

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 1711
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Recent legislation established civil liability for prohibited barratry and provided for the ability of a client to void any contract for legal services that was procured through such prohibited conduct.

Concern has been raised over reports that some attorneys have found a loophole in the law to avoid one of the civil penalties for barratry by releasing their client after a case is "run" and a contract for legal services is signed. Interested parties note that the \$10,000 penalty currently assessed applies only when a person is illegally solicited but no legal services contract is signed as a result of that conduct and that there is no such penalty if a legal services contract is signed as a result of that illegal solicitation.

In an effort to close this loophole and hold attorneys who commit barratry accountable for their actions, C.S.H.B. 1711 authorizes a client who enters into a legal services contract to recover certain damages and amounts from a person who commits barratry.

C.S.H.B. 1711 amends current law relating to barratry.

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 82.065(b), Government Code, to provide that any contract for legal services is voidable by the client if it is procured as a result of conduct violating Section 38.12(a) (relating to providing that a person commits an offense if, with intent to obtain an economic benefit the person commits certain actions) or (b) (relating to providing that a person commits an offense if the person knowingly commits certain actions), Penal Code, or Rule 7.03 of the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas (state bar), rather than conduct violating the laws of this state or the Texas Disciplinary Rules of Professional Conduct of the state bar, regarding barratry by attorneys or other persons.

SECTION 2. Amends Section 82.0651, Government Code, by amending Subsections (a), (b), and (c) and adding Subsection (g), as follows:

(a) Authorizes a client to bring an action to void a contract for legal services that was procured as a result of conduct violating Section 38.12(a) or (b), Penal Code, or Rule 7.03 of the Texas Disciplinary Rules of Professional Conduct of the state bar, rather than conduct violating the laws of this state or the Texas Disciplinary Rules of Professional Conduct of the state bar, regarding barratry by attorneys or other persons, and to recover any amount that may be awarded under Subsection (b). Authorizes a client who enters into a contract described by this subsection to bring an action to recover any amount that may be awarded under Subsection (b) even if the contract is voided voluntarily.

(b) Requires a client who prevails in an action under Subsection (a) to recover from any person who committed barratry certain fees and damages, including a penalty in the amount of \$10,000. Makes nonsubstantive changes.

(c) Authorizes a person who was solicited by conduct violating Section 38.12(a) or (b), Penal Code, or Rule 7.03 of the Texas Disciplinary Rules of Professional Conduct of the state bar, rather than conduct violating the laws of this state or the Texas Disciplinary Rules of Professional Conduct of the state bar, regarding barratry by attorneys or other persons, but who did not enter into a contract as a result of that conduct, to file a civil action against any person who committed barratry.

(g) Provides that the expedited actions process created by Rule 169, Texas Rules of Civil Procedure, does not apply to an action under this section.

SECTION 3. Amends Sections 38.12(d) and (e), Penal Code, as follows:

(d) Deletes existing text providing 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 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, that concerns an arrest or issuance of a summons to the person to whom the communication or solicitation is provided or a relative of that person and that was provided before the 31st day after the date on which the arrest or issuance of the summons occurred. Makes nonsubstantive changes.

(e) Makes a nonsubstantive change.

SECTION 4. (a) Provides that Section 82.065(b), Government Code, as amended by this Act, applies only to a contract procured as a result of conduct described by that subsection, as amended by this Act, occurring on or after the effective date of this Act. Provides that a contract procured as a result of conduct occurring before the effective date of this Act is governed by the law applicable to the contract immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Provides that except as provided by this section, Section 82.0651, Government Code, as amended by this Act, applies only to an action concerning a contract procured as a result of conduct described by Section 82.0651(a), Government Code, as amended by this Act, that occurs on or after the effective date of this Act. Provides that an action concerning a contract procured as a result of conduct that occurred before the effective date of this Act is governed by the law applicable to the contract immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(c) Provides that Section 82.0651(g), Government Code, as added by this Act, applies to an action:

(1) commenced on or after the effective date of this Act; or

(2) pending on the effective date of this Act and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, begins on or after the effective date of this Act.

SECTION 5. Effective date: September 1, 2013.