

## **BILL ANALYSIS**

C.S.H.B. 1711  
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Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Recent legislation established civil liability for prohibited barratry and provided for the ability of a client to void any contract for legal services that was procured through such prohibited conduct. Concern has been raised over reports that some attorneys have found a loophole in the law to avoid one of the civil penalties for barratry by releasing their client after a case is "run" and a contract for legal services is signed. Interested parties note that the \$10,000 penalty currently assessed applies only when a person is illegally solicited but no legal services contract is signed as a result of that conduct and that there is no such penalty if a legal services contract is signed as a result of that illegal solicitation. In an effort to close this loophole and hold attorneys who commit barratry accountable for their actions, C.S.H.B. 1711 authorizes a client who enters into a legal services contract to recover certain damages and amounts from a person who commits barratry.

### **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. 1711 amends the Government Code to authorize a client who enters into a contract for legal services that was procured as a result of conduct violating state law or the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas regarding barratry by attorneys or other persons to bring an action to recover any amount that may be awarded to a client who prevails in an action to void such a contract, even if the contract is voided voluntarily. The bill adds a penalty in the amount of \$10,000 to the amounts to be recovered in an action filed by a client who enters into such a contract and who prevails either in a suit to void that contract or in a suit to recover amounts that may be awarded. The bill specifies that the expedited actions process created by the Texas Rules of Civil Procedure does not apply to a civil action that is filed on the basis of prohibited barratry.

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1711 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Sections 82.0651(a) and (b), Government Code, are amended to read as follows:

- (a) A client may 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 Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas regarding barratry by attorneys or other persons and to recover any amount that may be awarded under Subsection (b). A client who enters into a contract described by this subsection may bring an action to recover any amount that may be awarded under Subsection (b) even if the contract is voided voluntarily.
- (b) A client who prevails in an action under Subsection (a) shall 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) a penalty in the amount of \$10,000; and
  - (5) reasonable and necessary attorney's fees.

SECTION 2. The change in law made by this Act to Section 82.0651, Government Code, applies only to an action concerning a contract procured as a result of conduct described by Section 82.0651(a), Government Code, that occurs on or after the effective date of this Act. An action concerning a contract procured as a result of conduct that occurred before the effective date of this Act is governed by the law applicable to the contract immediately before the effective date of this Act, and that law is continued in effect for that purpose.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 82.0651, Government Code, is amended by amending Subsections (a) and (b) and adding Subsection (g) to read as follows:

- (a) A client may 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 Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas regarding barratry by attorneys or other persons and to recover any amount that may be awarded under Subsection (b). A client who enters into a contract described by this subsection may bring an action to recover any amount that may be awarded under Subsection (b) even if the contract is voided voluntarily.
- (b) A client who prevails in an action under Subsection (a) shall 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) a penalty in the amount of \$10,000; and
  - (5) reasonable and necessary attorney's fees.
- (g) The expedited actions process created by Rule 169, Texas Rules of Civil Procedure, does not apply to an action under this section.

SECTION 2. (a) Except as provided by this section, Section 82.0651, Government Code, as amended by this Act, applies only to an action concerning a contract procured as a result of conduct described by Section 82.0651(a), Government Code, that occurs on or after the effective date of this Act. An action concerning a contract procured as a result of conduct that occurred before the effective date of this Act is governed by the law applicable to the contract immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) Section 82.0651(g), Government Code, as added by this Act, applies to an action:

- (1) commenced on or after the effective date of this Act; or
- (2) pending on the effective date of this Act and in which the trial, or any new trial or retrial following motion, appeal, or otherwise, begins on or after the effective date of this Act.

SECTION 3. This Act takes effect September 1, 2013.

SECTION 3. Same as introduced version.