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May 10, 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 4169 Required Attorney Fee


Dear Representative Pastor:

At its April 22, 2005 Board of Commissioners unanimously voted to **actively oppose**¹ **HB 4169**. This position is based upon the State Bar's long-standing policy that changes in court procedure should be made in the Michigan Court Rules by the Supreme Court, rather than in statute.

For your information, I have enclosed a public policy report regarding HB 4169 submitted to the State Bar from its General Practice Section. Please note that the opinions expressed in the letter are those of the General Practice Section, 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
Christopher Carlson, Chair, General Practice Section
Nell Kuhnmuensch, Governmental Consultant Services, Inc.

¹ Definition of active opposition: pending legislation that the State Bar opposes and which is the subject of active lobbying effort.



Report on Public Policy Position

Name of Section:
General Practice Section

Contact Person:
William Roy

Email:
roy@rsmv.com

Bill Number:
HB 4169 (Pastor) Civil procedure; costs and fees; threshold for requiring attorney fee to be paid by party that rejected mediation; revise. Amends secs. 4921 & 4969 of 1961 PA 236 (MCL 600.4921 & 600.4969).

Date position was adopted:
March 17, 2005

Process used to take the ideological position:
Discussion and vote at General Practice Section Council Meeting

Number of members in the decision-making body:
7

Number who voted in favor and opposed to the position:
7 opposed

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:
The Section is opposed to the proposed 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-4169>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

The legislation would restrict access to the courts by individuals. It would make it more difficult for individuals to reject case evaluation when the individual felt the evaluation was not in his or her best interests, by making it twice as difficult to obtain a more favorable verdict at trial. Corporations and insurance companies are in a better financial position to risk sanctions if they do not agree with an evaluation.

Arguments against the position (if any):

This legislation would favor the party which can most easily bear the financial risk of rejecting a case evaluation. This legislation would favor corporations and insurance companies.

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.

As of April 22, 2005, the State Bar of Michigan actively opposes HB 4169.

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:

Case evaluation is an issue of court procedure, and of fundamental fairness in the judicial process.