

MEMORANDUM

TO: Real Property Law Section Council

FROM: Dawn M. Patterson

DATE: April 7, 2022

SUBJECT: Legislative Committee - Report

1. **Monthly Call.** The ad hoc Legislative Committee met via conference call Tuesday, April 5, 2022, to discuss recent legislation.
2. **New Proposed Legislation.** Legislation affecting real estate that we are tracking is referenced on the attached Report of Introduced Legislation.
 - HB 5759 was introduced on February 16, 2022. On February 22, 2022, the State Bar of Michigan requested comments to the proposed legislation by March 31, 2022. After circulating the comments to RPLS Council, on March 31, 2022, we shared our comments via a copy of the attached Memorandum to the RPLS Council from the RPLS Legislative Committee dated 3-29-22.
 - i. A decision needs to be made as to whether RPLS wants to take a position on HB 5759. I have attached the positions of other groups for reference. Specifically, two committees (Civil Procedure & Courts and Access to Justice) and two sections (Family Law Section and Probate and Estate Planning Section) recommended support for the bill. Their submitted positions include minimal or no comment. I am guessing that they filed their positions in response to the email from the State Bar inviting comments. Please note that the Civil Procedure & Court Committee opposed the companion bill dealing with probate litigation, HB 5758.
 - ii. The Board of Commissioners for the State Bar of Michigan is expected to meet prior to our April Council meeting. If they decide to support or oppose the legislation, we may not be able to take a contrary position. The SBM Bylaws provide that: “A State Bar Section may not advocate a policy position on behalf of the Section that is inconsistent with State Bar policy, unless expressly authorized to do so by a majority vote of the Board of Directors or Representative Assembly.” Article VIII, Section 7(2).
 - SB 880 was introduced on February 17, 2022. Tabitha informed us that the Committee on Economic and Small Business Development is working on an overhaul and substitute bill. It is expected to be similar to HB 5605 referenced below. She will keep us informed of any developments.
3. **Bills of Interest.**
 - **Short-Term Rental related:**
 - HB 4722, [2021-HEBH-4722.pdf \(mi.gov\)](https://legislature.mi.gov/doc.aspx?2021-HEBH-4722) (<http://legislature.mi.gov/doc.aspx?2021-HB-4722>) This is also known as the “Realtor Bill”. It is the “ban on the ban” bill. Linked is the substitute version that was passed by the House on 10-27-21 (at 2 am, I believe).
 - HB 5605 (12/8/21) Taxation: excise taxes; excise tax on business of providing

accommodations to include certain short-term rentals; modify. Creates new act.
<http://legislature.mi.gov/doc.aspx?2021-HB-5605>

- **Uniform Assignment of Rents Act** – HB 4799
<http://legislature.mi.gov/doc.aspx?2021-HB-4799>

HB 4799 passed the House on January 27, 2022. Roll Call # 22 was: Yeas 99 Nays 3
Excused 0 Not Voting 4. This bill is currently in the Senate Committee on Judiciary and
Public Safety.

4. **Potential Future Action.**

- **Marketable Record Title Act** – David Pierson and Nick Scavone met with Senator Wozniak at his office on January 18, 2022. They engaged in an in-depth discussion of the Marketable Record Title bill. This is in the final drafting stage. Senator Wozniak inquired whether MLTA had a position on it. I forwarded MLTA contact information to Tabitha. Specifically, I gave her contact information for John Bommarito and David Martyn.
- **Prior Tax Foreclosure Amendments (issue with MCL §781(1))** – the Section's lobbyist is working to assist us in trying to fix the problem the Section previously identified with this legislation [see November 2020 Legislative Report].

5. **Pending Legislation; Positions**

- **Construction Lien Act Amendment** – HB 4668
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4668.pdf>

Position: At the May 12, 2021 Council meeting, Council voted to oppose this Bill.

- **Prohibited Restrictive Covenants Act** – HB 4416
(<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4416.pdf>)

Position: At the May 12, 2021 Council meeting, Council voted to oppose this Bill. According to Tabitha, Representative Anthony is trying to move this legislation. This bill is on its third draft. David Pierson graciously wrote a summary and had discussions with the primary sponsor of the bill. Attached please find a summary he prepared for us along with a red line showing proposed changes.

6. **Additional matters.**

- **Land Contract Reform Initiative** – As of April 2022, this has taken a backseat to discussions and movement on Affordable Housing Issues. Tabitha did not have an update on this initiative. However, she has an Affordable Housing call on April 11, 2022.

**RPLS LEGISLATIVE COMMITTEE
REPORT OF INTRODUCED LEGISLATION
(through April 4, 2022)**

House Bill	5758	Probate: other; allowing electronic signing and witnessing of certain documents under certain conditions; eliminate sunset. http://legislature.mi.gov/doc.aspx?2022-HB-5758 (for discussion purposes regarding positions files by other sections or by committee – will delete from report.)
House Bill	5759	Occupations: notaries public; use of communication technology to perform electronic notarizations and remote electronic notarizations; modify and expand. http://legislature.mi.gov/doc.aspx?2022-HB-5759

Senate Bill	0880	Housing: other; short-term rental regulation act; create. Creates new act. TIE BAR WITH: HB 4722'21 http://legislature.mi.gov/doc.aspx?2022-SB-0880
Senate Bill	0960	Property: conveyances; conveyance or transfer of state-owned property in Kalamazoo County; provide for. Creates land transfer act. http://legislature.mi.gov/doc.aspx?2022-SB-0960

PRIOR REPORTS:

HOUSE BILLS:

- 4180: Amends MCL 554.607 to allow a tenant to request that landlord apply security deposit to rent obligation during a declared emergency. <https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4180.pdf>
- 4181: Amends MCL 600.101 et seq (revised judicature act) to limit residential landlord's remedies for a certain period following the end of COVID-19 state of emergency. <https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4181.pdf>
- 4183: Amends MCL 125.532 (housing law of Michigan) to provide a procedure for landlords to notify residential tenants of a violation/condemnation issue. <https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4183.pdf>
- 4185: Amends MCL 211.44a (general property tax act) to provide certain property owners the ability to apply for a waiver of interest and penalties for summer 2020 property taxes. <https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4185.pdf>
- 4259: Amends MCL 600.101 et seq (revised judicature act) to prevent residential evictions during the COVID-19 state of emergency.

<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4259.pdf>

- 4416: **Creates a new statute, titled the “prohibited restrictive covenants act”, which would (a) prohibit certain restrictions from being included in a recorded document and (b) provide a method for an association to amend existing documents.¹**
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4416.pdf>
- 4417: Amends MCL 559.190 (condominium act) to allow a condominium association to amend existing documents that include prohibited restrictions without consent of co-owners or mortgagees.
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4417.pdf>
- 4496: Amends 1893 PA 206 (“general property tax act”) to make delinquent property tax installment payment plans and tax foreclosure avoidance agreements available for certain commercial property.
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4496.pdf>
- 4641: Amends 1992 PA 147 (neighborhood enterprise zone act) to allow for 180-day extension of an NEZ certificate issued prior to March 23, 2020.
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4641.pdf>
- 4647: Creates “attainable housing and rehabilitation act” to establish attainable housing districts in certain municipalities, and allow for an owner of certain low-income residential rental property to obtain property tax exemption on the qualified facility (but not the land) for up to 12 years.
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4647.pdf>
- 4668: **Amends 1980 PA 497 (construction lien act) to (i) require any contractor who is required to be licensed to display such license (or, if not presented in person, to attach copies of his license/personal id to the claim of lien) at the time it records a claim of lien, and (ii) state that a register of deeds shall not accept a claim of lien to be recorded from a contractor who is required to be licensed unless the contractor displays such license or attaches such license to the claim.²**
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4668.pdf>
- 4676: Amends 1972 PA 348 (re: landlord and tenant relationships) to allow a tenant to be released from his/her residential rental agreement if they are a witness or victim of domestic violence, sexual assault or other physical crime.
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4676.pdf>
- 4694: Now Public Act 115 - - Amends Article 9 (Secured Transactions) of the Uniform Commercial Code (UCC) to change references to a "correction statement" to an "information statement", and to require a filing office to accept certain financing statement forms approved by the International Association of Commercial Administrators and adopted by the Secretary of State (SOS) and any other form adopted by the SOS. <http://legislature.mi.gov/doc.aspx?2021-HB-4694> (11-30-21)
- 4722: **Amends 2006 PA 110 (Michigan zoning enabling act) to provide that short-term rentals are a permitted residential use in all residential zones and are not subject to special use or conditional use permits or procedures. [NOTE: This is a re-introduction of the prior bill from the 2019/2020 legislative session.]³**
<https://www.legislature.mi.gov/documents/2021-2022/billengrossed/House/pdf/2021-HEBH-4722.pdf> (as passed by House)
- 4724: Amends 1931 PA 328 (Michigan penal code) to exclude from the anti-eavesdropping statute for recording if it is part of a home security system.
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4724.pdf>

- 4729-4732: Amends various statutes to require local governmental entities to charge the same rate for producing copies of public records as they would be required under FOIA.
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4729.pdf>
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4730.pdf>
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4731.pdf>
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4732.pdf>
- 4799:** **Creates “Michigan uniform assignment of rents act” to provide for security interest in rents.**⁴
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4799.pdf>
- &
- 4800:** Civil procedure: other; action regarding assignment of rents; clarify that action does not constitute an action under the "one-action" rule. Amends sec. 3204 of [1961 PA 236](#) (MCL [600.3204](#)). TIE BAR WITH: [HB 4799'21](#) <http://legislature.mi.gov/doc.aspx?2021-HB-4800>
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- 4825: Amends sec. 57 of 1978 PA 59 (MCL 559.157) & adds sec.131a to the Condominium act that provides audit requirements for the condo association, This includes the requirement that the audit contain of list of co-owners that have a delinquency of 6 months of more. Sec 131a provides that if an association of co-owners proposes an assessment that is more than \$2,500.00 per co-owner or more than a 50% increase in annual dues, the association of co-owners must vote on the assessment and approve the assessment by a 2/3 vote of its members.
- Summary:
- Amendment to the Michigan Condominium Act to revise Sections regarding requirements for annual financial audits of the Association records and books.
 - Requires associations which opt out of performing annual financial audit under the Condo Act to, at a minimum, have their books and records independently audited every 5 years.
 - Five year audit must verify that all dues have been collected, contain a list of delinquencies, identify payments made to any co-owner or business in which a co-owner has an interest, and confirm proper documentation exists to support those payments, confirm that HOA is following applicable laws and process for collecting past dues assessments, and confirm interest rates charged on past due assessments, provide narrative of budget items that exceed a 50% increase from budgeted amount, provide accounting of reserve fund, among other terms.
 - Also provides a voting mechanism for approval on assessments that are more than \$2,500 per co-owner or represent more than a 50% increase in annual dues (must have 2/3 co-owner approval). Also provides mechanism for arbitration if the HOA believes the assessment are necessary, but such assessments are not approved by 2/3 of co-owners.
- <https://www.legislature.mi.gov/documents/2021-2022/billintroduced/House/pdf/2021-HIB-4825.pdf>
- 4827: Creates a new act. -A bill to provide for the establishment of residential housing districts in certain local governmental units; to provide for the exemption from certain taxes; to levy and collect a specific tax upon the owners of certain qualified residential facilities; to provide for the disposition of the tax; to provide for the obtaining and transferring of an exemption certificate and to prescribe the contents of those certificates; to prescribe the powers and duties of certain state and local governmental officials; and to provide penalties.
<http://legislature.mi.gov/doc.aspx?2021-HB-4827>
- 4834 Amends 1893 PA 206 (MCL 211.1 - 211.155) by adding sec. 9p. TIE BAR WITH: HB 4833'21
- Bill to amend the General Property Tax Act.
 - Beginning December 31, 2021 and each year thereafter, qualified heavy equipment rental personal property for which an exemption has been properly claimed is exempt from the collection of taxes under this act.

-A qualified renter shall claim the exemption under this section by filing each year with the local assessing unit in which is located the qualified renter business location a statement that includes the form to claim the exemption under this section and a statement of all qualified heavy equipment rental personal property for which the exemption is claimed.

<http://legislature.mi.gov/doc.aspx?2021-HB-4834>

- 5011 & 5012: Expands the range of development (including multi-family) and energy projects (now to include hazardous material cleanup) that can be financed with a special assessment (including the sale of bonds).
<http://legislature.mi.gov/doc.aspx?2021-HB-5011> & <http://legislature.mi.gov/doc.aspx?2021-HB-5012>
- 5172 & 5173: HB 5172 creates a new act and provides for taxation on short-term rentals. HB 5173 amends secs. 2 & 5 of 1989 PA 244 (MCL 141.892 & 141.895) and adds the term “Short-term rental” to the Regional tourism marketing act.
<http://legislature.mi.gov/doc.aspx?2021-HB-5172> & <http://legislature.mi.gov/doc.aspx?2021-HB-5173>
- 5293 Land use: zoning and growth management; definition of state licensed residential facility; increase number of children receiving care at certain child caring institutions. Amends sec. 102 of [2006 PA 110](#) (MCL [125.3102](#)). <http://legislature.mi.gov/doc.aspx?2021-HB-5293>
- 5326 Property tax: assessments; valuation of wind energy systems; clarify. Amends sec. 27 of [1893 PA 206](#) (MCL [211.27](#)). <http://legislature.mi.gov/doc.aspx?2021-HB-5326>
- 5329 Property tax: assessments; designated assessor on requirement; provide opt-out option. Amends sec. 10g of [1893 PA 206](#) (MCL [211.10g](#)). <http://legislature.mi.gov/doc.aspx?2021-HB-5329>
- 5337 Property tax: Headlee; calculation of Headlee rollback; modify. Amends sec. 34d of [1893 PA 206](#) (MCL [211.34d](#)). <http://legislature.mi.gov/doc.aspx?2021-HB-5337>
- 5396-5403 Mobile Homes related bills
- 5465 Housing: other; short-term rental regulation act; create. Creates new act. <http://legislature.mi.gov/doc.aspx?2021-HB-5465>
- 5466 Land use: zoning and growth management; Michigan zoning enabling act; amend to include short-term rentals. Amends [2006 PA 110](#) (MCL [125.3101](#) - [125.3702](#)) by adding sec. 206b.
<http://legislature.mi.gov/doc.aspx?2021-HB-5466>
- 5600 Land use: land division; public utility easement as part of recorded plat; expand to include a public path, walkway, or sidewalk as part of the recorded plat. Amends sec. 222a of [1967 PA 288](#) (MCL [560.222a](#)). <http://legislature.mi.gov/doc.aspx?2021-HB-5600>
- 5605 Taxation: excise taxes; excise tax on business of providing accommodations to include certain short-term rentals; modify. Creates new act. <http://legislature.mi.gov/doc.aspx?2021-HB-5605>
Short Term Rental related
- 5606 Property tax: board of review; board of review for the process for late principal residence exemption claims; eliminate. Amends sec. 53b of [1893 PA 206](#) (MCL [211.53b](#)). TIE BAR WITH: [HB 5607'21](#) <http://legislature.mi.gov/doc.aspx?2021-HB-5606>

- 5607 Property tax: principal residence exemption; the process for approving a late-filed principal residence exemption affidavit; revise. Amends sec. 7cc of [1893 PA 206](#) (MCL [211.7cc](#)). TIE BAR WITH: [HB 5606'21](#) <http://legislature.mi.gov/doc.aspx?2021-HB-5607>
- 5650 Cities: home rule; method for serving blight violation notices; modify. Amends sec. 4q of [1909 PA 279](#) (MCL [117.4q](#))
- 5661 Provides agency authority to issue written emergency order requiring owner of structure or fill on bottomlands to make immediate repairs and other actions to avoid imminent failure of structure or fill. <http://legislature.mi.gov/doc.aspx?2021-HB-5661>

House Joint Resolution J (2021):

Proposes an amendment to the state constitution as to Article I and Article X to remove gender limitations.
<http://legislature.mi.gov/doc.aspx?2021-HJR-J>

Many bills are tie-barred with HJR-J for revisions to gender neutral revisions including HB 5217-5231 and HB 5232-5235 and HB 5249.

SENATE BILLS:

- 112: Amends MCL 211.44a (general property tax act) to provide certain property owners the ability to apply for a waiver of interest and penalties for summer 2020 property taxes.
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/Senate/pdf/2021-SIB-0112.pdf>
- 127: Amends MCL 205.731 (tax tribunal act) to provide that the tax tribunal does not have exclusive or original jurisdiction over a matter if a decision is a necessary predicate to a claim based on a federal law violation guaranteeing a civil right.
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/Senate/pdf/2021-SIB-0127.pdf>
NOTE: This bill is intended to overturn *Morningside Community Org. v. Wayne County Treasurer*, Case No. 336430 (MI Ct. of App. 2017) in its construction of section 31 of the tax tribunal act.
- 145 Individual income tax: other; Michigan first-time home buyer savings program act; create. Creates new act. TIE BAR WITH: SB 0146'21, <http://legislature.mi.gov/doc.aspx?2021-SB-0145>
- 146 Individual income tax: deductions; tax incentive for contributions made to first-time home buyers program; provide for. Amends sec. 30 of 1967 PA 281 (MCL 206.30). TIE BAR WITH: SB 0145'21 <http://legislature.mi.gov/doc.aspx?2021-SB-0146>
- 243: Amends MCL 211.44a (general property tax act) to provide certain property owners the ability to apply for a waiver of interest and penalties for summer 2020 property taxes.
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/Senate/pdf/2021-SIB-0243.pdf>
- 362: Creates “attainable housing and rehabilitation act” [see HB 4647, above]
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/Senate/pdf/2021-SIB-0362.pdf>

- 403: Amends 1893 PA 206 (general property tax act) to allow a resident in a nursing home to continue to claim PRE even if he/she is renting the home to a child or grandchild.
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/Senate/pdf/2021-SIB-0403.pdf>
- 413: Amends 1972 PA 348 (re: landlord and tenant relationships) to require a landlord to notify its tenant, in writing, not more than 30 days after the rental property is return as delinquent or foreclosure proceedings are commenced.
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/Senate/pdf/2021-SIB-0413.pdf>
- 422: Creates “residential housing facilities act” to establish residential housing districts in certain municipalities and allow for the owner of owner-occupied residential property to obtain property tax exemption on the qualified facility (but not the land) for up to 12 years.
<https://www.legislature.mi.gov/documents/2021-2022/billintroduced/Senate/pdf/2021-SIB-0422.pdf>
- 432: Amends sec. 15a of 1966 PA 346 (MCL 125.1415a). Provides for payment in lieu of taxes for rural workforce housing projects.
<http://legislature.mi.gov/doc.aspx?2021-SB-0432>
- 446: Amends 2006 PA 110 (MCL 125.3101 - 125.3702) by adding sec. 206b. Amends the Michigan zoning enabling act to include short-term rentals.
<http://legislature.mi.gov/doc.aspx?2021-SB-0446>
- 459: Amends sec. 4 of 1992 PA 147 (MCL 207.774). PRESENTED TO GOVERNOR 07/21/2021 10:46 AM This amends the Neighborhood Enterprise Zone Act to add a specific exception that would allow an application for a neighborhood enterprise zone (NEZ) certificate to be filed after a building permit has already been issued for the project.
<http://legislature.mi.gov/doc.aspx?2021-SB-0459>
- 472: Amends sec. 7 of 1993 PA 92 (MCL 565.957) to modify the Seller’s Disclosure Statement, including an added representation regarding flood zones.
<http://legislature.mi.gov/doc.aspx?2021-SB-0472>
- 539: Amends sec. 7b of 1893 PA 206 (MCL 211.7b). TIE BAR WITH: SB 0540'21 This provides for reporting requirements for reimbursement of lost tax revenue due to the disabled veterans property tax exemption.
<http://legislature.mi.gov/doc.aspx?2021-SB-0539>
- 540: Amends sec. 17 of 2014 PA 86 (MCL 123.1357). TIE BAR WITH: SB 0539'21 This provides for reimbursement to certain municipalities for lost property tax revenue due to homestead exemptions for certain disabled veterans.
<http://legislature.mi.gov/doc.aspx?2021-SB-0540>
- 541: Amends 1893 PA 206 (MCL 211.1 - 211.155) by adding sec. 7c. This creates property tax: exemptions for surviving spouses of certain military service members who died from service-connected causes.
<http://legislature.mi.gov/doc.aspx?2021-SB-0541>
- 547: Creates a new act – the short-term rental regulation act. It creates a statewide registry for all short term rentals over 14 days per year and regulates and taxes hosting platforms.
<http://legislature.mi.gov/doc.aspx?2021-SB-0547>

- 589: Amends secs. 1, 2 & 3 of 1970 PA 132 (MCL 54.211 et seq.) This modifies certified survey map requirements and requires grantor or lessor to record the certified survey if the land is surveyed into parcels under the Land Division Act.
<http://legislature.mi.gov/doc.aspx?2021-SB-0589>
- 593: Creates a new act to provide and authorize fees for sewage and municipal stormwater utilities. It provides for the allocation of the costs of planning, constructing, operating, maintaining, financing, and administering a stormwater system to real property served by the stormwater system.
<http://legislature.mi.gov/doc.aspx?2021-SB-0593>
- 594: Creates a new act to provide for the imposition of a hotel-motel tourism reinvestment excise tax for certain counties. This affects short-term rentals by allowing Michigan counties to levy up to 3% tax on short-term rental rooms. This new bill provides for the levy, collection, and administration of an excise tax on room charges of certain short-term transient facilities by transient guests; provides for the disposition of the proceeds of the excise tax; prescribes the powers and duties of certain state departments, local units of government, and state and local officials; provides for certain penalties; and provides for certain exemptions.
<http://legislature.mi.gov/doc.aspx?2021-SB-0594>
- 595: Amends secs. 2 & 5 of 1989 PA 244 (MCL 141.892 & 141.895) of the Regional Tourism Marketing Act to include short-term rentals.
<http://legislature.mi.gov/doc.aspx?2021-SB-0595>
- 627 Land use: other; remonumentation of the Indiana-Michigan state line; provide for. Creates and repeals new act. <http://legislature.mi.gov/doc.aspx?2021-SB-0627>
- 628 State financing and management: funds; state survey and remonumentation fund; revise to allow expenditures for monumentation of state border. Amends sec. 12 of 1990 PA 345 (MCL 54.272). TIE BAR WITH: SB 0627'21 <http://legislature.mi.gov/doc.aspx?2021-SB-0628>
- 671 Economic development: brownfield redevelopment authority; eligibility criteria for transformational brownfield plans; modify. Amends secs. 2, 13c & 14a of 1996 PA 381 (MCL 125.2652 et seq.). <http://legislature.mi.gov/doc.aspx?2021-SB-0671> Passed by House and Senate and has been ordered enrolled. The legislative analysis may be found at this link: [Summary as Passed by the Senate \(12/8/2021\) \(mi.gov\)](#)
- 715 -719 Affordable Housing Legislation

<http://legislature.mi.gov/doc.aspx?2021-SB-0715>
<http://legislature.mi.gov/doc.aspx?2021-SB-0716>
<http://legislature.mi.gov/doc.aspx?2021-SB-0717>
<http://legislature.mi.gov/doc.aspx?2021-SB-0718>
<http://legislature.mi.gov/doc.aspx?2021-SB-0719>
<http://legislature.mi.gov/doc.aspx?2021-SB-0720>
- 808 Property tax: delinquent taxes; delinquent tax foreclosure proceedings; modify certain notices. Amends secs. 78b, 78c & 78f of [1893 PA 206](#) (MCL [211.78b](#) et seq.). TIE BAR WITH: [SB 0809'22](#)[https://www.legislature.mi.gov/\(S\(ayvmzvbjidkrlhah1i1dqd\)\)/mileg.aspx?page=getObject&objectName=2022-SB-0808](https://www.legislature.mi.gov/(S(ayvmzvbjidkrlhah1i1dqd))/mileg.aspx?page=getObject&objectName=2022-SB-0808)

- 809 Property tax: delinquent taxes; delinquent tax foreclosure proceedings; modify certain procedures. Amends secs. 78h & 78k of 1893 PA 206 (MCL 211.78h & 211.78k). TIE BAR WITH: SB 0808'22 [https://www.legislature.mi.gov/\(S\(uzyxidurkfsddn3ma0uayds\)\)/mileg.aspx?page=getObject&objectName=2022-SB-0809](https://www.legislature.mi.gov/(S(uzyxidurkfsddn3ma0uayds))/mileg.aspx?page=getObject&objectName=2022-SB-0809)
- 813 Natural resources: inland lakes; actions ordered or taken by the department under certain emergency orders; provide for. Amends [1994 PA 451](#) (MCL [324.101](#) - [324.90106](#)) by adding sec. 30111d. [https://www.legislature.mi.gov/\(S\(uzyxidurkfsddn3ma0uayds\)\)/mileg.aspx?page=getObject&objectName=2022-SB-0813](https://www.legislature.mi.gov/(S(uzyxidurkfsddn3ma0uayds))/mileg.aspx?page=getObject&objectName=2022-SB-0813)

¹ At the May 12, 2021 Council meeting, Council voted to oppose this Bill.

² At the May 12, 2021 Council meeting, Council voted to oppose this Bill.

³ This legislation may see movement.

⁴ This legislation may see movement.

MEMORANDUM

To: RPLS Council

From: RPLS Legislative Committee

Re: HB 5759; Amendment to Michigan Law on Notarial Acts
(<http://legislature.mi.gov/doc.aspx?2022-HB-5759>)
Comments only – not a position

Date: March 29, 2022

Background:

Public Act 238 of 2003, (MCL 55.261 through MCL 55.315) sets forth the Michigan Law on Notarial Acts. <http://legislature.mi.gov/doc.aspx?mcl-Act-238-of-2003>

The State of Michigan published a Notary Guide which may be found at: [E-Notary and Remote Notary Guide \(michigan.gov\)](http://www.michigan.gov/notary)

In 2018, Public Acts 360 through 364 (SB 664, SB 996, SB 997, SB 998, and SB 999) were enacted and took effect on March 12, 2019. These addressed **Electronic Notarizations**. The changes included a provision to allow a notary public to perform notarial acts electronically using a tamper-evident electronic notarization system approved or allowed by the Secretary of State (SOS).

Public Act 330 of 2018 (House Bill 5811) addressed **Remote Online Notarizations**. This is commonly referred to as **RON**. With RON, a remote signer appears before the notary public using a remote electronic notarization platform and involves the use of electronic documents, which are electronically signed and notarized by remote signer and notary public. This legislation took effect September 30, 2018. The changes/additions included a requirement that the SOS and the Department of Technology, Management, and Budget (DTMB) must review and may approve remote electronic notarization platforms for the performance of notarial acts by Michigan notaries. Here is a link to those approved platforms: [List of Vendors 8.23 \(michigan.gov\)](http://www.michigan.gov/notary)

The statutory basics of RON are as follows:

MCL 55.265(i) provides:

"Remote electronic notarization platform" means any combination of technology that enables a notary public to perform a notarial act **remotely**; that allows the notary public to communicate by sight and sound with the individual for whom he or she is performing the notarial act, and witnesses, if applicable, by means of audio and visual communication; and that **includes features to conduct credential analysis and identity proofing**. (Emphasis added.)

MCL 55.263(h) provides:

"Identity proofing" means a process or service by which a third party provides a notary public with a reasonable means to verify the identity of an individual through a review of personal information from public or proprietary data sources conducted remotely. (Emphasis added.)

In the field, this is sometimes referred to a **KBA** or knowledge based authentication.

MCL 55.263(c) provides:

"Credential analysis" means a process or service by which a third party affirms the validity of an identity document described in section 25(6)(c) through a review of public and proprietary data sources conducted remotely. (Emphasis added.)

Section 25(6)(c), MCL 55.285(6)(c) provides:

A notary public has satisfactory evidence that an individual is the individual whose signature is on a record if that individual is any of the following:

...

(c) Identified on the basis of a current license, identification card, or record issued by a federal or state government that contains the individual's photograph and signature.

HB 5759 would add a new type of notarization - RIN:

Under Michigan law, there are currently three types of notarizations. (1) Traditional in-person pen and paper notarizations; (2) In-Person Electronic Notarizations and (3) Remote Online Notarizations. Among other terms, HB 5759 would amend the statute to add/authorize a fourth type of notarization. This type is sometimes referred to as **RIN** or remote ink notarization. In RIN, a remote signer appears before the notary public using [technology] and involves the use of paper documents, which are wet-ink signed and

traditionally notarized by remote signer and notary public. The bill sets forth the proposed terms of RIN by adding Section 26e.

One of the primary concerns about Section 26e or RIN is that it does not have the same integrity level as RON even though, in both RON and RIN, the signer is not in the physical presence of the notary public. RIN does not include KBA (knowledge based authentication) or Identity Proofing as required for RON and it is less tamper proof than RON. Another concern is RON is already in place for the parties that would be entitled to use RIN under the proposed legislation. What is the motivation to add another, less secure method?

To break this down further, the following comments are submitted:

Comment 1: With respect to Section 26e on RIN, it is somewhat unclear what “satisfactory evidence” of the remote signer would be. [Section 26e(1)(c)] It seems like the intent is to require the same methods as are currently required for an in-person traditional notarization because there is not an amendment to Section 55.285(6) where the term “satisfactory evidence” is defined for traditional in person notarizations and remote online notarizations performed under Section 26b. It does not make sense to establish one set of identification requirements for RON and a less cumbersome set of identification standards for RIN. In both cases, there is a remote signer that is not in the physical presence of the notary performing the notarial act.

Comment 2: Section 26e.(1) states that the communication technology may be used “to perform notarial act **electronically**.” However, the notarial act via RIN will be performed on paper, rather than electronically. This statement should be revised. The legislation specifically provides:

Sec. 26e. (1) Notwithstanding any other provision of this act, a notary public described in subsection (4)(a) or (b) may use communication technology other than an electronic notarization system or remote electronic notarization platform to perform notarial acts **electronically** if all of the following requirements are met:

Comment 3: It is unclear whether the limitations contained in Section 26e(1)(d) (i) and (ii) are intentional. These limitations were imposed when individuals located outside the United States are seeking RON from a US notary. The limitations make sense in the international signer context in order to

prevent sovereignty issues from arising. The limitations seem confusing when applied in the context of an individual located in another state.

Comment 4: Section 26e.(1)(f) does not make sense. A paper document would not be “tamper evident” in the same sense that an electronic document would be tamper evident.

Comment 5: This RIN legislation limits which parties may utilize it. Under the proposed legislation, in Section 26(e)(4), only a notary public that is an attorney licensed to practice law in Michigan, or an employee of the attorney acting within the scope of his/her employment may perform RIN. However, the definition of attorney does not include an attorney who is employed by or is an agent of a financial services provider. A financial services provider is defined under the proposed statute as a financial institution, licensed mortgage lender, licensed real estate broker, or title insurance company. A notary for a financial services provider may only utilize Section 26 (e) for RIN if the Director of the Department of Insurance and Financial Services determines it is necessary during a statewide emergency declared by the President of the United States or the Governor, and after the Director promulgates emergency rules to implement this determination. In other words, an attorney licensed in Michigan in private practice who is a notary may utilize RIN anytime whereas a notary for a financial services provider may utilize RIN only in a declared statewide emergency. No other notary may perform a notarial act under the RIN provisions of 26(e).

Along these lines, some questions are posed:

What if a seller wants to sign by RIN? The title company can only utilize RIN if there is a declared state of emergency and other hoops are satisfied. If the seller insists to sign via RIN, does this seller have to pay an attorney for that service outside of the closing? Will RIN cause confusion and problems with the Registers of Deeds (RODs)? Does the permission to use RIN include deeds of conveyance? Is there a provision that compels or allows the ROD to record a deed executed via RIN?

Action: Request this topic to be added to the agenda for the April 13, 2022 Council meeting. RPLS should consider whether to take a position on this legislation.

Public Policy Position
House Bills 5758 and 5759

HB 5758 – Oppose
HB 5759 – Support

Explanation:

The Committee voted to oppose House Bill 5758. While remote witnessing of certain documents was a necessity during the exigency of COVID-19, the risk of fraud and the probate litigation challenges created by remote witnessing outweigh the utility of this tool outside the pandemic context.

The Committee voted to support House Bill 5759. Remote/electronic notarization has proven to be useful in a number of contexts beyond COVID-19 and does not pose the same fraud concerns as remote witnessing.

Position Vote:

Voted for position: 16

Voted against position: 3

Abstained from vote: 0

Did not vote (absence): 13

Keller Permissibility Explanation:

Witnessing and notarization of certain documents are essential in a wide variety of legal contexts and access to each impacts the availability of an equally wide range of legal services. As such, HB 5758 and HB 5759 are *Keller*-permissible as reasonably related to the availability of legal services to society.

Contact Person:

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**Public Policy Position
HB 5758 & HB 5759**

Support

Explanation

The Committee to support HB 5758 to allow remote witnessing of certain documents. The Committee voted unanimously to support HB 5759 to allow remote notarization of documents as long as certain requirements are met. The Committee believes that both remote witnessing and remote notarization serve the goal of making legal services more readily accessible to the public.

Position Vote for HB 5758:

Voted For position: 11
Voted against position: 3
Abstained from vote: 2
Did not vote (absence): 11

Position Vote for HB 5759:

Voted For position: 18
Voted against position: 0
Abstained from vote: 0
Did not vote (absence): 9

Keller Permissibility Explanation:

The Committee agreed that the legislation is *Keller*-permissible because remote witnessing and remote notarization of documents are both tools used in the provision of a wide variety of legal services, and which facilitate improved access those services.

Contact Persons:

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**Public Policy Position
HB 5759**

The Family Law Section is a voluntary membership section of the State Bar of Michigan, comprised of 2,642 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 March 5, 2022, the Section adopted its position after a discussion and vote at a scheduled meeting. 16 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 5 members did not vote.

Support

Explanation:

Use of electronic notarization of documents is highly effective and remains necessary, even as Covid-19 cases decline.

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**Public Policy Position
HB 5758 and HB 5759**

The Probate & Estate Planning Section is a voluntary membership section of the State Bar of Michigan, comprised of 3,423 members. The Probate & Estate Planning Section is not the State Bar of Michigan and the position expressed herein is that of the Probate & Estate Planning Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item.

The Probate & Estate Planning Section has a public policy decision-making body with 23 members. On March 11, 2022, the Section adopted its position after a discussion and vote at a scheduled meeting. 19 members voted in favor of the Section's position, 0 members voted against this position, 0 members abstained, 4 members did not vote.

Support

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