

# SENATE BILL NO. 270

April 19, 2023, Introduced by Senators LAUWERS, DALEY, VICTORY, MCBROOM and HOITENGA and referred to the Committee on Government Operations.

A bill to amend 1846 RS 66, entitled  
"Of estates in dower, by the curtesy, and general provisions  
concerning real estate,"  
by amending the title and sections 35 and 36 (MCL 554.135 and  
554.136) and by adding sections 36a and 36b.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1 TITLE  
2 Of estates in dower, **estates** by the curtesy, and—general  
3 provisions concerning real estate, **prohibitions on certain foreign**  
4 **ownership of certain real estate, and the prescription of remedies.**

1           Sec. 35. ~~(1) Any~~ **Except as otherwise provided in section 36a,**  
 2 **an** alien may acquire and hold ~~lands,~~ **land,** or any right ~~thereto~~ or  
 3 interest ~~therein,~~ **in land,** by purchase, devise, or descent, and ~~he~~  
 4 may convey, mortgage, and devise ~~the same,~~ and ~~if he shall die~~ **that**  
 5 **land or right or interest in land.** If an alien dies intestate, the  
 6 ~~same shall~~ **alien's land or right or interest in land must** descend  
 7 to ~~his~~ **the alien's** heirs. ; ~~and in all cases such lands shall~~

8           **(2) Except as otherwise provided in section 36a, land or a**  
 9 **right or interest in land described in subsection (1) must** be held,  
 10 conveyed, mortgaged, or devised, or ~~shall~~ **must** descend in like  
 11 manner, and with like effect, as if ~~such~~ **the** alien were a native  
 12 citizen of this state ~~,~~ or ~~of~~ the United States.

13           Sec. 36. ~~The~~ **Except as otherwise provided in section 36a, the**  
 14 title to any ~~lands heretofore~~ **land** conveyed ~~shall~~ **must** not be  
 15 questioned, ~~nor~~ or in any manner affected, ~~by reason~~ **because** of the  
 16 alienage of any person from or through whom ~~such~~ **that** title ~~may~~  
 17 ~~have been~~ **was** derived.

18           **Sec. 36a. (1) Beginning on the effective date of the**  
 19 **amendatory act that added this section, except as otherwise**  
 20 **provided in this section, a foreign person shall not own, purchase,**  
 21 **lease, possess, exercise control over, or otherwise acquire**  
 22 **agricultural land in this state. A foreign person that owns,**  
 23 **leases, possesses, exercises control over, or holds agricultural**  
 24 **land in this state on the effective date of the amendatory act that**  
 25 **added this section may continue to own, lease, possess, exercise**  
 26 **control over, or hold the agricultural land but shall not purchase**  
 27 **or otherwise acquire additional agricultural land in this state and**  
 28 **shall register under section 36b.**

29           **(2) Subsection (1) does not apply to agricultural land**

1 acquired after the effective date of the amendatory act that added  
2 this section if acquired by any of the following:

3 (a) Devise or descent.

4 (b) A bona fide encumbrance on agricultural land taken for  
5 security.

6 (c) A process of law in the collection of a debt, by a deed in  
7 lieu of foreclosure, under a forfeiture of a contract for deed, or  
8 by any procedure for the enforcement of a lien or claim on the  
9 agricultural land, whether created by mortgage or otherwise.

10 (3) If a foreign person owns, holds, leases, possesses,  
11 exercises control over, or acquires agricultural land in this state  
12 under any of the following situations, the foreign person shall  
13 petition the commission for a waiver under this section to continue  
14 owning, holding, leasing, possessing, or exercising control over  
15 the agricultural land or sell or otherwise dispose of the foreign  
16 person's interest in the agricultural land:

17 (a) A foreign person purchases or leases agricultural land  
18 after the effective date of the amendatory act that added this  
19 section.

20 (b) A foreign person acquires agricultural land as described  
21 in subsection (2).

22 (c) A person owns, purchases, leases, possesses, exercises  
23 control over, or otherwise acquires agricultural land after the  
24 effective date of the amendatory act that added this section, and  
25 the person's status changes so that the person becomes a foreign  
26 person.

27 (4) If the commission denies a waiver requested under  
28 subsection (3), the foreign person shall sell or otherwise dispose  
29 of the foreign person's interest in the agricultural land no later

1 than 1 year after the waiver is denied.

2 (5) No later than 6 months after the effective date of the  
3 amendatory act that added this section, the department shall  
4 promulgate rules to implement the waiver process under this  
5 section, including, but not limited to, all of the following:

6 (a) The department shall provide a timeline for a decision on  
7 the waiver application as follows:

8 (i) If the waiver is a nonexpedited waiver, the commission  
9 shall deliver an initial decision no later than 60 days after the  
10 waiver application is received by the commission to the waiver  
11 applicant and the clerk of each local government where any part of  
12 the agricultural land is located. If the waiver application is  
13 denied, the waiver applicant may file an appeal with the commission  
14 no later than 30 days after receipt of the decision. If the waiver  
15 application is granted, any local government where any part of the  
16 agricultural land is located may file an appeal with the commission  
17 no later than 30 days after receipt of the decision. The commission  
18 shall deliver a final decision no later than 30 days after the  
19 commission receives the appeal.

20 (ii) If the waiver is an expedited waiver, the commission shall  
21 deliver an initial decision no later than 30 days after the waiver  
22 application is received by the commission to the waiver applicant  
23 and the clerk of each local government where any part of the  
24 agricultural land is located. If the waiver application is denied,  
25 the waiver applicant may file an appeal with the commission no  
26 later than 15 days after receipt of the decision. If the waiver  
27 application is granted, any local government where any part of the  
28 agricultural land is located may file an appeal with the commission  
29 no later than 15 days after receipt of the decision. The commission

1 shall deliver a final decision no later than 15 days after the  
2 commission receives the appeal.

3 (b) The department shall publish guidelines on the  
4 department's website of the factors the department uses to  
5 determine whether or not to grant a waiver. The factors must  
6 include, but are not limited to, all of the following:

7 (i) The proximity of the agricultural land to a sensitive area.

8 (ii) The proposed use of the agricultural land.

9 (iii) Any financial impact on the area around the agricultural  
10 land.

11 (iv) Any objections by a local government where any part of the  
12 agricultural land is located.

13 (v) Any state or national security concerns.

14 (c) The department shall create a fee schedule as follows:

15 Waiver type	Fee
16 Nonexpedited business transaction	\$500.00
17 Expedited business transaction	\$1,000.00
18 Nonexpedited inheritance	\$100.00
19 Expedited inheritance	\$200.00

20 (d) The department shall make the waiver application available  
21 on the department's website.

22 (e) The department shall distribute waiver application forms  
23 to every county clerk's office in this state.

24 (6) If a foreign person acquires or holds agricultural land in  
25 violation of this section, the department shall report the  
26 violation to the attorney general.

27 (7) On receipt of the report under subsection (6), the  
28 attorney general shall do all of the following:

29 (a) Initiate an action in the circuit court of any county in

1 which the agricultural land is located.

2 (b) File notice of the pendency of the action initiated under  
3 subdivision (a) with the register of deeds in each county in which  
4 any of the agricultural land is located.

5 (8) In any action initiated under subsection (7), if the court  
6 finds that the agricultural land at issue was acquired or held in  
7 violation of this section, do both of the following:

8 (a) Enter an order declaring that the agricultural land has  
9 been acquired or held in violation of this section and file a copy  
10 of that order with the register of deeds in each county in which  
11 any portion of the agricultural land is located.

12 (b) Declare the agricultural land escheated to this state and  
13 order the sale of the agricultural land in the same manner as  
14 provided by law for the foreclosure of a mortgage on real estate  
15 for default of payment. The proceeds of this sale must be used to  
16 pay court costs and the remaining funds, if any, must be paid to  
17 the person divested of the agricultural land.

18 (9) A person that acquires or holds agricultural land in  
19 violation of this section remains in violation of this section for  
20 as long as the person holds an interest in the agricultural land.

21 (10) As used in this section:

22 (a) "Agricultural land" means land suitable for use in farming  
23 and includes any right or interest in such land.

24 (b) "Business entity" means a business as that term is defined  
25 in section 2 of the Michigan campaign finance act, 1976 PA 388, MCL  
26 169.202.

27 (c) "Commission" means the Michigan commission of agriculture  
28 and rural development.

29 (d) "Department" means the department of agriculture and rural

1 development.

2 (e) "Farming" means that term as defined in section 2 of the  
3 Michigan family farm development act, 1982 PA 220, MCL 285.252.

4 (f) "Foreign business" means a corporation incorporated under  
5 the laws of a foreign country, or a business entity, whether or not  
6 incorporated, in which a majority interest is owned directly or  
7 indirectly or the business entity is controlled by nonresident  
8 aliens or a foreign government. Legal entities, including, but not  
9 limited to, trusts, holding companies, multiple corporations, and  
10 other business arrangements, do not affect the determination of  
11 ownership or control of a foreign business.

12 (g) "Foreign government" means a government other than a  
13 government of the United States, its states, territories, or  
14 possessions or the government of Canada or Mexico.

15 (h) "Foreign person" means a nonresident alien, foreign  
16 business, or foreign government, or an agent, trustee, or fiduciary  
17 of a nonresident alien, foreign business, or foreign government.

18 (i) "Local government" means a county, city, township, or  
19 village in this state.

20 (j) "Nonresident alien" means an individual who is not any of  
21 the following:

22 (i) A citizen of the United States.

23 (ii) An individual lawfully admitted into the United States for  
24 permanent residence by the United States Citizenship and  
25 Immigration Services. An individual is lawfully admitted for  
26 permanent residence regardless of whether the individual's lawful  
27 permanent resident status is conditional.

28 (iii) A passport-holding citizen of Canada or Mexico.

29 (k) "Sensitive area" means any of the following:

1 (i) A key facility as that term is defined in section 552c of  
2 the Michigan penal code, 1931 PA 328, MCL 750.552c.

3 (ii) A location that is owned or possessed by the United States  
4 Armed Forces or the Michigan national guard.

5 (iii) A location that is important for national security or the  
6 security of this state.

7 Sec. 36b. (1) No later than 1 year after the effective date of  
8 the amendatory act that added this section, a foreign person that  
9 owns, leases, possesses, exercises control over, or holds  
10 agricultural land in this state on the effective date of the  
11 amendatory act that added this section shall register with the  
12 department under this section.

13 (2) The registration must be in a form and manner prescribed  
14 by the department and include, but not be limited to, all of the  
15 following information:

16 (a) The name of the registrant of the agricultural land.

17 (b) If the registrant of the agricultural land is an agent,  
18 trustee, or fiduciary of a nonresident alien, foreign business, or  
19 foreign government, the name of any principal for whom that  
20 agricultural land was acquired as agent, trustee, or fiduciary.

21 (c) The location and number of acres of the agricultural land  
22 by municipality and county.

23 (d) The date the agricultural land was acquired.

24 (3) No later than 6 months after the effective date of the  
25 amendatory act that added this section, the department shall make  
26 registration available electronically on the department website.

27 (4) The department shall distribute registration forms to  
28 every county clerk's office in this state.

29 (5) As used in this section:

1           (a) "Agricultural land" means land suitable for use in farming  
2 and includes any right or interest in such land.

3           (b) "Business entity" means a business as that term is defined  
4 in section 2 of the Michigan campaign finance act, 1976 PA 388, MCL  
5 169.202.

6           (c) "Department" means the department of agriculture and rural  
7 development.

8           (d) "Farming" means that term as defined in section 2 of the  
9 Michigan family farm development act, 1982 PA 220, MCL 285.252.

10           (e) "Foreign business" means a corporation incorporated under  
11 the laws of a foreign country, or a business entity, whether or not  
12 incorporated, in which a majority interest is owned directly or  
13 indirectly or the business entity is controlled by nonresident  
14 aliens or a foreign government. Legal entities, including, but not  
15 limited to, trusts, holding companies, multiple corporations, and  
16 other business arrangements, do not affect the determination of  
17 ownership or control of a foreign business.

18           (f) "Foreign government" means a government other than a  
19 government of the United States, its states, territories, or  
20 possessions or the government of Canada or Mexico.

21           (g) "Foreign person" means a nonresident alien, foreign  
22 business, or foreign government, or an agent, trustee, or fiduciary  
23 of a nonresident alien, foreign business, or foreign government.

24           (h) "Nonresident alien" means an individual who is not any of  
25 the following:

26           (i) A citizen of the United States.

27           (ii) An individual lawfully admitted into the United States for  
28 permanent residence by the United States Citizenship and  
29 Immigration Services. An individual is lawfully admitted for

1 permanent residence regardless of whether the individual's lawful  
2 permanent resident status is conditional.

3 (iii) A passport-holding citizen of Canada or Mexico.