

HOUSE BILL 2068

By Farmer

AN ACT to amend Tennessee Code Annotated, Title 30;  
Title 31; Title 34 and Title 35, relative to probate  
and trust matters.

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

SECTION 1. Tennessee Code Annotated, Section 30-4-102(4), is amended by deleting the subdivision in its entirety and substituting the following:

(4) "Property" means personal property, or any interest in personal property, owned by the decedent on the date of death, other than personal property held as tenants by the entirety or jointly with right of survivorship or personal property payable to a beneficiary other than the decedent's estate; and

SECTION 2. Tennessee Code Annotated, Section 31-4-105, is amended by deleting the words "after the death of the spouse-testator and" from the first sentence of the section.

SECTION 3. Tennessee Code Annotated, Section 34-5-114(6), is amended by deleting the subsection in its entirety and substituting the following:

(6) Certificates of deposit, time deposits, savings deposits, and any other accounts, issued and accepted by any state or national bank that has insured its accounts with the federal deposit insurance corporation, up to the maximum amount insured by the federal deposit insurance corporation; and

SECTION 4. Tennessee Code Annotated, Section 34-6-109, is amended by deleting the words "attorney at law" where such words first appear in the section and substituting instead the words "attorney in fact".

SECTION 5. Tennessee Code Annotated, Section 35-15-103(24)(B), is amended by deleting the language "(13)(A)" and substituting instead the language "(24)(A)".

SECTION 6. Tennessee Code Annotated, Title 35, Chapter 15, Part 5, is amended by adding the following new section:

(a) As used in this section, "proceeds" means:

(1) Property acquired by the trustee upon the sale, lease, license, exchange, or other disposition of property originally conveyed by a husband and wife as tenants by the entirety to a trustee or trustees;

(2) Property collected by the trustee on, or distributed on account of, property originally conveyed by a husband and wife as tenants by the entirety to a trustee or trustees;

(3) Rights arising out of property originally conveyed by a husband and wife as tenants by the entirety to a trustee;

(4) Claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, property originally conveyed by a husband and wife as tenants by the entirety to a trustee;

(5) Insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to, property originally conveyed by a husband and wife as tenants by the entirety to a trustee; or

(6) Property held by the trustee that is otherwise traceable to property originally conveyed by a husband and wife as tenants by the entirety to a trustee or the property proceeds described in subdivisions (a)(1)-(5).

(b) Any property of a husband and wife that was held by them as tenants by the entirety and subsequently conveyed as tenants by the entirety to the trustee or trustees of one (1) or more trusts, and the proceeds of that property, shall have the same immunity from the claims of their separate creditors as would exist if the husband and wife had continued to hold the property or its proceeds as tenants by the entirety, so long as:

(1) The husband and wife remain married;

(2) The property or its proceeds continues to be held in trust by the trustee or trustees or their successors in trust;

(3) The trust or trusts are, while both settlors are living, revocable by either settlor or both settlors, acting together;

(4) Both the husband and the wife are permissible current beneficiaries of the trust or trusts while living; and

(5) The trust instrument, deed, or other instrument of conveyance provides that this section shall apply to the property or its proceeds.

(c) After the death of the first of the husband and wife to die, all property held in trust that was immune from the claims of their separate creditors under subsection (b) immediately prior to the individual's death shall continue to have the same immunity from the claims of the decedent's separate creditors as would have existed if the husband and wife had continued while both were alive to hold the property conveyed in trust, or its proceeds, as tenants by the entirety. To the extent that the surviving spouse remains a beneficiary of the trust and has the power, exercisable in the individual capacity of the surviving spouse, to vest in the surviving spouse individually title to the property that was immune from the claims of the separate creditors of the decedent under subsection (b), the property shall be subject to the claims of the separate creditors of the surviving spouse.

(d) The immunity from the claims of separate creditors under subsections (b) and (c) may be waived as to any specific creditor or any specifically described trust property, including all separate creditors of a husband and wife or all former tenancy by the entirety property conveyed to the trustee or trustees, by the express provisions of a trust instrument, deed, or other instrument of conveyance, or by the written consent of both the husband and the wife.

(e)

(1) Except as provided in subdivision (e)(2), immunity from the claims of separate creditors under subsections (b) and (c) shall be waived if a trustee executes and delivers a financial statement for the trust that fails to disclose the requested identity of property held in trust that is immune from the claims of separate creditors.

(2) Immunity is not waived under this subsection (e) if the identity of the property that is immune from the claims of separate creditors and the fact of such immunity is otherwise reasonably disclosed by:

(A) A publicly recorded deed or other instrument of conveyance by the husband and wife to the trustee;

(B) A written memorandum by the husband and wife, or by a trustee, that is recorded among the land records or other public records in the county or other jurisdiction where the records of the trust are regularly maintained; or

(C) The terms of the trust instrument, including any schedule or exhibit attached to the trust instrument, if a copy of the trust instrument is provided with the financial statement.

(3) A waiver under this subsection (e) shall be effective only as to:

(A) The person to whom the financial statement is delivered by the trustee;

(B) The particular trust property held in trust for which the immunity from the claims of separate creditors is insufficiently disclosed on the financial statement; and

(C) The transaction for which the disclosure was sought.

(f) In any dispute relating to the immunity of trust property from the claims of a separate creditor of a husband or wife, the trustee has the burden of proving the immunity of the trust property from the creditor's claims.

(g) In the event that any transfer of real property held in tenancy by the entirety to a trustee of a trust as provided under subsection (b) is held invalid by any court of proper jurisdiction, or if the trust is revoked or dissolved by a court decree or operation of law, while both spouses are living, then immediately upon the occurrence of either event, absent a contrary provision in a court decree, all real property held in the trust automatically shall be deemed for all purposes to be held by both spouses as tenants by the entirety.

(h) No transfer by a husband and wife described in subsection (b) shall affect or change either settlor's marital property rights to the transferred property or interest therein immediately prior to such transfer in the event of dissolution of marriage of the spouses, unless both spouses otherwise expressly agree otherwise in writing. Upon entry of a decree granting divorce or annulment between the spouses, the immunity from the claims of separate creditors under subsection (b) shall terminate immediately.

(i) After a conveyance to a trustee described in subsection (b), the property transferred shall no longer be held by the husband and wife as tenants by the entirety.

(j) This section may not be construed to affect existing state law with respect to tenancies by the entirety. This section applies only to tenancy by the entirety property conveyed to a trustee or trustees on or after July 1, 2014.

SECTION 7. Tennessee Code Annotated, Section 35-15-814(b)(4), is amended by inserting the language "or to enforce the limitations of subsection (d)" between the language "(b)(2)" and the comma " , ".

SECTION 8. This act shall take effect on becoming law, the public welfare requiring it.