



# HOUSE BILL No. 5441

November 30, 1995, Introduced by Reps. Pitoniak, DeMars, Brewer, Varga, Bobier, Hanley and Scott and referred to the Committee on Judiciary and Civil Rights.

A bill to amend sections 22, 210, 282, 282a, 291, 635, and 651 of Act No. 642 of the Public Acts of 1978, entitled as amended

"Revised probate code,"

section 22 as amended by Act No. 69 of the Public Acts of 1989, sections 210, 282, and 651 as amended and section 282a as added by Act No. 326 of the Public Acts of 1980, and section 291 as amended by Act No. 377 of the Public Acts of 1984, being sections 700.22, 700.210, 700.282, 700.282a, 700.291, 700.635, and 700.651 of the Michigan Compiled Laws.

## THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1       Section 1. Sections 22, 210, 282, 282a, 291, 635, and 651  
2 of Act No. 642 of the Public Acts of 1978, section 22 as amended  
3 by Act No. 69 of the Public Acts of 1989, sections 210, 282, and  
4 651 as amended and section 282a as added by Act No. 326 of the

1 Public Acts of 1980, and section 291 as amended by Act No. 377 of  
 2 the Public Acts of 1984, being sections 700.22, 700.210, 700.282,  
 3 700.282a, 700.291, 700.635, and 700.651 of the Michigan Compiled  
 4 Laws, are amended to read as follows:

5       Sec. 22. (1) In addition to the jurisdiction conferred by  
 6 section 21 and other laws, the probate court has concurrent legal  
 7 and equitable jurisdiction of ALL OF the following matters  
 8 involving an estate of a decedent, ward, or trust:

9       (a) ~~To determine~~ DETERMINING property rights and  
 10 interests.

11       (b) ~~To authorize partition~~ PARTITION of property.

12       (c) ~~To authorize specific~~ SPECIFIC performance of a con-  
 13 tract in a joint or mutual will or of a contract to leave prop-  
 14 erty by will.

15       (d) ~~To ascertain~~ ASCERTAINING survivorship of persons.

16       (e) ~~To~~ PROCEEDINGS TO bar a mentally incompetent or minor  
 17 ~~wife from her~~ SPOUSE FROM HIS OR HER dower right under sections  
 18 1 to 29 of chapter 66 of the Revised Statutes of 1846, ~~as~~  
 19 ~~amended,~~ being sections 558.1 to 558.29 of the Michigan Compiled  
 20 Laws, in the real estate of HIS OR her living ~~husband~~ SPOUSE as  
 21 provided in section 2931 of the revised judicature act of 1961,  
 22 Act No. 236 of the Public Acts of 1961, being section 600.2931 of  
 23 the Michigan Compiled Laws.

24       (f) ~~To determine~~ DETERMINING cy-pres, gifts, grants,  
 25 bequests, and devises in trust or otherwise as provided in Act  
 26 No. 280 of the Public Acts of 1915, ~~as amended,~~ being sections  
 27 554.351 to 554.353 of the Michigan Compiled Laws.

1 (g) ~~To hear and decide an~~ AN action or proceeding against  
2 distributees of an estate fiduciary to enforce liability arising  
3 because the estate was liable upon ~~some~~ A claim or demand  
4 before distribution of the estate.

5 (h) ~~To require, hear, and settle~~ REQUIRING, HEARING, AND  
6 SETTLING an accounting of an attorney in fact or a fiduciary,  
7 other than a fiduciary as defined in section 5.

8 (i) ~~To impose a~~ IMPOSING constructive trust.

9 (j) ~~to hear and decide any~~ A claim by or against a fidu-  
10 ciary or trustee for the return of property.

11 (k) ~~To hear and decide any~~ A contract proceeding or action  
12 by or against an estate, trust, or ward.

13 (2) In an action or proceeding pending in ~~any other~~  
14 ANOTHER court of this state ~~of~~ OVER which the probate court and  
15 the other court have concurrent jurisdiction, the judge of the  
16 other court, upon motion of a party and after a finding and order  
17 on the jurisdictional issue, may by order remove the action or  
18 proceeding to the probate court. If the action or proceeding is  
19 removed to the probate court, the judge of the other court shall  
20 forward to the probate court the original of all papers in the  
21 action or proceeding and thereafter proceedings shall not be  
22 heard before the other court, except by appeal or review provided  
23 by supreme court rule or law, and the action or proceeding shall  
24 be prosecuted in the probate court as a probate court  
25 proceeding.

26 (3) The underlying purpose and policy of this section is to  
27 simplify the probate of estates and the disposition of actions or

1 proceedings involving estates of decedents, estates of wards, and  
 2 trust estates by having the probate and other related actions or  
 3 proceedings in the probate court.

4       Sec. 210. In cases of partition or sales for partition pur-  
 5 poses where it appears that a married ~~woman~~ INDIVIDUAL has an  
 6 inchoate right of dower in ~~any~~ lands divided or sold under sec-  
 7 tions 1 to 29 of chapter 66 of the ~~revised statutes~~ REVISED  
 8 STATUTES of 1846, ~~as amended~~ BEING SECTIONS 558.1 TO 558.29 OF  
 9 THE MICHIGAN COMPILED LAWS, or that a person has a vested or con-  
 10 tingent future right or estate in the property, the court shall  
 11 ascertain and settle the proportional value of the inchoate, con-  
 12 tingent, or vested right or estate, according to the principles  
 13 of law applicable to annuities and survivorships, and shall  
 14 direct the proportion to be invested, secured, or paid over in  
 15 the manner considered the best to secure the rights or interests  
 16 of the parties. The payment, investment, or other securing of  
 17 the proceeds of the sale shall be a bar to the right, estate, or  
 18 claim.

19       Sec. 282. (1) If a decedent who was domiciled in this state  
 20 dies testate leaving a surviving spouse, the fiduciary appointed  
 21 to represent the estate, before the date for presentment of  
 22 claims, shall serve notice on the surviving spouse of the  
 23 spouse's right to an election as provided by this section and to  
 24 file with the court an election in writing that the spouse elects  
 25 1 of the following:

26       (a) ~~That the~~ THE spouse will abide by the terms of the  
 27 will. ~~—~~

1 (b) ~~That the~~ THE spouse will take 1/2 of the sum or share  
2 that would have passed to the spouse had the testator died intes-  
3 tate, reduced by 1/2 of the value of all property derived by the  
4 spouse from the decedent by ~~any~~ ALL means other than testate or  
5 intestate succession upon the decedent's death.

6 (c) ~~If a widow, that the~~ THE spouse will take HIS OR her  
7 dower right under sections 1 to 29 of chapter 66 of the ~~revised~~  
8 ~~statutes~~ REVISED STATUTES of 1846, ~~as amended~~ BEING  
9 SECTIONS 558.1 TO 558.29 OF THE MICHIGAN COMPILED LAWS.

10 (2) The surviving spouse shall be entitled to only 1 elec-  
11 tion choice under subsection (1) unless the contrary plainly  
12 appears by the will to be intended by the testator. The right of  
13 election of the surviving spouse ~~may~~ SHALL be exercised only  
14 during the lifetime of the surviving spouse. The election shall  
15 be made within 60 days after the date for presentment of claims,  
16 or within 60 days after filing proof of service of the inventory  
17 upon the surviving spouse, whichever is later.

18 (3) Notice of right of election shall be served upon the  
19 decedent's spouse, if any, and proof of that notice shall be  
20 filed with the court. An election as provided by this section  
21 may be filed in lieu of service of notice and filing of proof.

22 (4) In the case of a legally incapacitated person, the right  
23 of election ~~may~~ SHALL be exercised only by order of the court  
24 in which a proceeding as to that person's property is pending,  
25 after finding that exercise is necessary to provide adequate sup-  
26 port for the legally incapacitated person during that person's  
27 life expectancy.

1 (5) The surviving spouse of a decedent who was not domiciled  
2 in this state shall be entitled only to AN election against the  
3 will ~~as may be~~ THAT IS provided by the law of the place in  
4 which the decedent was domiciled at the time of death.

5 (6) As used in subsection (1), "property derived by the  
6 spouse from the decedent," includes ~~all~~ PROPERTY THAT WAS THE  
7 SUBJECT OF 1 OR MORE of the following transfers:

8 (a) A transfer made within 2 years of decedent's death to  
9 the extent that the transfer is subject to federal gift or estate  
10 taxes.

11 (b) A transfer made before the date of DECEDENT'S death  
12 subject to a power retained by the decedent ~~which~~ THAT would  
13 make the property, or a portion of the property, subject to fed-  
14 eral estate tax.

15 (c) A transfer effectuated by the death of the decedent  
16 through joint ownership, tenancy by the entireties, insurance  
17 beneficiary, or similar means.

18 Sec. 282a. (1) If a decedent who was domiciled in this  
19 state dies intestate leaving a surviving ~~widow, she~~ SPOUSE, THE  
20 SURVIVING SPOUSE shall elect either of the following:

21 (a) That HE OR she will take HIS OR her intestate share as  
22 prescribed in section 105.

23 (b) That HE OR she will take HIS OR her dower right under  
24 sections 1 to 29 of chapter 66 of the Revised Statutes of 1846,  
25 ~~as amended~~ BEING SECTIONS 558.1 TO 588.29 OF THE MICHIGAN  
26 COMPILED LAWS.

1 (2) The election under subsection (1) shall be made within  
 2 the same period, on like notice, and in like manner as provided  
 3 in section 282(1) and (2).

4 Sec. 291. The rights of the surviving spouse to an estate  
 5 or to dower under sections 1 to 29 of chapter 66 of the Revised  
 6 Statutes of 1846, ~~as amended,~~ being sections 558.1 to 558.29 of  
 7 the Michigan Compiled Laws, homestead allowance, election, exempt  
 8 property, and family allowance, and the right to remain in the  
 9 dwelling house of the decedent as provided in section 288 or any  
 10 of them, may be waived ~~—~~ wholly or partially, before or after  
 11 marriage, by a written contract, agreement, or waiver signed by  
 12 the party waiving after fair disclosure. Unless it provides to  
 13 the contrary, a waiver of "all rights" in the property or estate  
 14 of a present or prospective spouse or a complete property settle-  
 15 ment entered into after or in anticipation of separate mainte-  
 16 nance is a waiver by the ~~female~~ spouse of all rights to dower  
 17 under sections 1 to 29 of chapter 66 of the Revised Statutes of  
 18 1846; ~~—, as amended,~~ a waiver of all rights to homestead allow-  
 19 ance, election, exempt property, and family allowance by each  
 20 spouse in the property of the other; a waiver of the right to  
 21 remain in the dwelling house of the decedent as provided in sec-  
 22 tion 288; and an irrevocable renunciation by each spouse of all  
 23 benefits ~~which~~ THAT would otherwise pass to the spouse from the  
 24 other by intestate succession or by virtue of the provisions of  
 25 ~~any~~ A will executed before the waiver or property settlement.

26 Sec. 635. (1) Subject to confirmation by the court, real  
 27 estate, an interest ~~therein~~ IN REAL ESTATE, or AN easement may

1 be sold by a personal representative in ~~any~~ ALL of the  
2 following instances:

3 (a) When it appears that the personal estate of a deceased  
4 person in the hands of ~~his~~ THE ESTATE'S personal representative  
5 is insufficient to pay the debts of the deceased and the charges  
6 of administering ~~his~~ THE estate, or when it appears that it is  
7 for the best interest of all persons interested in the estate  
8 that ~~his~~ THE real estate or some part ~~thereof~~ OF THE REAL  
9 ESTATE be sold for that purpose in lieu of disposing of the per-  
10 sonal estate.

11 (b) When it appears that sale of the real estate is neces-  
12 sary to preserve the estate or to prevent a sacrifice ~~thereof~~  
13 OF THE ESTATE, or to carry out the provisions of a will.

14 (c) When a testator gave a devise by will that is effectual  
15 to pass or charge real estate, and ~~his~~ THE TESTATOR'S personal  
16 property is insufficient to pay the devise, together with ~~his~~  
17 THE TESTATOR'S debts and charges of administration.

18 (d) When a testator gave real estate to 2 or more persons,  
19 or when a person died intestate, and it appears that it is neces-  
20 sary or will be for the best interests of the persons interested  
21 in the real estate as devisees or heirs to sell the real estate  
22 for the purpose of distribution, if that application under this  
23 subdivision is approved in writing by the persons owning a major-  
24 ity in interest of the real estate proposed to be sold.

25 (2) In the determination as to whether the persons owning a  
26 majority in interest of the real estate proposed to be sold under  
27 ~~subdivision (d)~~ SUBSECTION (1)(D) approved the sale, an



1 inchoate right of dower or ~~any~~ other interest held by the  
2 ~~wife~~ SPOUSE of a person entitled to an interest in the real  
3 estate as heir, devisee, or assignee, of an interest of an heir  
4 or devisee except the interest as may be held by ~~her~~ THE SPOUSE  
5 by virtue of a deed or recorded contract, shall not be considered  
6 in computing the majority in interest but the computation shall  
7 be based upon the interests of those persons only who would be  
8 entitled to participate in the distribution of the real estate  
9 proposed to be sold if it were personal property.

10 (3) If a sale is made under this section, ~~the spouse, if~~  
11 ~~any, shall not be~~ A SPOUSE OF A PERSON INTERESTED IN THE REAL  
12 ESTATE IS NOT entitled to a greater interest in the estate than  
13 the spouse would have received had the real estate been distrib-  
14 uted instead of being sold.

15 (4) If it appears that persons owning a majority in interest  
16 of the real estate proposed to be sold ~~are desirous of having~~  
17 ~~the real estate sold for any of the purposes or reasons~~ DESIRE  
18 TO SELL THE REAL ESTATE FOR A PURPOSE OR REASON stated in this  
19 section, and the personal representative neglects or refuses to  
20 make the sale as provided in this section, then the court shall  
21 entertain a petition for that purpose from persons owning a  
22 majority in interest of the real estate, and the court may order  
23 the sale. After the sale, the personal representative shall make  
24 the sale in the same manner as if the sale were originally made  
25 by the personal representative, and the neglect or refusal of the  
26 personal representative to perform the order shall constitute  
27 sufficient cause for removal.

1        Sec. 651. Sale of real estate, interest in real estate, or  
 2 easement may extend to the reversion of the dower of the ~~widow~~  
 3 SURVIVING SPOUSE of a deceased person under sections 1 to 29 of  
 4 chapter 66 of the Revised Statutes of 1846, ~~as amended~~ BEING  
 5 SECTIONS 558.1 TO 558.29 OF THE MICHIGAN COMPILED LAWS, and if  
 6 the reversion is not sold with the other real estate, it may be  
 7 sold after the expiration of the ~~widow's~~ SURVIVING SPOUSE'S  
 8 term.

9        Section 2. This amendatory act shall not take effect unless  
 10 all of the following bills of the 88th Legislature are enacted  
 11 into law:

12        (a) Senate Bill No. \_\_\_\_\_ or House Bill No. 5443 (request  
 13 no. 03904'95 a).

14        (b) Senate Bill No. \_\_\_\_\_ or House Bill No. 5444 (request  
 15 no. 03904'95 b).

16        (c) Senate Bill No. \_\_\_\_\_ or House Bill No. 5442 (request  
 17 no. 03904'95 c).

18        (d) Senate Bill No. \_\_\_\_\_ or House Bill No. 5445 (request  
 19 no. 03904'95 d).

20        (e) Senate Bill No. \_\_\_\_\_ or House Bill No. 5446 (request  
 21 no. 03904'95 e).

22        (f) Senate Bill No. \_\_\_\_\_ or House Bill No. 5447 (request  
 23 no. 03904'95 f).

24        (g) Senate Bill No. \_\_\_\_\_ or House Bill No. 5448 (request  
 25 no. 03904'95 g).

26        (h) Senate Bill No. \_\_\_\_\_ or House Bill No. 5449 (request  
 27 no. 03904'95 h).