

**Public Policy Position
SB 408**

The Appellate Practice Section is a voluntary membership section of the State Bar of Michigan, comprised of 815 members. The Appellate Practice Section is not the State Bar of Michigan and the position expressed herein is that of the Appellate Practice Section only and not the State Bar of Michigan. The State Bar's position in this matter is to oppose SB 408.

The Appellate Practice Section has a public policy decision-making body with 24 members. On June 10, 2021, the Section adopted its position after an electronic discussion and vote. 18 members voted in favor of the Section's position, 0 members voted against this position, 2 members abstained, 4 members did not vote.

Oppose**Explanation:**

The Council of the Appellate Practice Section expresses no opinion on the necessity or wisdom of providing an appeal as of right and automatic stay from an order granting a new trial in non-medical malpractice and personal injury cases, the cases to which MCL 600.6098 applies.

Nor does the Council express any opinion as to whether this is within the province of the Legislature rather than the rule making authority of the Supreme Court.

The Council does, however, have serious concerns with the provision that provides that an appeal as of right may be filed "not later than 42 days before the date the circuit court has ordered a new trial to start." Appeals as of right in civil cases are already governed by court rule, MCR 7.204(A)(1), which generally applies a 21-day period from the date of the order or from a timely filed motion for rehearing or reconsideration. Not only would the Senate Bill carve out what we believe is an unnecessary exception from the general rule, but it would cause uncertainty and delays in both the trial courts and the appellate courts and could result in gamesmanship as well. If, for example, the trial court set the date for a new trial to start six months later, then a party would have 4½ months to file an appeal of right with an automatic stay. And note that there is nothing in the bill that would limit the time period to the first scheduled trial date, so if the trial court set the date for a new trial to start six months later, and then adjourned the trial for six more months, a party would have 10½ months to file an appeal as of right with an automatic stay.

If the Legislature believes that there should be an appeal as of right with an automatic stay from an order granting a new trial in non-medical malpractice and personal injury cases, which would apply to



APPELLATE PRACTICE SECTION

a small number of cases per year, we believe that the time for filing an appeal of right should be governed by already existing provisions of the Michigan Court Rules.

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