

Public Policy Position
HB 4654

The Probate & Estate Planning Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,491 members. The Probate & Estate Planning Section is not the State Bar of Michigan and the position expressed herein is that of the Probate & Estate Planning Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Probate & Estate Planning Section has a public policy decision-making body with 23 members. On October 14, 2023, the Section adopted its position after a discussion and vote at a scheduled meeting. 13 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 10 members did not vote.

Oppose

Explanation:

1. HB 4654 would impose significant financial burdens on State and local government by substantially increasing the volume of litigated matters before the probate courts and appellate courts of this State.
2. HB 4654 would increase litigation, uncertainty, and expense in the probate process.
3. Electronic wills of the type contemplated in this bill are already permissible in Michigan; however, such wills are subject to a heightened standard of probate court review, because of their susceptibility to fraud. See MCL 700.2503. See *In re Estate of Horton*, 325 Mich App 325, 925 NW2d 207 (2018). This bill subverts the reasoned opinion of Michigan's legislature and the Courts that such wills require additional scrutiny.
4. This bill would recognize any of the following as an e-will: an email, text message, Microsoft Word file, or MS Paint file.
5. This bill does not set standards for signatures to ensure that the testator and witnesses are in fact the people who signed the e-will.
6. This bill's lack of encryption or audit-trail standards would invite tampering, forgery, and fraud.
7. The bill does not require any evidence that a computer file was actually was a person's will.

8. The bill does not set technological standards to prevent tampering after an electronic will has been signed. Because the bill does not require that an e-will be "fixed" and un-editable after it is signed, it would call into question whether a document is a draft, a true will, or a codicil (amendment) to a will.

9. The bill does not create procedural requirements to make clear to a person when she or he is creating, amending, or revoking a will.

10. Other states have enacted statutes related to electronic wills that offer better safeguards; there is nothing in this bill requiring them.

11. If enacted, this bill would:

1. Impose financial burdens on State and local government, including a likely need for additional probate judges and staff.

2. Force families to use higher-cost options like "formal probate," in order to get electronic wills admitted.

3. Create more litigation over whether a file on a person's computer or phone was intended to be a will.

4. Increase the risk that Michiganders' wills are lost through the accidental file deletion and corruption.

5. Make legal disputes more expensive, when parties have to use technology experts to resolve whether someone tampered with an electronic will.

6. Cause a flurry of appellate litigation, since the bill does not specify what makes an electronic will "tamper-evident." Since the bill does not create that definition, trial and appellate judges will be forced to do so.

The Probate and Estate Planning Section encourages the bill's sponsor to develop robust standards to protect the public from the litigation, uncertainty, and expense that would arise from this bill. Until those standards have been developed, the Section respectfully opposes House Bill 4654.

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