

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Smith of Tarrant

H.B. No. 148

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to the prosecution of the offense of barratry and  
3 solicitation of professional employment.

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

5 SECTION 1. Section 38.12(d), Penal Code, is amended to read  
6 as follows:

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

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

12 (2) with the intent to obtain professional employment  
13 for the person [~~himself~~] or for another, provides [~~sends~~] or  
14 knowingly permits to be provided [~~sent~~] to an individual who has not  
15 sought the person's employment, legal representation, advice, or  
16 care a written communication or a solicitation, including a  
17 solicitation in person or by telephone, that:

18 (A) concerns an action for personal injury or  
19 wrongful death or otherwise relates to an accident or disaster  
20 involving the person to whom the communication or solicitation is  
21 provided [~~addressed~~] or a relative of that person and that was  
22 provided [~~mailed~~] before the 31st day after the date on which the  
23 accident or disaster occurred;

24 (B) concerns a specific matter and relates to

1 legal representation and the person knows or reasonably should know  
2 that the person to whom the communication or solicitation is  
3 directed is represented by a lawyer in the matter;

4 (C) concerns an arrest of or issuance of a  
5 summons to the person to whom the communication or solicitation is  
6 provided [~~addressed~~] or a relative of that person and that was  
7 provided [~~mailed~~] before the 31st day after the date on which the  
8 arrest or issuance of the summons occurred;

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

15 (E) is provided [~~sent~~] or permitted to be  
16 provided [~~sent~~] by a person who knows or reasonably should know that  
17 the injured person or relative of the injured person has indicated a  
18 desire not to be contacted by or receive communications or  
19 solicitations concerning employment;

20 (F) involves coercion, duress, fraud,  
21 overreaching, harassment, intimidation, or undue influence; or

22 (G) contains a false, fraudulent, misleading,  
23 deceptive, or unfair statement or claim.

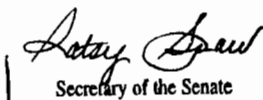
24 SECTION 2. The change in law made by this Act applies only  
25 to an offense committed on or after the effective date of this Act.  
26 An offense committed before the effective date of this Act is  
27 governed by the law in effect at the time the offense was committed,

1 and the former law is continued in effect for that purpose. For  
2 purposes of this section, an offense was committed before the  
3 effective date of this Act if any element of the offense occurred  
4 before that date.

5 SECTION 3. This Act takes effect September 1, 2009.

# ADOPTED

MAY 26 2009

  
Secretary of the Senate

COMMITTEE AMENDMENT NO. \_\_\_\_\_

BY: \_\_\_\_\_

1 Amend H.B. No. 148 (house engrossment) as follows:

2 (1) In SECTION 2 of the bill, strike "The change in law  
3 made by this Act applies" and substitute "Section 38.12(d),  
4 Penal Code, as amended by this Act,".

5 (2) Add the following appropriately numbered SECTIONS to  
6 the bill and renumber existing SECTIONS of the bill accordingly:

7 SECTION \_\_. Subchapter C, Chapter 82, Government Code, is  
8 amended by adding Section 82.067 to read as follows:

9 Sec. 82.067. CLIENT CAUSE OF ACTION. (a) A client may  
10 bring a civil action against any person who knowingly engages in  
11 conduct prohibited by:

12 (1) the following sections of the Penal Code:

13 (A) Section 38.12 (Barratry and Solicitation of  
14 Professional Employment);

15 (B) Section 38.122 (Falsely Holding Oneself Out  
16 as a Lawyer); or

17 (C) Section 38.123 (Unauthorized Practice of  
18 Law); or

19 (2) Rule 8.04 (a)(9), Texas Disciplinary Rules of  
20 Professional Conduct.

21 (b) A client who prevails in an action under this section  
22 may recover the following as damages:

23 (1) all amounts paid to or received by the person as  
24 a result of the conduct on which the cause of action is based;

25 (2) at the discretion of the fact-finder and as a  
26 penalty based on the severity of the wrongful conduct, up to an  
27 additional two times the amounts paid to or received by the  
28 person as a result of such conduct;

29 (3) reasonable and necessary attorney's fees and

1 court costs incurred by the client in the action; and

2 (4) prejudgment and post-judgment interest as provided  
3 by law.

4 (c) The standard of proof for proving a cause of action  
5 under this section shall be by a preponderance of the evidence.

6 (d) For the purposes of this section, a person acts  
7 "knowingly" when the person has actual awareness of the nature  
8 of the person's conduct or that the circumstances exist, or has  
9 actual awareness that the person's conduct is reasonably certain  
10 to cause the result. For the purposes of this section, "actual  
11 awareness" may be inferred where objective manifestations  
12 indicate that a person acted with actual awareness.

13 SECTION \_\_. Section 82.067, Government Code, as added by  
14 this Act, applies only to a cause of action that accrues on or  
15 after the effective date of this Act. A cause of action that  
16 accrues before the effective date of this Act is governed by the  
17 law in effect immediately before the effective date of this Act,  
18 and that law is continued in effect for that purpose.

25



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

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 28, 2009**

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

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB148** by Smith, Todd (Relating to the prosecution of the offense of barratry and solicitation of professional employment.), **As Passed 2nd House**

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

The bill would amend the Government Code relating to barratry. The bill would authorize the client of an attorney with whom the client had entered a contingent fee contract procured as a result of barratry to recover the amount paid to the attorney plus additional damages in a civil suit. To the extent the bill would modify court procedures, no affect on judicial workloads or fiscal implication to the State is anticipated.

The bill would amend the Penal Code by providing clarification for the conditions that must be met regarding the prosecution of the offense of barratry and solicitation of professional employment. It is assumed that implementation of these provisions of the bill would not have a significant impact on the costs of state government.

The bill would take effect September 1, 2009.

**Local Government Impact**

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

**Source Agencies:**

**LBB Staff:** JOB, SD, KJG, ESi, GG, DB



**LEGISLATIVE BUDGET BOARD**

Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

May 23, 2009

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

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB148** by Smith, Todd (Relating to the prosecution of the offense of barratry and solicitation of professional employment.), **Committee Report 2nd House, As Amended**

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

The bill would amend the Government Code relating to barratry. The bill would authorize the client of an attorney with whom the client had entered a contingent fee contract procured as a result of barratry to recover the amount paid to the attorney plus additional damages in a civil suit. To the extent the bill would modify court procedures, no affect on judicial workloads or fiscal implication to the State is anticipated.

The bill would amend the Penal Code by providing clarification for the conditions that must be met regarding the prosecution of the offense of barratry and solicitation of professional employment. It is assumed that implementation of these provisions of the bill would not have a significant impact on the costs of state government.

The bill would take effect September 1, 2009.

**Local Government Impact**

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

**Source Agencies:**

**LBB Staff:** JOB, KJG, ESi, GG, DB



**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**May 20, 2009**

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

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB148** by Smith, Todd (Relating to the prosecution of the offense of barratry and solicitation of professional employment.), **As Engrossed**

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

The bill would amend the Penal Code by providing clarification for the conditions that must be met regarding the prosecution of the offense of barratry and solicitation of professional employment. It is assumed that implementation of the bill would not have a significant impact on the costs of state government.

**Local Government Impact**

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

**Source Agencies:**

**LBB Staff:** JOB, KJG, ESi, GG, DB



**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

April 23, 2009

**TO:** Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB148** by Smith, Todd (Relating to the prosecution of the offense of barratry and solicitation of professional employment. ), **Committee Report 1st House, Substituted**

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

The bill would amend the Penal Code by providing clarification for the conditions that must be met regarding the prosecution of the offense of barratry and solicitation of professional employment. It is assumed that implementation of the bill would not have a significant impact on the costs of state government.

**Local Government Impact**

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

**Source Agencies:**

**LBB Staff:** JOB, ESi, GG, DB



**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**March 13, 2009**

**TO:** Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB148** by Smith, Todd (Relating to including within the offense of barratry and solicitation of professional employment certain solicitations made during certain periods.), **As Introduced**

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

The bill would amend the Penal Code relating to the offense of barratry if certain professionals, with the intent to obtain employment, solicit a person involved in a personal injury sustained in an accident or disaster involving the solicited person or a relative of the person before the 31st day after the date the accident or disaster occurred. The offense would be a Class A misdemeanor. The bill would take effect September 1, 2009.

A Class A misdemeanor is punishable by a fine not to exceed \$4,000, confinement in jail up to one year, or a combination of both.

**Local Government Impact**

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

**Source Agencies:**

**LBB Staff:** JOB, ESi, DB



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

**CRIMINAL JUSTICE IMPACT STATEMENT**

**81ST LEGISLATIVE REGULAR SESSION**

**April 23, 2009**

**TO:** Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB148** by Smith, Todd (Relating to the prosecution of the offense of barratry and solicitation of professional employment. ), **Committee Report 1st House, Substituted**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, GG



**LEGISLATIVE BUDGET BOARD**  
Austin, Texas

**CRIMINAL JUSTICE IMPACT STATEMENT**

**81ST LEGISLATIVE REGULAR SESSION**

**March 16, 2009**

**TO:** Honorable Pete Gallego, Chair, House Committee on Criminal Jurisprudence

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB148** by Smith, Todd (Relating to including within the offense of barratry and solicitation of professional employment certain solicitations made during certain periods.), **As Introduced**

No significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies is anticipated from any provisions of this bill that authorize or require a change in the sanctions applicable to adults convicted of felony crimes.

**Source Agencies:**

**LBB Staff:** JOB, GG

