

BILL ANALYSIS

Senate Research Center

H.B. 2380
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

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.

H.B. 2380 amends current law relating to a provision in a will or trust that would cause a forfeiture of or void an interest for bringing any court action, including contesting the will or trust.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

ARTICLE 1. CHANGES TO TEXAS PROBATE CODE

SECTION 1.01. Amends Section 64, Texas Probate Code, as follows:

Sec. 64. FORFEITURE CLAUSE. Provides that 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 certain conditions were met, rather than providing that 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 unenforceable if certain conditions were met.

ARTICLE 2. CHANGES TO ESTATES CODE

SECTION 2.01. Amends Section 254.005, Estates Code, as effective January 1, 2014, as follows:

Sec. 254.005. FORFEITURE CLAUSE. Provides that 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 certain conditions were met, rather than providing that 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 unenforceable if certain conditions were met.

SECTION 2.02. Repealer: Section 64 (Forfeiture Clause), Texas Probate Code, as amended by Article 1 of this Act.

SECTION 2.03. Effective date, this article: January 1, 2014.

ARTICLE 3. CHANGES TO PROPERTY CODE

SECTION 3.01. Amends Section 112.038, Property Code, as follows:

Sec. 112.038. FORFEITURE CLAUSE. Provides that 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 certain conditions were met, rather than providing that 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 certain conditions were met.

SECTION 3.02. Provides that 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. Provides that 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. Effective date, except as otherwise provided by this Act: September 1, 2013.