

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Bill No. 621, Page 8, Section 408.040, Line 50, by
2 inserting after all of said section and line the following:

3
4 "456.4-420. 1. If a trust instrument containing a no-contest clause is or has become
5 irrevocable, an interested person may file a petition to the court for an interlocutory determination
6 whether a particular motion, petition, or other claim for relief by the interested person would trigger
7 application of the no-contest clause or would otherwise trigger a forfeiture that is enforceable under
8 applicable law and public policy.

9 2. The petition described in subsection 1 of this section shall be verified under oath. The
10 petition may be filed by an interested person either as a separate judicial proceeding, or brought with
11 other claims for relief in a single judicial proceeding, all in the manner prescribed generally for such
12 proceedings under this chapter. If a petition is joined with other claims for relief, the court shall
13 enter its order or judgment on the petition before proceeding any further with any other claim for
14 relief joined therein. In ruling on such a petition, the court shall consider the text of the clause, the
15 context to the terms of the trust instrument as a whole, and in the context of the verified factual
16 allegations in the petition. No evidence beyond the pleadings and the trust instrument shall be taken
17 except as required to resolve an ambiguity in the no-contest clause.

18 3. An order or judgment determining a petition described in subsection 1 of this section shall
19 have the effect set forth in subsections 4 and 5 of this section, and shall be subject to appeal as with
20 other final judgments. If the order disposes of fewer than all claims for relief in a judicial
21 proceeding, that order is subject to interlocutory appeal in accordance with the applicable rules for
22 taking such an appeal. If an interlocutory appeal is taken, the court may stay the pending judicial
23 proceeding until final disposition of said appeal on such terms and conditions as the court deems
24 reasonable and proper under the circumstances. A final ruling on the applicability of a no-contest
25 clause shall not preclude any later filing and adjudication of other claims related to the trust.

26 4. An order or judgment, in whole or in part, on a petition described in subsection 1 of this
27 section shall result in the no-contest clause being enforceable to the extent of the court's ruling, and
28 shall govern application of the no-contest clause to the extent that the interested person then proceeds
29 forward with the claims described therein. In the event such an interlocutory order or judgment is
30 vacated, reversed, or otherwise modified on appeal, no interested person shall be prejudiced by any
31 reliance, through action, inaction or otherwise, on the order or judgment prior to final disposition of

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1 the appeal.

2 5. An order or judgment shall have effect only as to the specific trust terms and factual basis
3 recited in the petition. If claims are later filed that are materially different than those upon which the
4 order or judgment is based, then to the extent such new claims are raised, the party in whose favor
5 the order or judgment was entered shall have no protection from enforcement of the no-contest
6 clause otherwise afforded by the order and judgment entered under this section.

7 6. For purposes of this section, a "no-contest clause" shall mean a provision in a trust
8 instrument purporting to rescind a donative transfer to, or a fiduciary appointment of, any person, or
9 that otherwise effects a forfeiture of some or all of an interested person's beneficial interest in a trust
10 estate as a result of some action taken by the beneficiary. This definition shall not be construed in
11 any way as determining whether a no-contest clause is enforceable under applicable law and public
12 policy in a particular factual situation. As used in this section, the term "no-contest clause" shall also
13 mean an "in terrorem clause".

14 7. A no-contest clause is not enforceable against an interested person in, but not limited to,
15 the following circumstances:

16 (1) Filing a motion, petition, or other claim for relief objecting to the jurisdiction or venue of
17 the court over a proceeding concerning a trust, or over any person joined, or attempted to be joined,
18 in such a proceeding;

19 (2) Filing a motion, petition, or other claim for relief concerning an accounting, report, or
20 notice that has or should have been made by a trustee, provided the interested person otherwise has
21 standing to do so under applicable law, including, but not limited to, section 456.6-603;

22 (3) Filing a motion, petition, or other claim for relief under chapter 475 concerning the
23 appointment of a guardian or conservator for the settlor;

24 (4) Filing a motion, petition, or other claim for relief under chapter 404 concerning the
25 settlor;

26 (5) Disclosure to any person of information concerning a trust instrument or that is relevant
27 to a proceeding before the court concerning the trust instrument or property of the trust estate, unless
28 such disclosure is otherwise prohibited by law;

29 (6) Filing a motion, pleading, or other claim for relief seeking approval of a nonjudicial
30 settlement agreement concerning a trust instrument, as set forth in section 456.1-111;

31 (7) To the extent a petition under subsection 1 of this section is limited to the procedure and
32 purpose described therein.

33 8. In any proceeding brought under this section, the court may award costs, expenses, and
34 attorneys' fees to any party, as provided in section 456.10-1004.

35 474.395. 1. If a will contains a no-contest clause, an interested person may file a petition
36 with the court for a determination whether a particular motion, petition, action, or other claim for
37 relief by the interested person would trigger application of the no-contest clause or would otherwise
38 trigger a forfeiture that is enforceable under applicable law and public policy, which application
39 would be adjudicated in the manner prescribed in section 456.4-420, and subject to the provisions set
40 forth therein.

41 2. For purposes of this section, a "no-contest clause" shall mean a provision in a will

1 purporting to rescind a donative transfer to, or a fiduciary appointment of, any person who institutes
2 a proceeding challenging the validity of all or part of the will, or that otherwise effects a forfeiture of
3 some or all of an interested person's beneficial interest in the estate as a result of some action taken
4 by the beneficiary. This definition shall not be construed in any way as determining whether a
5 no-contest clause is enforceable under applicable law and public policy in a particular factual
6 situation. As used in this section, the term no-contest clause shall also mean an "in terrorem
7 clause". "; and

8
9 Further amend said bill by amending the title, enacting clause, and intersectional references
10 accordingly.