

IN THE SENATE

SENATE BILL NO. 1047

BY JUDICIARY AND RULES COMMITTEE

AN ACT

1 RELATING TO THE UNIFORM PROBATE CODE; AMENDING CHAPTER 1, TITLE 15, IDAHO
2 CODE, BY THE ADDITION OF A NEW SECTION 15-1-502, IDAHO CODE, TO PRO-
3 VIDE FOR ENFORCEMENT OF NO-CONTEST CLAUSES, EXCEPTIONS AND CONDITIONAL
4 PROVISIONS; AND REPEALING SECTION 15-3-905, IDAHO CODE, RELATING TO
5 PENALTY CLAUSE FOR CONTEST.
6

7 Be It Enacted by the Legislature of the State of Idaho:

8 SECTION 1. That Chapter 1, Title 15, Idaho Code, be, and the same is
9 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
10 ignated as Section 15-1-502, Idaho Code, and to read as follows:

11 15-1-502. ENFORCEMENT OF NO-CONTEST CLAUSE — EXCEPTIONS AND CONDI-
12 TIONAL PROVISIONS. (1) Except as otherwise provided in subsections (2), (3)
13 and (4) of this section, a no-contest clause in a trust or will must be en-
14 forced by the court. The exceptions and limitations provided for in subsec-
15 tions (2), (3) and (4) of this section are exclusive, and the court shall have
16 no authority to impose other exceptions or limitations.

17 (2) A no-contest clause must be construed to carry out the settlor's or
18 testator's intent. Except to the extent the no-contest clause in the trust
19 or will is vague or ambiguous, extrinsic evidence is not admissible to estab-
20 lish the settlor's or testator's intent concerning the no-contest clause.
21 The provisions of this subsection do not prohibit such evidence from being
22 admitted for any other purpose authorized by law.

23 (a) The beneficiary's conduct that triggers the reduction or elimina-
24 tion of the beneficiary's share shall include only that conduct spec-
25 ified in the trust instrument or will, but the settlor or testator may
26 include conduct that is not restricted to formal court action and may
27 include conduct unrelated to the trust or will itself, such as the com-
28 mencement of civil litigation against the settlor's probate estate or
29 family members, interference with the administration of another trust
30 or a business entity, efforts to frustrate the intent of the settlor's
31 or testator's power of attorney, or the designation of beneficiaries
32 related to a nonprobate transfer outside the trust or will.

33 (b) Except in violation of public policy, the settlor or testator has
34 the right:

- 35 (i) To make a distribution or allocation conditional upon a bene-
36 ficiary's action or failure to take specific action or upon the oc-
37 currence or nonoccurrence of one (1) or more specified events; and
38 (ii) To specify conditions or actions that would disqualify a per-
39 son from serving, or that would trigger the removal of a person
40 serving, in any capacity under the trust instrument, including as
41 a trustee, trust protector or trust adviser, or under the will, in-
42 cluding as a personal representative or guardian.

1 (3) Notwithstanding any provision to the contrary in the trust or will,
2 a beneficiary's share must not be reduced or eliminated if the beneficiary
3 seeks only to:

4 (a) Enforce the terms of the trust or will, any document referenced in
5 or affected by the trust or will or any other trust or will-related in-
6 strument;

7 (b) Enforce the beneficiary's legal rights related to the trust or will
8 or any trust or will-related instrument; or

9 (c) Obtain a court ruling with respect to the construction or legal ef-
10 fect of the trust or will or any other trust or will-related instrument.

11 (4) Notwithstanding any provision to the contrary in the trust or will,
12 a beneficiary's share must not be reduced or eliminated under a no-contest
13 clause in a trust because the beneficiary institutes legal action seeking to
14 invalidate a trust or will or any other trust or will-related instrument if
15 the legal action is instituted in good faith and based on probable cause that
16 would have led a reasonable person, properly informed and advised, to con-
17 clude that the trust or will or other trust or will-related instrument is in-
18 valid.

19 (5) As used in this section:

20 (a) "No-contest clause" means one (1) or more provisions in a trust or
21 will that express a directive to reduce or eliminate the share allocated
22 to a beneficiary or to reduce or eliminate the distributions to be made
23 to a beneficiary if the beneficiary takes action to frustrate or defeat
24 the settlor's or testator's intent as expressed in the trust or will or
25 in a trust or will-related instrument.

26 (b) "Testator" means the person making a will, whether male or female.

27 (c) "Trust" means the original trust instrument and each amendment made
28 pursuant to the terms of the original trust instrument.

29 (d) "Trust-related instrument" means any document purporting to trans-
30 fer property to or from the trust or any document made pursuant to the
31 terms of the trust purporting to direct the distribution of trust assets
32 or to affect the management of trust assets, including, without limita-
33 tion, documents that attempt to exercise a power of appointment.

34 (e) "Will" means the original will instrument and each codicil thereto.

35 (f) "Will-related instrument" means any document made pursuant to the
36 terms of the will purporting to direct the distribution of assets oth-
37 erwise directed by the will, including, without limitation, documents
38 that attempt to exercise a power of appointment.

39 (6) This section shall apply to existing trusts or wills, whenever cre-
40 ated, and is intended to clarify existing law.

41 SECTION 2. That Section [15-3-905](#), Idaho Code, be, and the same is hereby
42 repealed.