

By: Duncan
(Fletcher)

S.B. No. 1716

A BILL TO BE ENTITLED

AN ACT

1
2 relating to voidability of contracts procured through and liability
3 arising from conduct constituting barratry; providing a civil
4 penalty.

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

6 SECTION 1. Section 82.065, Government Code, is amended to
7 read as follows:

8 Sec. 82.065. [~~CONTINGENT FEE~~] CONTRACT FOR LEGAL SERVICES.

9 (a) A contingent fee contract for legal services must be in
10 writing and signed by the attorney and client.

11 (b) Any [~~A contingent fee~~] contract for legal services is
12 voidable by the client if it is procured as a result of conduct
13 violating the laws of this state or the Texas Disciplinary Rules of
14 Professional Conduct of the State Bar of Texas regarding barratry
15 by attorneys or other persons.

16 (c) An attorney who was paid or owed fees or expenses under a
17 contract that is voided under this section may recover fees and
18 expenses based on a quantum meruit theory if the client does not
19 prove that the attorney committed barratry or had actual knowledge,
20 before undertaking the representation, that the contract was
21 procured as a result of barratry by another person. To recover fees
22 or expenses under this subsection, the attorney must have reported
23 the misconduct as required by the Texas Disciplinary Rules of
24 Professional Conduct of the State Bar of Texas, unless:

1 (1) another person has already reported the
2 misconduct; or

3 (2) the attorney reasonably believed that reporting
4 the misconduct would substantially prejudice the client's
5 interests.

6 SECTION 2. Subchapter C, Chapter 82, Government Code, is
7 amended by adding Section 82.0651 to read as follows:

8 Sec. 82.0651. CIVIL LIABILITY FOR PROHIBITED BARRATRY.

9 (a) A client may bring an action to void a contract for legal
10 services that was procured as a result of conduct violating the laws
11 of this state or the Texas Disciplinary Rules of Professional
12 Conduct of the State Bar of Texas regarding barratry by attorneys or
13 other persons.

14 (b) A client who prevails in an action under Subsection (a)
15 shall recover from any person who committed barratry:

16 (1) all fees and expenses paid to that person under the
17 contract;

18 (2) the balance of any fees and expenses paid to any
19 other person under the contract, after deducting fees and expenses
20 awarded based on a quantum meruit theory as provided by Section
21 82.065(c);

22 (3) actual damages caused by the prohibited conduct;
23 and

24 (4) reasonable and necessary attorney's fees.

25 (c) A person who was solicited by conduct violating the laws
26 of this state or the Texas Disciplinary Rules of Professional
27 Conduct of the State Bar of Texas regarding barratry by attorneys or

1 other persons, but who did not enter into a contract as a result of
2 that conduct, may file a civil action against any person who
3 committed barratry.

4 (d) A person who prevails in an action under Subsection (c)
5 shall recover from each person who engaged in barratry:

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

10 (e) This section shall be liberally construed and applied to
11 promote its underlying purposes, which are to protect those in need
12 of legal services against unethical, unlawful solicitation and to
13 provide efficient and economical procedures to secure that
14 protection.

15 (f) The provisions of this subchapter are not exclusive.
16 The remedies provided in this subchapter are in addition to any
17 other procedures or remedies provided by any other law, except that
18 a person may not recover damages and penalties under both this
19 subchapter and another law for the same act or practice.

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

26 (b) Section 82.0651, Government Code, as added by this Act,
27 does not apply to prohibited conduct that occurred before the

1 effective date of this Act. Prohibited conduct that occurred
2 before the effective date of this Act is governed by the law that
3 applied to the conduct immediately before the effective date of
4 this Act, and that law is continued in effect for that purpose.

5 SECTION 4. This Act takes effect September 1, 2011.