

HOUSE BILL 468

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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

Committee Report: Favorable with amendments
House action: Adopted
Read second time: March 25, 1998

CHAPTER _____

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~~ concerning 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:

1 **Article - Business Occupations and Professions**

2 10-605.2.

3 (A) (1) THIS SECTION APPLIES ONLY TO A COMMUNICATION:

4 ~~(1)~~ (I) IN A FORM DESCRIBED UNDER SUBSECTION (C) OF THIS
5 SECTION;

6 ~~(2)~~ (II) SENT BY A LAWYER, DIRECTLY OR THROUGH AN AGENT OR
7 EMPLOYEE, TO A PROSPECTIVE CLIENT FOR THE PURPOSE OF OBTAINING
8 PROFESSIONAL EMPLOYMENT; AND

9 ~~(3)~~ (III) IF THE COMMUNICATION CONCERNS:

10 ~~(1)~~ 1. AN ACTION FOR PERSONAL INJURY OR WRONGFUL
11 DEATH, OR OTHERWISE RELATES TO AN ACCIDENT OR DISASTER INVOLVING THE
12 PERSON TO WHOM THE COMMUNICATION IS SENT OR THE PERSON'S RELATIVE; OR

13 ~~(2)~~ 2. A CRIMINAL PROSECUTION, OR A PROSECUTION OF A
14 TRAFFIC OFFENSE THAT IS PUNISHABLE BY A PERIOD OF INCARCERATION,
15 INVOLVING THE PERSON TO WHOM THE COMMUNICATION IS SENT OR THE PERSON'S
16 RELATIVE.

17 (2) THIS SECTION DOES NOT APPLY TO A DIRECT MARKETING
18 COMMUNICATION THAT IS NOT RELATED TO:

19 (I) A SPECIFIC ACCIDENT OR DISASTER DESCRIBED UNDER
20 PARAGRAPH (1)(III)1 OF THIS SUBSECTION; OR

21 (II) A SPECIFIC CRIMINAL PROSECUTION OR TRAFFIC OFFENSE
22 DESCRIBED UNDER PARAGRAPH (1)(III)2 OF THIS SUBSECTION.

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

25 (C) THIS SECTION APPLIES ONLY TO THE FOLLOWING FORMS OF
26 COMMUNICATION:

27 (1) AN AUDIO RECORDING;

28 (2) A COMPUTER ON-LINE TRANSMISSION;

29 (3) A FACSIMILE TRANSMISSION;

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

31 (5) A TELEGRAPHIC TRANSMISSION;

32 (6) A TELEPHONIC TRANSMISSION; AND

1 (7) A VIDEO RECORDING.

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

5 (2) IN A COMMUNICATION SENT BY COMPUTER ON-LINE
6 TRANSMISSION, FACSIMILE, MAIL, OR TELEGRAPH, THE REQUIRED WORDING SHALL
7 APPEAR IN CONSPICUOUS PRINT SIZE AND IN A FREESTANDING FORM:

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

9 (II) AT THE BEGINNING AND END OF THE CONTENTS OF THE
10 COMMUNICATION.

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

14 (4) IN A VIDEO RECORDING COMMUNICATION, THE REQUIRED
15 WORDING:

16 (I) SHALL APPEAR CONSPICUOUSLY IN THE COMMUNICATION FOR
17 AT LEAST FIVE SECONDS AT THE BEGINNING AND FOR AT LEAST FIVE SECONDS AT
18 THE END OF THE COMMUNICATION; AND

19 (II) OF THE AUDIO RECORDING PORTION, IF ANY, OF THE
20 COMMUNICATION SHALL MEET THE REQUIREMENTS OF PARAGRAPH (5) OF THIS
21 SUBSECTION.

22 (5) IN AN AUDIO RECORDING COMMUNICATION, THE REQUIRED
23 WORDING SHALL APPEAR, AT THE BEGINNING AND END OF THE COMMUNICATION,
24 IN A TONE, VOLUME, CLARITY, AND SPEED OF DELIVERY AT LEAST SUBSTANTIALLY
25 EQUIVALENT TO THE QUALITY OF THE TONE, VOLUME, CLARITY, AND SPEED OF THE
26 AUDIO ELSEWHERE IN THE COMMUNICATION.

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

29 ~~(F) A COMMUNICATION SHALL DISCLOSE HOW THE PERSON SENDING THE~~
30 ~~COMMUNICATION OBTAINED THE INFORMATION THAT PROMPTED THE~~
31 ~~COMMUNICATION.~~

32 ~~(G)~~ (F) A COMMUNICATION MAY NOT REVEAL ON THE ENVELOPE, OR ON
33 THE OUTSIDE OF A SELF-MAILING BROCHURE OR PAMPHLET, THE NATURE OF THE
34 PROSPECTIVE CLIENT'S LEGAL MATTER.

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

1 ~~(A)~~ (H) (1) IN THIS SUBSECTION, "BAR COUNSEL" MEANS THE PRINCIPAL
2 EXECUTIVE OFFICER OF THE DISCIPLINARY SYSTEM FOR LAWYERS UNDER THE
3 MARYLAND RULES.

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

7 (I) A COPY OF THE COMMUNICATION, TOGETHER WITH A SAMPLE
8 COPY OF THE ENVELOPE, IF ANY, USED IN CONJUNCTION WITH THE
9 COMMUNICATION; AND

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

13 (3) IF COMMUNICATIONS IDENTICAL IN CONTENT ARE SENT TO TWO OR
14 MORE PERSONS, A PERSON MAY COMPLY WITH THE PROVISIONS OF PARAGRAPH (2)
15 OF THIS SUBSECTION BY FILING WITH THE BAR COUNSEL WITHIN 3 DAYS AFTER THE
16 DATE THAT THE COMMUNICATION WAS SENT A SINGLE COPY OF THE
17 COMMUNICATION TOGETHER WITH A LIST OF THE NAMES AND THE APPLICABLE
18 MAILING ADDRESSES, TELEPHONE NUMBERS, OR TELECOMMUNICATION
19 ADDRESSES OF THE PERSONS TO WHOM THE COMMUNICATION WAS SENT.

20 (4) IF THE PERSON PERIODICALLY SENDS AN IDENTICAL
21 COMMUNICATION TO ADDITIONAL PERSONS, THE PERSON MAY COMPLY WITH THE
22 PROVISIONS OF PARAGRAPH (2) OF THIS SUBSECTION BY FILING WITH BAR COUNSEL
23 LISTS OF ADDITIONAL NAMES AND THE APPLICABLE MAILING ADDRESSES,
24 TELEPHONE NUMBERS, OR TELECOMMUNICATION ADDRESSES NOT LESS THAN
25 MONTHLY.

26 (5) A COMMUNICATION MAY NOT STATE OR IMPLY THAT A
27 COMMUNICATION IS APPROVED BY THE BAR COUNSEL, THE STATE, OR ANY UNIT OF
28 THE STATE.

29 ~~(A)~~ (I) A LAWYER, OR A PERSON ACTING AS AN AGENT OR EMPLOYEE OF
30 THE LAWYER, MAY NOT SEND, OR KNOWINGLY PERMIT TO BE SENT, ON A LAWYER'S
31 BEHALF, ON THE BEHALF OF A LAWYER'S FIRM, PARTNER, OR ASSOCIATE, OR ON
32 BEHALF OF ANY OTHER LAWYER AFFILIATED WITH THE LAWYER, A
33 COMMUNICATION THAT DOES NOT MEET THE REQUIREMENTS OF THIS SECTION.

34 10-606.

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

38 SECTION 2. AND BE IT FURTHER ENACTED, That if any provision of this
39 Act or the application thereof to any person or circumstance is held invalid for any
40 reason in a court of competent jurisdiction, the invalidity does not affect other

1 provisions or any other application of this Act which can be given effect without the
2 invalid provision or application, and for this purpose the provisions of this Act are
3 declared severable.

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