



Report on Public Policy Position

Name of Section:

Alternate Dispute Resolution Section

Contact Person:

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Bill Number:

HB 5677 (Wenke) Uniform Power Of Attorney Act

Probate; powers of attorney; uniform power of attorney act; enact. Creates new act & repeals secs. 5501 - 5505 of [1998 PA 386](#) (MCL [700.5501](#) et seq.).

Date position was adopted:

May 19, 2006

Process used to take the ideological position:

Review and Recommendation by Effective Practices and Procedures Action Team; Discussion and vote at Alternate Dispute Resolution Section Council Meeting

Number of members in the decision-making body:

21

Number who voted in favor and opposed to the position:

11 in favor, 0 opposed

FOR SECTIONS ONLY:

- ✓ This subject matter of this position is within the jurisdiction of the section.
- ✓ The position was adopted in accordance with the Section's bylaws.
- ✓ The requirements of SBM Bylaw Article VIII have been satisfied.

If the boxes above are checked, SBM will notify the Section when this notice is received, at which time the Section may advocate the position.

Position:

Although the Section does not take a position on the bill as a whole, since it is not within the jurisdiction of this Section, we do support certain language of the bill, and encourage its inclusion in this or any other legislation that defines powers granted when executing a power of attorney. Specifically, we support the language in Sections 203(d), 209(b)(iii), 209(c), 212(e), and 214(d).

The text (may be provided by hyperlink) of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report:

[http://www.legislature.mi.gov/\(hysnrx45zuxu1s55cr4aqx45\)/mileg.aspx?page=shortlinkdisplay&docname=2006-HB-5677](http://www.legislature.mi.gov/(hysnrx45zuxu1s55cr4aqx45)/mileg.aspx?page=shortlinkdisplay&docname=2006-HB-5677)

RECOMMEND STATE BAR ACTION ON THIS ISSUE:

Arguments for the position:

When a principal appoints a power of attorney, the agent is given specific or general powers to act on behalf of or in the place of the principal. When such language is general, it is not always clear whether the agent has authority to submit a dispute to arbitration, mediation, or other alternate dispute resolution processes. With the proposed language, agents clearly have authority to submit disputes to arbitration or mediation and to settle such disputes on behalf of the principal. These provisions may encourage the use of appropriate alternative dispute resolution procedures by agents without concern about whether they are exceeding their authority or otherwise not carrying out their obligations to the principal.

Each of the sections we support-- Section 203(d), 209(b)(iii), 209(c), 212(e), 214(d)-- authorizes the agent to submit to arbitration or mediation particular claims for or against the principal. Section 203(d) is a general clause, relating to all powers incorporated by reference from Sections 205-218. The other Sections relate to specific types of claims (Section 209, powers with respect to operating a business, Section 212, powers with respect to claims and litigation, Section 214, claims with respect to benefits from social security, medicare, medicaid, other governmental programs, or civil or military service.)

Arguments against the position (if any):

None reported.

If the State Bar currently has a position on this subject matter, state the position, and an analysis of whether the recommended position and the current State Bar position are in conflict.

As of June 5, 2006, the State Bar of Michigan does not have a position on HB 5677.

Fiscal implications of the recommended policy to the State Bar of Michigan:

None.

FOR LEGISLATIVE ISSUES ONLY:

This position falls within the following Keller-permissible category:

- The regulation and discipline of attorneys
- ✓ The improvement of the functioning of the courts
- The availability of legal services to society
- The regulation of attorney trust accounts
- The regulation of the legal profession, including the education, the ethics, the competency, and the integrity of the profession.

Keller- permissible explanation:

Acceptance of the language of these sections of the bill would mean that claims brought or defended by agents holding a power of attorney would be more likely to be resolved through alternative dispute resolution, including arbitration and mediation, leading to mutually agreeable results for parties and more efficient functioning of courts, as cases are handled through means other than trial.