

By: Fletcher

H.B. No. 1890

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the offense of prohibited barratry and solicitation,
3 liability for contingent fee contracts for legal services, and
4 attorney general prosecution of certain offenses.

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

6 SECTION 1. Section 82.065, Government Code, is amended by
7 adding Subsections (c) and (d) to read as follows:

8 (c) A client may bring an action to void a contingent fee
9 contract for legal services before the fourth anniversary of the
10 date the client knew or, in the exercise of reasonable care, should
11 have known that the contract is voidable. A statement or affidavit
12 by the client stating that the employment of the attorney was
13 properly secured or a similar statement or affidavit does not have
14 evidentiary value and may not be presented to a jury.

15 (d) An attorney who did not perform any illegal act in the
16 procurement of the contingent fee contract for legal services, who
17 did not have any actual knowledge that the contract is voidable, and
18 who made a reasonable attempt to ensure the validity of the contract
19 may recover legal fees based on a quantum meruit theory. An
20 attorney who learns of conduct described by Subsection (b) that is
21 involved in the procurement of the contract and fails to report the
22 activity to the disciplinary authorities of the State Bar of Texas
23 is not entitled to quantum meruit recovery.

24 SECTION 2. Subchapter C, Chapter 82, Government Code, is

1 amended by adding Section 82.0651 to read as follows:

2 Sec. 82.0651. CIVIL LIABILITY FOR PROHIBITED BARRATRY AND
3 SOLICITATION. (a) In this section, "prohibited conduct" means
4 conduct that is prohibited by:

5 (1) Section 38.12, 38.122, or 38.123, Penal Code; or

6 (2) Rule 7.03, 7.06, or 8.04(a)(9), Texas Disciplinary
7 Rules of Professional Conduct.

8 (b) A person affected by any prohibited conduct may bring an
9 action against one or more persons who knowingly engaged or
10 participated in, directly or indirectly, the prohibited conduct.

11 (c) The fact finder may award to a plaintiff that brings an
12 action under Subsection (b):

13 (1) all amounts paid to or received by any person as a
14 result of the prohibited conduct;

15 (2) damages for past and future mental anguish
16 resulting from the prohibited conduct;

17 (3) at the discretion of the fact finder and as a
18 penalty based on the severity of the prohibited conduct, an amount
19 not to exceed three times the amounts awarded under Subdivisions
20 (1) and (2);

21 (4) reasonable and necessary attorney's fees and court
22 costs incurred by the plaintiff in the action;

23 (5) prejudgment and postjudgment interest as provided
24 by law; and

25 (6) an injunction prohibiting the defendant from
26 engaging in future acts that constitute the prohibited conduct.

27 (d) The standard of proof for each element of a cause of

1 action under this section, including damages for mental anguish and
2 additional damages, is preponderance of the evidence. The court
3 may accept a verdict of 10 or more jurors in a district court or five
4 or more jurors in a county court at law.

5 (e) For purposes of Subsection (b), a person acts
6 "knowingly" when the person knows or by the exercise of reasonable
7 diligence should have known that the prohibited conduct occurred,
8 or at any time learns or by the exercise of reasonable diligence
9 should have learned the prohibited conduct occurred, and takes any
10 action that furthers the effect of the conduct. For purposes of
11 Subsection (c)(3), a person acts "knowingly" if the person has
12 actual awareness of the nature of the conduct or has actual
13 awareness that the circumstances exist or that the person's conduct
14 is reasonably certain to cause the result. For purposes of this
15 section, "actual awareness" may be inferred if objective
16 manifestations indicate a person acted with actual awareness.

17 (f) A person must bring suit for a cause of action under this
18 section not later than four years after the date the last act of the
19 prohibited conduct occurs. The discovery rules apply to a cause of
20 action brought under this section. Prohibited conduct is
21 considered inherently undiscoverable for purposes of this section.

22 (g) A judgment rendered against two or more persons under
23 this section is joint and several.

24 (h) This section shall be liberally construed in favor of
25 actions brought under this section to accomplish the purpose of the
26 legislature to reduce or eliminate the occurrences of prohibited
27 conduct, which is pervasive and difficult to prove.

1 (i) This section provides remedies that are in addition to
2 any other remedy available under other law.

3 SECTION 3. Section 41.008(c), Civil Practice and Remedies
4 Code, is amended to read as follows:

5 (c) This section does not apply to a cause of action against
6 a defendant from whom a plaintiff seeks recovery of exemplary
7 damages based on conduct described as a felony in the following
8 sections of the Penal Code if, except for Sections 49.07 and 49.08,
9 the conduct was committed knowingly or intentionally:

- 10 (1) Section 19.02 (murder);
- 11 (2) Section 19.03 (capital murder);
- 12 (3) Section 20.04 (aggravated kidnapping);
- 13 (4) Section 22.02 (aggravated assault);
- 14 (5) Section 22.011 (sexual assault);
- 15 (6) Section 22.021 (aggravated sexual assault);
- 16 (7) Section 22.04 (injury to a child, elderly
17 individual, or disabled individual, but not if the conduct occurred
18 while providing health care as defined by Section 74.001);
- 19 (8) Section 32.21 (forgery);
- 20 (9) Section 32.43 (commercial bribery);
- 21 (10) Section 32.45 (misapplication of fiduciary
22 property or property of financial institution);
- 23 (11) Section 32.46 (securing execution of document by
24 deception);
- 25 (12) Section 32.47 (fraudulent destruction, removal,
26 or concealment of writing);
- 27 (13) Chapter 31 (theft) the punishment level for which

1 is a felony of the third degree or higher;

2 (14) Section 49.07 (intoxication assault);

3 (15) Section 49.08 (intoxication manslaughter);

4 (16) Section 21.02 (continuous sexual abuse of young
5 child or children); ~~[or]~~

6 (17) Chapter 20A (trafficking of persons);

7 (18) Section 38.12 (barratry and solicitation of
8 professional employment);

9 (19) Section 38.122 (falsely holding oneself out as a
10 lawyer); or

11 (20) Section 38.123 (unauthorized practice of law).

12 SECTION 4. Section 38.01(11), Penal Code, is amended to
13 read as follows:

14 (11) "Solicit employment" means to communicate in
15 person or by telephone with a prospective client or a member of the
16 prospective client's family concerning professional employment
17 within the scope of a professional's license, registration, or
18 certification arising out of a particular occurrence or event, or
19 series of occurrences or events, or concerning an existing problem
20 of the prospective client within the scope of the professional's
21 license, registration, or certification, for the purpose of
22 providing professional services to the prospective client, when
23 neither the person receiving the communication nor anyone
24 authorized by law to act for ~~[acting on]~~ that person ~~[person's~~
25 ~~behalf has]~~ requested the communication. The term does not include
26 a communication initiated by a family member of the person
27 receiving a communication, a communication by a professional who

1 has a prior or existing professional-client relationship with the
2 person receiving the communication, or communication by an attorney
3 for a qualified nonprofit organization with the organization's
4 members for the purpose of educating the organization's members to
5 understand the law, to recognize legal problems, to make
6 intelligent selection of legal counsel, or to use available legal
7 services. The term does not include an advertisement by a
8 professional through public media.

9 SECTION 5. Section 38.12, Penal Code, is amended by
10 amending Subsection (b) and adding Subsection (c-1) to read as
11 follows:

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

13 (1) knowingly finances the commission of an offense
14 under Subsection (a);

15 (2) invests funds the person knows or believes are
16 intended to further the commission of an offense under Subsection
17 (a); ~~or~~

18 (3) is a professional or an employee or agent of a
19 professional who knowingly accepts employment within the scope of
20 the professional's ~~[person's]~~ license, registration, or
21 certification that results from the solicitation of employment in
22 violation of Subsection (a); or

23 (4) is a professional or an employee or agent of a
24 professional excepted under Subsection (c-1) who is soliciting
25 employment for a professional other than one excepted under
26 Subsection (c-1).

27 (c-1) It is an exception to prosecution under Subsection

1 (b)(3) that the professional or the employee or agent of the
2 professional is soliciting employment:

3 (1) as or for a chiropractor or other health care
4 provider; or

5 (2) as or for an attorney to represent a person related
6 to a crime for which the person is placed under arrest.

7 SECTION 6. Chapter 38, Penal Code, is amended by adding
8 Section 38.20 to read as follows:

9 Sec. 38.20. PROSECUTION BY ATTORNEY GENERAL. The attorney
10 general has discretionary jurisdiction concurrent with local
11 authorities to prosecute an offense under Section 38.12, 38.122,
12 38.123, or 71.02.

13 SECTION 7. The changes in law made by this Act apply only to
14 an offense committed on or after the effective date of this Act. An
15 offense committed before the effective date of this Act is covered
16 by the law in effect when the offense was committed, and the former
17 law is continued in effect for that purpose. For purposes of this
18 section, an offense was committed before the effective date of this
19 Act if any element of the offense was committed before that date.

20 SECTION 8. The changes in law made by this Act do not apply
21 to a cause of action that accrued before the effective date of this
22 Act. A cause of action that accrued before the effective date of
23 this Act is governed by the law in effect on the date the cause of
24 action accrued, and the former law is continued in effect for that
25 purpose.

26 SECTION 9. This Act takes effect September 1, 2011.