



To: Senator Julia Lynn, Chairperson
Members of the Senate Commerce Committee

From: Jeff K. Cooper, Cooper & Lee Law Offices, Topeka
On Behalf of the Kansas Association for Justice

Date: February 21, 2013

RE: **SB 187 Concerning workers compensation and the employment security boards nominating committee (OPPOSED)**

The Kansas Association for Justice (KsAJ) is a professional association of attorneys with members across the state. KsAJ supports strong workers compensation laws. Kansas workers are the engine of our economy. Balanced laws providing reasonable and adequate protection for workers support a robust economy and benefit employers and employees.

The Kansas Association for Justice opposes SB 187, particularly as it relates to the workers compensation system. SB 187 establishes a gatekeeper system for workers compensation judges that is unfairly weighted in favor of employer interests. SB 187 undermines the independence and impartiality of workers compensation system judges and the fairness of workers compensation decisions.

SB 187 eliminates a system that has worked well since 1993, when both the Kansas Chamber of Commerce & Industry and the Kansas AFL-CIO agreed upon legislation establishing the current nominating committee for workers compensation administrative law judges. Business and labor agreed that the system at that time was too political. The independence of the trier of fact needed to be protected for the benefit of all Kansas businesses and all Kansas employees.

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SB 187 is inherently biased, and will result in a workers compensation system that ***perpetually favors*** business interests.

- Unlike current law, employers and employees do not have equal representation on the proposed nominating committee.
- Business organizations hold the majority of positions on the proposed nominating committee--4 of 7 positions.
- The bill requires a 2/3 majority approval for any action the committee takes, including selecting a chair or filling a vacancy.
- The "supermajority" requirement guarantees that a candidate favored by employee representatives will never advance.
- Deadlock within the committee will be more the rule than the exception because of the increased burden of the supermajority requirement.
- A 2/3 majority is also required to reject the renomination of an ALJ, which creates an incentive for ALJs to rule favorably towards interests holding the majority on the committee--employers.
- Since business representatives are likely more experienced and sensitive to employer concerns, the committee is likely to produce nominees that favor employer interests and outcomes in workers compensation disputes.

Preserving the independence and impartiality of judges must be the most significant public policy consideration in reviewing the merit of SB 187.

- Impartiality of the trier of fact is critically important for all Kansas employees and Kansas businesses.
- Under SB 187, outcomes in workers compensation cases will not be fair.
- Judges must be able to rule without fear of reprisal; they must not be incentivized to rule to retain their judgeships.
- Under SB 187, justice within the workers compensation act will be a sham.

KsAJ members believe no changes are needed in the current nominating process. During the 2012 Session, the Kansas Department of Labor testified before the House Commerce & Economic Development Committee and the Senate Commerce Committee that there is no problem with the current nominating committee system.

For all of these reasons, the Kansas Association for Justice respectfully requests that the Senate Commerce Committee take no further action on SB 187.