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To: Representative Anthony Brown, Chairman
House Commerce & Economic Development Committee

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

Date: February 2, 2012

RE: HB 2531 Creation of a new workers compensation and employment security board nominating committee (OPPOSED)

The Kansas Association for Justice opposes HB 2531. HB 2531 establishes a gatekeeper system for workers compensation judges that is unfairly weighted in favor of employer interests. HB 2531 undermines the independence and impartiality of workers compensation system judges and the fairness of decisions.

Unlike current law, the proposed nominating committee lacks objectivity because employers and employees do not have equal representation. The majority of the positions on the proposed nominating committee are representatives of business organizations: the Kansas Chamber, National Federation of Independent Businesses, the Society for Human Resource Management, and the Kansas Self-Insurers Association. Employers and the business community appear to be better represented than Kansas workers since they hold 4 of 7 positions on the proposed committee. Since business representatives are likely more experienced and sensitive to employer concerns, the committee is likely to produce nominees that favor employer interests.

A much greater concern is that the proposed nominating committee has the ability to eliminate judges upon expiration of their terms if judges have not established track records viewed as "business-friendly." HB 2531 permits ALJs to submit an application for re-nomination upon expiration of their term. However, the proposed nominating committee—which is skewed in favor of employer interests—is empowered to act as a "gate keeper" to weed out ALJs who are perceived as not ruling favorably towards employers.

Judges must be able to rule without fear of reprisal; they must not be incentivized to rule to retain their judgeships. Otherwise, the outcomes in workers compensation cases will not be fair. Justice within the workers compensation act will be a sham.

In 1993, both the Kansas Chamber of Commerce & Industry and the Kansas AFL-CIO agreed upon legislation establishing the current nominating committee. Business and labor agreed that the system at that time was too political and that independence of the trier of fact needed to be protected for the benefit of both business and labor.

Preserving the impartiality of judges must be the most significant public policy consideration in reviewing the merit of HB 2531. Impartiality of the trier of fact is critically important for both Kansas workers and Kansas businesses. During the 2012 Session, the Kansas Department of Labor testified before this 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 committee take no further action on HB 2531.