

By: Smith of Tarrant

H.B. No. 3194

A BILL TO BE ENTITLED

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AN ACT

relating to third-party civil liability for certain persons entering into building or construction contracts.

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

SECTION 1. Section 38.12 of the Penal Code is amended to read as follows:

(a) A person commits an offense if, with intent to obtain an economic benefit the person:

(1) knowingly institutes a suit or claim that the person has not been authorized to pursue;

(2) solicits employment, either in person or by telephone, for himself or for another;

(3) pays, gives, or advances or offers to pay, give, or advance to a prospective client money or anything of value to obtain employment as a professional from the prospective client;

(4) pays or gives or offers to pay or give a person money or anything of value to solicit employment;

(5) pays or gives or offers to pay or give a family member of a prospective client money or anything of value to solicit employment; or

(6) accepts or agrees to accept money or anything of value to solicit employment.

(b) A person commits an offense if the person:

(1) knowingly finances the commission of an offense

1 under Subsection (a);

2 (2) invests funds the person knows or believes are
3 intended to further the commission of an offense under Subsection
4 (a); or

5 (3) is a professional who knowingly accepts employment
6 within the scope of the person's license, registration, or
7 certification that results from the solicitation of employment in
8 violation of Subsection (a).

9 (c) It is an exception to prosecution under Subsection (a)
10 or (b) that the person's conduct is authorized by the Texas
11 Disciplinary Rules of Professional Conduct or any rule of court.

12 (d) A person commits an offense if the person:

13 (1) is an attorney, chiropractor, physician, surgeon,
14 or private investigator licensed to practice in this state or any
15 person licensed, certified, or registered by a health care
16 regulatory agency of this state;

17 (2) with the intent to obtain professional employment
18 for himself or for another, sends or knowingly permits to be sent to
19 an individual who has not sought the person's employment, legal
20 representation, advice, or care a written communication that:

21 (A) concerns an action for personal injury or
22 wrongful death or otherwise relates to an accident or disaster
23 involving the person to whom the communication is addressed or a
24 relative of that person and that was mailed before the 31st day
25 after the date on which the accident or disaster occurred;

26 (B) concerns a specific matter and relates to
27 legal representation and the person knows or reasonably should know

1 that the person to whom the communication is directed is
2 represented by a lawyer in the matter;

3 (C) concerns an arrest of or issuance of a
4 summons to the person to whom the communication is addressed or a
5 relative of that person and that was mailed before the 31st day
6 after the date on which the arrest or issuance of the summons
7 occurred;

8 (D) concerns a lawsuit of any kind, including an
9 action for divorce, in which the person to whom the communication is
10 addressed is a defendant or a relative of that person, unless the
11 lawsuit in which the person is named as a defendant has been on file
12 for more than 31 days before the date on which the communication was
13 mailed;

14 (E) is sent or permitted to be sent by a person
15 who knows or reasonably should know that the injured person or
16 relative of the injured person has indicated a desire not to be
17 contacted by or receive communications concerning employment;

18 (F) involves coercion, duress, fraud,
19 overreaching, harassment, intimidation, or undue influence; or

20 (G) contains a false, fraudulent, misleading,
21 deceptive, or unfair statement or claim.

22 (e) A person commits an offense if the person is a
23 chiropractor, physician, surgeon or private investigator licensed
24 to practice in this state, or any person licensed, certified, or
25 registered by a health care regulatory agency of this state, and,
26 with the intent to obtain professional employment for himself or
27 another, solicits or causes to be solicited employment, either in

1 person or by telephone, in connection with a personal injury
2 sustained in an accident or disaster involving the person
3 solicited, or a relative of that person, before the 31st day after
4 the date on which the accident or disaster occurred;

5 (f) [~~(e)~~] For purposes of Subsection (d)(2)(E), a desire not
6 to be contacted is presumed if an accident report reflects that such
7 an indication has been made by an injured person or that person's
8 relative.

9 (g) [~~(f)~~] An offense under Subsection (a) or (b) is a felony
10 of the third degree.

11 (h) [~~(g)~~] Except as provided by Subsection (i), an offense
12 under Subsection (d) is a Class A misdemeanor.

13 (i) [~~(h)~~] An offense under Subsection (d) is a felony of the
14 third degree if it is shown on the trial of the offense that the
15 defendant has previously been convicted under Subsection (d).

16 (j) [~~(i)~~] Final conviction of felony barratry is a serious
17 crime for all purposes and acts, specifically including the State
18 Bar Rules and the Texas Rules of Disciplinary Procedure.

19 SECTION 2. The change in law made by this Act applies only
20 to an offense committed on or after the effective date of this Act.
21 An offense committed before the effective date of this Act is
22 covered by the law in effect when the offense was committed, and the
23 former law is continued in effect for that purpose. For purposes of
24 this section, an offense was committed before the effective date of
25 this Act if any element of the offense was committed before that
26 date.

27 SECTION 3. This Act takes effect September 1, 2005.