



**KANSAS BAR
ASSOCIATION**

TO: The Honorable Fred Patton
And Members of the House Judiciary Committee

FROM: Joseph Molina
On Behalf of the Kansas Bar Association

RE: House Bill 2461 – Public Litigation Coordination Act

DATE: January 29, 2020

Chairman Patton and Members of the House Judiciary Committee:

The KBA appreciates the opportunity to submit this written testimony in **OPPOSITION** of HB 2461, the Public Litigation Coordination Act.

As drafted, HB 2461 violates the Kansas Constitution, denies access to justice for litigants and installs an overly broad, ambiguous process that lacks oversight and accountability.

The Kansas Constitution empowers “cities to determine their local affairs and government...” Kan. Const. Art. 12 Section 5. This authority is to be construed liberally for the purpose of giving cities the largest measure of self-governance. *See*; Kan. Const. Art. 12, Section 5(d). As such, a city has the constitutional right to enter a contract for services. HB 2461 directly interferes with that right by prohibiting public entities from contracting for legal services on contingency fee basis. *See*, HB 2461 Section 1(b)(1). As such HB 2461 contemplates an unconstitutional use of power by the Kansas Attorney General’s Office.

HB 2461 denies litigants access to justice by prohibiting contingency fee contracts. *See again*; HB 2461 Section 1(b)(1). A core principle of the Kansas Bar Association is that all people, no matter their position or status, can bring their dispute to a court of law and receive a fair, impartial assessment of their grievances. Punitive regulation of the contingent fee system by ambiguous standards may keep otherwise meritorious claims from the judicial system, which would disenfranchise a large sector of our citizens. Given that HB 2461 would apply to public entities, the negative social implications from such exclusion would be great.

In addition, contingent fee contracts are designed primarily to ensure that everyone has access to our judicial system. The attorney-client relationship is intensely personal. Contractual arrangements between attorneys and clients should not be abrogated by statute without sound, fundamental reasons of major public policy significance which have a reciprocal benefit for all persons. As such, the Kansas Bar Association opposes legislative regulations of contingent fee contracts in legal matters. If such regulation is needed, it should come in a Supreme Court rule which sets guidelines for trial courts to review the attorney fee contracts of all parties and make determinations of reasonableness based on the difficulties and circumstances of each individual case.

Moreover, HB 2461 contains overly broad, ambiguous provisions that lack accountability and redress. HB 2461 is overly broad because it applies to all contingency fee contracts entered into by public entities. Local

units of government may very well have legal issues that necessitate outside counsel. These issues may have little to no statewide implications; nevertheless, the public entity is required seek approval from the KSAG before addressing its legal issues. This language and process place an undue burden on litigants.

HB 2461 lacks accountability and oversight because the KSAG has the SOLE DISCRETION to determine which public entities can enter contingency fee contracts. *See*; HB 2461 Section (d)(2). The bill does not provide any appeal or application for reconsideration. The bill does not set out specific standards the KSAG would use when making a determination. The bill fails to provide guidelines necessary for a written application to be successful. HB 2461 is an outright ban on contingency fee contracts when used by public entities unless the KSAG waives such prohibition. Should HB 2461 continue through the legislative process, efforts must be made to address these deficiencies to give litigants ample warning of the requirements imposed upon them.

For these reasons the Kansas Bar Association OPPOSES HB 2462, Public Litigation Coordination Act.

Thank you for your time and attention. I am happy to stand for questions when appropriate.

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals. Its more than 7,200 members include lawyers, judges, law students, and paralegals. www.ksbar.org