

BILL ANALYSIS

C.S.H.B. 2380
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A probate lawyer will sometimes include a forfeiture clause in a will or trust which provides that, if a person entitled to recover under a will or trust challenges the will or trust, that person forfeits the right to recover under the will or receive benefits from the trust. Forfeiture clauses can discourage frivolous challenges to wills and trusts but, if strictly enforced, can also discourage potentially legitimate claims, such as challenges to deathbed wills or trusts that give most of a person's assets to a caregiver. Interested parties note that, in the past, some Texas courts enforced forfeiture clauses without exception, while other courts enforced forfeiture clauses unless a challenge to a will or trust was made in good faith and with probable cause. The parties also contend that the courts recognizing an exception required the person challenging the will or trust to plead and prove that the challenge was brought in good faith and with probable cause.

Recently enacted legislation addressed the inconsistency in the treatment of forfeiture clauses by establishing that a forfeiture clause is invalid if the challenge to a will or trust is brought in good faith and with just cause. There is concern, however, that current law places the burden of proof on the person seeking to enforce the forfeiture clause. C.S.H.B. 2380 seeks to make the law consistent with the standard used by courts recognizing the exception prior to the enactment of such legislation.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2380 amends the Texas Probate Code in provisions repealed effective January 1, 2014, to establish that a forfeiture clause in a will is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that just cause existed for bringing the action and the action was brought and maintained in good faith, rather than establishing that a forfeiture clause is unenforceable if such conditions exist. The bill repeals this provision effective January 1, 2014.

C.S.H.B. 2380 amends the Estates Code, as effective January 1, 2014, to incorporate in that code the bill's provisions amending the Texas Probate Code. The bill makes this provision effective January 1, 2014.

C.S.H.B. 2380 amends the Property Code to establish that a forfeiture clause in a trust is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that just cause existed for bringing the action and the action was brought and maintained in good faith, rather than establishing that a forfeiture clause is unenforceable if such conditions exist.

Effective January 1, 2014, C.S.H.B. 2380 repeals Section 64, Texas Probate Code, as amended by the bill's provisions.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2380 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 64, Probate Code, is amended to read as follows:

Sec. 64. FORFEITURE CLAUSE. A provision in a will that would cause a forfeiture of or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is ~~un~~enforceable ~~if~~ unless the court finds that the person challenging the forfeiture clause establishes by a preponderance of the evidence that:

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

SECTION 3. Section 254.005, Estates Code, is amended to read as follows:

Sec. 254.005. FORFEITURE CLAUSE. A provision in a will that would cause a forfeiture of or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is ~~un~~enforceable ~~if~~ unless the court finds that the person challenging the forfeiture clause establishes by a preponderance of the evidence that:

- (1) just cause existed for bringing the

HOUSE COMMITTEE SUBSTITUTE

ARTICLE 1. CHANGES TO TEXAS PROBATE CODE

SECTION 1.01. Section 64, Texas Probate Code, is amended to read as follows:

Sec. 64. FORFEITURE CLAUSE. A provision in a will that would cause a forfeiture of or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that ~~unenforceable if~~:

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

ARTICLE 2. CHANGES TO ESTATES CODE

SECTION 2.01. Section 254.005, Estates Code, as effective January 1, 2014, is amended to read as follows:

Sec. 254.005. FORFEITURE CLAUSE. A provision in a will that would cause a forfeiture of or void a devise or provision in favor of a person for bringing any court action, including contesting a will, is enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that ~~unenforceable if~~:

- (1) just cause existed for bringing the

action; and
(2) the action was brought and maintained in good faith.

No equivalent provision.

No equivalent provision.

SECTION 2. Section 112.038, Property Code, is amended 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 ~~un~~enforceable ~~if~~ unless the court finds that the person challenging the forfeiture clause establishes by a preponderance of the evidence that:

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

SECTION 4. This Act applies to all actions commenced on or after the effective date of this Act. An action commenced prior to the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 5. This Act takes effect September 1, 2013.

action; and
(2) the action was brought and maintained in good faith.

SECTION 2.02. Section 64, Texas Probate Code, as amended by Article 1 of this Act, is repealed.

SECTION 2.03. This article takes effect January 1, 2014.

ARTICLE 3. CHANGES TO PROPERTY CODE

SECTION 3.01. Section 112.038, Property Code, is amended 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 enforceable unless in a court action determining whether the forfeiture clause should be enforced, the person who brought the action contrary to the forfeiture clause establishes by a preponderance of the evidence that ~~unenforceable if~~:

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

SECTION 3.02. Section 112.038, Property Code, as amended by this Act, applies to a court action commenced on or after the effective date of this Act. An action commenced before the effective date of this Act is governed by the law applicable to the action immediately before the effective date of this Act, and that law is continued in effect for that purpose.

ARTICLE 4. EFFECTIVE DATE

SECTION 4.01. Except as otherwise provided by this Act, this Act takes effect September 1, 2013.