

REAL PROPERTY LAW SECTION  
Respectfully submits the following position on:

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SB 0558, SB 0559, SB 0560

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The Real Property Law Section is not the State Bar of Michigan itself, but rather a Section which members of the State Bar choose voluntarily to join, based on common professional interest.

The position expressed is that of the Property Law Section only and is not the position of the State Bar of Michigan.

To date, the State Bar does not have a position on this matter.

The total membership of the Real Property Law Section is 3,556.

The position was adopted after an electronic discussion and vote. The number of members in the decision-making body is 18. The number who voted in favor to this position was 15. The number who voted opposed to this position was 0.

## Report on Public Policy Position

**Name of Section:**

Real Property Law Section

**Contact person:**

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**Bill Numbers:**

[SB 0558](#) (Jones) Probate; other; dower rights; repeal. Amends 1846 RS 66 (MCL [558.1](#) - [558.29](#)), by adding sec. 30 & repeals secs. 2931 & 2933 of [1961 PA 236](#) (MCL [600.2931](#) & [600.2933](#)).

[SB 0559](#) (Jones) Family law; marriage and divorce; requirement that judgment of divorce contain provisions regarding wife's dower rights; eliminate. Amends sec. 1 of [1909 PA 259](#) (MCL [552.101](#)).

[SB 0560](#) (Jones) Probate; wills and estates; reference to dower in estates and protected individuals code; revise to reflect abolition of dower. Amends secs. 1303, 2202, 2205 & 3807 of [1998 PA 386](#) (MCL [700.1303](#) et seq.).

**Date position was adopted:**

October 19, 2015

**Process used to take the ideological position:**

Position adopted after an electronic discussion and vote.

**Number of members in the decision-making body:**

18

**Number who voted in favor and opposed to the position:**

15 Voted for position

0 Voted against position

0 Abstained from vote

3 Did not vote (absent)

**Position:**

Support

**Explanation of the position, including any recommended amendments:**

After consultation with members of the Real Property Law Section, the Probate & Estate Planning Section, and the Family Law Section on the issues described and the drafting of the proposed amendments, Senator Rick Jones has introduced a package of bills to abolish dower SB 558, SB 559, and SB 560, amending the property, divorce, and probate statutes, respectively. The bills would preserve dower only for those widows whose husbands are already

deceased, if they have already elected dower at the time the amendment takes effect or if the time for that election has not yet expired. The Section’s Ad Hoc Committee on Real Property Issues for Same Sex Marriage recommends that the Section support all three bills for the reasons described below.

BACKGROUND

On June 26, 2015, the U.S. Supreme Court issued its decision in *Obergefell v Hodges* and *DeBoer v Snyder*, holding that the Fourteenth Amendment requires a State to license a marriage between two people of the same sex and to recognize a marriage between two people of the same sex when their marriage was lawfully licensed and performed in another state. The right of same sex couples to marry is derived from the Due Process Clause and the Equal Protection Clause of the Fourteenth Amendment. As a result of this decision, same sex marriage is now legal in all 50 states, and states must recognize marriages licensed and performed in other states.

Dower: At the time of the decision, Michigan was the only state with dower for wives only, by a combination of common law and statute. The cases are all couched in terms of “husband and wife,” or “widow.” The statute is stated in terms that make clear that it does not apply to same sex marriage:

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. MCL 558.1.

If a husband seized of an estate of inheritance and lands, exchanged them for other lands, his widow shall not have dower of both, but shall make her election to be endowed of the lands given, or of those taken in exchange; and if such an election be not evinced by the commencement of proceedings to recover her dower of the lands given in exchange, within 1 year after the death of her husband, she shall be deemed to have elected to take her dower of the lands received in exchange. MCL 558.2.

It is possible that the language of the statute might be construed to allow dower to a wife in a same sex marriage between women. There is no way to apply it to a same sex marriage between men, and the holding of the court in *DeBoer v Snyder* would invalidate Michigan dower interests altogether. As a practical matter, dower is almost never exercised in Michigan as a wife has the alternative of electing a share of all of the property of her husband at the time of his death, so it is rarely the case that an interest in the income from one-third of real property he had owned would exceed that. Leaving the existing common law and statute in place would simply serve to create confusion for some time and require the release of dower in deeds and mortgages as a precaution in a greater number of transactions without any likely real effect, at least until the matter is resolved. The language of the bills effectively abolish all dower rights at common law or by statute except for those widows whose husbands are already deceased, if they have already elected dower at the time the amendment takes effect or if the time for that election has not yet expired. Although there is a case to be made even those rights violate equal protection, the exceptions preserve rights that have either already vested or would by timely election, thereby avoiding challenge on other constitutional grounds.

**The text of any legislation, court rule, or administrative regulation that is the subject of or referenced in this report.**

<http://legislature.mi.gov/doc.aspx?2015-SB-0558>

<http://legislature.mi.gov/doc.aspx?2015-SB-0559>

<http://legislature.mi.gov/doc.aspx?2015-SB-0560>