

By: Hartnett

H.B. No. 1969

A BILL TO BE ENTITLED

AN ACT

relating to the enforcement of a penalty clause for contesting a will or trust.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter IV, Texas Probate Code, is amended by adding Section 64 to read as follows:

Sec. 64. PENALTY CLAUSE FOR WILL CONTEST. A provision in a will that purports to penalize an interested person for contesting the will is unenforceable if:

(1) probable cause exists for commencing the contest;

and

(2) the contest was brought in good faith.

SECTION 2. Subchapter B, Chapter 112, Property Code, is amended by adding Section 112.038 to read as follows:

Sec. 112.038. PENALTY CLAUSE FOR TRUST CONTEST. A provision in a trust that purports to penalize an interested person for contesting the trust is unenforceable if:

(1) probable cause exists for commencing the contest;

and

(2) the contest was brought in good faith.

SECTION 3. (a) Section 64, Texas Probate Code, as added by this Act, applies only to the estate of a decedent who dies on or after the effective date of this Act. The estate of a decedent who dies before the effective date of this Act is governed by the law in

1 effect on the date of the decedent's death, and the former law is
2 continued in effect for that purpose.

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

6 (c) The intent of this Act is to clarify existing law.

7 SECTION 4. This Act takes effect immediately if it receives
8 a vote of two-thirds of all the members elected to each house, as
9 provided by Section 39, Article III, Texas Constitution. If this
10 Act does not receive the vote necessary for immediate effect, this
11 Act takes effect September 1, 2009.