MEETING OF THE COUNCIL OF THE
PROBATE AND ESTATE PLANNING SECTION
OF
THE STATE BAR OF MICHIGAN

June 4, 2016
Lansing, Michigan

Minutes

I. Call to Order

The Chair of the Section, Shaheen I. Imami, called the meeting to order at 10:25 a.m.

II. Attendance

A. The following officers and members of Council were in attendance:

Shaheen I. Imami
James B. Steward
Marlaine C. Teahan
Marguerite Munson Lentz
Christopher A. Ballard
Susan M. Allan
George F. Bearup
Constance L. Brigman
Christopher J. Caldwell
Kathleen M. Goetsch
Mark E. Kellogg
Michael G. Lichterman
David P. Lucas
Katie Lynwood
Michele C. Marquardt
Richard C. Mills
Lorraine F. New
David L.J.M. Skidmore
Geoffrey R. Vernon
Nancy H. Welber

A total of 20 council members and officers were present, representing a quorum.

B. The following officers and members of Council were absent with excuse:

Rhonda M. Clark-Kreuer
Hon. Michael L. Jaconette
Raj A. Malviya
C. The following officers and members of Council were absent without excuse:
None.

D. The following ex-officio members of the Council were in attendance:
George W. Gregory
Amy N. Morrissey

E. Others in attendance:
Jeanne Murphy
Kalman G. Goren
Sueann T. Mitchell
Jessica Schilling
Nathan Piwowarski
Susan Chalgian
Mike Shelton
Bradley Martin
Robert O’Reilly
Carol Sewell
Joann Kline
Joe Viviano
Nazneen Syed
Scott Robbins
Neal Nusholtz
Robert Labe
John Roy Castillo
Laurie Murphy
Cynthia Andrew

III. Minutes of the April 16, 2016 Meeting of the Council

The minutes of the April 16, 2016, Meeting of the Council were attached to the Agenda for this meeting which was posted on the Section’s web page prior to the meeting. Ms. Lentz moved that the minutes be approved. The motion was seconded. The motion was approved on a voice-vote with no nays and no abstentions.

IV. Treasurer’s Report – Christopher Ballard

Mr. Ballard reported that the Treasurer’s Report was attached to the Agenda. Mr. Ballard reminded council members to turn in expense reports within 45 days.

V. Chairperson’s Report – Shaheen I. Imami

Mr. Imami reported as follows:
• Attached to the Agenda were two recently published cases for information.
• The Section’s lobbyist, Becky Bechler, reported that the American College of Life Insurers and Prudential have raised objections to SB 1010 (the proposed legislation to exonerate Trustees of ILITs).
• Mr. Imami received from Peter Cunningham a draft of the Michigan Law Revision Commission titled, “Same Sex Marriage: A Review of Michigan’s Constitutional Provisions and Statutes.” See Attachment A.
• Mr. Imami filed the annual report for the Section with the State Bar on May 31, 2016, which will be posted on the Section’s web page.
• Ms. Lori Buiteweg (State Bar President) would like to pursue specialization for Michigan lawyers. Mr. Imami informed her about the work on specialization that Mr. Steward and his committee had done. Mr. Steward will send Mr. Imami the most current versions of his materials for forwarding to Ms. Buiteweg.
• When the probate appeals and DAPT bills were introduced in the Senate, the Probate Council voted to support those bills. The original Senate bills have now been introduced in the House, but with new bill numbers. Mr. Imami requested a public policy vote on each of the House Bill numbers.
• Mr. Steward moved that the Section support HB 5503 (same language as SB 0633; deals with probate appeals). Ms. Lentz supported the motion. By a show of hands, the Probate Council voted unanimously to support the bill, with 20 votes in favor, 0 opposed, and 0 abstained.
• Mr. Steward moved that the Section support HB 5504 and 5505 (same language as SB 598 and 597; deals with domestic asset protection trusts). Ms. Goetsch supported. By a show of hands, the Probate Council voted unanimously to support the bills, with 20 votes in favor, 0 opposed, and 0 abstained.

At Mr. Imami’s invitation, Mr. Kal Goren, from the Debtor/Creditor Committee of the Business Law Section of the State Bar gave a report on changes his subcommittee is working on. They would like to propose legislation that would expand exemptions from creditors in MCL 600.6023 from one IRA to all IRAs and to all 529 plans (but annual contributions to a 529 plan that are exempted from creditors would be limited to the annual exclusion amount, currently $14,000). In additional, they would like to make other changes to modernize this statute. Mr. Goren is not asking for any action from the Probate Council at this time.

VI. Report of the Committee on Special Projects – David P. Lucas

Mr. Lucas reported that Ms. Welber of the ART Committee presented to CSP a proposal (included in the supplemental materials to the Agenda) to add a notice provision to the artificial reproductive technology draft legislation. CSP recommended to the Probate Council that the notice provision be added, subject to the Committee further drafting the language. Ms. Welber asked for a straw vote on whether Probate Council approves the legislative proposal presented so far (including language presented at prior meetings), including the notice provision, but with the understanding that the Committee would be working further on the notice provision. The straw vote was in favor of the legislation, including the notice provision. Ms. Welber hopes to present the entire proposed legislation for a vote in September.
Mr. Lucas reported that CSP recommended that the Probate Council authorize the Legislation Development and Drafting Committee to move forward with the tenancy by entireties bill, as revised with changes presented by Ms. Lentz at CSP (which changes were included in the supplemental materials attached to the Agenda), and negotiate further changes. A motion was made to accept CSP’s recommendation and grant such authority to the Committee. Based on a voice vote, the motion was approved. If the Committee is able to negotiate an agreement with other stakeholders, then the Committee will present the agreement to the Probate Council for a public policy position.

VII. Standing Committee Reports

A. Internal Governance


3. Awards – Amy N. Morrissey—No report.


5. Nominating – Mark K. Harder

Ms. Morrissey gave the report for the Committee. The members of the Committee include Mr. Harder, Ms. Morrissey, and Mr. Sweeney. Ms. Morrissey thanked all who helped with the Committee’s work. The Committee has put together a slate of qualified candidates. A copy of the Committee’s report is attached as Attachment B.

Ms. Morrissey reminded all that the Chairperson-Elect, Mr. Steward, will become the Chair without a further vote.

The following are nominated to be officers for 2016-2017 is as follows:

Chairperson-Elect: Marlaine C. Teahan
Vice Chairperson: Marguerite Munson Lentz
Secretary: Christopher A. Ballard
Treasurer: David P. Lucas

The following are nominated to the Council for a second three-year term:

Lorraine F. New
Geoffrey E. Vernon

The following are nominated to the Council for an initial three-year term:

Richard C. Mills
Robert C. Labe
Nathan R. Piwowarski
Nazneen H. Syed
Mr. Mills had previously been elected to fill the unexpired term for Ms. Lentz when Ms. Lentz was elected to be Treasurer. That term expired in 2016. Under the Section’s bylaws, Mr. Mills is eligible to serve for two three-year terms.

If David P. Lucas is elected as Treasurer, the Committee nominates Melisa M.W. Mysliwiec to serve the balance of Mr. Lucas’ term as a member of the Council, which ends with the annual meeting in 2017. Ms. Mysliwiec will thereafter be eligible for election to two three-year terms as a member of the Council.

Mr. Imami asked if there were any nominations from the floor. There were none, and Mr. Imami declared that the nominations were closed. The Section will vote on the nominees proposed by the Committee at the annual meeting of the Section in September.

6. Annual Meeting – James B. Steward

Mr. Steward reminded all to attend the annual meeting in September.

B. Legislation and Lobbying

1. Legislative Analysis and Monitoring Committee – Michele C. Marquardt

Ms. Marquardt gave the report. She handed out materials (see Attachment C) which included proposed changes to MCL 600.6023(1)(j) (discussed by Mr. Goren above); In re Estate of Jajuga, HB 5638 and HB 5704, as well as Ms. Marquardt’s proposed substitution for HB 5638. HB 5638 and HB 5704 are two different legislative proposals to overturn the result in Jajuga. The Committee will be reviewing these proposals. Ms. Marquardt requested that comments be forwarded to her. Mr. Vernon stated that a change to deal with Jajuga is already on the list of EPIC updates. The two Committees will coordinate efforts on this matter.

Ms. Marquardt also reported that HB 5629 was introduced to modify MCL 700.5103 (which permits a parent to temporarily delegate parental authority over a child up to six months). HB 5629 is tied barred with HB 5628. HB 5628 amends MCL 750.136C to make it a crime to transfer a child with the intent of permanently divesting the parent of parental responsibility except as provided in the statute. HB 5629 modifies MCL 700.5103 to change “six months” to “180 days,” and to provide that MCL 700.5103 cannot be used to delegate parental authority for longer than 180 days in violation of 750.136C. Ms. Marquardt will ask Ms. Bechler to follow up on this.

2. Legislation Development & Drafting Committee – Geoffrey R. Vernon

Mr. Vernon will discuss with Mr. Imami the priorities and timelines for completion of various aspects of the updating EPIC/MTC project.

3. Insurance Legislation Ad Hoc Committee – Geoffrey R. Vernon

Mr. Vernon reported that SB 1010 (the ILIT exoneration bill) was introduced by Senator Schuitmaker and the bill was assigned to the Judiciary Committee. Objections have been raised
regarding stranger-owned life insurance. These objections should have been satisfied by the previously passed legislation on trusts having an insurable interest in policies owned by the trusts.

4. Assisted Reproductive Technology Ad Hoc Committee – Nancy H. Welber

At Ms. Welber’s request, the name of the committee was changed from the “Artificial Reproductive Technology Ad Hoc Committee” to the “Assisted Reproductive Technology Ad Hoc Committee.”

Ms. Welber reported that pursuant to the straw vote taken earlier during the meeting, the Committee will refine the notice provision over the summer and add it to their proposal. Before September, the entire legislative proposal will be sent to Council members for a vote in September.

C. Education and Advocacy Services for Section Members

1. Amicus Curiae – David L. Skidmore

Mr. Skidmore reported on further activity in *In re Cliffman*. The case involved whether step-children could be potential beneficiaries of wrongful death proceeds. The Section previously filed an amicus brief. The trial court and appellate courts ruled that step-children could not be potential beneficiaries, and the Michigan Supreme Court accepted the case for review. Mr. Skidmore did not recommend that the Section file an additional amicus brief.

2. Probate Institute – Marlaine C. Teahan

Ms. Teahan reported that the attendance in Traverse City at the Annual Probate Institute was the largest ever: 406 registrants. This exceeded the 395 that attended when EPIC was enacted. So far, there are 288 registrants for the Plymouth Institute.

When Ms. Teahan and Jeff Kirkey were planning the Institute, they thought that registrants would want to know about basis and income tax planning. The audience poll in Traverse City confirmed that the registrants were very interested in this topic.


4. Citizens Outreach – Constance L. Brigman

Ms. Brigman reported that the web-based brochures should be available soon, hopefully next week.

The sales of the brochures at the Annual Probate Institute in Traverse City went well and many positive comments were received. All the brochures that were brought to the Institute were sold. (Because of a communication glitch, some of the brochures that could have been brought to the Institute were left behind. These will be added to the brochures for sale at the Plymouth Institute.)
5. Electronic Communications – Michael G. Lichterman

Mr. Lichterman reported that while resolving an issue with a member not receiving the Journal, the committee noticed that the emails for subscribers to the list serve do not match the emails for the members of the Section. A discussion followed about whether the list serve should be for members only and how to police the list serve. The consensus was that the list serve should be for members only and that Mr. Lichterman’s committee should explore options for weeding out non-members on a cost-effective basis.

6. Membership – Raj A. Malviya

Mr. Viviano gave the report. The Membership Committee had a table in Traverse City at the Annual Probate Institute, as it had last year. People visited the table, even though there was no drawing for a prize. (Last year, the committee gave away an Apple iWatch in a drawing.) The social event was held at the hotel, and was well attended. The change of venue seemed to help. This year, for the first time, there will be social event during the Plymouth Institute.

D. Ethics and Professional Standards


E. Administration of Justice


F. Areas of Practice

1. Real Estate – Mark E. Kellogg

Mr. Kellogg reported that the Committee is still working on exempting transfers to LLC’s from uncapping (HB 5141). Because of opposition, HB 5141 may be a weaker bill than we want. He will keep the Council posted.

2. Transfer Tax Committee – Lorraine F. New—No report.


VIII. Other Reports

G. Liaisons


3. Elder Law and Disability Rights Section Liaison – Amy Rombyer Tripp

Mr. Steward gave an update on the *Roush* case. Oral arguments were held on the application for leave to appeal. The Michigan Supreme Court has denied leave to appeal.

4. Family Law Section Liaison – Patricia M. Ouellette—No report.

5. ICLE Liaison – Jeanne Murphy—No report.


10. SCAO Liaisons – Constance L. Brigman, Michele C. Marquardt, Rebecca A. Schnelz—No report.


13. Taxation Section Liaison – George W. Gregory

Mr. Gregory reported that the Taxation Section held its annual conference in April with Carl Levin as the luncheon speaker and several interesting speakers.

IX. Other Business

X. Hot Topics

XI. Adjournment

The meeting was adjourned by Chairperson Shahcen I. Imami at 11:46.
ATTACHMENT A
Same Sex Marriage:
A Review of Michigan’s Constitutional Provisions and Statutes

A Special Report by the Michigan Law Revision Commission

Term Members:
RICHARD D. MCLELLAN, Chairperson
ANTHONY DEREZINSKI, Vice-Chairperson
GEORGE WARD
THE HONORABLE WILLIAM C. WHITBECK

Legislative Members:
SENATOR BERT JOHNSON
SENATOR TONYA SCHUITMAKER
REPRESENTATIVE PETER LUCIDO
REPRESENTATIVE ROSE MARY ROBINSON

Ex Officio Member:
JOHN STRAND
Legislative Council Administrator
Boji Tower – 3rd Floor
124 West Allegan
P.O. Box 30036
Lansing, Michigan 48909-7536

JANE O. WILENSKY, Executive Secretary
MICHIGAN
LAW REVISION COMMISSION

Term Members:
RICHARD D. McLELLAN, Chairperson
ANTHONY DEREZINSKI, Vice-Chairperson
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Analysis of the Michigan Constitution and Statutes Affected by Obergefell v Hodges

INTRODUCTION

In June 2015, the United States Supreme Court ruled that under the 14th Amendment to the U.S. Constitution, same sex couples have a constitutionally protected right to marry. Obergefell v Hodges, 135 S.Ct. 2584 (2015). Accordingly, states must issue marriage licenses to same sex couples and also must recognize marriages of same sex couples performed in other states.

The Michigan Law Revision Commission has the statutory duty to “Examine the common law and statutes of this state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms”. MCL 4.1403(1)(a). In keeping with this duty, the Commission initiated a review of Michigan laws to identify constitutional provisions and statutes that are implicated by the Obergefell decision. This Report contains the results of that review.

The following keywords were used to identify affected constitutional and statutory provisions:

1. Husband(s)
2. Wife
3. Wives
4. Father
5. Mother
6. Marriage
7. Married

The Report contains three sections:

Section 1, Constitutional Law Provisions and Statutes, identifies provisions in the Constitution and statutes that because of gender-specific terms should be changed to gender-neutral terms to conform to the new constitutional standard. Provisions are identified numerically by section and include both the text of the constitutional and statutory provision and the solution to revise the specific text to conform to Obergefell.

Section 2, Policy Issues, identifies statutes affected by the decision that require more than simple language changes to conform to Obergefell. Rather, the subject matter of these statutes calls for specific review by the Legislature because the particular issue implicates policy considerations beyond just a simple textual solution.

Section 3 contains the Michigan Law Revision Commission’s recommendation to use a single statute to amend multiple provisions of state laws to efficiently bring state statutes into
conformity with Obergefell, and the authority and rationale relied on by the Commission to support this approach.

As an advisory body to the Legislature, the Commission has traditionally avoided taking a position on matters that are highly divisive, partisan, or adequately addressed by others. This Report adheres to those principles.
SECTION 1. CONSTITUTIONAL LAW
PROVISIONS AND STATUTES

CONSTITUTION

Michigan Constitution of 1963

1. Article I Section 25
   - Text:
     - To secure and preserve the benefits of marriage for our society and for future
generations of children, the union of one man and one woman in marriage shall be
the only agreement recognized as a marriage or similar union for any purpose.
   - Solution
     - Remove entirely or, at a minimum, annotate to say: This section was held invalid

2. Article X Section 1
   - Text:
     - The disabilities of coverture as to property are abolished. The real and personal
estate of every woman acquired before marriage and all real and personal property
to which she may afterwards become entitled shall be and remain the estate and
property of such woman, and shall not be liable for the debts, obligations or
engagements of her husband, and may be dealt with and disposed of by her as if
she were unmarried. Dower may be relinquished or conveyed as provided by law.
   - Solution:
     - Annotate section to recognize the conflict with U.S. Const. Am. XIV and
## STATUTES

### TABLE OF STATUTES IDENTIFIED

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Public Safety Officers Benefit Act (Act 46 of 2004)

MCL 28.632 (j) (Definitions)

- Text:
  - “Surviving spouse” means the husband or wife of the deceased officer at the time of the officer's death, and includes a spouse living apart from the officer at the time of the officer's death for any reason.

- Solution:
  - “means the husband or wife” to “means the spouse”

Sex Offenders Registration Act (Act 295 of 1994)

MCL 28.722 (p) (Definitions)

- Text:
  - "Residence", as used in this act, for registration and voting purposes means that place at which a person habitually sleeps, keeps his or her personal effects, and has a regular place of lodging. If a person has more than 1 residence, or if a wife has a residence separate from that of the husband, that place at which the person resides the greater part of the time shall be his or her official residence for the purposes of this act. If a person is homeless or otherwise lacks a fixed or temporary residence, residence means the village, city, or township where the person spends a majority of his or her time. This section shall not be construed to
affect existing judicial interpretation of the term residence for purposes other than
the purposes of this act.

- **Solution:**
  - “or if a wife has a residence separate from that of the husband” to “or if a person
    has a residence separate from that of their spouse”

**MCL 32.924a (Payment to parents of deceased veteran; maximum appropriation)**

- **Text:**
  - (4a) There shall be paid on application of the mother and father, or the surviving
    parent, of each veteran heretofore or hereafter deceased from service connected
    causes arising during the period of service a sum equal to the difference between
    any payments received by the veteran or his beneficiary under section 3 and the
    sum of $500.00. In the event the veteran or his beneficiary has not received
    payment under section 3, the entire sum of $500.00 shall be paid to the mother
    and father, or the surviving parent. Any person or persons claiming payment
    under this section shall not be required to prove dependency. There is hereby
    appropriated from the general fund of the state the sum of $200,000.00, to be
    credited to the veterans' military pay fund, to pay benefits under the provisions
    of this section.

- **Solution:**
  - “application of the mother and father” to “application of the parents”
  - “paid to the mother and father” to “paid to the parents”

**Veteran’s Relief Fund**

**Act 214 of 1899**

**MCL 35.21 (Veteran’s relief fund; levy and collection of annual tax; emergency
appropriations; disposition)**

- **Text:**
  - The county board of commissioners of each county shall annually levy, a tax not
    exceeding 1/10 of a mill on each dollar, to be levied and collected as provided by
    law, upon the taxable property of each township and city, for their respective
    counties, for the purpose of creating a fund for the relief of honorably discharged
    indigent members of the army, navy, air force, marine corps, coast guard, and
    women's auxiliaries of all wars or military expeditions in which the United States
    of America has been, is, or may hereafter be, a participant as prescribed in section
    1 of Act No. 190 of the Public Acts of 1965, being section 35.61 of the Michigan
    Compiled Laws, and the indigent spouses, minor children, and parents of each
    such indigent or deceased member. Funds raised in accordance with the
    provisions of this section may be expended for the relief of indigent wives and
children of active duty soldiers, sailors, marines, airmen, coast guardsmen, nurses, and members of the women's auxiliaries during the continuance of present hostilities and prior to their discharge. However, in any year which, in the opinion of the board, an emergency justifying the same exists, the board may appropriate a sum not to exceed 2/10 of a mill on each dollar for said purpose. The sums, when collected, shall be paid to the county treasurer of the county where such tax is levied in each of the counties in this state, to be paid out by the treasurer upon the order of the soldiers' relief commission duly signed by the chairperson and secretary of the commission. If any money in the fund is not necessary for the purpose for which it was raised, the money shall remain in the treasury of the county as a soldiers' relief fund, and shall be considered in raising future sums therefor.

- **Solution:**
  - “relief of indigent wives” to “relief of indigent spouses”

**Funeral Expenses of Veterans (Act 235 of 1911)**

**MCL 35.802 (Soldier’s Relief commission; investigation of application for reimbursement, compensation)**

- **Text:**
  - It shall be the duty of the members of the soldiers' relief commission of each county, whenever application is made for reimbursement by the county for such funeral expenses paid or advanced, or incurred for the burial of such deceased person, to make an investigation of such claim and report their action to the clerk of the board of supervisors of the county, or to the clerk of the board of county auditors as the case may be, in all cases setting forth all the facts, together with the name, rank and command to which such soldier, sailor, marine, nurse or member of the women's auxiliary belonged, and in case of such wife or widow, the rank and command to which her husband or deceased husband belonged, the name and service rendered as such army nurse, the date of his or her death, place where buried, and his or her residence and occupation while living. They shall require such person or persons who paid, advanced or incurred such burial expenses for such deceased person to furnish the board of supervisors, or board of county auditors in counties having a board of county auditors, with a sworn itemized statement of the expense incurred in the burial of the deceased person mentioned in the application. The members of the commission, except where they are paid a salary, shall receive from the county the sum of $2.00 per day for the time actually and necessarily employed by them in the performance of their duties.

- **Solution:**
  - “In case of such wife or widow, the rank and command to which her husband or deceased husband belonged” to “in case of such spouse the rank and command to which their spouse or deceased spouse belonged”
MCL 35.803 (Duties of county clerk; record of application and reimbursement; headstones)

- Text:
  - It shall be the duty of the clerk of the board of supervisors or board of county auditors as the case may be upon receiving the report and statement of expenses provided for in the preceding section, to transcribe in a book kept for that purpose all the facts contained in said report respecting such deceased soldier, sailor or marine, or the deceased wife or widow of the same, or such deceased army nurse, and to report such application and statement to the board of supervisors or the board of county auditors, as the case may be, at the next meeting thereof. It shall be the further duty of said clerk upon the death and burial of any such soldier, sailor or marine, and upon request therefor, to make application to the proper authorities under the government of the United States for a suitable headstone as is now or may hereafter be provided by act of congress, and to cause the same to be placed at the head of the grave of such deceased soldier, sailor or marine. And also, to cause a suitable headstone to be placed at the head of the grave of the deceased wife or widow of such soldier, sailor or marine or army nurse if the same shall now or hereafter be provided by act of congress.

- Solution:
  - Change both references of “wife” to “spouse”

Uniform Veterans’ Guardianship Act
Act 321 of 1937

MCL 35.83 (Maintenance and support of ward)

- Text:
  - Maintenance and support. A guardian shall not apply any portion of the estate of his ward for the support and maintenance of any person other than said ward, his minor children and his wife (if she and the ward be living together) except upon petition to and order of the court after a hearing, notice of which has been given the proper office of the veterans administration in the manner and within the time provided in section 9 of this act.

- Solution:
  - “His ward” should be “their ward”
    - Note: not strictly required but seemingly appropriate.
  - “His minor children” should be “their minor children”
    - Note: not strictly required but seemingly appropriate
  - “wife” should be “spouse”
Michigan Veterans’ Facility
Act 152 of 1885

MCL 36.11 (Veterans’ Facility; eligibility for admission; maintenance charges; dismissal; creation of veteran’s facilities operation fund; credit of money to fund; expenditures; assignment of money to board of managers as condition of admission; expenditure of assigned money; creation of posthumous funds; expenditures)

- Text:
  - (3) The board of managers of the facilities may make a condition for admission to a facility that all applicants shall assign to the board of managers any balance of money accumulated while a member of the facility, or due to the applicant or on deposit with any bank, trust company, corporation, or with any individual, at the time of the death of the applicant. All such sums shall first be expended to pay for all residual maintenance costs attributable to the deceased individual and shall then be paid to the wife, minor children, or dependent mother or father, in the order named. If no such relative shall be found within a period of 2 years, or if no claim for the sums has been made within a period of 2 years, the balance of the money shall be paid into the posthumous fund, which is hereby created by this subsection. The posthumous fund shall be expended as prescribed by 1905 PA 313, MCL 36.61.

- Solution:
  - “paid to the wife” should “paid to the surviving spouse”.

Act 284 of 1964 (City Income Tax Act)

MCL 141.641 (annual return; joint return)

- Text:
  - (2) A husband and wife may file a joint return and, in such case, the tax liability is joint and several.

- Solution:
  - “A husband and wife may file” to “Spouses may file”

Act 388 of 1976 (Michigan Campaign Finance Act)

MCL 169.261 (State campaign fund; creation; administration; tax designation; appropriation; distribution of money; transfer to general fund)

- Text:
  - (2)“An individual whose tax liability under the income tax act of 1967, 1967 PA 281, MCL 206.1 to 206.532, for a taxable year is $3.00 or more may designate
that $3.00 be credited to the state campaign fund. In the case of a **joint return of husband and wife** having an income tax liability of $6.00 or more, each spouse may designate that 3.00 be credited to the state campaign fund.”

- **Solution:**
  - “joint return of husband and wife” to “joint return of spouses”

### Michigan Estate Tax Act

**Act 188 of 1899**

**MCL 205.221 (Definitions)**

- **Text:**
  - (g)“Qualified heir” means an individual entitled to any beneficial interest in property who is the grandfather, grandmother, father, mother, husband, wife, child, legally adopted child, stepchild, brother, sister, **wife or widow of a son**, or **husband or widower of a daughter** of the decedent grantor, donor, or vendor, or for the use of a person to whom the decedent grantor, donor, or vendor stood in the mutually acknowledged relation of a parent, if the relationship began at or before the child’s seventeenth birthday and continued until the death of the decedent grantor, donor, or vendor, or to or for the use of a lineal descendant of or a lineal descendant of a stepchild of the decedent grantor, donor, or vendor, or farm business partner, or to or for the use of any person to whom the decedent grantor, donor, or vendor stood in the mutually acknowledged relation of a farm business partner.

**Solution:**
  - “wife or widow of a son” to “spouse or deceased spouse of a son”
  - “husband or widower of a daughter” to “spouse of a daughter”

### Act 281 of 1967 (Income Tax of 1967)

**MCL 206.30 (“Taxable income” defined; personal exemption; single additional exemption; deduction not considered allowable federal exemption for purposes of subsection (2); allowable exemption or deduction for non-resident or part-year resident; subtraction of prizes under MCL 432.1 to 432.47 from adjusted gross income prohibited; adjusted personal exemption; adjustment on and after January 1, 2013; “retirement or pension benefits” defined; limitations and restrictions; “oil and gas” defined.)**

- **Text:**
  - (C)“Beginning January 1, 2013, for a person born in 1946 through 1952 who receives retirement or pension benefits from employment with a governmental agency that was not covered by the federal social security act, chapter 531, 49 Stat. 620, the sum of the deductions under subsection (1)(f)(i), (ii), and (iv) is
limited to $35,000.00 for a single return and, except as otherwise provided under this subdivision, $55,000.00 for a joint return. If both the husband and wife filing a joint return receive retirement or pension benefits from employment with a governmental agency that was not covered by the federal social security act, chapter 531, 49 Stat. 620, the sum of the deductions under subsection (1)(f)(i), (ii), and (iv) is limited to $70,000.00 for a joint return. After that person reaches the age of 67, the deductions under subsection (1)(f)(i), (ii), and (iv) do not apply and that person is eligible for a deduction of $35,000.00 for a single return and $55,000.00 for a joint return, or $70,000.00 for a joint return if applicable, which deduction is available against all types of income and is not restricted to income from retirement or pension benefits. A person who takes the deduction under subsection (1)(e) is not eligible for the unrestricted deduction of $35,000.00 for a single return and $55,000.00 for a joint return, or $70,000.00 for a joint return if applicable, under this subdivision.”

- Solution:
  - “If both the husband and wife filing a joint return” to “If both spouses filing a joint return”

- Text:
  - (D) “For a person born after 1952 who has reached the age of 62 through 66 years of age and who receives retirement or pension benefits from employment with a governmental agency that was not covered by the federal social security act, chapter 532, 49 Stat. 620, the sum of the deductions under subsection (1)(f)(i), (ii), and (iv) is limited to $15,000.00 for a single return and, except as otherwise provided under this subdivision, $15,000.00 for a joint return. If both the husband and the wife filing a joint return receive retirement or pension benefits from employment with a governmental agency that was not covered by the federal social security act, chapter 532, 49 Stat. 620, the sum of the deductions under subsection (1)(f)(i), (ii), and (iv) is limited to $30,000.00 for a joint return.”

- Solution:
  - “If both the husband and the wife filing a joint return” to “If both spouses filing a joint return”

MCL 206.311 (Tax return; form; content; verification; transmittal; remittance; extension, computation, and remittance of estimated tax due; interest; penalties; tentative return; payment of estimated tax; joint return; effect of filing copy of federal extension; automatic extension based on service in combat zone.)

- Text:
  - (3) Taxpayers who are husband and wife and who file a joint federal income tax return pursuant to the internal revenue code shall file a joint return.

- Solution:
  - “Taxpayers who are husband and wife” to “Taxpayers who are married”
MCL 206.504 ("Blind" and “claimant” defined)

- Text:
  - (2) "Claimant” means an individual natural person who filed a claim under this chapter and who was domiciled in this state during at least 6 months of the calendar year immediately preceding the year in which the claim is filed under this chapter and includes a husband and wife if they are required to file a joint state income tax return. The 6-month residency requirement does not apply to a claimant who files for the home heating credit under section 527a.

- Solution:
  - “and includes a husband and wife” to “and includes spouses”

MCL 206.522 (Determination of amount of claim; election of classification in which to make claims; single claimant per household entitled to credit; "totally and permanently disabled" defined; computation of credit by senior citizen; reduction of claim; tables; maximum credit; total credit allowable.)

- Text:
  - (3) Only 1 claimant per household for a tax year is entitled to the credit, unless both the husband and wife filing a joint return are blind, then each shall be considered a claimant.

- Solution:
  - “unless both the husband and wife filing a joint return are blind” to “unless both spouses filing a joint return are blind”

**Act 134 of 1966 (Real Estate Transfer Tax)**

MCL 207.505 (Exemptions to the Real Estate Transfer Tax)

- Text:
  - (i) "Conveyances from a husband or wife creating or disjoining a tenancy by the entireties in the grantors or the grantor and his or her spouse.”

- Solution:
  - “or husband and wife” to “or both spouses”
MCL 207.526 (Written instruments and transfers of property exempt from tax)

- Text:
  - (i) “A conveyance from a husband or wife or husband and wife creating or disjoining a tenancy by the entireties in the grantors or the grantor and his or her spouse.”

- Solution:
  - “husband and wife” to “both spouses”

MCL 211.27a (Property tax assessment; determining taxable value; adjustment; exception; "transfer of ownership" defined; qualified agricultural property; notice of transfer of property; applicability of subsection (10); definitions.)

- Text:
  - (7b) “Transfer of ownership does not include the following: a transfer from a husband, a wife, or a husband and wife creating or disjoining a tenancy by the entireties in grantors or the grantor and his or her spouse.”

- Solution:
  - “or a husband and wife” to “or both spouses”

MCL 211.7cc (principal residence; exemption from tax levied by local school district for school operating purposes; procedures; definitions)

- Text:
  - (3) Except as otherwise provided in subsection (5), a husband and wife who are required to file or who do file a joint Michigan income tax return are entitled to not more than 1 exemption under this section. For taxes levied after December 31, 2002, a person is not entitled to an exemption under this section if any of the following conditions occur.

- Solution:
  - “a husband and wife who are required to file” to “spouses who are required to file”

MCL 211.762 (Deferment of special assessments on homesteads; conveyance or transfer of or contract to sell homestead; termination of deferment; interest charge; notice.)

- Text:
  - (1) The payment of special assessments assessed and due and payable on a homestead in any year in which the owner meets all of the terms and conditions of this act shall be deferred until 1 year after the owner's death, subject to further order by the probate court or until the homestead or any part of the homestead is
conveyed or transferred to another or a contract to sell is entered into. The death of a spouse shall not terminate the deferment of special assessments for a homestead owned by husband and wife under tenancy by the entireties as long as the surviving spouse does not remarry. Special assessments deferred under this act may be paid in full at any time.”

- Solution:
  o “owned by husband and wife under tenancy by the entireties” to “owned by spouses under tenancy by the entireties” (note: the change presupposes that tenancy by the entireties has already been extended to same sex couples.)

MCL 211.764 (Application for deferment; affidavit form; signature; contents; consent of mortgagee or land contract vendor; filing.)

- Text:
  o An owner may apply to the local assessing officer for deferment of the payment of special assessments on the owner's homestead. The application shall be made upon an affidavit form to be furnished and made available by the department at convenient locations throughout the state. The affidavit form shall contain the following statement in 10-point boldface type located immediately above the affiant's signature: “If this deferment is authorized the state will place a lien on your property.” A person making a false affidavit for the purpose of obtaining deferment of special assessments under this act is guilty of perjury. If the homestead is owned jointly by husband and wife, each spouse shall sign and file the affidavit. If the homestead is encumbered by a mortgage or an unpaid balance on a land contract, a deferment of special assessments shall not be made without the written consent of the mortgagee or the land contract vendor, which shall be filed with the affidavit. The affidavit shall be filed with the local assessing officer at least 30 days after the due date of a special assessment or installment of a special assessment for which deferment is requested.

- Solution:
  o “If the homestead is owned jointly by husband and wife” to “If the homestead is owned jointly by both spouses”

The Drain Code of 1956
Act 40 of 1956

MCL 280.381 (Disqualification of commissioner; petition filed with probate judge)
- Text:
  o Whenever the commissioner of any county shall receive a petition asking for the laying out, construction, cleaning out, deepening or widening of any drain, or a petition asking proceedings by virtue of which any assessment upon lands for benefits received would result, wherein such commissioner shall be interested by
reason of **himself, wife** or child, owning lands that would be liable to an assessment for benefits upon the work or proceeding proposed to be done or had, and in cases where such commissioner may be otherwise disqualified to act in the making of apportionment of benefits, such commissioner shall file a copy of such petition with the judge of probate of the county, together with a statement signed by him, showing that he is disqualified to act in making such apportionment of benefits.

- **Solution:**
  - “**himself**” should be “**themselves**”
    - Note: not strictly required but seemingly appropriate
  - “**wife**” should be “**spouse**”

**MCL 280.74 (Release of right of way; acknowledgements; oaths, form, area, signature of wife, resolution covering street or public place; open drain)**

- **Text:**
  - Commissioners may take acknowledgments of releases of right of way and administer oaths in all proceedings in any way pertaining to drains under this act. A simple form of release of right of way and damages that shall set forth by reference to the survey of the drain, or by other convenient description, the particular land to be conveyed and signed and acknowledged by the person having the right to convey, shall be deemed a sufficient conveyance under the provisions of this act. All releases for rights of way shall be deemed to include sufficient ground on each side of the center line of such drain for the deposit of the excavations therefrom. **It shall not be necessary for the wife to sign the release of right of way unless she has an interest in the land other than her inchoate right of dower.** Whenever a portion of a drain shall be located within any street, highway or public place, then a resolution adopted by a majority vote of the governing body having jurisdiction over such street, highway or public place granting leave to construct such drain therein, designating the place to be traversed by said drain, shall be a sufficient release of the right of way, and shall be deemed a sufficient conveyance under this act, and said governing body may permit the construction of an open drain if such consent be set forth in such resolution.

- **Solution:**
  - “**wife**” should be “**spouse**”
  - “**she has an interest**” should be “**they have an interest**”

**Act 29 of 1970 (state potato industry commission)**

**MCL 290.428 (Referendum; votes; rules; petition to terminate shipper assessments; referendum by mail; conditions for termination of shipper assessments; adoption of assessment increase; public hearing; findings and recommendations; assent to proposal.)**
For the purpose of referenda under this act, a grower is entitled to 1 vote representing a single firm, individual proprietorship, corporation, company, association, partnership, or husband-wife or family ownership.”

Solution:
- “or husband-wife” to “or spousal ownership”

**Act 232 of 1965 (Agricultural Commodities Marketing Act)**

MCL 290.662 (referendum; director to establish procedures for determination of volume)

Text:
- “The director shall establish procedures for determination of volume for the conduct of referendums and other necessary procedures. For the purpose of referendums under this act, a producer is entitled to 1 vote representing a single firm, individual proprietorship, corporation, company, association, partnership, husband-wife or family ownership.”

Solution:
- “husband-wife” to “spousal ownership”

**Oil and gas Mining**

MCL 319.104 (Fiduciaries; right to prosecute and defend suits; parties)

Text:
- Executors, administrators and administrators with will annexed, receivers and trustees, may institute or defend such suits on behalf of their respective estates and trusts and the heirs, devisees, legatees, successors and assigns thereof. Infants and persons under legal disability may institute or defend suits by guardian or next of friend. Every person, including wives of owners, having any interest in such lands, whether in possession or otherwise, who is not a party plaintiff, shall be made a party defendant to such suit. In case of persons interested in such lands whose names are unknown, the bill of complaint shall so state, and such persons may be made parties to such suits by the name and description of “unknown owners.”

Solution:
- Technically there is no issue, “every person” is an inclusive phrase which would include same-sex couples.
If a change was still desired: “including wives of owners” to “including spouses of owners”

Act 451 of 1994
(Natural resources and environmental protection act)

MCL 324.36109 (Credit against state income tax or state single business tax.)

- Text:
  - (3) If the farmland and related buildings covered by a development rights agreement under section 36104 or an agricultural conservation easement or purchase of development rights under section 3611b or 36206 are owned by more than 1 owner, each owner is allowed to claim a credit under this section based upon that owner's share of the property tax payable on the farmland and related buildings. The department of treasury shall consider the property tax equally apportioned among the owners unless a written agreement signed by all the owners is filed with the return, which agreement apportions the property taxes in the same manner as all other items of revenue and expense. If the property taxes are considered equally apportioned, a husband and wife shall be considered 1 owner, and a person with respect to whom a deduction under section 151 of the internal revenue code of 1986, 26 USC 151, is allowable to another owner of the property shall not be considered an owner.

- Solution:
  - “a husband and wife shall be considered 1 owner” to “spouses shall be considered 1 owner”

Mental Health Code
Act 258 of 1974

MCL 330.1800 (Definitions)

- Text:
  - (h) “Parents” means the legal father and mother of an unmarried individual who is less than 18 years of age.

- Solution:
  - “the legal father and mother” to “the legal parents”
Act 280 of 1939
Social welfare act

MCL 400.32 (Continuation of assistance if person moves or is taken to another county; transfer of records; “resident of state” defined; continued absence from state as abandonment of residence; inapplicability of certain rules; requirements applicable to medical assistance eligibility; residence of husband and wife living separate and apart.)

- Text:
  - (4) The residence of a husband shall not be considered to be the residence of the wife if they are living separate and apart. If a husband and wife are living separate and apart, each may have a separate residence dependent upon proof of the fact and not upon legal presumption. This subsection shall not be construed to prohibit a person from acquiring or retaining a legal residence.

- Solution:
  - “The residence of a husband shall not be considered to be the residence of the wife” to “The residence of one spouse shall not be considered to be the residence of the wife”
  - “If a husband and wife are living separate and apart” to “If spouses are living separate and apart”

Worker’s Disability Compensation Act of 1969
Act 317 of 1969

MCL 418.118 (Domestic Servants)

- Sec. 1 Text:
  - No household domestic servant shall be considered an employee if the person is a wife, child or other member of the employer's family residing in the home, and no householder shall be deemed a statutory principal within the meaning of section 171 for the purposes of this section.

- Solution:
  - “wife” should be “spouse”
    - Note: because of the clause: “other member of the employer’s family” this change is not strictly necessary but semantic in nature.

MCL 418.335 (Cessation of payments upon remarriage of dependent wife or upon dependent person reaching certain age; reinstatement of dependency; persons to whom section is applicable)
Upon the remarriage of a dependent wife receiving compensation, such payments shall cease upon the payment to her of the balance of the compensation to which she would otherwise have been entitled but not to exceed the sum of $500.00, and further compensation, if any, shall be payable to the person either wholly or partially dependent upon deceased for support at his death as provided in section 331(b). A worker's compensation magistrate shall determine the amount of compensation or portion thereof that shall be payable weekly to such wholly or partially dependent person for the remaining weeks of compensation. Where, at the expiration of the 500-week period, any such wholly or partially dependent person is less than 18 years of age, a worker's compensation magistrate may order the employer to continue to pay the weekly compensation, or some portion thereof, until such wholly or partially dependent person reaches the age of 18. The payment of compensation to any dependent child shall cease when the child reaches the age of 18 years, if at the age of 18 years he or she is neither physically nor mentally incapacitated from earning, or when the child reaches the age of 16 years and thereafter is self-supporting for 6 months. If the child ceases to be self-supporting thereafter, the dependency shall be reinstated. Such remaining compensation, if any, shall be payable to the person either wholly or partially dependent upon the deceased employee for support at the time of the employee's death, as provided in the case of the remarriage of a dependent wife.

Solution:
- “dependent wife” to “dependent spouse”
- “Payment to her” to “payment to them”
- “to which she would” to “to which they would”
- “of a dependent wife” to “of a dependent spouse”

Compensation of Injured Peace Officers
Act 329 of 1937

MCL 419.102 (Peace officers; surviving spouse or dependents; compensation; last sickness and burial expenses.)

Text:
- The surviving spouse or dependents of a peace officer of this state or of a political subdivision of this state who is killed as the result of active duty in enforcing the laws of this state or the laws of an adjoining state shall receive the sum of $1,000.00 for defraying the expense of last sickness and burial and $18.00 a week until a total sum of $5,000.00 is paid. As used in this section, (a) “surviving spouse” means the spouse of the peace officer, if living, and until remarriage (b) “dependent” means the children of the peace officer, if dependent; the mother, father, or both, of the peace officer, if dependent; and the brothers and sisters of the peace officer, if dependent; in the order named. If the peace officer does not leave a surviving spouse or any dependents as defined in this section, the
estate of the peace officer shall receive the sum of $1,000.00 for the expense of the peace officer's last sickness and burial.

- Solution:
  - “the mother, father, or both” to “the mother, father, or both parents”

**Compensation of injured firefighters**

**Act 9 of 1942**

MCL 419.203 (Death benefits equivalent to amount provided under worker's disability compensation act; compensation of dependents.)

- Text:
  - The surviving spouse and dependents of a fire fighter who is killed in safeguarding life or property outside his or her jurisdiction from damage due to an explosion, fire, or other disaster, however caused, or in transportation to or from a fire, explosion, or other disaster, however caused, outside his or her jurisdiction, shall receive the sum of $500.00 for defraying the expense of burial, and compensation equivalent to the amount provided at the time of death of the fire fighter under the worker's disability compensation act of 1969, Act No. 317 of the Public Acts of 1969, being sections 418.101 to 418.941 of the Michigan Compiled Laws. Compensation shall be payable to the spouse of the fire fighter, if living, and until remarriage; the children of the fire fighter, while dependent; the mother, father, or both, of the fire fighter, while dependent; and the brothers and sisters of the fire fighter, while dependent; in the order named. If the fire fighter does not leave a surviving spouse or any dependents as defined in this section, the estate of the fire fighter shall receive the sum of $500.00 for the expense of the fire fighter's burial.

- Solution:
  - “The mother, father, or both” to “the mother, father, or both parents”

**Act 58 of 1998**

**Michigan Liquor Control Code of 1998**

MCL 436.1801 (Granting or renewing license; surety; selling, furnishing, or giving alcoholic liquor to minor or to person visibly intoxicated; right of action for damage or personal injury; actual damages; institution of action; notice; survival of action; general reputation as evidence of relation; separate actions by parents; commencement of action against retail licensee; indemnification; defenses available to licensee; rebuttable presumption; prohibited causes of action; section as exclusive remedy for money damages against licensee; civil action subject to revised judicature act.)
(4) An action under this section shall be instituted within 2 years after the injury or death. A plaintiff seeking damages under this section shall give written notice to all defendants within 120 days after entering an attorney-client relationship for the purpose of pursuing a claim under this section. Failure to give written notice within the time specified shall be grounds for dismissal of a claim as to any defendants that did not receive that notice unless sufficient information for determining that a retail licensee might be liable under this section was not known and could not reasonably have been known within the 120 days. In the event of the death of either party, the right of action under this section shall survive to or against his or her personal representative. In each action by a husband, wife, child, or parent, the general reputation of the relation of husband and wife or parent and child shall be prima facie evidence of the relation, and the amount recovered by either the husband, wife, parent, or child shall be his or her sole and separate property. The damages, together with the costs of the action, shall be recovered in an action under this section. If the parents of the individual who suffered damage or who was personally injured are entitled to damages under this section, the father and mother may sue separately, but recovery by 1 is a bar to action by the other.

Solution:
- “the general reputation of the relation of husband and wife” to “the general reputation of spouses”

Act 72 of 1917
Uniform Partnership Act

MCL 449.6 (partnership; definition; effect of act as to prior and limited partnerships)

Text:
- (1) A partnership is an association of 2 or more persons, which may consist of husband and wife, to carry on as co-owners a business for profit; any partnership heretofore established consisting of husband and wife only, formed since January 10, 1942 shall constitute a valid partnership.

Solution:
- “which may consist of husband and wife” to “which may consist of spouses”
  - Note: This change is primarily semantic, “may consist” is not exclusive so a change is not technically required.
- “consisting of husband and wife only” to “consisting of spouses only”
Act 23 of 1993
Michigan Limited Liability Company Act

MCL 450.4504 (membership interest as personal property)

- Text:
  - (1) A membership interest is personal property and may be held in any manner in which personal property may be held. **A husband and wife may hold a membership interest in joint tenancy** in the same manner and subject to the same restrictions, consequences, and conditions that apply to the ownership of real estate held jointly by a husband and wife under the laws of this state, with full right of ownership by survivorship in case of the death of either.”

- Solutions:
  - “A husband and wife may hold a membership interest in joint tenancy” to “Spouses may hold a membership interest in joint tenancy”
  - “ownership of real estate held jointly by a husband and wife under the laws of this state” to “ownership of real estate held jointly by spouses under the laws of this state”

Incorporation of Summer Resort Owners
Act 137 of 1929

455.208 (Annual meeting; trustees, election, report)

- Text:
  - The annual meeting of such association shall be held in its own county between June first and August thirty-first of each year, at such time and place as may be fixed by the board of trustees and such meeting may adjourn from day to day as may be necessary for the transaction of its business. At each annual meeting there shall be elected such number of trustees as shall be necessary to fill the places of trustees whose terms of office then expire, and all vacancies on such board. Such election shall be by ballot and choice of trustees shall be by a majority of all votes cast. Members may vote in person or by proxy filed with the secretary. Each member shall be entitled to 1 vote. **Husbands and wives**, owning property by entireties, shall each be entitled to 1 vote. Membership shall terminate upon the alienation of the property of a member. At each annual meeting the trustees shall make a report, in writing, of the management of the business of the corporation, the condition of its property, its assets and liabilities, and upon such other matters as may be proper and of general interest to the members.

- Solution:
  - “Husbands and wives” to “Spouses”
    - Note: this change presupposes that same-sex couples can own property by the entireties which is likely the case.
Act 21 of 1939
Regulatory Loan Act

MCL 493.17 (Assignment or order for payment of compensation to secure loan invalid; validity of chattel mortgage or lien in household goods’ married borrower; signatures; written assent of spouse)

- Text:
  - (2) “If the borrower is married, a chattel mortgage or other lien on household goods shall not be valid unless it is signed in person by both husband and wife. The written assent of a spouse under this section shall not be required when husband and wife have been living separate and apart for a period of not less than 5 months before the making of the chattel mortgage or other lien.”

- Solution:
  - “signed in person by both husband and wife” to “signed in person by both spouses”
  - “section shall not be required when husband and wife have been living separate” to “section shall not be required when spouses have been living separate”

Act 218 of 1956
The Insurance code of 1956

MCL 500.2207 (Insurable interest; personal insurance; rights of beneficiaries, creditors)

- Text:
  - (1)”It shall be lawful for any husband to insure his life for the benefit of his wife, and for any father to insure his life for the benefit of his children, or of any one or more of them; and in case that any money shall become payable under the insurance, the same shall be payable to the person or persons for whose benefit the insurance was procured, his, her or their representatives or assigns, for his, her or their own use and benefit, free from all claims of the representatives of such husband or father, or of any of his creditors; and any married woman, either in her own name or in the name of any third person as her trustee, may cause to be insured the life of her husband, or of any other person, for any definite period, or for the term of life, and the moneys that may become payable on the contract of insurance, shall be payable to her, her representatives or assigns, free from the claims of the representatives of the husband, or of such other person insured, or of any of his creditors; and in any contract of insurance, it shall be lawful to provide that on the decease of the person or persons for whose benefit it is obtained, before the sum insured shall become payable, the benefit thereof shall accrue to any other person or persons designated; and such other person or persons shall, on the happening of such contingency, succeed to all the rights and benefits of the deceased beneficiary or beneficiaries of the policy of insurance, notwithstanding he, she or they may not at the time have any such insurable interest as would have
enabled him, her or them to obtain a new insurance; and the proceeds of any policy of life or endowment insurance, which is payable to the wife, husband or children of the insured or to a trustee for the benefit of the wife, husband or children of the insured, including the cash value thereof, shall be exempt from execution or liability to any creditor of the insured; and said exemption shall apply to insurance heretofore or hereafter issued; and shall apply to insurance payable to the above enumerated persons or classes of persons, whether they shall have become entitled thereto as originally designated beneficiaries, by beneficiary designation subsequent to the issuance of the policy, or by assignment (except in case of transfer with intent to defraud creditors).”

- Solutions:
  - “benefit of his wife” to “benefit of his spouse”
  - “life of her husband” to “life of her spouse”
    - Note: While a change to the statute may not necessarily be required, language that authorizes benefits regardless of gender is preferable.

**MCL 500.2209 (Insurable interest; married woman; right to proceeds, devise.)**

- Text:
  - (1)“It shall be lawful for any married woman, by herself, and in her name or in the name of any third person, with his assent, as her trustee, to cause to be insured for her sole use, the life of her husband or the life of any other person, in any life insurance company of any nature whatever, located in either of the states of the United States of America or in Great Britain, for any definite period, or for the term of his natural life; and in case of her surviving her husband, or such other person insured in her behalf, the sum or net amount of the policy of insurance due and payable by the terms of the insurance, shall be payable to her, to and for her own use, free from the claims of the representatives of her husband, or of such other person insured, or of any of his creditors, but such exemption shall not apply where the amount of premium annually paid shall exceed the sum of $300.00.”

- Solution:
  - “the life of her husband” to “the life of her spouse”
    - Note: this is not strictly required given the inclusive clause: “or the life of any other person”.
  - “in case of her surviving her husband” to “in case of her surviving her spouse”
    - Note: this is not strictly required given the inclusive clause: “or such other person”

- Text:
  - (2) “In case of the death of the wife before the decease of her husband, or of such other person insured, the amount of the insurance may be made payable after her death to her children, for their use, and to their guardian, if under age, or the amount of the policy may be disposed of by such married woman by a last will and testament.”
• Solution:
  o “decease of her husband” to “decease of her spouse”
    ▪ Note: not strictly required given the inclusive clause: “of such other person insured”

MCL 500.3110 (dependents of deceased person; termination of dependency; accrual of personal protection benefits)

• Text:
  o (1a) “a wife is dependent on a husband with whom she lives at the time of his death.”

• Solution:
  o “a wife is dependent on a husband” to “a wife is dependent on a spouse”

• Text:
  o (1b) “A husband is dependent on a wife with whom he lives at the time of her death.”

• Solution:
  o “a husband is dependent on a wife” to “a husband is dependent on a spouse”

MCL 500.3402 (Disability insurance policy; provisions required.)

• Text:
  o (3) It purports to insure only 1 person, except that a policy may insure, originally or by subsequent amendment, upon the application of an adult member of a family who shall be deemed the policyholder, any 2 or more eligible members of that family, including husband, wife, dependent children or any children under a specified age which shall not exceed 19 years and any other person dependent upon the policyholder;

• Solution:
  o “including husband, wife, dependent children” to “including spouses, dependent children”

Revised Statutes of 1846
Of marriage and the solemnization thereof

551.1 (marriage between individuals of same sex an invalid contract)
• Text:
  o Marriage is inherently a unique relationship between a man and a woman. As a matter of public policy, this state has a special interest in encouraging, supporting, and protecting that unique relationship in order to promote, among other goals,
the stability and welfare of society and its children. A marriage contracted between individuals of the same sex is invalid in this state.

- **Solution:**
  - Repeal entire section
  - At a minimum annotate section to say: “this section was held invalid as in conflict with U.S. Const. Am. XIV.”

**Foreign Marriages**  
**Act 168 of 1939**

**551.271 (Marriages solemnized in another state validated)**

- **Text:**
  - (1) Except as otherwise provided in this act, a marriage contracted between a man and a woman who are residents of this state and who were, at the time of the marriage, legally competent to contract marriage according to the laws of this state, which marriage is solemnized in another state within the United States by a clergyman, magistrate, or other person legally authorized to solemnize marriages within that state, is a valid and binding marriage under the laws of this state to the same effect and extent as if solemnized within this state and according to its laws.
  
  - Solution:
    - “between a man and a woman” to “between two parties”

  - **Text:**
    - (2) This section does not apply to a marriage contracted between individuals of the same sex, which marriage is invalid in this state under section 1 of chapter 83 of the revised statutes of 1846, being section 551.1 of the Michigan Compiled Laws.

  - **Solution:**
    - Section 2 needs to be removed entirely
    - At a minimum annotate section to say: “this section was held invalid as in conflict with U.S. Const. Am. XIV.”

**Revised Statutes of 1846**  
**Chapter 83. Of marriage and the solemnization thereof**

**MCL 551.3 (Incapacity; persons man prohibited from marrying)**

- **Text:**
  - A man shall not marry his mother, sister, grandmother, daughter, granddaughter, stepmother, grandfather's wife, son's wife, grandson's wife, wife's mother, wife's grandmother, wife's daughter, wife's granddaughter, brother's daughter, sister's...
daughter, father's sister, mother's sister, or cousin of the first degree, or another man.

- Solution:
  - “another man”- remove entirely
  - The following reflect changes that are not technically required by Obergefell but are necessary to maintain the intent of the statute in light of Obergefell.
    - “Grandfather’s wife” to “grandfather’s spouse”
    - “son’s wife” to “son’s spouse”
    - “Grandson’s wife” to “grandson’s spouse”
    - “wife’s mother” to “spouse’s mother”
    - “wife’s grandmother” to “spouse’s grandmother”
    - “wife’s daughter” to “spouse’s daughter”
    - “wife’s granddaughter” to “spouse’s granddaughter”

**Revised Statutes of 1846, Ch. 83**
Of Marriage and the solemnization thereof

MCL 551.4 (Incapacity; persons woman prohibited from marrying.)

- Text:
  - “A woman shall not marry her father, brother, grandfather, son, grandson, stepfather, grandmother's husband, daughter's husband, granddaughter's husband, husband's father, husband's grandfather, husband's son, husband's grandson, brother's son, sister's son, father's brother, mother's brother, or cousin of the first degree, or another woman.”

- Solution:
  - Change to “a woman shall not marry her father, brother, grandfather, son, grandson, stepfather, grandmother’s spouse, daughter’s spouse, granddaughter’s spouse, spouse’s father, spouse’s grandfather, spouse’s son, spouse’s grandson, brother’s son, sister’s son, father’s brother, mother’s brother, or cousin of the first degree.”

MCL 551.9 (Solemnization of marriage; form; declaration by parties; witnesses.)

- Text:
  - In the solemnization of marriage, no particular form shall be required, except that the parties shall solemnly declare, in the presence of the person solemnizing the marriage and the attending witnesses, **that they take each other as husband and wife**; and in every case, there shall be at least 2 witnesses, besides the person solemnizing the marriage, present at the ceremony.
Solution:
  o “that they take each other as husband and wife” to “that they take each other as spouses”

**Act 259 of 1909**

MCL 552.101 (Judgment of divorce or separate maintenance; provision in lieu of dower; determining rights of wife or husband in and to policy of life insurance, endowment, or annuity; discharge of liability on policy; determination of rights; assignment of rights.)

- Text:
  o (2)“Each judgment of divorce or judgment of separate maintenance shall determine all rights of the wife in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the husband in which the wife was named or designated as beneficiary, or to which the wife became entitled by assignment or change of beneficiary during the marriage or in anticipation of marriage. If the judgment of divorce or judgment of separate maintenance does not determine the rights of the wife in and to a policy of life insurance, endowment, or annuity, the policy shall be payable to the estate of the husband or to the named beneficiary if the husband so designates. However, the company issuing the policy shall be discharged of all liability on the policy by payment of its proceeds in accordance with the terms of the policy unless before the payment the company receives written notice, by or on behalf of the insured or the estate of the insured, 1 of the heirs of the insured, or any other person having an interest in the policy, of a claim under the policy and the divorce.”

- Solutions:
  o “all rights of the wife” to “all rights of the spouse”
  o “upon the life of the husband in which the wife” to “upon the life of their spouse in which the spouse”
  o “or to which the wife became entitled” to “or to which the spouse became entitled”
  o “determine the rights of the wife” to “determine the rights of the spouse”
  o “the policy shall be payable to the estate of the husband or to the named beneficiary if the husband so designates” to “the policy shall be payable to the estate of their husband or to the named beneficiary if their spouse so designates”

- Text:
  o (3)“Each judgment of divorce or judgment of separate maintenance shall determine all rights of the husband in and to the proceeds of any policy or contract of life insurance, endowment, or annuity upon the life of the wife in which the husband was named or designated as beneficiary, or to which he became entitled by assignment or change of beneficiary during the marriage or in anticipation of marriage. If the judgment of divorce or judgment of separate maintenance does not determine the rights of the husband in and to the policy of
life insurance, endowment, or annuity, the policy shall be payable to the estate of the wife, or to the named beneficiary if the wife so designates. However, the company issuing the policy shall be discharged of all liability on the policy by payment of the proceeds in accordance with the terms of the policy unless before the payment the company receives written notice, by or on behalf of the insured or the estate of the insured, 1 of the heirs of the insured, or any other person having an interest in the policy, of a claim under the policy and the divorce.”

- Solution:
  - In light of the changes to the preceding section, this section should likely be removed entirely.

- Text:
  - (4)“Each judgment of divorce or judgment of separate maintenance shall determine all rights, including any contingent rights, of the husband and wife in and to all of the following:”

- Solution:
  - “including any contingent rights, of the husband and wife” to “including any contingent rights, of the spouses”

MCL 552.102 (Realty owned jointly or by entireties; effect of divorce without determination of ownership in decree.)

- Text:
  - Every husband and wife owning real estate as joint tenants or as tenants by entireties shall, upon being divorced, become tenants in common of such real estate, unless the ownership thereof is otherwise determined by the decree of divorce.

- Solution:
  - “Every husband and wife” to “Spouses”

Act 310 of 1996
Uniform interstate family support act

MCL 552.1328 (physical presence of petitioner not required; documents admissible as evidence; testimony)

- Text:
  - (8)The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this act.
• Solution:
  o “based on the relationship of husband and wife” to “based on the relationship as spouses”

**MCL 552.23 (judgment of divorce or separate maintenance; further award of real and personal estate; transmittal of payments to department of human services; service fee; failure or refusal to pay service fee; contempt; “state disbursement unit or “SDU” defined.)**

• Text:
  o (3) If the court appoints the friend of the court custodian, receiver, trustee, or escrow agent of assets owned by a husband and wife, or either of them, the court may fix the amount of the fee for such service, to be turned over to the county treasurer and credited to the general fund of the county. The court may hold in contempt a person who fails or refuses to pay a fee ordered under this subsection.

• Solution:
  o “assets owned by a husband and wife” to “assets owned by spouses”

**MCL 552.27 (Alimony or allowance for support and education of children as lien; default; powers of court.)**

• Text:
  o (D) Award a division between the husband and wife of the real and personal estate of either party or of the husband and wife by joint ownership or right as the court considers equitable and just.

• Solution:
  o “division between the husband and wife” to “division between the spouses”
  o “of the husband and wife by joint ownership” to “of the spouses by joint ownership”

**MCL 552.34 (action to annul marriage of a minor)**

• Text:
  o “An action to annul a marriage on the ground that 1 of the parties was under the age of legal consent, as provided in section 3 of Act No. 128 of the Public Acts of 1887, being section 551.103 of the Michigan Compiled Laws, may be brought by the parent or guardian entitled to the custody of the minor or by the next friend of the minor, but the marriage shall not be annulled on the application of a party who was of the age of legal consent at the time of the marriage, or when it appears that the parties, after they had attained the age of consent, had freely cohabited as husband and wife.”
Solution:
  o “had freely cohabitated as husband and wife” to “had freely cohabitated as spouses”

MCL 552.36 (Marriage annulment; action by party to marriage)

Text:
  o A party to a marriage who, at the time of the marriage, was not capable in law of contracting and who later becomes capable in law of contracting may bring an action to annul the marriage. The court shall not, however, annul the marriage if the court finds that the parties cohabited as husband and wife after the party became capable in law of contracting.

Solution:
  o “parties cohabitated as husband and wife” to “parties cohabitated as spouses”

MCL 552.37 (Marriage annulment; ground of force or fraud; effect of voluntary cohabitation)

Text:
  o No marriage shall be annulled on the ground of force or fraud, if it shall appear that, at any time before the commencement of the suit, there was a voluntary cohabitation of the parties as husband and wife.

Solution:
  o “of the parties as husband and wife” to “of the parties as spouses”

Act 299 of 1905
Change of name of divorced woman

MCL 552.391 (divorced woman; change of name)

Text:
  o “The circuit courts of this state, whenever a decree of divorce is granted, may, at the instance of the woman, whether complainant or defendant, decree to restore to her her [sic] birth name, or the surname she legally bore prior to her marriage to the husband in the divorce action, or allow her to adopt another surname if the change is not sought with any fraudulent or evil intent.”

Solution:
  o “or the surname she legally bore prior to her marriage to the husband in the divorce action” to “or the surname she legally bore prior to her marriage to their spouse in the divorce action”
MCL 552.9f (Divorce; taking of testimony; minor children; perpetuating testimony; nonresident defendant, residence of plaintiff.)

- Text:
  - No proofs or testimony shall be taken in any case for divorce until the expiration of 60 days from the time of filing the bill of complaint, except where the cause for divorce is desertion, or when the testimony is taken conditionally for the purpose of perpetuating such testimony. In every case where there are dependent minor children under the age of 18 years, no proofs or testimony shall be taken in such cases for divorce until the expiration of 6 months from the day the bill of complaint is filed. In cases of unusual hardship or such compelling necessity as shall appeal to the conscience of the court, upon petition and proper showing, it may take testimony at any time after the expiration of 60 days from the time of filing the bill of complaint. Testimony may be taken conditionally at any time for the purpose of perpetuating such testimony. When the defendant in any case for divorce is not domiciled in this state at the time of commencing the suit or shall not have been domiciled herein at the time the cause for divorce arose, before any decree of divorce shall be granted the complainant must prove that the parties have actually lived and cohabited together as husband and wife within this state, or that the complainant has in good faith resided in this state for 1 year immediately preceding the filing of the bill of complaint for divorce.

- Solution:
  - “actually lived and cohabited together as husband and wife within this state” to “actually lived and cohabited together as spouses within this state”

Revised Statute of 1846 Ch. 62
Of the nature and qualities of estates in real and personal property, and the alienation thereof.

MCL 554.45 (Land conveyance; exceptions to preceding section.)

- Text:
  - The preceding section shall not apply to mortgages, nor to devises or grants made in trust, or made to executors, or to husband and wife.

- Solution:
  - “or to husband and wife” to “or to spouses”

Marriage License
Act 128 of 1887

551.101 (marriage license; requirements; place to obtain, delivery to person officiating)
Text:
  o It shall be necessary for all parties intending to be married to obtain a marriage license from the county clerk of the county in which either the man or woman resides, and to deliver the said license to the clergyman or magistrate who is to officiate, before the marriage can be performed. If both parties to be married are non-residents of the state it shall be necessary to obtain such license from the county clerk of the county in which the marriage is to be performed.

Solution:
  o “which either the man or woman resides” to “which either party desiring to be married resides”

Revised Statutes of 1846
Chapter 83. Of Marriage and the solemnization thereof

MCL 551.2 (Marriage as civil contract; consent; license; solemnization)

Text:
  o So far as its validity in law is concerned, marriage is a civil contract between a man and a woman, to which the consent of parties capable in law of contracting is essential. Consent alone is not enough to effectuate a legal marriage on and after January 1, 1957. Consent shall be followed by obtaining a license as required by section 1 of Act No. 128 of the Public Acts of 1887, being section 551.101 of the Michigan Compiled Laws, or as provided for by section 1 of Act No. 180 of the Public Acts of 1897, being section 551.201 of the Michigan Compiled Laws, and solemnization as authorized by sections 7 to 18 of this chapter.

Solution:
  o “between a man and a woman” to “between two parties”

Issuance of Marriage license without publicity
Act 180 of 1897

MCL 551.201 (issuance of marriage license without publicity; conditions; application; notice; consent; exceptions; order)

Text:
  o (1) When a person desires to keep the exact date of his or her marriage to a person of the opposite sex a secret, the judge of probate may issue, without publicity, a marriage license to any person making application, under oath, if there is good reason expressed in the application and determined to be sufficient by the judge of probate.
• Solution:
  o Remove words “to a person of the opposite sex”

Foreign marriages
Act 168 of 1939

MCL 551.272 (Marriage not between man and woman invalidated)

• Text:
  o This state recognizes marriage as inherently a unique relationship between a man and a woman, as prescribed by section 1 of chapter 83 of the Revised Statutes of 1846, being section 551.1 of the Michigan Compiled Laws, and therefore a marriage that is not between a man and a woman is invalid in this state regardless of whether the marriage is contracted according to the laws of another jurisdiction.

• Solution:
  o This section should be repealed.
    ▪ At a minimum annotate section to say: “This section was held invalid as in conflict with U.S. Const. Am. XIV. Obergefell v Hodges, 135 S. Ct. 1039 (2015).”

Alimony Awarded by Court of Another State
Act 52 of 1911

MCL 552.122 (Stay of proceedings)

• Text:
  o If the defendant in this state shows that they have made proper application in the court of the other state for a reduction or any further order in relation to the alimony in the courts of the other state, the court in this state may stay the proceedings in this state on such terms as it desires to impose.

• Solution:
  o “that he has” to “that they have”

Act 210 of 1927

MCL 557.101 (terminating tenancy by entirety)

• Text:
  o In all cases where husband and wife own any interest in land as tenants by the entirety, such tenancy by the entirety may be terminated by a conveyance from either one to the other of his or her interest in the land so held.
**Solution:**
- “where husband and wife” to “where spouses”

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**Act 212 of 1927**

MCL 557.151 (Evidence of indebtedness payable to husband and wife; ownership in joint tenancy)

- **Text:**
  - All bonds, certificates of stock, mortgages, promissory notes, debentures, or other evidences of indebtedness hereafter made payable to persons who are husband and wife, or made payable to them as endorsees or assignees, or otherwise, shall be held by such husband and wife in joint tenancy unless otherwise therein expressly provided, in the same manner and subject to the same restrictions, consequences and conditions as are incident to the ownership of real estate held jointly by husband and wife under the laws of this state, with full right of ownership by survivorship in case of the death of either.

- **Solutions:**
  - “to persons who are husband and wife” to “to persons who are spouses”
  - “shall be held by such husband and wife in joint tenancy” to “shall be held by such spouses in joint tenancy”
  - “ownership of real estate held jointly by husband and wife” to “ownership of real estate held jointly by spouses”

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**Act 216 of 1981**

MCL 557.21 (Status of property acquired by woman before or after marriage; earnings of married woman.)

- **Text:**
  - If a woman acquires real or personal property before marriage or becomes entitled to or acquires, after marriage, real or personal property through gift, grant, inheritance, devise, or other manner, that property is and shall remain the property of the woman and be a part of the woman's estate. She may contract with respect to the property, sell, transfer, mortgage, convey, devise, or bequeath the property in the same manner and with the same effect as if she were unmarried. The property shall not be liable for the debts, obligations, or engagements of any other person, including the woman's husband, except as provided in this act.

- **Solution:**
  - “including the woman’s husband” to “including the woman’s spouse”
    - Note, because of the inclusive clause “any other person” this change is primarily semantic and not strictly required.
Act 216 of 1981
Rights and Liabilities of Married Women

MCL 557.24 (Contract by married woman; liability of husband for breach of contract)
- Text:
  - (2) “The husband of a married woman shall not be liable for breach of a contract which was entered into by the married woman and which relates to the separate property of the married woman as provided in subsection (1) unless the husband acted as a surety, co-signor, or guarantor on the contract.”
- Solutions:
  - “The husband of a married woman” to “The spouse of a married woman”
  - “Unless the husband” to “unless the spouse”

MCL 557.25 (Married woman as surety for debt or obligation of other person; judgment against married woman; satisfaction)
- Text:
  - A married woman may act as a surety for the debt or obligation of another person, including the debt of her husband, by signing a written instrument providing for the suretyship. A judgment entered against the married woman as a surety may be satisfied out of her separate property as described in section 1, whether or not the contract of suretyship benefits or concerns that separate property.
- Solution:
  - “including the debt of her husband” to “including the debt of her spouse”
  - Note, because “of another person” is inclusive the change is primarily semantic and not strictly necessary.

Act 39 of 1948

MCL 557.253 (Repeal of community property act; community property on effective date of repeal, continuance, notice of claim.)
- Text:
  - “Any property which, at the time this act takes effect, constitutes community property by virtue of the provisions of Act No. 317 of the Public Acts of 1947 shall continue to be community property and remain subject to the provisions of said act and for such purpose said act shall continue in force: Provided, That, except where the conveyance or other instrument of title under which the same was acquired or other evidence of ownership thereof expressly states the intention that such property shall be community property, any such property shall, upon the expiration of 1 year after the time this act takes effect, be deemed to be the separate property of the husband or the wife, or both, according to the name or
names set forth in the conveyance or other instrument of title under which such property was acquired or other evidence of ownership thereof, unless, within such 1 year period, either spouse having an interest therein, or any of the devisees, legatees, heirs or distributes [sic] of either of them who shall have died prior to or during the running of such 1 year period, shall file notice of claim that such property constitutes community property. Such notice of claim, to be effective, shall be in writing, shall contain a description of each item of property to which the same relates, shall be executed by the party making the same in the manner required for the execution of deeds and shall be filed in the office of the register of deeds for the county in which the spouse by whom, or in whose behalf, the same is made resides at the time of the filing thereof, or, in the event that such spouse shall have died, for the county in which such spouse resided at the time of death. In the event that such notice of claim relates to real property located in any other county or counties, to be effective as to such property, a duplicate original of such notice of claim shall also be filed in the office of the register of deeds for each such county. No disability of any kind or lack of knowledge on the part of anyone shall suspend the running of the time for filing such notice of claim, but such notice may be executed and filed by any other person acting in behalf of any party by whom such notice of claim may be filed who is under a disability or otherwise unable to make such claim in his or her own behalf.”

- Solution:
  - “separate property of the husband or wife or both” to “separate property of one or both spouses”

MCL 557.254 (Repeal of community property act; community property thereafter derived, continuance, notice of claim)

- Text:
  - “Any property hereafter derived from property which constitutes community property by virtue of the provisions of Act No. 317 of the Public Acts of 1947 shall constitute community property and remain subject to the provisions of said act and for such purpose said act shall continue in force: Provided, That, except where the conveyance or other instrument of title under which the same is acquired or other evidence of ownership thereof expressly states the intention that such property shall be community property, any such property acquired within 1 year after the time this act takes effect shall be deemed to be separate property of the husband or the wife, or both, according to the name or names set forth in the conveyance or other instrument of title under which such property is acquired or other evidence of ownership thereof, unless within such 1 year period either spouse having an interest therein, or any of the devisees, legatees, heirs or distributes [sic] of either of them who shall have died prior to or during the running of such 1 year period, shall file notice of claim that such property constitutes community property: And provided further, That any such property acquired after the expiration of such 1 year period shall be deemed to be separate property.”
property, as aforesaid, unless the conveyance or other instrument of title under which such property is acquired or other evidence of ownership thereof shall expressly state the intention that such property shall constitute community property. All of the provisions of section 3 of this act with respect to any notice of claim pursuant thereto shall be applicable with respect to any notice of claim under the provisions of this section.”

- Solution:
  - “separate property of the husband or the wife, or both” to “separate property of one or both spouses”

MCL 557.26 (Pledge or assignment by married woman of interest in separate property as security for debt of other person; contract by married woman giving general guarantee; satisfaction of judgment.)

- Text:
  - (1) A married woman may enter into a written contract pledging or assigning her interest in her separate property, as described in section 1, as security for the debt of another person, including the debt of her husband. If a married woman signs a written contract pledging or assigning an interest in her separate property as security for the debt of another person or her husband, a judgment rendered for payment of the debt may be satisfied out of that separate property whether or not the separate property derives a benefit from the pledge or assignment.”

- Solutions:
  - “including the debt of her husband” to “including the debt of her spouse”
  - “of another person or her husband” to “or another person or her spouse”
  - Both changes are semantic and not strictly required.

- Text:
  - (2) A married woman may enter into a written contract giving a general guarantee obligating her personally for the debt of another person, including the debt of her husband. If the married woman signs such a written contract, a judgment rendered for payment of the debt may be satisfied out of any of the separate property of the married woman described in section 1, whether or not the separate property derives a benefit from the general guarantee.”

- Solution:
  - “including the debt of her husband” to “including the debt of her spouse”
    - Note: the change is semantic and not strictly required”
Act 288 of 1975

MCL 557.71 (Equal rights of husband and wife holding property as tenants by entirety).

- Text:
  - A husband and wife shall be equally entitled to the rents, products, income, or profits, and to the control and management of real or personal property held by them as tenants by the entirety.

- Solution:
  - "A husband and wife” to “Spouses”

Act 126 of 1925

MCL 557.81 (Sale of land held in entirety; survivorship of rights of vendor)

- Text:
  - "In all cases where a husband and wife shall sell land held as a tenancy by the entirety and accept in part payment for the purchase price the note or other obligation of said purchaser payable to said husband and wife, secured by a mortgage on said land payable to husband and wife, the said debt together with all interest thereon, unless otherwise expressly stated in said mortgage, after the death of either shall be payable to the survivor, and the title to said mortgage shall vest in the survivor, and in case a contract for the sale of property owned by the husband and wife as tenants by the entirety, is entered into by them as vendors, the same provisions herein applying to the rights of the survivor in mortgages as above set forth, shall apply to the survivor of the contract.”

- Solutions:
  - "where a husband wife shall” to “where spouses shall”
  - "purchaser payable to said husband and wife” to “purchaser payable to said spouses”
  - "on said land payable to husband and wife” to “on said land payable to spouses”
  - "property owned by the husband and wife” to “property owned by the spouses”

Act 21 of 1861

Confirmation of certain deeds and instruments

MCL 565.602 (married woman’s joint deed with husband; validity)

- Text:
  - All deeds of lands situated in this state, heretofore or hereafter made by any married woman jointly with her husband by their attorney in fact, under a joint power of attorney, executed and acknowledged as required in the joint deed of
a husband and wife, and recorded in the office of the register of deeds of the proper county, shall be taken and deemed as between the parties thereto, and all persons claiming under or through them as valid and effectual to convey the legal title of the premises therein described, as if the same had been executed and acknowledged by the husband and wife in person.

- **Solution:**
  - “married woman jointly with her husband” to “married woman jointly with her spouse”
  - “joint deed of a husband and wife” to “joint deed of spouses”
  - “by the husband and wife in person” to “by the spouses in person”

**Act 236 of 1961**
**Revised Judicature Act of 1961**

**MCL 600.1410 (Legal impediment to marriage as bar to action.)**

- **Text:**
  - If 2 person have lived together as husband and wife, and a legal impediment existed to the marriage of either of the persons, their issue and the person that entered the relation in the good faith belief that the marriage was lawful are entitled to the same damages in a civil action as though no such impediment existed, when the other of such persons or their issue is injured or dies as a result of the negligent act or omission of another.

- **Solution:**
  - “lived together as husband and wife” to “lived together as spouses”

**MCL 600.2005 (Married women; tort; action against both spouses)**

- **Text:**
  - “No suit may be brought against husband and wife, jointly, or against the husband alone, for any tort of the wife, unless such tort was committed under such circumstances as to render them both liable.”

- **Solution:**
  - “may be brought against husband and wife” to “may be brought against a wife and her spouse”
  - “or against the husband alone, for any tort of the wife” to “or against the spouse alone, for any tort of the wife”
MCL 600.2162 (Husband or wife as witness for or against other)

- **Text:**
  - (1) In a civil action or administrative proceeding, a husband shall not be examined as a witness for or against his wife without her consent or a wife for or against her husband without his consent, except as provided in subsection (3).

- **Solution:**
  - Change entire section to: “In a civil action or administrative proceeding, a spouse shall not be examined as a witness for or against their spouse without their consent, except as provided in subsection (3).

**Revised Judicature Act of 1961**

*Act 236 of 1961*

MCL 600.2807 (Property owned as tenants by the entirety; priority; exceptions; sale or refinance of property subject to judgement lien; limitation on proceeds)

- **Text:**
  - (1) A judgment lien does not attach to an interest in real property owned as tenants by the entirety unless the underlying judgment is entered against both the husband and wife.

- **Solution:**
  - “against both the husband and wife” to “against both spouses”

MCL 600.3344 (Release of interest by married woman; payment from proceeds of sale; effect on rights)

- **Text:**
  - Any married woman may release her right, interest, or estate to her husband and lawfully acknowledge this release. If the release is executed outside of this state it shall be executed, acknowledged, and certified as the laws of this state require for the execution, acknowledgment, and certification of deeds in any other state, territory, or district of the United States. Upon the release the shares of the sale arising from her contingent interest shall be paid to her. This release shall be a bar to her right, estate, or claim.

- **Solution:**
  - “estate to her husband” to “estate to her spouse”
MCL 600.5451 (bankruptcy; exemption for property of estate; exception; exempt property sold, damaged, destroyed, or acquired for public use; amounts adjusted by state treasurer; definitions)

- Text:
  - (1n)Property described in section 1 of 1927 PA 212, MCL 557.151, or real property, held jointly by a husband and wife as a tenancy by the entirety, except that this exemption does not apply with regard to a claim based on a joint debt of the husband and wife.

- Solutions:
  - “jointly by a husband and wife” to “jointly by spouses”
  - “joint debt of the husband and wife” to “joint debt of the spouses”

MCL 600.6023a (property held jointly by husband and wife; exemption under judgment entered against 1 spouse)

- Text:
  - Property described in section 1 of 1927 PA 212, MCL 557.151, or real property, held jointly by a husband and wife as a tenancy by the entirety is exempt from execution under a judgment entered against only 1 spouse.

- Solution:
  - “jointly by a husband and wife” to “jointly by spouses”

Revised Judicature Act of 1961
Act 236 of 1961

MCL 600.6131 (Prima facie case; burden of proof; proceedings before sale on execution; transfer of property within 1 year prior to commencement of action)

- Text:
  - (3) Where it appears that the judgment debtor at a time within 1 year prior to the date of the commencement of the action in which the judgment is entered has had title to or has paid the purchase price of any real or personal property to which at the time of the examination his wife, or a relative or a person on confidential terms with the judgment debtor may claim title or right of possession, the burden of proof shall be upon the judgment debtor, or person claiming title or right of possession, to establish that the transfer or gift from him was not made for the purpose of delaying, hindering, and defrauding creditors.

- Solution:
  - “of the examination his wife” to “of the examination their spouse”
  - “gift from him” to “gift from them”
Note: not strictly required by Obergefell but a semantic change reflecting the understanding that this statute applies to both men and women.

**Estates and Protected Individuals Code**  
*Act 386 of 1998*

**MCL 700.2114 (Parent and child relationship)**

- **Text:**
  - (1a) If a child is born or conceived during a marriage, both spouses are presumed to be the natural parents of the child for purposes of intestate succession. A child conceived **by a married woman with the consent of her husband** following utilization of assisted reproductive technology is considered as their child for purposes of intestate succession. **Consent of the husband is presumed** unless the contrary is shown by clear and convincing evidence. **If a man and a woman** participated in a marriage ceremony in apparent compliance with the law before the birth of a child, even though the attempted marriage may be void, the child is presumed to be their child for purposes of intestate succession.

- **Solutions:**
  - “by a married woman with the consent of her husband” to “by a married woman with the consent of her spouse”
  - “Consent of the husband is presumed” to “consent of the spouse is presumed”
  - “If a man and a woman” to “If two spouses”

**MCL 700.2801 (effect of divorce, annulment, decree of separation, bigamy, and absence)**

- **Text:**
  - (1) An individual who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless, by virtue of a subsequent marriage, he or she is married to the decedent at the time of death. A decree of separation that **does not terminate the status of husband and wife** is not a divorce for purposes of this section.

- **Solution:**
  - “does not terminate the statute of husband and wife” to “does not terminate the status as spouses”

- **Text**
  - (2a) An individual who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is not recognized as valid in this state, unless they subsequently participate in a marriage ceremony purporting to marry each to the other or live **together as husband and wife**.
• Solution:
  o “together as husband and wife” to “together as spouses”

MCL 700.2806 (definitions relating to revocation of probate and nonprobate transfers by divorce; revocation by other changes of circumstances)

• Text:
  o (b) “Divorce or annulment” means a divorce or annulment, or a dissolution or declaration of invalidity of a marriage, that would exclude the spouse as a surviving spouse within the meaning of section 2801. A decree of separation that does not terminate the status of husband and wife is not a divorce for purposes of this section and sections 2807 to 2809.

• Solution:
  o “does not terminate the status of husband and wife” to “does not terminate the status as spouses”

Probate Code of 1939
Act 288 of 1939

MCL 710.24 (petition for adoption; filing; jurisdiction; verification; contents; preplacement assessment; omission of certain identifying information)

• Text:
  o (1) Except as otherwise provided in this section, if a person desires to adopt a child or an adult and to bestow upon the adoptee his or her family name, or to adopt a child or an adult without a name change, with the intent to make the adoptee his or her heir, that person, together with his wife or her husband, if married, shall file a petition with the court of the county in which the petitioner resides, where the adoptee is found or, where the parent's parental rights were terminated or are pending termination. If both parents' parental rights were terminated at different times and in different courts, a petition filed under this section shall be filed in the court of the county where parental rights were first terminated. If there has been a temporary placement of the child, the petition for adoption shall be filed with the court that received the report described in section 23d(2) of this chapter.

• Solution:
  o “together with his wife or her husband” to “together with their spouse”

MCL 710.36 (Hearing to determine whether child born out of wedlock and to determine identity and rights of father; filing proof of service of notice of intent or acknowledgment; copy of notice of intent to claim paternity; notice of hearing; contents; filing proof of service of notice of hearing; waiver; evidence of identity; adjournment of proceedings.)
If a child is claimed to be born out of wedlock and the mother executes or proposes to execute a release or consent relinquishing her rights to the child or joins in a petition for adoption filed by her husband, and the release or consent of the natural father cannot be obtained, the judge shall hold a hearing as soon as practical to determine whether the child was born out of wedlock, to determine the identity of the father, and to determine or terminate the rights of the father as provided in this section and sections 37 and 39 of this chapter.

Solution:
- “joins in a petition for adoption filed by her husband” to “joins in a petition for adoption filed by her spouse”

**Act 195 of 2001**

MCL 722.1309 (delivery of child to petitioner; grounds for exception; expenses; additional relief; refusal to testify; inference; privilege against disclosure)

Text:
- A privilege against disclosure of communications between spouses and a defense of immunity based on the relationship of husband and wife or parent and child cannot be invoked in a proceeding under this article.

Solution:
- “on the relationship of husband and wife” to “on the relationship as spouses”

**Surrogate Parenting Act**

*Act 199 of 1988*

MCL 722.853 (Definitions)

Text:
- (i) "Surrogate parentage contract" means a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination, or in which a female agrees to surrogate gestation, and to voluntarily relinquish her parental or custodial rights to the child. It is presumed that a contract, agreement, or arrangement in which a female agrees to conceive a child through natural or artificial insemination by a person other than her husband, or in which a female agrees to surrogate gestation, includes a provision, whether or not express, that the female will relinquish her parental or custodial rights to the child.

Solution:
- “by a person other than her husband” to “by a person other than her spouse”
**Foster Care and Adoption Services Act**  
*Act 203 of 1994*  

**MCL 722.954a (Placement of child in supervising agency’s care; determination of placement with relative; notification; special consideration and preference to child’s relative; documentation of decision; review hearing)**

- Text:
  - (4b) Provide written notice of the decision and the reasons for the placement decision to the child's attorney, guardian, guardian ad litem, mother, and father; the attorneys for the child's mother and father; each relative who expresses an interest in caring for the child; the child if the child is old enough to be able to express an opinion regarding placement; and the prosecutor.

- Solution:
  - “mother, and father” to “parents”
  - “Attorneys for the child’s mother and father” to “Attorneys for the child’s parents”

**Uniform child-custody jurisdiction and enforcement act**

**MCL 750.166 (wife may testify against husband)**

- Text:
  - In all prosecutions under this chapter, the wife may testify against the husband without his consent.

- Solution:
  - “the wife may testify against the husband without his consent” to “the wife may testify against her spouse without such spouse’s consent”

**The Michigan Penal Code**  
*Act 328 of 1931*  

**750.30 (Adultery; punishment)**

- Text:
  - Punishment—Any person who shall commit adultery shall be guilty of a felony; and when the crime is committed between a married woman and a man who is unmarried, the man shall be guilty of adultery, and liable to the same punishment.

- Solution:
  - “between a married woman and a man who is unmarried the man shall” to “between a married woman and person who is unmarried the unmarried person shall”
750.335 (Lewd and lascivious cohabitation and gross lewdness)

- Text:
  - Any man or woman, not being married to each other, who lewdly and lasciviously associates and cohabits together, and any man or woman, married or unmarried, who is guilty of open and gross lewdness and lascivious behavior, is guilty of a misdemeanor punishable by imprisonment for not more than 1 year, or a fine of not more than $1,000.00. No prosecution shall be commenced under this section after 1 year from the time of committing the offense.

- Solution:
  - “Any man or woman not being married to each other” to “Any two people not being married to each other”

MCL 750.90 (Sexual intercourse under pretext of medical treatment)

- Text:
  - Sexual intercourse under pretext of medical treatment—Any person who shall undertake to medically treat any female person, and while so treating her, shall represent to such female that it is, or will be, necessary or beneficial to her health that she have sexual intercourse with a man, and shall thereby induce her to have carnal sexual intercourse with any man, and any man, not being the husband of such female, who shall have sexual intercourse with her by reason of such representation, shall be guilty of a felony, punishable by imprisonment in the state prison not more than 10 years.

- Solution:
  - “with any man, and any man, not being the husband” to “with any person, and any person, not being their spouse”
    - Note: the suggested change extends beyond what is strictly required but seems appropriate given other changes suggested in the report.

Revised Uniform Reciprocal Enforcement of Support Act
Act 8 of 1952

MCL 780.159a (enforcement of duties of support; defense of immunity not available)

- Text:
  - All duties of support, including the duty to pay arrearages, are enforceable by a proceeding under this act including a proceeding for civil contempt. The defense that the parties are immune to suit because of their relationship as husband and wife or parent and child is not available to the obligor.
• Solution:
  o “because of their relationship as husband and wife” to “because of their relationship as spouses”

MCL 780.169 (husband and wife; privilege against disclosure inapplicable; competent witnesses; compelling testimony)

• Text:
  o Laws attaching a privilege against the disclosure of communications between husband and wife are inapplicable to proceedings under this act. Husband and wife are competent witnesses and may be compelled to testify to any relevant matter, including marriage and parentage.

• Solution:
  o “between husband and wife” to “between spouses”
  o “Husband and wife are competent” to “Spouses are competent”

Coercion of married woman by husband
   Act 85 of 1935

MCL 780.401 (presumption of coercion by husband prohibited)

• Text:
  o In the prosecution of any complaint or indictment charging a criminal offense, no presumption shall be indulged that a married woman committing an offense does so under coercion because she commits it in the presence of her husband.

• Solution:
  o “because she commits it in the presence of her husband” to “because she commits it in the presence of her spouse”
SECTION 2. POLICY ISSUES

1. ESTATES IN DOWER

“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. Black’s Law Dictionary. Michigan still has laws that recognize a wife’s dower rights. No similar laws exist for a husband. The following statutory provisions relate to dower and should be reviewed, particularly in the event the Legislature repeals Michigan’s dower laws. See SB 558, 559 and 560.

- **MCL 558.1 (Right of widow to dower)**
  - Text: “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 558.12 (alternative dower rights before assignment; occupation, profits and rents receipt)**
  - Text: “When a widow is entitled to dower in the lands of which her husband died seized, she may continue to occupy the same with the children or other heirs of the deceased, or may receive 1/3 part of the rents, issues and profits thereof, so long as the heirs or others interested do not object, without having the dower assigned.”

- **MCL 558.13 (barring of dower; joining in conveyance, release)**
  - Text: “A married woman residing within this state may bar her right of dower in any estate conveyed by her husband or by his guardian, if he be under guardianship, by joining in the deed of conveyance and acknowledging the same as prescribed in the preceding chapter, or by joining with her husband in a subsequent deed, acknowledged in like manner; or by deed executed by the wife alone to one who has theretofore acquired and then holds the husband's title, provided the intent to bar her right of dower shall be expressed in said deed.”

- **MCL 558.14 (barring dower; jointure)**
  - Text: “A woman may also be barred of her dower in all the lands of her husband by a jointure settled on her with her assent before the marriage, provided such jointure consists of a freehold estate in lands for the life of the wife at least, to take effect in possession or profit immediately on the death of the husband.”
o **MCL 558.16 (barring of dower; antenuptial pecuniary provisions)**

  o Text: “Any pecuniary provision that shall be made for the benefit of an intended wife, and in lieu of dower, shall, if assented to as provided in the preceding section, bar her right of dower in all the lands of her husband.”

o **MCL 558.2 (dower in lands exchanged; election)**

  o Text: “If a husband seized of an estate of inheritance in lands, exchange 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 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.”

o **MCL 558.21 (Dower right of aliens and nonresidents)**

  o Text: A woman being an alien, shall not on that account be barred of her dower, and any woman residing out of the state, shall be entitled to dower of the lands of her deceased husband, lying in this state, of which her husband died seized, and the same may be assigned to her, or recovered by her, in like manner as if she and her deceased husband had been residents within the state at the time of his death.

o **558.24 (damages upon recovery of dower; widow’s rights)**

  o Text: Whenever in any action brought for the purpose, a widow shall recover her dower in lands of which her husband shall have died seized, she shall be entitled also to recover damages for the withholding of such dower.

o **558.26 (Damages upon recovery of dower; use of added improvements)**

  o Text: Such damages shall not be estimated for the use of any permanent improvements made after the death of her husband by his heirs, or by any other person claiming title to such lands.

o **558.27 (Damages upon recovery of dower; against heir alienating lands)**

  o Text: When a widow shall recover her dower in any lands alienated by the heir of her husband, she shall be entitled to recover of such heir, in an action on the case, her damages for withholding such dower, from the time of the death of her husband to the time of the alienation by the heir not exceeding 6 years in the whole; and the amount which she shall be entitled to recover from such heir, shall be deducted from the amount she would otherwise be entitled to recover from such grantee, and any amount recovered as damages, from such grantee, shall be deducted from the sum she would otherwise be entitled to recover from such heir.
558.28 (Assignment of dower; effect of acceptance)

Text: When the widow shall have accepted an assignment of dower, in satisfaction of her claim upon all the lands of her husband, it shall be a bar to any further claim of dower against the heir of such husband, or any grantee of such heir, or any grantee of such husband, unless such widow shall have been lawfully evicted of the lands so assigned to her as aforesaid.

558.29 (Collusive recovery by widow; effect on rights of infants or others entitled to land)

Text: When a widow not having right to dower, shall during the infancy of the heirs of the husband, or any of them, or of any person entitled to the lands, recover dower by the default or collusion of the guardian of such infant, heir or other person, such heir or other person so entitled shall not be prejudiced thereby, but when he comes of full age, he shall have an action against such widow, to recover the lands so wrongfully awarded for dower.

MCL 558.4 (dower in mortgaged lands; purchase money mortgage given after marriage)

Text: “When a husband shall purchase lands during coverture, and shall at the same time mortgage his estate in such lands to secure the payment of the purchase money, his widow shall not be entitled to dower out of such lands, as against the mortgagee or those claiming under him, although she shall not have united in such mortgage, but she shall be entitled to her dower as against all other persons.”

MCL 558.5 (dower in surplus of proceeds from foreclosure of mortgage)

Text: “Where in either of the cases mentioned in the 2 last preceding sections, or in case of a mortgage in which she shall have joined with her husband, the mortgagee, or those claiming under him shall after the death of the husband cause the mortgaged premises to be sold by virtue of such mortgage, and any surplus shall remain after payment of the moneys due thereon and the costs and charges of the sale, such widow shall be entitled to the interest or income of 1/3 part of such surplus, for her life, as dower.”

Act 63 of 1847
Dual Claim to, or discharge of, dower

558.52 (dower claimed by two or more widows; liability of land to claims after discharge of dower)

Text: Where dower in any lands may be claimed by 2 or more widows, the 1 whose husband was first seized therein, shall be first entitled thereto, and in all cases where dower in any land shall have been assigned, or where it shall appear
that the owner or owners, or person or persons having an interest therein, shall have made full satisfaction to, and has obtained a discharge from the person recovering or having a prior right to dower therein by reason of the prior seizent of her husband, the said land shall not be subject to any other claim for dower during the lifetime of the person so recovering or who has received satisfaction and given a discharge as aforesaid.

- **MCL 558.6 (dower in lands released by payment of mortgage)**
  
  o Text: “If, in either of the cases above specified, the heir or other person claiming under the husband, shall pay and satisfy the mortgage, the amount so paid shall be deducted from the value of the land, and the widow shall have set out to her, for her dower in the mortgaged lands, the value of 1/3 of the residue after such deduction.”

- **MCL 558.7 (dower in aliened lands; estimation)**
  
  o Text: “When a widow shall be entitled to dower out of any lands which shall have been aliened by the husband in his lifetime, and such lands shall have been enhanced in value after the alienation, such lands shall be estimated, in setting out the widow's dower, according to their value at the time when they were so aliened.”

**Act 58 of 1917**

Filing claim of Dower

- **558.81 (Claim of dower; filing, contents)**
  
  o Text: All persons having or claiming dower, whether inchoate or consummate, in lands conveyed, or otherwise disposed of, more than 25 years prior to the time this act shall take effect, by the person who is or was the husband of the person claiming such dower, shall, within 6 months after this act shall take effect, file in the office of the register of deeds of the county in which such lands are situated, a claim of dower under oath setting forth the name and address of the persons claiming such dower and the name of the person who is or was her husband and through whom she claims to have obtained dower in such lands and a description of the lands in which dower is claimed.

**Act 105 of 1939**

Filing of Claim of Dower

- **558.91 (Claim of dower; filing, contents)**
  
  o Text: All persons having or claiming dower, whether inchoate or consummate, in lands heretofore or hereafter conveyed, or otherwise disposed of, by the person
who is or was the husband of the person claiming such dower, shall, within 25 years from the time of such conveyance or other disposal of said lands, or within 6 months after this act shall take effect, file in the office of the register of deeds of the county in which such lands are situated, a claim of dower under oath setting forth the name and address of the persons claiming such dower and the name of the person who is or was her husband and through whom she claims to have obtained dower in such lands and a description of the lands in which dower is claimed: Provided, however, That this act shall apply only to persons having or claiming dower, inchoate or consummate, in lands conveyed or otherwise disposed of subsequent to a time 25 years prior to August 10, 1917, that being the time Act No. 58 of the Public Acts of 1917 became effective.

600.2931 (barring dower of incompetent wife; action by husband; determination by court; disposition of proceeds; action by guardian; proceedings)

- Text:
  - (1) 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.

- Text:
  - (2) If the court finds that the wife is incurably insane or for more than 2 years has remained insane or otherwise incompetent so that she has been unable from defective intellect to join her husband in the conveyance of the real estate, and that it is proper or necessary to sell the real estate or bar the wife's right of dower in it, then the court shall determine the cash value of the wife's dower interest in the premises, taking into consideration the respective ages of the husband and wife, and order that the wife shall be barred of her dower by the payment of this sum to a guardian other than her husband who shall receive and invest this sum for her sole use and support subject to the supervision of the court. On her becoming sound in mind the court shall direct the remainder to be delivered to her. On her death the court shall direct the remainder to be delivered to her husband, if living, or if not, to her personal representatives.

- Text:
  - (3) The guardian, after posting bond approved by the court, may sell at private sale the interest of his ward at a sum not less than the value of the dower as fixed by the court or he may, in a conveyance with the husband, or by separate conveyance, transfer the interest of the ward in the property to the husband's grantee or grantees, or their heirs and assigns but to no other person. Such conveyance shall bar dower as if the ward had, being in sound mind, joined her husband in a deed of the premises.
600.2933 (dower; admeasurement procedure; award of money in lieu of dower; actions equitable in nature)

- Text:
  o (1) A widow entitled to dower, or a woman entitled to dower and her husband, may maintain a claim to recover her dower in lands, tenements, and hereditaments under section 2932 after the expiration of 6 months from the time her right to dower accrued. If an action is brought to recover the dower of any widow which has not been admeasured to her before the commencement of such action, instead of a writ of possession being issued, such plaintiff shall proceed to have her dower assigned to her in the following manner:

- Text:
  o (2) In any action commenced by any widow for the recovery of dower in lands which were aliened by her husband in his lifetime, if dower cannot be assigned in the land by metes and bounds without injustice or manifest injury to the widow or to the owners or persons in possession of the land or some one of them, the court having cognizance of the matter may award a sum of money in lieu of dower to be paid to the widow, or may assign to her, as tenant in common, a just proportion of the rents, issues, and profits of the lands. In all cases the court shall consider the true value of the lands at the time of their alienation by the husband, and of the probable duration of the life of the doweress at the time the sum of money is awarded or the rents, issues, and profits are assigned to her.

2. STATUTES THAT REFERENCE “MOTHER” AND “FATHER”, AND/OR “HUSBAND” AND “WIFE”.

The following statutes include references to “father” and “mother”, and/or “husband” and “wife”, and do not recognize that parents of children may be same sex couples. The subject matters of these statutes implicate family law considerations beyond just simple changes to the text and are identified separately in this section for that reason.

*Born Alive Infant Protection Act*
*Act 687 of 2002*

MCL 333.1073 (Abortion resulting in live birth; surrender of newborn to emergency service provider; medical care; report; confidentiality of newborn’s mother and father; transmission of information to newborn’s mother)

- Text:
  o (4) If a newborn is considered a newborn who has been surrendered to an emergency service provider under the safe delivery of newborns law, chapter XII of the probate code of 1939, 1939 PA 288, MCL 712.1 to 712.20, as provided in
subsection (1), the identity of the newborn's mother and father becomes confidential and shall not be revealed, either orally or in writing.

**Public Health Code**
**Act 368 of 1978**

MCL 333.2822 (Persons required to report live birth occurring in state; “abortion defined”)

- Text:
  - (1)(b)(iii) The father, the mother, or, in the absence of the father and the inability of the mother, the individual in charge of the premises where the live birth occurs.

MCL 333.2824 (Registering name of husband as father of child; registering surname of child; consent; acknowledgment of parentage; designating surname of child; entering name of father and surname of child on birth certificate; father not named on birth registration; utilization of assisted reproductive technology; reference to legitimacy or illegitimacy prohibited.)

Text:
- (1) The name of the husband at the time of conception or, if none, the husband at birth shall be registered as the father of the child. The surname of the child shall be registered as designated by the child's parents.
- (2) If the child's mother was not married at the time of conception or birth, the name of the father shall not be entered on the certificate of birth without the written consent of the mother and without the completion, and filing with the state registrar, of an acknowledgment of parentage by the mother and the individual to be named as the father. The acknowledgment of parentage shall be completed in the manner provided in the acknowledgment of parentage act. For a certificate of birth completed under this subsection and upon the written request of both parents, the surname of the child shall be designated by the child's parents.
- (3) If the name of the child's father cannot be shown under subsection (1) or (2), the child shall be given the surname designated by the mother.
- (4) If the paternity of a child is determined by a court of competent jurisdiction, the name of the father shall be entered on the certificate of birth as found and ordered by the court. The surname of the child shall be entered on the certificate of birth as designated by the child's mother.
- (5) If the child's father is not named on the birth registration, no other information about the father shall be entered on the registration.
- (6) “A child conceived by a married woman with consent of her husband following the utilization of assisted reproductive technology is considered to be the legitimate child of the husband and wife.”
**Act 259 of 1909**

MCL 552.101 (Judgment of divorce or separate maintenance; provision in lieu of dower; determining rights of wife or husband in and to policy of life insurance, endowment, or annuity; discharge of liability on policy; determination of rights; assignment of rights.)

- Text:
  - (1) When any judgment of divorce or judgment of separate maintenance is granted in any of the courts of this state, the court granting the judgment shall include in it a provision in lieu of the dower of the wife in the property of the husband, which shall be 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.

**600.3320 (Guardian; authority to agree to division; report; infants; infant as married woman; delivery of guardianship property to probate court guardian; discharge of circuit court guardian)**

- Text:
  - (4) If the infant is a married woman the court may, upon petition, appoint her husband as her guardian and he shall be subject to the provisions of this section.

- Solution:
  - “appoint her husband as her guardian” to “appoint her spouse as her guardian”
    - Although Obergefell doesn’t require any additional changes, the Legislature may take this as an opportunity to re-examine the seemingly needless gender specificity in this section.

**Estates and Protected Individuals Code**

**Act 386 of 1998**

MCL 700.1303 (Concurrent Jurisdiction; removal; policy)

- Text:
  - (1) In addition to the jurisdiction conferred by section 1302 and other laws, the court has concurrent legal and equitable jurisdiction to do all of the following in regard to an estate of a decedent, protected individual, ward, or trust:
    - Sec. K:
      - Bar an incapacitated or minor wife of her dower right.
MCL 711.1 (Order Changing name of adult, minor, or spouse and minor children)

- Text:
  - (5) Except as provided in subsection (7), if the petitioner is a minor, the petition shall be signed by the mother and father jointly; by the surviving parent if 1 is deceased; if both parents are deceased, by the guardian of the minor; or by 1 of the minor's parents if there is only 1 legal parent available to give consent. If either parent has been declared mentally incompetent, the petition may be signed by the guardian for that parent. The written consent to the change of name of a minor 14 years of age or older, signed by the minor in the presence of the court, shall be filed with the court before an order changing the name of the minor is entered. If the court considers the child to be of sufficient age to express a preference, the court shall consult a minor under 14 years of age as to a change in his or her name, and the court shall consider the minor's wishes.

- Text:
  - (6) If the petitioner is married, the court, in its order changing the name of the petitioner, may include the name of the spouse, if the spouse consents, and may include the names of minor children of the petitioner of whom the petitioner has legal custody. The written consent to the change of name of a child 14 years of age or older, signed by the child in the presence of the court, shall be filed with the court before the court includes that child in its order. Except as provided in subsection (7), the name of a minor under 14 years of age may not be changed unless he or she is the natural or adopted child of the petitioner and unless consent is obtained from the mother and father jointly, from the surviving parent if 1 is deceased, or from 1 of the minor's parents if there is only 1 legal parent available to give consent. If the court considers the child to be of sufficient age to express a preference, the court shall consult a minor under 14 years of age as to a change in his or her name, and the court shall consider the minor's wishes.

Acknowledgement of Parentage Act
Act 305 of 1996

MCL 722.1003 (Acknowledgment of parentage; form; validity; signatures; witness; copy.)

- Text:
  - (2) An acknowledgment of parentage form is valid and effective if signed by the mother and father and those signatures are each notarized by a notary public authorized by the state in which the acknowledgment is signed or witnessed by 1 disinterested, legally competent adult. The witness must be an employee of 1 of the following: a hospital, publicly funded or licensed health clinic, pediatric office, friend of the court, prosecuting attorney, court, department of human
services, department of community health, county health agency, county records
department, head start program, local social services provider, county jail, or state
prison. The witness must sign and date the acknowledgment of parentage form
and provide his or her printed name, address, and place of employment. An
acknowledgment may be signed any time during the child's lifetime.

- Text:
  - (3) The mother and father shall be provided a copy of the completed
    acknowledgment at the time of signing.

MCL 722.1006 (Grant of initial custody)

- Text:
  - After a mother and father sign an acknowledgment of parentage, the mother has
    initial custody of the minor child, without prejudice to the determination of either
    parent's custodial rights, until otherwise determined by the court or otherwise
    agreed upon by the parties in writing and acknowledged by the court. This grant
    of initial custody to the mother shall not, by itself, affect the rights of either parent
    in a proceeding to seek a court order for custody or parenting time.

MCL 722.1010 (Consent to court jurisdiction)

- Text:
  - Except as otherwise provided by law, a mother and father who sign an
    acknowledgment that is filed as prescribed by section 5 are consenting to the
    general, personal jurisdiction of the courts of record of this state regarding the
    issues of the support, custody, and parenting time of the child.

Michigan Penal Code
Act 328 of 1931

MCL 750.162 (Payments for care and support of wife or children; sworn statement)

- Text:
  - When any person is convicted under section 161 and sentenced to serve a term of
    imprisonment either in 1 of the state prisons or other penal institution, the warden
    of the prison or superintendent of said penal institution in which said person shall
    be confined shall, in case funds are available for such purpose, at the end of each
    and every week during the period of said term of imprisonment, pay over to any
    of the superintendents of the poor of the city or county in which the wife or
    children of such person resides, the sum of 2 dollars and 50 cents per week, if
    there be only a wife, and 75 cents per week additional for each minor child under
    the age of 17 years; if there be no wife and there are children under the age of 17
    years, the sum of 2 dollars and 50 cents per week for the oldest child, and an
    additional sum of 1 dollar per week for each of the other children under said age
in lieu of any earnings of such person while an inmate therein, said sums to be expended by said superintendent of the poor for the care and support of the wife or children of said person, as the case may be; and it shall be the duty of the superintendent of the poor of the city or county from which such person shall be committed to furnish the warden of the prison or superintendent of the penal institution in which said person is confined with a sworn statement, showing the names of the wife and children who are left dependent upon the city or county for support, their ages and the relation they bear to such convicted person.

- **Solution:**
  - Note: the statute is currently written in such a way that only incarcerated men need to provide such support.

**MCL 750.163 (Complaints)**

- **Text:**
  - Complainants—Any of the superintendents of the poor of the city or county or the county agent of the state welfare commission for the county wherein the wife or minor children of the person complained of reside, may make the complaint under the first section of this chapter.

- **Solution:**
  - Note: the statute is currently written in such a way that only incarcerated men need to provide such support. Therefore there are two potential changes, with different policy implications.
1. Authority for Use of a Single Public Act to Amend Multiple Sections of Michigan Statutes

Bills that amend more than one statute are introduced infrequently because of the restrictions imposed by the “Title/Object” provision of the Michigan Constitution, Const 1963, art IV, § 24. There are, however, instances where one statute having a single purpose references and affects other related statutes. See, for example, the Age of Majority Act of 1971, 1971 PA 79, MCL 722.51 et seq.; and the Executive Organization Act of 1965, 1965 PA 380, MCL 16.101 et seq. And bills that amend more than one act are permissible if the bill concerns a single object and if the bill request has been recommended by the Michigan Law Revision Commission. The use of a single public act to amend multiple statutes is permitted by the following authority.

1. CONSTITUTIONAL PROVISIONS

A. Const 1963, art IV, § 15

There shall be a bi-partisan legislative council consisting of legislators appointed in the manner prescribed by law. The legislature shall appropriate funds for the council’s operations and provide for its staff which shall maintain bill drafting, research and other services for the members of the legislature. The council shall periodically examine and recommend to the legislature revision of the various laws of the state.

B. Const 1963, art IV, § 24  Laws; object, title, amendments changing purpose

No law shall embrace more than one object, which shall be expressed in its title. No bill shall be altered or amended on its passage through either house so as to change its original purpose as determined by its total content and not alone by its title.

2. STATUTORY PROVISIONS

Legislative Council Act (Excerpt), 1986 PA 268

MCL 4.1403  Duties of commission; availability of writings to public

The Michigan law revision commission shall do each of the following:

Examine the common law and statutes of this state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms.
Recommend changes in the law it considers necessary in order to modify or eliminate antiquated and inequitable rules of law, and bring the law of this state into harmony with modern conditions.

Report its findings and recommendations to the council and annually, before January 2 of each year, to the legislature. If the commission considers it advisable, it shall accompany the commission’s report with proposed bills to implement the recommendations.

3. LEGISLATIVE COUNCIL RULES (as adopted through October 23, 2003).

Chapter 7: Drafting; General Rules

The Bureau shall not accept a bill request unless the request is sufficiently specific to determine the subject and the purpose of the bill to be prepared.

The Bureau shall accept a bill request that will amend more than one act in a single bill if both of the following apply:

The purpose of the request has been formally approved or recommended by the Michigan Law Revision Commission pursuant to its duties as provided in Section 403 of the Legislative Council Act, Act No. 268 of the Public Acts of 1986, being section 4.1403 of the Michigan Compiled Laws.

The Bureau has determined that the sections to be amended are necessarily or properly related, or otherwise meet the requirements of Const. 1963, Art. IV, 24.


The Michigan Law Revision Commission has the statutory duty to “Examine the common law and statutes of this state and current judicial decisions for the purpose of discovering defects and anachronisms in the law and recommending needed reforms”. MCL 4.1403(1). The recent decision of the U.S. Supreme Court in Obergefell v Hodges, 135 S.Ct. 2584 (2015) has direct implications on the text of more than one hundred Michigan laws involving a wide range of subjects, rendering those statutes anachronistic in light of the Supreme Court decision.

The Commission believes that changes are necessary to bring the laws of this State into harmony with modern conditions, and, in the interest of legislative efficiency, believes that this is a situation in which a single bill that directs the use of gender-neutral terms rather than gender-specific references may effectively be used to amend multiple acts.
For these reasons, the Commission has determined that the sections to be amended are necessarily and properly related and meet the requirements of Const. 1963, art IV, § 24.

PROPOSED TEXT FOR BILL REQUEST:

Revised Statutes of 1846 (EXCERPT)

CHAPTER 83. Of marriage and the solemnization thereof.

ATTACHMENT B
Report of the Nominating Committee  
To the Probate & Estate Planning Council of the State Bar of Michigan  
June 4, 2016

The Nominating Committee of the Probate and Estate Planning Section of the State Bar of Michigan consists of Mark K. Harder, Thomas F. Sweeney, and Amy Morrissey.

The Committee reminds the Council and Section that under the Section’s By-Laws the incumbent Chairperson Elect assumes the office of Chairperson upon the conclusion of the Section’s annual meeting. The Committee therefore does not nominate a candidate for Chairperson of the Section, and the incumbent Chairperson Elect, James B. Steward, will succeed to the office of Chairperson without action by the Committee, Council or Section.

The Committee met and pursuant to Section 4.1 of the Section By-Laws, the Committee nominates the following individuals for the positions shown opposite their name:

Chairperson Elect: Marlaine C. Teahan  
Vice Chairperson: Marguerite Munson Lentz  
Secretary: Christopher A. Ballard  
Treasurer: David P. Lucas

For the Council for a second three year term:

Richard C. Mills  
Lorraine F. New  
Geoffrey E. Vernon

For the Council for an initial three year term:

Robert C. Labe  
Nathan R. Piwowarski  
Nazneen H. Syed

If David P. Lucas is elected as Treasurer, the Committee nominates Melisa M.W. Mysliwiec to serve the balance of Mr. Lucas’s term as a member of the Council, which ends with the annual meeting in 2017. Mr. Mysliwiec will thereafter be eligible for election to two three-year terms as a member of the Council.

Respectfully submitted on behalf of the Nominating Committee,

Mark K. Harder, Chair

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600.6023(1) (j)

(i) All individual retirement accounts or individual retirement annuities as now or hereafter defined in section 408 or [408A] of the internal revenue code of 1986, 26 USC 408 and 408a, and the payments or distributions from the account or annuity to the initial owner and his dependents as that term is defined in section 152 of the internal revenue code of 1986, 26 USC [152]. As used herein, the reference to “all individual retirement accounts shall include, but not be limited to: so-called traditional individual retirement accounts, Roth individual retirement accounts, “inherited individual retirement accounts", rollover individual retirement accounts as defined in section 402(c) of the internal revenue code of 1986, 26 USC 402(c), “simple retirement accounts” as defined in section 408(p) of the internal revenue code of 1986, 26 USC 408(p), and “simplified employee pension plans” as defined in section 408(k) of the internal revenue code of 1986, 26 USC 408(k). This exemption applies to the operation of the federal bankruptcy code as permitted by section 522(b)(2) of the bankruptcy code, 11 USC 522. This exemption does not apply to (i) any amount contributed to the individual retirement account or individual retirement annuity within 120 days before the debtor files for bankruptcy; or (ii) contributions to the individual retirement account or premiums on the individual retirement annuity, and the earnings or benefits from those contributions or premiums, if those contributions or premiums exceed, in the tax year made or paid, the deductible amount allowed under section 408 of the internal revenue code of 1986, 26 USC 408. This limitation on contributions does not apply to a rollover of a pension, profit-sharing, stock bonus, or other plan that is qualified under section 401 of the internal revenue code of 1986, 26 USC 401, or an annuity contract under section 403(b) of the internal revenue code of 1986, 26 USC 403.

This exemption does not apply to exempt an individual retirement account or individual retirement annuity from the following:

(i) An order of a court pursuant to a judgment of divorce or separate maintenance.

(ii) An order of a court concerning child support.

(i)
(k) The right or interest of a person in [a] pension, profit-sharing, stock bonus, defined benefit, money purchase, employee stock ownership, deferred compensation plans of state and local government and tax-exempt employers for the benefit of their employees or other plans that are intended to qualify under section 401 of the internal revenue code of 1986, 26 USC 401, or an annuity contract intended to comply with section 403(b) of the internal revenue code of 1986, 26 USC 403, unless the Internal Revenue Service has revoked a favorable determination letter issued to the plan sponsor where it was not within the job responsibility of the person asserting this statute as an affirmative defense to maintain the tax qualified status of the plan or retirement vehicle in question. This exemption applies to the operation of the federal bankruptcy code, as permitted by section 522(b)(2) of the bankruptcy code, 11 USC 522. This exemption does not apply to any amount contributed to a pension, profit-sharing, stock bonus, or other plan intended to qualify for current income tax exemption under section 401(a) of the internal revenue code of 1986, 26 USC 401 or a 403(b) annuity or annuity contract issued with the intent to qualify for current income tax exemption under section 403(b) of the internal revenue code of 1986, 26 USC 401 if the contribution occurs within 120 days before a petition in bankruptcy is filed by or against the debtor. This exemption does not apply to the right or interest of a person in a pension, profit-sharing, stock bonus, or other plan intended to qualify for current income tax exemption under section 401(a) of the internal revenue code of 1986, 26 USC 401 or 403(b) of the internal revenue code of 1986, 26 USC 403b to the extent that the right or interest in the plan or annuity is subject to either of the following:

(i) An order of a court pursuant to a judgment of divorce or separate maintenance or

(ii) An order of a court concerning child support.

(i) Any interest in the following as to contributions made more than 120 days before a petition in bankruptcy is filed by or against the debtor for an annual amount that is limited to the annual gift tax of a present interest tax exclusion of section 2503(b) of the internal revenue code of 1986, 26 USC 2503(b):

(i) A trust, fund, or advance tuition payment contract established under the Michigan education trust act, 1986 PA 316, MCL 390.1421 to 390.1442.
(ii) An account established under the Michigan education savings program act, 2000 PA 161, MCL 390.1471 to 390.1486.

(iii) An account in a qualified tuition program or educational savings trust under section 529, 529A or 530 of the internal revenue code of 1986, 26 USC 529 and 530.

(2) The exemptions provided in this section do not extend to any lien on the exempt property that is excluded from exemption by law.

(3) If the owner of a homestead dies, leaving a surviving spouse but no children, the homestead is exempt, and the rents and profits of the homestead shall accrue to the benefit of the surviving spouse before his or her remarriage, unless the surviving spouse is the owner of a homestead in his or her own right.
Decided October 20, 2015

Chelenyak v Veith (In re Estate of Jajuga)
312 Mich App 706
Published Michigan Court of Appeals Opinion
Before: Markey, P.J., and Stephens and Riordan, JJ.

Docket No(s) 322522
Lower Court Docket No(s) 13-016382-DE

Riordan, J.

Riordan, J.

Respondent, Joann Chelenyak, who is the personal representative of the estate of Shelby Jean Jajuga ("decedent"), appeals as of right a probate court order granting the petition for exempt property filed by petitioner, Susan P. Veith. We affirm.

I. FACTUAL AND PROCEDURAL HISTORY

The relevant facts are undisputed in this case. Petitioner is the sole surviving child of decedent, Shelby Jean Jajuga. Decedent drafted her last will and testament on January 16, 2002, under which her estate was to be divided in equal parts between three beneficiaries: (1) Mike and Joanne Chelenyshk, who constituted a single, joint beneficiary, (2) Jeanette Mullins, and (3) Sherry Snyder. She further directed that petitioner and her other children, who were still living at the time, were to “inherit nothing from [her] estate.” Decedent explained in the will that her decision to disinherit her children was “not because of any lack of love and affection I hold toward them but because they have either received compensation in advance of my death or because I do not believe it would be in their best interest that they inherit.” The decedent later filed a codicil to her will, appointing respondent as personal representative and directing that her estate shall be divided equally between two, rather than three, named beneficiaries. The codicil reaffirmed the remainder of the will and did not alter the provision that disinherited petitioner.

Following decedent’s death, petitioner filed an objection to the final account “on the basis that the Personal Representative has refused to pay Petitioner the exempt property allowance as
This Court reviews de novo an issue of statutory interpretation as a question of law. In re Temple Marital Trust, 278 Mich App 122, 128; 748 NW2d 265 (2008). However, “appeals from a probate court decision are on the record, not de novo.” Id., citing MCL 700.1305; MCL 600.866(1); MCR 5.802(B)(1); In re Webb H Coe Marital and Residuary Trusts, 233 Mich App 525, 531; 593 NW2d 190 (1999). We review the probate court’s factual findings for clear error and its dispositional rulings for an abuse of discretion. Id. A “court abuses its discretion when it chooses an outcome outside the range of reasonable and principled outcomes.” Id.

III. WHETHER A DECEDED MAY LIMIT OR MODIFY A SURVIVING CHILD’S CLAIM TO EXEMPT PROPERTY UNDER MCL 700.2404

On appeal, respondent asserts that the probate court erred in granting petitioner’s claim of exempt property. The gravamen of respondent’s claims is that a decedent may—through a provision that expressly disinherits a child under a will—eliminate an adult child’s claim to exempt property under MCL 700.2404 when there is no surviving spouse. On the facts of this case, we disagree and conclude that the disinheriting language in decedent’s will did not eliminate petitioner’s statutory right to exempt property under MCL 700.2404.

A. APPLICABLE LAW

This is an issue of first impression under Michigan law, which requires this Court to interpret MCL 700.2404 in the context of the EPIC. We restated the following principles of statutory interpretation in Book-Gilbert v Greenleaf, 302 Mich App 538, 541-542; 840 NW2d 743 (2013):

The judiciary’s objective when interpreting a statute is to discern and give effect to the intent of the Legislature. First, the court examines the most reliable evidence of the Legislature’s intent, the language of the statute itself. When construing statutory language, [the court] must read the statute as a whole and in its grammatical context, giving each and every word its plain and ordinary meaning unless otherwise defined. Effect must be given to every word, phrase, and clause in a statute, and the court must avoid a construction that would render part of the statute surplusage or nugatory. If the language of a statute is clear and unambiguous, the statute must be enforced as written and no further judicial construction is permitted. Generally, when language is included in one section of a statute but omitted from another section, it is presumed that the drafters acted intentionally and purposely in their inclusion or exclusion. The courts may not read into the statute a requirement that the Legislature has seen fit to omit. When the Legislature fails to address a concern in the statute with a specific provision, the courts cannot insert a provision simply because it would have been wise of the Legislature to do so to effect the statute’s purpose. Statutes that address the same subject matter or share a common purpose are in pari materia and must be read collectively as one law, even when there is no reference to one another. . . . [Quotation marks and citations omitted; alteration in original.]
As a preliminary matter, we recognize that respondent emphasizes the rule of construction indicating that the primary role of the court is to ascertain the intent of the testator and, if permissible under the law, effectuate that intent: "In will cases the primary rule of construction and the primary function of courts is to ascertain from the four corners of a will the intent of the testator and, if legally possible, that intent must prevail." Hay v Hay, 317 Mich 370, 397; 26 NW2d 908 (1947); see also Foster v Stevens, 146 Mich 131, 136; 109 NW 265 (1906). In the instant case, however, we are concerned with interpreting and applying a statute, not discerning decedent's testamentary intent. Nevertheless, that rule of construction is consistent with the rule of construction applicable to the EPIC under MCL 700.1201(b), i.e., to liberally construe and apply the act in a way that promotes the discovery and execution of a decedent's intent in the distribution of the decedent's property. There is no dispute that decedent intended that petitioner would inherit nothing from her estate.

However, it is important to recognize that MCL 700.3101 provides:

An individual’s power to leave property by will, and the rights of creditors, devisees, and heirs to his or her property, are subject to the restrictions and limitations contained in this act to facilitate the prompt settlement of estates. Upon an individual’s death, the decedent’s property devolves to the persons to whom the property is devised by the decedent’s last will or to those indicated as substitutes for them in cases involving lapse, disclaimer, or other circumstances affecting devolution of a testate estate, or in the absence of testamentary disposition, to the decedent’s heirs or to those indicated as substitutes for them in cases involving disclaimer or other circumstances affecting devolution of an intestate estate, subject to homestead allowance, family allowance, and exempt property, to rights of creditors, to the surviving spouse’s elective share, and to administration. [Emphasis added.]

Accordingly, it is apparent that effectuating a decedent's testamentary intent should not be our sole focus in construing MCL 700.2404, as the EPIC clearly provides that an individual's power to leave property by will is subject to the exempt property provisions under MCL 700.2404.

Thus, we reject respondent's argument that "[i]t is counterproductive to permit the decedent to disinherit an adult child on one hand and then grant the disinherited adult child rights in exempt property greater than the right of the decedent to devise his or her property." Instead, it appears that the limitations under MCL 700.3101 specifically allow for such a situation. Likewise, we do not agree that "the statutory language is silent as to whether or not [an] adult child's 'rights' to exempt property have a first priority over the decedent's devise or other intended distribution from the estate." Again, MCL 700.3101 expressly provides that a decedent's devises are subject to exempt property, which clearly indicates that a decedent's intended distribution of estate property is limited by the provisions of the exempt property statute. Therefore, given that the language of an act is the most reliable evidence of the Legislature's intent, Book-Gilbert, 302 Mich App at 541-542, we reject respondent's claim that there is no statutory support for the court's ruling that exempt property may be distributed to
case. See MCL 700.2101(1). Likewise, for the foregoing reasons, we reject respondent’s claim that a conflict arises between MCL 700.2101 and MCL 700.2404 if a disinherit child is permitted to claim exempt property, as the statutes pertain to different types of property transfers.

B. STATUTORY LANGUAGE UNDER MCL 700.2404

1. MEANING OF “ENTITLED” UNDER MCL 700.2404(1) AND (2)

Respondent contends that the probate court erred in finding that the Legislature’s use of the term “entitled” in MCL 700.2404(1) establishes that a decedent’s children have a statutory right to exempt property when there is no surviving spouse. We disagree.

“Entitled” is not defined by statute. “When the Legislature has not defined a statute’s terms, we may consider dictionary definitions to aid our interpretation.” Autodie, LLC v City of Grand Rapids, 305 Mich App 423, 434; 852 NW2d 650 (2014). “Entitle” means “to furnish with proper grounds for seeking or claiming something.” Merriam-Webster’s Collegiate Dictionary (2014). Similarly, “entitle” has been defined as “[t]o grant a legal right to or qualify for.” Black’s Law Dictionary (10th ed). In considering both definitions, we conclude that the plain meaning of “entitled” in this context is having a legal right to exempt property, or meeting the qualifications to claim exempt property as a matter of law.

Respondent, however, asserts that “[t]he plain and ordinary meaning of ‘entitled’ is one of eligibility as to the right of priority” and does not establish an “absolute right to exempt property.” Construing “entitled” in the manner advocated by respondent is inconsistent with the context of the word “entitled” in the statute, as MCL 700.2404(3) refers a surviving spouse’s entitlement (or, if there is no surviving spouse, the entitlement of the decedent’s children) to the property delineated in the statute as “rights” without indicating that the rights themselves are merely procedural rights of priority that arise once a child is eligible to claim exempt property. See GC Timmis & Co v Guardian Alarm Co, 468 Mich 416, 421; 662 NW2d 710 (2003) (“In seeking meaning, words and clauses will not be divorced from those which precede and those which follow.” [Quotation marks and citation omitted.]); Potter v McLeary, 484 Mich 397, 411; 774 NW2d 1 (2009) (“[W]hen considering the correct interpretation, [a] statute must be read as a whole. Individual words and phrases, while important, should be read in the context of the entire legislative scheme. In defining particular words in statutes, we must consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme.” [Footnotes omitted.]). Instead, the language first describes the property to which a surviving spouse (or, if there is no surviving spouse, the decedent’s children) is entitled and subsequently states that those rights themselves have “have priority over all claims against the estate,” not that the rights only constitute rights of priority. MCL 700.2404(1), (2). Furthermore, the fact that the devises in a testator’s will are subject to exempt property pursuant to MCL 700.3101 further suggests that surviving spouses or children have a legal right to—not just a right of priority as to—exempt property under MCL 700.2404. Thus, in reading the EQIC as a whole, see GC Timmis, 468 Mich at 421 (stating that...
of the exempt property statute is separate and distinct from the specific devises of a will, and the decisions of other state courts interpreting language strikingly similar to MCL 700.2404, see Part III C, infra.

Additionally, respondent argues that language expressly stating that an adult child is to receive nothing under a will is sufficient to trigger the "unless otherwise provided" language under MCL 700.2404, such that petitioner was not entitled to exempt property under MCL 700.2404 given the disinherit language in the will. We disagree.

Given the existence of a right to exempt property under MCL 700.2404 that is separate from any property devised under the will, we conclude that the language in decedent's will that generally disinherited petitioner was not sufficient under MCL 700.2404 to eliminate petitioner's statutory right to exempt property, as the disinherit language included no reference to petitioner's statutory rights. 5

C. CASELAW FROM OTHER JURISDICTIONS

Our reasoning above is consistent with caselaw from other jurisdictions that considered statutes strikingly similar to MCL 700.2404. 6 In Matter of Dunlap's Estate, 199 Mont 488, 489; 649 P2d 1303 (1982), the decedent, whose husband predeceased her, executed a will under which she specifically disinherited her son, who sought to claim exempt property. "The sole issue before [the court was] whether a child specifically disinherited by will may take under [Mont Code Ann 72-2-802] which provides exempt property for certain heirs." Id. At the time, the exempt property statute provided:

(1) In addition to the homestead allowance, the surviving spouse of a decedent who was domiciled in this state is entitled from the estate to value not exceeding $3,500 in excess of any security interests therein in household furniture, automobiles, furnishings, appliances, and personal effects. If there is no surviving spouse, children of the decedent are entitled jointly to the same value. If encumbered chattels are selected and if the value is excess of security interests, plus that of other exempt property, is less than $3,500 or if there is not $3,500 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $3,500 value.

(2) Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance.

(3) These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided, by intestate succession, or by way of elective share. [Id. at 489-490, quoting Mont
encumbered chattels are selected and if the value in excess of security interests, plus that of other exempt property, is less than five thousand dollars, or if there is not five thousand dollars worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the five thousand dollars value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate except for costs and expenses of administration, and except that the right to any assets to make up a deficiency of exempt property shall abate as necessary to permit prior payment of homestead allowance and family allowance. These rights are in addition to any benefit or share passing to the surviving spouse or children by the will of the decedent unless otherwise provided therein, by intestate succession, or by way of elective share. [Id. at 336-337, quoting Neb Rev Stat 30–2323 (Reissue 1995).]

The court “conclude[d] that the plain and unambiguous language of § 30–2323 creates a statutory right that accrues to the surviving spouse or the surviving children jointly if there is no surviving spouse upon the death of the testator.” Id. at 339. In determining whether “this right is indefeasibly vested or whether it may be abrogated by will,” the court considered Matter of Dunlap's Estate, 199 Mont 488, and noted that other jurisdictions allowing a testator to provide for a bequest instead of a statutory allowance have indicated that the testator’s intent to do so “must be clear from the language of the will before the court will bar the statutory grant.” In re Estate of Peterson, 254 Neb at 339-340. The court ultimately held:

In construing the language of § 30–2323, we conclude that the statutory rights granted therein are vested and indefeasible. The clear intent of § 30–2323 is to provide an exempt property allowance, which benefit is “in addition to” any benefits passing to the surviving spouse or surviving children by will, by intestate succession, or by way of elective share. Unless a testator clearly provides in the will that the devises and bequests are in lieu of exempt property, then the spouse or children are entitled to both.... [Id. at 340.]

Finally, the court wrote:

If the will of a testator clearly provides otherwise, then an exempt property allowance is not “in addition to” any benefit by will, intestate succession, or elective share. Regardless, the rights set forth in § 30–2323 cannot be defeated by a testator even though the testator may require a spouse or child to choose between the devise or the exempt property allowance.

The county court erred in finding that [the disinherited son] was not entitled to an exempt property allowance. The testator disinherited [the son], but [the son] is entitled to an exempt property allowance in accordance with § 30–2323. [Id. at 341.] [8]
the spouse in the property of the other and is an irrevocable renunciation by the
spouse of all benefits that would otherwise pass to the spouse from the other
spouse by intestate succession or by virtue of a will executed before the waiver or
property settlement.

Based on this, respondent argues that we should infer that a surviving spouse has a vested
right to exempt property that cannot be waived without the consent of the spouse, while a non-
dependent adult child does not have the same vested right, such that his or her consent is not
required for his or her right to exempt property to be modified or eliminated by a decedent’s
will.

Given the significant legal differences between—and implications of—a martial relationship as
opposed to a parent-child relationship, we disagree that the express possibility of waiver “by a
written contract, agreement, or waiver signed by the party waiving after fair disclosure” under
MCL 700.2205 necessarily establishes that a decedent’s surviving spouse has a “vested right”
while a decedent’s adult child does not. Moreover, we find that such a conclusion is tenuous in
light of the statutory text. Apart from possibility of spousal waiver established under MCL
700.2205, we discern no indication that the Legislature intended for children to have different
or limited rights to exempt property as compared to a surviving spouse. In light of the
significant consequences of such a conclusion, we find that the Legislature, if it wished, could
have expressly included such a distinction between the rights in the text if it had intended for
that distinction to exist. Cf. Sclafani v Domestic Violence Escape, 255 Mich App 260, 269-270;
660 NW2d 97 (2003) (reasoning that the Legislature would have expressed an intention more
clearly if it had intended to implement such a provision). It is not the role of the Court to
judicially legislate by adding language to a statute, Empire Iron Mining Partnership v
Orphanen, 455 Mich 410, 421; 565 NW2d 844 (1997), and this Court may not engraft a
limitation of a right, which is not included by the Legislature, “under the guise of statutory
construction,” see Lakeland Neurocare Ctrs v State Farm Mut Auto Ins Co, 250 Mich App 35,
39-40; 645 NW2d 59 (2002). 11

Therefore, we reject respondent’s argument that MCL 700.2205 indicates that an adult child
has an inferior right to exempt property compared to a surviving spouse.

IV. CONCLUSION

Although it may have been prudent for the Legislature to specifically prescribe the way in
which a statement of a decedent’s intent to disinherit a child under a will affects the child’s
claim to exempt property, especially given that one of the express purposes and policies of the
EPIC is “[t]o discover and make effective a decedent’s intent in distribution of the decedent’s
property,” MCL 700.1201(b), it is not our role to do so. “When the Legislature fails to address a
concern in [a] statute with a specific provision, the courts cannot insert a provision simply
because it would have been wise of the Legislature to do so to effect the statute’s purpose.”
Book-Gilbert, 302 Mich App at 542 (quotation marks and citations omitted).

5 By analogy, the Reporter’s Comment to MCL 700.2404 provides, “A specific devise of personal property to the spouse or children without a further indication that it replaces this exemption should not be interpreted as within the phrase ‘unless otherwise provided.’” EPIC with Reporter’s Commentary, pp 81-82.

The Reporter’s Comment to MCL 700.2402 also states the following with regard to the “unless otherwise provided” language, ultimately concluding that it is unclear whether a decedent may modify or eliminate an exemption by will:

The phrase “unless otherwise provided” in the last sentence of §2402 permits a testator to stipulate that the allowance is to be treated as part of the share given by will to the spouse (or other recipient). The allowances in §§2402, 2043, and 2404, MCL 700.2403, 2404, are certainly intended to offer some economic protection to the surviving spouse and to children when they are eligible. May the decedent, however, stipulate in his or her will that one or more of the allowances not be paid? In other words, can a spouse or a child be omitted from coverage by these allowances? It seems clear that a spouse may not be denied these allowances through unilateral action by the decedent. Section 2205, MCL 700.2205, appears to state the only methods by which the spouse may be excluded from receiving the allowances. All require consent of the spouse. Other provisions point to the fact that a decedent could omit a child not only from taking anything under the decedent’s will but also from receiving allowances as well. These sections are MCL 700.2101(2) (permitting exclusion from receiving an intestate share), and §2302, MCL 700.2302 (providing no share for a child who is deliberately or inadvertently excluded from a will, except in very limited situations). The inclusion of dependent children in the coverage of §§ 2402 and 2403 arguably is based on a public policy of providing a minimal benefit in all events for the one or those who have an economic need. Because children who may take exempt property under §2404 need not be dependent children, their inclusion may be based on simple fairness, not economic necessity. Whatever the policy reason for including children within the coverage of these provisions, it is unclear whether the decedent may modify or eliminate these exemptions and allowances by will. [Id. at 78-79 (emphasis added).]
This section permits only a spouse to waive allowances and the right to exempt property (as well as other rights). An adult dependent child may be entitled to homestead and family allowances under MCL 700.2402 and 2403. An adult child may be entitled to an exempt property allowance under MCL 700.2404. These apparently are rights that may not be waived. It is uncertain whether they may be modified or eliminated by the decedent's will. . . . [EPIC with Reporter's Commentary, p 72 (emphasis added); see also In re Conservatorship of Bittner, ___ Mich App at ___; slip op at 8].
HOUSE BILL No. 5638

May 11, 2016, Introduced by Rep. Lucido and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled

"Estates and protected individuals code,
by amending section 2404 (MCL 700.2404), as amended by 2000 PA
177.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2404. (1) The decedent's surviving spouse is also
entitled to household furniture, automobiles, furnishings,
appliances, and personal effects from the estate up to a value not
to exceed $10,000.00 more than the amount of any security interests
to which the property is subject. **Except as otherwise provided**

IN SUBSECTION (4), IF there is no surviving spouse, the decedent's
children are entitled jointly to the same value.

(2) **Except as otherwise provided in subsection (4), if**

encumbered assets are selected and the value in excess of security

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interests, plus that of other exempt property, is less than
$10,000.00, or if there is not $10,000.00 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $10,000.00 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to assets to make up a deficiency of exempt property abates as necessary to permit payment of all of the following in the following order:

(a) Administration costs and expenses.
(b) Reasonable funeral and burial expenses.
(c) Homestead allowance.
(d) Family allowance.

(3) The rights under this section are in addition to a benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by elective share. The $10,000.00 amount described in this section shall—MUST be adjusted as provided in section 1210.

(4) A DECEDEANT BY WILL OR OTHER SIGNED WRITING MAY EXPRESSLY EXCLUDE OR LIMIT THE RIGHT OF A CHILD WHO IS NOT A MINOR OR DEPENDENT CHILD TO MAKE A CLAIM THAT THE CHILD IS OTHERWISE ENTITLED TO UNDER THIS SECTION. THE EXCLUSION OR LIMITATION DESCRIBED IN THIS SUBSECTION MUST BE EXPRESSLY STATED BY THE DECEDEANT, AND MUST SPECIFICALLY REFERENCE THE ALLOWANCE DESCRIBED IN THIS SECTION IN A MANNER SUFFICIENT TO EXPRESS THE DECEDEANT'S INTENT. AN EXCLUSION OR LIMITATION STATED BY A DECEDEANT BY WILL UNDER SECTION 2101, WITHOUT ADDITIONAL LANGUAGE SPECIFICALLY STATING AN INTENT TO EXCLUDE OR LIMIT A RIGHT PROVIDED UNDER THIS SECTION, IS NOT CONSIDERED SUFFICIENT LANGUAGE TO EXCLUDE OR LIMIT A RIGHT PROVIDED IN THIS SECTION.
Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.
Dear Committee:

After re-writing this section several times, which excluded children in a way not contemplated by EPIC, I decided to be direct and short. Do you think this does the job, or does it need to be more comprehensive?

I also had concerns about the Bill because it says that a “dependent child” cannot be excluded. Isn’t it possible that a special needs adult, while perhaps a dependent for the parent, would need to be excluded to unable benefits? So that was another issue with the Bill that worried me. That problem seems to be resolved if we just stick to EPIC.

Please email us all your thoughts- thank you!
Michele

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Suggested re-write of section (4) of House Bill 5638:

(4) A DECEDEDENT BY WILL OR TRUST MAY EXPRESSLY EXCLUDE OR LIMIT THE RIGHT OF AN INDIVIDUAL OR CLASS TO SUCCEED TO PROPERTY OF THE DECEDEDENT IN ACCORDANCE WITH SECTION 2101(2) OF THE ESTATES AND PROTECTED INDIVIDUALS CODE, BEING SECTION 700.2101(2) OF THE MICHIGAN COMPILED LAWS.
HOUSE BILL No. 5704

May 26, 2016, Introduced by Rep. Hughes and referred to the Committee on Judiciary.

A bill to amend 1998 PA 386, entitled

"Estates and protected individuals code,"
by amending section 2404 (MCL 700.2404), as amended by 2000 PA 177.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

Sec. 2404. (1) The decedent's surviving spouse is also
etitled to household furniture, automobiles, furnishings,
appliances, and personal effects from the estate up to a value not
to exceed $10,000.00 more than the amount of any security
interests
to which the property is subject. If there is no surviving spouse,
the decedent's children are entitled jointly to the same value
UNLESS THE DECEDEENT DISINHERITS 1 OR MORE CHILDREN IN HIS OR HER
WILL, IN WHICH CASE ONLY THOSE CHILDREN NOT DISINHERITED ARE
ENTITLED. AS USED IN THIS SUBSECTION, "DISINHERIT" MEANS A
DECEDENT
BY WILL EXPRESSLY STATING THAT A CHILD TAKES NOTHING OR AN AMOUNT
LESS THAN $10.00 FROM THE ESTATE.

(2) If encumbered assets are selected and the value in excess
of security interests, plus that of other exempt property, is less than $10,000.00, or if there is not $10,000.00 worth of exempt property in the estate, the spouse or children are entitled to other assets of the estate, if any, to the extent necessary to make up the $10,000.00 value. Rights to exempt property and assets needed to make up a deficiency of exempt property have priority over all claims against the estate, except that the right to assets to make up a deficiency of exempt property abates as necessary to permit payment of all of the following in the following order: (a) Administration costs and expenses. (b) Reasonable funeral and burial expenses. (c) Homestead allowance. (d) Family allowance.

(3) The rights under this section are in addition to a benefit or share passing to the surviving spouse or children by the decedent's will, unless otherwise provided, by intestate succession, or by elective share. The $10,000.00 amount expressed in this section shall—MUST be adjusted as provided in section 1210.

Enacting section 1. This amendatory act takes effect 90 days after the date it is enacted into law.