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June 22, 2005

The Honorable Bruce Caswell
State Representative
State Capitol
P.O. Box 30014
Lansing, MI 48909-7514

306 Townsend Street
Michael Franck Building
Lansing, MI
48933-2083

Re. HB 4006 Bad Check Diversion Program

Dear Representative Caswell:

At its June 10, 2005 meeting, the Board of Commissioners unanimously voted to **support in principle**¹ HB 4006.

For your information, I have enclosed public policy reports submitted to the State Bar from its Criminal Jurisprudence and Practice Committee and Standing Committee on Justice Initiatives. Please note that the opinions expressed in the reports are those of the Committees and not of the State Bar.

I would be happy to discuss the State Bar's position in more detail. I can be reached directly at (517) 346-6375 or jwelch@mail.michbar.org.

Sincerely,



Janet Welch
General Counsel

CC. Nancy J. Diehl, President
John T. Berry, Executive Director
Martin P. Krohner, Co-Chair, Criminal Jurisprudence and Practice Committee
Valerie R. Newman, Co-Chair, Criminal Jurisprudence and Practice Committee
Richard D. McLellan, Co-Chair, Standing Committee on Justice Initiatives
Hon. Cynthia D. Stephens, Co-Chair, Standing Committee on Justice Initiatives
Nell Kuhnmuensch, Governmental Consultant Services, Inc.

¹ Definition of support in principle: Pending legislation that the State Bar supports but is not the subject of active lobbying effort. The State Bar is on record on this position and will explain it upon request.



Report on Public Policy Position

Name of Committee:

Criminal Jurisprudence and Practice Committee

Contact Person:

Valerie Newman/Marty Krohner

Email:

valerie@sado.org; marty@mich.com

Bill Number:

HB 4006 (Caswell) Crimes; uttering and publishing; bad check pretrial diversion program; create. Creates new act.

Date position was adopted:

3/17/05

Process used to take the ideological position:

Committee meeting

Number of members in the decision-making body:

10

Number who voted in favor and opposed to the position:

Unanimous support in principle

Position:

This bill authorizes private agencies to operate diversion programs, which would reduce court backlogs and the committee supports this part of the bill. The concern, however, is that the proposed legislation gives private agencies carte blanche to collect debts, meaning that those agencies do not have to comply with the licensing requirements for collection agencies. There needs to be some oversight/constraints on the collection practices of agencies set up under the auspices of this proposed bill so that the agencies are required to comply with fair debt collection laws.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-HB-4006>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

See above for arguments for and against the proposed legislation

Arguments against the position (if any):

None provided.

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

On June 10, 2005, the State Bar of Michigan unanimously voted to adopt a position of support in principle.

Fiscal implications of the recommended policy to the State Bar of Michigan:

None.

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

- The regulation and discipline of attorneys
- ✓ The improvement of the functioning of the courts
- The availability of legal services to society
- The regulation of attorney trust accounts
- The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

Keller-permissible explanation:

It is critical that any agencies set up under the auspices of the court, which will be mandatory for those sentenced to diversion programs, comply with fair debt collection practices.



Report on Public Policy Position

Name of Committee:

Standing Committee on Justice Initiatives

Contact Person:

Richard McLellan, Hon. Cynthia Stephens

Email:

rmclellan@dykema.com, judgecyn@yahoo.com

Bill Number:

HB 4006 (Caswell) Crimes; uttering and publishing; bad check pretrial diversion program; create. Creates new act.

Date position was adopted:

April 21, 2005

Process used to take the ideological position:

In-person discussion and vote

Number of members in the decision-making body:

Seventeen

Number who voted in favor and opposed to the position:

Fifteen in favor, none opposed

Position:

Recommend a position of support in principle for HB 4006.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

<http://www.legislature.mi.gov/mileg.asp?page=getObject&objName=2005-HB-4006>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

The SCJI concurs with the arguments for this position as provided by the Criminal Jurisprudence and Practice Committee:

“This bill authorizes private agencies to operate diversion programs, which would reduce court backlogs and the committee supports this part of the bill. The concern, however, is that the proposed legislation gives private agencies carte blanche to collect debts, meaning that those agencies do not have to comply with the licensing requirements for collection agencies. There needs to be some oversight/constraints on the collection practices of agencies set up under the auspices of this proposed bill so that the agencies are required to comply with fair debt collection laws.”

Arguments against the position (if any):

None reported.

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

On June 10, 2005, the State Bar of Michigan unanimously voted to adopt a position of support in principle.

Fiscal implications of the recommended policy to the State Bar of Michigan:

None reported.

Provided by the Criminal Jurisprudence and Practice Committee:

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

- The regulation and discipline of attorneys
- ✓ The improvement of the functioning of the courts
- The availability of legal services to society
- The regulation of attorney trust accounts
- The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

Keller- permissible explanation:

It is critical that any agencies set up under the auspices of the court, which will be mandatory for those sentenced to diversion programs, comply with fair debt collection practices.