



Report on Public Policy Position

Name of Section

Probate & Estate Planning

Contact Person:

Henry M. Grix

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Bill Number:

SB 888

Date position was adopted:

January 17, 2004

Process used to take the ideological position:

Discussion at Council of Section

Number of members in the decision-making body:

20

Number who voted in favor and opposed to the position:

20 in favor; none opposed

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:

See attached letter to Senator Hardiman

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.michiganlegislature.org/mileg.asp?page=getObject&objName=2003-SB-0888>

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

N/A

Arguments against the position (if any):

N/A

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

N/A

Fiscal implications of the recommended policy to the State Bar of Michigan:

N/A

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category (to be completed for legislative issues only):

- The regulation and discipline of attorneys
- ✓ The improvement of the functioning of the courts
- ✓ The availability of legal services to society

The regulation of attorney trust accounts

The regulation of the legal profession, including the education, the ethics, the competence, and the integrity of the profession.

Keller- permissible explanation:

Our comments were preliminary and expressed only concerns that legislation as drafted is ambiguous and would create an unfunded mandate.

February 3, 2004

Senator Bill Hardiman
Chair
Senate Families and Health Services Committee
915 Farnum Building
Lansing, MI 48909

Re: Senate Bill 888

Dear Senator Hardiman:

I am the Chairperson of the Probate and Estate Planning Council. The Council is the governing body of the Probate and Estate Planning Section of the State Bar of Michigan. Our Section is the largest section of the State Bar with nearly 5,000 members. At our Council's meeting in January, the referenced Senate Bill was brought to our attention. Although our Council has not had the opportunity to study the legislation in detail, serious concerns and reservations were expressed, and we are advised that it is important to express our preliminary views at this time:

- **The legislation lacks adequate definitions.** For example, the legislation refers to the word "inheritance" which is not defined in Michigan's Estates and Protected Individuals Code, our probate code. Traditionally, an "inheritance" refers only to a gift from an individual who died without a will. Our probate code uses the word "devise" to refer to transfers under a will or from an individual who died without a Will. Transfers from trusts presumably should be covered by the legislation as well because so many citizens now use trusts as will substitutes.
- **The law appears to place an unfunded burden on fiduciaries, their lawyers, and, ultimately, the probate courts.** Would a notice to the agencies charged with collecting arrearages not be sufficient?

Members of our Council who are active in family law matters understand and generally approve of the goal of collecting child support arrearages. Our Council nevertheless has grave concerns about the legislation as currently drafted.

We respectfully request that your office keep us advised of the status of the legislation and let us know how we participate in a reasonable and cost effective solution to the problems the legislation seeks to address.

Very truly yours,

Henry M. Grix
Chairperson
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cc: Ms. Jennifer Zambiasi