



KANSAS BAR
ASSOCIATION

TO: The Honorable Tim Owens
And Members of the Senate Judiciary Committee

FROM: Nancy Schmidt Roush
On Behalf of the Kansas Bar Association

RE: SB 44 – Amending K.S.A. 23-201

DATE: February 2, 2011

Good morning Chairman Owens and Members of the Senate Judiciary Committee. I am Nancy Schmidt Roush and I appear on behalf of the Kansas Bar Association in support of SB 44 which modifies K.S.A. 23-201.

K.S.A. 23-201 provides that the separate property owned by one spouse, irrespective of whether brought into the marriage or received from a third party, remains free of the other spouse's debts, except for transfers from the other spouse. As originally drafted (prior to 1936), the exception appears to be absolute regardless of the circumstances of the spousal transfer, and contradicts other applicable Kansas law. K.S.A. 33-101 and 33-201 specifically address the circumstances under which creditors can reach transferred assets, including transfer to a trust for the use of the transferee or a transfer made "in fraud of creditors." We believe that whether a transfer to a spouse can be reached by the creditor of transferring spouse is best determined under these other statutes.

On behalf of the Kansas Bar Association, I thank you for the opportunity to appear before the committee in support of SB 47.

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