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TO: Senator Rick Wilborn, Chairperson
Members of the Senate Judiciary Committee

FROM: Steve Kahler, Senior Project Manager,
Aeroflex Wichita/Cobham AvComm

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SUBJECT: Aeroflex Wichita Opposition to SB 199

Aeroflex Wichita, now part of Cobham AvComm, is a Kansas based company that develops and manufactures electronic test equipment for aviation and military applications. It has operations in Lenexa, Kansas, where 29 employees work performing mostly engineering functions, and in Wichita, Kansas, where 272 employees work in engineering, manufacturing and administrative roles. I am a Senior Program Manager for Aeroflex Wichita/Cobham AvComm. Aeroflex Wichita opposes Senate Bill 199.

Aeroflex Wichita prides itself on its technology and its ability to develop and manufacture test equipment for both military and commercial applications. Its ability to develop and produce products is dependent upon its unique technology and the business acumen of its personnel. Aeroflex Wichita treats its business information as confidential and requires its employees to sign confidentiality agreements. Protection of confidentiality related to its technology and its business plans is critical to maintaining the economic success of Aeroflex Wichita.

Unfortunately, but like other companies in the business community, Aeroflex Wichita found it necessary to sue another company to protect its confidential proprietary information. A long legal battle ensued (filed in 2009) and after a six week trial (in 2017), both the Court and the jury found that Aeroflex Wichita's confidential business information had been taken, that the actions of the defendant were malicious and intentional, and damages totaling \$5.425 million were awarded.

After the judgment was entered, the District Court allowed Tel Instrument to utilize the reduced bond provisions of K.S.A. 60-2103(d)(2)(A) and required the posting of a bond for only \$2,000,000. That procedure was allowed because Tel Instrument asked for the reduced bond claiming that the "full bond" normally statutorily required would impose a hardship on it. Despite arguing that the posting of any bond would be a hardship, Tel Instrument was able to

post the \$2,000,000 once the Court entered its order. Of course, the statutorily reduced bond was for only about 40% of the damages caused and amounts to less than 10% of the amount of revenues received by Tel Instrument from the contract it acquired as a result of using Aeroflex's confidential information.

In our case, Senate Bill 199 will be used to argue for a bond of \$1,000,000 despite a finding of malicious and intentional conduct by the defendant. The application of SB 199 will likely impair the ability of Aeroflex Wichita to collect most of its judgment, as it provides no mechanism to allow the Court to impose a higher bond obligation. As a practical matter, adoption of SB 199 may eliminate most of Aeroflex Wichita's remedy for the intentional wrongful acts of another company and cause Aeroflex Wichita a substantial loss.

Our company's case demonstrates why an adequate bond is necessary once a judgment has been entered. Aeroflex Wichita manufactured a test set called the 4530. It is used by the military to test Identification Friend or Foe functionality in military aircraft. That technology is intended to keep our country's military aircraft safe, by providing a way to determine whether an aircraft is "friendly" or a "foe," and in a combat zone, that can be a life or death question.

In 2007, a New Jersey company named Tel Instrument Electronics decided to compete for the Upgrade contract on the 4530 product. But to do so it decided to hire away from Aeroflex Wichita a key engineer on the product and the lead business person for the product. Those employees were hired with the knowledge that they had confidentiality agreements. We later learned that Tel Instrument decided to hire those employees and exploit the information they had about the Aeroflex product "despite the legal risk" with the hope that they could "hurt Aeroflex" and "capture 100% of the market."

Tel Instrument was successful in competing for the Upgrade contract and in 2009 was awarded a government contract estimated to be worth \$44,000,000 over several years. Aeroflex promptly sued, but substantial delays in the litigation resulted in Tel Instrument performing the contract and receiving revenues in excess of \$20,000,000 as the litigation progressed. The end result was that Tel Instrument was able to capture the benefit of the contract and spend that money.

Aeroflex must live with the delays of the litigation process and the practical result that Tel Instrument was able to capture much of the value of what Aeroflex felt was its business opportunity. We learned in this case that delay worked to the advantage of the tortfeasor. Tel Instrument literally spent millions of dollars defending the case, and that made sense, as it was generating many millions more in revenues as the case slogged through jurisdictional appeals, multiple motions for dismissal and summary judgment. As the trial judge referenced in an order, the millions Tel Instrument spent in defense was considered simply a "cost of doing business."

The "cost of doing business" point demonstrates why the Court has to have the ability to require an adequate bond and why a judgment creditor, like Aeroflex Wichita, is entitled to a sufficient bond to protect its interest should there be additional delays imposed by an appeal. In the context of our case, and I suppose others like it, the posting of a \$1,000,000 bond to stay enforcement of a much higher judgment potentially allows the tortfeasor to continue to benefit from their wrongful act and, when that money is being spent, effectively reduces the ability of a

company like Aeroflex Wichita to obtain compensation for damages caused to it by the intentional wrongful acts of another company.

In the context of commercial litigation – where businesses need access to the courts to protect their rights and to seek remedies for wrongs – SB199 is not a “business friendly” bill. Supersedeas bonds exist to protect the right to recover damages already awarded and only come into play when the judgment debtor wants to delay collection during an appeal. My company’s case is an example where a substantially reduced bond potentially impairs our ability to enforce the damage remedy we are entitled to receive. If businesses like Aeroflex are entitled to obtain compensation for damages caused to their business, an adequate bond requirement is necessary to protect that remedy.

Aeroflex believes that the existing law more than sufficiently protects the interests of judgment debtors. Aeroflex opposes SB 199 as it believes that judgment creditors, like itself, are entitled to protection too and that the proposed changes in the law advanced by SB 199 deny it protections the law should require to satisfy judgments obtained against those who have harmed others through wrongful conduct.

I will appear at the hearing on behalf of my company and welcome the opportunity to testify. This is an important issue to my company and to other businesses in Kansas that may find themselves in court trying to protect their rights or to recover money owed to them. I will appear at the hearing with my company’s lawyer, Jay Fowler of Foulston Siefkin LLP of Wichita. He will be available to assist in answering questions related to my company’s concerns about SB199.