

**Public Policy Position
HB 5739 and HB 5740**

The Probate & Estate Planning Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,503 members. The Probate & Estate Planning Section is not the State Bar of Michigan and the position expressed herein is that of the Probate & Estate Planning Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Probate & Estate Planning Section has a public policy decision-making body with 23 members. On June 12, 2026, the Section adopted its position after a discussion and vote at a scheduled meeting. 18 members voted in favor of the Section's position, 0 members voted against this position, 1 member abstained, 4 members did not vote.

Oppose

Explanation:

Further explanation is provided in the attached Report.

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Guardianship, Conservatorship and End of Life Committee Report

To: Probate Council/PCP

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Cc: Guardianship, Conservatorship and End of Life Committee

Re: HB 5739 and 5740

The committee meet via Zoom to discuss proposed house bills 5739 and 5740. Present at the meeting were Elizabeth Graziano, Sandra Glazier, Judge Murkowski and Georgette David. Prior to the meeting, Judge Mack provided his comments and concerns regarding the proposed legislation via an email.

HB 5739

While theft by fiduciaries is a real concern, it is important that the medicine prescribed to address it not kill the patient.

All who participated believed that mandatory bonding at \$25,000 in liquid assets was too low, but acknowledged that there might be instances when bonding when the assets are below that amount might be called for and when assets at a greater value may not merit the cost of a bond.

Factored into that analysis were the practical implications of requiring a surety bond. The vast majority (if not all) of the insurance companies appear to presently require that the fiduciary be represented by counsel before they issue a bond. Therefore, the increase in legal fees together with the cost of the bond may actually have an adverse effect on the resources available to the incapacitated or protected individual or minor.

In an attempt to balance the concerns, it was thought that instead pegging the amount at which a bond might be mandatory (unless the Court determined on the record, for good cause shown, that the requirement of bond be waived should be tied to the amount specified in MCL 700.3982 and 3983, adjusted for inflation, as provided pursuant to MCL 700.1210.

The court should also be able to require a bond in conservatorship estates valued at below the MCL 700.3982 and 3983 amounts (as adjusted for inflation) in the exercise of the court's discretion.

It was felt that paragraphs 4 and 5 would complicate administration and increase costs without a commensurate benefit. Instead, the committee suggests that paragraph 4 provide that when considering a petition for the sale of real property the court shall also consider the extent to which a bond may now be required or increased and it shall state its reasons on the record with regard such determination.

It was felt that the language about designating a particular account provided no additional safeguards or protections, as in all instances the proceeds derived from a sale approved by the court would be payable to a fiduciary account and the issue of bond would have been addressed as part of the consideration engaged in by the court in approving the sale, as well as any other conditions the court might place upon the sale or potential use of proceeds in appropriate circumstances.

HB5740

Concerns were raised particularly with regard to the language proposed in paragraph (k), on page 9 of the bill (and by extension the language in (i)(ii) on page 7 of the bill). It was felt that the language in (i)(ii) should be modified to reflect “liquid assets and precious metals” as opposed to “money and tangible property”, or something along those lines (e.g. cash, accounts, securities, annuities, whole or universal life insurance policies having a cash surrender value, and precious metals). Paragraph (k) should mirror indicate that the type of discovered assets (such that the court might require a protective order or conservatorship) relates to the “liquid assets and precious metals”. Moreover, a protective order of conservatorship might not be required if the incapacitated individual has a duly executed and effective power of attorney in place. As such, it was felt that the imposition of the requirements set forth in paragraph (k) provided little if any benefit while increasing the cost of administration, even with the change reference to “liquid assets and precious metals”.

Again, while the members were aware that some courts may not require bonds as a matter of course, and that concerns of misappropriation of funds remains a real issue, care must be utilized in fashioning a remedy so that the remedy doesn’t result unnecessarily for diminished resources being available to the protected/incapacitated individual. As written, Section 5319 (2) could require additional reporting when illiquid assets believed to have a value of \$25,000 or more is found to exist, even if those assets are not easily converted into cash or have liens secured against it that reduces the net value of the assets. When inventories are provided to the court, only the value of a real estate mortgage secured against a property may be considered to reduce the value of property reflected on the

inventory. Other liens (such as taxes, or loans – even those that may be secured against tangible property) will not be considered when determining “value” for such purposes.