

1 SB55  
2 146928-1  
3 By Senator Ward  
4 RFD: Judiciary  
5 First Read: 05-FEB-13  
6 PFD: 01/24/2013

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

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

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

19 This bill would provide certain exceptions.  
20

21 A BILL  
22 TO BE ENTITLED  
23 AN ACT  
24

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

1 violating the laws of the state or the Alabama Rules of  
2 Professional Conduct; to provide for recovery of certain fees  
3 and expenses; to allow an attorney to recover fees and  
4 expenses based on a quantum meruit theory; and to provide  
5 certain exceptions.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. Section 34-3-25 of the Code of Alabama  
8 1975, is amended to read as follows:

9 "§34-3-25.

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

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

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

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

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

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

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

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

25 "(d) A person who was solicited by conduct violating  
26 the laws of this state or the Alabama Rules of Professional  
27 Conduct regarding case solicitation by attorneys or other

1 persons, but who did not enter into a contract as a result of  
2 that conduct may file a civil action against any person who  
3 committed case solicitation.

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

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

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

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

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

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

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

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

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

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

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

14           "(5) Pays or gives or offers to pay or give a family  
15 member of a prospective client money or anything of value to  
16 solicit employment.

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

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

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

24           "(j) This section shall be liberally construed and  
25 applied to promote its underlying purposes, which are to  
26 protect those in need of legal services against unethical,

1 unlawful solicitation and to provide efficient and economical  
2 procedures to secure that protection.

3 "(k) The provisions of this chapter are not  
4 exclusive. The remedies provided in this chapter are in  
5 addition to any other procedures or remedies provided by any  
6 other law, except that a person may not recover damages and  
7 penalties under both this chapter and another law for the same  
8 act or practice.

9 "(l) This section does not apply to prohibited  
10 conduct that occurred before the effective date of the act  
11 adding this amendatory language."

12 Section 2. This act shall become effective on  
13 January 1, 2014.