

Good afternoon. My name is Darren Kadish. I am a practicing attorney and the President-Elect of the Bar Association of Baltimore City. I am here as a representative to offer testimony on behalf of the Bar Association of Baltimore City and its 2,000+ members. I am a lifelong Maryland resident. I attended Johns Hopkins University and the University of Maryland School of Law. Since graduation from law school I have been a litigator and am now a partner at a small two attorney law firm. I represent clients across the State of Maryland in a wide variety of litigation matters, including prosecuting and defending civil claims, criminal defense, traffic offenses, landlord/tenant matters representing both sides, debt collection representing both sides, as well as administrative hearings. The Bar Association of Baltimore City opposes HB 1628. Here are some of the ways we anticipate a tax on legal services will be problematic and lead to many unintended consequences:

Problematic for Clients

1. It makes it more expensive for people to seek legal advice. This is particularly important when some of the most-needy people can barely afford to hire a lawyer, in matters such as divorce, child support, and debt collection. These are the people who can least afford to pay the increased costs for legal services that this tax will create.
2. People generally do not hire attorneys because they want to; they hire attorneys because they need them. Oftentimes, they do so during some of the most vulnerable periods of their lives. Increasing the cost of legal services will place a greater financial burden on Maryland citizens when they can least afford one.
3. A tax on legal services is regressive because the poor pay a larger percentage of their income in taxes than do the wealthy.

Problematic for Lawyers

1. Most of Maryland's law firms are small, with minimal administrative staff. Imposing an additional administrative burden on these law firms may require them to hire additional personnel, or spend more time on administrative duties. The cost of this additional burden will be passed on to clients through higher rates - rates that are difficult already for many people to afford. Alternatively, many attorneys may choose to eliminate defending or prosecuting certain matters because they will become even more cost-prohibitive.
2. Maryland is a geographically small state, surrounded by other states with active legal communities. Clients with a legal matter in Maryland can hire a District of Columbia, Pennsylvania, Virginia or Delaware lawyer to handle a matter arising in Maryland to

work on their case, as long as the proper ethics rules are followed. In those cases, the legal service could not be taxed, as the work is done outside the state. This will drive business to lawyers in other states, affecting not only Maryland lawyers, but also the ancillary services and businesses Maryland lawyers use. Think office supplies, business equipment suppliers, technology companies, etc., that all currently supply Maryland lawyers with goods (currently taxable) and services. This demand will move across state lines, increasing the amount of legal dollars and accompanying spending spent outside Maryland. This risk is especially high in counties that border other states (which is most of them). Even Maryland lawyers may choose to move across the border, beyond Maryland's taxing authority, to provide legal services for Maryland residents that will not be taxable in Maryland. For instance, a Carroll County attorney may move across the border to Pennsylvania, where they could perform identical legal services for Maryland residents like writing wills, providing business advice, etc. Because those services would be provided and occur in Pennsylvania, they would not be taxable by Maryland. But with the relocation of the legal services, Maryland would also lose the tax it already collects on the office supplies that attorney buys. The now empty office suite would generate no income for the landlord, etc., thus provoking the unintended consequence of a collateral reduction in other income that is taxable by the State.

Potential Constitutional Issues

1. A legal services tax may violate Article 19 of the Maryland Declaration of Rights.
2. A legal services tax may also violate Article 15 of the Maryland Declaration of Rights.
3. The Constitution grants criminal defendants the right to have an attorney of their choice. A tax on legal services may be unconstitutional because it infringes on this right. Pushing private legal services beyond the reach of those who can least afford it may lead to a greater burden on the state's public defenders and other publicly-supported legal services providers.
4. A tax on legal services creates a separation of powers issue, because attorneys are regulated by the Court of Appeals of Maryland.
5. A Maryland state tax on attorneys litigating in federal court may violate the Supremacy Clause of the United States Constitution.

Attorney-Client Privilege Issues

1. A tax audit of an attorney's legal bills could violate attorney-client privilege and the work product doctrine.

Increased Burden on Businesses

1. A tax on legal services is also bad for business in the State of Maryland. Corporations that can hire law firms from any state will choose to hire lawyers outside of the State of Maryland. This is particularly true for highly sophisticated work. National law firms with offices in Maryland and other states, can readily choose to assign work to offices outside of the State of Maryland, rather than force their clients to pay the legal services tax when it otherwise would not be necessary. Clients will also likely demand that their matters be assigned outside of the State of Maryland to keep their legal bills down.
2. This tax will hit smaller businesses particularly hard because, unlike larger businesses with in-house legal departments, smaller businesses cannot afford to have an in-house legal department. In-house legal services will not be taxed, because those attorneys are employees who are not billing for their legal services. This will put small businesses at a competitive disadvantage.
3. Frequently clients seek legal advice from attorneys to ensure that they are complying with applicable laws and regulations. A tax on legal services provides a disincentive to companies to seek this advice in advance, thereby potentially reducing compliance with applicable laws and regulations.
4. A tax on legal services will create an unfair advantage for corporations and government agencies with their own in-house attorneys because these entities will not have to pay the legal services tax.

I would like to add a few personal points to this testimony. In my practice I currently often take very small cases defending or prosecuting small claims for individuals of limited means, and small businesses, not because of the fees, but because I like helping folks, and it is the right thing to do. Taxing these smaller services may well make me rethink providing these services (which I often do at a loss in terms of time and effort vs. what I charge) due to the additional administrative burden, and quite frankly may also simply make retaining my legal services too expensive for the clients.

From experience, I can tell you that many national insurance companies have in-house legal offices. While they may appear to be independent law offices, in reality these lawyers are all corporate employees. Because there is no separate charge for the legal services provided by these employees, their legal work would not be taxed. Smaller insurers would not have that option, and would in fact be faced with the necessity of raising insurance rates to cover the additional cost of legal services being incurred. Since insurance rating plans must be approved by the Maryland Insurance Administration and it is not clear that additional cost to the carrier would be a valid basis for raising premiums. Some carriers may simply choose to leave the market.

There are also problems and issues raised when thinking about how the tax is collected and who pays. Maryland generally follows what is called "The American Rule", which means

that parties to litigation pay their own legal fees. Clearly in those situations, each party would be responsible for their own taxes. However, there are a number of situations where the legal fees can be shifted. Some examples of these situations include breach of contract actions where the contract calls for the loser of the litigation to pay the winner's legal fees. Other situations include statutory fee shifting, such as in wage and hour cases and consumer protection cases. There are also times when Courts award attorneys' fees for bad faith, frivolous or unjustified proceedings. These situations are not contemplated by HB 1628, which fails to properly address the issue of who pays when fees are shifted. Should a consumer, harmed by fraud, wind up paying taxes when they successfully prosecute their claim? Should a party who prevails against a meritless claim and is awarded attorneys' fees then be taxed, adding insult to injury? Or does the party who is ordered to pay fees under one of the fee shifting situations mentioned above (which may not be a complete list of possibilities) have to pay the tax as well as the fees?

Additionally, this tax proposal unfairly targets all legal services. Part of my practice also involves representing individuals harmed by others. Essentially, this bill would tax at least a portion of that recovery. The point of compensation for victims is to make them whole. Federal tax authorities recognize this, and in fact recoveries by victims are not taxed by the IRS, because they are not considered income. They are making whole someone who has suffered a loss. This bill would ignore that important principle.

Lastly, to emphasize a prior point, there is something called "low-bono" where persons of more than limited means, but who are unable to afford the going rate for legal services can qualify for discounted legal rates. However, a regressive tax such as HB 1628 will push legal services, even at a discounted rate, out of being affordable to people who do not qualify for *pro bono* legal services.

Therefore, the BABC urges this Committee to reject HB 1628. Thank you for your consideration and understanding.