

House _____ Amendment NO. _____

Offered By _____

1 AMEND House Committee Substitute for Senate Substitute for Senate Bill No. 34, Page 9, Section
2 252.069, Line 3, by inserting immediately after all of said section and line the following:

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4 "456.006. 1. Where a trust or custodial account constitutes a health savings account, as
5 defined in the Internal Revenue Code of 1986, as amended, a trust may be created by any of the
6 following:

7 (1) A transfer of money to the trustee or custodian holding such trust or custodial account;

8 (2) The documentation of the creation of such trust or custodial account in the records of the
9 trustee or custodian holding such trust or custodial account; or

10 (3) The execution of a trust or custodial agreement with respect to such trust or custodial
11 account.

12 2. In any case, a trust or custodial account shall be deemed to have been established on the
13 first day on which the individual who is the beneficiary of such trust or custodial account is an
14 eligible individual, as defined in the Internal Revenue Code of 1986, as amended, in that calendar
15 year in which such trust or custodial account is created in accordance with this section.

16 456.4-414. 1. After notice to the qualified beneficiaries, the trustee of a trust consisting of
17 trust property having a total value less than [one hundred thousand] two hundred fifty thousand
18 dollars may terminate the trust if the trustee concludes that the value of the trust property is
19 insufficient to justify the cost of administration.

20 2. The court may modify or terminate a trust or remove the trustee and appoint a different
21 trustee if it determines that the value of the trust property is insufficient to justify the cost of
22 administration.

23 3. Upon termination of a trust under this section, the trustee shall distribute the trust
24 property in a manner consistent with the purposes of the trust.

25 4. This section does not apply to an easement for conservation or preservation.

26 456.4-420. 1. If a trust instrument containing a no-contest clause is or has become
27 irrevocable, an interested person may file a petition to the court for an interlocutory determination
28 whether a particular motion, petition, or other claim for relief by the interested person would trigger
29 application of the no-contest clause or would otherwise trigger a forfeiture that is enforceable under
30 applicable law and public policy.

31 2. The petition described in subsection 1 of this section shall be verified under oath. The
32 petition may be filed by an interested person either as a separate judicial proceeding, or brought
33 with other claims for relief in a single judicial proceeding, all in the manner prescribed generally for
34 such proceedings under this chapter. If a petition is joined with other claims for relief, the court
35 shall enter its order or judgment on the petition before proceeding any further with any other claim
36 for relief joined therein. In ruling on such a petition, the court shall consider the text of the clause,

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1 the context to the terms of the trust instrument as a whole, and in the context of the verified factual
2 allegations in the petition. No evidence beyond the pleadings and the trust instrument shall be taken
3 except as required to resolve an ambiguity in the no-contest clause.

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

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

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

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

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

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

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

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

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

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

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

48 (7) Filing a motion, pleading, or other claim for relief concerning a breach of trust by a

1 trustee including, but not limited to, a claim under section 456.10-1001. For purposes of this
2 subdivision, "breach of trust" means a trustee's violation of the terms of a trust instrument, a
3 violation of the trustee's general fiduciary obligations, or a trustee's violation of a duty that equity
4 imposes on a trustee;

5 (8) Filing a motion, pleading, or other claim for relief concerning removal of a trustee
6 including, but not limited to, a claim for removal under section 456.7-706;

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

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

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12 Further amend said bill by amending the title, enacting clause, and intersectional references
13 accordingly.