

By: Duncan

S.B. No. 1716

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to voidability of contracts procured through barratry and  
3 liability arising from conduct constituting barratry; providing a  
4 civil penalty.

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

6 SECTION 1. Section 82.065, Government Code, is amended to  
7 read as follows:

8 Sec. 82.065. [~~CONTINGENT FEE~~] CONTRACT FOR LEGAL SERVICES.

9 (a) A contingent fee contract for legal services must be in  
10 writing and signed by the attorney and client.

11 (b) Any [~~A contingent fee~~] contract for legal services is  
12 voidable by the client if it is procured as a result of conduct  
13 violating the laws of this state or the Texas Disciplinary Rules of  
14 Professional Conduct of the State Bar of Texas regarding barratry  
15 by attorneys or other persons.

16 (c) A lawyer who was paid or owed fees or expenses under a  
17 contract that is voided may recover in quantum meruit if the client  
18 does not prove the lawyer committed barratry or had actual  
19 knowledge, prior to undertaking the representation, that the  
20 contract was procured as a result of barratry by another person.

21 SECTION 2. Subchapter C, Chapter 82, Government Code, is  
22 amended by adding Section 82.067 to read as follows:

23 Sec. 82.067. CIVIL LIABILITY FOR PROHIBITED BARRATRY.

24 (a) A client may bring an action to void any contract for legal

1 services that was procured as a result of conduct violating the laws  
2 of this state or the Texas Disciplinary Rules of Professional  
3 Conduct of the State Bar of Texas regarding barratry by attorneys or  
4 other persons.

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

7 (1) all fees and expenses paid to that person under any  
8 contract that is voided;

9 (2) actual damages caused by the prohibited conduct;

10 and

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

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

18 (d) A person who prevails in an action under Subsection (c)  
19 shall recover from each person who engaged in barratry:

20 (1) a civil penalty of \$5,000;

21 (2) actual damages caused by the prohibited conduct;

22 and

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

24 (e) This section shall be liberally construed and applied to  
25 promote its underlying purposes, which are to protect those in need  
26 of legal services against unethical, unlawful solicitation and to  
27 provide efficient and economical procedures to secure such

1 protection.

2 (f) The provisions of this subchapter are not exclusive.  
3 The remedies provided in this subchapter are in addition to any  
4 other procedures or remedies provided in any other law; provided,  
5 however, that no recovery shall be permitted under both this  
6 subchapter and another law of both damages and penalties for the  
7 same act or practice.

8 SECTION 3. (a) Section 82.065, Government Code, as amended  
9 by this Act, applies only to a contract entered into on or after the  
10 effective date of this Act. A contract entered into before the  
11 effective date of this Act is governed by the law in effect  
12 immediately before the effective date of this Act, and that law is  
13 continued in effect for that purpose.

14 (b) Section 82.067, Government Code, as added by this Act,  
15 does not apply to prohibited conduct, as defined by that section,  
16 that occurred before the effective date of this Act. Prohibited  
17 conduct that occurred before the effective date of this Act is  
18 governed by the law that applied to the conduct immediately before  
19 the effective date of this Act, and that law is continued in effect  
20 for that purpose.

21 SECTION 4. This Act takes effect September 1, 2011.