

# CONFERENCE COMMITTEE REPORT FORM

Austin, Texas


5/30/09  
Date

Honorable David Dewhurst  
President of the Senate

Honorable Joe Straus  
Speaker of the House of Representatives

Sirs:

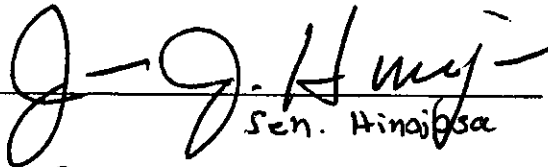
We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 148 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.



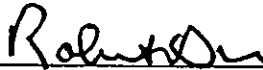
Sen. Wentworth



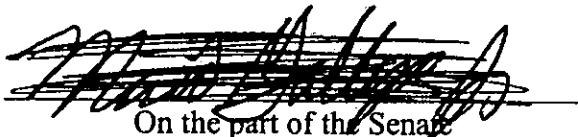
Sen. Watson



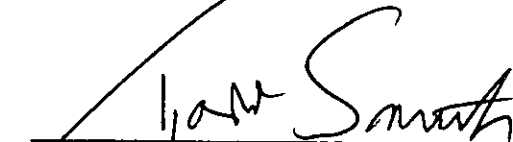
Sen. Hinojosa



Sen. Duncan



On the part of the Senate



Rep. Todd Smith



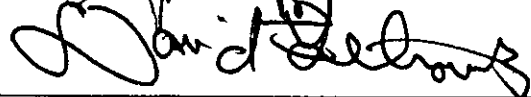
Rep. Branch



Rep. Hartnett



Rep. Hueter



On the part of the House

Rep. Leibowitz

## Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

# CONFERENCE COMMITTEE REPORT

3<sup>rd</sup> Printing

H. B. No. 148

A BILL TO BE ENTITLED

AN ACT

1  
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.

**House Bill 148**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

No equivalent provision.

Same as House version.

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

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

(1) the following sections of the Penal Code:

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

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

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

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

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

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

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

(3) reasonable and necessary attorney's fees and court costs incurred by the client in the action; and

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

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

**House Bill 148**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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

No equivalent provision.

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

Same as House version.

SECTION 1. Section 38.12(d), Penal Code, is 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 [himself] or for another, provides [sends] or knowingly permits to be provided [sent] 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

Same as House version.

Same as House version.

**House Bill 148**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

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 [~~addressed~~] or a relative of that person and that was provided [~~mailed~~] 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 of or issuance of a summons to the person to whom the communication or solicitation is provided [~~addressed~~] or a relative of that person and that was provided [~~mailed~~] before the 31st day after the date on which the arrest or issuance of the summons occurred;

(D) concerns a lawsuit of any kind, including an action for divorce, in which the person to whom the communication or solicitation is provided [~~addressed~~] 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 [~~mailed~~];

(E) is provided [~~sent~~] or permitted to be provided [~~sent~~] 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;

**House Bill 148**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

(F) involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence; or  
(G) contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

SECTION 2. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

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

SENATE VERSION

SECTION 2. Section 38.12(d), Penal Code, as amended by this Act, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect at the time the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

Same as House version.

CONFERENCE

Same as House version.

Same as House version.



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

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

**May 30, 2009**

**TO:** Honorable David Dewhurst , Lieutenant Governor, Senate  
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.), **Conference Committee Report**

**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.

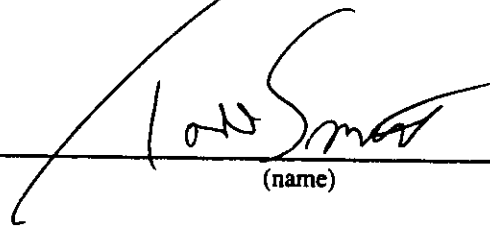
**Source Agencies:**

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

## Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on 4 B. 148 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.

  
\_\_\_\_\_  
(name)

5/30/09  
\_\_\_\_\_  
(date)