

SENATE BILL 542

By Gardenhire

AN ACT to amend Tennessee Code Annotated, Title 30;
Title 31; Title 32; Title 34; Title 35 and Title 67,
relative to trusts and estates.

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

SECTION 1. Tennessee Code Annotated, Section 30-4-103(2), is amended by deleting the second sentence of the subdivision and substituting instead the following:

The clerk shall deliver to the affiant small estate letters of authority with a certified copy of the affidavit onto which are affixed the clerk's stamp and seal certifying that the affidavit has been filed in the office of the probate court.

SECTION 2. Tennessee Code Annotated, Section 31-1-103(b)(2)(A), is amended by deleting the language "if the disclaimer involves an interest in a decedent's estate, with the court in which the decedent's estate proceedings are or would be pending" and substituting instead "if the disclaimer involves an interest in a decedent's probate estate assets, with the court in which the decedent's probate estate proceedings are or would be pending".

SECTION 3. Tennessee Code Annotated, Section 34-1-104(b) is amended by deleting the language "twenty thousand dollars (\$20,000)" and substituting instead "twenty-five thousand dollars (\$25,000)".

SECTION 4. Tennessee Code Annotated, Section 34-1-104(c) is amended by deleting the language "twenty thousand dollars (\$20,000)" and substituting instead "twenty-five thousand dollars (\$25,000)".

SECTION 5. Tennessee Code Annotated, Section 35-6-108(k)(1), is amended by deleting subdivisions (A), (B), and (C) and substituting instead the following:

(A) The governing instrument reflects an intention that the current beneficiary or beneficiaries are to receive an amount other than a reasonable current return from the trust;

(B) The trust is a pooled income fund described in 26 U.S.C. § 642(c)(5) or a charitable-remainder trust described in 26 U.S.C. § 664(d); and

(C) The governing instrument expressly prohibits use of this section by specific reference to the section or expressly states the trustor's intent that net income not be calculated as a unitrust amount.

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

(a)

(1) A revocable (living) trust that becomes irrevocable upon the death of its settlor may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the revocable trust, other than money, evidences of indebtedness, documents of title, securities, and property used in a trade or business.

(2) To be effective under this section as evidence of the intended disposition, the writing:

(A) Must:

(i) Be either in the handwriting of the settlor or signed by the settlor;

(ii) Be dated; and

(iii) Describe the items and the beneficiaries with reasonable certainty;

(B) May be prepared before or after the execution of the revocable trust;

(C) May be altered by the settlor after its preparation, provided that the settlor signs and dates the alteration; and

(D) May be a writing that has no significance apart from its effect upon the dispositions made by the revocable trust.

(3) If more than one (1) otherwise effective writings exist or a single writing contains properly signed and dated alterations, the provisions of the most recent writing or alteration revoke any inconsistent provisions of all prior writings.

(b) A trustee is not liable for any distribution of tangible personal property to the apparent beneficiary under the settlor's revocable trust without actual knowledge of the written statement or list, as described in subsection (a), and the trustee has no duty to recover property distributed without knowledge of the written statement or list.

SECTION 7. Tennessee Code Annotated, Section 35-15-707, is amended by adding the following as a new subsection:

Prior to delivering the trust property within the trustee's possession to the cotrustee, successor trustee, or other person entitled to receive the property, a trustee who has resigned or been removed shall have the right and authority to petition the court for a release and discharge from all liability related to such trust. All qualified beneficiaries must be made a party to any such proceeding and have the opportunity to object to such release and discharge, and the trustee must provide the court and the qualified beneficiaries with an accounting of the trustee's services and any other information requested by the court. The decision to grant a release and discharge to the trustee shall be within the discretion of the court.

SECTION 8. Tennessee Code Annotated, Section 35-15-810, is amended by adding the following as a new subsection:

For all purposes under the Tennessee Uniform Trust Code, when a trust is apportioned into separate shares for a single beneficiary or related beneficiary group, the apportioned separate share of the trust shall be treated as separate trusts even though such share may be commingled with other separate shares for investment and tax reporting purposes as provided in this section.

SECTION 9. Tennessee Code Annotated, Section 35-15-813(a)(1), is amended by adding the following sentence to the end of the subdivision:

If a trust is divided into separate shares for the sole benefit of a single beneficiary or a separate group of beneficiaries, the trustee's duty shall apply only to the beneficiary or beneficiaries of the separate share of the trust.

SECTION 10. Tennessee Code Annotated, Section 67-4-409(a)(3), is amended by adding the following as a new subdivision:

Are deeds executed by the trustee of a testamentary trust or revocable living trust to implement the distribution of the real property to a trust beneficiary or beneficiaries;

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it.