

FAMILY LAW SECTION
Public Policy Position
HB 4959

The Family Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 2,826 members. The Family Law Section is not the State Bar of Michigan and the position expressed herein is that of the Family Law Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Family Law Section has a public policy decision-making body with 21 members. On November 10, 2017, the Section adopted its position after discussion and vote at a scheduled meeting. 18 members voted in favor of the Section's position on HB 4959, 0 members voted against this position, 0 members abstained, 3 members did not vote.

The Family Law Section Opposes HB 4959.

Explanation:

HB 4959 would legislatively overrule Allard by amending MCL 552.23 to provide that if an antenuptial agreement conflicts with the statute, the antenuptial agreement controls.

Any regulation of the law of prenuptial agreements should protect both parties to the agreement. Prenuptial agreements can be useful for couples contemplating marriage, especially for second marriages where one or both parties are concerned about legacies for children of prior marriages. But prenuptial agreements are different from other contracts because they are rarely arms length transactions. In addition, an unscrupulous party can use the protection of MCL 600.2901 to evade equitable remedies for misconduct, such as an antenuptial agreement that is only presented on the eve of the wedding. An antenuptial agreement that severely disadvantages one spouse can be used by an abuser to force the disadvantaged spouse to remain in an abusive relationship. This bill would prevent the court from addressing any of those issues.

The Family Law Section opposes this bill.

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