



## Report on Public Policy Position

**Name of Section:**

Real Property Law Section

**Contact Person:**

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**Bill Number:**

**SB 1099** (Bishop) Liens; other; commercial real estate brokers lien; create. Creates new act.

**Date position was adopted:**

April 26, 2006

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

Vote of the Council of the Section

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

19

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

The 14 members at the meeting all voted in favor of the position to oppose SB 1099

**FOR SECTIONS ONLY:**

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

*If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.*

**Position:**

The Section opposes SB 1099, which would create a statutory commercial real estate brokers' lien. The reasons for opposition are:

1. The proposed legislation provides for a non-consensual lien which interferes with basic property rights.
2. The proposed legislation makes brokers a special preferred class of persons and provides a very extraordinary remedy of a lien against real property.
3. Brokers deal directly with owners, purchasers, landlords and tenants and have adequate remedies at law for

the collection of their commissions.

4. Providing lien rights to brokers will encourage other parties dealing with real estate such as appraisers, property managers, property inspectors, lawyers, title companies, escrow agents and accountants to request similar rights.
5. Once broker's liens are granted for commercial property there will be a substantial risk that lien rights will be subsequently extended to include residential property.
6. The proposed legislation is patterned after the Construction Lien Act, but the justification for protecting artisans who create physical improvements to property does not apply to brokers.
7. The proposed legislation gives brokers' liens priority over commercial lenders, which will provide a disincentive for commercial lenders to do business in the State of Michigan.
8. The proposed legislation is complex, will add substantial costs, expenses, delays and disruptions to closing real estate transactions.
9. The proposed legislation will result in the filing of more documents affecting property, problems of timely discovering such documents, and will create additional underwriting risks for title insurance companies.

**The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:**

[http://www.legislature.mi.gov/\(gp3zo4nybwjiq5vrduq2ntf2\)/mileg.aspx?page=getObject&objectName=2006-SB-1099](http://www.legislature.mi.gov/(gp3zo4nybwjiq5vrduq2ntf2)/mileg.aspx?page=getObject&objectName=2006-SB-1099)