

House Bill 1711
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

No equivalent provision.

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.

SENATE VERSION (CS)

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.

(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.

CONFERENCE

House Bill 1711
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(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

SENATE VERSION (CS)

(c) A person who was solicited by 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, but who did not enter into a contract as a result of that conduct, may file a civil action against any person who committed barratry.

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

SECTION 4. (a) Section 82.065(b), Government Code, as amended by this Act, applies only to a contract procured as a result of conduct described by that subsection, as amended by this Act, occurring on or after the effective date of this Act. A contract procured as a result of conduct occurring 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) 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, as amended by this Act, 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.

(c) 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

CONFERENCE

House Bill 1711
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(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.

No equivalent provision.

SENATE VERSION (CS)

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

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

(1) is an attorney, chiropractor, physician, surgeon, or private investigator licensed to practice in this state or any person licensed, certified, or registered by a health care regulatory agency of this state; and

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

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

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

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

CONFERENCE

House Bill 1711
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (CS)

CONFERENCE

~~(D)~~ concerns a lawsuit of any kind, including an action for divorce, in which the person to whom the communication or solicitation is provided is a defendant or a relative of that person, unless the lawsuit in which the person is named as a defendant has been on file for more than 31 days before the date on which the communication or solicitation was provided;

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

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

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

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

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

SECTION 5. Same as House version.