

BILL ANALYSIS

C.S.H.B. 1890
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that although barratry is a crime and has for years been considered to be against the public policy of the state, it has remained a serious problem and has become increasingly prevalent in recent years. After hearings and studies on the issue it was clear to interested parties that the main difficulty involving barratry was enforcement and that a civil cause of action would alleviate the problem. C.S.H.B. 1890 addresses this issue by providing for an enforcement mechanism for the offense of barratry consisting of a civil penalty, among other provisions.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1890 amends the Government Code to make any contract for legal services, rather than a contingent fee contract for legal services, voidable by the client if it is procured as a result of conduct violating state law or rules of the Texas Disciplinary Rules of Professional Conduct regarding barratry by attorneys or other persons. The bill authorizes a lawyer who was paid or owed fees or expenses under a voided contract to recover in quantum meruit if the client does not prove the lawyer committed barratry or had actual knowledge, prior to undertaking the representation, that the contract was procured as a result of barratry by another person. The bill requires the lawyer, in order to recover in quantum meruit, to have reported the misconduct as required by the Texas Disciplinary Rules of Professional Conduct, unless another person previously reported the conduct or the lawyer reasonably believed that reporting the conduct would substantially prejudice the client's interests.

C.S.H.B. 1890 authorizes a client to bring an action to void any contract for legal services that was procured as a result of conduct violating state law or rules of the Texas Disciplinary Rules of Professional Conduct regarding barratry by attorneys or other persons. The bill requires a client who prevails in such an action to recover from any person who committed barratry all fees and expenses paid to that person under any voided contract, the balance of any fees and expenses paid to another person under the voided contract less any quantum meruit fees and expenses awarded under the bill's provisions, actual damages caused by the prohibited conduct, and reasonable and necessary attorney's fees. The bill authorizes a person who was solicited by conduct violating state law or rules of the Texas Disciplinary Rules of Professional Conduct 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 and requires a person who prevails in such an action to recover from each person who engaged in barratry a penalty in the amount of \$10,000, actual damages caused by the prohibited conduct, and reasonable and necessary attorney's fees.

C.S.H.B. 1890 requires its provisions relating to civil liability for prohibited barratry to be

liberally construed and applied to promote the underlying purposes, which are to protect those in need of legal services against unethical, unlawful solicitation and to provide efficient and economical procedures to secure such protection. The bill establishes that statutory provisions relating to attorney conduct are not exclusive and that the remedies provided in those statutory provisions are in addition to any other procedures or remedies provided in any other law, except that recovery is not permitted under both statutory provisions relating to attorney conduct and another law of both damages and penalties for the same act or practice. The bill makes a nonsubstantive change.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1890 contains a provision not included in the original making any contract for legal services voidable by the client if it is procured as a result of conduct violating the Texas Disciplinary Rules of Professional Conduct relating to barratry.

C.S.H.B. 1890 differs from the original by authorizing a lawyer who was paid or owed fees or expenses under a voided contract to recover in quantum meruit if the client does not prove the lawyer committed barratry or had actual knowledge, prior to undertaking the representation, that the contract was procured as a result of barratry by another person, whereas the original authorizes an attorney to recover legal fees based on a quantum meruit theory if the attorney did not perform any illegal act in the procurement of the contract, did not have any actual knowledge that the contract is voidable, and made a reasonable attempt to ensure the validity of the contract.

C.S.H.B. 1890 differs from the original by requiring a lawyer seeking to recover in quantum meruit to have reported the misconduct unless another person previously reported the conduct or the lawyer reasonably believed that reporting the conduct would substantially prejudice the client's interests, whereas the original specifies that an attorney is not entitled to quantum meruit recovery if the attorney learns of certain prohibited conduct that is involved in the procurement of the contract and fails to report the activity.

C.S.H.B. 1890 differs from the original by authorizing a client to bring an action to void any contract for legal services that was procured as a result of conduct violating certain laws and rules regarding prohibited barratry, whereas the original authorizes a client to bring an action to void a contingent fee contract for legal services that is procured as a result of such conduct before the fourth anniversary of the date the client knew or should have known that the contract is voidable. The substitute contains provisions not included in the original requiring a client who prevails in an action to void a contract to recover from any person who committed barratry certain fees, expenses, and damages. The substitute omits provisions included in the original specifying that a statement or affidavit by the client stating that the employment of the attorney was properly secured or a similar statement or affidavit does not have evidentiary value and prohibiting the affidavit or statement from being presented to a jury.

C.S.H.B. 1890 differs from the original by authorizing a person who was solicited by conduct constituting barratry, but did not enter into a contract as a result of the conduct, to file a civil action against any person who committed barratry, whereas the original authorizes a person affected by any prohibited conduct to bring an action against one or more persons who knowingly engaged or participated in the prohibited conduct.

C.S.H.B. 1890 differs from the original by requiring a person who prevails in the action to recover from each person who engaged in barratry a penalty in a specified amount, actual damages caused by the prohibited conduct, and certain attorney's fees, whereas the original authorizes the fact finder to award a plaintiff that brings the action certain amounts paid to or

received as the result of the prohibited conduct, damages for certain anguish resulting from the conduct, an additional penalty awarded at the discretion of the fact finder, certain attorney's fees and court costs, prejudgment and postjudgment interest, and an injunction prohibiting the defendant from engaging in future acts constituting the prohibited conduct. The substitute omits a provision included in the original that defines "prohibited conduct."

C.S.H.B. 1890 omits provisions included in the original establishing requirements regarding the standard of proof and jury verdict in the action and clarifying when a person acts knowingly. The substitute omits provisions included in the original requiring a person to bring a suit for the cause of action by a certain date, making discovery rules applicable to the cause of action, and specifying that certain prohibited conduct is inherently undiscoverable. The substitute omits a provision included in the original making a judgment rendered against two or more persons in such an action joint and several.

C.S.H.B. 1890 differs from the original by requiring its provisions relating to civil liability for prohibited barratry to be liberally construed and applied to promote its underlying purposes, which are to protect those in need of legal services against unethical, unlawful solicitation and to provide efficient and economical procedures to secure such protection, whereas the original requires its provisions relating to that subject to be liberally construed in favor of certain actions that accomplish the purpose of the legislature to reduce or eliminate the occurrences of prohibited conduct. The substitute differs from the original by specifying that provisions of law relating to attorney conduct are not exclusive and that the remedies provided by those provisions are in addition to any other procedures or remedies provided in any other law, except that recovery is not permitted under those provisions and another law of both damages and penalties for the same act or practice, whereas the original specifies that its provisions relating to civil liability for barratry and solicitation provide remedies that are in addition to any other remedy available under law.

C.S.H.B. 1890 omits a provision included in the original exempting from certain limitations on the amount of recovery a cause of action against a defendant from whom a plaintiff seeks recovery of exemplary damages based on felony conduct constituting barratry and solicitation of professional employment, falsely holding oneself out as a lawyer, or unauthorized practice of law. The substitute omits a provision included in the original redefining "solicit employment." The substitute omits a provision included in the original expanding the conditions that constitute an offense of barratry and solicitation of employment and creating an exception to prosecution for certain persons whose conduct otherwise constitutes such an offense. The substitute omits a provision included in the original granting the attorney general discretionary jurisdiction concurrent with local authorities to prosecute an offense of barratry and solicitation of employment, falsely holding oneself out as a lawyer, unauthorized practice of law, or engaging in organized criminal activity. The substitute differs from the original in nonsubstantive ways.