

BILL ANALYSIS

Senate Research Center
81R17816 MTB-F

H.B. 1969
By: Hartnett (Watson)
Jurisprudence
5/11/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Estate planners commonly put forfeiture clauses in wills and trusts, providing that any beneficiary who challenges the validity of the will or trust will forfeit all benefits under the will or trust. Texas courts have upheld these clauses, but have created an exception to the forfeiture if the contestant demonstrates that the contest of the document was brought in good faith and with probable cause. The courts have basically held that Texas law should balance the wishes of the person who makes the will or creates the trust with the public policy of allowing Texans access to the courts for meritorious causes of action brought in good faith.

Several states have enacted statutes that prohibit the application of penalty clauses in wills and trusts when a challenge to a will or trust is found to be made in good faith and with probable cause. This bill provides that penalty clauses in wills and trusts are ineffective in cases where a challenge to a will or trust is brought in good faith and with just cause.

H.B. 1969 relates to the enforcement of a penalty clause for contesting a will or trust.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter IV, Texas Probate Code, by adding Section 64, as follows:

Sec. 64. PENALTY CLAUSE FOR WILL CONTEST. Provides that a provision in a will that purports to penalize an interested person for contesting the will is unenforceable if probable cause exists for commencing the contest and the contest was brought in good faith.

SECTION 2. Amends Subchapter B, Chapter 112, Property Code, by adding Section 112.038, as follows:

Sec. 112.038. PENALTY CLAUSE FOR TRUST CONTEST. Provides that a provision in a trust that purports to penalize an interested person for contesting the trust is unenforceable if probable cause exists for commencing the contest and the contest was brought in good faith.

SECTION 3. (a) Makes application of Section 64, Texas Probate Code, as added by this Act, prospective.

(b) Provides that Section 112.038, Property Code, as added by this Act, applies to a trust existing on or created on or after the effective date of this Act.

(c) Provides that the intent of this Act is to clarify existing law.

SECTION 4. Effective date: upon passage or September 1, 2009.