

AN ACT

relating to the enforcement of certain provisions in a will or trust that forfeit or void devises or interests.

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. FORFEITURE CLAUSE. 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:

- (1) probable cause exists for bringing the action; and
- (2) the action was brought and maintained in good faith.

SECTION 2. Section 111.0035(b), Property Code, is amended to read as follows:

(b) The terms of a trust prevail over any provision of this subtitle, except that the terms of a trust may not limit:

- (1) the requirements imposed under Section 112.031;
- (2) the applicability of Section 114.007 to an exculpation term of a trust;
- (3) the periods of limitation for commencing a judicial proceeding regarding a trust;
- (4) a trustee's duty:
 - (A) with regard to an irrevocable trust, to

respond to a demand for accounting made under Section 113.151 if the demand is from a beneficiary who, at the time of the demand:

(i) is entitled or permitted to receive distributions from the trust; or

(ii) would receive a distribution from the trust if the trust terminated at the time of the demand; and

(B) to act in good faith and in accordance with the purposes of the trust; ~~or~~

(5) the power of a court, in the interest of justice, to take action or exercise jurisdiction, including the power to:

(A) modify or terminate a trust or take other action under Section 112.054;

(B) remove a trustee under Section 113.082;

(C) exercise jurisdiction under Section 115.001;

(D) require, dispense with, modify, or terminate a trustee's bond; or

(E) adjust or deny a trustee's compensation if the trustee commits a breach of trust; or

(6) the applicability of Section 112.038.

SECTION 3. Subchapter B, Chapter 112, Property Code, is amended by adding Section 112.038 to read as follows:

Sec. 112.038. FORFEITURE CLAUSE. 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:

(1) probable cause exists for bringing the action; and

(2) the action was brought and maintained in good

1 faith.

2 SECTION 4. (a) Section 64, Texas Probate Code, as added by
3 this Act, applies only to the estate of a decedent who dies on or
4 after the effective date of this Act. The estate of a decedent who
5 dies before the effective date of this Act is governed by the law in
6 effect on the date of the decedent's death, and the former law is
7 continued in effect for that purpose.

8 (b) Section 112.038, Property Code, as added by this Act,
9 and Section 111.0035(b), Property Code, as amended by this Act,
10 apply to a trust existing on or created on or after the effective
11 date of this Act.

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

13 SECTION 5. This Act takes effect immediately if it receives
14 a vote of two-thirds of all the members elected to each house, as
15 provided by Section 39, Article III, Texas Constitution. If this
16 Act does not receive the vote necessary for immediate effect, this
17 Act takes effect September 1, 2009.

H.B. No. 1969

President of the Senate

Speaker of the House

I certify that H.B. No. 1969 was passed by the House on April 28, 2009, by the following vote: Yeas 149, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1969 on May 25, 2009, by the following vote: Yeas 142, Nays 0, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1969 was passed by the Senate, with amendments, on May 21, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor