



**House Committee on Judiciary
Testimony in Support of House Bill 2461
Presented by Eric Stafford, Vice President of Government Affairs**

Wednesday, January 29, 2020

Mister Chairman and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. The Kansas Chamber represents small, medium and large businesses of all industry segments across the state. We appreciate the opportunity to testify in support of House Bill 2461, which prohibits public entities in the state from entering into a contingent fee agreement with outside legal counsel without express consent from the Attorney General of the state.

We appreciate Attorney General Schmidt bringing this bill forward for consideration. Municipal contingency fee-based litigation is a disturbing trend nationally. Our 2020 legislative agenda supports the passage of legislation limiting the ability of government entities from entering contingency-based class action lawsuits without the consent of the Attorney General.

In March 2019, the U.S. Chamber Institute for Legal Reform (ILR) issued a research paper on this subject titled *Mitigating Municipality Litigation, Scope and Solutions*. The report reads “The incentives that drive municipal litigation are principally economic.” In short, cities are simply looking for low-risk opportunities to receive potentially significant awards. The ILR report offers extensive background on this type of litigation and how municipal litigation began in the 1990’s during lawsuits against tobacco companies.

Following the Master Settlement Agreement against tobacco companies, however, municipalities have pursued similar cases against lead paint manufacturers, gun manufacturers and subprime mortgage lenders with mixed results. Most recently, cities are pursuing class action lawsuits against opioid manufacturers, against companies whose products allegedly contributed to global warming, and for failure to protect consumer data.

Most recently though, cities across the country and in Kansas, along with several Kansas school districts, have entered contingency arrangements in pursuit of awards against opioid manufacturers and e-cigarette makers and distributors. So this legislation is not a solution looking for a problem in our state; the problem already exists.

Municipal litigation undermines the ability of the Attorney General to represent the state and its citizens in instances where there is a widespread, alleged public harm. The ILR report states “Municipal litigation limits the potential for global settlements, depriving parties of finality and predictability...And as commentators and courts have noted, although litigation can yield sizeable recoveries for municipal entities, it reduces the funds available to compensate injured individuals.”

In closing, if a company, or industry has truly caused collective harm to residents of our state, the Attorney General should be the lone voice in acting against those companies. Just a few years ago, we supported the Attorney General’s effort to strengthen consumer privacy/data protection statutes in our state. While our membership believes that should be managed federally to maintain uniform laws, there were specific instances in Kansas where the Attorney General needed to prosecute, but state law was not clear enough on the AG’s authority and we were able to work together to find a reasonable legislative solution. We mention this only to compare a city-by-city approach versus a statewide approach, and the certainty it provides to Kansas businesses.

We appreciate the opportunity to testify in support of House Bill 2461, and I am happy to answer any questions at the appropriate time.