

HB 1429 -- NO-CONTEST CLAUSES

SPONSOR: McGaugh

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. This bill specifies that when an irrevocable trust contains a no-contest clause, 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 a ruling may be filed as a separate judicial proceeding or along with other claims for relief in a single judicial proceeding. The bill specifies that when ruling on the petition, the court must consider the text of the clause and the context to the terms of the trust as a whole and in the context of the verified factual allegations in the petition. Any evidence beyond the pleadings and the trust must not be taken except as required to resolve an ambiguity in the no-contest clause.

An order or judgment on a petition regarding a no-contest clause must be subject to appeal as with other final judgments. Following the ruling, if a claim is subsequently filed in which differing facts are asserted from those that the no-contest clause judgment was based, the party in whose favor the order or judgment was entered has no protection from enforcement of the no-contest clause.

The bill also specifies the types of circumstances in which a no-contest clause is enforceable such as objections to venue or a claim for relief concerning an accounting error. In these situations, the court may award attorney fees and costs to any party.

The bill also specifies that if a will contains a no-contest clause, an interested person may file a petition with the court for a determination on whether a court action would trigger the application of the no-contest clause or trigger a forfeiture that is enforceable under applicable law and public policy.