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Testimony in Support of Senate Bill 18
An act to amend K.S.A. 60-903 concerning temporary restraining orders

Presented to the Senate Judiciary Committee
By Assistant Attorney General Steve Phillips

January 23, 2013

Chairman King and Members of the Committee:

I am Steve Phillips, a long time employee of the Kansas Attorney General's office. On behalf of the Office of Attorney General Derek Schmidt, I offer the following written testimony in favor of Senate Bill 18.

Senate Bill 18 reforms Kansas' Code of Civil Procedure's provision concerning temporary restraining orders, K.S.A. 60-903. Temporary Restraining Orders (TROs) are supposed to be a very short term form of injunctive relief that can be granted by a court on an emergency basis without advance notice to the defendant until a hearing can be held on a preliminary injunction. A temporary restraining order is not appealable; a preliminary injunction is appealable. But under current Kansas law, a TRO may be issued by a judge--without prior notice to the defendant--and there is nothing that prevents a judge from simply entering a TRO and leaving it in place *ad infinitum* with no opportunity to appeal. Over the years, the Kansas Attorney General's office has faced precisely this situation on several occasions.

The purpose of this legislation is to limit the duration of TROs and require judges to hold hearings on preliminary injunctions, which would then be appealable. The proposed amendments to K.S.A. 60-903 are closely patterned after Federal Rule of Civil Procedure 65, just as Kansas's Code of Civil Procedure is itself closely patterned after the Federal Rules of Civil Procedure.

The Kansas Attorney General believes this legislation adequately preserves judges' authority, but serves everyone's interests by promoting timely resolution of, and finality in, injunctive relief. With me today is Steve Fabert, another Assistant Attorney General, who is here to testify about a recent case he handled that demonstrates the necessity of this legislation.

We appreciate the Committee providing its time for this hearing as well as its favorable consideration to the amendments requested in Senate Bill 18. Both Mr. Fabert and I are ready to

stand for questions, and I can either do so now or after Mr. Fabert's testimony, at the pleasure of the Chair.