



# State of Tennessee

## PUBLIC CHAPTER NO. 695

### SENATE BILL NO. 2256

By Stevens

Substituted for: House Bill No. 2713

By Garrett, Lamberth

AN ACT to amend Tennessee Code Annotated, Title 35; Title 45; Title 61 and Title 66, relative to trusts and estates.

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

SECTION 1. Tennessee Code Annotated, Section 35-15-103, is amended by adding the following as a new subdivision:

( ) "Disinterested trustee" means a trustee that is not a related or subordinate party, as defined in 26 U.S.C. § 672(c), with respect to the grantor or a qualified beneficiary if the qualified beneficiary were the grantor for purposes of 26 U.S.C. § 672(c);

SECTION 2. Tennessee Code Annotated, Section 35-15-302(a), is amended by adding the following as a new subdivision:

(3) Notwithstanding this section to the contrary, if a disinterested trustee is serving as a trustee of a trust, then the holder of any non-general power of appointment may, regardless of whether there is a material conflict of interest between the holder of the non-general power of appointment and the persons represented with respect to the particular question or dispute, represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to such power.

SECTION 3. Tennessee Code Annotated, Section 35-15-303(a), is amended by deleting subdivisions (1), (2), (7), and (10) and substituting:

(1) A conservator of the property or guardian of the property may represent and bind the estate that the conservator or guardian controls;

(2) A conservator of the person or guardian of the person may represent and bind the ward if a conservator or guardian of the ward's estate has not been appointed;

(7) A person may represent and bind the person's minor or unborn descendant if a guardian of the property or of the person for the descendant has not been appointed. If a disagreement arises between persons seeking to represent the same minor or unborn descendant, then representation is determined as follows:

(A) If only one (1) person is a beneficiary of the trust that is the subject of the representation, then that person may represent the minor descendant or unborn descendant;

(B) If both persons are beneficiaries of the trust that is the subject of the representation, then the person who is related to the settlor, other than by reason of being married to the other person, may represent the minor descendant or unborn descendant;

(C) Subject to subdivision (a)(7)(D), if neither person is a beneficiary of the trust that is the subject of the representation, then the person who is the settlor of the trust that is the subject of the representation may represent the minor descendant or unborn descendant; or

(D) If neither person is a beneficiary or settlor of the trust that is the subject of the representation, then the person who is related to the settlor, other than by reason of being married to the other person, may represent the minor descendant or unborn descendant;

(10) If a disinterested party is serving as trustee, then a parent, grandparent, sibling, or spouse of an incapacitated adult who has assumed responsibility for the adult as determined by the disinterested trustee in the trustee's own discretion, may represent and bind the incapacitated adult if a conservator of the property or of the person has not been appointed and an agent does not have authority to act with respect to the matter in question.

SECTION 4. Tennessee Code Annotated, Section 35-15-505(e), is amended by deleting the subsection and substituting:

(e) For purposes of subdivision (a)(2) and subsection (g), a person who is the holder of a power of withdrawal is not considered a settlor of the trust by failing to exercise that power of withdrawal, letting that power of withdrawal lapse, or releasing or waiving that power of withdrawal.

SECTION 5. Tennessee Code Annotated, Section 35-15-505, is amended by deleting subsection (b).

SECTION 6. Tennessee Code Annotated, Section 35-15-716, is amended by deleting the section and substituting the following:

(a) The power to appoint a successor trustee under a trust instrument includes the power to appoint multiple successor trustees, trust protectors, and trust advisors. An exercisable power to remove and replace a trustee under a trust instrument includes the power to appoint additional trustees, trust protectors, and trust advisors to serve with an existing trustee. The power to appoint multiple successor trustees and additional trustees, trust protectors, and trust advisors under this subsection (a) includes the power to allocate various powers, including the power to direct or prevent certain actions of the trustees, exclusively to one (1) or more of the trustees, trust protectors, and trust advisors serving from time to time.

(b) All of the provisions of a trust instrument generally applicable to the trustees, including the provisions regarding trustee qualifications, resignation, removal, standard of care, indemnification, compensation, and the scope and nature of the restrictions, limitations, and immunities applicable when exercising powers and authority, apply to trustees, trust protectors, and trust advisors appointed under this section. These include provisions:

(1) Waiving certain duties when exercising certain investment powers apply equally to trustees, trust protectors, and trust advisors appointed under this section;

(2) Permitting the removal and replacement of a trustee subject to various limitations and conditions apply equally to trustees, trust protectors, and trust advisors appointed under this section; and

(3) Proscribing the settlor and beneficiaries and persons or entities related or subordinate to the settlor and any beneficiary from being eligible to serve as a trustee apply equally to proscribe all of those persons from serving as trustees, trust protectors, and trust advisors appointed under this section.

(c) Notwithstanding subsection (b), if an appointment under this section confers upon a co-trustee, trust protector, or trust advisor to the exclusion of another co-trustee, trust protector, or trust advisor, the power to take certain actions with respect to the trust, including the power to direct or prevent certain actions of a trustee, trust protector, or trust advisor, then the respective duties and liabilities of the trustee, trust protector, or trust advisor who are excluded fiduciaries as well as of the co-trustee, trust protector, or trust advisor holding the power are as set forth under §§ 35-15-1204 and 35-15-1205.

(d) Any powers granted in subsection (a) to appoint additional trustees, trust protectors, and trust advisors that are exercised in such a manner as to modify the duties of any existing trustee, trust protector, or trust advisor do not become effective until thirty (30) days after the receipt by the existing trustee or trustees, trust protector or trust protectors, and trust advisor or trust advisors of a written notice from the person authorized to appoint additional trustees detailing the changes. The thirty-day notice requirement may be waived by the existing trustee or trustees, trust protector or trust protectors, and trust advisor or trust advisors.

(e) Except as otherwise expressly provided by the terms of a trust instrument, this section is available to any trust that is administered in this state or otherwise governed by the laws of this state.

SECTION 7. Tennessee Code Annotated, Section 45-2-2002(c), is amended by adding the following as a new subdivision:

(3) For purposes of this part, if an exempt private trust company is controlled by a trust, then a change in the trusteeship of the trust, for any reason, including the addition of a new co-trustee, is not deemed a change of control that results in the termination of the private trust company's exempt status.

SECTION 8. Tennessee Code Annotated, Section 61-1-101, is amended by adding the following as new, appropriately designated subdivisions:

( ) "Family partnership" means a partnership subject to a written partnership agreement entered into, or amended with consent of all partners, on or after July 1, 2024, in which, at the relevant time, members of the same family hold, in the aggregate, at least fifty percent (50%) of the interests in the partnership's profits or capital;

( ) "Members of the same family":

(A) Means:

(i) A group of two (2) or more individuals who bear a relationship to a common relative through one (1) of the following relationships:

(a) A spouse or former spouse of the common relative;

(b) An ancestor or lineal descendant of the common relative;

(c) An ancestor of the spouse or former spouse of the common relative;

(d) A brother or sister of the common relative;

(e) A lineal descendant of any individual described in subdivision ( ) (A)(i)(d);

(f) A spouse or former spouse of any individual described in subdivisions ( ) (A)(i)(b)-(e); or

(g) A lineal descendant of any individual described in subdivision ( ) (A)(i)(f); and

(ii) For the purpose of determining "members of the same family":

(a) Relationship by adoption is treated the same as relationship by blood;

(b) An interest held by any entity that is related, within the meaning of §§ 267(b) and 707(b) of the Internal Revenue Code (26 U.S.C. §§ 267(b) and 707(b)), as amended, to an individual is deemed to be held by the individual;

(c) The common relative need not be a partner;

(d) The common relative need not be living, but, if deceased, must not be more than four (4) generations removed from the youngest generation of individuals who would, but for this subdivision ( ) (A)(ii)(d), be members of the same family; and

(e) For purposes of this subdivision ( ), "fiduciary," as used in § 267(b) of the Internal Revenue Code, is treated as a trust and an entity;

(B) Does not include:

(i) A partnership operating without a written partnership agreement; or

(ii) A partnership operating under a written partnership agreement executed prior to July 1, 2024, that is not subsequently amended with the consent of all partners;

SECTION 9. Tennessee Code Annotated, Section 61-1-603(a), is amended by designating the existing language as subdivision (a)(1) and adding the following language as subdivision (a)(2):

(2) Notwithstanding subdivision (a)(1) or part 6, part 7, or part 8 of this chapter to the contrary, with respect to a family partnership:

(A) If a partner dissociates or is dissociated as described in § 61-1-601(1), (6), (7), (8), (9), or (10), then the dissociation:

(i) Does not cause the winding up of the partnership business under part 8 of this chapter; and

(ii) Does not obligate or cause the partnership to purchase the dissociating partner's interest in the partnership as provided under § 61-1-701, unless a written partnership agreement provides otherwise; and

(B) The dissociating partner's interest in the partnership must for all purposes be treated as the interest of a transferee of the dissociating partner's share of the profits and losses of the partnership and the partner's right to receive distributions, as contemplated in §§ 61-1-502 and 61-1-503(b), and the dissociated partner is not deemed a partner for purposes of § 61-1-306 but may be deemed a transferee of the partnership interest.

SECTION 10. Tennessee Code Annotated, Section 61-1-701, is amended by adding the following sentence at the end of subsection (a):

Notwithstanding this subsection (a), with respect to a family partnership, this section does not apply to a dissociated partner's interest to the extent provided in § 61-1-603(a).

SECTION 11. Tennessee Code Annotated, Section 61-1-801, is amended by adding the following language at the end of subdivision (1):

provided, that, with respect to a family partnership, the dissociation does not cause the partnership to wind up to the extent provided in § 61-1-603(a);

SECTION 12. Tennessee Code Annotated, Section 66-1-202, is amended by adding the following as a new subsection:

(g) If a trustee of an irrevocable trust transfers to this state the principal place of administration of a trust validly created in a foreign jurisdiction, as defined in § 35-15-103, then all beneficial interests in the trust must vest or terminate and any power of appointment must be exercised within:

(1) If the trust instrument does not contain a state jurisdiction provision as defined in § 35-15-107, the least of three-hundred sixty (360) years from the date of creation of the trust, the period stated in the trust instrument, or the period governing under the law of the foreign jurisdiction in effect in the jurisdiction at the time the trust became irrevocable; or

(2) If the trust instrument does contain a state jurisdiction provision as defined in § 35-15-107, the lesser of the period stated in the trust instrument, or the period governing under the law provided in the state jurisdiction provision.

SECTION 13. The Tennessee Code Commission is requested to publish in Tennessee Code Annotated the revisions required to conform to the current state of the law official comments for chapter 15 of title 35, chapter 2 of title 45, chapter 1 of title 61, and chapter 1 of title 66 that are filed with the executive secretary of the Tennessee Code Commission by June 16, 2024, unless a later date is provided by said secretary, by duly authorized representatives of the Trust Committee of the Tennessee Bankers Association.

SECTION 14. This act takes effect July 1, 2024, the public welfare requiring it.

SENATE BILL NO. 2256

PASSED: April 1, 2024

  
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RANDY McNALLY  
SPEAKER OF THE SENATE

  
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CAMERON SEXTON, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 11<sup>th</sup> day of April 2024

  
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BILL LEE, GOVERNOR