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SENATE BILL NO. 760

Offered January 9, 2013

Prefiled December 17, 2012

A *BILL to amend the Code of Virginia by adding in Article 2 of Chapter 1 of Title 64.2 a section numbered 64.2-109, relating to pre-death proof of wills and trusts.*

Patron—Edwards

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Article 2 of Chapter 1 of Title 64.2 a section numbered 64.2-109 as follows:

§ 64.2-109. Establishment of will or trust before death.

A. A testator during his lifetime may petition the court to determine that his will is a valid will, subject only to subsequent revocation or modification. The settlor of a revocable trust during his lifetime may petition the court to determine that the trust is valid and enforceable under its terms, subject only to subsequent revocation or modification. A petition under this section may not be brought by the agent for the testator or settlor under a power of attorney.

B. The failure of a testator or settlor to file a petition under this section shall not be construed as evidence or as an admission that the will or revocable trust is not valid or that the testator or settlor lacked capacity or freedom from undue influence.

C. A petition under this section shall be filed in the circuit court where the testator or settlor is domiciled if the testator or settlor is domiciled in the Commonwealth, or in the circuit court where any of the testator's or the trust's real property is located if the testator or settlor is not domiciled in the Commonwealth. For the purposes of this section, domicile shall be determined at the time of the filing of the petition.

D. The court may declare the will or revocable trust to be valid and make other findings of fact and conclusions of law that are appropriate under the circumstances. After the testator's death, unless and to the extent that the will is modified or revoked after the court's declaration, the will shall have full legal effect as the testator's will and shall be admitted to probate upon request. After the settlor's death, unless and to the extent that the revocable trust is modified or revoked after the court's declaration, the revocable trust shall have full legal effect as a valid trust. A testator may modify or revoke a will and a settlor may modify or revoke a revocable trust in the manner provided by law whether or not there is a declaration of the validity of the will or revocable trust under this section.

E. Notice shall be given pursuant to Chapter 8 (§ 8.01-285 et seq.) of Title 8.01 and the Rules of the Supreme Court of Virginia to: (i) the petitioner's spouse and children; (ii) all beneficiaries named in the will or revocable trust that is the subject of the petition; (iii) the petitioner's intestate heirs determined as if the petitioner had died intestate on the date of filing the petition; and (iv) all other interested persons. The court may authorize the hearing to proceed without notice to any person who would not be substantially affected by the proceedings. For the purposes of this section, the beneficiaries and intestate heirs shall be deemed possessed of inchoate property rights. Unless otherwise represented, a minor, incapacitated, or unborn individual, or a person whose identity or location is unknown and not reasonably ascertainable, may, with the approval of the court, be represented and bound by another having a substantially identical interest with respect to the will or revocable trust that is the subject of a petition under this section, but only to the extent there is no conflict of interest between the representative and the person represented.

F. The burden of proof and presumptions in a petition brought under this section shall be as in a suit brought after the death of the petition.

G. A court may consolidate cases where there are petitions to determine the validity of a will and a revocable trust executed on the same date. The right to a jury shall be as in a civil action brought after the death of the testator or settlor.

H. The court's findings of facts in a suit under this section shall not be admissible as evidence in any proceeding other than a proceeding to determine the validity of the will or revocable trust that is the subject of the petition under this section.

I. A suit under this section does not result in continuing supervision by the court.

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