

HOUSE BILL NO. 2863

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE PARKER.

6516H.011

JOSEPH ENGLER, Chief Clerk

AN ACT

To repeal section 456.4-420, RSMo, and to enact in lieu thereof one new section relating to claims for relief.

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

Section A. Section 456.4-420, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 456.4-420, to read as follows:

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

2. The petition described in subsection 1 of this section shall be verified under oath. The petition ~~[may]~~ **shall** be filed by an interested person either as a separate judicial proceeding, or brought with other claims for relief in a single judicial proceeding, all in the manner prescribed generally for such proceedings under this chapter. If a petition is joined with other claims for relief, the **interested person shall seek and the** court shall enter its order or judgment on the petition before proceeding any further with ~~[any other claim for relief joined therein]~~ **the matter**. In ruling on such a petition, the court shall 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. No evidence beyond the pleadings and the trust instrument shall be taken except as required to resolve an ambiguity in the no-contest clause.

3. An order or judgment ~~[determining a petition]~~ **making a determination** described in subsection 1 of this section shall have the effect set forth in subsections 4 and 5 of this

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.

18 section, and shall be subject to appeal as with other final judgments. ~~[If the]~~ **An order that**
19 **disposes of fewer than all claims for relief in a [judicial] proceeding**~~[, that order]~~ **under this**
20 **section** is subject to ~~[interlocutory]~~ **immediate** appeal in accordance with the applicable rules
21 for taking such an appeal. If an ~~[interlocutory]~~ appeal is taken, the court may stay the pending
22 judicial proceeding until final disposition of said appeal on such terms and conditions as the
23 court deems reasonable and proper under the circumstances. A final ruling on the
24 applicability of a no-contest clause shall not preclude any later filing and adjudication of other
25 claims related to the trust.

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

33 5. An order or judgment shall have effect ~~[only]~~ as to the **claims**, specific trust terms,
34 and factual basis recited in the petition **and shall relate to all actions taken by all parties in**
35 **the lawsuit under the rules of civil procedure and this chapter**. If claims are later filed or
36 **amended** that are materially different than those upon which the order or judgment is based,
37 then to the extent such new claims are raised, the party in whose favor the order or judgment
38 was entered shall have no protection from enforcement of the no-contest clause otherwise
39 afforded by the order and judgment entered under this section.

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

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

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

52 (2) Filing a motion, petition, or other claim for relief concerning an accounting,
53 report, or notice that has or should have been made by a trustee, provided the interested

54 person otherwise has standing to do so under applicable law, including, but not limited to,
55 section 456.6-603;

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

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

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

63 (6) Filing a motion, pleading, or other claim for relief seeking approval of a
64 nonjudicial settlement agreement concerning a trust instrument, as set forth in section 456.1-
65 111;

66 (7) ~~[To the extent]~~ **Filing** a petition under ~~[subsection 1 of]~~ this section, **provided the**
67 **petition** is limited to the ~~[procedure and purpose]~~ **procedures and purposes** described
68 ~~[therein]~~ **herein;**

69 (8) **Participation in a lawsuit consistent with the rules of civil procedure by any**
70 **interested person if the interested person has not asserted any affirmative claim for**
71 **relief;**

72 (9) **As to the interested persons to an action to the extent the court determines**
73 **that the application of the no-contest clause is void or unenforceable as against the**
74 **public policy of this state;**

75 (10) **The scope of the no-contest clause does not include the factual allegations of**
76 **the petition as the factual allegations apply to the specific terms of the trust; and**

77 (11) **A no-contest clause that seeks to cause a forfeiture against a beneficiary**
78 **challenging a trust term that would otherwise be prohibited under subsection 2 of**
79 **section 456.1-105 or section 456.10-1008.**

80 **8. An interested person who does not seek a determination in accordance with**
81 **the provisions of this section is not thereafter prohibited in any manner from**
82 **challenging the validity or application of a no-contest clause in a proceeding without the**
83 **protections afforded by this section.**

84 ~~[8-]~~ **9.** In any proceeding brought under this section, the court may award costs,
85 expenses, and attorneys' fees to any party, as provided in section 456.10-1004.

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