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SENATE DRS45170-MQqq-46 (03/10)

Short Title: Unauthorized Practice of Law Changes.

(Public)

Sponsors: Senator Hartsell (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO FURTHER DEFINE THE TERM "PRACTICE LAW" FOR THE PURPOSE OF PROTECTING MEMBERS OF THE PUBLIC FROM SERIOUS HARM RESULTING FROM THE UNAUTHORIZED PRACTICE OF LAW BY A PERSON WHO IS NOT A TRAINED AND LICENSED ATTORNEY AND TO ESTABLISH A PROCESS OF REVIEW BY THE ATTORNEY GENERAL PRIOR TO ANY ACTION BY THE STATE BAR TO ENJOIN THE UNAUTHORIZED PRACTICE OF LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 84-2.1 reads as rewritten:

"§ 84-2.1. "Practice law" defined.

(a) The phrase "practice law" as used in this Chapter is defined to be performing any legal service for any other person, firm or corporation, with or without compensation, specifically including the preparation or aiding in the preparation of deeds, mortgages, wills, trust instruments, inventories, accounts or reports of guardians, trustees, administrators or executors, or preparing or aiding in the preparation of any petitions or orders in any probate or court proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in any court, including administrative tribunals and other judicial or quasi-judicial bodies, or assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon the legal rights of any person, firm or corporation: Provided, that the above reference to particular acts which are specifically included within the definition of the phrase "practice law" shall not be construed to limit the foregoing general definition of the term, but shall be construed to include the foregoing particular acts, as well as all other acts within the general definition.

(b) The phrase "practice law" does not encompass any of the following:

(1) ~~the~~ The drafting or writing of memoranda of understanding or other mediation summaries by mediators at community mediation centers authorized by G.S. 7A-38.5 or by mediators of employment-related matters for The University of North Carolina or a constituent institution, or for an agency, commission, or board of the State of North Carolina.

(2) The production, distribution, or sale of materials, provided that all of the following are satisfied:

a. The production of the materials must have occurred entirely before any contact between the provider and the consumer.

b. During and after initial contact between the provider and the consumer, the provider's participation in creating or completing any materials must be limited to typing, writing, or reproducing exactly



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1 the information provided by the consumer as dictated by the
2 consumer, or deleting content that is visible to the consumer at the
3 instruction of the consumer.

4 c. The provider does not select or assist in the selection of the product
5 for the consumer; provided however, (i) operating a Web site that
6 requires the consumer to select the product to be purchased, (ii)
7 publishing descriptions of the products offered, when not done to
8 address the consumer's particular legal situation and when the
9 products offered and the descriptions published to every consumer
10 are identical, and (iii) publishing general information about the law,
11 when not done to address the consumer's particular legal situation
12 and when the general information published to every consumer is
13 identical, does not constitute assistance in selection of the product.

14 d. The provider does not provide any individualized legal advice to or
15 exercise any legal judgment for the consumer; provided however,
16 that publishing general information about the law and describing the
17 products offered, when not done to address the consumer's particular
18 legal situation and when the general information published to every
19 consumer is identical and does not constitute legal advice or the
20 exercise of legal judgment.

21 e. During and after initial contact between the provider and the
22 consumer, the provider may not participate in any way in selecting
23 the content of the finished materials.

24 f. In the case of the sale of materials including information supplied by
25 the consumer through an Internet Web site or otherwise, the
26 consumer is provided a means to see the blank template or the final,
27 completed product before finalizing a purchase of that product.

28 g. The provider does not review the consumer's final product for errors
29 other than notifying the consumer (i) of spelling errors, (ii) that a
30 required field has not been completed, and (iii) that information
31 entered into a form or template by the consumer is factually
32 inconsistent with other information entered into the form or template
33 by the consumer.

34 h. The provider must clearly and conspicuously communicate to the
35 consumer that the materials are not a substitute for the advice or
36 services of an attorney.

37 i. The provider discloses its legal name and physical location and
38 address to the consumer.

39 j. The provider does not disclaim any warranties or liability and does
40 not limit the recovery of damages or other remedies by the consumer.

41 k. The provider does not require the consumer to agree to jurisdiction or
42 venue in any state other than North Carolina for the resolution of
43 disputes between the provider and the consumer.

44 For the purposes of this subsection, "production" shall mean design, creation, publication or
45 display, including by means of an Internet Web site; "materials" shall mean legal written
46 materials, books, documents, templates, forms, or computer software; and "provider" shall
47 mean designer, creator, publisher, distributor, displayer, or seller."

48 **SECTION 2.** G.S. 84-37 reads as rewritten:

49 **"§ 84-37. State Bar may investigate and enjoin unauthorized activities.**

50 (a) The Council or any committee appointed by it for that purpose may inquire into and
51 investigate any charges or complaints of (i) ~~unauthorized~~ unauthorized, unlicensed, or unlawful

1 practice of law or (ii) the use of the designations, "North Carolina Certified Paralegal," "North
2 Carolina State Bar Certified Paralegal," or "Paralegal Certified by the North Carolina State Bar
3 Board of Paralegal Certification," by individuals who have not been certified in accordance
4 with the rules adopted by the North Carolina State Bar, ~~Bar,~~ or (iii) noncompliance with
5 G.S. 84-2.1(b)(2) by any provider of materials, as those terms are defined in G.S. 84-2.1(b)(2).
6 The Council may issue a letter of warning or, after complying with the provisions of subsection
7 (a1) of this section, may issue a demand to cease and desist or bring or cause to be brought and
8 maintained in the name of the North Carolina State Bar an action or actions, upon information
9 or upon the complaint of any person or entity actions against any person or entity that engages
10 in rendering any legal ~~service,~~ service in violation of any provision of this Chapter, holds
11 himself or herself out as a North Carolina certified paralegal by use of the designations set forth
12 in this subsection, or makes it a practice or business to render legal services that are
13 unauthorized or prohibited by law. No bond for cost shall be required in the proceeding.

14 (a1) Prior to issuing a demand to cease and desist or bringing an action or actions as set
15 forth in subsection (a) of this section, the Council, or any committee appointed by it for that
16 purpose, may submit the proposed demand to cease and desist or action and an explanation of
17 why regulatory action by the Council is needed for review by the Attorney General. The
18 Attorney General shall review the proposed demand to cease and desist or action and any
19 material submitted in support thereof to ensure that the Council, or any committee appointed by
20 it, is acting to protect the public interest and is consistent with State policy and with the
21 Council's authority as set forth in this Chapter. The purpose of the review by the Attorney
22 General is to ensure that the proposed demand to cease and desist or action is State action that
23 is consistent with the authority of the Council and that would be entitled to State action
24 immunity under the federal antitrust laws. The Attorney General shall review the substance and
25 procedure of any decision by the Council or any committee appointed to send a demand to
26 cease and desist or to file an action to ensure that the proposed action is consistent with State
27 policy. The Attorney General shall have the authority to approve or disapprove the proposed
28 sending of a demand to cease and desist or the filing of an action or to modify any demand to
29 cease and desist or action to ensure that it accords with State policy. The Council or any
30 committee appointed by it for that purpose may forgo review by the Attorney General when
31 seeking injunctive relief is necessary to prevent ongoing fraud or imminent harm to consumers
32 or when the Council or any committee appointed by it for that purpose has made a specific
33 determination in writing that the relief sought is not likely to have a material adverse effect on
34 competition. The Attorney General may appoint a designee to perform any duties required or
35 authority provided under this subsection.

36 (b) In an action brought under this section, the final judgment if in favor of the plaintiff
37 North Carolina State Bar shall perpetually restrain the defendant or defendants from the
38 commission or continuance of the ~~unauthorized~~ unauthorized, unlicensed, or unlawful act or
39 acts. A temporary injunction to restrain the commission or continuance of the act or acts may
40 be granted upon proof or by affidavit, that the defendant or defendants have violated any of the
41 laws applicable to ~~unauthorized~~ unauthorized, unlicensed, or unlawful practice of law or the
42 unauthorized use of the designations set forth in subsection (a) of this section or any other
43 designation implying certification by the State Bar. The provisions of law relating generally to
44 injunctions as provisional remedies in actions shall apply to a temporary injunction and the
45 proceedings for temporary injunctions.

46 ...
47 (d) ~~The plaintiff in the action~~ North Carolina State Bar shall be entitled to obtain
48 documents and examine the adverse party and witnesses before filing complaint and before trial
49 in the same manner as provided by law for examining parties.

50 (e) This section shall not repeal or limit any remedy now provided in cases of
51 ~~unauthorized~~ unauthorized, unlicensed, or unlawful practice of law. Nothing contained in this

1 section shall be construed as disabling or abridging the inherent powers of the court in these
2 matters.
3"
4 **SECTION 3.** This act is effective when it becomes law.