

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 342  
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Business & Commerce  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Investigations involving charitable trusts and nonprofit corporations with charitable purposes are conducted by the Charitable Trust Section of the Office of the Attorney General (OAG). The Charitable Trust Section is a section of OAG's Consumer Protection and Public Health Division.

Under current law, OAG's Charitable Trust Section has the authority to intervene on behalf of the general public in any proceeding involving a charitable trust. This is because, as a matter of public policy, money given to a charity is viewed as belonging to the public. Many of the cases are initiated against trusts and nonprofit corporations because of questions involving mismanagement, including misapplication of funds. Therefore, the goal of the Charitable Trust Section is to protect the public's money from mismanagement and fraud.

The Antitrust and Deceptive Trade Practices Act (DPTA) statutes give OAG specific authority to take statements under oath during investigations. The OAG's Antitrust and Consumer Protection Divisions frequently use this authority while conducting investigations. There is no such authority for investigations of OAG's Charitable Trust Section for cases involving the review of trusts in the absence of misrepresentations under the DTPA. Statements taken under oath, including depositions, are an important tool used to discover information necessary to an investigation, and what is learned often assists OAG staff in determining whether to file suit. Without the authority to take such statements, OAG is often required to initiate a lawsuit prematurely in order to take a deposition.

S.B. 342 would authorize OAG to take statements under oath during investigations involving the review of trusts and nonprofit corporations involving charitable trusts. This change in law would save time and resources, and will assist OAG staff in determining whether to file suit.

As proposed, S.B. 342 amends current law relating to the power of the Office of the Attorney General to make certain examinations and inquiries.

### **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 Section 12.151, Business Organizations Code, as follows:

Sec. 12.151. New heading: **AUTHORITY OF ATTORNEY GENERAL TO EXAMINE BOOKS AND RECORDS AND MAKE CERTAIN INQUIRIES.** (a) Creates this subsection from existing text. Provides that a record of the entity includes minutes and a book, account, letter, memorandum, e-mail, document, check, voucher, telegram, constitution, and bylaw.

(b) Authorizes the attorney general, if the attorney general has reason to believe that a filing entity or foreign filing entity is engaging in, has engaged in, or is about to engage in an unlawful act or practice or that it would be in the public

interest to conduct an investigation to ascertain whether the entity is engaging in, has engaged in, or is about to engage in an unlawful act or practice, to:

(1) require an employee or agent of the entity to file on forms prescribed by the attorney general a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the alleged unlawful act or practice and other data and information the attorney general considers necessary; and

(2) examine under oath any person in connection with the alleged unlawful act or practice.

SECTION 2. Amends the heading to Chapter 123, Property Code, to read as follows:

CHAPTER 123. ATTORNEY GENERAL PARTICIPATION IN PROCEEDINGS  
INVOLVING AND INVESTIGATION OF MATTERS CONCERNING  
CHARITABLE TRUSTS

SECTION 3. Amends Chapter 123, Property Code, by adding Section 123.007, as follows:

Sec. 123.007. **AUTHORITY OF ATTORNEY GENERAL TO EXAMINE BOOKS AND RECORDS AND MAKE CERTAIN INQUIRIES.** (a) Requires each charitable entity or fiduciary or managerial agent of a charitable trust to permit the attorney general to inspect, examine, and make copies, as the attorney general considers necessary in the performance of a power or duty of the attorney general with respect to charitable entities and trusts, of any record of the charitable entity or trust. Provides that a record of the charitable entity or trust includes minutes and a book, account, letter, memorandum, e-mail, document, check, voucher, telegram, constitution, and bylaw.

(b) Authorizes the attorney general, if the attorney general has reason to believe that a person is engaging in, has engaged in, or is about to engage in an unlawful act or practice with respect to a charitable trust or that it would be in the public interest to conduct an investigation to ascertain whether the person is engaging in, has engaged in, or is about to engage in an unlawful act or practice with respect to a charitable trust, to:

(1) require the person to file on forms prescribed by the attorney general a statement or report in writing, under oath or otherwise, as to all the facts and circumstances concerning the alleged unlawful act or practice and other data and information as the attorney general considers necessary; and

(2) examine under oath any person in connection with the alleged unlawful act or practice.

SECTION 4. Effective date: September 1, 2011.