

1 SB169
2 146928-1
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 07-FEB-13

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8 SYNOPSIS: Under existing law, attorneys are subject to
9 certain rules regarding their professional conduct.

10 This bill would provide that a contract for
11 legal service is voidable if it is procured as a
12 result of conduct violating the laws of the state
13 or the Alabama Rules of Professional Conduct.

14 This bill would provide for recovery of
15 certain fees and expenses; and would allow an
16 attorney to recover fees and expenses based on a
17 quantum meruit theory.

18 This bill would provide certain exceptions.
19

20 A BILL

21 TO BE ENTITLED

22 AN ACT
23

24 To amend Section 34-3-25, Code of Alabama 1975,
25 relating to attorneys; to provide that a contract for legal
26 service is voidable if it is procured as a result of conduct
27 violating the laws of the state or the Alabama Rules of

1 Professional Conduct; to provide for recovery of certain fees
2 and expenses; to allow an attorney to recover fees and
3 expenses based on a quantum meruit theory; and to provide
4 certain exceptions.

5 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

6 Section 1. Section 34-3-25 of the Code of Alabama
7 1975, is amended to read as follows:

8 "§34-3-25.

9 "(a) Any person who shall, before or after an action
10 is brought, receive or agree to receive from any
11 attorney-at-law, firm or partnership of attorneys compensation
12 for services in seeking out, procuring or placing in the hands
13 of an attorney, firm or partnership of attorneys a demand of
14 any kind for an action or compromise shall be guilty of a
15 misdemeanor and, upon conviction, shall be fined in a sum not
16 exceeding ~~\$1,000~~ one thousand dollars (\$1,000) and, in
17 addition, may be punished by imprisonment in the county jail
18 or by hard labor for the county for a term not exceeding six
19 months, at the discretion of the court trying the case.

20 "(b) A contract for legal services shall be voidable
21 by the client if it is procured as a result of conduct
22 violating the laws of this state or the Alabama Rules of
23 Professional Conduct regarding case solicitation by attorneys
24 or other persons. A person may not solicit professional
25 employment from a prospective client with whom the person has
26 no familial or current or prior professional relationship, in
27 person or otherwise, when to do so results in gain for the

1 person or a gain for an attorney. The term "solicit" includes
2 contact in person, by telephone, facsimile, e-mail, or by
3 other communication directed to a specific recipient and
4 includes contact by any written form of communication directed
5 to a specific recipient and not meeting the requirements of
6 Rule 7.3(b) (2) of the Alabama Rules of Professional Conduct. A
7 client may bring an action to void the legal contract pursuant
8 to the laws of this state or the Alabama Rules of Professional
9 Conduct regarding case solicitation by attorneys or other
10 persons.

11 "(c) A client who prevails in an action under
12 subsection (a) may recover the following from any person who
13 committed case solicitation:

14 "(1) All fees and expenses paid to that person under
15 the contract.

16 "(2) The balance of any fees and expenses paid to
17 any other person under the contract after deducting fees and
18 expenses based on a quantum meruit theory as provided by
19 subsection (f).

20 "(3) Actual damages caused by the prohibited
21 conduct.

22 "(4) All attorneys fees incurred pursuing the
23 action.

24 "(d) A person who was solicited by conduct violating
25 the laws of this state or the Alabama Rules of Professional
26 Conduct regarding case solicitation by attorneys or other
27 persons, but who did not enter into a contract as a result of

1 that conduct may file a civil action against any person who
2 committed case solicitation.

3 "(e) A person who prevails in an action under
4 subsection (c) may recover from each person who engaged in
5 case solicitation the following:

6 "(1) A penalty in the amount of five thousand
7 dollars (\$5,000).

8 "(2) Actual damages caused by the prohibited
9 conduct.

10 "(f) An attorney who was paid or owed fees or
11 expenses under a contract that is voided under this section
12 may recover fees and expenses based on a quantum meruit theory
13 if the client does not prove that the attorney committed case
14 solicitation or had actual knowledge before undertaking the
15 representation that the contract was procured as a result of
16 case solicitation by another person. To recover fees or
17 expenses under this subsection, the attorney must have
18 reported the misconduct as required by the Alabama Rules of
19 Professional Conduct, unless:

20 "(1) Another person has already reported the
21 misconduct.

22 "(2) The attorney reasonably believed that reporting
23 the misconduct would substantially prejudice the client's
24 interest.

25 "(g) A person violates this section if, with intent
26 to obtain an economic benefit, the person does any of the
27 following:

1 "(1) Knowingly institutes a suit or claim that the
2 person has not been authorized to pursue.

3 "(2) Solicits employment, either in person or by
4 himself or herself or for another.

5 "(3) Pays, gives, or advances or offers to pay,
6 give, or advance to a prospective client money or anything of
7 value to obtain employment as a professional from the
8 prospective client.

9 "(4) Pays or gives or offers to pay or give a person
10 money or anything of value to solicit employment.

11 "(5) Pays or gives or offers to pay or give a family
12 member of a prospective client money or anything of value to
13 solicit employment.

14 "(6) Accepts or agrees to accept money or anything
15 of value to solicit employment.

16 "(h) It is an exception to this section if the
17 person's conduct is authorized by the Alabama Rules of
18 Professional Conduct or any rule of court.

19 "(i) Any action shall be commenced within two years
20 from the date of the soliciting conduct.

21 "(j) This section shall be liberally construed and
22 applied to promote its underlying purposes, which are to
23 protect those in need of legal services against unethical,
24 unlawful solicitation and to provide efficient and economical
25 procedures to secure that protection.

26 "(k) The provisions of this chapter are not
27 exclusive. The remedies provided in this chapter are in

1 addition to any other procedures or remedies provided by any
2 other law, except that a person may not recover damages and
3 penalties under both this chapter and another law for the same
4 act or practice.

5 "(1) This section does not apply to prohibited
6 conduct that occurred before the effective date of the act
7 adding this amendatory language."

8 Section 2. This act shall become effective on
9 January 1, 2014.