

PUBLIC CHAPTER NO. 638

SENATE BILL NO. 3045

By Overbey

Substituted for: House Bill No. 3862

By Coleman, Fincher, McManus, Rich, Barker

AN ACT to amend Tennessee Code Annotated, Title 32 and Title 35, relative to wills and trusts.

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

SECTION 1. Tennessee Code Annotated, Title 32, Chapter 3, is amended by adding the following language as a new section:

§ 32-3-113.

(a)(1) A will or trust of a decedent, who dies after December 31, 2009, but before January 1, 2011, that contains a formula referring to the "unified credit", "estate tax exemption", "applicable exemption amount", "applicable credit amount", "applicable exclusion amount", "generation-skipping transfer tax exemption", "GST exemption", "marital deduction", "maximum marital deduction", or "unlimited marital deduction", or that measures a share of an estate or trust based on the amount that can pass free of Federal estate taxes or the amount that can pass free of Federal generation-skipping transfer taxes, or that is otherwise based on a similar provision of Federal estate tax or generation-skipping transfer tax law, shall be deemed to refer to the Federal estate and generation-skipping transfer tax laws as they applied with respect to estates of decedents dying on December 31, 2009.

(2) Subdivision (a)(1) shall not apply with respect to:

(A) A will or trust that is executed or amended after December 31, 2009, or manifests an intent that a contrary rule shall apply if the decedent dies on a date on which there is no then-applicable Federal estate or generation-skipping transfer tax;

(B) A will, if the personal representative files with the clerk of the court in which the will is being administered, within nine (9) months of the decedent's death, a written election to opt out of the application of the general rule of construction set forth in this subsection (a), together with the written consent to such election of each

beneficiary who would have received a different amount of property under the will absent this election; or

(C) A trust, if the personal representative, within nine (9) months of the decedent's death, elects to opt out of the application of the general rule of construction set forth in this subsection (a) by delivery of written notice to the qualified beneficiaries of the trust, provided the personal representative first obtains written consent to such election from each qualified beneficiary of the trust who would have received a different amount of property under the trust absent such election.

(3) If a beneficiary from whom the personal representative of a will is required to obtain approval pursuant to subdivision (a)(2)(B) or (a)(2)(C) is a trust, then the approval shall be obtained from each qualified beneficiary of such trust.

(4) For purpose of this subsection (a), the term "qualified beneficiary" shall have the same meaning as defined in § 35-15-103.

(5) For the purpose of obtaining a beneficiary's or qualified beneficiary's consent, the provisions of § 35-15-301 through § 35-15-305 shall apply.

(6) If there is no personal representative, then the trustee of the trust may make the election for the trust in the manner permitted for a personal representative under this subsection (a).

(7) An election by the personal representative or trustee under this subsection (a) shall relate back to the date of the decedent's death for all purposes, including the application of Title 67, Chapter 8.

(8) The reference to January 1, 2011, in this subsection (a) shall, if the Federal estate and generation-skipping transfer tax becomes effective before that date, refer instead to the first date on which such tax shall become legally effective.

(b) The personal representative, or any affected beneficiary under the will or other instrument, may bring a proceeding to determine whether the decedent intended that the references under subsection (a) be construed with respect to the law as it existed after December 31, 2009. Such a proceeding must be commenced within twelve (12) months following the death of the testator or grantor, and not thereafter.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.

PASSED: March 1, 2010



RON RAMSEY
SPEAKER OF THE SENATE



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 17th day of March 2010



PHIL BREDESEN, GOVERNOR