

35-11-101. Funds placed in trust — Trustee. —

(a) All funds raised to meet the medical or related expenses of a named individual suffering from a catastrophic illness shall be placed in trust with a bank or trust company organized and doing business under the laws of any state or territory of the United States, including the District of Columbia, and authorized to do business in this state. The trustee of this trust shall be either an individual, or a bank or trust company. The funds placed with a bank or trust company shall be considered to be held in trust, and the bank or trust company considered a trustee, as those terms are used in this chapter, if the bank or trust company maintains the funds in its name as custodian for the benefit of the injured individual, and limits disbursements to those for which the funds are raised or that are permitted by §§ [35-11-103](#) and [35-11-105](#).

(b) As used in this chapter, “catastrophic illness” includes organ transplants.

[Acts 1989, ch. 386, § 1; 2007, ch. 430, § 2.]

35-11-102. Trust relationship prerequisite to accepting contributions — Beneficiaries. —

(a) Before accepting any contributions for such fundraising activities, the organizer or promoter shall enter into a trust relationship with a bank or trust company or shall establish a trust in the name of an individual, “

_____ [name of beneficiary] trust,
_____ trustee”, or words to the same effect;
provided, that if in violation of this chapter contributions are accepted prior to entering into the trust relationship, then those contributions shall be placed in trust immediately upon establishment of the required trust relationship.

(b) The beneficiary of the trust shall be the named individual for whom the funds are being raised.

(c) Contingent beneficiaries shall be selected as provided in § [35-11-103](#).

(d) On the establishment of a trust for purposes regulated by this chapter, the trustee shall file written notice of the establishment of the trust on forms prescribed by the secretary of state with the division of charitable solicitation in the office of the secretary of state. No person or entity may solicit funds on behalf of an individual with a catastrophic illness that is subject to this chapter prior to the filing of this notice with the division. For any trust regulated under this chapter on July 1, 2007, the notice shall be filed on or before August 1, 2007.

(e) A trustee, other than a bank or trust company acting as trustee, shall file an accounting of the trust with the division of charitable solicitations each year on the anniversary of the establishment of the trust.

[Acts 1989, ch. 386, § 1; 2007, ch. 430, §§ 3, 6.]

35-11-103. Transfer of remaining funds — Contingent beneficiaries. —

(a) If the expenses of the illness of the beneficiary are less than the funds held in trust or the beneficiary dies before the funds held in trust are depleted, any remaining balance shall be transferred to the contingent beneficiary.

(b) When the trust is established, the named beneficiary shall select the manner in which a contingent beneficiary shall be named. If the named beneficiary is a minor or is incompetent, the parent or guardian shall select the manner in which a contingent beneficiary shall be named. The selection of the contingent beneficiary shall be made as follows:

(1) An institution involved in research to find a cure for a catastrophic illness shall be named;

(2) An individual, if known, who suffers from a catastrophic illness and is in need of financial help for valid reimbursable medical expenses, as defined in § [35-11-105](#), shall be named; or

(3) The trustee shall be authorized to select:

(A) An institution involved in research to find a cure for a catastrophic illness; or

(B) An individual who suffers from a catastrophic illness whether the name of such individual is known at the death of the named beneficiary or comes to the attention of the trustee within one (1) year after the death of the named beneficiary. The selection of this individual by the trustee is not limited to an individual for whom a trust has been established at the bank or trust company. If an individual beneficiary cannot be named within one (1) year, the option in subdivision (b)(3)(A) shall automatically occur.

(c) Modification of the selection of the contingent beneficiary may be made before the death of the named beneficiary or before the disbursement of funds to the selected contingent beneficiary.

(d) The transfer to a contingent beneficiary shall occur as quickly as is reasonably feasible.

[Acts 1989, ch. 386, § 2.]

35-11-104. Payment and deposit of contributions. —

(a) All contributions for funds raised in accordance with this chapter made by check shall be made payable to the bank or trust company or the trust established by this chapter.

(b) All cash contributions shall be deposited as quickly as is reasonably feasible to the trust.

[Acts 1989, ch. 386, § 3; 2007, ch. 430, § 4.]

35-11-105. Disbursement of funds — Valid reimbursable medical expenses. —

(a) Funds shall be disbursed by the trustee upon the presentation of a statement for valid reimbursable medical expenses incurred by the named individual for the treatment of the catastrophic illness and for the payment of reasonable solicitation costs and expenses, when appropriate, incurred by the organizer, promoter or solicitor.

(b) “Valid reimbursable medical expenses” are those deductible medical expenses described in the Internal Revenue Code.

[Acts 1989, ch. 386, § 3; 2007, ch. 430, § 5.]

35-11-106. Powers of institutions apply to trusts. —

All powers and authority that are conferred on banks and trust companies in the administration and maintenance of trust funds in those institutions shall also apply to trusts created by this chapter.

[Acts 1989, ch. 386, § 3.]

35-11-107. Civil penalties — Appeal. —

In addition to any other penalty or remedy available under law, the secretary of state or the designee of the secretary may assess a civil penalty, pursuant to § [48-101-514](#), against any person or entity that violates a provision of this chapter. The person or entity against whom the penalty is assessed shall have appeal rights pursuant to § [48-101-514](#).

[Acts 2007, ch. 430, § 7.]

35-11-108. Right to inspect records for trusts. —

The secretary of state or the secretary's designee shall have the right to inspect the records for trusts established under this part, subject to title 45, chapter 10 and the Federal Right to Financial Privacy Act, compiled in 12 U.S.C. § 3401 et seq.

[Acts 2007, ch. 430, § 8.]

35-11-109. Subpoena power. —

The secretary of state or the secretary's designee shall have the right to issue subpoenas to obtain records relevant to a solicitation or a trust established under this part, subject to title 45, chapter 10 and the Federal Right to Financial Privacy Act, compiled in 12 U.S.C. § 3401 et seq.

[Acts 2007, ch. 430, § 9.]

35-11-110. Rules and regulations. —

The secretary of state may adopt rules and regulations to carry out this chapter in accordance with the Uniform Administrative Procedures Act, compiled in title [4](#), chapter 5.

[Acts 2007, ch. 430, § 10.]

35-11-111. Unlawful fundraising. —

(a) It is an offense for any fundraising to occur for the purposes described in §§ [35-11-101](#) and [35-11-102](#) in violation of this chapter.

(b) It is an offense for trust funds raised for the purposes described in §§ [35-11-101](#) and [35-11-102](#) to be distributed in violation of this chapter.

(c) A violation of subsection (a) or (b) is a Class B misdemeanor.

[Acts 1989, ch. 386, § 4; 2007, ch. 430, § 1.]

35-11-112. Exemptions. —

(a) (1) This chapter shall not apply to any nonprofit corporation that is:

(A) Incorporated under the laws of Tennessee;

(B) Exempt from federal income taxation under 26 U.S.C. § 501(c)(3); and

(C) Requested by a patient or a patient's family to raise funds for an organ transplant for a specific individual.

(2) Any funds remaining in a particular account shall revert to the general fund of the corporation to be used to assist other similarly situated persons.

(b) (1) This chapter shall not apply to any nonprofit corporation that:

(A) Is incorporated under the laws of Tennessee and is exempt from federal income taxation under 26 U.S.C. § 501(c)(3); and

(B) Solicits and accepts contributions of funds for the purpose of providing minors suffering from a catastrophic illness with nonmedical gifts or benefits to fulfill a desire or wish of the minor.

(2) A portion of such funds may be used to provide appropriate adult supervision if required by the gift.

(3) Any such funds raised for a particular minor and unexpended shall revert to the general fund of the corporation to be used to provide gifts or benefits for a similar minor.

[Acts 1989, ch. 386, §§ 5, 6.]