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

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HB 4648

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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 10. The number who voted opposed to this position was 0.

SBM | CHILDREN'S LAW SECTION

State Bar of Michigan

Report on Public Policy Position

Name of section:
Children's Law Section

Contact person:
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Bill Number:
HB 4648 (Kurtz) Children; adoption; termination of rights of putative father; clarify. Amends sec. 39, ch. X of 1939 PA 288 (MCL 710.39).

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:
10 Voted for position
0 Voted against position
0 Abstained from vote
9 Did not vote

Position:
Oppose

Explanation of the position, including any recommended amendments:
HB 4648 restores parental rights to a mother who has voluntarily released her parental rights to facilitate an adoption due to a putative father's objection. The Children's Law Section opposes House Bill 4648.

The reasons that the Children's Law Section opposes this bill is for numerous reasons.

1) Despite a finding by a court that a putative father is deemed to be fit and is able to properly care for the minor child, the minor child is automatically given to the mother who has had no evaluation of her fitness and ability to provide care to the minor child. It is not logical to find that a putative father is fit but then custody of the child is given to the mother who has not been evaluated when the issue regarding the father is only that he has been unable to establish paternity for any number of reasons, i.e. lack of finances, inability to locate the mother, etc.

2) In a child protective proceeding, the court has the ability to directly place a child with any person who the Court finds to be appropriate, including a putative father. If a putative father is deemed to be appropriate and is seen to have an established relationship with the minor child, the Court is able to directly place that child with the putative father allowing the child to continue a parent-child relationship. This bill does not provide an ability to do this with the exception of the mother's rights being terminated in subsection (5). It also provides no requirement to evaluate the mother's fitness or ability to provide care to the minor child when a putative father objects. It simply reinstates the mother's parental rights and returns the minor child to the mother without any analysis of the mother's ability to provide care.

3) MCL 710.39 as already written provides for the ability to evaluate the fitness of the putative father and the relationship between the putative father and child and make a best interest determination. By allowing MCL 710.39 to stand as is, the putative father is given time to file a notice of intent to claim paternity as governed by MCL 710.33 and establish paternity so that he may be deemed the legal father of the minor child and possibly gain custody of the minor child.

4) One argument that has been made is that the mother whose rights have been terminated is being punished by focusing on the putative father and providing him time to establish paternity to possibly have the minor child placed in his care pending or after paternity is established. However, that is the incorrect issue to focus on. A minor raised by a parent is the best resolution for that child as long as the parent has the ability to provide care and stability for that child.

5) This bill also does not allow any time for the father to establish paternity as required by existing statute and case law governed by child protection law so that the putative father's due process rights are not violated.

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-4648