

By: Nixon

H.B. No. 2011

Substitute the following for H.B. No. 2011:

By: Hartnett

C.S.H.B. No. 2011

A BILL TO BE ENTITLED

AN ACT

relating to the creation of a living trust; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 4, Business & Commerce Code, is amended by adding Chapter 48 to read as follows:

CHAPTER 48. CREATION OF LIVING TRUSTS

Sec. 48.001. DEFINITIONS. In this chapter:

(1) "Irrevocable living trust" means a living trust that cannot be terminated by the settlor after the trust's creation.

(2) "Living trust" means a trust that is created and takes effect during the settlor's lifetime.

(3) "Revocable living trust" means a living trust in which the settlor reserves the right to terminate the trust and recover the trust property and any undistributed income.

(4) "Settlor" means the person who creates the trust.

(5) "Unauthorized practice of law committee" means the unauthorized practice of law committee established under Section 81.103, Government Code.

Sec. 48.002. PROHIBITED ACT. (a) A person, other than a person described in Subsection (b), may not:

(1) engage in any act, practice, or course of business involving the solicitation of another person:

1 (A) to become the settlor of a living trust; or

2 (B) to purchase a document or other instrument  
3 creating or purporting to create a revocable or irrevocable living  
4 trust; or

5 (2) induce, solicit, or employ or contract with  
6 another to engage in conduct described by Subdivision (1).

7 (b) This section does not apply to a person currently  
8 licensed to practice law in this state.

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

16 (b) Chapter 33, Civil Practice and Remedies Code, does not  
17 apply to an action brought under this section.

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

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

26 Sec. 48.006. UNAUTHORIZED PRACTICE OF LAW. A violation of  
27 this chapter constitutes the unauthorized practice of law.

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

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

7       (c) The unauthorized practice of law committee may recover  
8 reasonable expenses incurred in obtaining a civil penalty under  
9 this section, including court costs and reasonable attorney's fees.

10       Sec. 48.008. INJUNCTIVE RELIEF. (a) In addition to any  
11 other action, proceeding, or remedy authorized by law, the  
12 unauthorized practice of law committee, as authorized by Section  
13 81.104, Government Code, may institute an action to enjoin a  
14 violation of this chapter.

15       (b) The unauthorized practice of law committee is entitled  
16 to recover reasonable expenses incurred in obtaining injunctive  
17 relief under this section, including reasonable attorney's fees and  
18 court costs.

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

23       Sec. 48.010. CUMULATIVE REMEDIES. This chapter is not  
24 exclusive and does not limit or restrict the definition of the  
25 practice of law in Chapter 81, Government Code. This chapter does  
26 not limit or restrict any remedy provided in Chapter 81, Government  
27 Code, or any other law designed to eliminate the unauthorized

1 practice of law by individuals or other persons.

2           SECTION 2. This Act applies only to conduct that occurs on  
3 or after the effective date of this Act. Conduct that occurs before  
4 the effective date of this Act is governed by the law in effect at  
5 the time the conduct occurred, and that law is continued in effect  
6 for that purpose.

7           SECTION 3. This Act takes effect September 1, 2005.