



**KANSAS BAR
ASSOCIATION**

TO: The Honorable Lance Kinzer, Chair
And Members of the House Judiciary Committee

FROM: Joseph N. Molina
On behalf of the Kansas Bar Association

RE: SB 293 – Amending the Probate Code

DATE: March 13, 2012

Good afternoon Chairman Kinzer and Members of the House Judiciary Committee. I am Joseph Molina and on behalf of the Kansas Bar Association I provide this written testimony in support of SB 293 which amends K.S.A. 59-618a by allowing an interested party the ability to file a will to preserve it for the record.

As way of background, the Legislature first considered similar legislation in 2011 (SB 48). SB 48 was introduced by the Kansas Bar Association into this committee. The Senate Judiciary Committee did not act on the bill, but rather referred SB 48 to the Kansas Judicial Council for further study. The Legislature often refers complex matters to the Kansas Judicial Council for review and recommendations before enacting changes to the law. The Judicial Council is composed of practicing attorneys from plaintiff and defense bars, law professors and judges.

In 2011, the Probate Advisory Committee of the Kansas Judicial Council reviewed several probate proposals, including SB 48. The Kansas Bar Association was able to have a voice during these discussions as KBA member, Nancy Roush, was asked to be part of the review process. The fruit of those discussions is presented in the form of SB 293.

SB 293, like its predecessor SB 48, would amend K.S.A. 59-618a by allowing for a protective procedure for the filing of a will in probate court within six months of the date of death of a decedent without formally petitioning to admit the will to probate. As originally enacted, literally read, such statute had a glitch in that such a filing would not protect a later admission of the will to probate if the estate had any real property, even if not known at the time of the filing of the will. An amendment by the legislature in 2010 provided that such protection would be afforded if the estate had no known real or personal property or the value of the decedent's probate estate is less than the total of all demands enumerated in K.S.A. 59-1301. Despite such conditions being in the disjunctive, the 2010 legislative changes required the accompanying affidavit to list both the decedent's property and valuation, as well as the demands against the decedent's estate that were outstanding at the decedent's death. The KBA feels that there

should be no conditions upon the protective filing of a will and no public purpose is served by inclusion of information relating to the assets of the estate or demands relating thereto. The deletion of such requirements also places the viability of creditor claims against a testate estate in parity with those against an intestate estate.

In closing, the Kansas Bar Association supports the work product of the Probate Advisory Committee of the Kansas Judicial Council as it amends K.S.A. 59-621.

On behalf of the Kansas Bar Association, I thank you for the opportunity to provide this written testimony in support of SB 293.

About the Kansas Bar Association:

The Kansas Bar Association (KBA) was founded in 1882 as a voluntary association for dedicated legal professionals and has more than 7,000 members, including lawyers, judges, law students, and paralegals. www.ksbar.org