

PROBATE & ESTATE PLANNING SECTION

Respectfully submits the following position on:

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SB 465 (S-1) Draft 2; SB 466 (S-1) Draft 1, and Proposed
Amendment to the Security Freeze Act

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The Probate & Estate Planning Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Probate & Estate Planning Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Probate & Estate Planning Section is 4,128.

The position was adopted after an electronic discussion and vote. The number of members in the decision-making body is 23. The number who voted in favor to this position was 23. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:

Probate & Estate Planning Section

Contact person:

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Regarding:

SB 465 (S-1) Draft 2; SB 466 (S-1) Draft 1, and proposed amendment to the Security Freeze Act

[SB 465](#) (Schuitmaker) Probate; guardians and conservators; jurisdictional provisions in the estates and protected individuals code; revise to reflect adoption of the uniform adult guardianship and protective proceedings jurisdiction act. Amends secs. 1301, 5307 & 5402 of [1998 PA 386](#) (MCL [700.1301](#) et seq.).

[SB 466](#) (Schuitmaker) Probate; guardians and conservators; uniform adult guardianship and protective proceedings jurisdiction act; enact. Creates new act.

Date position was adopted:

September 17, 2014

Process used to take the ideological position:

Position adopted after an electronic discussion and vote

Number of members in the decision-making body:

23

Number who voted in favor and opposed to the position:

23 Voted for position

0 Voted against position

0 Abstained from vote

0 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

The Probate & Estate Planning Section Council opposes SB 465 (S-1) Draft 2 and SB 466 (S-1) Draft 1, as well as the proposed companion amendment to the "Security Freeze Act," in part because the proposed legislation has not been sufficiently reviewed and analyzed to ensure that the core concepts expressed by these Bills will actually result without causing unintended and undesirable changes to current Michigan guardian and conservator laws. For

example, one primary stated purpose of this proposed legislation is for the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) to apply only to those cases in which there is an inter-jurisdictional conflict. This intent is stated in Section 503 of the current proposal. However, the jurisdictional scope of the proposed Act is not actually limited in that manner. For example, Section 203 reads as follows:

"Sec. 203. This article provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult." [emphasis added]

This wording is identical to the corresponding provision (at Section 202) of the prior version. Therefore, this proposed legislation does not in fact provide that the jurisdictional hierarchy concepts of the Uniform Act will only apply if a jurisdictional issue is raised. If that intent is to be achieved, additional wording revisions are needed to provide exactly how that concept will be applied in practice, including some sort of time limitations on when the jurisdictional conflict issue must be raised.

In addition, we oppose adoption of Articles III and IV of the Uniform Adult Guardianship and Protective Proceedings Jurisdiction Act (UAGPPJA) which are contained in these Bills. The provisions of those Articles were previously reviewed and debated extensively. Ultimately, that review and debate resulted in the provisions adopted as Act 545 of 2012 (that Act basically makes it easier for an out-of-state guardian or conservator to be appointed as such for the ward in Michigan; see MCL 700.5202a, 700.5301a, 700.5313 and 700.5433). Articles III and IV do not need to be part of the jurisdictional Act and present separate issues.

When reviewing these proposals, we must continually keep in mind that the purpose of the Uniform Act is to change the jurisdictional basis for when Michigan courts are allowed to act regarding the appointment of guardian or conservator – if Michigan does not have jurisdiction, as stated in our laws, then the Michigan courts cannot act.

The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.

<http://www.legislature.mi.gov/documents/2013-2014/billintroduced/Senate/pdf/2013-SIB-0465.pdf>

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