

FAMILY LAW SECTION
Public Policy Position
HB 4751

The Family Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 2,907 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 September 11, 2017, the Section adopted its position after an electronic discussion and vote. 15 members voted in favor of the Section's position on HB 4751, 1 members voted against this position, 2 members abstained, 3 members did not vote.

The Family Law Section Opposes HB 4751 and Offers Recommended Amendments

The Family Law Section opposes [HB 4751](#) as written and offers recommended amendments.

Explanation:

HB 4751 attempts to codify the law regarding the enforceability of prenuptial agreements, but it could undermine the holding in *Allard v Allard*. Prenuptial agreements can be useful for couples contemplating marriage, especially for second marriages where one or both parties are concerned about legacies for children of prior marriages. But prenuptial agreements are different from other contracts because they are rarely arms length transactions. In addition, an unscrupulous party can use the protection of MCL 600.2901 to evade equitable remedies for misconduct. Any codification of the law of prenuptial agreements must protect both parties to the agreement.

The Family Law Section opposes this bill as written. At a minimum the bill should permit a court to refuse to enforce a prenuptial agreement initiated shortly before a planned wedding date. The disclosure provisions should include all assets placed in a Domestic Asset Protection Trust, and the bill should state that the agreements cannot limit the court's authority under MCL 552.23 or MCL 552.401.

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