

HOUSE BILL 468

Unofficial Copy
D1

1998 Regular Session
8r0222
CF 8r0221

By: **Delegates Vallario, Pitkin, Palumbo, Montague, and T. Murphy**
Introduced and read first time: February 4, 1998
Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Lawyers - Solicitation of Clients - Requirements**

3 FOR the purpose of prohibiting a lawyer, or a lawyer's agent or employee, from
4 sending specified forms of communication to certain persons unless the
5 communication meets certain requirements; requiring a person who sends
6 certain communications to file a copy of the communication and certain
7 information with the Bar Counsel under certain circumstances; providing for
8 certain penalties; making provisions of this Act severable; and generally relating
9 to solicitation of lawyer services under certain circumstances.

10 BY adding to

11 Article - Business Occupations and Professions
12 Section 10-605.2
13 Annotated Code of Maryland
14 (1995 Replacement Volume and 1997 Supplement)

15 BY repealing and reenacting, without amendments,

16 Article - Business Occupations and Professions
17 Section 10-606(c)
18 Annotated Code of Maryland
19 (1995 Replacement Volume and 1997 Supplement)

20 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
21 MARYLAND, That the Laws of Maryland read as follows:

22 **Article - Business Occupations and Professions**

23 10-605.2.

24 (A) THIS SECTION APPLIES ONLY TO A COMMUNICATION:

25 (1) IN A FORM DESCRIBED UNDER SUBSECTION (C) OF THIS SECTION;

1 (2) SENT BY A LAWYER, DIRECTLY OR THROUGH AN AGENT OR
2 EMPLOYEE, TO A PROSPECTIVE CLIENT FOR THE PURPOSE OF OBTAINING
3 PROFESSIONAL EMPLOYMENT; AND

4 (3) IF THE COMMUNICATION CONCERNS:

5 (I) AN ACTION FOR PERSONAL INJURY OR WRONGFUL DEATH, OR
6 OTHERWISE RELATES TO AN ACCIDENT OR DISASTER INVOLVING THE PERSON TO
7 WHOM THE COMMUNICATION IS SENT OR THE PERSON'S RELATIVE; OR

8 (II) A CRIMINAL PROSECUTION, OR A PROSECUTION OF A TRAFFIC
9 OFFENSE THAT IS PUNISHABLE BY A PERIOD OF INCARCERATION, INVOLVING THE
10 PERSON TO WHOM THE COMMUNICATION IS SENT OR THE PERSON'S RELATIVE.

11 (B) THIS SECTION DOES NOT APPLY TO A COMMUNICATION SENT TO A
12 PROSPECTIVE CLIENT AT THE REQUEST OF THE PROSPECTIVE CLIENT.

13 (C) THIS SECTION APPLIES ONLY TO THE FOLLOWING FORMS OF
14 COMMUNICATION:

15 (1) AN AUDIO RECORDING;

16 (2) A COMPUTER ON-LINE TRANSMISSION;

17 (3) A FACSIMILE TRANSMISSION;

18 (4) A LETTER OR OTHER FORM OF WRITTEN COMMUNICATION;

19 (5) A TELEGRAPHIC TRANSMISSION;

20 (6) A TELEPHONIC TRANSMISSION; AND

21 (7) A VIDEO RECORDING.

22 (D) (1) EACH COMMUNICATION SHALL INCLUDE THE WORDS "THIS IS AN
23 ADVERTISEMENT" IN A PROMINENT PLACE AT THE BEGINNING AND END OF EACH
24 COMMUNICATION AS REQUIRED IN THIS SUBSECTION.

25 (2) IN A COMMUNICATION SENT BY COMPUTER ON-LINE
26 TRANSMISSION, FACSIMILE, MAIL, OR TELEGRAPH, THE REQUIRED WORDING SHALL
27 APPEAR IN CONSPICUOUS PRINT SIZE:

28 (I) ON THE OUTSIDE OF THE ENVELOPE, IF ANY; AND

29 (II) AT THE BEGINNING AND END OF THE CONTENTS OF THE
30 COMMUNICATION.

31 (3) IF THE FORM OF THE COMMUNICATION IS A SELF-MAILING
32 BROCHURE OR PAMPHLET, THE REQUIRED WORDING SHALL APPEAR ON THE
33 ADDRESS PANEL OF THE BROCHURE OR PAMPHLET.

1 (4) IN A VIDEO RECORDING COMMUNICATION, THE REQUIRED
2 WORDING:

3 (I) SHALL APPEAR CONSPICUOUSLY IN THE COMMUNICATION FOR
4 AT LEAST FIVE SECONDS AT THE BEGINNING AND FOR AT LEAST FIVE SECONDS AT
5 THE END OF THE COMMUNICATION; AND

6 (II) OF THE AUDIO RECORDING PORTION, IF ANY, OF THE
7 COMMUNICATION SHALL MEET THE REQUIREMENTS OF PARAGRAPH (5) OF THIS
8 SUBSECTION.

9 (5) IN AN AUDIO RECORDING COMMUNICATION, THE REQUIRED
10 WORDING SHALL APPEAR, AT THE BEGINNING AND END OF THE COMMUNICATION,
11 IN A TONE, VOLUME, CLARITY, AND SPEED OF DELIVERY AT LEAST SUBSTANTIALLY
12 EQUIVALENT TO THE QUALITY OF THE TONE, VOLUME, CLARITY, AND SPEED OF THE
13 AUDIO ELSEWHERE IN THE COMMUNICATION.

14 (E) A WRITTEN COMMUNICATION MAY NOT BE IN THE FORM OF, OR INCLUDE,
15 LEGAL PLEADINGS OR LEGAL DOCUMENTS.

16 (F) A COMMUNICATION SHALL DISCLOSE HOW THE PERSON SENDING THE
17 COMMUNICATION OBTAINED THE INFORMATION THAT PROMPTED THE
18 COMMUNICATION.

19 (G) A COMMUNICATION MAY NOT REVEAL ON THE ENVELOPE, OR ON THE
20 OUTSIDE OF A SELF-MAILING BROCHURE OR PAMPHLET, THE NATURE OF THE
21 PROSPECTIVE CLIENT'S LEGAL MATTER.

22 (H) IN ADDITION TO MEETING THE REQUIREMENTS OF THIS SECTION, A
23 COMMUNICATION SHALL COMPLY WITH MARYLAND RULES 7.1 THROUGH 7.4.

24 (I) (1) IN THIS SUBSECTION, "BAR COUNSEL" MEANS THE PRINCIPAL
25 EXECUTIVE OFFICER OF THE DISCIPLINARY SYSTEM FOR LAWYERS UNDER THE
26 MARYLAND RULES.

27 (2) SUBJECT TO THE PROVISIONS OF THIS SUBSECTION, A PERSON WHO
28 SENDS A COMMUNICATION SHALL, WITHIN 3 DAYS AFTER THE DATE THAT THE
29 COMMUNICATION IS SENT, FILE THE FOLLOWING WITH THE BAR COUNSEL:

30 (I) A COPY OF THE COMMUNICATION, TOGETHER WITH A SAMPLE
31 COPY OF THE ENVELOPE, IF ANY, USED IN CONJUNCTION WITH THE
32 COMMUNICATION; AND

33 (II) THE NAME OF THE PERSON TO WHOM THE COMMUNICATION
34 WAS SENT AND THE PERSON'S MAILING ADDRESS, TELEPHONE NUMBER, OR
35 TELECOMMUNICATION ADDRESS TO WHICH THE COMMUNICATION WAS SENT.

36 (3) IF COMMUNICATIONS IDENTICAL IN CONTENT ARE SENT TO TWO OR
37 MORE PERSONS, A PERSON MAY COMPLY WITH THE PROVISIONS OF PARAGRAPH (2)
38 OF THIS SUBSECTION BY FILING WITH THE BAR COUNSEL WITHIN 3 DAYS AFTER THE

1 DATE THAT THE COMMUNICATION WAS SENT A SINGLE COPY OF THE
2 COMMUNICATION TOGETHER WITH A LIST OF THE NAMES AND THE APPLICABLE
3 MAILING ADDRESSES, TELEPHONE NUMBERS, OR TELECOMMUNICATION
4 ADDRESSES OF THE PERSONS TO WHOM THE COMMUNICATION WAS SENT.

5 (4) IF THE PERSON PERIODICALLY SENDS AN IDENTICAL
6 COMMUNICATION TO ADDITIONAL PERSONS, THE PERSON MAY COMPLY WITH THE
7 PROVISIONS OF PARAGRAPH (2) OF THIS SUBSECTION BY FILING WITH BAR COUNSEL
8 LISTS OF ADDITIONAL NAMES AND THE APPLICABLE MAILING ADDRESSES,
9 TELEPHONE NUMBERS, OR TELECOMMUNICATION ADDRESSES NOT LESS THAN
10 MONTHLY.

11 (5) A COMMUNICATION MAY NOT STATE OR IMPLY THAT A
12 COMMUNICATION IS APPROVED BY THE BAR COUNSEL, THE STATE, OR ANY UNIT OF
13 THE STATE.

14 (J) A LAWYER, OR A PERSON ACTING AS AN AGENT OR EMPLOYEE OF THE
15 LAWYER, MAY NOT SEND, OR KNOWINGLY PERMIT TO BE SENT, ON A LAWYER'S
16 BEHALF, ON THE BEHALF OF A LAWYER'S FIRM, PARTNER, OR ASSOCIATE, OR ON
17 BEHALF OF ANY OTHER LAWYER AFFILIATED WITH THE LAWYER, A
18 COMMUNICATION THAT DOES NOT MEET THE REQUIREMENTS OF THIS SECTION.

19 10-606.

20 (c) Except as provided in subsections (a) and (b) of this section, a person who
21 violates any provision of this title is guilty of a misdemeanor and on conviction is
22 subject to a fine not exceeding \$1,000 or imprisonment not exceeding 1 year or both.

23 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
24 Act or the application thereof to any person or circumstance is held invalid for any
25 reason in a court of competent jurisdiction, the invalidity does not affect other
26 provisions or any other application of this Act which can be given effect without the
27 invalid provision or application, and for this purpose the provisions of this Act are
28 declared severable.

29 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
30 October 1, 1998.