

1-1 By: Hartnett (Senate Sponsor - Watson) H.B. No. 1969
1-2 (In the Senate - Received from the House April 29, 2009;
1-3 May 4, 2009, read first time and referred to Committee on
1-4 Jurisprudence; May 18, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 5, Nays 0;
1-6 May 18, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1969 By: Watson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the enforcement of certain provisions in a will or trust
1-11 that forfeit or void devises or interests.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter IV, Texas Probate Code, is amended by
1-14 adding Section 64 to read as follows:

1-15 Sec. 64. FORFEITURE CLAUSE. A provision in a will that
1-16 would cause a forfeiture of a devise or void a devise or provision
1-17 in favor of a person for bringing any court action, including
1-18 contesting a will, is unenforceable if:

1-19 (1) probable cause exists for bringing the action; and

1-20 (2) the action was brought in good faith.

1-21 SECTION 2. Section 111.0035(b), Property Code, is amended
1-22 to read as follows:

1-23 (b) The terms of a trust prevail over any provision of this
1-24 subtitle, except that the terms of a trust may not limit:

1-25 (1) the requirements imposed under Section 112.031;

1-26 (2) the applicability of Section 114.007 to an
1-27 exculpation term of a trust;

1-28 (3) the periods of limitation for commencing a
1-29 judicial proceeding regarding a trust;

1-30 (4) a trustee's duty:

1-31 (A) with regard to an irrevocable trust, to
1-32 respond to a demand for accounting made under Section 113.151 if the
1-33 demand is from a beneficiary who, at the time of the demand:

1-34 (i) is entitled or permitted to receive
1-35 distributions from the trust; or

1-36 (ii) would receive a distribution from the
1-37 trust if the trust terminated at the time of the demand; and

1-38 (B) to act in good faith and in accordance with
1-39 the purposes of the trust; ~~or~~

1-40 (5) the power of a court, in the interest of justice,
1-41 to take action or exercise jurisdiction, including the power to:

1-42 (A) modify or terminate a trust or take other
1-43 action under Section 112.054;

1-44 (B) remove a trustee under Section 113.082;

1-45 (C) exercise jurisdiction under Section 115.001;

1-46 (D) require, dispense with, modify, or terminate
1-47 a trustee's bond; or

1-48 (E) adjust or deny a trustee's compensation if
1-49 the trustee commits a breach of trust; or

1-50 (6) the applicability of Section 112.038.

1-51 SECTION 3. Subchapter B, Chapter 112, Property Code, is
1-52 amended by adding Section 112.038 to read as follows:

1-53 Sec. 112.038. FORFEITURE CLAUSE. A provision in a trust
1-54 that would cause a forfeiture of or void an interest for bringing
1-55 any court action, including contesting a trust, is unenforceable
1-56 if:

1-57 (1) probable cause exists for bringing the action; and

1-58 (2) the action was brought in good faith.

1-59 SECTION 4. (a) Section 64, Texas Probate Code, as added by
1-60 this Act, applies only to the estate of a decedent who dies on or
1-61 after the effective date of this Act. The estate of a decedent who
1-62 dies before the effective date of this Act is governed by the law in
1-63 effect on the date of the decedent's death, and the former law is

2-1 continued in effect for that purpose.

2-2 (b) Section 112.038, Property Code, as added by this Act,
2-3 and Section 111.0035(b), Property Code, as amended by this Act,
2-4 apply to a trust existing on or created on or after the effective
2-5 date of this Act.

2-6 (c) The intent of this Act is to clarify existing law.

2-7 SECTION 5. This Act takes effect immediately if it receives
2-8 a vote of two-thirds of all the members elected to each house, as
2-9 provided by Section 39, Article III, Texas Constitution. If this
2-10 Act does not receive the vote necessary for immediate effect, this
2-11 Act takes effect September 1, 2009.

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