

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH10177-LU-108 (4/5)

Short Title: 30-Day Wait/Unsolicited Mailings/Attorneys. (Public)

Sponsors: Representative Justice.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE A THIRTY-DAY WAITING PERIOD BEFORE AN
3 ATTORNEY IS ALLOWED TO SEND UNSOLICITED WRITTEN
4 COMMUNICATIONS TO PROSPECTIVE CLIENTS.

5 The General Assembly of North Carolina enacts:

6 **SECTION 1.** G.S. 84-38 reads as rewritten:

7 "**§ 84-38. Solicitation of retainer or contract for legal services prohibited; division**
8 **of fees.**

9 ~~It~~ Except as otherwise provided in G.S. 84-39, it shall be unlawful for any person,
10 firm, corporation, or association or his or their agent, agents, or employees, acting on
11 his or their behalf, to solicit or procure through solicitation either directly or indirectly,
12 any legal business, whether to be performed in this State or elsewhere, or to solicit or
13 procure through solicitation either directly or indirectly, a retainer or contract, written or
14 oral, or any agreement authorizing an attorney or any other person, firm, corporation, or
15 association to perform or render any legal services, whether to be performed in this
16 State or elsewhere.

17 It shall be unlawful for any person, firm, corporation, or association to divide with or
18 receive from any attorney-at-law, or group of attorneys-at-law, whether practicing in
19 this State or elsewhere, either before or after action is brought, any portion of any fee or
20 compensation charged or received by such attorney-at-law, or any valuable
21 consideration or reward, as an inducement for placing or in consideration of being
22 placed in the hands of such attorney or attorneys-at-law, or in the hands of another
23 person, firm, corporation or association, a claim or demand of any kind, for the purpose
24 of collecting such claim or instituting an action thereon or of representing claimant in
25 the pursuit of any civil remedy for the recovery thereof, or for the settlement or
26 compromise thereof, whether such compromise, settlement, recovery, suit, claim,
27 collection or demand shall be in this State or elsewhere. This paragraph shall not apply

1 to agreements between attorneys to divide compensation received in cases or matters
2 legitimately, lawfully and properly received by them.

3 Any person, firm, corporation or association of persons violating the provisions of
4 this section shall be guilty of a Class 1 misdemeanor.

5 The council of the North Carolina State Bar is hereby authorized and empowered to
6 investigate and bring action against persons charged with violations of this section and
7 the provisions as set forth in G.S. 84-37 shall apply. Nothing contained herein shall be
8 construed to supersede the authority of district attorneys to seek injunctive relief or
9 institute criminal proceedings in the same manner as provided for in G.S. 84-7. Nothing
10 herein shall be construed as abridging the inherent powers of the courts to deal with
11 such matters."

12 **SECTION 2.** Article 4 of Chapter 84 of the General Statutes is amended by
13 adding a new section to read:

14 **§ 84-39. Unsolicited written communication.**

15 Notwithstanding G.S. 84-38 or any rules adopted by the Council of the North
16 Carolina State Bar, it shall be unlawful for a licensed attorney to send, or knowingly
17 permit to be sent, on the attorney's behalf or on behalf of the attorney's firm, partner,
18 associate, or any other attorney affiliated with the attorney or the attorney's firm, an
19 unsolicited written communication directly or indirectly to a prospective client for the
20 purpose of obtaining professional employment if the written communication concerns a
21 traffic citation or an action for personal injury or wrongful death or otherwise relates to
22 an accident or disaster involving the person to whom the communication is addressed or
23 a relative of that person, unless the accident or disaster occurred more than 30 days
24 before the communication is mailed.

25 All unsolicited written communications shall otherwise comply with the laws of this
26 State and rules adopted by the Council of the North Carolina State Bar.

27 Any person, firm, corporation, or association of persons violating the provisions of
28 this section shall be guilty of a Class 1 misdemeanor and subject to investigation or
29 action by the Council pursuant to G.S. 84-37."

30 **SECTION 3.** This act is effective when it becomes law and applies to
31 unsolicited written communications mailed on or after that date.