

SENATE BILL 749

By Massey

AN ACT to amend Tennessee Code Annotated, Title 33;
Title 36 and Title 37, relative to custody
determinations involving disabled parents.

WHEREAS, the Tennessee General Assembly finds that thousands of Tennesseans are disabled as the result of disease, accident, injuries sustained in the service of our country, genetic causes, or congenital defects; and

WHEREAS, the General Assembly further finds that Tennesseans with disabilities have contributed in no small manner to the prosperity and welfare of the State of Tennessee in the practice of various professions, in the arts, in business, in the sciences, as teachers and instructors, and as parents and caregivers to countless children in this State; and

WHEREAS, the General Assembly further finds and concludes that strong and healthy families are the foundation of an orderly and prosperous society; and

WHEREAS, it is the policy of the State of Tennessee to foster the growth and preservation of strong and healthy families in Tennessee; and

WHEREAS, the General Assembly finds that Tennesseans with disabilities have suffered invidious discrimination in child welfare and custody proceedings throughout this State on account of such disability; and

WHEREAS, it is the policy of the State of Tennessee that no citizen of this State shall suffer discrimination from any child welfare agency or in any custody proceeding solely because of such person's disability; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 6, Part 1, is amended by adding the following as a new section:

36-6-115.

(a)

(1) In any suit for divorce, or for legal separation, or in any other proceeding requiring the court to make a custody determination regarding a minor child, or in any proceeding where the issue before the court is the modification of a prior decree pertaining to custody or the modification of a permanent parenting plan, and where at least one (1) parent suffers from a disability, the party asserting or claiming that a parent's disability renders the parent unfit or otherwise incapable of satisfying the physical, emotional, educational or psychological needs of the minor child must establish by clear and convincing evidence that the disability of that parent poses a substantial risk of harm to the health or safety of the minor child at issue.

(2) Should the court find by clear and convincing evidence that the disabled parent's disability poses a substantial risk of harm to the health or safety of the minor child, the court shall make specific findings of fact and conclusions of law in support of such finding.

(b)

(1) For purposes of this section, the term "disability" means, with respect to an individual, any mental or physical impairment which substantially limits one (1) or more major life activities of the individual, including, but not limited to, seeing, hearing, walking, speaking, learning, working, self-care or manual tasks; or a record of such an impairment; or being regarded or perceived by others as having such an impairment. The term "disability" shall not include transvestism, transsexualism, pedophilia, exhibitionism, voyeurism or other sexual behavior disorders, any substance use or alcohol use disorder, any compulsive gambling disorder; kleptomania or pyromania. Sexual preference or sexual orientation shall not be deemed an impairment or disability.

(2) The determination as to whether or not an impairment substantially limits one (1) or more major life activities shall be made without consideration of the effect of corrective or mitigating measures used to reduce the effect of the impairment.

(c) All child protective service investigators, family service workers and case managers employed with the department of children's services; all judges and referees, whether part-time or full-time, with family law, domestic or juvenile jurisdiction; and all Rule 31 Listed Family Mediators shall receive annual training which addresses the issues and concerns of disabled parents. Further, at least one half (1/2) of this annual training shall be conducted by disabled parents.

SECTION 2. Tennessee Code Annotated, Section 36-6-106(a)(5), is amended by deleting the subdivision in its entirety and by substituting instead the following:

(5) The mental and physical health of the parents or caregivers; provided, that a parent's disability shall be considered pursuant to § 36-6-115;

SECTION 3. This act shall take effect July 1, 2013, the public welfare requiring it, and shall apply to all custody determinations made on or after such date.