House Children & Families Subcommittee Am. #1

FILED
Date _____
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Clerk _____
Comm. Amdt. _____

Amendment No. _____

Kelly Keisling

Signature of Sponsor

AMEND Senate Bill No. 1359 House Bill No. 917*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 49, Chapter 6, Part 30, is amended by adding the following language as a new section:

(a) As used in this section, "investigating agency" means the department of children's services or a law enforcement agency that is conducting a child abuse or child neglect investigation.

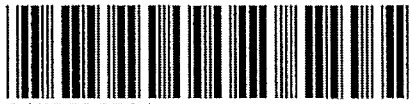
(b) A parent, guardian, or other legal custodian required to cause a child to attend school in accordance with § 49-6-3001 shall not withdraw, transfer, or in any way alter a child's current enrollment in school with intent to hinder an active child abuse or child neglect investigation.

(c) It is a defense to prosecution for an offense under this section that the parent, guardian, or legal custodian received written confirmation from the investigating agency that the investigating agency has been notified of the child's change in enrollment and has confirmed that the change in enrollment would not hinder the agency's investigation.

(d) An investigating agency conducting a child abuse or child neglect investigation that receives a written notification of intent to withdraw, transfer, or alter a child's enrollment in school must respond to the request within forty-eight (48) hours.

(e) A violation of subsection (b) is a Class A misdemeanor.

(f) A violation of subsection (b) is a Class E felony if the parent, guardian, or legal custodian takes the child out of state.



SECTION 2. This act shall take effect July 1, 2019, the public welfare requiring it.

House Children & Families Subcommittee Am. #1

Amendment No. _____

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Signature of Sponsor

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AMEND Senate Bill No. 542* **House Bill No. 675**

by deleting Sections 1, 2, and 7 and renumbering the remaining sections accordingly.

House Children & Families Subcommittee Am. #1

FILED
Date _____
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Comm. Amdt. _____

Amendment No. _____

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Signature of Sponsor

AMEND Senate Bill No. 326* **House Bill No. 674**

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 36-6-303, is amended by deleting the section and substituting instead the following:

(a) In extraordinary cases, the court is authorized to order stepparent visitation under the following circumstances:

(1) If a stepparent or former stepparent presents a petition, or a motion in a pending case to which the stepparent is a party, for visitation with the stepparent's stepchild or former stepchild to the circuit court, chancery court, general sessions court with domestic relations jurisdiction, or juvenile court of the county in which the stepchild or former stepchild resides, the court shall set the matter for hearing if such visitation is opposed by a parent or custodian or if the petitioner's visitation has been severely reduced by the parent or custodian and any of the following circumstances exist:

(A) The parent of the child to whom the petitioner was married is deceased;

(B) The child's parent and the petitioner are divorced or are in the process of seeking a divorce;

(C) The whereabouts of the child's parent to whom the petitioner is married are unknown;

(D) The court of another state has ordered the visitation between the child and the petitioner;

(E) The child and petitioner maintained a significant relationship for a substantial period of time preceding severance or severe reduction of contact and the contact was severed or severely reduced by the parent or custodian for reasons other than abuse or presence of danger of substantial mental, emotional, or physical harm to the child, and severance or severe reduction of this contact is likely to cause substantial mental, emotional, or physical harm to the child; or

(F) There has been an unreasonable denial of visitation by a parent or custodian and the denial has caused the child severe mental, emotional, or physical harm.

(2) For purposes of this section, "petitioner" includes a movant, unless the context otherwise requires.

(b)

(1) In considering a petition or motion for stepparent visitation, the court shall first determine the presence of a danger of substantial mental, emotional, or physical harm to the child if the requested visitation is not permitted by the court. Such finding of substantial harm may be based upon cessation or severe reduction of the contact between a minor child and the petitioner only if the court determines by a preponderance of the evidence that the child had a significant existing relationship with the petitioner, and that loss of or severe reduction in contact is likely to occasion severe mental, emotional, or physical harm to the child or presents the danger of other direct and substantial harm to the child.

(2) A petitioner is not required to present the testimony of an expert witness in order to establish a significant existing relationship with a child or that the loss or severe reduction of the contact is likely to cause substantial mental, emotional, or physical harm to the child.

(c) There is a rebuttable presumption that a fit parent's or custodian's actions and decisions regarding the petitioner's requested visitation are not harmful to the child's

mental, emotional, or physical health. The burden is on the petitioner to prove that a parent's or custodian's actions and decisions regarding visitation will cause substantial harm to the child's mental, emotional, or physical health.

(d) Upon an initial finding of the presence of a danger of substantial mental, emotional, or physical harm to the child, the court shall then determine whether the petitioner's visitation would be in the best interest of the child based upon the factors in subsection (e). The best interest finding will only occur in extraordinary cases. Upon a determination that visitation would be in the best interest of the child, reasonable visitation may be ordered.

(e) In determining the best interests of the child under this section, the court shall consider all pertinent matters, including, but not limited to, the following:

(1) The length and quality of the prior relationship between the child and the petitioner and the role performed by the petitioner;

(2) The existing emotional ties of the child to the petitioner;

(3) The preference of the child if the child is determined to be of sufficient maturity to express a preference;

(4) The effect of hostility between the petitioner and the parent or custodian of the child manifested before the child, and the willingness of the petitioner, except in case of abuse, to encourage a close relationship between the child and the parent or custodian of the child;

(5) The good faith of the petitioner in filing the petition or motion;

(6) If one (1) parent or custodian is deceased or missing, the fact that the petitioner requesting visitation is or was the spouse of the deceased or missing parent or custodian;

(7) Any unreasonable deprivation of the petitioner's opportunity to visit with the child by the child's parent or custodian;

(8) Whether the petitioner is seeking to maintain a significant existing relationship with the child;

(9) Whether awarding the petitioner visitation would interfere with the parent-child relationship or the custodian-child relationship;

(10) The child's interactions and interrelationships with siblings, half-siblings, other relatives, and step-relatives;

(11) Any court finding that the child's parent or custodian is unfit; and

(12) Any other factors the court deems relevant.

SECTION 2. This act shall take effect July 1, 2019, the public welfare requiring it, and shall apply to petitions and motions filed on or after that date.

House Children & Families Subcommittee Am. #1

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Amendment No. _____

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Signature of Sponsor

AMEND Senate Bill No. 699 **House Bill No. 676***

by deleting all language after the enacting clause and substituting the following:

SECTION 1. Tennessee Code Annotated, Section 31-1-103, is amended by deleting the section in its entirety.

SECTION 2. Tennessee Code Annotated, Title 31, is amended by adding the following new chapter:

31-7-101. Short Title.

This chapter shall be known and may be cited as the "Tennessee Disclaimer of Property Interests Act."

31-7-102. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made;

(2) "Disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made;

(3) "Disclaimer" means the refusal to accept an interest in or power over property;

(4) "Fiduciary" means a personal representative, trustee, agent acting under a power of attorney, or other person authorized to act as a fiduciary with respect to the property of another person;

(5) "Jointly held property" means property held in the name of two (2) or more persons under an arrangement in which all holders have concurrent

interests and under which the last surviving holder is entitled to the whole of the property;

(6) "Person" means an individual; fiduciary; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government, governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity;

(7) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. "State" includes an Indian tribe or band, or Alaskan native village, recognized by federal law or formally acknowledged by a state; and

(8) "Trust" means:

(A) An express trust, charitable or noncharitable, with additions thereto, whenever and however created; and

(B) A trust created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust.

31-7-103. Scope.

This chapter applies to disclaimers of any interest in or power over property, whenever created.

31-7-104. Disclaimer Act supplement by other law.

(a) Unless displaced by this chapter, the principles of law and equity supplement this chapter.

(b) This chapter does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than this chapter.

31-7-105. Power to disclaim; general requirements; when irrevocable.

(a) A person may disclaim, in whole or part, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power

even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim.

(b) Except to the extent a fiduciary's right to disclaim is expressly restricted or limited by state law or by the instrument creating the fiduciary relationship, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment, whether acting in a personal or representative capacity. A fiduciary may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction or limitation on the right to disclaim, or an instrument other than the instrument that created the fiduciary relationship imposed a restriction or limitation on the right to disclaim.

(c) To be effective, the disclaimer must:

(1) Be in writing;

(2) Declare the disclaimer, and the extent thereof;

(3) Describe the interest or power disclaimed; and

(4) Be signed either by:

(A) The person making the disclaimer; or

(B) Some person subscribing the name of the person making the disclaimer, in the person's presence and by such person's express direction in the presence of two (2) or more witnesses competent to witness a will under title 32.

(d) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(e) A disclaimer becomes irrevocable when it is delivered or filed pursuant to § 31-7-112 or when it becomes effective as provided in §§ 31-7-106 - 31-7-111, whichever occurs later.

(f) A disclaimer made under this chapter is not a transfer, assignment, or release.

31-7-106. Disclaimer of interests in property.

(a) As used in this section:

(1) "Future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation; and

(2) "Time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

(b) Except for a disclaimer governed by § 31-7-107 or § 31-7-108, the following rules apply to a disclaimer of an interest in property:

(1) The disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death;

(2) The disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general;

(3) If the instrument does not contain a provision described in subdivision (b)(2), the following rules apply:

(A) If the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist;

(B) If the disclaimant is an individual, except as otherwise provided in subdivisions (3)(C) and (3)(D), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution;

(C) If by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died immediately before the time of

distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution; and

(D) If the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes per stirpes to the descendants of the disclaimant who survive the time of distribution. If no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in such shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died at the time of distribution; and

(4) Upon the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment.

31-7-107. Disclaimer of rights of survivorship in jointly held property.

(a) Upon the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of:

(1) A fractional share of the property determined by dividing the number one (1) by the number of joint holders alive immediately before the death of the holder to whose death the disclaimer relates; or

(2) All of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

(b) A disclaimer under subsection (a) takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(c) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

31-7-108. Disclaimer of interest by trustee.

If a trustee disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

31-7-109. Disclaimer of power of appointment not held in a fiduciary capacity or other power not held in a fiduciary capacity.

If a holder disclaims a power of appointment not held in a fiduciary capacity or other power not held in a fiduciary capacity, the following rules apply:

(1) If the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable;

(2) If the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power; and

(3) The instrument creating the power is construed as if the power expired when the disclaimer became effective.

31-7-110. Disclaimer by appointee, object, or taker in default of exercise of power of appointment.

(a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by a permissible appointee or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

31-7-111. Disclaimer of power held in fiduciary capacity.

(a) If a fiduciary disclaims a power held in a fiduciary capacity which has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a fiduciary disclaims a power held in a fiduciary capacity which has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

31-7-112. Delivery or filing.

(a) As used in this section, "beneficiary designation" means an instrument, other than an instrument creating a trust, naming the beneficiary of:

(1) An annuity or insurance policy;

(2) An account with a designation for payment on death;

(3) A security registered in beneficiary form;

(4) A pension, profit-sharing, retirement, or other employment-related benefit plan; or

(5) Any other nonprobate transfer at death.

(b) Subject to subdivision (c)(1), delivery of a disclaimer may be affected by personal delivery, first-class mail, or any other method likely to result in its receipt.

(c) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust:

(1) A disclaimer must be delivered to the personal representative of the decedent's estate; or

(2) If no personal representative is then serving, the disclaimer must be filed with a court having jurisdiction to appoint the personal representative.

(d) In the case of an interest in a testamentary trust:

(1) A disclaimer must be delivered to the trustee then serving;

(2) If no trustee is then serving, the disclaimer must be delivered to the personal representative of the decedent's estate; or

(3) If no trustee is then serving and no personal representative is then serving, the disclaimer must be filed with a court having jurisdiction to enforce the trust.

(e) In the case of an interest in an inter vivos trust:

(1) A disclaimer must be delivered to the trustee then serving;

(2) If no trustee is then serving, the disclaimer must be filed with a court having jurisdiction to enforce the trust; or

(3) If the disclaimer is made before the time the instrument creating the trust becomes irrevocable, the disclaimer must be delivered to the settlor of a revocable trust or the transferor of the interest.

(f) In the case of an interest created by a beneficiary designation that is disclaimed before the designation becomes irrevocable, the disclaimer must be delivered to the person making the beneficiary designation.

(g) In the case of an interest created by a beneficiary designation which is disclaimed after the designation becomes irrevocable:

(1) The disclaimer of an interest in personal property must be delivered to the person obligated to distribute the interest; and

(2) The disclaimer of an interest in real property must be recorded in the office of the county register's office of the county where the real property that is the subject of the disclaimer is located.

(h) In the case of a disclaimer by a surviving holder of jointly held property, the disclaimer must be delivered to the person to whom the disclaimed interest passes.

(i) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created, the disclaimer must be delivered to:

(A) The holder of the power; and

(B) The fiduciary acting under the instrument that created the power; provided, however, if no fiduciary is then serving, the disclaimer must be filed with a court having authority to appoint the fiduciary.

(j) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment, the disclaimer must be delivered to:

(A) The holder or personal representative of the holder's estate; and

(B) The fiduciary under the instrument that created the power; provided, however, that if no fiduciary is then serving, the disclaimer must be filed with a court having authority to appoint the fiduciary.

(k) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer must be delivered as provided in subsection (c), (d), or (e), as if the power disclaimed were an interest in property.

(l) In the case of a disclaimer of a power by an agent, the disclaimer must be delivered to the principal or the principal's representative.

31-7-113. When disclaimer barred or limited.

(a) A disclaimer is barred by a written waiver of the right to disclaim.

(b) A disclaimer of an interest in property is barred if any of the following events occur before the disclaimer becomes effective:

(1) The disclaimant accepts the interest sought to be disclaimed;

(2) The disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to do so; or

(3) A judicial sale of the interest sought to be disclaimed occurs.

(c) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(d) Unless the power is exercisable in favor of the disclaimant, a disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise.

(e) A disclaimer is barred or limited if so provided by law other than this chapter.

(f) A disclaimer of a power over property which is barred by this section is ineffective. A disclaimer of an interest in property which is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this chapter had the disclaimer not been barred.

31-7-114. Tax qualified customer.

(a) Notwithstanding this chapter, if as a result of a disclaimer or transfer the disclaimed or transferred interest is treated pursuant to title 26 of the United States code, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this chapter.

(b) Tax qualified disclaimers must comply with the rules set forth in 26 U.S.C. § 2518, as now or hereafter amended, or any successor statute thereto, and the regulations promulgated thereunder, including the nine-month time limitation set forth under 26 U.S.C. § 2518(b)(2).

31-7-115. Recording of disclaimer.

If an instrument transferring an interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be so filed, recorded, or registered. Except as otherwise provided in § 31-7-112(g)(2), failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

31-7-116. Application to existing relationships.

Except as otherwise provided in § 31-7-113, an interest in or power over property existing on the effective date of this chapter as to which the time for delivering or filing a disclaimer under law superseded by this chapter has not expired may be disclaimed after the effective date of this chapter.

31-7-117. Severability clause.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to that end the provisions of this chapter are declared to be severable.

SECTION 3. Tennessee Code Annotated, Section 34-1-101(7), is amended by deleting the subdivision in its entirety and substituting the following:

"Fiduciary" means a guardian, coguardian, conservator, co-conservator, or qualified trustee as defined in § 35-16-102(12)(A);

SECTION 4. Tennessee Code Annotated, Section 34-1-104(a), is amended by deleting the language "subsections (b) and (c)" and substituting instead "subsections (b)-(d)".

SECTION 5. Tennessee Code Annotated, Section 34-1-104, is amended by adding the following language as a new subsection:

(d) In a proceeding to determine letters of guardianship or conservatorship, the court shall be vested with the authority to direct any fund or part of the fund decreed to belong to a minor or person with a disability, or in which there is recovery in favor of a minor or person with a disability, into a trust created under the Tennessee Uniform Trust Code, compiled in title 35, chapter 15 with such fiduciary appointed upon order of the court according to this chapter.

SECTION 6. Tennessee Code Annotated, Section 34-1-115(a), is amended by deleting the first sentence in the subsection and substituting the following:

A fiduciary is limited in its investments to the investments permitted by title 35, chapter 3 unless estate funds or property, or both, are transferred to a trust

created pursuant to the Tennessee Uniform Trust Code, compiled in title 35, chapter 15.

SECTION 7. Tennessee Code Annotated, Section 34-1-115, is amended by adding the following as a new subsection:

( ) If funds are transferred to a trust as referenced in § 34-1-115(a), the fiduciary and trust protector are relieved of requirements under title 34 where trust assets, investments, and their financial nature require public disclosure or filing upon public record. A certification of trust outlined under § 35-15-1013 may be filed with the clerk of the court to show such trust is created. Such trust must be governed and administered by a qualified trustee as permitted by title 35. Further, the court clerk with personal jurisdiction over the person with a disability or minor must be named trust protector of said trust with powers prescribed by §§ 35-15-1201 - 35-15-1206.

SECTION 8. Tennessee Code Annotated, Section 35-15-110, is amended by deleting the section and substituting the following:

(a) A charitable organization expressly designated to receive distributions under the terms of a charitable trust has the rights of a qualified beneficiary under this chapter, if the charitable organization, on the date the charitable organization's qualification is being determined, would be a qualified beneficiary under this chapter if such charitable organization were an individual beneficiary.

(b) The attorney general and reporter has the rights of a qualified beneficiary with respect to a charitable trust having its principal place of administration in this state if all of the interests in the trust that are for a charitable purpose, in the aggregate, on the date the attorney general and reporter's qualification is being determined, would cause an individual beneficiary to be a qualified beneficiary under this chapter if all of such interests were for the benefit of an individual beneficiary instead of for charitable purposes.

SECTION 9. Tennessee Code Annotated, Title 35, Chapter 15, Part 2, is amended by adding the following language as a new, appropriately designated section:

(a) If the trustee resigns, is removed, or upon the full or partial termination of the trust, a qualified beneficiary or successor trustee may petition the court to require the trustee transferring or distributing the trust to appear before the court for a final accounting. However, a successor trustee shall not have any obligation to petition the court to require the final accounting. The trustee transferring or distributing the trust may also petition the court to approve a final accounting relieving the trustee from liability for the period of its administration. The final accounting period shall begin from the latest of:

(1) The date of acceptance of the trusteeship by the trustee; or

(2) The end of the period since an accounting was last approved by the court.

(b) The petition shall set forth:

(1) The name and address of the trustee;

(2) The qualified beneficiaries of the trust; and

(3) The period that the accounting covers.

(c) The petition shall be served on each qualified beneficiary or their representative under part 3 of this chapter to the extent there is no material conflict of interest or on the trustee.

(d) Upon review of the trustee's final accounting and after considering any objections thereto and any evidence presented, the court may approve the final accounting or enter judgment granting appropriate relief. If no objection to the petition is filed within the time allowed by law after service, or if the parties consent, the petition may be approved without notice, hearing, or further proceedings. The final judgment of the court shall be binding on all parties.

(e) Upon approval of the petition, the trustee shall be relieved from liability for the period covered by the final accounting.

(f) Costs and expenses, including reasonable attorney's fees of the trustee, shall be taxed against the trust, unless otherwise directed by the court.

SECTION 10. Tennessee Code Annotated, Section 35-15-707, is amended by adding the following language as a new, appropriately designated subsection:

Prior to delivering the trust property within the trustee's possession to the co-trustee, successor trustee, or other person entitled to it, a trustee who has resigned or been removed shall have the right and authority to petition the court for approval of its accountings and a release and discharge from all liability related to such trust as allowed under Section 9.

SECTION 11. Tennessee Code Annotated, Section 35-15-817, is amended by deleting subsection (c) and substituting instead the following:

Notwithstanding subsections (a) and (b), any qualified beneficiary or trustee may petition the court for a final accounting covering a resigning or removed trustee's period of administration or the period since an accounting was last approved by the court as allowed under Section 9.

SECTION 12. Tennessee Code Annotated, Section 35-15-1005, is amended by adding the following language as a new subsection:

(e) Notwithstanding subsections (a)-(c), no beneficiary, trustee, trust advisor, or trust protector may commence a proceeding against a trustee or former trustee for any matter covered by a final accounting approved by the court under Section 9.

SECTION 13. Tennessee Code Annotated, Section 35-15-302, is amended by deleting the section and substituting instead the following:

(a)

(1) To the extent there is no material conflict of interest between the holder of a power of appointment and the persons represented with respect to the particular question or dispute, the holder may represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are

subject to the power. Notwithstanding this section to the contrary, the holder of any general power of appointment may, regardless of whether there is a material conflict of interest between the holder of such 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.

(2) As used in this section, "general power of appointment" means a power, regardless of when exercisable, to appoint in favor of any one (1) or more of the following: such power holder, such power holder's creditors, such power holder's estate, and the creditors of the estate of such power holder.

(b) Notwithstanding subsection (a) to the contrary, if the holder, under the terms of the governing instrument, may only exercise such general power of appointment with the consent of another person, then the written consent of such other person is required in order for the holder of the general power of appointment to represent and bind persons whose interests, as permissible appointees, takers in default, or otherwise, are subject to the power.

SECTION 14. Tennessee Code Annotated, Section 35-15-411, is amended by deleting the section and substituting instead the following:

(a) During the settlor's lifetime, a noncharitable irrevocable trust may be modified or terminated by the trustee upon consent of all qualified beneficiaries, even if the modification or termination is inconsistent with a material purpose of the trust if the settlor does not object to the proposed modification or termination. The trustee shall notify the settlor of the proposed modification or termination not less than sixty (60) days before initiating the modification or termination. The notice of modification or termination must include:

(1) An explanation of the reasons for the proposed modification or termination;

(2) The date on which the proposed modification or termination is anticipated to occur; and

(3) The date, not less than sixty (60) days after the giving of the notice, by which the settlor must notify the trustee of an objection to the proposed modification or termination.

(b) Following the settlor's death, a noncharitable irrevocable trust may be terminated upon consent of all of the qualified beneficiaries if the court concludes that continuance of the trust is not necessary to achieve any material purpose of the trust.

(c) Following the settlor's death, a noncharitable irrevocable trust may be modified upon the unanimous agreement of the trustee and all qualified beneficiaries as provided under § 35-15-111 if such modification does not violate a material purpose of the trust. Additionally, a noncharitable irrevocable trust may be modified upon consent of all of the qualified beneficiaries if the court concludes that modification is not inconsistent with a material purpose of the trust.

(d) Modification of a trust as authorized in this section is not prohibited by a spendthrift clause or by a provision in the trust instrument that prohibits amendment or revocation of the trust.

(e) An agreement to modify a trust as authorized by this section is binding on a beneficiary whose interest is represented by another person under part 3 of this chapter.

(f) Upon termination of a trust under subsection (a) or (b), the trustee shall distribute the trust property as agreed by the qualified beneficiaries.

(g) If not all of the qualified beneficiaries consent to a proposed modification or termination of the trust under subsection (a), (b), or (c), as applicable, the modification or termination may be approved by the court if the court is satisfied that:

(1) If all of the qualified beneficiaries had consented, the trust could have been modified or terminated under this section; and

(2) The interests of a qualified beneficiary who does not consent will be adequately protected.

(h) As used in this section, "noncharitable irrevocable trust" refers to a trust that is not revocable by the settlor with respect to which:

(1) No federal or state income, gift, estate, or inheritance tax charitable deduction was allowed upon transfers to the trust; and

(2) The value of all interests in the trust owned by charitable organizations does not exceed five percent (5%) of the value of the trust.

(i) Notwithstanding subsection (a), (b), or (c), the trustee may seek court approval of a modification or termination.

SECTION 15. Tennessee Code Annotated, Section 35-15-414, is amended by deleting subsection (a) and substituting instead the following:

(a) After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having either a total value less than one hundred thousand dollars ($100,000) or for which the trustee's annual fee for administering the trust, as set forth in the trustee's published fee schedule, is five percent (5%) or more of the market value of the principal assets of the trust as of the last day of the preceding trust accounting year or the present market value of the principal assets of the trust if there is no applicable trust accounting for a preceding year may terminate the trust if the trustee concludes that the value of the trust property is insufficient to justify the cost of administration.

SECTION 16. Tennessee Code Annotated, Section 35-15-505(g), is amended by deleting the language "(g)(2)(C)" wherever it appears and substituting instead the language "(g)(2)(B)".

SECTION 17. Tennessee Code Annotated, Title 35, Chapter 15, is amended by adding the following as a new part:

35-15-1301.

(a) As used in this part:

(1) "Corporate trustee" means a Tennessee trust company, a Tennessee bank with trust powers, or a national bank with trust powers and with a physical presence in Tennessee;

(2) "Department" means the department of financial institutions;

(3) "Designated ancestor" means one (1) or more ancestors of the family designated as such in the entity's governing documents. A designated ancestor may be either living or deceased. If two (2) designated ancestors are designated, they must be or have been spouses to each other, and if more than such first two (2) designated ancestors are designated, each such additional designated ancestor must be or have been a spouse of either of the first two (2) designated ancestors;

(4) "Entity" means a corporation or a limited liability company;

(5)

(A) "Family member" means a designated ancestor and:

(i) An individual within the twelfth degree of lineal kinship of a designated ancestor;

(ii) An individual within the eleventh degree of collateral kinship of a designated ancestor;

(iii) A spouse or former spouse of a designated ancestor or of an individual defined as a family member in subdivision (a)(5)(A) or (B); and

(iv) An individual who is a relative of a spouse or former spouse specified in subdivision (a)(5)(C) who is within the fifth degree of lineal or collateral kinship of the spouse or former spouse.

(B) For purposes of determining whether a person is a family member as defined in this subdivision (a)(5):

(i) A legally adopted person shall be treated as a natural child of the adoptive parents;

(ii) A stepchild shall be treated as a natural child of the individual who is or was the stepparent of that child;

(iii) A foster child, or an individual who was a minor when an adult became the individual's legal guardian, shall be treated as a natural child of the adult appointed as foster parent or guardian;

(iv) A child of a spouse or former spouse of an individual shall be treated as a natural child of that individual;

(v) Degrees are calculated by adding the number of steps from a relevant designated ancestor through each individual to the family member either directly, in case of lineal kinship, or through a designated ancestor, in the case of collateral kinship; and

(vi) A person who was a family member at the time of the special purpose entity's engagement as trust protector or trust advisor shall not cease to be a family member solely due to a death, divorce, or other similar event; and

(6) "Special purpose entity" means an entity that meets the requirements provided under subsection (b).

(b) A special purpose entity shall not be subject to chapters 1 and 2 of title 45 regulating fiduciary activity if:

(1) The entity is established for the exclusive purpose of acting as a trust protector or trust advisor as defined by § 35-15-1201, or any combination of such purposes;

(2) The entity is acting in such capacity solely under the terms of trusts in which the grantor or beneficiary is a family member, and under which a corporate trustee is serving as trustee;

(3) The entity is not engaged in trust company business as a private trust company under title 45, chapter 2, part 20, or with the general public as a public trust company;

(4) The entity does not hold itself out as being in the business of acting as a fiduciary for hire as either a public or private trust company;

(5) The entity files an annual report with the secretary of state and provides a copy to the department;

(6) The entity agrees to be subject to examination by the department at the discretion of the department solely for the purpose of determining whether the entity satisfies all requirements for qualification under this part;

(7) The entity agrees to pay the department the actual expenses of the examination at the time of the examination described in subdivision (b)(6);

(8) The entity does not use the word "trust" or "trustee" in the entity's name in any manner;

(9) The governing documents of the entity, as such governing documents may be amended from time to time, limit the entity's authorized activities to the functions permitted to a trust protector or trust advisor, or any combination of such functions, and limit the performance of those functions with respect to trusts in which a grantor or beneficiary of such trust is a family member with respect to a designated ancestor specifically named in the entity's governing documents;

(10) The entity does not act as a fiduciary other than as provided in this part;

(11) Within thirty (30) days of beginning operations as a trust protector or trust advisor, or any combination thereof, the entity notifies the department of:

(A) Its existence;

(B) Its capacity to act;

(C) The name of the corporate trustee for each separate trust for which such entity is engaged as a trust protector or trust advisor; and

(D) Pays a one-time initial fee of one thousand dollars ($1,000); and

(12) The entity submits annually to the department, no later than April 15 and no earlier than January 1:

(A) An annual fee of one thousand dollars ($1,000);

(B) An updated list of the name of the corporate trustee for each separate trust for which such entity is engaged as a trust protector or trust advisor; and

(C) A certification to the department in which:

(i) The corporate trustee certifies that it is the corporate trustee of the applicable trust; and

(ii) The entity certifies that it is acting as a trust protector or trust advisor for the applicable trust, and that such entity's actions are in compliance with this part.

SECTION 18. Tennessee Code Annotated, Section 45-10-103(8)(C), is amended by deleting the language "45-10-115" and substituting instead the language "45-10-119".

SECTION 19. The headings to sections, chapters, and parts in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee code commission is requested to include the headings in any compilation or publication containing this act.

SECTION 20. The act shall take effect upon becoming law, the public welfare requiring it.