

By: Nixon

H.B. No. 2011

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the creation of a living trust; providing a penalty.

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

4 SECTION 1. Section 38.123, Penal Code, is amended by
5 amending Subsection (a) and adding Subsection (e) to read as
6 follows:

7 (a) A person commits an offense if, with intent to obtain an
8 economic benefit for himself or herself, the person:

9 (1) contracts with any person to represent that person
10 with regard to personal causes of action for property damages or
11 personal injury;

12 (2) advises any person as to the person's rights and
13 the advisability of making claims for personal injuries or property
14 damages;

15 (3) advises any person as to whether or not to accept
16 an offered sum of money in settlement of claims for personal
17 injuries or property damages;

18 (4) enters into any contract with another person to
19 represent that person in personal injury or property damage matters
20 on a contingent fee basis with an attempted assignment of a portion
21 of the person's cause of action; ~~[or]~~

22 (5) enters into any contract with a third person which
23 purports to grant the exclusive right to select and retain legal
24 counsel to represent the individual in any legal proceeding; or

1 (6) sells or offers to sell to another person in this
2 state a document or other instrument creating or purporting to
3 create a revocable or irrevocable living trust.

4 (e) In this section:

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

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

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

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

14 SECTION 2. Title 4, Business & Commerce Code, is amended by
15 adding Chapter 48 to read as follows:

16 CHAPTER 48. CREATION OF LIVING TRUSTS

17 Sec. 48.001. DEFINITIONS. In this chapter:

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

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

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

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

27 Sec. 48.002. PROHIBITED ACT. (a) A person, other than a

1 person described in Subsection (b), may not:

2 (1) sell or offer to sell a document or other
3 instrument creating or purporting to create a revocable or
4 irrevocable living trust;

5 (2) induce, solicit, or employ or contract with
6 another to sell or offer to sell a document or other instrument
7 described by Subdivision (1); or

8 (3) otherwise receive, either directly or indirectly,
9 any compensation or other thing of value for any part of the
10 preparation of a document or other instrument described by
11 Subdivision (1).

12 (b) This section does not apply to a person currently
13 licensed to practice law in this state, another state, or a foreign
14 country and in good standing with the State Bar of Texas and the
15 state bar or licensing authority of any and all other states and
16 foreign countries where licensed.

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

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

26 Sec. 48.004. EXPENSES. This chapter does not prevent an
27 attorney from paying secretarial, paralegal, or other ordinary and

1 reasonable expenses necessarily and actually incurred by the
2 attorney for the preparation of a document or other instrument
3 described by Section 48.002(a).

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

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

10 Sec. 48.007. CIVIL PENALTY. (a) A person who violates this
11 chapter is liable to the state for a civil penalty in an amount not
12 to exceed \$20,000 for each violation.

13 (b) The unauthorized practice of law committee of the State
14 Bar of Texas may bring suit to recover the civil penalty imposed
15 under Subsection (a).

16 (c) The unauthorized practice of law committee of the State
17 Bar of Texas may recover reasonable expenses incurred in obtaining
18 a civil penalty under this section, including court costs and
19 reasonable attorney's fees.

20 Sec. 48.008. INJUNCTIVE RELIEF. (a) In addition to any
21 other action, proceeding, or remedy authorized by law, the
22 unauthorized practice of law committee of the State Bar of Texas, as
23 authorized by Section 81.104, Government Code, may institute an
24 action to enjoin a violation of this chapter.

25 (b) The committee is entitled to recover reasonable
26 expenses incurred in obtaining injunctive relief under this
27 section, including reasonable attorney's fees and court costs.

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

5 Sec. 48.010. CUMULATIVE REMEDIES. This chapter is not
6 exclusive and does not limit or restrict the definition of the
7 practice of law in Chapter 81, Government Code. This chapter does
8 not limit or restrict any remedy provided in Chapter 81, Government
9 Code, or any other law designed to eliminate the unauthorized
10 practice of law by individuals or other persons.

11 SECTION 3. (a) This Act applies only to conduct that occurs
12 on or after the effective date of this Act. Conduct that occurs
13 before the effective date of this Act is governed by the law in
14 effect at the time the conduct occurred, and that law is continued
15 in effect for that purpose.

16 (b) For purposes of this section, conduct constituting an
17 offense under the penal law of this state occurred before the
18 effective date of this Act if any element of the offense occurred
19 before that date.

20 SECTION 4. This Act takes effect September 1, 2005.