

**Public Policy Position
HB 4164**

The Family Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 2,703 members. The Family Law Section is not the State Bar of Michigan and the position expressed herein is that of the Family Law Section only and not the State Bar of Michigan. The State Bar's position in this matter is to support the concept of making court records available electronically to the public.

The Family Law Section has a public policy decision-making body with 21 members. On June 9, 2021, the Section adopted its position after an electronic discussion and vote. 14 members voted in favor of the Section's position, 6 members voted against this position, 0 members abstained, 1 member did not vote.

Oppose

Explanation

The Family Law Section had multiple concerns with this bill as passed by the House. The Section generally agreed that courts should allow the register of actions to be available to the public at no cost, and that documents filed with the court should be easily available to attorneys.

Much of the concern centers around the free and easy access to the public of all documents filed in a family court case. Chief among the concerns is the ease with which personal matters, including exhibits to documents, will be able to be obtained and the potential for misuse (e.g., posting extremely sensitive information on social media websites). Minor children will be able to read and disseminate their parents' and friend's parents' personal information. Employers and potential employers would have easy/unfettered and free access to an employee's family court case, where people are often at their worst and sometimes overzealous attorneys portray parties in an unfavorable light. This could also be fertile ground for children to engage in abusive or bullying behavior against other children whose parents are engaged in family court litigation. All of which is clearly public record, but some very minimal barriers can guard against a lot of these unintended, but predictable, outcomes.

Another concern is that parties frequently file content in the form of exhibits which are improper personal information (e.g., social security numbers, medical records, financial records with unredacted account numbers, text messages sent by the children in cases, psychological evaluations that were supposed to be under seal, CPS reports that were not to be disseminated, and other completely inappropriate material for the public filing. While these documents can be removed under a motion to strike, the proposed bill would allow these documents to be readily accessible on

the internet unless or until a motion to strike is filed and granted, and it will be impossible to un-ring that bell.

Lastly, there was concern about how this bill would interplay with HB 4195, which would prohibit a Complaint for Divorce from being made public until a proof of service is filed. The Family Law Section requested certain amendments to HB 4195. The Section believes strongly that HB 4195, with the recommended amendments from the Section, should be implemented.

The public should have on-line access to the register of actions, but should have to order documents or go to the courthouse to obtain them. For the public, a nominal fee and providing identifying info, is reasonable for the reasons set forth above.

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