

SB 500 -- WILLS AND TRUSTS

This bill specifies that any property or interest in property held by a husband and wife as tenants by the entirety or as joint tenants or another form of joint ownership with right of survivorship must be deemed to be held as tenants by the entirety upon its transfer to a qualified spousal trust. The bill specifies that a provision in a trust instrument requiring mediation or arbitration of disputes among specified individuals is enforceable. However, a provision in a trust agreement requiring the mediation or arbitration of disputes relating to the validity of a trust is not enforceable unless all interested persons consent to the mediation or arbitration.

Currently, a no-contest clause in a will or trust is enforceable, which generally means that a beneficiary forfeits interest in the will or trust property if he or she contests the trust or will. The bill specifies that if a trust instrument containing a no-contest clause is or has become irrevocable, 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 trigger a forfeiture that is enforceable under applicable law and public policy. 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 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 to the extent the new claims are raised.

The bill specifies the types of circumstances in which a no-contest clause is not enforceable, including filing a claim objecting to the jurisdiction or venue of the court or filing 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 to any party.

If a will contains a no-contest clause, an interested person may file a petition with the court for a determination whether a particular claim for relief would trigger application of the no-contest clause or trigger a forfeiture that is enforceable under applicable law and public policy.