

1 State of Arkansas
2 90th General Assembly
3 Regular Session, 2015

A Bill

HOUSE BILL 1538

4
5 By: Representative Ballinger

For An Act To Be Entitled

8 AN ACT TO REPEAL DOWER AND CURTESY RIGHTS; TO CREATE
9 THE SURVIVING SPOUSE MARITAL SHARE; AND FOR OTHER
10 PURPOSES.

Subtitle

14 TO REPEAL DOWER AND CURTESY RIGHTS; AND
15 TO CREATE THE SURVIVING SPOUSE MARITAL
16 SHARE.

17
18
19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

20
21 SECTION 1. Arkansas Code §§ 9-11-602 – 9-11-604 are repealed.

22 ~~9-11-602. Sale of real estate free of dower or curtesy—Petition.~~

23 ~~(a)(1) Any person owning lands in this state and whose spouse is~~
24 ~~adjudged insane may apply by petition to the circuit court of the county~~
25 ~~where the lands are situated for leave to sell the real estate, or any part~~
26 ~~thereof, discharged and unencumbered of the rights of dower or curtesy of the~~
27 ~~spouse.~~

28 ~~(2) The petition shall set forth the insanity of the spouse, the~~
29 ~~nature and duration thereof, the person with whom and the place at which the~~
30 ~~spouse may then be residing, the nature and object of the conveyance desired~~
31 ~~to be made, describing the real estate and giving the name of the person to~~
32 ~~whom the conveyance is intended to be made, and the consideration thereof,~~
33 ~~and that the intention of the conveyance is not to deprive the spouse of~~
34 ~~dower or curtesy, as the case may be, but to dispose of the real estate in~~
35 ~~the usual and ordinary course of business.~~

36 ~~(b) On the filing of the petition, the court shall appoint some~~



1 ~~reliable and disinterested citizen not related to either of the parties, nor~~
2 ~~interested directly or indirectly in the real estate or any part thereof~~
3 ~~described in the petition as guardian ad litem for the defendant. The~~
4 ~~guardian ad litem shall forthwith cause the appearance of the defendant to be~~
5 ~~entered of record in the case from time to time and make such pleadings in~~
6 ~~the case as may seem fit to him or her for the interest of his or her ward~~
7 ~~and be consistent with the practice of the court. All acts of the guardian ad~~
8 ~~litem shall be deemed valid and binding on the defendant.~~

9
10 ~~9-11-603. Sale of real estate free of dower or curtesy—Order and~~
11 ~~deposit.~~

12 ~~(a) Upon the hearing of the petition, if the court deems it to be in~~
13 ~~the best interest of the parties that the land be sold, it may make an order~~
14 ~~that the plaintiff may sell the land free and discharged and unencumbered of~~
15 ~~the right of dower or curtesy, as the case may be.~~

16 ~~(b) In every such order, the court shall adjudge as part of the order~~
17 ~~that before the sale shall become effective, the petitioner or his or her~~
18 ~~grantee shall deposit in the registry of the court, in cash, one-third (1/3)~~
19 ~~of the purchase price of the lands to be disposed of as provided in this~~
20 ~~section. In all such sales, the sale shall be reported to the circuit court~~
21 ~~and the sale approved thereby.~~

22 ~~(c)(1) The deposit of one-third (1/3) of the purchase price of the~~
23 ~~land shall be held in trust by the clerk of the court and loaned out by him~~
24 ~~or her under the order of the court from time to time at the highest~~
25 ~~obtainable rate of interest, upon security to be approved by the court or~~
26 ~~judge in vacation. The clerk shall be responsible therefor on his or her~~
27 ~~official bond.~~

28 ~~(2) The interest on the money shall be paid over annually to the~~
29 ~~plaintiff. However, the court may make, upon application, of which the~~
30 ~~plaintiff shall be notified, and on reasonable showing, reasonable allowance~~
31 ~~out of the interest from time to time for the support of the defendant.~~

32 ~~(d)(1) Should the insane defendant be survived by the plaintiff, the~~
33 ~~deposit shall be paid over to the plaintiff upon the plaintiff's application~~
34 ~~to the court. If the plaintiff survives the defendant but dies before an~~
35 ~~order of the court is actually made to pay the moneys over to the plaintiff,~~
36 ~~then the moneys shall descend to the plaintiff's heirs at law as realty and~~

1 shall be paid over to the plaintiff's heirs or legal representatives
2 according to law or the lawful order of the circuit court.

3 (2) In the event that the plaintiff is survived by the
4 defendant, the interest accruing on the deposit shall be paid over to the
5 defendant only during the defendant's natural life. At the defendant's death
6 the deposit shall descend to the heirs at law of the plaintiff as realty and
7 shall be paid over to the plaintiff's heirs or legal representatives
8 according to law or the lawful order of the circuit court.

9
10 9-11-604. Setting apart dower or curtesy as life estate in certain
11 lands.

12 (a)(1) Any person owning lands in this state whose spouse is adjudged
13 permanently insane may apply by petition to the circuit court of the county
14 where the lands or the greater part thereof are situated to have a life
15 estate in a part of the lands set apart to the spouse in lieu of the spouse's
16 inchoate right of dower or curtesy, as the case may be, in all of the lands
17 and the remaining lands discharged and unencumbered of the dower or curtesy
18 interest of the spouse.

19 (2) The petition shall set forth the insanity of the spouse, the
20 nature and duration thereof, the person with whom and the place at which the
21 spouse may then be residing, describing all the real estate of the plaintiff,
22 and that it will be to the best interest of all parties.

23 (b) On the filing of the petition, the court shall appoint some
24 reliable person, a citizen of the county, not related to either of the
25 parties nor interested directly or indirectly in the real estate nor in any
26 part thereof as guardian ad litem for the spouse. The guardian ad litem shall
27 forthwith cause the appearance of the spouse to be entered of record in the
28 case and make such pleadings in the case from time to time as may seem fit to
29 him or her for the interest of his or her ward and be consistent with the
30 practice of the court. All acts of the guardian ad litem shall be deemed
31 valid and binding on his or her ward.

32 (c) The court on hearing the petition and being satisfied that it will
33 be to the best interests of the parties to have the life estate in a part of
34 the lands set apart to the spouse in lieu of dower or curtesy in the whole of
35 the lands shall appoint three (3) persons as commissioners not interested in
36 the lands nor in any part thereof who shall set apart the life estate in lieu

1 ~~of dower or curtesy, designating specifically the lands. They shall make~~
 2 ~~their report to the court, which report shall be subject to the approval of~~
 3 ~~the court.~~

4 ~~(d) On approval of the report of the commissioners, the court shall~~
 5 ~~make an order and decree divesting the dower or curtesy of the spouse out of~~
 6 ~~the real estate of the plaintiff and in lieu thereof vesting in the spouse a~~
 7 ~~life estate of the lands designated by the commissioners, and authorizing and~~
 8 ~~empowering the plaintiff to sell the remainder of the lands or to mortgage~~
 9 ~~and encumber the remainder of the lands free from any dower or curtesy rights~~
 10 ~~of the spouse.~~

11
 12 SECTION 2. Arkansas Code § 9-11-706(b)(3), concerning the property
 13 rights of a married person, is amended to read as follows:

14 (3) All property rights, including, but not limited to,
 15 conveyances, inheritance, intestate succession, ~~dower, curtesy,~~ the surviving
 16 spouse marital share, and all rights and duties between the parties
 17 themselves or third persons, are declared to be those of validly married
 18 persons.

19
 20 SECTION 3. Arkansas Code § 16-47-102(b), concerning the property
 21 rights of a married person, is amended to read as follows:

22 (b) The acknowledgment of a married person, both as to the disposition
 23 of his or her own property and as to the relinquishment of ~~dower, curtesy,~~
 24 ~~and a~~ homestead in the property of a spouse, may be made in the same form as
 25 if he or she were sole and without any examination separate and apart from a
 26 spouse, and without necessity for a specific reference ~~therein~~ in the
 27 acknowledgement to the interest so conveyed or relinquished.

28
 29 SECTION 4. Arkansas Code § 16-47-105 is amended to read as follows:
 30 16-47-105. Certificate of acknowledgment.

31 Every court or officer that ~~shall take~~ takes the proof or
 32 acknowledgment of any deed, instrument, or conveyance of real estate, ~~or the~~
 33 ~~relinquishment of dower of any married woman in any conveyance of the real~~
 34 ~~estate of her husband,~~ shall grant a certificate thereof and cause the
 35 certificate to be endorsed on the deed, instrument, or conveyance, ~~or~~
 36 ~~relinquishment of dower, which certificate shall be signed by the clerk of~~

1 the court where probate is taken in court or by the officer before whom the
 2 probate is taken and sealed, if he or she has a seal of office.

3
 4 SECTION 5. Arkansas Code § 16-47-110(a), concerning the conveyance of
 5 real property, is amended to read as follows:

6 (a) Every deed or instrument in writing ~~which~~ that conveys or affects
 7 real estate and ~~which~~ that is acknowledged or proved and certified as
 8 prescribed by this act ~~may~~, together with the certificate of acknowledgment,
 9 ~~or proof, or relinquishment of dower,~~ may be recorded by the recorder of the
 10 county where ~~such~~ the land to be conveyed or affected thereby is located, and
 11 when so recorded may be read in evidence in any court in this state without
 12 further proof of execution.

13
 14 SECTION 6. Arkansas Code § 18-12-202(b), concerning the property
 15 rights of a married person, is amended to read as follows:

16 (b) The acknowledgment of a married person, both as to the disposition
 17 of his or her own property and as to the relinquishment of ~~dower, curtesy,~~
 18 ~~and a homestead in the property of a spouse,~~ may be made in the same form as
 19 if that person were sole and without any examination separate and apart from
 20 a spouse, and without necessity for a specific reference therein to the
 21 interest so conveyed or relinquished.

22
 23 SECTION 7. Arkansas Code § 18-12-209(a), concerning the conveyance of
 24 real property by a married person, is amended to read as follows:

25 (a) Every deed or instrument in writing ~~which~~ that conveys or affects
 26 real estate and ~~which~~ that is acknowledged or proved and certified as
 27 prescribed by this act ~~may~~, together with the certificate of acknowledgment,
 28 ~~or proof, or relinquishment of dower,~~ may be recorded by the recorder of the
 29 county where ~~such~~ the land to be conveyed or affected thereby is located, and
 30 when so recorded may be read in evidence in any court in this state without
 31 further proof of execution.

32
 33 SECTION 8. Arkansas Code § 18-12-402 is repealed.

34 ~~18-12-402. Relinquishment of dower or curtesy in spouse's land.~~
 35 ~~A married person may relinquish dower or curtesy in any of the real~~
 36 ~~estate of a spouse by joining with the spouse in the deed of conveyance~~

1 ~~thereof, or by a separate instrument executed to spouse's grantee or anyone~~
 2 ~~claiming title under the spouse, and acknowledging it in the manner~~
 3 ~~prescribed by law.~~

4
 5
 6 SECTION 9. Arkansas Code § 18-12-404 is repealed.

7 ~~18-12-404. Conveyance of insane husband's interest—Relinquishment of~~
 8 ~~dower.~~

9 ~~In all cases under § 20-47-103 whereunder a husband is duly adjudged to~~
 10 ~~be insane and a guardian appointed and wherein the guardian makes a sale of~~
 11 ~~the husband's interest in any of the real estate belonging to his ward, and~~
 12 ~~the wife of the insane husband is entitled to dower, it shall be sufficient~~
 13 ~~to pass the dower interest of the wife, if she shall duly join in the~~
 14 ~~petition of the guardian for the sale, and by separate instrument, duly~~
 15 ~~acknowledged, convey all her interest in the lands.~~

16
 17 SECTION 10. Arkansas Code § 18-12-503 is amended to read as follows:

18 18-12-503. Relinquishment of ~~dower, curtesy, and~~ homestead rights.

19 (a) By joining with his or her spouse in the execution of power of
 20 attorney, or by separate instrument, a married person may appoint an agent or
 21 attorney in fact and authorize him or her, for and in the person's name and
 22 stead, to relinquish all rights and possibility of ~~dower, curtesy, and a~~
 23 homestead to a spouse's grantee, lessee, or mortgagee in any lands, oil, gas,
 24 mineral, or timber and to execute for the person ~~such~~ the relinquishment of
 25 ~~dower, curtesy, and a~~ homestead in ~~any~~ an oil and gas lease or assignment
 26 thereof, mineral deed, timber deed, royalty contract, mortgage, or contract
 27 for the sale of ~~any~~ land, timber, or minerals, or ~~any~~ an interest therein,
 28 owned by a spouse and conveyed by the spouse to the grantee.

29 (b)(1) The act of an agent or attorney in fact, when authorized by
 30 properly executed and recorded power of attorney, in so relinquishing ~~dower,~~
 31 ~~curtesy, and a~~ homestead of a married person by joining in ~~any~~ a deed, lease,
 32 conveyance of minerals, royalty contract, or other contract for the sale of
 33 ~~any~~ lands or lease of ~~any~~ lands for developing its minerals, or ~~any~~ an
 34 interest therein, or the assignment of ~~any~~ an oil and gas lease or interest
 35 therein shall be as effectual and binding as if the instrument or instruments
 36 had been executed in the first instance by the married person.

1 (2) The relinquishment of homestead rights by the attorney in
2 fact may be by separate instrument or by the attorney in fact joining with
3 the spouse in the execution of one (1) or more conveyances.

4
5 SECTION 11. Arkansas Code § 18-60-401(a), concerning the division of
6 real property, is amended to read as follows:

7 (a) Under this act, any persons having any interest in, and desiring a
8 division of, land held in joint tenancy, tenancy in common, ~~as assigned or~~
9 ~~unassigned dower, as assigned or unassigned curtesy,~~ or in coparceny,
10 absolutely or subject to the life estate of another, or otherwise, or under
11 an estate by the entirety when the owners ~~shall~~ have been divorced, except
12 when the property involved ~~shall be~~ is a homestead and occupied by either of
13 the divorced persons, shall file in the circuit court a written petition.

14
15 SECTION 12. Arkansas Code § 18-60-403(a), concerning the division of
16 real property, is amended to read as follows:

17 (a) ~~Every~~ A person having an interest as is specified in § 18-60-401,
18 whether in possession or otherwise, ~~and every person entitled to dower or~~
19 ~~curtesy in the premises,~~ if it has not been admeasured, shall be made a party
20 to the petition.

21
22 SECTION 13. Arkansas Code § 28-1-102(a), concerning definitions of
23 terms used in Title 28 of the Arkansas Code, is amended to add a new
24 subdivision to read as follows:

25 (21) "Surviving spouse marital share" means the interest in the
26 decendent's estate of a surviving spouse.

27
28 SECTION 14. Arkansas Code Title 28, Chapter 11, Subchapter 1, is
29 amended to read as follows:

30 28-11-101. Definition.

31 As used in this chapter, "endowed" means invested ~~and shall apply both~~
32 ~~to dower and curtesy.~~

33
34 28-11-102. Descent of land upon death of spouse having ~~dower or~~
35 ~~curtesy interest~~ a surviving spouse marital share.

36 ~~At the death of any~~ When a surviving spouse ~~who~~ has ~~dower or curtesy a~~

1 surviving spouse marital share for life in land, the property shall descend
 2 in accordance with the will of the first deceased spouse or, if the first
 3 spouse died intestate, then to descend in accordance with the law for the
 4 distribution of intestates' estates.

5
 6 SECTION 15. Arkansas Code Title 28, Chapter 11, Subchapter 1, is
 7 amended to add an additional section to read as follows:

8 28-11-103. Surviving spouse marital share.

9 (a) The surviving spouse marital share vests an interest in the
 10 deceased spouse's estate when:

11 (1) The deceased has no children.

12 (A) The surviving spouse shall be endowed in the estate
 13 against collateral heirs with:

14 (i)(a) A fee simple interest in one-half (1/2) of
 15 the real property of the estate that was vested in the deceased spouse and is
 16 not an ancestral estate; or

17 (b) A life estate interest in one-half (1/2)
 18 of the real property of the estate that was vested in the deceased spouse and
 19 is an ancestral estate; and

20 (ii) An absolute interest in one-half (1/2) of the
 21 personal property of the estate.

22 (B) The surviving spouse shall be endowed against
 23 creditors with:

24 (i)(a) A fee simple interest in one-third (1/3) of
 25 the real property of the estate that was vested in the deceased spouse and is
 26 not an ancestral estate; or

27 (b) A life estate interest in one-third (1/3)
 28 of the real property of the estate that was vested in the deceased spouse and
 29 is an ancestral estate; and

30 (ii) A fee simple interest in one-third (1/3) of the
 31 personal property of the estate; or

32 (2) When the deceased has children the surviving spouse shall be
 33 endowed against collateral heirs and creditors with:

34 (A) A life estate interest in one-third (1/3) of the real
 35 property of the estate that was vested in the deceased spouse and is not an
 36 ancestral estate; and

1 (B) A fee simple interest in one-third (1/3) of the
 2 personal property of the estate.

3 (b) A surviving spouse marital share:

4 (1) Only vests in a deceased spouse's estate; and

5 (2) Does not grant a spouse an interest in a living spouse's
 6 real or personal property.

7
 8 SECTION 16. Arkansas Code §§ 28-11-201 – 28-11-202 are repealed.

9 ~~28-11-201. Actions of spouse not to bar right to dower or curtesy.~~

10 ~~(a) No act, deed, or conveyance executed or performed by one (1)~~
 11 ~~spouse without the assent of the other spouse, evinced by acknowledgment in~~
 12 ~~the manner required by law, shall pass the estate of dower or curtesy.~~

13 ~~(b) No judgment, default, covin, or crime of one (1) spouse shall~~
 14 ~~prejudice the right of the other spouse to curtesy or dower, or preclude~~
 15 ~~either spouse from the recovery thereof, if otherwise entitled thereto.~~

16
 17 ~~28-11-202. Surviving spouse of alien entitled to dower or curtesy.~~

18 ~~The surviving spouse of an alien shall be entitled to dower in the~~
 19 ~~estate of the deceased spouse in the same manner as if the alien had been a~~
 20 ~~native-born citizen of this state.~~

21
 22 SECTION 17. Arkansas Code § 28-11-203 is amended to read as follows:

23 28-11-203. Right of ~~dower and curtesy~~ surviving spouse marital share
 24 barred.

25 ~~(a) The inchoate right of dower or curtesy of any spouse~~ A surviving
 26 spouse marital share ~~in real property in the State of Arkansas~~ this state ~~is~~
 27 ~~barred in all cases when or where the other~~ the surviving ~~spouse has been~~
 28 ~~barred of title or of any interest in the property for seven (7) years or~~
 29 ~~more and also in real property or interest conveyed by the husband or wife~~
 30 ~~but not signed by the other spouse when the conveyance is made or has been~~
 31 ~~made for a period of seven (7) years or more.~~

32 ~~(b)(1) This section shall affect the inchoate right of dower and~~
 33 ~~curtesy of a spouse in real property in this state only where or when the~~
 34 ~~husband or wife has been barred of title for seven (7) years or more, or when~~
 35 ~~a conveyance by the husband or wife, without the signature of the other~~
 36 ~~spouse, has been made for a period of seven (7) years or more.~~

1 ~~(2) However, this section shall not apply unless the instrument~~
 2 ~~of conveyance by the husband or wife has been of record for at least seven~~
 3 ~~(7) years.~~

4
 5 SECTION 18. Arkansas Code §§ 28-11-301 and 28-11-302 are repealed.

6 ~~28-11-301. Land generally.~~

7 ~~(a) If a person dies leaving a surviving spouse and a child or~~
 8 ~~children, the surviving spouse shall be endowed of the third part of all the~~
 9 ~~lands for life whereof his or her spouse was seized, of an estate of~~
 10 ~~inheritance, at any time during the marriage, unless the endowment shall have~~
 11 ~~been relinquished in legal form.~~

12 ~~(b) A person shall have a dower or curtesy right in lands sold in the~~
 13 ~~lifetime of his or her spouse without consent of the spouse in legal form~~
 14 ~~against all creditors of the estate.~~

15
 16 ~~28-11-302. Lands exchanged — Election.~~

17 ~~If a person seized of an estate of inheritance in lands exchanges it~~
 18 ~~for other lands, the surviving spouse shall not have curtesy or dower of~~
 19 ~~both, but shall make an election to curtesy or dower in the lands given or of~~
 20 ~~those taken in exchange. If the election is not evinced by the commencement~~
 21 ~~of proceedings to recover curtesy or dower of the lands given in exchange~~
 22 ~~within one (1) year after the death of the deceased spouse, the surviving~~
 23 ~~spouse shall be deemed to have elected to take the curtesy or dower of the~~
 24 ~~lands received in exchange.~~

25
 26 SECTION 19. Arkansas Code §§ 28-11-303 and 28-11-304 are amended to
 27 read as follows:

28 28-11-303. Mortgaged land.

29 (a) When a person ~~seized of an~~ has a vested estate of inheritance in
 30 land ~~shall have executed~~ executes a mortgage of the estate before marriage,
 31 ~~the surviving spouse, nevertheless, shall be entitled to dower or curtesy out~~
 32 ~~of the lands mortgaged as against every person except the mortgagee and those~~
 33 ~~claiming under him or her~~ a surviving spouse marital share is subject to the
 34 mortgagee or those claiming under the mortgagee.

35 (b)(1) When a person ~~shall purchase~~ purchases lands during coverture
 36 and ~~shall mortgage~~ mortgages his or her estate in the lands to secure the

1 payment of the purchase money, the surviving spouse shall not be entitled to
 2 ~~dower or curtesy~~ the surviving spouse marital share out of the lands as
 3 against the mortgagee or those claiming under him or her, although he or she
 4 shall not have united in the mortgage. However, he or she shall be entitled
 5 to ~~dower or curtesy~~ the surviving spouse marital share as against all other
 6 persons.

7 (2) ~~When, in such a case,~~ the mortgagee or those claiming under
 8 him or her, shall, after the death of the mortgagor, cause the land mortgaged
 9 to be sold, either under a power contained in the mortgage or by virtue of
 10 the decree of a circuit court and any surplus shall remain after the payment
 11 of the moneys due on the mortgage and the costs and charges of sale, then the
 12 surviving spouse shall be entitled to the interest or income of one-third
 13 (1/3) part of the surplus for life, as his or her ~~curtesy or dower~~ surviving
 14 spouse marital share.

15 (c) A surviving spouse shall not be endowed of lands conveyed to the
 16 deceased spouse by way of mortgage unless the deceased spouse has acquired an
 17 absolute estate therein during the marriage.

18
 19 28-11-304. Sale of timber, oil, gas, or mineral leases.

20 (a) If a person dies leaving a surviving spouse and a child or
 21 children, the surviving spouse shall be entitled, absolutely and in his or
 22 her own right, to one-third (1/3) of all money received from the sale of
 23 timber, oil and gas or other mineral leases, oil and gas or other mineral
 24 royalty or mineral sales, and to one-third (1/3) of the money derived from
 25 any and all royalty run to the credit of the royalty owners from any oil or
 26 gas well or to royalty accruing from the production of other mines or
 27 minerals in lands in which he or she has a ~~dower, curtesy,~~ surviving spouse
 28 marital share or homestead interest, unless the surviving spouse ~~shall have~~
 29 has relinquished same in legal form.

30 (b)(1) All persons, firms, partnerships, or corporations now engaged
 31 in the production of oil and gas or other minerals shall immediately withhold
 32 payments to the royalty interests until the rights of the surviving spouse
 33 are determined, as defined by this section, and shall thereafter pay the
 34 surviving spouse separately his or her one-third (1/3) part of all royalty
 35 accruing to the royalty interest unless he or she ~~shall have~~ has relinquished
 36 the royalty interest in legal form.

1 (2) In the sale of timber, the purchaser shall pay one-third
2 (1/3) of the purchase price directly to the surviving spouse or his or her
3 agent or attorney at the time of the execution or delivery of the deed.

4
5 SECTION 20. Arkansas Code § 28-11-305 is repealed.

6 ~~28-11-305. Personalty.~~

7 ~~If a person dies leaving a surviving spouse and a child or children,~~
8 ~~the surviving spouse shall be entitled, as part of dower or curtesy in his or~~
9 ~~her own right, to one third (1/3) part of the personal estate whereof the~~
10 ~~deceased spouse died seized or possessed.~~

11
12 SECTION 21. Arkansas Code § 28-11-306 is amended to read as follows:

13 28-11-306. Bonds, notes, accounts, and evidences of debt.

14 If ~~any~~ a person ~~shall die~~ dies leaving a surviving spouse, the
15 surviving spouse shall be allowed to take the ~~same dower or curtesy~~ surviving
16 spouse marital share in the bonds, bills, notes, books, accounts, and
17 evidences of debt as the surviving spouse would be entitled to take out of
18 the personal property or cash on hand of the deceased spouse.

19
20 SECTION 22. Arkansas Code § 28-11-307 is repealed.

21 ~~28-11-307. Dower or curtesy when no children.~~

22 ~~(a)(1) If a person dies leaving a surviving spouse and no children,~~
23 ~~the surviving spouse shall be endowed in fee simple of one half (1/2) of the~~
24 ~~real estate of which the deceased person died seized when the estate is a new~~
25 ~~acquisition and not an ancestral estate and of one half (1/2) of the personal~~
26 ~~estate, absolutely, and in his or her own right, as against collateral heirs.~~

27 ~~(2) However, as against creditors, the surviving spouse shall be~~
28 ~~invested with one third (1/3) of the real estate in fee simple if a new~~
29 ~~acquisition, and not ancestral, and of one third (1/3) of the personal~~
30 ~~property absolutely.~~

31 ~~(b) If the real estate of the deceased person is an ancestral estate,~~
32 ~~the surviving spouse shall be endowed in a life estate of one half (1/2) of the~~
33 ~~estate as against collateral heirs and one third (1/3) as against creditors.~~

34
35 SECTION 23. Arkansas Code Title 28, Chapter 11, Subchapter 4, is
36 repealed.

1 ~~28-11-401.—Jointure or payment with spouse's assent.~~

2 ~~(a) When an estate in land shall be conveyed to a person and his or~~
3 ~~her intended spouse, or to the intended spouse alone, or to any person in~~
4 ~~trust for the person and his or her intended spouse, or in trust for the~~
5 ~~spouse alone, for the purpose of erecting a jointure for the intended spouse,~~
6 ~~and with his or her assent, the jointure shall be a bar to any right or claim~~
7 ~~for dower or curtesy of the spouse in any land of the other spouse.~~

8 ~~(b) The assent of the spouse to the jointure shall be evinced, if he~~
9 ~~or she is of full age, by his or her becoming a party to the conveyance by~~
10 ~~which it shall be settled or, if the spouse is an infant, by his or her~~
11 ~~joining with his or her father or guardian in the conveyance.~~

12 ~~(c) Any pecuniary provision that shall be made for the benefit of an~~
13 ~~intended spouse, and in lieu of dower or curtesy, if assented to by the~~
14 ~~intended spouse, as provided in this section, shall be a bar to any right or~~
15 ~~claim of dower or curtesy of the spouse in all lands of his or her spouse.~~

16
17 ~~28-11-402.—Jointure or payment—Election of spouse.~~

18 ~~If, before the marriage, but without a spouse's assent, or if, after~~
19 ~~the marriage, land shall be given or assured for the jointure of a spouse or~~
20 ~~a pecuniary provision shall be made for the spouse in lieu of dower or~~
21 ~~curtesy, the spouse shall make an election whether the spouse will take the~~
22 ~~jointure or pecuniary provision, or whether the spouse will be endowed of the~~
23 ~~lands of the other spouse. However, the spouse shall not be entitled to both.~~

24
25 ~~28-11-403.—Devise or bequest—Election of spouse.~~

26 ~~If land is devised to a spouse, or a pecuniary or other provision is~~
27 ~~made for a spouse by will in lieu of dower or curtesy, the spouse shall make~~
28 ~~an election whether he or she will take the land so devised, or the provision~~
29 ~~so made, or whether he or she will be endowed of the lands of the other~~
30 ~~spouse.~~

31
32 ~~28-11-404.—Devise deemed in lieu of dower or curtesy.~~

33 ~~If any spouse shall devise and bequeath to the other spouse any portion~~
34 ~~of his or her real estate of which he or she died seized, it shall be deemed~~
35 ~~and taken in lieu of dower or curtesy, as the case may be, out of the estate~~
36 ~~of the deceased spouse, unless the testator shall, in his or her will,~~

1 ~~declare otherwise.~~

2
3 ~~28-11-405. Forfeiture.~~

4 ~~Every jointure, devise, and pecuniary provision, in lieu of dower or~~
5 ~~curtesy, shall be forfeited by the spouse for whose benefit it shall be made,~~
6 ~~in the same cases in which the spouse would forfeit his or her dower or~~
7 ~~curtesy, as the case may be. Upon such a forfeiture, any estate so conveyed~~
8 ~~for jointure and every pecuniary provision so made shall immediately vest in~~
9 ~~the person, or his or her legal representatives, in whom they would have~~
10 ~~vested on the determination of the spouse's interest therein by the death of~~
11 ~~the spouse.~~

12
13 SECTION 24. Arkansas Code § 28-39-101(a)(1), concerning an allowance
14 to a surviving spouse, is amended to read as follows:

15 (a)(1) In addition to their homestead and ~~, dower, and curtesy rights~~
16 surviving spouse marital share, the surviving spouse and minor children of a
17 decedent, or either in the absence of the other, shall be entitled to have
18 assigned to them out of the property owned by the decedent at the time of his
19 or her death, personal property, tangible or intangible, to be selected prior
20 to the sale thereof by the personal representative or after sale out of the
21 proceeds thereof by the surviving spouse, if there is a surviving spouse or,
22 otherwise, by the guardian of the minor children, when the personal property
23 is of the value of four thousand dollars (\$4,000) as against distributees or
24 the value of two thousand dollars (\$2,000) as against creditors.

25
26 SECTION 25. Arkansas Code § 28-39-102 is amended to read as follows:

27 28-39-102. Right of surviving spouse to live in house for two months -
28 Sustenance.

29 A surviving spouse may reside in the chief residence of the deceased
30 spouse for two (2) months after death, ~~whether or not dower or curtesy is~~
31 ~~assigned sooner~~, without being liable for any rent. In the meantime, the
32 surviving spouse shall have a reasonable sustenance out of the estate of the
33 deceased spouse.

34
35 SECTION 26. Arkansas Code § 28-39-103 is amended to read as follows:

36 28-39-103. Extension of surviving spouse's quarantine.

1 If the ~~dower or curtesy of any~~ surviving spouse marital share interest
 2 of the surviving spouse is not assigned ~~and laid off~~ within two (2) months
 3 after the death of a deceased spouse, the surviving spouse shall remain in
 4 and possess the chief residence of the deceased spouse, together with the
 5 land thereto attached, free of all rent, until ~~dower or curtesy shall be laid~~
 6 ~~off and~~ the surviving spouse marital share interest is assigned to the
 7 surviving spouse.

8
 9 SECTION 27. Arkansas Code § 28-39-104 is amended to read as follows:
 10 28-39-104. Allowance paid surviving spouse out of rent ~~until~~
 11 ~~apportionment of curtesy or dower.~~

12 Until ~~curtesy or dower~~ the surviving spouse marital share is
 13 apportioned, the court shall order such sums to be paid to the surviving
 14 spouse out of the rent of the real estate as shall be in proportion to his or
 15 her interest in the real estate.

16
 17 SECTION 28. Arkansas Code Title 28, Chapter 39, Subchapter 3, is
 18 amended to read as follows:

19 28-39-301. Assignment by heir – Acceptance.

20 (a) It shall be the duty of the heir at law of ~~any an~~ an estate of which
 21 the surviving spouse is entitled to ~~dower or curtesy to lay off and a~~
 22 surviving spouse marital share to assign the ~~dower or curtesy~~ surviving
 23 spouse marital share as soon as practicable after the death of the deceased
 24 spouse. If the heirs to any estate are minors, they shall act, in the
 25 assignment of ~~dower or curtesy~~ the surviving spouse marital share, by their
 26 guardians.

27 (b) If the ~~dower or curtesy~~ the surviving spouse marital share
 28 assigned by the heir at law is accepted by the surviving spouse, the heir at
 29 law shall make a statement of the assignment, specifying what lands have been
 30 assigned, and the acceptance of the surviving spouse shall be endorsed
 31 thereon.

32 (c) The statements and specification of ~~dower or curtesy~~ the surviving
 33 spouse marital share, and acceptance thereof, shall be proved or acknowledged
 34 by both parties and filed with and recorded by the probate clerk of the
 35 circuit court, which will then be a sufficient assignment of ~~dower or curtesy~~
 36 the surviving spouse marital share and shall bar any further demand for ~~dower~~

1 ~~or curtesy~~ the surviving spouse marital share in the property specified in
2 the statement.

3
4 28-39-302. Assignment by heir – Grant of severance rights required.

5 (a) The heirs in any estate cannot assign or secure an assignment of
6 ~~dower or curtesy in~~ lands in this state unless and until the heirs of the
7 estate comply with the surviving spouse marital share the provisions set out
8 in subsections (b) and (c) of this section.

9 (b) Before assignment of ~~dower or curtesy~~ the surviving spouse marital
10 share can be made by the heirs as against a surviving spouse, the heirs shall
11 first execute an agreement, or the agreement of a guardian shall be approved
12 by the court, by which agreement the surviving spouse is given permission to
13 sell timber on lands set aside to the surviving spouse under selective
14 cutting practices as used or adopted by general practice in the area where
15 the land is situated.

16 (c) In addition to rights granted in subsection (b) of this section,
17 the heirs shall grant, by proper agreement, to the surviving spouse, the
18 right to execute good, valid, and binding oil and gas leases covering lands
19 set aside to the surviving spouse by which the surviving spouse shall receive
20 the bonus money for any lease and receive the delay rentals so long as they
21 are payable, or so long as the surviving spouse lives.

22 (d) Should there be production of oil or gas under any lease executed
23 by the surviving spouse, he or she shall be entitled to receive the royalty
24 payments so long as the surviving spouse lives.

25
26 28-39-303. Proceedings for allotment.

27 (a) If ~~dower or curtesy~~ the surviving spouse marital share is not
28 assigned to the surviving spouse within one (1) year after the death of his
29 or her spouse, or within three (3) months after demand is made ~~therefor~~, the
30 surviving spouse may file a written petition in the circuit court. This
31 petition shall include a description of the lands in which he or she claims
32 ~~dower or curtesy~~ the surviving spouse marital share, the names of those
33 having interest in the lands, and the amount of the interest briefly stated
34 in ordinary language with a prayer for the allotment of ~~dower or curtesy~~ the
35 surviving spouse marital share. All persons interested in the property shall
36 be summoned to appear and answer the petition.

1 (b) ~~Upon the petition's by all interested in the property being filed~~
2 Upon the filing of the petition by all interested in the property, or upon a
3 summons being served upon all who have an interest in the property, the
4 circuit court may make an order for the allotment of ~~dower or curtesy~~ the
5 surviving spouse marital share according to the rights of the parties by
6 commissioners appointed according to law.

7 (c) Parties interested may be constructively summoned, as provided by
8 Rule 4 of the Arkansas Rules of Civil Procedure.

9 (d)(1) No verification shall be required to the petition or answer.

10 (2) Petitions for ~~dower or curtesy~~ the surviving spouse marital
11 share shall be heard and determined by the court without the necessity of
12 formal pleading upon the petition, answer, exhibits, and other testimony.

13 (e) If the petition is filed against infants or persons of unsound
14 mind, the guardian or committee may appear and defend for them and protect
15 their interests, and, if the guardian or committee does not appear and
16 defend, the court shall appoint some discreet person for that purpose.

17 (f) If any person summoned, as provided in this section, desires to
18 contest the rights of the petitioner or the statements in the petition, he or
19 she shall do so by a written answer, and the questions of the law and fact
20 thereupon arising shall be tried and determined by the circuit court.

21 (g) The costs of the division and allotment shall be apportioned among
22 the parties in the ratio of their interests, and the costs arising from any
23 contest of fact or law shall be paid by the party adjudged to be in the
24 wrong.

25
26 28-39-304. Assignment by commissioners.

27 (a) In all cases when it orders and decrees ~~dower or curtesy~~ the
28 surviving spouse marital share to ~~any~~ a surviving spouse, the court shall
29 appoint three (3) commissioners of the vicinity who shall proceed to the
30 premises in question and, by survey and measurement, lay off and designate by
31 proper metes and bounds the ~~dower or curtesy~~ surviving spouse marital share
32 of the surviving spouse, in accordance with the decree of the court.

33 (b) In all assignments of ~~dower or curtesy~~ the surviving spouse
34 marital share to ~~any~~ a surviving spouse, it shall be the duty of the
35 commissioners, who may be appointed to lay off the ~~dower or curtesy~~ surviving
36 spouse marital share, if the estate will permit such a division without

1 essential injury, to lay off the ~~dower or curtesy~~ surviving spouse marital
2 share in the lands of the deceased spouse so that the usual dwelling of the
3 deceased spouse and family shall be included in the assignment of ~~dower or~~
4 ~~curtesy~~ the surviving spouse marital share to the surviving spouse.

5 (c) The commissioners appointed to lay off ~~dower or curtesy~~ the
6 surviving spouse marital share in the lands of the deceased spouse, under
7 existing laws, shall lay off the ~~dower or curtesy~~ the surviving spouse
8 marital share on any part of the lands of the deceased at the request of the
9 surviving spouse who is to be endowed, whether the lands shall include the
10 usual dwelling of the deceased spouse and family or not, if it can be done
11 without essential injury to the estate.

12 (d) The commissioners shall make a detailed report of their
13 proceedings to the next term of the court.

14 (e) Upon the report's being returned, the court may confirm or set the
15 report aside or remand it to the commissioners for correction. If approved by
16 the court, the report shall be entered of record and be conclusive on the
17 parties.

18
19 28-39-305. Rental of indivisible property.

20 In cases in which lands or tenements will not permit division, the
21 court, being satisfied of that fact or on the report of the commissioners to
22 that effect, shall order that the tenements or lands be rented out and that
23 one-third (1/3) part of the proceeds be paid to the surviving spouse in lieu
24 of ~~dower or curtesy~~ the surviving spouse marital share in the lands or
25 tenements.

26
27 28-39-306. Sale of property indivisible without prejudice.

28 In proceedings in the circuit court for the allotment of ~~dower or~~
29 ~~curtesy~~ the surviving spouse marital share, when it appears to the court that
30 ~~dower or curtesy~~ the surviving spouse marital share cannot be allotted out of
31 the real estate without great prejudice to the surviving spouse or heirs and
32 that it will be most to the interest of the parties that the real estate may
33 be sold, the court may decree a sale of the real estate free from the ~~dower~~
34 ~~or curtesy~~ surviving spouse marital share and decree that a portion of the
35 proceeds may be paid to the surviving spouse in lieu of the ~~dower or curtesy~~
36 the surviving spouse marital share or interest otherwise secured to the

1 surviving spouse as to the court may seem equitable and just.

2
3 28-39-307. Rights of surviving spouse when ~~dower or curtesy~~ the
4 surviving spouse marital share land alienated by heir.

5 If the heir alienates lands of which a surviving spouse is entitled to
6 ~~dower or curtesy~~ the surviving spouse marital share, he or she shall still be
7 decreed ~~his curtesy or her dower~~ the surviving spouse marital share in the
8 lands so alienated, in whosoever hands the land may be.

9
10 28-39-308. Surviving spouse's bequest of growing crop.

11 A surviving spouse may bequeath the crop in the ground of the land held
12 by ~~him or her in curtesy or dower~~ the surviving spouse marital share at the
13 time of his or her death. If he or she dies intestate, the crop shall go to
14 his or her administrator.

15
16 28-39-309. Recovery of ~~dower or curtesy~~ the surviving spouse marital
17 share lands taken from surviving spouse - Damages.

18 If the land assigned and laid off to any surviving spouse is deforced
19 from his or her possession, the surviving spouse shall have an action for the
20 recovery of possession of the land, with double damages for the deforcement,
21 or a surviving spouse may sue for the damages alone and recover double the
22 actual damage sustained from time to time, until the surviving spouse is put
23 in possession of the ~~dower or curtesy~~ the surviving spouse marital share held
24 by the deforcer or detainer.

25
26 SECTION 29. Arkansas Code § 28-39-401 is amended to read as follows:

27 28-39-401. Rights of surviving spouse - Limitations.

28 (a) When a married person dies testate as to all or any part of his or
29 her estate, the surviving spouse shall have the right to take against the
30 will if the surviving spouse has been married to the decedent continuously
31 for a period in excess of one (1) year.

32 (b) In the event of such an election, the rights of the surviving
33 spouse in the estate of the deceased spouse shall be limited to the
34 following:

35 (1) ~~The surviving spouse, if a woman, shall receive dower in the~~
36 ~~deceased husband's real estate and personal property as if he had died~~

1 ~~intestate. The dower shall be additional to her homestead rights and~~
 2 ~~statutory allowances; and~~

3 ~~(2) The surviving spouse, if a man, shall receive a curtesy~~
 4 ~~interest in the real and personal property of the deceased spouse to the same~~
 5 ~~extent as if she had died intestate. The curtesy interest shall be additional~~
 6 ~~to his homestead rights and statutory allowances; and The surviving spouse~~
 7 ~~marital share;~~

8 (2) The homestead interest;

9 (3) Other statutory allowances; and

10 ~~(3)(4) If, after the assignment of dower or curtesy, as the case~~
 11 ~~may be, the surviving spouse marital share and the payment of all statutory~~
 12 ~~allowances, taxes, and debts, and the satisfaction of all testamentary gifts~~
 13 ~~and devises, there ~~shall remain~~ remains some residue of the deceased spouse's~~
 14 ~~estate which is not disposed of by will, then, if the deceased spouse ~~shall~~~~
 15 ~~have has been survived by no natural or adopted child, or the descendants of~~
 16 ~~any natural or adopted child, and by no parent, brother, sister, grandparent,~~
 17 ~~uncle, aunt, great-grandparent, great-uncle, great-aunt, or the lineal~~
 18 ~~descendants of any of them, then the surviving spouse will take by~~
 19 ~~inheritance the undisposed residue.~~