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BILL



ANALYSIS

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Senate Bills 558, 559, and 560 (as introduced 10-13-15)
Sponsor: Senator Rick Jones
Committee: Judiciary

Date Completed: 10-20-15

CONTENT

Senate Bill 558 would amend Chapter 66 of the Revised Statutes of 1846, which deals with estates in dower, to abolish a wife's right to dower. The bill also would repeal two sections of the Revised Judicature Act that pertain to dower rights.

Senate Bill 559 would amend 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.

Senate Bill 560 would amend the Estates and Protected Individuals Code (EPIC) to do the following:

- **Delete the probate court's jurisdiction to bar an incapacitated or minor wife of her dower right.**
- **Delete the option of a widow to elect to take her dower rights.**
- **Delete other references to a widow's right of dower.**

Senate Bill 558 is tie-barred to Senate Bills 559 and 560. Senate Bill 560 is tie-barred to Senate Bill 558. Senate Bill 559 would take effect 90 days after its enactment.

(According to *Black's Law Dictionary*, "dower", at common law, is a wife's right, upon her husband's death, to a life estate in one-third of the land that he owned. With few exceptions, the wife could not be deprived of dower by any transfer made by her husband during his lifetime.)

Senate Bill 558

Sections 1 through 29 of Chapter 66 of the Revised Statutes of 1846 deal with estates in dower. Section 1 states, "The widow of every deceased person, shall be entitled to dower, or the use during her natural life, of 1/3 part of all the lands whereof her husband was seized of an estate of inheritance, at any time during the marriage, unless she is lawfully barred thereof."

The bill would add Section 30 to specify that, notwithstanding Sections 1 to 29, and except as otherwise provided in Section 30, a wife's dower right would be abolished and unenforceable either through statute or at common law. This provision would not apply to either of the following:

- A widow's dower elected by a woman whose husband died before the bill's effective date.

- A widow's right to elect dower under EPIC, if her husband died before the bill's effective date.

The bill also would repeal Sections 2931 and 2933 of the Revised Judicature Act. (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 559

Under Public Act 259 of 1909, when any judgment of divorce or of separate maintenance is granted in a Michigan court, the court must include a provision in lieu of the wife's dower in the property of the husband, which is in full satisfaction of all claims that the wife may have in any property that the husband owns or may own in the future or in which he may have any interest. The bill would delete that provision.

Senate Bill 560

Probate Court Jurisdiction

The Estates and Protected Individuals Code lists areas in which the probate court has concurrent legal and equitable jurisdiction in regard to an estate of a decedent, protected individual, ward, or trust. The bill would delete from that list the court's jurisdiction to bar an incapacitated or minor wife of her dower right.

Election of Inheritance

Under EPIC, the surviving widow of a decedent who lived in Michigan and dies intestate (without a valid will) may file with the court an election to take one of the following:

- Her intestate share as determined under the Code.
- Her dower right under Chapter 66 of the Revised Statutes of 1846.

Under the bill, the second option would apply only if the decedent died before the effective date of Senate Bill 558.

In addition, a decedent's surviving spouse who lived in Michigan and died testate (with a valid will) may file with the court an election to do one or more of the following:

- Abide by the terms of the will.
- Take one-half of the sum or share that would have passed to the spouse had the testator died intestate, reduced by one-half of the value of all property derived by the spouse from the decedent by any means other than testate or intestate succession upon the decedent's death.
- If a widow, take her dower right under Chapter 66 of the Revised Statutes of 1846.

Under Senate Bill 560, the last option would apply only if the decedent died before the effective date of Senate Bill 558.

Other References to Dower Rights

The Code specifies that the rights of the surviving spouse to a share under interstate succession, homestead allowance, election, dower, exempt property, or family allowance may

be waived, wholly or partially, before or after marriage, by a written contract, agreement, or waiver signed by the waiving party after fair disclosure. Senate Bill 560 would delete that reference to dower.

Under EPIC, upon the expiration of four months after the publication date of a notice to creditors, and after providing for certain costs and expenses, including dower, an estate's personal representative must pay the claims allowed against the estate in a specified order of priority. The bill would delete dower from those costs and expenses.

Proposed MCL 558.30 (S.B. 558)
MCL 552.101 (S.B. 559)
700.1303 (S.B. 560)

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bills would have no fiscal impact on State or local government.

Fiscal Analyst: Ryan Bergan

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.