

SUBJECT: Revising barratry statutes to cover other professional solicitation

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Place, Talton, Galloway, Keel, Nixon, A. Reyna

0 nays

3 absent — Dunnam, Farrar, Hinojosa

WITNESSES: For — Tom Edwards, Richard Hile, Texas Trial Lawyers Association

Against — None

BACKGROUND : The offense of barratry prohibits the solicitation of legal or professional services by an attorney or other professional. A professional is prohibited from:

- knowingly instituting a suit on behalf of another person when not authorized;
- soliciting employment by telephone personally or through another;
- paying, giving or advancing a prospective client money or anything of value, or offer to pay give or advance such compensation, to obtain legal representation;
- paying or giving money or anything of value to obtain professional employment;
- paying or giving the family member of a prospective client anything of value to solicit employment; or
- accepting or agreeing to accept money or anything of value to solicit employment.

A registered or licensed professional can be charged with barratry if the professional knowingly accepts employment after soliciting such employment. An offense is punishable as a class A misdemeanor, maximum penalty of one year in jail and a \$4,000 fine. If a person is convicted of the offense more than once, the second offense is punishable as

a third degree felony, two to 10 years in prison and an optional \$10,000 fine.

**DIGEST:** HB 1327 would expand the offense of barratry to cover solicitation of employment by a licensed or registered health care professional, regardless of whether that professional actually obtains employment from the solicitation. It would change all references to attorneys to all professionals.

HB 1327 would take effect September 1, 1997.

**SUPPORTERS SAY:** HB 1327 is needed to strengthen the barratry statute for other professionals. Currently these professionals could be convicted of barratry only if they accept employment from the solicitation. The act of solicitation itself is only prohibited for attorneys. This distinction allows these professionals to solicit business without repercussions so long as it cannot be proven that they have accepted business on the basis of that solicitation. It also allows these professionals to solicit business on behalf of another professional.

This legislation would not prevent professionals from doing anything that is currently ethical now. Such actions are also criminal, but only if the professional accepts employment. Under this bill, though, a prosecutor would not have to wait for the professional to accept a client based on the solicitation in order to prosecute that professional for solicitation.

Solicitation is prohibited by the ethical rules of all professionals covered by this statute. Allowing unethical professionals to solicit business is unfair to ethical professionals who may lose business because of the solicitation. By imposing a criminal penalty for solicitation, all professionals would have to abide by ethical standards. The purpose of prohibiting professional solicitation is to protect the individuals who should be allowed to choose these services based on the quality of service offered and not because of solicitation.

**OPPONENTS SAY:** If the purpose of the barratry statute is to even out the competition between professionals who do not solicit business and those who do solicit such business, that purpose could be accomplished by simply doing away with the barratry statute and allowing all professionals to solicit business.

NOTES: The companion bill, SB 1172 by Duncan, has been scheduled for a public hearing in the Senate Jurisprudence Committee.

An identical bill, SB 720 by Henderson, passed the Senate in 1995 and was reported favorably by the House Criminal Jurisprudence Committee but failed to be considered by the House.