FAMILY LAW SECTION
Respectfully submits the following position on:

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HB 4071

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The Family Law 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 Family Law 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 Family Law Section is 3,086.

The position was adopted after a discussion and vote at a scheduled meeting. The number of members in the decision-making body is 21. The number who voted in favor of this position was 18. The number who voted opposed to this position was 0.

Report on Public Policy Position

Name of Section:
Family Law Section

Contact person:
Kent Weichmann

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Bill Number:
HB 4071 (Barrett) Family law; child custody; requirement to file motion for change of custody or parenting time order when parent is called to active military duty; modify. Amends secs. 7 & 7a of 1970 PA 91 (MCL 722.27 & 722.27a).

Date position was adopted:
March 7, 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:
21

Number who voted in favor and opposed to the position:
18 Voted for position
0 Voted against position
1 Abstained from vote
2 Did not vote (absent)

Position:
Support with Amendments

Explanation of the position, including any recommended amendments:
HB 4071 This is the House version of SB 009, which we supported with amendments:

"This bill provides protections for deployed parents in addition to those provided in the Servicemembers Civil Relief Act. The revisions address the concerns expressed by Council last year, removing the appeal through the SCAO, and clarifying that a court can grant temporary relief during a stay.

The bill applies to parents on "active military duty" which is defined in MCL 722.22(a) as when "a reserve unit member or national guard unit member is called into active military duty." The committee recommended that the relief should apply to all deployed parents, as defined in the Uniform Deployed Parents Custody and Visitation Act:

(8) "Deployment" means the movement or mobilization of a service member for more than [90] days but less than [18] months pursuant to uniformed service orders that:
(A) are designated as unaccompanied;
(B) do not authorize dependent travel; or
(C) otherwise do not permit the movement of family members to the location to which the service member is deployed.

The bill also would require a parent to prevail by clear and convincing evidence versus a non-parent. The committee recommended that the burden should be preponderance of the evidence."

The Michigan Supreme Court has ruled that in custody disputes between parents and non-parents, the non-parent must prevail by clear and convincing evidence. HB 4071 reverses this burden, and requires a parent to prevail by clear and convincing evidence against a non-parent. The Family Law Section believes that to the extent that the bill applies to temporary placements of children, a preponderance of the evidence is the appropriate standard. The Family Law Section supports the bill with those two amendments but recommends the overall approach of the Uniform Deployed Parent Custody and Visitation Act as a more comprehensive alternative.

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-HB-4071