

KANSAS TRIAL LAWYERS ASSOCIATION



To: Representative Fred Patton, Chairman
Members of the House Judiciary Committee

From: Callie Jill Denton, Executive Director

Date: January 29, 2020

Re: HB 2461 An enacting the public litigation coordination act; relating to contracts by public entities for legal services on a contingent fee basis; powers and duties of the attorney general - OPPOSE

The Kansas Trial Lawyers Association is a non-profit, professional organization of trial lawyers with members across the state. I am here to testify on behalf of KTLA in opposition to HB 2461.

The public litigation coordination act prohibits public entities from contracting for legal services on a contingent fee basis. Valid contracts as of the effective date of the act are grandfathered in but may not be renewed. The attorney general, in their sole discretion, may waive the prohibition but only if the waiver would serve the public interest and would not impede the legal interests of the state, as determined by the attorney general. If a waiver involves a contract that, if entered into by the attorney general, would be governed by the review process in K.S.A. 75-37,135, the waiver may be granted only if the provisions in K.S.A. 75-37,135 are met.

KTLA appreciates the invitation from the Attorney General to discuss HB 2461. At the heart of HB 2461 is a battle to hold accountable the industries whose products or actions have harmed citizens or have added financial burdens to taxpayers. KTLA wholeheartedly believes that people should pay for the harm that they wrongly cause. If that harm is caused to a public entity and, indirectly, to the taxpayers, then KTLA believes the companies that caused the harm to the public entity should pay.

Both the state and smaller local units of government have an important role in protecting Kansas citizens and tax dollars. KTLA believes both should have the ability to hold accountable those that cause harm. However, the harm caused to Kansas as a whole is not necessarily the same as the harm caused to each municipality.

When a firefighter responds to an opioid overdose because pharmaceutical companies covered up the facts and concocted a marketing scheme to addict an entire nation, it is the citizens of the municipality who pay for the emergency services. When a school district installs special sensors

in the bathroom because a company manufactured and targeted bubble gum flavored, highly addictive e-cigarettes to high schoolers, those sensors are paid for by the school district.

The effect of HB 2461 is to say that such costs and harms to local units of government and taxpayers should not be remedied on an individual basis. HB 2461 does not permit school districts or county commissions to represent their own interests or decide to hire outside counsel to *investigate* whether they have a remedy available to them. HB 2461 says local taxpayers must subordinate their local interests to a centralized legal decision-making process in the Office of the Attorney General. Most likely, this requirement will eliminate local suits by public entities entirely.

HB 2461 would impose a significant amount of new oversight and control over public entities and their ability to self-govern. HB 2461 centralizes legal decision making in the Attorney General, a departure from the Kansas Constitution's Article 12, Section 5 guarantee that cities—not the state—get determine their own local affairs and government.. Public entities have legal authority, and the authority to make decisions about legal representation, that are separate from the Office of the Attorney General and not derived from the Attorney General. HB 2461 doesn't clarify a chain of command; it establishes a new bureaucracy to direct local affairs.

By prohibiting contingency fee contracts without a waiver from the Attorney General, HB 2461 is more likely to discourage public entity lawsuits than to coordinate them. It's not in Kansans' best interests to eliminate meritorious lawsuits or weaken public entities' ability to hold wrongdoers accountable. The only result from such a law would be more taxes when companies who harm Kansans are not held fully accountable, leaving the Kansas taxpayer to foot the bill.

Local government lawsuits are a powerful means to not only make taxpayers "whole" but to assure that unsafe industries are held to account. The opioid epidemic and vaping are just two recent situations where taxpayers are on the hook for the public health and safety crisis created by a dangerous product and unlawful business practices. Local litigation to recover losses to communities and taxpayers are fair and appropriate. No one will testify today defending the companies who have created addiction and death in our state. But limiting local entities' ability to bring their own claims will benefit these companies.

Kansas is not the first state to consider legislation such as HB 2461; Ohio wisely chose not to pursue a similar bill. The Ohio legislation was criticized as a "serious mistake" by the governor and county prosecutors because of the expansive control it would give the Attorney General over opioid litigation filed by local governments and concern that settlement funds filtered through the Attorney General's office would be used for other state needs. Ultimately, the Ohio Attorney General conceded defeat and withdrew the bill.

On behalf of the Kansas Trial Lawyers Association, I respectfully request that the committee oppose HB 2461.