

## **BILL ANALYSIS**

C.S.H.B. 2011  
By: Nixon  
Judiciary  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

For years the elderly have been preyed upon by "trust mill" organizations which use falsehoods and implied authority and knowledge to sell them unnecessary trusts and annuities. This bill provides for and will ensure that the Attorney General is encouraged to shut down these operations so that the elderly will be protected from the advances of these organizations.

### **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**

The bill provides for a new chapter to be added to the Business and Commerce Code to be called Creation of Living Trusts, which would prohibit the solicitation of another by a non-lawyer with regard to the formation or documentation of a living trust. The chapter provides for a civil penalty of up to \$25,000 per violation if fraud is shown, which may be enforced by the unauthorized practice of law committee in addition to the attorney general. A private action for damages is also made available. The uplc and successful private plaintiffs may recover attorneys' fees.

### **EFFECTIVE DATE**

September 1, 2005

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

The substitute removes the criminal provisions of the original bill in light of the fact that no other area of non-litigation office practice has previously been made subject to criminal sanction for unauthorized practice of law. The substitute provides for a civil penalty of up to \$25,000 per violation for non-lawyers who solicit others to enter into living trusts with intent to defraud. The original bill prohibited the sale of trusts and documents and the receipt of compensation in connection with such sale and provided for strict liability. The substitute removes foreign lawyers from the exception to application of the statute, requiring that any person engaging in the conduct be currently licensed to practice law in Texas.