

SECOND REGULAR SESSION

HOUSE BILL NO. 1650

99TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE CORNEJO.

5028H.02I

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 456.4-414 and 456.4-420, RSMo, and to enact in lieu thereof three new sections relating to trust instruments.

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

Section A. Sections 456.4-414 and 456.4-420, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 456.006, 456.4-414, and 456.4-420, to read as follows:

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

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

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

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

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

456.4-414. 1. After notice to the qualified beneficiaries, the trustee of a trust consisting of trust property having a total value less than [~~one hundred thousand~~] **two hundred fifty**

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.

3 **thousand** dollars may terminate the trust if the trustee concludes that the value of the trust
4 property is insufficient to justify the cost of administration.

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

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

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

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

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

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

24 4. An order or judgment, in whole or in part, on a petition described in subsection 1 of
25 this section shall result in the no-contest clause being enforceable to the extent of the court's
26 ruling, and shall govern application of the no-contest clause to the extent that the interested
27 person then proceeds forward with the claims described therein. In the event such an
28 interlocutory order or judgment is vacated, reversed, or otherwise modified on appeal, no

29 interested person shall be prejudiced by any reliance, through action, inaction, or otherwise, on
30 the order or judgment prior to final disposition of the appeal.

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

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

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

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

48 (2) Filing a motion, petition, or other claim for relief concerning an accounting, report,
49 or notice that has or should have been made by a trustee, provided the interested person
50 otherwise has standing to do so under applicable law, including, but not limited to, section
51 456.6-603;

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

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

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

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

61 (7) **Filing a motion, pleading, or other claim for relief concerning a breach of trust**
62 **by a trustee including, but not limited to, a claim under section 456.10-1001. For purposes**
63 **of this subdivision, "breach of trust" means a trustee's violation of the terms of a trust**

64 **instrument, a violation of the trustee's general fiduciary obligations, or a trustee's violation**
65 **of a duty that equity imposes on a trustee;**

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

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

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

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