

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1651 – SB 1597

March 28, 2016

SUMMARY OF ORIGINAL BILL: Relative to civil proceedings under Titles 16, 20, 27-30, 32, 34, 54, 66, and 69, deletes references to “persons adjudicated incompetent” and substitutes “persons who lack capacity to understand their legal rights and liabilities”.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

SUMMARY OF AMENDMENT (014988): Deletes all language after the enacting clause and rewrites the bill.

Expressly states that a person over the age of 18 years of age is presumed competent.

Provides that a person who is under 18 years of age or proven to lack capacity at the time a cause of action accrued, or the person’s representatives or privies, may commence a lawsuit within the applicable statute of limitations after removal of such incapacity, but if the applicable statute of limitations is more than three years, then the person, or the person’s representatives or privies, must commence the action within three years of the removal of the incapacity.

Requires any person with court-ordered fiduciary responsibility for a person who lacks capacity or any individual who possesses the legal right to bring suit on behalf of a person who lacks capacity to commence the action on behalf of the person with the incapacity within the applicable statute of limitations if the fiduciary representative knows the cause of action has accrued.

Clarifies that the fiduciary representative may not rely on any tolling of the statute of limitations, unless that individual can establish by clear and convincing evidence that the individual did not know and could not reasonably have known of the accrued cause of action.

Clarifies that the bill as amended will not affect or toll any statute of repose.

Clarifies that “person who lacks capacity” means and shall be interpreted consistently with “person of unsound mind” as found in Tenn. Code Ann. § 28-1-106 prior to its amendment by Chapter 47 of the Public Acts of 2011.

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FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

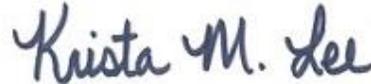
Unchanged from the original fiscal note.

Assumptions for the bill as amended:

- Tennessee Code Annotated § 28-1-106, known as the legal disability statute, tolls the statute of limitations until a person’s disability (age of minority or incompetency) is removed. Tennessee Code Annotated § 28-1-106 “specifically grants the tolling protection not only to the disabled individual but also to his or her ‘representative and privies.’” *Sullivan v. Chattanooga Med. Investors, LP*, 2006 Tenn. App. LEXIS 55 (Tenn. Ct. App. January 26, 2006) (construing Tenn. Code Ann. § 28-1-106 (2000)).
- In *Abels v. Genie Indus.*, 202 S.W.3d 99, 103 (Tenn. 2006), the Tennessee Supreme Court noted, “If the plaintiff is under some form of legally recognized disability which tolls the statute of limitations, the statute of limitations remains tolled despite the possibility that some representative could bring the action on the plaintiff’s behalf.”
- The bill as amended would require any person with a fiduciary responsibility toward a person who lacks capacity to commence a cause of action within the applicable statute of limitations. The fiduciary could not rely on the tolling of the statute of limitations unless the fiduciary can establish by clear and convincing evidence that the fiduciary did not and could not reasonably have known of the accrued cause of action.
- The bill as amended will result in more cases being dismissed because they were filed outside the statute of limitations. However, it is assumed that any decrease would not significantly impact the courts and that any time not spent on these matters will be directed toward other matters. It is assumed that the bill as amended will not significantly impact the courts.
- The bill as amended uses “lacks capacity” rather than “adjudicated incompetent”. It is assumed that this terminology will not significantly impact the number of suits filed in state and local courts.
- The legal disability statute does not currently toll any statute of repose. It is assumed that expressly codifying the current state of the law will not significantly impact the number of cases filed or dismissed in state and local courts.

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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