reduced by the injury. The judge was allowed to determine the weight given to each prong of the work disability formula, and could base the percentage of work disability on one factor or the other, or anything in between.

Work disability was proved by first having a doctor testify and give an opinion regarding the work restrictions recommended for the injured worker as a result of the on-the-job injury, then having a vocational expert testify using the work restrictions and give opinions about the reduction in the injured worker's ability to get and perform jobs available in the local labor market, and the reduction in the worker's likely wages. The vocational experts had to use surveys showing the type and number of jobs available in the local labor market, the physical tasks of each job, and the wages paid for such work. The bottom line is the matter of proof (Attachment 4).

Troy Leinen, Supervisor, Employee Benefits, Bombardier Aerospace, Learjet, Inc., a proponent for the topic of work disability in **Sub SB 181** stated injuries and accidents are not increasing. The driver is how work disability is being determined. The system is tilted in favor of the claimant and the employer is at a disadvantage. We want all of our employees to return to work. We want the employee to have the capacity to earn wages. The costs for workers compensation is three times as much in Kansas as in the other states where we do business. Since 1993, work disability has been defined as the average of two factors: wage loss and task loss. Wage loss, under the current system, is normally determined by the reduction in an injured worker's actual wages. Task loss, under the current system, is proved by presenting testimony of the injured worker about the physical requirements job tasks he or she performed over the 15 years prior to injury, then having a doctor testify which tasks the injured worker should not perform (Attachment 5).

Representative Carlin requested information on when the law changed in Arizona, Florida and Indiana.

Terry Leatherman, Executive Director, Kansas Chamber of Commerce, testified in support on the topic of work disability on **Sub SB 181**. The issue surrounding an economic layoff situation leading to work disability compensation is another example of the Kansas workers compensation system extending benefits beyond its intended purpose. Workers compensation was created to provide prompt medical care and financial compensation when a worker got hurt on the job. Today, Kansas employers find themselves responsible in cases which go beyond the scope of a reasonable workers compensation system. The pre-existing condition law needs to be changed so employers are only responsible for paying financial compensation to workers for the portion of their injury caused by work. Work disability compensation should only be awarded when a workplace injury prompts an employee's separation from the workforce, but not when the economy leads to the employee losing their job (Attachment 6).

Testimony was distributed from Secretary Joan Wagnon, Kansas Department of Revenue that testified as an opponent on February 17 on **HB 2719 - Establishing manufactured home installation licenses and apprentice installation licenses and standards for the installation and siting of manufactured homes.** (Attachment 7).

The meeting adjourned at 10:15 a.m. The next meeting will be February 20, 2004.

COMMERCE AND LABOR COMMITTEE

Date February 18, 2004

NAME	AGENCY
RICHARD L Timms	IPDUC - WC
[illegible]	Dept
Josie Torres	SILCK
Kim Dietrich	TIRC
Heather Grace	Dannon & Associates
Michael B. Brink	Iron Workers Local No 10
Wil Leib	Ks. AFL-CIO
[illegible] Burton	KED
Dick Cook	KID
DEBORAH STERN	KHA

HOUSE COMMERCE & LABOR COMMITTEE
TESTIMONY REGARDING HB 2757 AND
BENEFITS IN KANSAS WORKERS COMPENSATION
February 18, 2004

KANSAS AFL-CIO
JOHN M. OSTROWSKI
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Thank you Chairman Dahl for this opportunity to present testimony opposing Sub. SB 181 as it relates to K.S.A. 44-510e. I appear today on behalf of the Kansas AFL-CIO and other injured workers statewide.

A. PROBLEM SOLVED

The intent of Sub. SB 181, page 5, lines 5-13, appears to be to prevent an economic layoff from resulting in an award of "work disability" under certain circumstances; i.e. if the employee did not have permanent restrictions at the time of the layoff.

In October of 2003, in a published decision, the Kansas Court of Appeals decided the case of *Tallman v. Case Corp.* (Court of Appeals No. 89,996). Therein, the Court stated in Syllabus 1:

> Under Kansas statutory and case law, the ability of an injured worker to return to their previous, unaccommodated job, will generally call for a finding of no permanent partial general disability.

The issue in *Tallman* was really whether or not the so-called "*Watkins* rule" should be applied to K.S.A. 44-510e recognizing that *Watkins* was based on the pre-1993 statute. The Court noted that when a worker returns to work *with accommodations*, that worker may at a later time become entitled to work disability. The Court specifically stated:

> Placing an injured worker in an accommodated position temporarily masks the worker's work disability. When the accommodated worker leaves the confines of accommodated employment, the disability reemerges. The accommodated worker is less likely to be able to find comparable wage work because the ongoing physical limitation will make him or her less attractive to a new employer who will not have the economic incentive to accommodate in order to reduce compensation costs. (*Tallman, supra.*)

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The situation is entirely different if the worker has no restrictions. Obviously, if there are no restrictions, then there is no accommodation. Again, *Watkins* stated:

> If following an injury an employee is physically able to return to work, perform his or her job duties ***without special accommodation***, and earn a wage comparable to his or her pre-injury wage, then ***by definition that employee does not have work disability***. See K.S.A. 1992 Supp. 44-510e(a). If the employee subsequently loses the job for economic or other reasons, the loss of employment cannot by itself create a work disability, absent a change in the employee's physical condition. (*Watkins v. Food Barn Stores, Inc.*, 23 Kan.App.2d 837 at 839 (1997); our emphasis)

While there may have been some debate as to whether the *Watkins* rule applied to the law after 1993, that debate is over. The Court has stated (correctly) in *Tallman* that, "*Watkins* is still good law notwithstanding the 1993 changes."

As such, there is no need for an amendment. Furthermore, by making the unnecessary amendment, there will be litigation over the changes.

B. LANGUAGE PROBLEM

While Kansas AFL-CIO feels that the language in Sub. SB 181 is totally unnecessary based on *Tallman*, we would also point out that the language in the bill does not appear to accomplish the intent of the drafters. Specifically, the "trigger" for a finding of no work disability is a lack of "work restrictions at the time of separation from employment."

Therefore, if a worker was recovering from the injury at the time of his receipt of the pink slip, the worker would be barred from work disability, even though following the recovery period, he or she was left with severe restrictions. Consider the worker home recovering from a back fusion, and the plant closes. This injured worker would be covered by the current language, which does not seem consistent, again, with the intent of the legislation.

Also, many doctors are reluctant to impose *permanent work restrictions* until three to six months after a worker has returned to work and attempted to perform his/her duties. Indeed, the protocol for a functional capacity evaluation to test a worker's abilities is not recommended until several months after the injured worker has reached maximum medical improvement. A layoff occurring while the employee is being "tested" could result in an inappropriate denial of benefits under the current language.

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JANICE JONES, R.N., M.N., C.N.S.
PRESIDENT

TERRI ROBERTS J.D., R.N.
EXECUTIVE DIRECTOR

S.B. 181- Work Disability

Written Testimony To House Commerce & Labor Committee
February 18, 2004

Chairman Dahl and members of the House Commerce and Labor Committee, my name is Terri Roberts R.N. and I represent the KANSAS STATE NURSES ASSOCIATION. KSNA is strongly opposed to the amendments being proposed in Substitute for S.B. 181 related to work disability and economic layoffs, and any others that might be offered by the Insurance industry or the KCCI that would alter the mechanisms to qualify for work disability benefits.

The proposed changes related to work disability would deny work disability benefits/compensation to an injured worker who agrees to return to work without restrictions for their employer and then is laid off . This will encourage "adverse selection" if you will, targeting previously injured employees for dismissal. Current Kansas law allows injured employees to use compensation and settlement from work disability cases for retraining or re-education. These changes if approved will deny work disability compensation to workers who are the most vulnerable—the disabled worker who is without a job. At the same time, this new language will provide an incentive to lay off seriously injured workers who try to return to work without work restrictions. The fundamental principles of workers compensation–sole remedy, no fault compensation will not be upheld if this new language is proposed.

These changes would open the door for business to take advantage of injured workers by discarding them when they make good faith efforts to return to work,. leaving them without recourse or resources. These changes would also alter long standing policy and while the intentional effects of the changes have been described, it is unclear if there will be unintended consequences from such a dramatic policy change to workers compensation benefits.

Thank you.

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KANSAS NATIONAL EDUCATION ASSOCIATION / 715 SW 10TH AVENUE / TOPEKA, KANSAS 66612-1686

Mark Desetti, Testimony
House Commerce and Labor Committee
February 18, 2004
Workers Compensation – Work Disability

Chairman Dahl, members of the committee, thank you for the opportunity to submit written testimony on behalf of the Kansas National Education Association concerning workers compensation and work disability. Once again you are being asked to consider a proposal that is frightening in its potential impact on the families of injured Kansas workers.

Under current law, when an injured worker has a disability that prevents her from returning to the same job, she is entitled to benefits that bridge the difference between what she earned *before* the injury and what she is earning *after* the injury. That just makes sense. If you can no longer work at your chosen career because of an on the job injury and are now working in a different position at a lower wage, it is only fair that you be compensated. You are not earning such compensation because you fell off a ladder stringing up holiday lights at home – you were injured on the job and the resulting disability prevents you from returning to the same position.

The proposal before you removes the reliance on actual earnings and instead moves to someone's analysis of what you ought to be able to earn – some theoretical "capacity to earn." What the injured worker can find in the open job market has no relevance in this proposal. Your former employer's "vocational expert" gets to estimate or theorize or guess what you could have/might have earned and that's the basis of your benefit. You could have won the lottery too.

Any incentive to take an injured worker back in any capacity is removed in this proposal. Since an employer can currently take an employee back at 90% of her pre-injury wage and avoid paying any benefit, why would an employer take back this disabled employee if instead the vocational expert can theorize, estimate, or guess that this employee has the "capacity to earn" 90% of pre-injury wages *even if the best employment found in the open labor market is at 50% of those wages?*

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Now, as if that is not enough, the proposal before you also deals with the elimination of benefits in an economic downturn. Under the proposal, if an injured worker comes back to work and is subsequently laid off, the employer does not have to pay work disability provided he can make the case that the lay-off was economic. Who, do you suppose, would be the first to go under this proposal? The injured worker, whose ability to ply her trade has been compromised by an on-the-job injury, returns to the labor market to compete on a playing field made uneven by her work injuries.

As I have said in previous testimony, there is no workers compensation crisis in Kansas. Kansas employers enjoy the fourth lowest premiums in the nation and workers compensation benefits are already among the lowest in the nation. Weekly benefits for injured workers are well below the standard recommended by the National Commission on State Workmen's Compensation Laws. We are one of only four states that caps benefits for permanent total disability and our cap is the lowest in the nation.

There are those who will tell you that SB 181 does not reduce benefits. And while the bill does not include the specific language "reduce benefits," the impact is the same. Whether through the "pre-existing condition" amendment or the "work disability" amendment, benefits to injured workers **will be reduced**. The truth about Kansas right now is that premiums are low and benefits are low. I never take my car to the mechanic when it's running like a top. There is no need for this amendment to the Kansas workers compensation law.

KANSAS TRIAL LAWYERS ASSOCIATION

Lawyers Representing Consumers

Feb. 18, 2004

TO: House Commerce and Labor Committee

FROM: Tim Short

RE: SB 181 Work Disability

Recent History of Work Disability: Since it was originally enacted in 1911, the Kansas Workers Compensation Act has provided compensation for injured workers based upon "work disability," representing the economic loss a worker suffers as a result of an on-the-job injury. The definition of work disability has been changed by the Legislature twice in the last 17 years.

Prior to the 1987 amendment, work disability was defined as the extent to which an injured worker had lost the ability to perform the job he or she was doing at the time of injury. The ability of the injured worker to obtain and perform other types of work, or to earn comparable wages was not considered.

An injured worker, who returned to other employment and earned as much money as before the injury, could still receive 100% work disability. Conversely, a worker injured on a temporary light duty job could have no work disability, even though the worker had lost the ability to perform his or her usual work.

Under the 1987 amendment, work disability was determined by considering two factors: (1) the extent to which an injured worker's ability to obtain and perform work in the open labor market was reduced by the injury; and (2) the extent to which the injured worker's ability to earn a comparable wage as reduced by the injury. The judge was allowed to determine the weight given to each prong of the work disability formula, and could base the percentage of work disability on one factor or the other, or anything in between.

Work disability was proved by first having a doctor testify and give an opinion regarding the work restrictions recommended for the injured worker as a result of the on-the-job injury, then having a vocational expert testify using the work restrictions and give opinions about the reduction in the injured worker's ability to get and perform jobs available in the local labor market, and the reduction in the worker's likely wages. The vocational experts had to use surveys showing the type and number of jobs available in the local labor market, the physical tasks of each job, and the wages paid for such work.

Terry Humphrey, Executive Director

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The use of vocational experts added greatly to the cost of workers compensation litigation for both sides, and the complexity of the evidence increased the workload of judges deciding workers compensation cases.

In 1993, the definition of work disability was changed again.

Current Definition of Work Disability: Since the 1993 amendment, work disability has been defined as the average of two factors: (1) the reduction in the wages actually earned by an injured worker, called the worker's "wage loss"; and (2) the reduction in the ability of the injured worker to perform the job tasks he or she had performed over the 15 years prior to injury, called the worker's "task loss." To avoid the need for hiring vocational experts, the new definition required the task loss opinion to be given by a doctor.

Task loss, under the current system, is proved by presenting testimony of the injured worker about the physical requirements job tasks he or she performed over the 15 years prior to injury, then having a doctor testify which tasks the injured worker should not perform.

Vocational experts are sometimes used to facilitate the injured worker's recollection and description of prior job tasks, and to suggest whether each job task violates a doctor's restrictions. However, the injured worker must testify that the task descriptions are accurate and the doctor must testify that the work restrictions are properly applied.

Wage loss, under the current system, is normally determined by the reduction in an injured worker's actual wages. Employers can reduce or completely avoid paying compensation for work disability by providing accommodated employment which allows the injured worker to earn more than he or she could on the open labor market. The reduction in actual wage loss reduces work disability. If the injured worker's post-injury wage is 90% of his or her pre-injury wage, he or she is not eligible for work disability, and is compensated only for the functional impairment resulting from the injury, based upon the A.M.A. Guides.

An injured worker must present evidence documenting his or her efforts to find work. If the judge believes an injured worker has not made a good faith effort looking for a job, the judge will "impute a wage" rather than using the worker's actual wage loss.

Vocational experts are occasionally used to prove the "theoretical wage" an injured worker could earn. Some vocational experts give opinions about jobs the injured worker could physically perform based upon general descriptions taken from the Dictionary of Occupational Titles published by the U. S. Department of Labor, without considering whether a job is actually available in the area or whether the injured worker has the training and experience required to obtain and perform the job.

Proposed Changes in Work Disability: Proposed amendments to Senate Bill 181, currently being circulated, would once again change the definition of work disability.

Wage loss would be determined by comparing an injured worker's pre-injury wage to theoretical capacity of the worker to earn a comparable wage post-injury. The employer would no longer

have any incentive to provide accommodated work, since wage loss would no longer be based upon the injured worker's actual wage loss.

Instead, employers will simply hire vocational experts to testify that the injured worker has the physical "capacity" to earn comparable wages, without regard to whether the jobs paying such wages are actually available in the local labor market and whether the injured worker has the training and experience required to obtain or perform the job. Injured workers will have to hire vocational experts to refute this testimony. The expense, delay and complexity of litigating work disability would rival that under the pre-1993 Act.

An injured worker returns to accommodated work at a comparable wage would be denied compensation for work disability if he or she is laid off for economic reasons. Some employers ask why they should be *penalized* when the loss of an accommodated job is unrelated to the worker's injury. The employers who make this complaint have it backwards.

An injured worker who requires accommodation to earn a comparable wage in the open labor market will have an actual wage loss *unless* the employer provides accommodated employment. The employer is *rewarded* (by being relieved of the duty to pay for work disability) *as long as* it provides accommodated employment. If the employer is unable or unwilling to provide accommodated work, for whatever reason, the injured worker's wage loss is determined by the open labor market.

Even though the work restrictions limiting an injured worker's ability to perform job tasks and earn comparable wages is permanent, compensation for work disability is based upon only 415 weeks (a little over 8 years). The economic impact upon an injured worker will continue for the rest of his or her worklife. Unless the employer continues to accommodate the work restrictions for an injured worker until retirement, the worker will eventually suffer a real economic loss due to his or her disability.

The Learning Curve: Every time the Legislature changes the definition of work disability in the Act, the lawyers on both sides, as well as the administrative law judges and workers compensation appeals board, must try to interpret the meaning of the changes. Opinions always vary, creating confusion in the system until enough cases are fully tried and appealed so the Kansas Court of Appeals and the Kansas Supreme Court can eventually decide what the new language means (a process which can take a decade or more).

Until the interpretation of the new law is resolved, the parties always have difficulty determining the value of workers compensation claims, so fewer cases get settled and more cases get tried. Because the parties are uncertain what evidence is required to prove or disprove the new definition of work disability, they tend to present more testimony to cover all the bases, increasing the length and cost of litigation.

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February 18, 2004

House Commerce & Labor Committee
Leglislative Testimony
Substitue Senate Bill 181

Chairman Dahl and members of the House Commerce and Labor Committee:

This document supports my testimony today supporting the introduction of Substitute Senate Bill 181, as amended.

Undoubtedly, you have heard much testimony from both proponents and opponents of the bill. You have also participated in many discussions on the history of worker's compensation in Kansas and the general results of the Legislature to address worker's compensation concerns in the past. Because of this, I will not focus on the history of how we came to where we are. However, I want to provide you some general insight on how work disability under the statute is being applied by the courts and how that impacts Kansas businesses, including ours.

I represent Learjet Inc., a division of Bombardier Corporation in Wichita. I also am a member of the Wichita Area Work Comp Task Force. If you are unfamiliar with this group, it is composed of representatives from many employers of all sizes in the Wichita area concerned about the continued increase in costs of our workers' compensation programs.

In an effort to not duplicate what you may have already seen, I am attaching a copy of previous correspondence that I submitted to members of the Senate Commerce Committee last year in support of the original SB 181. The points I make in that document are still very valid. In fact, I would like to update you on a couple of points I make in the correspondence;

- Our business isn't unlike others in the state. We have taken great pride in reducing workplace accidents and injuries. As supported by the Division of Workers' Compensation annual report, it is clear that businesses have taken the concept of workplace safety very seriously. Therefore, if the increase in costs aren't being driven by increases in accidents and injuries, then it clearly must be something else.

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- To support this, my company's workplace accident frequency rates* the past three years;
  - 2000 1.92
  - 2001 1.37
  - 2002 0.91
  - YTD Oct. 2003 0.54

  * OHSA Definition

- Summary of Work Disability Issues;
  - Current law is tilted in favor of the claimant because if the claimant is not working, the disability compensation they would be entitled is greater than if they were working. Therefore, there is little incentive for employees to return to work. In cases where the employee may have been laid-off, there is no incentive for that employee to obtain employment until her or she receives a settlement.
  - The potential for fraud and abuse is evident when employees become aware of the entitlements afforded to them if they claim an injury prior to being laid-off. Benefits under the statute should not be more or less generous in good econimic times versus bad. I don't believe the intent of the Legislature was to promote this difference. In fact, prior to some recent court decisions, this wasn't the case. Much of what we are proposing through the proposed amendment in this area is to restore what the Legislature intended in the 1993 reform.
  - Litigation is a driving force behind the increased exposure and cost of work disability. I cannot speak for Topeka, but the Wichita environment is rich in advertising for claimant attorneys (phone book, billboards & televsion commercials). Although this is perfectly legal, it undermines the employer/employee relationship and the ability for the employer to appropriately respond to the employee's need in the case of injury or accident. It is the system that is at fault, not the claimant attorneys who use this system for their clients. They are simply doing their job in obtaining the highest possible settlement for their client.

Although you may be concerned from an opponent's view that Kansas doesn't have as rich benefits as other states, let me leave you with this thought; I have responsibility for administering our workers' compensation programs in four other states. Although it is very difficult to compare on an "apples to apples" basis (TTD, PPD, Death, etc..), I can tell you that on a whole, on average, my cost to bring a claim to close is three times as much in Kansas than in those other states.

I know you are aware of a proposed amendment to Substitute Senate Bill 181 that has been circulated. I would ask that you seriously consider the proposed amendment to the Bill in order to preserve Kansas' businesses and jobs. We have a proud history of having a large "footprint" and our nationwide headquarters in Wichita, Kansas. As a Kansas business, we are asking the Legislature to help us control our costs in order to compete on a national and global scale so that we may continue to invest in jobs, equipment, salaries, etc. to benefit our community.

Thank you for allowing me to provide input on this very important issue to Kansas Businesses.

I hope you will consider SB 181 as a step to help Kansas businesses remain competitive in today's economic environment. Will the passage of SB 181 alone create financial stability in a Company? Probably no; but, as you have heard, our Company has other alternatives to build business jets throughout the world. The Company wishes to stay in Wichita, Kansas, but we it is becoming a critical challenge to sustain the level of costs that we are currently experiencing in Kansas. SB 181 not only supports that endeavor, it doesn't, in any way diminish the "spirit" of the law to care for injured workers.

Thank you for your consideration,

Troy D. Leinen
Manager, Human Resources
Learjet Inc.

cc: Jon Small

Legislative Testimony

Substitute for SB 181

February 18, 2004

Testimony before the Kansas House Committee on Commerce and Labor
By Terry Leatherman, Vice President – Public Affairs

THE KANSAS CHAMBER

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Mr. Chairman and members of the Committee:

I am Terry Leatherman, Vice President of Public Affairs for the Kansas Chamber of Commerce. Thank you for giving me the opportunity to comment on the workers compensation topic being explored by the Committee this morning concerning individuals qualifying for work disability compensation when their separation from employment was for economic reasons.

The issue surrounding an economic layoff situation leading to work disability compensation is another example of the Kansas workers compensation system extending benefits beyond its intended purpose. Workers compensation was created to provide prompt medical care and financial compensation when a worker gets hurt on the job. Today, Kansas employers find themselves responsible in cases which go beyond the scope of a reasonable workers compensation system.

- Preexisting condition law need to be changed so employers are only responsible for paying financial compensation to workers for the portion of their injury caused by work
- Work Disability compensation should only be awarded when a workplace injury prompts an employee's separation from the workforce, but not when the economy leads to the employee losing their job.

The Kansas Chamber appreciates the review of the state's workers compensation system, and would urge your support of reforms to address the concerns raised by the Kansas business community.

The Kansas Chamber is the statewide business advocacy group, with headquarters in Topeka. It is working to make Kansas more attractive to employers by reducing the costs of doing business in Kansas. The Kansas Chamber and its affiliate organization, The Kansas Chamber Federation, have nearly 7,500 member businesses, including local and regional chambers of commerce and trade organizations. The Chamber represents small, large and medium sized employers all across Kansas.

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K A N S A S

JOAN WAGNON, SECRETARY

KATHLEEN SEBELIUS, GOVERNOR

DEPARTMENT OF REVENUE
OFFICE OF THE SECRETARY

Testimony to House Commerce and Labor

Regarding House Bill 2719

Kansas Department of Revenue by Joan Wagnon, Secretary of Revenue

Chairman Dahl and Members of the Committee:

The Department of Revenue opposes this legislation. Once the Federal Rules come out we will begin a study on this issue and assist in crafting language for the 2005 session.

The bill proposed by the Kansas Manufactured Housing Association relates to the state administration of The Manufactured Housing Improvement Act of 2000. KDFA, and it subsidiary the Kansas Housing Resources Corporation, wish to express concern that legislative enactment of the proposal this year is premature and recommends an interim study.

This Federal law primarily relates to installation of what used to be referred to as mobile homes and the establishment of a dispute resolution process. The law provides for a five year implementation period. By December 27, 2005 Kansas must have a program related to installation and a dispute resolution process that satisfies Federal requirements or the United States Department of Housing and Urban Development (HUD) will administer the federal requirements. The Federal government is in the process of developing the requirements; however, that process has not been completed.

The policy options before the State are (1) should the state or HUD administer the federal requirements and (2) does the State wish to exceed the Federal requirements. When faced with a similar set of policy options related to the National Manufactured Housing Construction and Safety Standards Act of 1974, Kansas along with 14 other states elected to have HUD administer the minimum federal standards.

Since Kansas elected not to administer the 1974 Act, there is no clear "organizational home" for this program. Before the State commits to any organizational change, KDFA recommends that the Legislature delay action until it can review at least the initial drafts of the federal requirements to determine what is actually required and what the impact of various options will be on Kansas.

Kansas has the ability to delay action until the 2005 Legislature and then implement the program by the December 27, 2005 "deadline." In the event that the 2005 Legislature elected not to implement a program, the decision could be reversed in future Sessions.

KDFA recognizes that policy makers will be required to make decisions in 2005 and that preparation for those decisions should be started. KDFA believes that an interim study will allow policy makers to study the federal requirements as drafts are released and consider what

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action should be taken.