

PROBATE AND ESTATE PLANNING SECTION

OFFICERS

CHAIR

James B. Steward
Steward & Sheridan PLC
205 S Main St
Ishpeming, MI 49849-2018

CHAIR-ELECT

Marlaine C. Teahan
Lansing

VICE CHAIR

Marguerite Munson Lentz
Detroit

SECRETARY

Christopher A. Ballard
Ann Arbor

TREASURER

David P. Lucas
Battle Creek

COUNCIL

George F. Bearup
Traverse City

Christopher J. Caldwell
Grand Rapids

Rhonda M. Clark-Kreuer
Saint Louis

Kathleen M. Goetsch
Howell

Hon. Michael L. Jaconette
Battle Creek

Mark E. Kellogg
Lansing

Robert B. Labe
Birmingham

Michael G. Lichterman
Grandville

David P. Lucas
Battle Creek

Katie Lynwood
East Lansing

Raj Anand Malviya
Grand Rapids

Richard Charles Mills
Jackson

Melisa Marie-Werkema Mysliwicz
Grand Rapids

Lorraine F. New
Troy

Nathan R. Piwowski
Cadillac

David L.J.M. Skidmore
Grand Rapids

Nazneen Hasan Syed
Lansing

Geoffrey R. Vernon
Saint Clair Shores

Nancy H. Welber
Farmington Hills

November 30, 2016

House Judiciary Committee
Room 521,
House Office Building,
Lansing, MI

In re: SB 0270

Dear Committee:

On behalf of the Probate & Estate Planning Section of the Michigan State Bar Association, I wish to bring to your attention some concerns which have been noted by this Section's Council in its policy position statement adopted on June 13, 2015 (copy attached).

This Bill proposes to amend the "Estates & Protected Individuals Code" ("EPIC") by modifying some of the jurisdictional provisions applicable to guardianship and conservatorship (and protective) proceedings for certain individuals. However, the Bill places these jurisdictional changes in Part 3 of Article V, of EPIC, whereas the general jurisdictional provisions applicable to guardianship/conservatorship proceedings are located in Part 3 of Article I, which is titled "Scope, Jurisdiction, and Courts". At present, the jurisdictional provision applicable to a guardianship, conservatorship, or protective proceeding, is located primarily in MCL 700.1302. We believe that any revisions to the probate court's primary jurisdiction in this regard should be located in that same section and coordinated with that current statutory structure.

Our next major concern is the effect on the probate court's current jurisdiction. In general, our current jurisdiction for a guardianship/conservatorship/protective proceeding is considered to extend to people who reside here or those who are present here, even if their residence is actually elsewhere. This concept appears in the EPIC provisions dealing with "venue". See MCL 700.5302 and MCL 700.5302. However, SB 0270 goes beyond just venue and adds a new statutory jurisdictional requirement: "a significant connection to this state". Under SB 0270, simply being present in Michigan is not enough -- the person must also have a "significant connection" to Michigan. That is more limiting than what is currently required. Also, since this is a **jurisdictional** requirement, the court will need to conduct a hearing regarding these various factors, and then render its decision, which is subject to appeal -- if the appellate court determines that the person did not have a sufficiently "significant connection" to Michigan, then the probate court did not have **jurisdiction** to issue **any** valid orders. Such a possibility has the potential to leave the "protected person's" affairs in a state of considerable uncertainty, particularly when medical treatment is involved.

The jurisdictional change embodied within SB 0270 could also have an uncertain effect on MCL 700.5301a (appointment of guardian in another state as temporary guardian), and MCL 700.5312 (court exercise of power of guardian).

PROBATE AND ESTATE PLANNING SECTION

In summary, the Probate & Estate Planning Section of the Michigan State Bar Association believes that additional analysis and revision of SB 0270 is required before the concepts included therein can safely be passed into law.

Very truly yours,

**James B.
Steward**

Digitally signed by James B. Steward
DN: cn=James B. Steward, o, ou,
email=jamessteward@stewardsherid
an.com, c=US
Date: 2016.11.29 01:07:08 -05'00'

James B. Steward,
Chair

p.s. On January 9, 2016, the Elder Law & Disability Rights Section of the Michigan State Bar Association adopted a policy position statement similar to that adopted by the Probate & Estate Planning Section. A copy of the policy position statement is also attached.



PROBATE & ESTATE PLANNING SECTION

PROBATE & ESTATE PLANNING SECTION
Respectfully submits the following position on:

*

SB 0270

*

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 3,701.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 23. The number who voted in favor to this position was 17. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:

Probate & Estate Planning Section

Contact person:

Marlaine C. Teahan

E-Mail:

mteahan@fraserlawfirm.com

Bill Number:

[SB 0270](#) (Jones) Probate; guardians and conservators; probate court jurisdiction over guardianship and conservatorship proceedings; clarify. Amends [1998 PA 386](#) (MCL [700.1101](#) - [700.8206](#)) by adding secs. 5301b & 5402a.

Date position was adopted:

June 13, 2015

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:

23

Number who voted in favor and opposed to the position:

17 Voted for position

0 Voted against position

0 Abstained from vote

6 Did not vote (absent)

Position:

Support in Concept

Explanation of the position, including any recommended amendments:

Our Section takes a position to support SB 270 in concept but recommends that the Bill's proposed language be moved from Article 5 to Article 1 in the Estates and Protected Individuals Code. Further, it is our position that the intent of SB 270 is to expand the Probate Court's jurisdiction instead of restrict the Court's jurisdiction. The approved motion includes a grant of authority to the co-chairs of the Guardianship, Conservatorship and End of Life Committee, Rhonda M. Clark-Kreuer and Katie Lynwood, to work with our lobbyist and the Bill's sponsors to modify, or approve modifications to, the final proposed Bill in accordance with the position taken by Council, outlined above.

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?2015-SB-0270>



ELDER LAW & DISABILITY RIGHTS SECTION
Respectfully submits the following position on:

*

SB 0270

*

The Elder Law & Disability Rights 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 Elder Law & Disability Rights 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 Elder Law & Disability Rights Section is 1,287.

The position was adopted after discussion and vote at a scheduled meeting. The number of members in the decision-making body is 20. The number who voted in favor to this position was 15. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of section:

Elder Law & Disability Rights Section

Contact person:

Sara Schimke

E-Mail:

sschimke@jaffelaw.com

Bill Number:

[SB 0270](#) (Jones) Probate; guardians and conservators; probate court jurisdiction over guardianship and conservatorship proceedings; clarify. Amends [1998 PA 386](#) (MCL [700.1101](#) - [700.8206](#)) by adding secs. 5301b & 5402a.

Date position was adopted:

January 9, 2016

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:

20

Number who voted in favor and opposed to the position:

15 Voted for position

0 Voted against position

0 Abstained from vote

5 Did not vote (absent)

Position:

Support in Concept

Explanation of the position, including any recommended amendments

The Elder Law and Disability Rights Section supports the concept of expanding the jurisdiction of probate courts, so long as the language in Article 1 of EPIC to reflect this intent does not ultimately restrict jurisdiction of the court.

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?2015-SB-0270>

