FAMILY LAW SECTION
Respectfully submits the following position on:

*

HB 4015

*

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 19. 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:
Kent Weichmann

E-mail:
weichmann@earthlink.net

Bill Number:
HB 4015 (Liss) Children; adoption; access to certain adoption records; allow unless a denial is on record. Amends secs. 27b & 68, ch. X of 1939 PA 288 (MCL 710.27b & 710.68).

Date position was adopted:
March 6, 2010

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:
19 Voted for position
0 Voted against position
0 Abstained from vote
2 Did not vote

Position:
Oppose

Explanation of the position, including any recommended amendments:
HB 4015 changes the rules for an adopted child's access to their birth certificate for adoptions which took place from 1945 until 1980.

During this time period, birth parent was assured of anonymity. If those parents wanted to allow contact from their child, they could file a form stating that preference. If they have not filed such a form and their child wishes to contact them, a confidential intermediary contacts the parent on the child's behalf to find out if the parent wants to be contacted by the child. If the child has hereditary medical issues, the court may require non-identifying medical information to be given to the child.

This bill changes that process so that identifying information about the birth parent will be released unless the parent files the form prohibiting release. If they do not know the law has changed and that they need to file such a

form, their identifying information will be released directly to their birth child and it would be up to the adoptive child to determine how they wished to use that information.

There is no requirement of using an intermediary. The birth parent would have no control over the timing or manner of the first contact with their birth child. For birth mothers who were victims of rape or incest, abrupt and unwanted contact may be traumatic. The saner and more considerate adopted children might give great deference to their birth parents' wishes. The less stable and considerate adopted children may choose less appropriate interactions. The proposed bill washes its hands of this issue.

It is also not clear how this bill will apply to children placed under the Safe Delivery of Newborns Act. The SDNA was enacted in reaction to the horrendous cases where newborns are found in dumpsters or public bathrooms, presumably left there by mothers too ashamed to deal with their pregnancies. The SDNA provides an opportunity for these mothers to have their children safely in hospitals under the assurance of absolute confidentiality. It would not seem fair that these parents could be assured of confidentiality, yet other birth parents would not. If the SDNA is tacitly repealed by this bill, it may endanger a certain class of newborns. If it isn't repealed, other birth mothers could choose this irrevocable choice of confidentiality at the time of their child's birth. Again, it seems that the current legislative scheme is a well-balanced approach.

There is additional information on this issue at National Council for Adoption. Here is a quote from one article; "Unfortunately, the loudest voices legislatures and the public generally hear regarding this issue belong to a small minority of adopted persons who insist upon an absolute right to identify and even to contact their birthparents, without birthparents' consent. A small but nationally well-organized group of activists seeks to eliminate confidentiality in adoption, or "secrecy and shame," as they attempt to caricature it. This vocal minority has little to lose simply by persevering year after year in their efforts to eliminate confidentiality in adoption. That is not the case for birthparents who desire their privacy, however. By standing up for their rights, they lose them in the process." Consent or Coercion? How Mandatory Open Records Harm Adoption , Thomas C. Atwood

The current legislative system is well-designed and sensitive to competing interests. Michigan should not break the promise it made to birth parents from 1945 until 1980. The Family Law Section opposes this 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?2009-HB-4015