

SECOND REGULAR SESSION

HOUSE BILL NO. 1429

97TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCGAUGH.

5414L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To amend chapters 456 and 474, RSMo, by adding thereto two new sections relating to no-contest clauses.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapters 456 and 474, RSMo, are amended by adding thereto two new sections, to be known as sections 456.4-420 and 474.395, to read as follows:

- 2 **456.4-420. 1. If a trust instrument containing a no-contest clause is or has become**
3 **irrevocable, an interested person may file a petition to the court for an interlocutory**
4 **determination whether a particular motion, petition, or other claim for relief by the**
5 **interested person would trigger application of the no-contest clause or would otherwise**
6 **trigger a forfeiture that is enforceable under applicable law and public policy.**
7 **2. The petition described in subsection 1 of this section shall be verified under oath.**
8 **The petition may be filed by an interested person either as a separate judicial proceeding,**
9 **or brought with other claims for relief in a single judicial proceeding, all in the manner**
10 **prescribed generally for such proceedings under this chapter. If a petition is joined with**
11 **other claims for relief, the court shall enter its order or judgment on the petition before**
12 **proceeding any further with any other claim for relief joined therein. In ruling on such a**
13 **petition, the court shall consider the text of the clause, the context to the terms of the trust**
14 **instrument as a whole, and in the context of the verified factual allegations in the petition.**
15 **No evidence beyond the pleadings and the trust instrument shall be taken except as**
16 **required to resolve an ambiguity in the no-contest clause.**
17 **3. An order or judgment determining a petition described in subsection 1 of this**
 section shall have the effect set forth in subsections 4 and 5 of this section, and shall be

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

subject to appeal as with other final judgments. If the order disposes of fewer than all claims for relief in a judicial proceeding, that order is subject to interlocutory appeal in accordance with the applicable rules for taking such an appeal. If an interlocutory appeal is taken, the court may stay the pending judicial proceeding until final disposition of said appeal on such terms and conditions as the court deems reasonable and proper under the circumstances. A final ruling on the applicability of a no-contest clause shall not preclude any later filing and adjudication of other claims related to the trust.

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

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

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

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

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

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

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

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

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

61 (6) Filing a motion, pleading, or other claim for relief seeking approval of a
62 nonjudicial settlement agreement concerning a trust instrument, as set forth in section
63 456.1-111;

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

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

474.395. 1. If a will contains a no-contest clause, an interested person may file a
2 petition with the court for a determination whether a particular motion, petition, action,
3 or other claim for relief by the interested person would trigger application of the no-contest
4 clause or would otherwise trigger a forfeiture that is enforceable under applicable law and
5 public policy, which application would be adjudicated in the manner prescribed in section
6 456.4-420, and subject to the provisions set forth therein.

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

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