

## **BILL ANALYSIS**

Senate Research Center  
81R33365 MTB-F

C.S.H.B. 1969  
By: Hartnett (Watson)  
Jurisprudence  
5/14/2009  
Committee Report (Substituted)

### **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.

C.S.H.B. 1969 relates to the enforcement of certain provisions in a will or trust that forfeit or void devises or interests.

### **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. FORFEITURE CLAUSE Provides that a provision in a will that would cause a forfeiture of a devise or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is unenforceable if probable cause exists for bringing the action and the action was brought in good faith.

SECTION 2. Amends Section 111.0035(b), Property Code, to provide that the terms of a trust prevail over any provision of this subtitle, except that the terms of a trust are prohibited from limiting the applicability of Section 112.038.

SECTION 3. Amends Subchapter B, Chapter 112, Property Code, by adding Section 112.038, as follows:

Sec. 112.038. FORFEITURE CLAUSE. Provides that a provision in a trust that would cause a forfeiture of or void an interest for bringing any court action, including contesting a trust, is unenforceable if probable cause exists for bringing the action and the action was brought in good faith.

SECTION 4. (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, and Section 111.0035(b), Property Code, as amended by this Act, apply 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 5. Effective date: upon passage or September 1, 2009.