FAMILY LAW SECTION
Respectfully submits the following position on:

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HB 5465

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The Family 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 Family 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 Family Law Section is 2,481.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 21. The number who voted in favor to this position was 18. The number who voted opposed to this position was 0.

SBM | FAMILY LAW SECTION

Report on Public Policy Position

Name of Section:
Family Law Section

Contact person:
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Bill Number:
HB 5465 (Kurtz) Family law; paternity; summary support and paternity act; establish. Creates new act.

Date position was adopted:
May 3, 2014

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:
21

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

Position:
Support with amendments

Explanation of the position, including any recommended amendments:
HB 5465 is a new act entitled the Summary Support and Paternity Act. It changes the procedure for initiating a paternity determination from a quasi criminal action to the filing of a "statement" by the title IV-D agency and serving that statement with a "notice of intent to establish paternity" on the parties. The notice informs the parties that the man has been named as the child's father and within 21 days must admit paternity, request a genetic test, or produce proof of prior exclusion by law. Failure to do any of these results in the alleged father being established as the child's legal father. If the nonfiling party requests genetic testing and the alleged father is not excluded, the nonfiling party must pay the cost of the genetic test.

If the man is not excluded, the IV-D agency may submit an order establishing the father's "duty to pay support", as in MCL 722.3. Once paternity is established, the IV-D agency may file a "notice of support obligation" to initiate

the entry of a support order. The notice is only served on the nonfiling party. The IV-D agency may then use MCL 552.517b to establish the amount of the support obligation.

A party may file a motion to set aside the order, but the "objection, required proof, and hearing must conform" to section 6(4) of the Paternity Act, which deals only with admissibility of the blood or tissue typing tests. The court must hold a preliminary hearing to determine whether the party can establish a prima facie case. If the initial determination of prima facie case is made by a referee, there is no right to a de novo hearing from that determination.

The Section supports this bill if the following amendments are made:

- The provision requiring repayment of genetic testing costs should be removed. A party should be encouraged to submit to genetic testing to make sure that the correct father is determined. The repayment provision will work to discourage genetic testing.
- The act should make it clear that the IV-D agency submitting the statement alleging paternity should not be the same agency that makes the paternity determination. A system where the prosecutor is also the judge will certainly be efficient, but will never be perceived as fair.
- The process for contesting paternity, even after genetic testing, should be revised. The bill references the process in the paternity act, which only deals with admissibility of reports, not their accuracy. The nonfiling party should have an opportunity to dispute the accuracy of the tests before any order is entered, rather than in a motion to set the order aside. The current procedure for summary judgment before entry of the order should be substituted for the preliminary hearing on a prima facie case to set aside an order already entered. If the summary judgment motion is heard by a referee, the current de novo review process should apply.
- The "notice of support obligation" should be sent to both parties, not just to the non-filing party.

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?2014-HB-5465