

FIRST REGULAR SESSION

SENATE BILL NO. 356

99TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROMINE.

Read 1st time January 25, 2017, and ordered printed.

ADRIANE D. CROUSE, Secretary.

1588S.01I

AN ACT

To repeal section 456.4-420, RSMo, and to enact in lieu thereof one new section relating to no-contest clauses in trust instruments.

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Section A. Section 456.4-420, RSMo, is repealed and one new section
2 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
2 has become irrevocable, an interested person may file a petition to the court for
3 an interlocutory determination whether a particular motion, petition, or other
4 claim for relief by the interested person would trigger application of the
5 no-contest clause or would otherwise trigger a forfeiture that is enforceable under
6 applicable law and public policy.

7 2. The petition described in subsection 1 of this section shall be verified
8 under oath. The petition may be filed by an interested person either as a
9 separate judicial proceeding, or brought with other claims for relief in a single
10 judicial proceeding, all in the manner prescribed generally for such proceedings
11 under this chapter. If a petition is joined with other claims for relief, the court
12 shall enter its order or judgment on the petition before proceeding any further
13 with any other claim for relief joined therein. In ruling on such a petition, the
14 court shall consider the text of the clause, the context to the terms of the trust
15 instrument as a whole, and in the context of the verified factual allegations in the
16 petition. No evidence beyond the pleadings and the trust instrument shall be
17 taken except as required to resolve an ambiguity in the no-contest clause.

18 3. An order or judgment determining a petition described in subsection
19 1 of this section shall have the effect set forth in subsections 4 and 5 of this
20 section, and shall be subject to appeal as with other final judgments. If the order

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

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

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

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

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

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

56 (2) Filing a motion, petition, or other claim for relief concerning an

57 accounting, report, or notice that has or should have been made by a trustee,
58 provided the interested person otherwise has standing to do so under applicable
59 law, including, but not limited to, section 456.6-603;

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

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

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

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

71 (7) **Filing a motion, pleading, or other claim for relief concerning**
72 **a breach of trust by a trustee including, but not limited to, a claim**
73 **under section 456.10-1001. For purposes of this subdivision, "breach of**
74 **trust" means a trustee's violation of the terms of a trust instrument, a**
75 **violation of the trustee's general fiduciary obligations, or a trustee's**
76 **violation of a duty that equity imposes on a trustee;**

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

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

82 8. In any proceeding brought under this section, the court may award
83 costs, expenses, and attorneys' fees to any party, as provided in section
84 456.10-1004.

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