

**SUBSTITUTE FOR
SENATE BILL NO. 560**

A bill to amend 1998 PA 386, entitled
"Estates and protected individuals code,"
by amending sections 1303, 2202, 2205, and 3807 (MCL 700.1303,
700.2202, 700.2205, and 700.3807), sections 1303, 2202, and 2205 as
amended by 2000 PA 54 and section 3807 as amended by 2000 PA 177.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- 1 Sec. 1303. (1) In addition to the jurisdiction conferred by
2 section 1302 and other laws, the court has concurrent legal and
3 equitable jurisdiction to do all of the following in regard to an
4 estate of a decedent, protected individual, ward, or trust:
- 5 (a) Determine a property right or interest.
- 6 (b) Authorize partition of property.
- 7 (c) Authorize or compel specific performance of a contract in
8 a joint or mutual will or of a contract to leave property by will.
- 9 (d) Ascertain if individuals have survived as provided in this

1 act.

2 (e) Determine cy-pres or a gift, grant, bequest, or devise in
3 trust or otherwise as provided in 1915 PA 280, MCL 554.351 to
4 554.353.

5 (f) Hear and decide an action or proceeding against a
6 distributee of a fiduciary of the estate to enforce liability that
7 arises because the estate was liable upon some claim or demand
8 before distribution of the estate.

9 (g) Impose a constructive trust.

10 (h) Hear and decide a claim by or against a fiduciary or
11 trustee for the return of property.

12 (i) Hear and decide a contract proceeding or action by or
13 against an estate, trust, or ward.

14 (j) Require, hear, or settle an accounting of an agent under a
15 power of attorney.

16 ~~—— (k) Bar an incapacitated or minor wife of her dower right.~~

17 (2) If the probate court has concurrent jurisdiction of an
18 action or proceeding that is pending in another court, on the
19 motion of a party to the action or proceeding and after a finding
20 and order on the jurisdictional issue, the other court may order
21 removal of the action or proceeding to the probate court. If the
22 action or proceeding is removed to the probate court, the other
23 court shall forward to the probate court the original of all papers
24 in the action or proceeding. After that transfer, the other court
25 shall not hear the action or proceeding, except by appeal or review
26 as provided by law or supreme court rule, and the action or
27 proceeding shall ~~shall~~ **MUST** be prosecuted in the probate court as a

1 probate court proceeding.

2 (3) The underlying purpose and policy of this section is to
3 simplify the disposition of an action or proceeding involving a
4 decedent's, a protected individual's, a ward's, or a trust estate
5 by consolidating the probate and other related actions or
6 proceedings in the probate court.

7 Sec. 2202. (1) The surviving widow of a decedent who was
8 domiciled in this state and who dies intestate may file with the
9 court an election in writing that she elects to take 1 of the
10 following:

11 (a) Her intestate share under section 2102.

12 (b) ~~Her~~ **IF THE DECEDENT DIED BEFORE THE EFFECTIVE DATE OF THE**
13 **AMENDATORY ACT THAT ADDED SECTION 30 TO 1846 RS 66, HER** dower right
14 under sections 1 to 29 of 1846 RS 66, MCL 558.1 to 558.29.

15 (2) The surviving spouse of a decedent who was domiciled in
16 this state and who dies testate may file with the court an election
17 in writing that the spouse elects 1 of the following:

18 (a) That the spouse will abide by the terms of the will.

19 (b) That the spouse will take 1/2 of the sum or share that
20 would have passed to the spouse had the testator died intestate,
21 reduced by 1/2 of the value of all property derived by the spouse
22 from the decedent by any means other than testate or intestate
23 succession upon the decedent's death.

24 (c) If a widow, **AND IF THE DECEDENT DIED BEFORE THE EFFECTIVE**
25 **DATE OF THE AMENDATORY ACT THAT ADDED SECTION 30 TO 1846 RS 66,**
26 that she will take her dower right under sections 1 to 29 of 1846
27 RS 66, MCL 558.1 to 558.29.

1 (3) The surviving spouse electing under subsection (1) is
2 limited to 1 choice. Unless the testator's will plainly shows a
3 contrary intent, the surviving spouse electing under subsection (2)
4 is limited to 1 choice. The right of election of the surviving
5 spouse **UNDER THIS SECTION** must be exercised during the lifetime of
6 the surviving spouse. The election must be made within 63 days
7 after the date for presentment of claims or within 63 days after
8 service of the inventory upon the surviving spouse, whichever is
9 later.

10 (4) Notice of right of election ~~shall~~ **MUST** be served ~~upon~~ **ON**
11 the decedent's spouse, if any, as provided in section 3705(5), and
12 proof of that notice ~~shall~~ **MUST** be filed with the court. An
13 election as provided by this section may be filed instead of
14 service of notice and filing of proof.

15 (5) ~~In the case of~~ **FOR** a legally incapacitated person, the
16 right of election may be exercised only by order of the court in
17 which a proceeding as to that person's property is pending, after
18 finding that exercise is necessary to provide adequate support for
19 the legally incapacitated person during that person's life
20 expectancy.

21 (6) The surviving spouse of a decedent who was not domiciled
22 in this state is entitled to election against the intestate estate
23 or against the will only as may be provided by the law of the place
24 in which the decedent was domiciled at the time of death.

25 (7) As used in subsection (2), "property derived by the spouse
26 from the decedent" includes all of the following transfers:

27 (a) A transfer made within 2 years before the decedent's death

1 to the extent that the transfer is subject to federal gift or
2 estate taxes.

3 (b) A transfer made before the date of death subject to a
4 power retained by the decedent that would make the property, or a
5 portion of the property, subject to federal estate tax.

6 (c) A transfer effectuated by the decedent's death through
7 joint ownership, tenancy by the entireties, insurance beneficiary,
8 or similar means.

9 Sec. 2205. The rights of the surviving spouse to a share under
10 intestate succession, homestead allowance, election, ~~dower~~, exempt
11 property, or family allowance may be waived, wholly or partially,
12 before or after marriage, by a written contract, agreement, or
13 waiver signed by the party waiving after fair disclosure. Unless it
14 provides to the contrary, a waiver of "all rights" in the property
15 or estate of a present or prospective spouse or a complete property
16 settlement entered into after or in anticipation of separate
17 maintenance is a waiver of all rights to homestead allowance,
18 election, ~~dower~~, exempt property, and family allowance by the
19 spouse in the property of the other and is an irrevocable
20 renunciation by the spouse of all benefits that would otherwise
21 pass to the spouse from the other spouse by intestate succession or
22 by virtue of a will executed before the waiver or property
23 settlement.

24 Sec. 3807. (1) Upon the expiration of 4 months after the
25 publication date of the notice to creditors, and after providing
26 for administration costs and expenses, for reasonable funeral and
27 burial expenses, ~~for dower~~, for the homestead, family, and exempt

1 property allowances, for claims already presented that have not yet
2 been allowed or whose allowance has been appealed, and for unbarred
3 claims that may yet be presented, including costs and expenses of
4 administration, the personal representative shall pay the claims
5 allowed against the estate in the order of priority as provided in
6 this act. A claimant whose claim has been allowed, but not paid as
7 provided in this section, may petition the court to secure an order
8 directing the personal representative to pay the claim to the
9 extent that property of the estate is available for the payment.

10 (2) The personal representative may pay a claim that is not
11 barred at any time, with or without formal presentation, but is
12 individually liable to another claimant whose claim is allowed and
13 who is injured by the payment if either of the following occurs:

14 (a) Payment is made before the expiration of the time limit
15 stated in subsection (1) and the personal representative fails to
16 require the payee to give adequate security for the refund of any
17 of the payment necessary to pay another claimant.

18 (b) Payment is made, due to the negligence or willful fault of
19 the personal representative, in a manner that deprives the injured
20 claimant of priority.

21 (3) If a claim is allowed, but the claimant's whereabouts are
22 unknown at the time the personal representative attempts to pay the
23 claim, upon petition by the personal representative and after
24 notice that the court considers advisable, the court may disallow
25 the claim. If the court disallows a claim under this subsection,
26 the claim is barred.

27 Enacting section 1. This amendatory act takes effect 90 days

1 after the date it is enacted into law.

2 Enacting section 2. This amendatory act does not take effect
3 unless Senate Bill No. 558 of the 98th Legislature is enacted into
4 law.