



**KANSAS BAR  
ASSOCIATION**

**TO:**           **The Honorable Julia Lynn, Chair**  
                  And Members of the Senate Commerce Committee

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

**RE:**           **SB 5, Business Entities**

**DATE:**       **January 24, 2013**

Good morning, Chairperson Lynn and Members of the Senate Commerce Committee. My name is Joseph Molina and I appear on behalf of the Kansas Bar Association. The KBA has reviewed SB 5 and pose the following questions.

First, does SB 5 limit the time period that a purchasing entity must “warranty” the purchased entities goods and services?

Second, does this legislation take into account the use of “DBA” and the potential issue of common business names being bought/sold when those common names are not required to be registered with the Kansas Secretary of State’s Office?

Third, does SB 5 define which business name is the legal name that will be subject to this legislation? Is it the public name (name found in the phone book) or the legal name that is registered with the Kansas Secretary of State’s office?

Fourth, does SB 5 take into account the new limited liability company entities described as ‘Series LLC’s’?

Fifth, does SB 5 differentiate between an asset sale and a stock or equity sale? In an asset sale, the seller retains possession of the legal entity and the buyer purchases individual assets of the company, such as equipment, fixtures, leaseholds, licenses, goodwill, trade secrets, trade names, telephone numbers, and inventory. The buyer also can limit its liability by expressly assuming certain liabilities. Through a stock sale, the buyer buys the seller's legal entity itself and assumes ownership of the corporate stock. Most, if not all, of the accounts on the company's balance sheet are transferred to the owner. Unlike an asset sale, stock sales do not require numerous separate conveyances of each individual asset because the title of each asset lies within the corporation. Stock sales cause concern for buyers and their advisors because they are accepting more risk by purchasing the company's stock, including all contingent risk that may be unknown

or undisclosed. Future lawsuits, environmental concerns, OSHA violations, employee issues and other liabilities become the responsibility of the new owner. In stock sales, it is especially important for buyers to conduct thorough due diligence with a team of highly qualified professionals (which means expending more fees for such services).

These are just a few questions that the KBA would need to be answered before a formal position can be made about SB 5. The Kansas Bar Association appreciates the opportunity to provide testimony concerning SB 5 and we look forward to a discussion about this legislation.

*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](http://www.ksbar.org)