

BILL ANALYSIS

Senate Research Center
79R14215 CLG-F

H.B. 2011
By: Nixon (Wentworth)
State Affairs
5/18/2005
Engrossed

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

H.B. 2011 prohibits the solicitation of another person by a non-lawyer regarding the formation or documentation of a living trust. The provisions of the bill provide for a civil penalty of up to \$25,000 per violation if fraud is shown. The provisions will be enforced by the unauthorized practice of law committee and the Office of the Attorney General.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4, Business & Commerce Code, by adding Chapter 48, as follows:

CHAPTER 48. CREATION OF LIVING TRUSTS

Sec. 48.001. DEFINITIONS. Defines "irrevocable living trust," "living trust," "revocable living trust," "settlor," and "unauthorized practice of law committee."

Sec. 48.002. PROHIBITED ACT. (a) Prohibits a person, other than a person described in Subsection (b), from engaging in certain acts.

(b) Provides that this section does not apply to a person currently licensed to practice law in this state.

Sec. 48.003. LIABILITY OF OTHER PERSONS; PROPORTIONATE RESPONSIBILITY INAPPLICABLE. (a) Provides that a person who is a partner, officer, director, associate, or employee of another person alleged to have engaged in activity in violation of Section 48.002 is jointly and severally liable with the other person under this chapter if the person has willfully participated or materially aided in the activity.

(b) Provides that Chapter 33, Civil Practices and Remedies Code, does not apply to an action brought under this section.

Sec. 48.004. EXPENSES. Provides that this chapter does not prevent an attorney from making a payment for secretarial, paralegal, or other ordinary and reasonable expenses incurred in connection with the representation of clients.

Sec. 48.005. PRIVATE ACTION. Authorizes a person injured by a violation of this chapter, including the personal representative or beneficiary of a decedent's estate, to bring an action to recover actual damages, court costs, and reasonable attorney's fees.

Sec. 48.006. UNAUTHORIZED PRACTICE OF LAW. Provides that a violation of this chapter constitutes the unauthorized practice of law.

Sec. 48.007. CIVIL PENALTY. (a) Provides that a person who violates this chapter with intent to defraud or deceive another with respect to a living trust is liable to the state for a civil penalty in an amount not to exceed \$25,000 for each violation.

(b) Authorizes the unauthorized practice of law committee to bring suit to recover the civil penalty imposed under Subsection (a).

(c) Authorizes the unauthorized practice of law committee to recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs and reasonable attorney's fees.

Sec. 48.008. INJUNCTIVE RELIEF. (a) Authorizes the unauthorized practice of law committee, in addition to any other action, proceeding, or remedy authorized by law, as authorized by Section 81.04, Government Code, to institute an action to enjoin a violation of this chapter.

(b) Authorizes the unauthorized practice of law committee to recover reasonable expenses incurred in obtaining injunctive relief under this section, including reasonable attorney's fees and court costs.

Sec. 48.009. WAIVER OF RIGHT OR REMEDY VOID. Provides that a provision of a contract or other agreement or instrument that purports to be a waiver by a person of any right or remedy provided by this chapter is contrary to public policy and void.

Sec. 48.010. CUMULATIVE REMEDIES. Provides that this chapter is not exclusive and does not limit or restrict the definition of the practice of law in Chapter 81, Government Code. Provides that this chapter does not limit or restrict any remedy provided in Chapter 81, Government Code, or any other law designed to eliminate the unauthorized practice of law by individuals or other persons.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2005.