CHILDREN'S LAW SECTION
Respectfully submits the following position on:

*

HB 4646

*

The Children's 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 Children's Law Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Children's Law Section is 492.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 19. The number who voted in favor to this position was 6. The number who voted opposed to this position was 4.

SBM | CHILDREN'S LAW SECTION

Report on Public Policy Position

Name of section:
Children's Law Section

Contact person:
Robin Eagleson

E-Mail:
RobinEsq@gmail.com

Bill Number:
HB 4646 (Shirkey) Children; adoption; temporary placement, consent, and release; provide for general revisions. Amends secs. 23d, 29 & 44, ch. X of 1939 PA 288 (MCL 710.23d et seq.).

Date position was adopted:
May 9, 2013

Process used to take the ideological position:
Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:
19

Number who voted in favor and opposed to the position:
6 Voted for position
4 Voted against position
0 Abstained from vote
9 Did not vote

Position:
Support and Amend

Explanation of the position, including any recommended amendments:
HB 4646 would allow a mother to consent to adoption without court intervention. While the Section agrees that it creates an undue burden on the parent executing a release to go to court on such a sensitive issue, the Section recommends that the bill be amended to protect the interests of the consenting parent(s), the prospective adoptive parents, and most importantly, the minor child. The proposed amendments by the Children's Law Section are as follows:

Sec. 23d (10): The Section believes that 72 hours is too short of a time. The Section recommends a longer period of time to file a petition to revoke a temporary placement after the temporary placement has been made.

Sec. 29. (5) & (7): The Section is concerned with the conflicts that most likely will arise when a parent or guardian is provided all explanations of rights by an adoption attorney who is hired by the prospective adoptive parent or agency or by a caseworker hired by the agency assisting the prospective adoptive family with adoption. The Section recommends that a neutral third party is appointed to explain all rights to the parent. The Section would also recommend, or in the alternative, recommend that the agency or prospective adoptive parent provide for a stenographer/transcriptionist or a videographer to document all explanations given at the time of consent and to document the actual signing of the consent. Further, the transcript and/or the video recording shall be filed with the Court along with the adoption petition to ensure or safeguard that no coercion or inaccurate information has been provided to any party.

Sec. 29. (11): The Section recommends that a longer period of time be given for the notice of revocation that must be submitted in writing to the adoption attorney or the child placing agency caseworker. The Section recommends that 5-7 days be considered to ensure that enough time has been provided to the parent to weigh all options after executing the release and to confirm that the parent is in the right state of mind after giving birth when considering to continue the execution of the release or to revoke the release.

Sec. 44. (8): The Section recommends that a release shall not be executed prior to 24 hours after giving birth. Due to the stressful nature of birth, 24 hours should provide enough time for the parent to rest and allow for all medications provided during birth to exit the parent's system. It further allows the parent time to consider all options before being provided an explanation of all rights and prior to executing a release. Further, the Section adopts the comments made in Sec. 29 (5) & (7) above and recommend that a stenographer/transcriptionist or videographer be required to be present at the time of the release. In the alternative or in addition, have a neutral third party appointed to explain all rights to the parent before execution of the release.

Sec. 44. (9): The Section recommends that the comments made in Sec. 29 (11) above be adopted here and recommend that the revocation time be extended to either 5-7 days to ensure that a competent decision was freely and voluntarily made by the parent. Further, the Section recommends that the last line of (9) be deleted since (9) speaks of revocation within the time provided by statute and should not require a court hearing to determine best interests (this is further explained below when this Section speaks of (10)).

Sec. 44 (10): The Section recommends that (10) be completely deleted from the proposed bill. Subsection (10) seems to violate Santosky v Kramer, 45 U.S. 755, which requires that parents be provided fundamentally fair procedures meeting the requisites of the Due Process Clause. By denying a parent custody of their child after revoking their release within the allowable statutory period of time to do so and only applying the best interest test, the parent is denied their full due process rights. In addition, a process for when a revocation within the time allowed by statute is already governed by the Adoption Code, Section 23 (this proposed subsection completely changes the existing law). Specifically, MCL 710.23e states that should a parent decide to revoke their consent within the time allowed by statute, and if there is concern to return the child to the parent, the Court is empowered to appoint a Lawyer-Guardian Ad Litem to investigate on behalf of the child and to file a petition under the probate code governing child protection within 2 weeks or to refer the matter to the Department of Human Services. The Section asserts that this process is appropriate to confirm that the child is protected and placed in a safe environment, whether that be with the parent or the department at the conclusion of the investigation.

The Section also recommends that a new form for SCAO be created for the parent and the prospective adoptive parent to sign as an acknowledgment that they understand all rights and procedures at the time of execution of the release.

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-4646