



S T A T E B A R O F M I C H I G A N

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48933-2012

July 6, 2010

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

RE: HB 5800 Procedure for Civil Actions to Enforce Headlee Amendment

Dear Representative Kennedy:

At its June meeting, the State Bar of Michigan Board of Commissioners unanimously voted to **oppose HB 5800**.

The State Bar recognizes the intent of the legislation to address the State Commission on Unfunded Mandates report. The State Bar's position in no way reflects the merits of the bill or its goal to ease taxpayers' ability to seek relief from alleged Headlee violations. The State Bar is, however, concerned with the impact the process proposed in HB 5800 would have on the functioning of the court system. When the Board had the opportunity to address questions put forth in a May 5, 2010 memo (please see enclosed), the resulting issues led to the vote to oppose the bill.

If you would like to discuss this position in further detail or have questions, please contact me directly at your convenience.

Sincerely,

Elizabeth K. Lyon
Director of Governmental Relations
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CC. Charles R. Toy, President
Nell Kuhnmuensch, Governmental Consultant Services, Inc.

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To: Representative Deb Kennedy
The Honorable Members of the House Judiciary Committee

From: Janet K. Welch, Executive Director
Elizabeth K. Lyon, Director of Government Relations

Date: May 5, 2010, House Judiciary Committee Hearing

Re: HB 5800

The State Bar of Michigan's Board of Commissioners has not yet formally considered HB 5800 to adopt a position. While we apologize for not being able to offer comments timely for the House Judiciary Committee hearing on May 5, 2010, we respectfully offer some preliminary considerations as part of the Committee record based on previous actions taken by the State Bar.

The State Bar will not weigh in as to the merits of the bill nor its intent to address alleged violations under the Headlee amendment. The State Bar may, however, consider the process laid out in the bill that determines how claims are to be handled in the courts. Traditionally, the State Bar has advocated that the Supreme Court is the properly constitutional authority to determine procedural matters.

We anticipate that when the Board of Commissioner's reviews HB 5800 as introduced its analysis will include the following:

- Can the legislature set time guidelines for case review in the court system?
- Under the proposed bill, if the Court of Appeals elects to refer a matter to a special master, can a panel of judges be statutorily required to defer its judicial power to the decision of a special master?
- Does current case law that limits the appointment of a special master only by stipulation of both parties preclude the Court of Appeals from choosing to appoint one to review these matters?
- Would the Court of Appeals be responsible for payment of a special master?
- If the Court of Appeals fails to make a decision within six months, is it constitutional to have the case decided, by statute, in favor of the plaintiff?

The State Bar of Michigan would appreciate the opportunity to work with Representative Kennedy and members of the House Judiciary Committee as the legislation is considered.