

Public Policy Position
HB 5339

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, 1 member abstained, 1 member did not vote.

Oppose

Explanation:

The Family Law Section opposes HB 5339. The requirement that an intended parent pass a background check before entering a surrogacy agreement is vague and confusing. If the purpose of the requirement is to protect the surrogate, this bill fails to do so as there is no mandate that the intended parent provide a copy of the background check to the surrogate. Additionally, the bill does not include any language on how an intended parent might "pass" a background check. It is unclear whether there are certain conditions (criminal conviction, sex offender registration, poor credit) which would cause the intended parent to "fail" the check or whether mere completion is sufficient to say that they have "passed" it. By the strict language of the bill, an intended parent must "pass" and not simply complete the background. The Family Law Section is concerned that this could be interpreted as the State placing a precondition on one's ability to become a parent, which may be an unconstitutional restriction on a parent's liberty interest in the care and custody of their children. We are aware of no case law indicating that the government may prohibit a person from becoming a parent, and state interference with a parent-child relationship in a child protective proceeding requires certain findings which are not immediately apparent simply from a background check. Finally, because the Assisted Reproduction and Surrogacy Protection Act contains no judicial oversight, it is unclear how the provisions of this bill could be enforced.

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