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To: Representative Marvin Kleeb, Chairperson
Members of the House Commerce, Labor and Economic Committee

From: Gary M. Peterson, Attorney, Cooper & Lee, LLC,
CoreFirst Bank Bldg, 100 SE 9th Street, 3rd Fl., Topeka, Kansas 66612 (785-233-9988)

Re: In opposition to SB187 concerning workers compensation and the employment
security board's nominating committee.

Dear Chairperson and Committee Members:

My name is Gary M. Peterson and I would like to take a minute to introduce myself to the Committee. After graduating from Washburn Law School in 1976, I was engaged in the private practice of law with an emphasis on workers compensation law until 1993.

In 1993, I was one of five attorneys originally appointed to the newly created workers compensation board (board). My appointment was made under the same process as is presently set out in K.S.A. 2012 Supp. 44-555c.

Before 1993, an appeal of an award entered by an Administrative Law Judge (ALJ) employed by the Division of Workers Compensation was taken to the Kansas district court in the county where the accident occurred. In 1993, the five member board took the place of the district court in the workers compensation appeals process. The board members are paid an annual salary in the amount equal to the salary prescribed by law for a district court judge.

I retired from the board after serving for ten years in 2003, at the age of 63. After I retired in 2003, I started working part-time for Mr. Jeff Cooper of Cooper and Lee Law Offices practicing workers compensation law.

Under the current workers compensation board nominating procedure, I was first appointed to a two-year term and then reappointed for two consecutive four-year terms. I also served as chairperson of the board for three one-year terms.

Accordingly, I feel I am very familiar with the current board nominating process. The current system provides for a board nominating committee composed of two members. One member selected by the Kansas AFL-CIO and one member selected by the Kansas Chamber of Commerce and Industry. From a list of qualified attorney applicants, provided by the Director of Workers Compensation, the nominating committee nominates an individual. The nominee's name is then sent to the secretary of labor who has the option of either appointing the nominee or rejecting the nominee. If the nominee is rejected, the board nominating committee selects another qualified applicant to send to the secretary of labor.

This current nominating procedure, in my opinion, is fair and objective because the nominating committee is equally represented by labor and industry. Thus, before a qualified applicant is nominated, both a representative of the injured workers and a representative of the employers have to agree on one applicant to fill the board's vacancy. Since the secretary of labor has the power to reject the nominee, the secretary provides the political party in control at the time of the nomination a veto. However, it is my opinion that because both representatives of labor and industry make up the nominating committee and therefore have to decide on the nominee, this makes the secretary of labor's decision to reject the nominee much more difficult.

SB187 proposes that the board's nominating committee shall be composed of seven members with only two members representing labor or government employees. The drafters of this bill have made it clear that the only qualified applicants that will be nominated by the newly created board nominating committee will be nominees who have allegiance to business and industry.

Therefore, injured workers' interests will no longer have impartial board members making decisions as to the compensability of their claim, appropriate medical treatment for their injuries and an unbiased opinion in regard to the nature and extent of their permanent disability. In most cases, the consequence of an injured worker's claim being denied shifts the expense to us as taxpayers through Medicaid and other welfare assistance programs.

This is in direct contrast to the personal experience I had working with fellow board members who were nominated under the current procedure. These board members were very knowledgeable concerning the workers compensation law, impartial, honest and hardworking.

When SB187 is coupled, with the 2011 amendments to the Kansas Workers Compensation Act, one has to question whether the resulting Kansas Workers Compensation Act provides the necessary adequate substitute remedy for the abolishment of the injured workers' common law right to sue employers for injuries caused by the employer's negligence. Furthermore, in my opinion, when one examines a change in the law such is proposed in SB187, which is blatantly prejudicial against the injured worker, the original purpose of workers compensation, for the employer to bear the expense of an accidental injury to a worker caused by the employment, has been abrogated and lost.