

AN ACT

relating to barratry.

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

SECTION 1. Section 82.065(b), Government Code, is amended to read as follows:

(b) Any contract for legal services is voidable by the client if it is procured as a result of conduct violating Section 38.12(a) or (b), Penal Code, [the laws of this state] or Rule 7.03 of the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas, regarding barratry by attorneys or other persons.

SECTION 2. Section 82.0651, Government Code, is amended by amending Subsections (a), (b), and (c) 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 Section 38.12(a) or (b), Penal Code, [the laws of this state] or Rule 7.03 of 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.

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

3 (1) all fees and expenses paid to that person under the
4 contract;

5 (2) the balance of any fees and expenses paid to any
6 other person under the contract, after deducting fees and expenses
7 awarded based on a quantum meruit theory as provided by Section
8 82.065(c);

9 (3) actual damages caused by the prohibited conduct;
10 ~~and~~

11 (4) a penalty in the amount of \$10,000; and

12 (5) reasonable and necessary attorney's fees.

13 (c) A person who was solicited by conduct violating Section
14 38.12(a) or (b), Penal Code, [the laws of this state] or Rule 7.03
15 of the Texas Disciplinary Rules of Professional Conduct of the
16 State Bar of Texas, regarding barratry by attorneys or other
17 persons, but who did not enter into a contract as a result of that
18 conduct, may file a civil action against any person who committed
19 barratry.

20 (g) The expedited actions process created by Rule 169, Texas
21 Rules of Civil Procedure, does not apply to an action under this
22 section.

23 SECTION 3. Sections 38.12(d) and (e), Penal Code, are
24 amended to read as follows:

25 (d) A person commits an offense if the person:

26 (1) is an attorney, chiropractor, physician, surgeon,
27 or private investigator licensed to practice in this state or any

1 person licensed, certified, or registered by a health care
2 regulatory agency of this state; and

3 (2) with the intent to obtain professional employment
4 for the person or for another, provides or knowingly permits to be
5 provided to an individual who has not sought the person's
6 employment, legal representation, advice, or care a written
7 communication or a solicitation, including a solicitation in person
8 or by telephone, that:

9 (A) concerns an action for personal injury or
10 wrongful death or otherwise relates to an accident or disaster
11 involving the person to whom the communication or solicitation is
12 provided or a relative of that person and that was provided before
13 the 31st day after the date on which the accident or disaster
14 occurred;

15 (B) concerns a specific matter and relates to
16 legal representation and the person knows or reasonably should know
17 that the person to whom the communication or solicitation is
18 directed is represented by a lawyer in the matter;

19 ~~(C) [concerns an arrest of or issuance of a~~
20 ~~summons to the person to whom the communication or solicitation is~~
21 ~~provided or a relative of that person and that was provided before~~
22 ~~the 31st day after the date on which the arrest or issuance of the~~
23 ~~summons occurred,~~

24 ~~(D)~~ concerns a lawsuit of any kind, including
25 an action for divorce, in which the person to whom the communication
26 or solicitation is provided is a defendant or a relative of that
27 person, unless the lawsuit in which the person is named as a

1 defendant has been on file for more than 31 days before the date on
2 which the communication or solicitation was provided;

3 (D) [~~(E)~~] is provided or permitted to be provided
4 by a person who knows or reasonably should know that the injured
5 person or relative of the injured person has indicated a desire not
6 to be contacted by or receive communications or solicitations
7 concerning employment;

8 (E) [~~(F)~~] involves coercion, duress, fraud,
9 overreaching, harassment, intimidation, or undue influence; or

10 (F) [~~(G)~~] contains a false, fraudulent,
11 misleading, deceptive, or unfair statement or claim.

12 (e) For purposes of Subsection (d)(2)(D) [~~(d)(2)(E)~~], a
13 desire not to be contacted is presumed if an accident report
14 reflects that such an indication has been made by an injured person
15 or that person's relative.

16 SECTION 4. (a) Section 82.065(b), Government Code, as
17 amended by this Act, applies only to a contract procured as a result
18 of conduct described by that subsection, as amended by this Act,
19 occurring on or after the effective date of this Act. A contract
20 procured as a result of conduct occurring before the effective date
21 of this Act is governed by the law applicable to the contract
22 immediately before the effective date of this Act, and that law is
23 continued in effect for that purpose.

24 (b) Except as provided by this section, Section 82.0651,
25 Government Code, as amended by this Act, applies only to an action
26 concerning a contract procured as a result of conduct described by
27 Section 82.0651(a), Government Code, as amended by this Act, that

1 occurs on or after the effective date of this Act. An action
2 concerning a contract procured as a result of conduct that occurred
3 before the effective date of this Act is governed by the law
4 applicable to the contract immediately before the effective date of
5 this Act, and that law is continued in effect for that purpose.

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

8 (1) commenced on or after the effective date of this
9 Act; or

10 (2) pending on the effective date of this Act and in
11 which the trial, or any new trial or retrial following motion,
12 appeal, or otherwise, begins on or after the effective date of this
13 Act.

14 SECTION 5. This Act takes effect September 1, 2013.

President of the Senate

Speaker of the House

I certify that H.B. No. 1711 was passed by the House on April 11, 2013, by the following vote: Yeas 140, Nays 4, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1711 on May 16, 2013, by the following vote: Yeas 141, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1711 was passed by the Senate, with amendments, on May 15, 2013, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor