FAMILY LAW SECTION
Respectfully submits the following position on:

*

HB 4646

*

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 8. The number who voted opposed to this position was 7.

SBM | FAMILY LAW SECTION

State Bar of Michigan

Report on Public Policy Position

Name of section:
Family Law Section

Contact person:
Kent Weichmann

E-Mail:
weichmannk@att.net

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 4, 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:
21

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

Position:
Support and Amend

Explanation of the position, including any recommended amendments:
HB 4646 would allow a mother to sign her consent to adoption without going to court. Over three fourths of the states allow this. Because the mother's consent is done out of court a revocation period is established, which is unnecessary for a consent given in court. The bill should be amended as follows:

• Throughout the bill 72 hours should be changed to 7 days. The extra time will provide better assurance that the birth mother is committed to the release or consent.

Days are used elsewhere in the adoption code and courts generally do better with days, than hours

• Section 23(d)(10) – The time to revoke a temporary placement needs to be tied to the execution of the release or consent.

(10) If an out-of-court release or consent has been executed, a petition filed under this section to revoke a temporary placement must be filed with the court not more than 7 days after the execution of the out-of-court release or consent.

• Section 29(7) mistakenly uses the term consent where it should use release and references section 44(8) when it should reference section 29.

• Section 29(8) should delay entry of an order terminating until expiration of the 7 day revocation period.

• Additional Sections 29(12) and (13) should be added to address the procedure for revocation within the 7 day period similar to those stated in Sections 44(9) and (10). The introductory clause to 29(13) should read:

If a prospective adoptive parent with whom a child has been placed, or the agency that accepted the release objects to a revocation submitted under subsection (12), timely . . .

• Both Sections 29 and 44 should confirm a minor parent of an adoptee must have a parent or other specified person with authority join the minor parent in executing the consent as is currently required in Section 28(2) and 43(4).

• Change Sections 29(13)(b) and 44(10)(b) to (c) and add a new subsection (b) in each to permit the court to consider any legally justifiable reasons the revocation is sought, and if such reasons are sufficient to invalidate the release or consent, permit revocation without consideration of subsection (c).

• Establish a standard by which the court determines best interest either by specifying the factors in Sections 29 and 44 or revising the existing standard in Section 22(g).

The Family Law Section supports this bill with those amendments.

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