

BILL ANALYSIS

Senate Research Center

H.B. 148
By: Smith, Todd (Wentworth)
State Affairs
5/23/2009
Committee Report (Amended)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 148 relates to the prosecution of the offense of barratry and solicitation of professional employment.

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 38.12(d), Penal Code, to provide that a person commits an offense if the person with the intent to obtain professional employment for the person or for another, provides or knowingly permits to be provided, rather than for himself or for another, sends or knowingly permits to be sent, to an individual who has not sought the person's employment, legal representation, advice, or care a written communication or a solicitation, including a solicitation in person or by telephone concerning certain matters.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2009.

SUMMARY OF COMMITTEE CHANGES

(1) Amends SECTION 2 of the bill to strike "The change in law made by this Act applies" and substitute with "Section 38.12(d), Penal Code, as amended by this Act,".

(2) Adds the following appropriately numbered SECTIONS to the bill and renumbers existing SECTIONS of the bill accordingly:

SECTION __. Amends Subchapter C, Chapter 82, Government Code, by adding Section 82.067, as follows:

Sec. 82.067. CLIENT CAUSE OF ACTION. (a) Authorizes a client to bring a civil action against any person who knowingly engages in conduct prohibited by:

(1) the following sections of Penal Code:

(A) Section 38.12 (Barratry and Solicitation of Professional Employment);

(B) Section 38.122 (Falsely Holding Oneself Out as a Lawyer); or

(C) Section 38.123 (Unauthorized Practice of Law); or

(2) Rule 8.04 (a)(9) (relating to engaging in conduct that constitutes barratry as defined by laws of this state), Texas Disciplinary Rules of Professional Conduct.

(b) Authorizes a client who prevails in an action under this section to recover the following as damages:

(1) all amounts paid to or received by the person as a result of the conduct on which the cause of action is based;

(2) at the discretion of the fact-finder and as a penalty based on the severity of the wrongful conduct, up to an additional two times the amounts paid to or received by the person as a result of such conduct;

(3) reasonable and necessary attorney's fees and court costs incurred by the client in the action; and

(4) prejudgment and post-judgment interest as provided by law.

(c) Requires that the standard of proof for proving a cause of action under this section be by a preponderance of evidence.

(d) Provides that for the purposes of this section, a person acts "knowingly" when the person has actual awareness of the nature of the person's conduct or that the circumstances exist, or has actual awareness that the person's conduct is reasonably certain to cause the result. Provides that "actual awareness" for purposes of this section is authorized to be inferred where objective manifestations indicate that a person acted with actual awareness.

SECTION __. Makes application Section 82.067, Government Code, as added by this Act, prospective.