

Report on Public Policy Position**Name of section:**

Litigation Section

Contact person:

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[HB 5527](#) (Meadows) Sales tax; other; sales tax on services; implement. Amends secs. 1, 2, 4, 4a, 4d, 4h, 4j, 4q, 4t, 4u, 4w, 5b, 6, 10, 16a, 19, 23 & 25 of [1933 PA 167](#) (MCL [205.51](#) et seq.) & adds sec. 4c.

Date position was adopted:

June 16, 2010

Process used to take the ideological position:

Position adopted by electronic vote after discussion at several scheduled meetings and circulation of position statement.

Number of members in the decision-making body:

22

Number who voted in favor and opposed to the position:

19 Voted for position

0 Voted against position

3 Did not vote

Position:

The Litigation Section opposes HB 5527 proposed tax on legal services and supports the State Bar of Michigan's position on the bill.

Explanation of the position, including any recommended amendments:

The Litigation Section of the State Bar of Michigan supports the State Bar's opposition to legislation that burdens the public's access to justice, including adoption of a tax on legal services

In addition to the reasons set forth by the SBM in its position statement on the issue, the Litigation Section offers the following:

- A tax on legal services is a tax on individuals, not lawyers. Many businesses are unincorporated or operated by individuals doing business under an assumed name (d/b/a's).

- Individuals and small businesses secure legal services for the purpose of ascertaining, exercising, and defending their legal rights in court, including defending themselves in lawsuits regarding both personal and business matters. By allowing incorporated business entities to avoid the tax, but not allowing individuals doing business in their own name or as a d/b/a to do the same, would substantially prejudice the millions of small business men and women who find themselves in court.
- A tax on legal services is a tax that would add a tremendous burden on individuals and small businesses already facing significant financial stress and misfortune, e.g. bankruptcy, lawsuits, domestic violence, divorce, child support, debt collection, evictions, and property foreclosures.
- Most legal services are not discretionary.
- A tax on professional services would be detrimental to Michigan business interests, encouraging individuals and small businesses to seek legal services out of state. Small unincorporated business firms would be affected at a much higher occurrence than larger incorporated businesses that would not be subject to the tax.
- Many legal transactions, such as property transfers and estate administration, are already taxed. Imposing a tax on legal services for litigation that may arise out of those transactions would result in double taxation for those individuals.
- Audits of taxes on legal services would invade attorney/client confidentiality.
- In personal injury cases where an attorney is retained by a client on a contingent basis, the tax will reduce the amount of money recovered by an injured individual for their injuries. The collection of such a tax in this situation may also create an administrative burden on the lawyer representing the individual, reducing the willingness of attorneys to take such cases.
- Litigation involving corporations and/or individuals whose legal expenses are funded by an insurance company will result in a tax on the individual who is unprotected by virtue of the veil of a corporate or business status thereby skewing the cost of litigation in favor of the non-taxed party. Such one sided taxation is fundamentally unfair and restricts access to justice. Some examples include (1) taxing a plaintiff who was seriously injured in a motor vehicle collision by a drunk driver who is defended by the at-fault driver's automobile insurance carrier, (2) taxing a plaintiff who files a lawsuit against his/her own automobile insurance carrier to enforce his/her rights under Michigan's no fault laws to have medical and wage loss expenses paid, (3) taxing a plaintiff who files a lawsuit against his/her own homeowners insurance carrier to recover property damage loss, (4) taxing a plaintiff who files a lawsuit for injuries suffered against a premises owner who is defended by the owner's insurance carrier.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://legislature.mi.gov/doc.aspx?2009-HB-5527>