



Report on Public Policy Position

Name of Section:

Family Law Section

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Bill Number:

HB 5495 (Schuitmaker) Family law; marriage and divorce; affidavit filed with complaint for divorce stating all issues of the divorce have been resolved by both parties; allow. Amends sec. 6 of 1846 RS 84 (MCL 552.6). TIE BAR WITH: HB 5496'05

HB 5496 (Byrnes) Family law; marriage and divorce; 6-month waiting period before finalizing a divorce; provide exemption if both parties have resolved all issues before filing for divorce. Amends sec. 9f of 1846 RS 84 (MCL 552.9f). TIE BAR WITH: HB 5495'05

Date position was adopted:

February 4, 2006

Process used to take the ideological position:

Vote of Council members at the monthly meeting

Number of members in the decision-making body:

21

Number who voted in favor and opposed to the position:

11-6

FOR SECTIONS ONLY:

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:

The committee considered HB 5495 and HB 5496 as a package, since they are tie-barred to each other. The bills provide an automatic exception to the six-month waiting period for divorces involving minor children for cases in which the parties (plural) file a complaint accompanied by a consent Judgment of Divorce and an affidavit of each party stating that they approve the judgment and that all issues have been resolved, and reciting the statutory grounds for divorce. On its face, it appears to mandate the entry of judgment on the affidavits of the parties alone, without the appearance of either party.

In some counties attorneys may refer their clients to mediation before filing a complaint for divorce. This allows their clients to proceed in a manner and schedule of their own choosing, rather than being caught up in the court's scheduling mandates. Once the case is resolved, one party must file a complaint for divorce and the parties must wait six-months to enter the judgment, if there are minor children. These bills would encourage this procedure by automatically waiving the six-month waiting period, and allowing the parties to file a joint complaint. It may also be possible to allow the parties to file a joint complaint, in which neither is designated defendant (this designation offends some parties).

The Council supported this concept, but was concerned about the possible abuse of the process, with no review to determine whether there was full disclosure, opportunity for representation, or duress. Of course, such abuse is possible under current practice of entering consent judgments. The Council supports the concept of these bills (mandating a waiver of the six-month waiting period for cases settled before filing) and suggests the following amendments:

- Add "joint" before "complaint" on page two, line 11 of HB 5495;
- Require the affidavits of each party to be notarized, and require language in each affidavit that advises the parties of the effect of filing the consent order, including the rights they are waiving.
- Both parties must appear for the entry of the consent judgment unless it presents undue hardship to a party.

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

[http://www.legislature.mi.gov/\(v\)lll5rkoxhm2j45baojnuyy\)/mileg.aspx?page=BillStatus&objectname=2005-HB-5495](http://www.legislature.mi.gov/(v)lll5rkoxhm2j45baojnuyy)/mileg.aspx?page=BillStatus&objectname=2005-HB-5495)

[http://www.legislature.mi.gov/\(v\)lll5rkoxhm2j45baojnuyy\)/mileg.aspx?page=BillStatus&objectname=2005-HB-5496](http://www.legislature.mi.gov/(v)lll5rkoxhm2j45baojnuyy)/mileg.aspx?page=BillStatus&objectname=2005-HB-5496)