

SENATE BILL 534

By Stevens

AN ACT to amend Tennessee Code Annotated, Title 30
and Title 35, relative to trusts.

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

SECTION 1. Tennessee Code Annotated, Section 30-1-404(b), is amended by deleting the language "Should any person entitled to serve as trustee" and substituting "Should any person entitled to serve or currently serving as trustee", and by deleting the language ", provided that the then market value of the trust estate does not exceed one hundred thousand dollars (\$100,000)".

SECTION 2. Tennessee Code Annotated, Section 30-1-404(b)(2), is amended by deleting the subdivision and substituting:

(2) The instrument does not contain provisions for the appointment of a successor or substitute, or such provision is unable to be implemented, and the then-serving trustee does not, or an adult income beneficiary or vested remainderman do not petition for the appointment of a successor or substitute trustee within three (3) months after there is a vacancy in office or all sooner waive this right; or

SECTION 3. Tennessee Code Annotated, Section 35-15-104(a), is amended by adding the following new subdivision:

(4) Has reason to know of it because the fact is accessible by the person through electronic means, such person provided consent to receive information by electronic means in a record, as defined in § 47-10-102, and such consent has not been revoked. Such information is deemed to be accessible by the person through electronic

means if the information was available through electronic means for at least sixty (60) days and if:

- (A) The means of electronic access were provided in the record; or
- (B) It can be shown that the electronic access was actually utilized at any time.

SECTION 4. Tennessee Code Annotated, Section 35-15-109(a), is amended by deleting the subsection and substituting:

(a)

(1) Notice to a person under this chapter or the sending of a document to a person under this chapter must be accomplished in a manner reasonably suitable under the circumstances and likely to result in receipt of the notice or document.

(2) Permissible methods of notice or for sending a document include:

- (A) First-class mail;
- (B) Personal delivery;
- (C) Delivery to the person's last known place of residence or place of business;
- (D) A properly directed electronic message; or
- (E) Providing the notice or document through electronic means when such person provided consent to receive information by electronic means in a record, as defined in § 47-10-102, and such consent has not been revoked. A notice or document is deemed to be accessible by the person through electronic means if:

- (i) The means of electronic access were provided in the record; or

(ii) It can be shown that the electronic access was actually utilized at any time.

SECTION 5. Tennessee Code Annotated, Title 35, Chapter 15, Part 2, is amended by adding the following as a new section:

35-15-206.

(a) A judicial proceeding to contest whether a revocable trust or any amendment thereto, or an irrevocable trust was validly created may be commenced at any time following its execution, but shall not be commenced later than the first to occur of:

(1) Two (2) years after the date of the settlor's death;

(2) One hundred twenty (120) days after the date that the trustee notified in writing the person who is contesting the trust of the trust's existence, of the trustee's name and address, of whether such person is a beneficiary, and of the time allowed under this section for commencing a proceeding to contest the validity of the trust. However, a trustee does not have any liability under the trust instrument or to any third party or otherwise for failure to provide any such written notice. For purposes of this subdivision (a)(2), notice has been given when sent to the person to whom notice was given. Absent evidence to the contrary, it is presumed that notice was received by the person seven (7) days after it was sent to such person in accordance with § 35-15-109; or

(3) The date the person's right to contest was precluded by adjudication, consent, or other limitation.

(b) In the event a trust or trust provision is adjudged to be invalid, or if a distribution is adjudged to have been made in error, by the final judgment of a court having jurisdiction, which judgment is subject to no further appeal, any beneficiary having received an improper distribution shall, upon receipt of a copy of such order,

return the improper distribution to the court. If the beneficiary fails to return the improper distribution to the court, then the beneficiary is liable for costs, including reasonable attorney fees, incurred to recover the improper distribution from the beneficiary.

SECTION 6. Tennessee Code Annotated, Section 35-15-817(h)(1), is amended by deleting "§ 35-15-604" and substituting "§ 35-15-206".

SECTION 7. Tennessee Code Annotated, Section 35-15-301, is amended by adding the following new subsection:

(e) Notice, information, accountings, or reports given to a person who may represent and bind another person under this chapter may serve as a substitute for and have the same effect as providing notice, information, accountings, or reports directly to the person being represented.

SECTION 8. Tennessee Code Annotated, Section 35-15-402(d), is amended by deleting the word "and" immediately following the semicolon at the end of subdivision (1), by deleting the language "describing the asset with particularity in the trust instrument." from subdivision (2) and substituting "describing the asset; and", and by adding the following new subdivision:

(3) Tangible personal property other than money, an evidence of indebtedness, a document of title, a security, and property used in a trade or business may be assigned to a trust, either during the grantor's life or after the grantor's death, by delivery of a written instrument that:

- (A) Is signed by the transferor;
- (B) Identifies the tangible personal property in general terms; and
- (C) Specifically identifies the trust.

SECTION 9. Tennessee Code Annotated, Section 35-15-402, is amended by designating subsection (d) as subdivision (d)(1) and adding the following as subdivision (d)(2):

(2) Subdivision (d)(1) applies to such tangible personal property that is owned when such written instrument is signed, and to property that is subsequently acquired by the transferor.

SECTION 10. Tennessee Code Annotated, Section 35-15-604, is amended by deleting subsections (a) and (c).

SECTION 11. Tennessee Code Annotated, Section 35-15-709(b), is amended by deleting the subsection and substituting:

(b) An advance, either by the trustee, trust advisor, or trust protector or by a person named in § 35-15-701(c)(1), of money gives rise to a lien against trust property to secure reimbursement with reasonable interest. Failure to pay to or reimburse a trustee for expenses incurred pursuant to subsection (a) gives rise to a lien against all trust property for the payment of all sums due or to become due for services, expenses, advances, and the costs and expenses of enforcing such payment or reimbursement.

SECTION 12. Tennessee Code Annotated, Title 35, Chapter 15, Part 8, is amended by adding the following as a new section:

(a) Unless the terms of a trust instrument expressly provide that a settlor shall not be reimbursed by a trust for the settlor's personal income tax liability attributable to the trust, if the settlor of a trust is treated under 26 U.S.C. § 671 et seq. as the owner of all or part of the trust, then a disinterested trustee, in the disinterested trustee's sole discretion, or another trustee at the direction of a trust advisor or trust protector who would be treated as a disinterested trustee and otherwise has the power to direct discretionary distributions under the trust instrument, may reimburse the settlor for any amount of the settlor's personal federal, state, local, foreign, or other income tax liability that is attributable to the inclusion of the trust's income, capital gains, deductions, and credits in the calculation of the settlor's taxable income under principals of 26 U.S.C. §

671 et seq. The trustee may pay such amount to the settlor directly, or may pay the amount to an appropriate taxing authority on the settlor's behalf, as the trustee determines in the trustee's sole discretion. This power shall in all cases be exercised in the sole and absolute discretion of a disinterested trustee or trust advisor or protector who would be treated as a disinterested trustee, and no settlor or other person may compel the exercise of this power or enter into an express or implied agreement or understanding regarding the exercise of such power. No policy of insurance on the settlor's life held in the trust nor the cash value of any such policy, nor the proceeds of any loan secured by an interest in the policy may be used to reimburse the settlor or to pay an appropriate taxing authority on the settlor's behalf. Neither the trustee's power to make payments to, or for the benefit of, the settlor under this section, nor the trustee's decision to exercise such power in favor of the settlor, causes the settlor to be treated as a beneficiary of the trust for any purpose.

(b) This section does not apply if the application of this section would disqualify a trust for, or reduce the amount of, a marital deduction, a charitable deduction, or another specific tax benefit otherwise available to any person for state or federal income, gift, estate, or generation-skipping transfer tax purposes.

SECTION 13. Tennessee Code Annotated, Section 35-15-1005, is amended by adding the following new subsection:

(f) For purposes of this section, a person is deemed to have actual knowledge of information that is accessible by the person through electronic means if the person provided consent to receive information by electronic means in a record, as defined in § 47-10-102, and such consent has not been revoked. The information is deemed to be accessible by the person if:

(1) The means of electronic access were provided in the record; or

(2) It can be shown that the electronic access was actually utilized at any time.

SECTION 14. Tennessee Code Annotated, Section 35-15-1102, is amended by deleting the last sentence and substituting "However, the execution of an inter vivos trust instrument, a document to transfer an asset to or from a trust, or a consent, release, ratification, modification, termination, or settlement agreement pursuant to § 35-15-109, § 35-15-111, § 35-15-411, or § 35-15-412 is considered a transaction for purposes of § 47-10-103."

SECTION 15. Tennessee Code Annotated, Section 35-15-1202, is amended by deleting the section and substituting:

(a) A trust advisor or trust protector, other than a beneficiary, is a fiduciary with respect to each power granted to such trust advisor or trust protector. In exercising a power or refraining from exercising a power, a trust advisor or trust protector acting as a fiduciary shall act in good faith and in accordance with the terms and purposes of the trust and the interests of the beneficiaries.

(b) A trust advisor or trust protector is an excluded fiduciary, regardless of whether the trust advisor or trust protector is serving in a fiduciary capacity, with respect to each power granted or reserved exclusively to any one (1) or more other trustees, trust advisors, or trust protectors.

(c) Notwithstanding subsection (a), a trust advisor or trust protector may serve in a nonfiduciary capacity when specifically appointed in such capacity, and when acting in such capacity is liable only for acting in bad faith or with reckless indifference.

SECTION 16. The Tennessee Code Commission is requested to publish in Tennessee Code Annotated the revisions required to conform to the current state of the law the official comments for Chapter 1 of Title 30 and Chapter 15 of Title 35 that are filed with the executive

secretary of the Tennessee Code Commission by May 19, 2025, by duly authorized representatives of the Trust Committee of the Tennessee Bankers Association.

SECTION 17. This act takes effect July 1, 2025, the public welfare requiring it.