

**Public Policy Position
SB 408**

The Negligence Section is a voluntary membership section of the State Bar of Michigan, comprised of 1,796 members. The Negligence Law Section is not the State Bar of Michigan and the position expressed herein is that of the Negligence Law Section only and not the State Bar of Michigan. The State Bar's position on this item is to oppose SB 408.

The Negligence Law Section has a public policy decision-making body with 14 members. On May 26, 2021, the Section adopted its position after a discussion and vote at a scheduled meeting. 14 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 0 members did not vote.

Oppose

Explanation

As Chairperson of the Negligence Law Section for the SBM, I am writing on behalf of the Section to voice our opposition to SB 408 introduced by Senator Roger Victory. SB 408 allows a party to seek relief from a circuit court judgment entered in a civil action based on a jury verdict, provides for an immediate appeal as of right from the order granting relief from judgment, and also mandating a stay of proceedings during the appellate process.

Currently, Michigan Court Rule 2.612C sets forth the grounds a party must show to obtain relief from a judgment in a civil action. The grounds for setting aside a circuit court judgment in SB 408 are essentially identical to those contained in MCR 2.612(C).

Our opposition to SB 408 is not due to a disagreement with the policies of the bill. Indeed, there is a good argument that when a jury verdict is set aside, the opposing party should have the right to seek an immediate appeal and have the new trial put on hold until the appellate system sorts out whether the jury verdict should have been set aside in the first place.

Instead, our opposition is based on the fact that adoption of SB 408 would create a conflict with the Michigan Court Rules. Under the Court Rules, if a jury verdict is set aside under MCR 2.612(C), the opposing party has to seek permission to appeal and the Court of Appeals has discretion to hear the appeal or deny the appeal. The Court Rules also do not provide for an automatic stay while the application seeking permission to appeal is pending.

If SB 408 is passed into law, a litigant involved in a case where the jury verdict has been set aside would be confronted with a statute that says an appeal as of right can be filed and a court rule that says an appeal as of right cannot be filed. The litigant would also have a statute that says the trial proceedings are stayed and a court rule that says the new trial can go forward immediately. While the traditional rule is that the Court Rules trump a statute on matters of procedure, it will take litigants, the trial court and the Court of Appeals years to firmly decide whether SB 408 prevails over the Court Rules.

This will create uncertainty and an inefficient use of resources for the judiciary and the litigants. For this reason, the Section is unable to support SB 408.

Contact Person: Thomas R. Behm

Email: trbehm@gmnp.com