

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Fletcher

H.B. No. 1711

A BILL TO BE ENTITLED

AN ACT

relating to civil liability for prohibited barratry.

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

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;

1 [~~and~~]

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

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

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

7 SECTION 2. (a) Except as provided by this section, Section  
8 82.0651, Government Code, as amended by this Act, applies only to an  
9 action concerning a contract procured as a result of conduct  
10 described by Section 82.0651(a), Government Code, that occurs on or  
11 after the effective date of this Act. An action concerning a  
12 contract procured as a result of conduct that occurred before the  
13 effective date of this Act is governed by the law applicable to the  
14 contract immediately before the effective date of this Act, and  
15 that law is continued in effect for that purpose.

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

18 (1) commenced on or after the effective date of this  
19 Act; or

20 (2) pending on the effective date of this Act and in  
21 which the trial, or any new trial or retrial following motion,  
22 appeal, or otherwise, begins on or after the effective date of this  
23 Act.

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

ADOPTED

MAY 15 2013

*Walter D. Burdick*  
Secretary of the Senate

By: Robert Owen

H.B. No. 1711

Substitute the following for H.B. No. 1711:

By: Du

C.S. \_\_\_ B. No. \_\_\_

A BILL TO BE ENTITLED

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 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.

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 15, 2013**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HBI711** by Fletcher (Relating to barratry.), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Government Code to specify that a client bringing an action to void a legal contract procured as a result of barratry may also bring a damages recovery action. The bill specifies that a client may bring a recovery action even if the contract the action is based on was voided voluntarily, and adds a \$10,000 penalty as an element of recovery. The bill specifies that the expedited actions process established by Rule 169 of the Texas Rules of Civil Procedure does not apply to an action brought under the bill's provisions. The bill would amend the Penal Code in relation to certain actions constituting criminal offenses.

No significant fiscal impact to the court system is anticipated. The bill would take effect September 1, 2013.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, SD, AG, CL, AM



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**May 7, 2013**

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1711** by Fletcher (Relating to barratry.), **Committee Report 2nd House, Substituted**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend the Government Code to specify that a client bringing an action to void a legal contract procured as a result of barratry may also bring a damages recovery action. The bill specifies that a client may bring a recovery action even if the contract the action is based on was voided voluntarily, and adds a \$10,000 penalty as an element of recovery. The bill specifies that the expedited actions process established by Rule 169 of the Texas Rules of Civil Procedure does not apply to an action brought under the bill's provisions. The bill would amend the Penal Code in relation to certain actions constituting criminal offenses.

No significant fiscal impact to the court system is anticipated. The bill would take effect September 1, 2013.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, AG, CL, AM

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**April 19, 2013**

**TO:** Honorable Robert Duncan, Chair, Senate Committee on State Affairs

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1711** by Fletcher (Relating to civil liability for prohibited barratry.), **As Engrossed**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Government Code to specify that a client bringing an action to void a legal contract procured as a result of barratry may also bring a damages recovery action. The bill specifies that a client may bring a recovery action even if the contract the action is based on was voided voluntarily, and adds a \$10,000 penalty as an element of recovery. The bill specifies that the expedited actions process established by Rule 169 of the Texas Rules of Civil Procedure does not apply to an action brought under the bill's provisions.

No significant fiscal impact to the court system is anticipated. The bill would take effect September 1, 2013.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, AG, CL, AM

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**March 27, 2013**

**TO:** Honorable Tryon D. Lewis, Chair, House Committee on Judiciary & Civil Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1711** by Fletcher (Relating to civil liability for prohibited barratry.), **Committee Report 1st House, Substituted**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Government Code to specify that a client bringing an action to void a legal contract procured as a result of barratry may also bring a damages recovery action. The bill specifies that a client may bring a recovery action even if the contract the action is based on was voided voluntarily, and adds a \$10,000 penalty as an element of recovery. The bill specifies that the expedited actions process established by Rule 169 of the Texas Rules of Civil Procedure does not apply to an action brought under the bill's provisions.

No significant fiscal impact to the court system is anticipated. The bill would take effect September 1, 2013.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, CL, AM

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 83RD LEGISLATIVE REGULAR SESSION**

**March 8, 2013**

**TO:** Honorable Tryon D. Lewis, Chair, House Committee On Judiciary & Civil Jurisprudence

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1711** by Fletcher (Relating to civil liability for prohibited barratry.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Government Code to specify that a client bringing an action to void a legal contract procured as a result of barratry may also bring a damages recovery action. The bill specifies that a client may bring a recovery action even if the contract the action is based on was voided voluntarily. The bill adds a \$10,000 penalty as an element of recovery for clients bringing barratry actions. The bill would take effect September 1, 2013.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** UP, CL, AM