

Legislative Analysis



ABOLISH DOWER RIGHTS

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House Bill 5520 as introduced
Sponsor: Rep. Klint Kesto

Analysis available at
<http://www.legislature.mi.gov>

Senate Bill 558 (Substitute S-1 as passed the Senate)
Senate Bill 560 (Substitute S-1 as passed the Senate)
Sponsor: Sen. Rick Jones

House Committee: Judiciary
Senate Committee: Judiciary
Complete to 5-2-16

(Enacted as Public Acts 378, 489, and 490 of 2016)

SUMMARY:

Senate Bill 558 abolishes a wife's dower right in both statute and at common law and repeals sections of the Revised Judicature Act that pertain to dower rights.

House Bill 5520 deletes a provision that judgments of divorce and separate maintenance include a provision in lieu of dower.

Senate Bill 560 applies the right of dower only to a surviving widow whose spouse died before the effective date of Senate Bill 558.

Each of the bills will take effect 90 days after enactment. Senate Bill 558 and 560 are tie-barred to each other. Senate Bill 558 is also tie-barred to Senate Bill 559, which has been replaced by House Bill 5520.

Michigan's "right of dower" is a provision of law that entitles a surviving widow to one-third of her husband's real property during her lifetime. Generally speaking, under Michigan's Estates and Protected Individuals Code, a widow has some choices when her husband dies. If her husband dies without a will (intestate), she is entitled to at least the first \$100,000 of the husband's estate and one-half of the rest or she can choose to take her dower right instead. If the husband left a will, the wife can take what is left to her in her husband's will, take one-half of the sum or the share that she would have received had the husband not left a will minus one-half of the value of remaining property, or take her dower right.

House Bill 5520 amends Public Act 259 of 1909, which requires judgments of divorce and separate maintenance to satisfy a wife's claims in the property of the husband, to delete a requirement that those judgments include a provision in lieu of dower (MCL 552.101).

Senate Bill 558 adds a new section to Chapter 66 of the Revised Statutes of 1846 (MCL 558.30, proposed). The bill specifies that a wife's dower right is abolished and unenforceable either through statute or at common law.

However, the bill does preserve the right of dower elected by a woman whose husband died before the bill's effective date or the right to elect dower under the Estates and Protected Individuals Code, if the widow's husband died before Senate Bill 558 took effect.

The bill would repeal Sections 2931 and 2933 of the Revised Judicature Act which pertain to dower rights. (Section 2931 provides that the husband of an insane or otherwise incompetent wife or any other person who has an interest in the real estate in which she has a right of dower may maintain an action to bar her of her right of dower in the premises. Under Section 2933, a widow entitled to dower, or a woman entitled to dower together with her husband, may maintain a claim to recover her dower in land, tenements, and hereditaments after the expiration of six months from the time her right to dower accrued.)

Senate Bill 560 amends the Estates and Protected Individuals Code, EPIC (MCL 700.1303 et al.). As explained earlier, a wife has options regarding the election of her dower right whether her husband left a will or died without one. The bill eliminates the option of a widow to elect to take her dower right when her husband dies intestate (without a will), unless the husband died before the effective date of Senate Bill 558.

Similarly, if her husband left a will, the widow could no longer choose to elect her dower right unless the husband died before the effective date of Senate Bill 558.

The bill also would delete the probate court's jurisdiction to bar an incapacitated or minor wife of her dower right. In addition, the bill would delete references to dower in provisions allowing a surviving spouse to waive her dower rights and in a provision authorizing an estate's personal representative to pay certain costs and expenses before paying creditors' claims against the estate.

FISCAL IMPACT:

The bills would have no fiscal impact on the state or local units of government.

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