

## NEGLIGENCE LAW SECTION

Respectfully submits the following position on:

\*

HB 5156

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The Negligence Law Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Negligence Law Section only and is not the position of the State Bar of Michigan.

The State Bar's position in this matter is to support the bill, and support the amendments suggested by the Negligence Law Section.

The total membership of the Negligence Law Section is 2,112.

The position was adopted after discussion and vote at a special meeting. The number of members in the decision-making body is 15. The number who voted in favor to this position was 13. The number who voted opposed to this position was 0.

## Report on Public Policy Position

**Name of Section:**

Negligence Law Section

**Contact person:**

Todd Tennis

**E-Mail:**

[ttennis@capitolservices.org](mailto:ttennis@capitolservices.org)

**Bill Number:**

HB 5156 (Shirkey) Courts; judges; court of claims exceptions to trial by court without jury; provide for under certain circumstances. Amends sec. 6421 of 1961 PA 236 (MCL 600.6421).

**Date position was adopted:**

November 26, 2013

**Process used to take the ideological position:**

Position adopted after discussion and vote at a special meeting

**Number of members in the decision-making body:**

15

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

13 Voted for position

0 Voted against position

0 Abstained from vote

2 Did not vote

**Position:**

Support with Amendments

**Explanation of the position, including any recommended amendments:**

On November 12, 2013, Michigan enacted PA 164 (SB 652) which, *inter alia*, enlarged the jurisdiction of the Court of Claims and reassigned the Court of Claims from the 30th Circuit to the Court of Appeals. As a consequence of the enlarged jurisdictional provisions of PA 164, a number of issues related to the right to jury trial were potentially implicated. Due to time constraints and the manner in which the law was enacted, public input was limited and the State Bar of Michigan was unable to take an official position. However, our Negligence Law Section and a number of other State Bar sections, together with local bar associations, were able to advance a position, and unanimously opposed its enactment and expressed concerns about a number of issues, most prominently the jury trial and constitutional conflicts presented.

HB 5156 - The "trailer" bill was introduced and intended to correct jury trial issues.

The explained legislative purpose of HB 5156 is to preserve any and all rights a party may have had to a jury trial prior to the enactment of PA 164, by again amending MCL 600.6421. Section 6421 is the consolidation provision of the Court of Claims Act, and is also an express controlling provision with respect to its enlarged jurisdiction found in MCL 600.6419. As amended by HB 5156, Sec. 6421 would now begin with a statement of legislative purpose intended to guide our courts in the interpretation of the Court of Claims Act, establishing that PA 164 was not intended to limit any right to a jury trial a party may otherwise have under law and to preserve circuit court jurisdiction over those matters.

The Negligence Law Section supports this stated purpose.

However, drafting issues with HB 5156 may create confusion and misinterpretation by reviewing courts. A coalition of State Bar members and Sections, led by our Negligence Law Section, recently met with representatives, including the House GOP Caucus and the Governor's Office, to discuss these concerns. By consensus, the following changes were submitted for amendment and a substitute Bill is expected to be introduced at the Government Operations Committee Hearing on Dec. 3, 2013.

These revisions to HB 5156 would, if adopted:

1. Clarify that any right to a jury trial a party had prior to the enactment of PA 164 is expressly preserved, including claims against any individual state employee.
2. Clarify that such jury trials would occur in a circuit, district, or probate court of proper jurisdiction.
3. Clarify that defendants' rights to jury trial are expressly preserved, along with those of plaintiffs and claimants.

The Negligence Law Section supports the adoption of HB 5156, with the above proposed revisions expected to be contained in the substitute Bill.

**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?2013-HB-5156>

**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:**

HB 5156 concerns court of claims exceptions to trial by court without jury in certain circumstances.



## NEGLIGENCE LAW SECTION

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November 27, 2013

State of Michigan  
House of Representatives  
Committee on Government Operations  
Pete Lund, Chairman  
Anderson House Office Building  
124 North Capitol Avenue  
P.O. Box 30014  
Lansing, MI 48909-7514

**Re: HB 5156**

Dear Chairman Lund:

The Negligence Law Section of the State Bar is interested in the current Court of Claims legislation pending before your Committee as HB 5156. We are a voluntary organization that represents over 2,000 plaintiff and defense attorneys in Michigan. The governing council is comprised of an equal number of plaintiff and defense attorneys in order to achieve a balanced perspective of civil law in Michigan. Though our views do not necessarily represent the State Bar, our members actively practice in the Court of Claims in various aspects of litigation and have insight into the issue before your Committee.

As a condition to the privilege of practicing law in the State of Michigan, and as officers of the court, every lawyer takes an oath that begins: "I will support the Constitution of the United States and the Constitution of the State of Michigan." Central to our analysis and position regarding HB 5156 is the right to jury trial found in the 7th Amendment to the United States Constitution, and in Article 1, Section 14, of the Michigan Constitution.

### **BACKGROUND ON PA 164 (2013):**

On November 12, 2013, Michigan enacted PA 164 (SB 652) which, *inter alia*, enlarged the jurisdiction of the Court of Claims and reassigned the Court of Claims from the 30th Circuit to the Court of Appeals. As a consequence of the enlarged jurisdictional provisions of PA 164, a number of issues related to the right to jury trial were potentially implicated. Due to time constraints and the manner in which the law was enacted, public input was limited and the State Bar of Michigan was unable to take an official position. However, our Negligence Law Section and a number of other State Bar sections, together with local bar associations, were able to advance a position, and unanimously opposed its enactment and expressed concerns about a number of issues, most prominently the jury trial and constitutional conflicts presented.



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However, drafting issues with HB 5156 may create confusion and misinterpretation by reviewing courts. A coalition of State Bar members and Sections, led by our Negligence Law Section, recently met with your representatives, including the House GOP Caucus and the Governor's Office, to discuss these concerns. By consensus, the following changes were submitted for amendment and a substitute Bill is expected to be introduced at the Government Operations Committee Hearing on Dec. 3, 2013.

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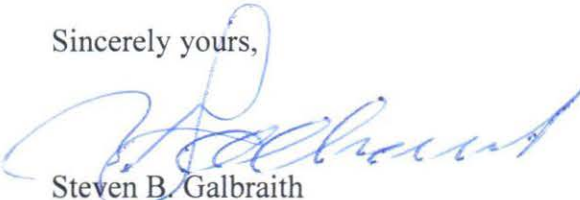
The Negligence Law Section supports the adoption of HB 5156, with the above proposed revisions expected to be contained in the substitute Bill.



## NEGLIGENCE LAW SECTION

As always, our Section stands ready to assist in any legislative ideas which may come before your Committee.

Sincerely yours,



Steven B. Galbraith  
Chair, SBM Negligence Law Section

SBG/mkf

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