

**Public Policy Position
HB 5309**

The Family Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 2,629 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. To date, the State Bar does not have a position on this item.

The Family Law Section has a public policy decision-making body with 21 members. On December 17, 2025, the Section adopted its position after a discussion and vote at a scheduled meeting. 19 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 2 members did not vote.

Oppose

Explanation:

The Family Law Section opposes HB 5309. The presumption that custody with a parent is in a child's best interests during the course of a custody dispute is rooted in the US Constitution. Parents have a fundamental liberty interest in the care and custody of their children, and the Constitution demands that a third party carry a heavy burden to interfere with that liberty interest. Because that presumption is rooted in the Constitution and is not merely a legislative or judicial creation, the Family Law Section believes that a legislative attempt to undo that presumption or to shift the presumption to a third party runs afoul of parents' liberty interests. Likewise, the US Supreme Court has held that even imperfect parents maintain that fundamental liberty interest, and a bill which subjugates a parent, even a deeply flawed parent, to the same legal status as a third party for the purpose of the parental presumption may violate that parent's liberty interests. As such, the Family Law Section believes that HB 5309 as drafted is unconstitutional and should not be enacted.

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