

1-1 By: Duncan S.B. No. 1716
1-2 (In the Senate - Filed March 11, 2011; March 23, 2011, read
1-3 first time and referred to Committee on State Affairs;
1-4 March 29, 2011, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 8, Nays 0; March 29, 2011,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1716 By: Duncan

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to voidability of contracts procured through and liability
1-11 arising from conduct constituting barratry; providing a civil
1-12 penalty.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 82.065, Government Code, is amended to
1-15 read as follows:

1-16 Sec. 82.065. [~~CONTINGENT FEE~~] CONTRACT FOR LEGAL SERVICES.

1-17 (a) A contingent fee contract for legal services must be in
1-18 writing and signed by the attorney and client.

1-19 (b) Any [~~A contingent fee~~] contract for legal services is
1-20 voidable by the client if it is procured as a result of conduct
1-21 violating the laws of this state or the Texas Disciplinary Rules of
1-22 Professional Conduct of the State Bar of Texas regarding barratry
1-23 by attorneys or other persons.

1-24 (c) An attorney who was paid or owed fees or expenses under a
1-25 contract that is voided under this section may recover fees and
1-26 expenses based on a quantum meruit theory if the client does not
1-27 prove that the attorney committed barratry or had actual knowledge,
1-28 before undertaking the representation, that the contract was
1-29 procured as a result of barratry by another person. To recover fees
1-30 or expenses under this subsection, the attorney must have reported
1-31 the misconduct as required by the Texas Disciplinary Rules of
1-32 Professional Conduct of the State Bar of Texas, unless:

1-33 (1) another person has already reported the
1-34 misconduct; or

1-35 (2) the attorney reasonably believed that reporting
1-36 the misconduct would substantially prejudice the client's
1-37 interests.

1-38 SECTION 2. Subchapter C, Chapter 82, Government Code, is
1-39 amended by adding Section 82.0651 to read as follows:

1-40 Sec. 82.0651. CIVIL LIABILITY FOR PROHIBITED BARRATRY.

1-41 (a) A client may bring an action to void a contract for legal
1-42 services that was procured as a result of conduct violating the laws
1-43 of this state or the Texas Disciplinary Rules of Professional
1-44 Conduct of the State Bar of Texas regarding barratry by attorneys or
1-45 other persons.

1-46 (b) A client who prevails in an action under Subsection (a)
1-47 shall recover from any person who committed barratry:

1-48 (1) all fees and expenses paid to that person under the
1-49 contract;

1-50 (2) the balance of any fees and expenses paid to any
1-51 other person under the contract, after deducting fees and expenses
1-52 awarded based on a quantum meruit theory as provided by Section
1-53 82.065(c);

1-54 (3) actual damages caused by the prohibited conduct;
1-55 and

1-56 (4) reasonable and necessary attorney's fees.

1-57 (c) A person who was solicited by conduct violating the laws
1-58 of this state or the Texas Disciplinary Rules of Professional
1-59 Conduct of the State Bar of Texas regarding barratry by attorneys or
1-60 other persons, but who did not enter into a contract as a result of
1-61 that conduct, may file a civil action against any person who
1-62 committed barratry.

1-63 (d) A person who prevails in an action under Subsection (c)

2-1 shall recover from each person who engaged in barratry:
2-2 (1) a penalty in the amount of \$10,000;
2-3 (2) actual damages caused by the prohibited conduct;
2-4 and
2-5 (3) reasonable and necessary attorney's fees.
2-6 (e) This section shall be liberally construed and applied to
2-7 promote its underlying purposes, which are to protect those in need
2-8 of legal services against unethical, unlawful solicitation and to
2-9 provide efficient and economical procedures to secure that
2-10 protection.
2-11 (f) The provisions of this subchapter are not exclusive.
2-12 The remedies provided in this subchapter are in addition to any
2-13 other procedures or remedies provided by any other law, except that
2-14 a person may not recover damages and penalties under both this
2-15 subchapter and another law for the same act or practice.
2-16 SECTION 3. (a) Section 82.065, Government Code, as amended
2-17 by this Act, applies only to a contract entered into on or after the
2-18 effective date of this Act. A contract entered into before the
2-19 effective date of this Act is governed by the law in effect
2-20 immediately before the effective date of this Act, and that law is
2-21 continued in effect for that purpose.
2-22 (b) Section 82.0651, Government Code, as added by this Act,
2-23 does not apply to prohibited conduct that occurred before the
2-24 effective date of this Act. Prohibited conduct that occurred
2-25 before the effective date of this Act is governed by the law that
2-26 applied to the conduct immediately before the effective date of
2-27 this Act, and that law is continued in effect for that purpose.
2-28 SECTION 4. This Act takes effect September 1, 2011.

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