

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 436
Committee Substitute Favorable 4/15/15
Third Edition Engrossed 4/20/15

Short Title: Unauthorized Practice of Law Changes.

(Public)

Sponsors:

Referred to:

April 1, 2015

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



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- 1 materials must be limited to typing, writing, or reproducing exactly
2 the information provided by the consumer as dictated by the
3 consumer or deleting content that is visible to the consumer at the
4 instruction of the consumer.
- 5 c. The provider does not select or assist in the selection of the product
6 for the consumer; provided, however, (i) operating a Web site that
7 requires the consumer to select the product to be purchased; (ii)
8 publishing descriptions of the products offered, when not done to
9 address the consumer's particular legal situation and when the
10 products offered and the descriptions published to every consumer
11 are identical; and (iii) publishing general information about the law,
12 when not done to address the consumer's particular legal situation
13 and when the general information published to every consumer is
14 identical, does not constitute assistance in selection of the product.
- 15 d. The provider does not provide any individualized legal advice to or
16 exercise any legal judgment for the consumer; provided, however,
17 that publishing general information about the law and describing the
18 products offered, when not done to address the consumer's particular
19 legal situation and when the general information published to every
20 consumer is identical and does not constitute legal advice or the
21 exercise of legal judgment.
- 22 e. During and after initial contact between the provider and the
23 consumer, the provider may not participate in any way in selecting
24 the content of the finished materials.
- 25 f. In the case of the sale of materials including information supplied by
26 the consumer through an Internet Web site or otherwise, the
27 consumer is provided a means to see the blank template or the final,
28 completed product before finalizing a purchase of that product.
- 29 g. The provider does not review the consumer's final product for errors
30 other than notifying the consumer (i) of spelling errors, (ii) that a
31 required field has not been completed, and (iii) that information
32 entered into a form or template by the consumer is factually
33 inconsistent with other information entered into the form or template
34 by the consumer.
- 35 h. The provider clearly and conspicuously communicates to the
36 consumer that the materials are not a substitute for the advice or
37 services of an attorney.
- 38 i. The provider discloses its legal name and physical location and
39 address to the consumer.
- 40 j. The provider does not disclaim any warranties or liability and does
41 not limit the recovery of damages or other remedies by the consumer.
- 42 k. The provider does not require the consumer to agree to jurisdiction or
43 venue in any state other than North Carolina for the resolution of
44 disputes between the provider and the consumer.
- 45 (3) The completion of a preprinted form by a real estate broker licensed under
46 Chapter 93A of the General Statutes, and prepared in accordance with rules
47 adopted by the North Carolina Real Estate Commission.
- 48 (c) For the purposes of this section, the following definitions shall apply:
- 49 (1) Materials. – Legal written materials, books, documents, templates, forms, or
50 computer software.

1 (2) Production. – Design, creation, publication, or display, including by means
2 of an Internet Web site.

3 (3) Provider. – Designer, creator, publisher, distributor, displayer, or seller."

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

5 **"§ 84-37. State Bar may investigate and enjoin unauthorized activities.**

6 (a) The Council or any committee appointed by it for that purpose may inquire into and
7 investigate any charges or complaints of (i) ~~unauthorized~~ unauthorized, unlicensed, or unlawful
8 practice of law or (ii) the use of the designations, "North Carolina Certified Paralegal," "North
9 Carolina State Bar Certified Paralegal," or "Paralegal Certified by the North Carolina State Bar
10 Board of Paralegal Certification," by individuals who have not been certified in accordance
11 with the rules adopted by the North Carolina State Bar, ~~Bar,~~ or (iii) noncompliance with
12 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).
13 The Council may issue a letter of warning or, after complying with the provisions of subsection
14 (a1) of this section, may issue a demand to cease and desist or bring or cause to be brought and
15 maintained in the name of the North Carolina State Bar an action or actions, ~~upon information~~
16 or ~~upon the complaint of any person or entity~~ actions against any person or entity that engages
17 in rendering any legal service, ~~service in violation of any provision of this Chapter,~~ holds
18 himself or herself out as a North Carolina certified paralegal by use of the designations set forth
19 in this subsection, or makes it a practice or business to render legal services that are
20 unauthorized or prohibited by law. No bond for cost shall be required in the proceeding.

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

43 (b) In an action brought under this section, the final judgment if in favor of the ~~plaintiff~~
44 North Carolina State Bar shall perpetually restrain the defendant or defendants from the
45 commission or continuance of the ~~unauthorized~~ unauthorized, unlicensed, or unlawful act or
46 acts. A temporary injunction to restrain the commission or continuance of the act or acts may
47 be granted upon proof or by affidavit, that the defendant or defendants have violated any of the
48 laws applicable to ~~unauthorized~~ unauthorized, unlicensed, or unlawful practice of law or the
49 ~~unauthorized~~ unauthorized, unlicensed, or unlawful use of the designations set forth in
50 subsection (a) of this section or any other designation implying certification by the State Bar.

1 The provisions of law relating generally to injunctions as provisional remedies in actions shall
2 apply to a temporary injunction and the proceedings for temporary injunctions.

3 (c) The venue for actions brought under this section shall be the superior court of any
4 county in which the relevant acts are alleged to have been committed or in which there appear
5 reasonable grounds that they will be committed in the county where the defendants in the
6 action reside, or in Wake County.

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

10 (e) This section shall not repeal or limit any remedy now provided in cases of
11 ~~unauthorized~~ unauthorized, unlicensed, or unlawful practice of law. Nothing contained in this
12 section shall be construed as disabling or abridging the inherent powers of the court in these
13 matters.

14 (f) The Council or its duly appointed committee may issue advisory opinions in
15 response to inquiries from members or the public regarding whether contemplated conduct
16 would constitute the ~~unauthorized~~ unauthorized, unlicensed, or unlawful practice of law."

17 **SECTION 3.** G.S. 84-10.1 reads as rewritten:

18 **"§ 84-10.1. Private cause of action for the unauthorized practice of law.**

19 If any person knowingly violates any of the provisions of G.S. 84-4 through G.S. 84-6 or
20 G.S. 84-9, fraudulently holds himself or herself out as a North Carolina certified paralegal by
21 use of the designations set forth in G.S. 84-37(a), or knowingly aids and abets another person to
22 commit the unauthorized practice of law, in addition to any other liability imposed pursuant to
23 this Chapter or any other applicable law, any person who is damaged by the unlawful acts set
24 out in this section shall be entitled to maintain a private cause of action to recover damages and
25 reasonable attorneys' ~~fees~~ fees and other injunctive relief as ordered by court. No order or
26 judgment under this section shall have any effect upon the ability of the North Carolina State
27 Bar to take any action authorized by this Chapter."

28 **SECTION 4.** This act is effective when it becomes law.