



SENATE BILL No. 1010

May 8, 1996, Introduced by Senator ROGERS and referred to the Committee on Judiciary.

A bill to amend section 2 of Act No. 131 of the Public Acts of 1996, entitled "Disclaimer of property interests act," being section 554.872 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Section 2 of Act No. 131 of the Public Acts of
2 1996, being section 554.872 of the Michigan Compiled Laws, is
3 amended to read as follows:

4 Sec. 2. As used in this act:

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

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

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

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

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

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

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

1 property right is created, or a contract right is created.

2 Governing instrument includes the provable terms of an oral con-
3 tract or arrangement under which property devolves or a property
4 right is created.

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

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

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

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

1 another person, which fiduciary relationship arises as a result
2 of a manifestation of an intention to create it. ~~Fiduciary~~
3 ~~relationship~~ TRUST includes an express trust, private or chari-
4 table, with additions to the trust, whether created by will or
5 other than by will, and includes a trust created by statute,
6 judgment, or decree under which the trust is to be administered
7 in the manner of an express trust. ~~Fiduciary relationship~~
8 TRUST does not include a constructive trust or a resulting
9 trust.

10 Section 2. This amendatory act shall take effect June 1,
11 1996.