



Minnesota
State Bar
Association

2022 MINNESOTA STATE BAR ASSOCIATION LEGISLATIVE AGENDA

The Minnesota State Bar Association (MSBA) is proud of our long history of nonpartisan collaboration with policymakers. Our legislative efforts are focused on crafting well-vetted proposals that arise from our members' day-to-day experiences working with Minnesota's statutes. Our goal is to apply the expertise of the legal profession to improve Minnesota's laws, not for the profit of lawyers but for the benefit of the state's citizens.

For the 2022 legislative session, the MSBA has identified four priorities.

First, we urge policymakers to support the supplemental budget requests from Civil Legal Services, the Judicial Branch, and the Board of Public Defense. These investments will help sustain a smoothly functioning justice system and ensure access to justice for more Minnesotans.

Second, we strongly support establishing a right to counsel for public housing tenants in breach of lease cases. This proposal—which does not apply to nonpayment of rent cases—is narrowly targeted to assist the most vulnerable tenants in the most complicated eviction cases. Appointed counsel will help public housing tenants avoid eviction or secure enough time to move, which will stabilize communities and reduce burdens on publicly funded shelters and emergency assistance. Providing a right to counsel will also put public housing tenants on more equal footing with public housing authorities, which are represented by publicly funded attorneys.

Third, we suggest modifying certain provisions in Minn. Ch. §508 and §508A to conform with current practices pertaining to acceptable evidence of title to register land. These changes will reduce the time and costs associated with land registration.

Finally, we propose tax fairness for Single Member LLCs (SMLLCs) in two situations. The first change would modify Minn. Stat. §290.06 to permit Minnesota residents who are the sole member of a SMLLC to claim Minnesota tax credits for taxes imposed on the SMLLC by another state. This same right is already provided to LLCs that are classified as S Corporations or Partnerships for tax purposes. We also suggest addressing similarly unfair treatment of SMLLCs for sales tax purposes in the context of property transfers under Minn. Stat. §297A.68. There is no meaningful policy justification for granting these credits only to certain types of LLCs. These “traps for the unwary” largely fall upon sole proprietors who are the most common users of the SMLLC classification.

Collectively, the MSBA’s 2022 legislative priorities are practical and reasonable changes that will improve the lives of countless Minnesotans.

BACKGROUND: MINNESOTA’S JUSTICE SYSTEM

At [their] best, [humans] are the noblest of all animals; separated from law and justice [they] are the worst.

-Aristotle

Minnesota is fortunate to have a well-respected justice system that safeguards citizens’ rights, protects the most vulnerable members of our society, and is the underpinning of our democracy. However, only an **adequately funded justice system** can perform those roles at the level Minnesotans expect and deserve.

Prosecutors are an important component of Minnesota’s judicial system, but they are largely funded by local governments. Conversely, the Legislature has significant budgetary control over three other major elements of the justice system: the Judicial Branch, public defenders, and civil legal services. It is essential to properly support and balance this “three-legged stool” of justice to ensure that Minnesotans can peacefully resolve their disputes and protect their rights, families, and businesses.

- **Courts are a foundational aspect of our democracy**, essential to securing the rule of law and ensuring public safety. Minnesota’s court system has persevered despite the enormous challenges created by the Covid-19 pandemic, preserving access to justice while protecting the health and safety of everyone who uses our courts. Properly

funding the Judicial Branch is crucial for maintaining a functional government and society.

- **Civil legal services providers** (also known as legal aid) help poor and vulnerable Minnesotans access the justice system and protect their most basic human needs—safety, shelter, and economic security. It is critically important to adequately fund civil legal services to overcome barriers to justice in our state.
- **Minnesota’s public defenders** provide constitutionally-mandated representation for qualified defendants in felony and misdemeanor cases. This work is both indispensable and immensely challenging. Adequate funding for our public defenders is essential to meet constitutional standards and prevent delays in the justice system.

In addition to adequately funding the justice system, it is important that policymakers preserve Minnesotans’ right to trial by jury and the right to counsel without placing **arbitrary limits on damages or unreasonable restrictions on legal fees**. It is also imperative that Minnesotans in every community have access to legal representation, which is why the MSBA supports **student loan repayment assistance** for lawyers who commit to establishing practices that will serve residents of rural areas in Minnesota.

Finally, a well-functioning justice system depends on clear lines of authority and a commitment to the separation of powers. Therefore, the MSBA **supports the authority of the Minnesota Supreme Court** to govern Minnesota’s judicial branch, the administration of justice, and the practice of law in Minnesota, and we oppose measures that would usurp or undermine that authority.

BACKGROUND: SALES TAX ON LEGAL SERVICES

The concept of taxing legal services is periodically discussed when policymakers are considering comprehensive tax reforms or potential options to address budget shortfalls. Over the years, such proposals have failed to gain traction, and for good reasons: Taxing legal services in Minnesota would make our state an extreme outlier, create a competitive disadvantage, raise a barrier to justice, and burden Minnesotans with a tax on misery.

Making Minnesota an outlier

Florida and Massachusetts tried taxing legal services, but both states rapidly repealed those laws when it quickly became evident that it was bad policy. Currently, **legal services are taxed in just three states** (HI, NM, and SD), all of which differ significantly from Minnesota. South Dakota relies on a broad-based sales tax and has no corporate or personal income tax, while Hawaii and New Mexico have taxed services since the inception of their sales tax codes. In addition, Minnesota has more attorneys than all of those states combined; and unlike those states, Minnesota has many lawyers who maintain regional, national, and international practices.

Harmful for individuals and businesses

Taxing legal services in Minnesota would create a competitive disadvantage. The additional tax burden would suppress business expansion and job creation. Clients would be discouraged from seeking legal advice from Minnesota law firms, and businesses needing legal expertise to expand or locate in Minnesota might choose to do so elsewhere. Moreover, the tax would push multi-state law firms to relocate attorneys and staff away from our state.

The negative effects on individuals would be just as harmful. **Legal representation is often needed when people are most vulnerable**, including situations involving bankruptcy, child custody, criminal accusations, debt collection, divorce, disability, domestic abuse, eviction, foreclosure, personal injury, and wrongful death. On top of that, Minnesota has very high court filing fees, which by themselves create a barrier to justice. Taxing legal services could push citizens to either forego their legal rights or attempt to represent themselves in the complex justice system, often to their disadvantage.

Complications

A sales tax on legal services would create complications and disparate treatment in a variety of contexts. First, citizens and businesses **would be forced to pay a tax to the state in order to challenge the state in court** (e.g., when challenging a property tax valuation). Second, larger companies could avoid the tax by growing their in-house legal departments, but smaller business would not have that option. Third, the tax would erode injury victims' compensation for their losses and make it more difficult for parties to reach reasonable compromise settlements.

Additionally, a tax on legal services would create some vexing problems. For example, how would “legal services” be defined? Would it include services that are commonly performed by both lawyers and non-lawyers (e.g., drafting real estate documents, conducting real estate closings, and preparing tax returns)? **It would be unfair to tax those services in some scenarios but not others.**

Finally, there are a number of perhaps unanswerable questions regarding a potential tax on legal services. Would law firm records would be subject to audit **in potential violation of the attorney-client privilege**? When would sales tax payments be due? Attorneys often don’t receive prompt payment from clients, so reconciling a payment with the related tax obligation could be difficult. Would the tax be due when a case is won or when an award is received? And how would contingency fee cases be handled?

For the numerous reasons outlined above, taxing legal services in Minnesota would be unfair, impractical, and unwise.

OTHER ISSUES

In the **Criminal Law** realm, the MSBA advises the Legislature to take action consistent with the recommendations of the Commission on Juvenile Sentencing for Heinous Crimes **in order to bring Minnesota’s Heinous Crimes Act into compliance with United States Supreme Court requirements**. The MSBA also recommends that policymakers adopt the **Uniform Collateral Consequences of Conviction Act**, which will ensure that individuals are aware of any penalties or disadvantages imposed as a result of a conviction.

The area of **Family Law** is often emotionally charged both in the courtroom and at the Capitol. Over the years, the MSBA has supported numerous policy changes that have substantially reduced litigation and acrimony in family court. As a result, the overwhelming majority of family law cases are now resolved through alternative dispute resolution, with the parties finding a solution that best fits their family. Practitioners know that most effective and enduring custody arrangements are those that the parents themselves have cooperatively designed. Our core belief is that **the interests of children should be of primary importance** in family law disputes. As such, we take great interest in any proposals that would modify the “best interest of the child” factors codified in Minn. Stat. §518.17.

With increasing frequency, child custody disputes involve separating couples who are not married to each other. The MSBA supports the **equality of both unmarried parents' rights** in determining custody pursuant to their child's best interests. **We also support a number of other policy changes, including:**

- Encouraging substantial parenting time for fit parents.
- Providing mandatory compensatory parenting time when a substantial amount of court-ordered parenting time has been intentionally made unavailable to one parent.
- Giving parties access to temporary hearings for parenting time issues as well as accelerated temporary relief when access to a child or financial resources are being unreasonably denied.
- Emphasizing that the current 25 percent statutory parenting time baseline is a floor not a ceiling.
- Replacing the outdated term "visitation" in the parenting time statute.
- Adding a child's mental health and safety to a court's considerations in parenting time proceedings.
- Enabling courts to award costs and fees against parties whose unreasonable failure to comply with an order or decree forces the other party to seek enforcement or other relief.

In addition to the foregoing changes, the MSBA also supports **updating Minnesota's spousal maintenance statute** to provide greater fairness, clarity, certainty, and predictability.

As part of our commitment to diversity and inclusion, and in recognition of the importance of protecting Minnesotans' civil rights, the MSBA opposes any effort to withdraw or more narrowly define any currently protected class from the scope of the **Minnesota Human Rights Act**.

Although it is at times a contentious issue area, we believe **Immigration Law** has room for proposals that are worthy of bipartisan support. These include improvements such as **reducing gross misdemeanor sentences from 365 to 364 days** to improve clarity and eliminate damaging consequences and the loss of certain forms of relief for non-U.S. citizens. The MSBA also supports establishing a **"driving privilege license"** for Minnesota residents who are unable to demonstrate legal immigration status but otherwise meet the requirements for a driver's license. Such an option would ensure that more drivers have knowledge of, and the ability to comply with, Minnesota's road laws. It would also increase the percentage of insured vehicles

on the road and reduce the overall cost to individuals and the public for accidents involving uninsured vehicles.

The MSBA is committed to **safeguarding Minnesota's system of judicial selection from political influence**. Accordingly, we support judicial selection changes that may include, but are not limited to:

1. initial screening of judicial candidates by a merit selection commission;
2. appointment by the Governor from a list of candidates recommended by the merit selection commission;
3. an evaluation of each judge's performance by a nonpartisan evaluation commission; and
4. the retention of each judge decided by voters.

In the area of **Probate & Trust Law**, the MSBA supports allowing **electronic Wills and electronic Will witnessing**. Our goals are to give effect to each Minnesotan's testamentary intent and protect the public by ensuring proper procedures are followed in the execution of all Wills, electronic or otherwise. The MSBA also supports **modifications to the Directed Trust Statute** to clarify the roles and responsibilities of interested parties in directed trusts, which are an increasingly popular approach to trust administration in Minnesota and nationally. Importantly, our proposed changes would provide a framework for assigning fiduciary responsibilities.

Over the years, the MSBA has been involved in countless proposals to modify real property statutes. Those efforts continue today. Currently, we have a number of new suggestions, including **clarifying the 20-acre exception to the city/town subdivision regulations**, which will alleviate the need for some landowners to have to pay for a survey. We also support **allowing contact for deed cancellations to be recorded despite delinquent property taxes**. This will eliminate the problem of "innocent" contract vendors being unable to record a cancellation.

Additionally, the MSBA supports modifying Minn. Stat. §559.217 regarding cancellations of residential purchase agreements to **eliminate the \$3,000 cap on prevailing parties for the recovery of court filing fees, attorney fees, and costs of services**. This statute has helped get properties back on the market faster, but an unintended consequence is the unduly burdensome cost to commence a court action to suspend a cancellation of a purchase agreement under a tight timeframe. Our proposal would benefit both buyers and sellers of real property.

Real property practitioners also suggest a handful of **updates to Chapter 515B, known as the Minnesota Common Interest Ownership Act (MCIOA)**. The changes outlined below will benefit landowners, developers, associations, purchasers, and unit owners.

- Correct internal cross references which have become inaccurate or incomplete by the adoption of companion statutory sections.
- Add internal references to appropriately identify 2017 changes to MCIOA and the common interest communities to which they apply.
- Require that when an association delivers a resale disclosure statement to a buyer, the association must also furnish or make available electronically copies of the Maintenance Plan, Maintenance Schedule, and Maintenance Budget.

Last but not least, the MSBA supports a variety of **Tax Law** changes that aim to increase clarity and fairness. We recommend that lawmakers:

- Establish a state “interest netting” provision and reconcile Minnesota and federal tax statutes.
- Clarify that taxpayers can claim a refund during the same time period that Department of Revenue can assess a tax.
- Conform to the federal statute of limitations for filing a refund claim following an assessment.
- Extend the appeal period for taxpayers to receive commissioner orders.
- Simplify service requirements for property tax petitions.
- Establish that that when no sales are made in connection with a trade or business in a given year, the apportionment formula for net income and losses does not apply.