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June 22, 2005

The Honorable John R. Pastor
State Representative
State Capitol
P.O. Box 30014
Lansing, MI 48909-7514

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

Re. HB 4160 Small Claims Suit Recovery

Dear Representative Pastor:

At its June 10, 2005 meeting, the Board of Commissioners unanimously voted to **oppose in principle¹ HB 4160.**

For your information, I have enclosed public policy reports submitted to the State Bar from its Civil Procedure and Courts Committee, Standing Committee on Justice Initiatives and the Judicial Conference. Please note that the opinions expressed in the reports are not that 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
Ronald S. Longhofer, Chair, Civil Procedure and Courts Committee
Richard D. McLellan, Co-Chair, Standing Committee on Justice Initiatives
Hon. Cynthia D. Stephens, Co-Chair, Standing Committee on Justice Initiatives
Hon. Kathryn J. Root, Chair, Judicial Conference
Nell Kuhnmuensch, Governmental Consultant Services, Inc.

¹ Definition of oppose in principle: Pending legislation that the State Bar opposes 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:

Civil Procedure and Courts Committee

Contact Person:

Ronald S. Longhofer

Email:

rlonghofer@srr.com

Bill Number:

HB 4160 (Pastor) Civil procedure; civil actions; limitation on recovery amount allowed in small claims suits; revise. Amends sec. 8401 of 1961 PA 236 (MCL 600.8401).

Date position was adopted:

4/21/05

Process used to take the ideological position:

Discussion and vote

Number of members in the decision-making body:

20

Number who voted in favor and opposed to the position:

10 in favor, 4 opposed

Position:

10 members voted to oppose, because insufficient procedural due process is provided by the small claims court procedures, and pro se litigants may not understand the notice provided with the summons that they have a right to remove to district court. However, 2 of the 10 would support an increase to \$5,000.

4 members voted to support, because participation in small claims court is voluntary, and the bill would increase litigants' options by providing a low-cost forum in cases involving between \$3,000 and \$10,000 for those who choose to avail themselves of it.

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-4160>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

None provided.

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 oppose in principle.

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

None provided.

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:

Not provided.



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 4160 (Pastor) Civil procedure; civil actions; limitation on recovery amount allowed in small claims suits; revise. Amends sec. 8401 of 1961 PA 236 (MCL 600.8401).

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:

The SCJI opposes this legislation.

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-4160>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

Many low-income people use small claims court. A \$10,000 limit is very high, especially because there is no appeal.

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 oppose in principle.

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

None reported.

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:

This is Keller permissible because it deals with the functioning of the courts.



Report on Public Policy Position

Name of Section:

Judicial Conference

Contact Person:

Judge Katherine Root, Oscoda Co Probate Ct

Email:

d21@voyager.net

Bill Number:

HB 4160 (Pastor) Civil procedure; civil actions; limitation on recovery amount allowed in small claims suits; revise. Amends sec. 8401 of 1961 PA 236 (MCL 600.8401).

Date position was adopted:

2-18-05

Process used to take the ideological position:

Vote of Judicial Conference Executive Committee

Number of members in the decision-making body:

27

Number who voted in favor and opposed to the position:

15 yes

0 no

FOR SECTIONS ONLY:

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:

Oppose

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-4160>