

PROBATE & ESTATE PLANNING SECTION
Respectfully submits the following position on:

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HB 5704

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The Probate & Estate Planning 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 Probate & Estate Planning Section only and is not the position of the State Bar of Michigan.

The State Bar does not have a position in this matter.

The total membership of the Probate & Estate Planning Section is 3,769.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 22. The number who voted in favor to this position was 15. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:

Probate & Estate Planning Section

Contact person:

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Bill Number:

[HB 5704](#) (Hughes) Probate; wills and estates; exempt property; allow decedent to exclude child by will. Amends sec. 2404 of [1998 PA 386](#) (MCL [700.2404](#)).

Date position was adopted:

September 10, 2016

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:

22

Number who voted in favor and opposed to the position:

15 Voted for position

0 Voted against position

0 Abstained from vote

7 Did not vote (absent)

Position:

Support with Recommended Amendments

Explanation of the position, including any recommended amendments:

The Probate Council supports the concept and HB 5704 and recommended that HB 5704 be amended as provided in the attachment.

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?2016-HB-5704>

[Recommended changes to HB 5704; Draft 4.]

A bill to amend 1998 PA 386, entitled "Estates and protected individuals code,"
by amending section 2404 (MCL 700.2404), as amended by 2000 PA 177

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2404. (1) The decedent's surviving spouse is also
2 entitled to household furniture, automobiles, furnishings,
3 appliances, and personal effects from the estate up to a value not
4 to exceed \$10,000.00 more than the amount of any security interests
5 to which the property is subject. If there is no surviving spouse,
6 the decedent's children **WHO ARE NOT EXCLUDED UNDER SUBSECTION 4** are entitled jointly to
the same value.

7

1 (2) If encumbered assets are selected and the value in excess
2 of security interests, plus that of other exempt property, is less
3 than \$10,000.00, or if there is not \$10,000.00 worth of exempt
4 property in the estate, the spouse or children **WHO ARE NOT EXCLUDED UNDER SUBSECTION 4**
are entitled to

5 other assets of the estate, if any, to the extent necessary to make
6 up the \$10,000.00 value. Rights to exempt property and assets
7 needed to make up a deficiency of exempt property have priority
8 over all claims against the estate, except that the right to assets
9 to make up a deficiency of exempt property abates as necessary to
10 permit payment of all of the following in the following order:

11 (a) Administration costs and expenses.

12 (b) Reasonable funeral and burial expenses.

13 (c) Homestead allowance.

14 (d) Family allowance.

15 (3) The rights under this section are in addition to a benefit

16 or share passing to the surviving spouse or children by the

17 decedent's will, unless otherwise provided, by intestate

18 succession, or by elective share. The \$10,000.00 amount ~~expressed~~ **DESCRIBED**

19 in this section ~~shall~~ **MUST** be adjusted as provided in section 1210.

20 Enacting section 1. This amendatory act takes effect 90 days

21 after the date it is enacted into law.

~~22 (4) UNLESS THE DECEDENT DISINHERITS MAY EXCLUDE 1 OR MORE CHILDREN FROM~~
~~23 RECEIVING THIS ALLOWANCE BY EITHER OF THE FOLLOWING MEANS: IN HIS OR HER~~
~~24 WILL, IN WHICH CASE ONLY THOSE CHILDREN NOT DISINHERITED ARE~~
~~25 ENTITLED. AS USED IN THIS SUBSECTION, "DISINHERIT" MEANS A~~

~~26 (a) DECEDENT BY WILL EXPRESSLY STATES THAT THE CHILD TAKES NOTHING OR AN~~
~~27 AMOUNT LESS THAN OF \$10.00 OR LESS FROM THE ESTATE.~~

~~28 (b) DECEDENT BY WILL EXPRESSLY STATES THAT THE CHILD IS NOT TO RECEIVE AN~~
~~29 ALLOWANCE UNDER THIS SECTION.~~