

Report on Public Policy Position

Name of section:

Family Law Section

Contact person:

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Bill Number:

[HB 5761](#) (Sheen) Family law; marriage and divorce; grounds for divorce when minor children are involved; revise, and require higher burden of proof. Amends sec. 6 of 1846 RS 84 (MCL [552.6](#)).

Date position was adopted:

March 8, 2008

Process used to take the ideological position:

Position adopted after discussion and vote at a scheduled meeting.

Number of members in the decision-making body:

21

Number who voted in favor and opposed to the position:

14 Voted for position

0 Voted against position

0 Abstained from vote

7 Did not vote

Position:

Oppose

Explanation of the position, including any recommended amendments:

HB 5761 would prohibit divorce in cases with minor children unless the plaintiff can prove, by clear and convincing evidence, one of the following grounds for divorce:

1) Defendant's adultery

2) Defendant's conviction of a felony and sentence for 5 years or more

3) Defendant abandoned the marital residence for more than a year prior to the complaint despite Plaintiff's request for Defendant's return.

- 4) Defendant has physically or sexually abused Plaintiff or a child of either party
- 5) The parties have been living apart by mutual agreement for more than 2 years
- 6) The parties have been legally separated for more than 18 months. This bill promotes bad marriages because it would make it almost impossible for a person with minor children to get out of a bad marriage without the consent of their spouse. This gives a tremendous amount of leverage to bad spouses, who can engage in every kind of bad behavior short of the statutory criteria with impunity. The person who wants out of the marriage will either have to engage in behavior that will drive their spouse away, or will have to offer sufficient concessions in the divorce to induce the spouse to agree to a divorce.

If the other spouse will not agree to a divorce in a marriage with minor children, the allegations that must be made and proven to obtain a divorce will raise the levels of conflict between the parties. Such conflict is very damaging to the minor children of the marriage.

The bill also proposes to increase the burden of proof to clear and convincing evidence. This will require more extensive trials, and tie up judicial resources. It will also make it more difficult for victims of domestic violence to get out of a marriage. Not only will they have to prove domestic violence, but they must establish it by clear and convincing evidence. In all cases the process will be more burdensome and expensive, causing additional damage to families which are already under substantial stress.

The Family Law section opposes this bill.

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

<http://legislature.mi.gov/doc.aspx?2008-HB-5761>