



**KANSAS BAR
ASSOCIATION**

TO: The Honorable Richard Carlson, Chair
And Members of the House Committee on Taxation

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

RE: HB 2763, enacting the Kansas economic freedom act of 2014

DATE: March 14-15, 2012

Good morning, Chairman Carlson and Members of the House Committee on Taxation. I am Joseph Molina, and I submit this written testimony on behalf of the Kansas Bar Association in opposition to HB 2763 enacting the Kansas economic freedom act of 2014 which would impose a sales tax on legal services.

The Kansas Bar Association opposes a sales tax on legal services for several reasons. First, a legal services tax would fall disproportionately on those least able to afford legal representation, thereby limiting their ability to access the judicial system. Access to justice is a fundamental right of every citizen and installing a tax barrier will infringe on this right. Individual Kansas citizens would bear the entire burden of the tax while government entities and corporations who litigate against them would be entirely free from the tax. This would create an uneven playing field in favor of corporate and governmental litigants and against individual Kansans.

Second, a sales tax would compromise the attorney-client relationship by requiring an attorney to transmit sensitive client information to the Department of Revenue. A fundamental principle in the attorney-client relationship, found in Kansas Rule of Professional Conduct Rule 1.6, is that the lawyer maintains confidentiality of information relating to the representation. The client is thereby encouraged to communicate fully and frankly with the lawyer even as to embarrassing or legally damaging issues. While disclosure of this information would not run afoul of Rule 1.6, it would most certainly damage this relationship. The public is better served if full and open communication by the client is encouraged than if it is inhibited. The ability of the state to force disclosure and investigate tax issues will compromise the attorney-client relationship.

Third, a tax on legal services would encourage sophisticated clients, and those in border communities, to use untaxed legal services outside Kansas. It would also create an incentive for Kansas law firms to perform more services outside Kansas, and to shift investment in facilities, staff and support services to other states.

Fourth, the sales tax on legal services would amount to a "misery tax" levied on Kansas families at their most vulnerable. It is necessity rather than choice that leads Kansans to seek legal assistance in cases involving death, divorce, domestic abuse, end-of-life decisions, injury,

accusation of criminal offenses, or bankruptcy. To tax them in a time of anxiety, uncertainty, and fear places an undue burden on these families.

The Kansas Bar Association appreciates the opportunity to provide testimony concerning HB 2763 and we encourage the committee to consider the possible unintended consequences of imposing a sales tax on legal services.

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 7,300 members, including lawyers, judges, law students, and paralegals. www.ksbar.org