

Delegate Jon S Cardin HB 1345 Testimony 2Apr26.pdf

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House Bill 1345

Maryland Trust Act – In Terrorem Clause – Void Support

HB1345 addresses in terrorem clauses, commonly referred to as “no-contest clauses,” in the context of estate planning and trusts. These clauses are designed to discourage beneficiaries from challenging a will or trust by threatening to disinherit them if they contest the document.

Maryland law already recognizes that these clauses can chill legitimate legal challenges. That is why §4-413 of the Estates and Trusts Article provides that if probable cause exists for instituting proceedings, a provision in a will that penalizes a person for contesting the will or bringing related proceedings is void.

However, that same protection does not currently exist for trusts under the Maryland Trust Act, HB1345 addresses that inconsistency.

The issue was brought to our attention by a Maryland resident, Michael Harris, whose family has been involved in more than four years of litigation surrounding a family trust. For Mr. Harris, the trust was significantly amended just three months after the death of his wife’s grandfather, dramatically shifting control and benefits to a single relative who had not even been included in the original trust created when both grandparents were alive and actively engaged in their estate planning.

Despite serious questions surrounding the validity of the amended trust, the case was ultimately dismissed because the challenge was not filed within the one-year period specified under the Maryland Trust Act. The court interpreted that provision as a statute of repose, meaning the case could not proceed regardless of the underlying circumstances. As a result, the courts never reached the merits of the dispute.

This real-world example highlights two issues that HB1345 seeks to clarify:

First, it addresses the inconsistent treatment of no-contest clauses. Maryland policy has long recognized that individuals with probable cause should not be penalized for seeking judicial review of estate planning documents. HB1345 simply extends that same protection to trusts, ensuring that wills and trusts are treated consistently under Maryland law.

Second, the bill reflects broader concerns about ensuring that Maryland's trust laws do not unintentionally prevent legitimate challenges where fraud, duress, or undue influence may have occurred.

Maryland courts already retain authority to review trust administration, intervene where necessary, and prevent abuse of discretion by trustees. HB1345 reinforces those principles by ensuring that individuals with legitimate concerns are not discouraged from seeking review - simply because a trust contains a no-contest clause.

For those reasons, I respectfully ask for a favorable report on House Bill 1345.