



January 18, 2018

Testimony Before the Senate Judiciary Committee  
The Honorable Rick Wilborn, Chairman  
Kansas State Capitol, Room 346-S  
Topeka, KS 66612

RE: SB 199 Testimony - Natasha Schamberger, CPA, KSCPA CEO & President

Chairman Wilborn and Members of the Committee:

Good morning. I would like to thank you Chairman Wilborn and the committee for the opportunity to testify in support of Senate Bill 199. I am Natasha Schamberger, CEO & President of the Kansas Society of CPAs (KSCPA). Today I am representing my membership of approximately 2,700 CPAs and their staff. Several of our members work in small, mid-size and large CPA firms across Kansas and provide professional services such as audit, tax and consulting.

Current Kansas law requires a defendant to obtain what's called a supersedeas bond in order appeal a verdict from a trial court. The bond is generally set in the full amount of the judgment, unless the appellant can show it would create an undue hardship or denial of the right to appeal. SB 199 would remove the burden from the defendant and provide that the bond not exceed \$25 million or, if the appellant is a small business, the lesser of \$1 million or the amount of the judgment.

The current structure challenges the accounting profession with an unreasonable appeal cost which could force the settlement of meritless cases. We believe passage of this bill would accomplish two things, protect an individual or business' access to justice and promote the state as a location that welcomes business.

Mr. Chairman and members of the Committee, appeal bond caps are particularly important to professional service firms so that defendants don't have to go bankrupt merely to pursue an appeal from an adverse trial verdict. Professional services firms and most small businesses lack hard assets like equipment as collateral to secure a bond, limiting their ability to get full access to the justice system. My membership wants you to know that should they lose a frivolous lawsuit, the inability to secure a reasonable bond can literally put them out of business and result in the loss of their employees' jobs.

Some of you may wonder if the danger from an ineffective appeal bond cap is just theoretical – and to that, I want to provide a real-world example of why this is a very real concern for CPAs. In 2009, the CPA firm BDO was held liable in a Florida case for \$521 million. For perspective, BDO's entire annual revenue that year was only \$620 million. Because of an appeal bond cap law passed in Florida prior to the trial court judgment, BDO was able to appeal based on numerous trial court errors resulting in the Florida appellate court overturning the jury verdict. Had it not been for the cap, BDO would have been unable to post the necessary appeal bond, would have been unable to appeal and would have been forced to

accept a judgment they – and ultimately the courts - believed should not stand. More important, because of the cap, over 2,700 BDO employees who live and work around the US still have their jobs.

Establishing a \$25 million cap on appeal bonds is a cost free way to help attract business. Kansas has an opportunity to be in conformity with 36 other states – including our neighbors Missouri and Nebraska - that have established concrete caps on appeal bonds or don't even require a bond to appeal. Companies looking to relocate will welcome the message passage of this bill sends, that Kansas law protects business from abusive litigation while ensuring justice for plaintiffs.

This bill does not change the rules by which a trial is conducted or affect who ultimately wins or loses the lawsuit. It does not affect the rights of plaintiffs to recover fully the damages to which they are entitled if the judgment is upheld on appeal. An appeal bond cap establishes a system that allows all defendants to be treated fairly and fully exercise their right to appeal without being forced to declare bankruptcy or settle the case before completion of the appellate review. SB 199 continues to protect the rights of plaintiffs by allowing the court to require a bond amount up to the value of the judgment if the appellant is dissipating its assets to avoid paying a judgment.

Thank you again for the opportunity to appear before you today. I urge you to support SB 199.