

HOUSE BILL 912
By Fowlkes

AN ACT to amend Tennessee Code Annotated, Title 35, Chapter 50 and Section 66-1-205, relative to perpetual trusts.

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

SECTION 1. Tennessee Code Annotated, Title 35, Chapter 50, is amended by adding the following as a new section:

Section 35-50-____.

(a) This act may be cited as the Perpetual Trust Act of 1999.

(b) As used in this act, unless the context otherwise requires:

(1) "Trust" means any trust created by any written governing instrument, including, without limitation, a trust created in the exercise of a power of appointment.

(2) "Perpetual Trust" means any trust to which by the specific terms governing the trust it states that it is a perpetual trust or that states that the rule against perpetuities does not apply.

(3) "Trustee" includes the original trustee of any trust and also any succeeding or added trustee.

(4) "Governing Instrument" means a will, deed, agency agreement, or trust instrument.

(c) A "perpetual trust" may be created in the State of Tennessee by stating in the governing instrument that it is a perpetual trust or by stating that the rule of perpetuities

does not apply to the trust. Under a perpetual trust, the trustee or other person to whom the power is properly granted or delegated has the power in the trust document or any provision of law to sell, lease or mortgage property or take any action permitted for any period of time beyond the period that is required for an interest created under the governing instrument to vest, so as to be good under the rule against perpetuities.

(d) This section shall apply to all trusts created by any written instrument executed or amended on or after the effective date of this act, and to all trusts created by exercise of a power of appointment granted under instruments executed or amended on or after the effective date of this act.

SECTION 2. Tennessee Code Annotated, Section 66-1-205, is amended by adding the following as a new item (8):

(8) A trust in which the governing instrument states that it is a “perpetual trust” or that the rule against perpetuities does not apply to the trust. Under a perpetual trust, the trustee or other person to whom the power is properly granted or delegated has the power under the governing instrument, applicable statute, or common law, to sell, lease, or mortgage property or take any action permitted for any period of time beyond the period that is required for an interest created under the governing instrument to vest, so as to be good under the rule against perpetuities.

SECTION 3. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 4. This act shall take effect on July 1, 1999, the public welfare requiring it.