

BILL ANALYSIS

S.B. 1716
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Barratry is commonly known as vexatious incitement to litigation, typically by soliciting potential legal clients. Many refer to the practice as "case running." Under Section 38.12, Penal Code, "barratry" is generally defined as the illegal solicitation of professional employment. The Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas prohibit these solicitations as well. Adding a civil enforcement option would help curtail this practice.

S.B. 1716 adds a cause of action for a client who has been unlawfully solicited to void the contract and recover any actual damages and any fees and expenses paid. The bill allows a potential client to recover a civil penalty of \$10,000 from any person who committed barratry but did not succeed in getting the potential client to sign a contract. Actual damages and attorney's fees are also recoverable by a potential client. In addition, the bill allows equitable, quantum meruit recovery of reasonable fees and expenses by any other lawyer who did not commit barratry and did not know of it (the innocent lawyer safe harbor).

S.B. 1716 amends current law relating to voidability of contracts procured through and liability arising from conduct constituting barratry and provides a civil penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

ANALYSIS

SECTION 1. Amends Section 82.065, Government Code, as follows:

Sec. 82.065. New heading: CONTRACT FOR LEGAL SERVICES. (a) Requires that a contingent fee contract for legal services be in writing and signed by the attorney and client.

(b) Provides that any contract, rather than a contingent fee contract, for legal services is voidable by the client if it is procured as a result of conduct violating the laws of this state or the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas (disciplinary rules) regarding barratry by attorneys or other persons.

(c) Authorizes an attorney who was paid or owed fees or expenses under a contract that is voided under this section to recover fees and expenses based on a quantum meruit theory if the client does not prove that the attorney committed barratry or had actual knowledge, before undertaking the representation, that the contract was procured as a result of barratry by another person. Requires an attorney, to recover fees or expenses under this subsection, to have reported the misconduct as required by the disciplinary rules unless another person has already reported the misconduct, or the attorney reasonably believed that reporting the misconduct would substantially prejudice the client's interests.

SECTION 2. Amends Subchapter C, Chapter 82, Government Code, by adding Section 82.0651, as follows:

Sec. 82.0651. CIVIL LIABILITY FOR PROHIBITED BARRATRY. (a) Authorizes a client to bring an action to void a contract for legal services that was procured as a result of conduct violating the laws of this state or the disciplinary rules regarding barratry by attorneys or other persons.

(b) Requires a client who prevails in an action under Subsection (a) to recover from any person who committed barratry:

- (1) all fees and expenses paid to that person under the contract;
- (2) the balance of any fees and expenses paid to any other person under the contract, after deducting fees and expenses awarded based on a quantum meruit theory as provided by Section 82.065(c);
- (3) actual damages caused by the prohibited conduct; and
- (4) reasonable and necessary attorney's fees.

(c) Authorizes a person who was solicited by conduct violating the laws of this state or the disciplinary rules 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.

(d) Requires a person who prevails in an action under Subsection (c) to recover from each person who engaged in barratry:

- (1) a penalty in the amount of \$10,000;
- (2) actual damages caused by the prohibited conduct; and
- (3) reasonable and necessary attorney's fees.

(e) Requires that this section 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 that protection.

(f) Provides that the provisions of this subchapter are not exclusive. Provides that the remedies provided in this subchapter are in addition to any other procedures or remedies provided in any other law, except that a person is prohibited from recovering damages and penalties under both this subchapter and another law for the same act or practice.

SECTION 3. (a) Provides that Section 82.065, Government Code, as amended by this Act, applies only to a contract entered into on or after the effective date of this Act. Provides that a contract entered into before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Provides that Section 82.0651, Government Code, as added by this Act, does not apply to prohibited conduct that occurred before the effective date of this Act. Provides that prohibited conduct that occurred before the effective date of this Act is governed by the law that applied to the conduct immediately before the effective date of this Act, and that law is continued in effect for that purpose.

EFFECTIVE DATE

September 1, 2011.