



SENATE BILL No. 802

August 31, 1993, Introduced by Senator VAN REGENMORTER and referred to the Committee on Judiciary.

A bill to provide for the right to disclaim certain property interests and control over certain property interests; to prescribe the procedures for disclaimers; and to repeal certain acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "disclaimer of property interests act".

3 Sec. 2. As used in this act:

4 (a) "Agent" means an agent or attorney in fact acting under
5 a written power of attorney and within the scope of his, her, or
6 its authority.

7 (b) "Disclaimable interest" includes property, the right to
8 receive or control property, and a power of appointment, but does
9 not include an interest retained by or conferred upon the
10 disclaimant by the disclaimant at the creation of the interest.

1 For purposes of this definition, the survivorship interest in
2 joint property is not considered to be an interest retained or
3 conferred upon the disclaimant even if the disclaimant created
4 the joint property.

5 (c) "Effective date of a governing instrument other than a
6 will or testamentary trust" means the date on which a property
7 right vests, or a contract right arises, even though either right
8 is subject to divestment.

9 (d) "Fiduciary" includes an agent, a conservator, a guardian
10 if no conservator has been appointed, a guardian ad litem, a per-
11 sonal representative including an independent personal represen-
12 tative, a trustee, a probate court acting through a protective
13 order under the revised probate code, and a temporary, successor,
14 or foreign fiduciary.

15 (e) "Fiduciary power" means a management power relating to
16 the administration or management of assets similar to those
17 powers granted to an independent personal representative in sec-
18 tion 334 and a trustee in sections 822 to 829 of the revised pro-
19 bate code, Act No. 642 of the Public Acts of 1978, being sections
20 700.334 and 700.822 to 700.829 of the Michigan Compiled Laws, and
21 granted by law to a fiduciary or conferred upon a fiduciary in a
22 governing instrument.

23 (f) "Governing instrument" means a deed, assignment, bill of
24 sale, will, trust, beneficiary designation, contract, instrument
25 creating or exercising a power of appointment or a power of
26 attorney, or other instrument under which property devolves, a
27 property right is created, or a contract right is created.

1 governing instrument includes the provable terms of an oral
2 contract or arrangement under which property devolves or a prop-
3 erty right is created.

4 (g) "Joint property" means property that is owned by 2 or
5 more persons with rights of survivorship, and includes a tenancy
6 by the entires in real property, a tenancy in personal prop-
7 erty as provided in section 1 of Act No. 212 of the Public Acts
8 of 1927, being section 557.151 of the Michigan Compiled Laws, a
9 joint tenancy, a joint tenancy with rights of survivorship, and a
10 joint life estate with contingent remainder in fee. For purposes
11 of this act, joint property is considered to consist of a present
12 interest and a future interest. The future interest is the right
13 of survivorship.

14 (h) "Person" includes an entity and an individual, but does
15 not include a fiduciary, an estate, or a trust.

16 (i) "Property" means anything that may be the subject of
17 ownership. Property includes both real and personal property and
18 an interest in property, including a present interest; a future
19 interest; a legal interest; an equitable interest; an interest
20 acquired by intestate or testate succession, by succession to a
21 disclaimed interest, or by lapse or release of a power of
22 appointment; or an interest that may be otherwise acquired under
23 a governing instrument.

24 (j) "Trust" means a fiduciary relationship with respect to
25 property that subjects the person who holds title to the property
26 to equitable duties to deal with the property for the benefit of
27 another person, which fiduciary relationship arises as a result

1 of a manifestation of an intention to create it. Fiduciary
2 relationship includes an express trust, private or charitable,
3 with additions to the trust, whether created by will or other
4 than by will, and includes a trust created by statute, judgment,
5 or decree under which the trust is to be administered in the
6 manner of an express trust. Fiduciary relationship does not
7 include a constructive trust or a resulting trust.

8 Sec. 3. (1) A person, or a fiduciary representing a person
9 to whom a disclaimable interest devolves, may disclaim a dis-
10 claimable interest in whole or in part. A trustee, with respect
11 to the trust as a whole or with respect to a separate trust that
12 is or will be established under the governing instrument, may
13 disclaim a disclaimable interest, in whole or in part, but only
14 to the extent that the governing instrument expressly gives the
15 trustee the right to disclaim.

16 (2) A disclaimer may be of a fractional or percentage share
17 or of a limited interest or estate. A provision in a power of
18 attorney granting the agent the authority to do whatever the
19 principal could do, or words of similar effect, includes the
20 authority to disclaim, unless the authority to disclaim is spe-
21 cifically excluded or limited. Except for a trust or a power of
22 attorney, the right to disclaim a disclaimable interest exists
23 notwithstanding a spendthrift provision or a restriction or limi-
24 tation on the right to disclaim contained in the governing
25 instrument.

26 (3) A fiduciary may disclaim a fiduciary power. The right
27 to disclaim a fiduciary power exists notwithstanding a

1 restriction or limitation on the right to disclaim contained in
2 the governing instrument.

3 Sec. 4. (1) A disclaimer is not valid unless it complies
4 with all of the following:

5 (a) Is in writing.

6 (b) Declares the disclaimer.

7 (c) Describes the disclaimed interest.

8 (d) Is signed by the disclaimant.

9 (e) Is delivered as provided in sections 5, 6, and 7.

10 (2) If a disclaimable interest is disclaimed by a fiduciary
11 on behalf of the person to whom the disclaimable interest
12 devolves, the disclaimer shall be signed by all incumbent
13 fiduciaries. Unless the governing instrument requires otherwise,
14 a disclaimer of a disclaimable interest by a trustee may be
15 signed by less than all incumbent trustees. A disclaimer of a
16 fiduciary power by a fiduciary may be signed by less than all
17 incumbent fiduciaries.

18 Sec. 5. (1) Except as provided in section 6, if a dis-
19 claimed interest arises under a will or testamentary trust, or by
20 the laws of intestacy, the disclaimer shall be delivered after
21 the death of the owner of the property and before any event
22 described in section 11. If a disclaimed interest arises under a
23 will or by the laws of intestacy, the disclaimer shall be deliv-
24 ered to the personal representative of the deceased owner's
25 estate. If a disclaimed interest arises under a testamentary
26 trust, the disclaimer shall be delivered to the trustee of the

1 testamentary trust or, if a trustee has not been appointed, to
2 the personal representative of the deceased owner's estate.

3 (2) Except as provided in section 6, if a disclaimed inter-
4 est arises under a governing instrument other than a will or tes-
5 tamentary trust, the disclaimer shall be delivered after the
6 effective date of the governing instrument and before any event
7 described in section 11. A disclaimer under this subsection
8 shall be delivered in 1 of the following manners:

9 (a) If the disclaimer is made by a beneficiary of a trust,
10 the disclaimer shall be delivered to the trustee.

11 (b) If the disclaimer is made by a donee with respect to a
12 gift from a living donor, the disclaimer shall be delivered to
13 the donor of the gift.

14 (c) If the disclaimer is made by a beneficiary under a bene-
15 ficiary designation, the disclaimer shall be delivered to the
16 payor.

17 (d) If the disclaimer is made by a trustee with respect to a
18 separate trust that is or will be established under the governing
19 instrument, the disclaimer shall be delivered to another incum-
20 bent trustee of that trust who has not disclaimed or to all the
21 beneficiaries of that trust who are then living and whose where-
22 abouts are known or reasonably ascertainable.

23 Sec. 6. (1) A disclaimed interest that is subject to, or
24 arises under, an exercise, release, or lapse of a power of
25 appointment, shall comply with the following:

26 (a) A disclaimer by an appointee shall be delivered to the
27 donee, to the personal representative of the donee's estate, or

1 to the fiduciary under the instrument that created the power of
2 appointment. The disclaimer by the appointee shall be delivered
3 after the exercise of the power of appointment by the donee and
4 before any event described in section 11.

5 (b) A disclaimer by a taker in default shall be delivered to
6 the donee, to the fiduciary under the instrument that created the
7 power of appointment, or to 1 of the persons entitled to the
8 property in the event of a disclaimer. The disclaimer by a taker
9 in default may be delivered before or after the lapse or release
10 of the power of appointment, and shall be delivered before any
11 event described in section 11.

12 (2) If the disclaimed interest arises out of joint property,
13 the disclaimer shall be delivered after creation of the joint
14 ownership and before any event described in section 11, to the
15 person who created the joint property, to a remaining owner who
16 has not disclaimed, or to the person entitled to the disclaimed
17 interest in the event of a disclaimer. The barring of the right
18 to disclaim a present interest under section 11 does not bar the
19 right to disclaim the future interest.

20 (3) A fiduciary power may be disclaimed at any time, before
21 or after exercise of the power. The disclaimer shall be deliv-
22 ered to the person who established the instrument that gave rise
23 to the power or to 1 of the following:

24 (a) If the fiduciary is a personal representative, to all
25 the devisees under the will who are then living and whose where-
26 abouts are known or reasonably ascertainable.

1 (b) If the fiduciary is a trustee, to another incumbent
2 trustee who has not disclaimed the power or to all the
3 beneficiaries of the trust who are then living and whose where-
4 abouts are known or reasonably ascertainable.

5 (c) If the fiduciary is a guardian or conservator, to the
6 interested parties.

7 (d) If the fiduciary is an agent to the principal, or if the
8 principal is legally incapacitated, to the principal's presump-
9 tive heirs at law.

10 Sec. 7. (1) A disclaimer shall be delivered in 1 of the
11 following manners:

12 (a) By personally handing it to the person to whom it is to
13 be delivered or to a fiduciary representing that person.

14 (b) By enclosing it in a sealed envelope with first-class
15 postage fully prepaid, addressed to the person to whom it is to
16 be delivered or to a fiduciary representing that person, and
17 depositing the envelope and its contents in the United States
18 mail.

19 (c) By another means that is reasonably likely to accomplish
20 delivery to the person who is to receive the disclaimer or to a
21 fiduciary representing that person.

22 (2) If delivery is to be made to a fiduciary, the following
23 apply:

24 (a) If a fiduciary is not currently serving, the delivery of
25 the disclaimer shall be made by filing the disclaimer with the
26 probate court that has jurisdiction to entertain proceedings to
27 appoint or qualify the fiduciary.

1 (b) If the fiduciary cannot be located, the delivery of the
2 disclaimer shall be made by filing the disclaimer with the pro-
3 bate court that has jurisdiction over the fiduciary.

4 (3) A copy of a disclaimer may be filed in a probate court
5 where proceedings are pending concerning the disclaimed interest,
6 or in the probate court that would have jurisdiction if proceed-
7 ings were commenced. If the disclaimed interest pertains to real
8 property, a copy of the disclaimer may be recorded in the office
9 of the register of deeds of the county in which the property is
10 located.

11 Sec. 8. (1) Except as otherwise provided in this section
12 and section 9, if a disclaimed interest arises under a will or
13 testamentary trust, or by the laws of intestacy, and the decedent
14 has not provided for another disposition of that interest should
15 it be disclaimed, or for another disposition of disclaimed or
16 failed interests in general, the disclaimed interest devolves as
17 if the disclaimant had predeceased the decedent. However, if by
18 law, or under the will or testamentary trust, the descendants of
19 the disclaimant would take the disclaimant's share by representa-
20 tion if the disclaimant predeceased the decedent, then the dis-
21 claimed interest passes by representation to the descendants of
22 the disclaimant who survive the decedent.

23 (2) A future interest that takes effect in possession or
24 enjoyment upon the termination of the disclaimed interest, takes
25 effect as if the disclaimant had predeceased the decedent. A
26 future interest that is held by the disclaimant and that takes

1 effect at a time certain is not accelerated and takes effect at
2 the time certain.

3 (3) Except as otherwise provided in this section and section
4 9, if the disclaimed interest arises under a governing instrument
5 other than a will or testamentary trust, and the governing
6 instrument does not provide for another disposition of that
7 interest should it be disclaimed, or for another disposition of
8 disclaimed or failed interests in general, the disclaimed inter-
9 est devolves as if the disclaimant had died before the time when
10 the interest was entitled to take effect in possession or
11 enjoyment. However, if by law or under the governing instrument
12 the descendants of the disclaimant would take the disclaimant's
13 share by representation if the disclaimant predeceased the effec-
14 tive date of the instrument, then the disclaimed interest passes
15 by representation to the descendants of the disclaimant who sur-
16 vive the effective date of the instrument.

17 (4) A future interest that takes effect in possession or
18 enjoyment at or after the termination of the disclaimed interest
19 takes effect as if the disclaimant had died before the time when
20 the interest was entitled to take effect in possession or
21 enjoyment. A future interest that is held by the disclaimant and
22 that takes effect at a time certain is not accelerated and takes
23 effect at the time certain.

24 Sec. 9. (1) If the disclaimed interest arises out of joint
25 property created by a governing instrument, testamentary or non-
26 testamentary, the following apply:

1 (a) If the disclaimant is the only living owner, the
2 disclaimed interest devolves to the estate of the last to die of
3 the other joint owners.

4 (b) If the disclaimant is not the only living owner, the
5 disclaimed interest devolves to the living joint owners equally,
6 or all to the other living owner, if there is only 1 living
7 owner.

8 (2) If the donee of a power of appointment disclaims the
9 power of appointment, the property that is subject to the power
10 of appointment devolves as follows:

11 (a) If the power of appointment arises out of a will or tes-
12 tamentary instrument, as if the donee died before the decedent.

13 (b) If the power of appointment arises out of a governing
14 instrument other than a will or testamentary trust, as if the
15 disclaimant died before the effective date of the governing
16 instrument.

17 (3) If all incumbent trustees disclaim a disclaimable inter-
18 est and the governing instrument does not provide for another
19 disposition of the disclaimed interest should it be disclaimed,
20 or for another disposition of disclaimed or failed interests in
21 general, then the disclaimed interest devolves as if the trust
22 with respect to which the disclaimer was made never existed. If
23 less than all incumbent trustees disclaim a disclaimable interest
24 and the governing instrument does not provide for another dispo-
25 sition of the disclaimed interest under those circumstances, then
26 the trustee who disclaims is treated as never having had any
27 interest in or power over the disclaimed interest.

1 (4) If a fiduciary disclaims a fiduciary power, the
2 fiduciary power ceases to exist as of the effective date of the
3 disclaimer. A disclaimer of a fiduciary power by 1 of multiple
4 incumbent fiduciaries is binding only on the fiduciary who dis-
5 claims, and is not binding on the other incumbent fiduciaries or
6 on successor fiduciaries. A disclaimer of a fiduciary power by
7 all incumbent fiduciaries is binding on all successor fiducia-
8 ries, unless the disclaimer states otherwise.

9 Sec. 10. (1) A disclaimer, or a written waiver of the right
10 to disclaim, is binding upon the disclaimant or person waiving
11 the right to disclaim, and all persons claiming through or under
12 him or her.

13 (2) A disclaimer acts as a nonacceptance of the disclaimed
14 interest, rather than as a transfer of the disclaimed interest.
15 The disclaimant is treated as never having received the dis-
16 claimed interest.

17 Sec. 11. (1) The right to disclaim property is barred by
18 any of the following events that occur after the event giving
19 rise to the right to disclaim and before the disclaimer is
20 perfected:

21 (a) An assignment, conveyance, encumbrance, pledge, or
22 transfer of the property, or a contract for such a transaction.

23 (b) A written waiver of the right to disclaim.

24 (c) An acceptance of the disclaimable interest or a benefit
25 under the disclaimable interest after actual knowledge that a
26 property right has been conferred.

1 (d) A sale of the property under judicial sale.

2 (e) The expiration of the permitted applicable perpetuities
3 period.

4 (2) The right to disclaim is barred to the extent provided
5 by other applicable law. A partial bar does not preclude the
6 disclaimant from disclaiming all or any part of the balance of
7 the property if the disclaimant has received a portion of the
8 property and there still remains an interest that the disclaimant
9 is yet to receive. An act that bars the right to disclaim a
10 present interest in joint property does not bar the right to dis-
11 claim a future interest in joint property.

12 Sec. 12. The common law right of disclaimer or renunciation
13 is abolished. This act does not abridge the right of a person to
14 waive, release, disclaim, or renounce property or an interest in
15 property under another statute.

16 Sec. 13. An interest in property that exists on the effec-
17 tive date of this act as to which, if a present interest, the
18 time for delivering a disclaimer under this act has not expired,
19 or if a future interest, the interest has not become indefeasibly
20 vested or the taker finally ascertained, may be disclaimed after
21 the effective date of this act and before any event described in
22 section 11.

23 Sec. 19. Act No. 9 of the Public Acts of 1971, being sec-
24 tions 554.501 to 554.520 of the Michigan Compiled Laws, is
25 repealed.