

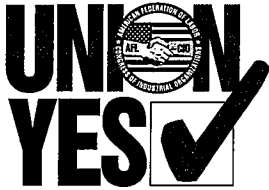
# Kansas AFL-CIO

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## TESTIMONY OF KANSAS AFL-CIO IN OPPOSITION TO HB 2531

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Mr. Chairman and Members of the Committee:

The Kansas AFL-CIO **OPPOSES** the passage of HB 2531. In short, HB 2531 is an unjust solution in search of a nonexistent problem. Some background information is appropriate.

### A. A SHORT HISTORY

Prior to 1993, the Director of Workers Compensation was the judicial body for workers compensation. It was a purely political appointment. As such, every time there was a "changing of the guard", the entire workers compensation system fluctuated. The major stakeholders in the system recognized the problems, i.e. the lack of uniformity in decisions, the lack of stability, and a lack of any judicial precedent. In short, the system was not respected because the rule makers were seen as political in nature and not judicial in nature. Courts of law did not give "judicial deference" to these decisions, and there was unnecessary litigation.

As such, the *stakeholders* (including the Kansas Chamber, the AFL-CIO, the insurance carriers, the trial lawyers, and certain legislators) worked out the current nominating system. It was a monumental effort with the stated goals:

- a) make the system as apolitical as possible; and
- b) add stability and uniformity to the system; and
- c) add a sense of fairness and integrity.



It was agreed that these goals would benefit both employers and employees. There would also be a decrease in litigation.

It is respectfully suggested that the current system accomplishes all of these goals—absolutely. In fact, the system worked so well that after several years of operation, the administrative law judges were brought in on the same basis as the Appeals Board members. The decision to do so was unanimous by the stakeholders.

## **B. PROOF OF SUCCESS NEEDED?**

Last year, Labor and Industry met in negotiation for several months. There were five representatives of the business and insurance communities and five representatives of Labor and injured workers. At the outset of these extended negotiations, concerns about the system were laid out by both sides of the table.

The list of “concerns” brought forth by the parties was quite extensive. However, at no time was there a single issue raised about the nominating committee or the process for appointing and removing Board members and the ALJs. It is suggested that if there were any concerns, someone would have raised an objection to the current process. Again, this process worked so well that it was extended to the administrative law judges.

In addition, the Director of Workers Compensation appeared before this Committee and was specifically asked about current problems. The existing nominating committee was not mentioned.

## **C. THE BILL DESTROYS EVEN THE APPEARANCE OF JUDICIAL INTEGRITY.**

The proposed bill gives business/insurance four votes on a permanent basis; and gives Labor/injured workers two votes on a permanent basis. It is clear that the nominating committee is heavily tilted in favor of the business interests.

Since the Board members and judges have limited terms of office, they must be “renominated” on an ongoing basis. There is no objective standard for continued employment. It seems obvious that any judge or member of the Appeals Board will have to satisfy the pro-business community to retain their job. Such a setting destroys judicial integrity.

If you were the victim of a crime, would you feel it is fair for the criminal defendant to hand select the judge and jury?

**D. THE QUALITY OF APPLICANTS WILL FALL.**

Under the current system, the quality of the judges and Board members selected have set a very high bar. Most recently, Gary Terrill was nominated by the Chamber and the AFL-CIO to fill a vacancy. Mr. Terrill has over 30 years experience in workers compensation. He worked for the Kansas Court of Appeals, worked as a claimant's attorney, defended claims on behalf of insurance carriers, defended claims on behalf of the Kansas Workers Compensation Fund, and served as Assistant Director for Workers Compensation. It is respectfully suggested that if the position for which he applied was considered political in nature, as opposed to judicial in nature, he would not have made application. Furthermore, if his continued employment were solely based on favoring one side, it would be offensive to him or any other qualified applicant.

**E. THE ALLEGATION OF 10%.**

It has been stated that organized Labor only represents approximately 10% of the work force in Kansas. Kansas is a right-to-work state. The Kansas AFL-CIO represents all workers when it comes to workers compensation issues—whether they are union or nonunion. There is never an issue in workers compensation that pits a union worker against a nonunion worker. Anything that positively impacts injured workers and their families is fought for by the Kansas AFL-CIO.

Surely, there are more working families in Kansas than business entities. It is patently unfair that the system which is in part created for the benefit of injured workers should be weighted so heavily towards the business community.

Indeed, the reason the current system has worked so well is because of the bipolar interests "meeting and conferring." The judicial process is given integrity.

**F. UNEMPLOYMENT.**

The bill also destroys the apolitical nature by which unemployment appeal judges are appointed. All the same arguments that apply to workers compensation for the selection of judges apply to unemployment.