

**House Bill 1969**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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.

**No equivalent provision.**

SENATE VERSION

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

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- (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; [Ø]
- (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 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. 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 faith.

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

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

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

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SECTION 4. (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 effect on the date of the decedent's death, and the former law is continued in effect for that purpose.

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

SECTION 5. Same as House version.

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