

the trust; and

(3) if the settlor or settlors are living at the time the trust becomes irrevocable, the settlor or settlors of the trust or, if the settlor or settlors are not living at the time the trust becomes irrevocable, the individuals who would inherit the settlor or settlors' property under the law of this state had the settlor or settlors died intestate at the time the trust becomes irrevocable. Added by Acts 2005, 79th Leg., Ch. 148 (H.B. 1190), Sec. 6, eff. January 1, 2006.

Sec. 112.038. FORFEITURE CLAUSE. (a) 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:

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

(b) This section is not intended to and does not repeal any law, recognizing that forfeiture clauses generally will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties, seeking redress against a fiduciary for a breach of the fiduciary's duties, or seeking a judicial construction of a will or trust.

Added by Acts 2009, 81st Leg., R.S., Ch. 414 (H.B. 1969), Sec. 3, eff. June 19, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 657 (S.B. 1197), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 351 (H.B. 2380), Sec. 3.01, eff. September 1, 2013.

Acts 2017, 85th Leg., R.S., Ch. 62 (S.B. 617), Sec. 3, eff. September 1, 2017.

SUBCHAPTER C. REVOCATION, MODIFICATION, AND TERMINATION OF TRUSTS