

**Public Policy Position
HB 5933**

The Probate & Estate Planning Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,240 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 September 11, 2020, the Section adopted its position after a discussion and vote at a scheduled meeting. 15 members voted in favor of the Section's position on HB 5933, 0 members voted against this position, 0 members abstained, 8 members did not vote.

Oppose HB 5933 with Explanation

Explanation:

The Probate and Estate Planning Section of the State Bar of Michigan opposes HB 5933. HB 5933's essential function is contained in its paragraph (4): "(4) The signing of a will by a devisee voids any devise to the devisee." This proposed change will harm Michigan citizens; in particular, it will harm those of modest means.

Michigan's current law, MCL 700.2505, is modeled after Uniform Probate Code 2-505. The UPC is promulgated by the Uniform Law Commission, which provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity, uniformity, and stability to critical areas of state statutory law.

Even prior to Michigan's 1998 enactment of MCL 700.2505, gifts to witnesses were not automatically void. (See Former MCL 700.122). With the adoption of UPC 2-505 / MCL 700.2502, the Michigan Legislature allowed for interested witnesses. Under this current law, a person who will receive a gift under a will may properly serve as a witness to the signing of the will and testify to prove due execution of the will. The purpose of this change was not to foster use of interested witnesses, as attorneys routinely prefer using disinterested witnesses in execution of wills. Rather, this change recognized that interested witness penalties did more harm than good.

Interested witness penalties fall heavily on the poor who do not have the means to seek legal counsel and have historically taken advantage of self-typed or form documents. Interested witness penalties also unnecessarily increase litigation regarding will formalities. A substantial gift by will to a witness

is itself a suspicious circumstance, and the gift might be challenged on grounds of undue influence. The former requirement of disinterested witnesses did not prevent or eliminate fraud and undue influence. In most cases of undue influence, the influencer is careful not to sign as a witness, but instead procures disinterested witnesses.

In the 20 years it has been effective, the current law has not appreciably increased fraud or undue influence. HB 5933 takes two steps back for Michigan Jurisprudence and proposes an even more aggressive approach than the former MCL 700.122.

The issue of interested witnesses was carefully examined by the legislature and its advisors in 1998. There is no reason to revisit this issue today.

The proposed HB 5933 may be related to HB 5795, which would permit electronic signatures for wills. The Probate and Estate Planning Section opposes HB 5795 for the following reasons:

Will formalities requirements provide evidentiary, channeling, ritual and protective (e.g., protections from undue influence, fraud, delusion, coercion, forgery or perjury) functions. The PEP Section believes that HB 5795 as drafted, does not adequately serve these functions.

The Probate and Estate Planning Section's reasons for opposing HB 5795 would not be altered if HB 5933 were enacted.

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