

SB 500 -- WILLS AND TRUSTS

SPONSOR: Keaveny (Kelly, 45)

COMMITTEE ACTION: Voted "Do Pass" by the Committee on Judiciary by a vote of 9 to 1.

This bill specifies that when an irrevocable trust contains a no-contest clause, as defined in the bill, an interested person may file a petition with a court for a ruling on whether a particular claim for relief would trigger application of the no-contest clause or a forfeiture. The petition for the ruling must be verified under oath and may be filed as a separate judicial proceeding or along with other claims for relief in a single proceeding. The bill specifies that when ruling on the petition, the court must consider the text of the clause, the context to the terms of the trust instrument as a whole, and in the context of the verified factual allegations in the petition. The court must not accept evidence beyond what is provided in the pleadings and the trust instrument except as required to resolve an ambiguity in the no-contest clause.

An order or judgment on the application of a no-contest clause must be subject to appeal as with other final judgments. Following the ruling, if claims are subsequently filed that are materially different than those upon which the no-contest clause order or judgment is based, the party in whose favor the order or judgment was entered must have no protection from enforcement of the no-contest clause provided under these provisions.

The bill specifies the types of circumstances in which a no-contest clause is not enforceable, such as objections to the jurisdiction or venue of the court or a claim for relief concerning an accounting, report, or notice that has or should have been made by a trustee. In these situations, the court may award attorney fees and costs.

If a will contains a no-contest clause, an interested person may file a petition with the court for determination on whether a particular motion, petition, action, or other claim for relief would trigger the application of the no-contest clause or trigger a forfeiture.

PROPONENTS: Supporters say that the bill clarifies when an individual can get a preliminary ruling on a no-contest clause in a will without triggering the penalty.

Testifying for the bill was Representative Cox for Senator Keaveny.

OPPONENTS: There was no opposition voiced to the committee.