

CHAPTER 871

H.B. No. 1926

AN ACT

relating to the regulation of lawyer referral services.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Article 320d, Revised Statutes, is amended to read as follows:

Art. 320d. LAWYER REFERRAL SERVICES

Sec. 1. **SHORT TITLE.** *This article may be cited as the "Texas Lawyer Referral Service Quality Assurance Act."*

Sec. 2. **PURPOSE; PUBLIC POLICY.** (a) *The legislature finds that:*

(1) *every person in this state should have access to the legal system for legally recognized purposes;*

(2) *a person's access to the legal system is enhanced by the assistance of a qualified lawyer;*

(3) *the public often encounters difficulty in identifying and locating qualified lawyers who are willing to consult with them about the person's legal needs; and*

(4) *in order to prevent potential deception, misrepresentation, and unfair business practices by some entities that operate as lawyer referral services, a comprehensive regulatory scheme is necessary.*

(b) *Bona fide lawyer referral services are uniquely qualified to provide referral services under the supervision of the State Bar of Texas for the benefit of the public. It is the public policy of the state to support the establishment of lawyer referral services and to encourage these services to:*

(1) *make legal services readily available to the general public through a referral method that considers the client's financial circumstances, spoken language, geographical convenience, and the type and complexity of the client's legal problem;*

(2) *provide information about lawyers and the availability of legal services that will aid in the selection of a lawyer; and*

(3) *provide referrals to lawyers who meet minimum qualifications established under this article or to pro bono publico legal programs when in the best interests of a client.*

Sec. 3. **DEFINITIONS.** *In this article:*

(1) *"Entity" means an individual, partnership, corporation, association, or any other form of organization.*

(2) *"Lawyer referral service" means an entity or service or agency of an entity that refers potential clients to lawyers without regard to whether the term "referral service" is used. The term does not include:*

(A) *a bona fide organization that recommends, furnishes, or pays for legal services for its members or beneficiaries and that satisfies the conditions of the disciplinary rules of professional conduct or other rules adopted by the supreme court;*

(B) *a plan of prepaid legal services insurance;*

(C) *individual referrals made by one lawyer to another lawyer that are made in conformance with the disciplinary rules of professional conduct or other rules adopted by the supreme court;*

(D) *lawyers who jointly advertise their own services in a manner that clearly discloses that the advertising is intended solely to solicit clients for those lawyers; or*

(E) *a service of a pro bono publico legal assistance program that does not accept a fee from either the lawyer or the client.*

(3) *"State bar" means the State Bar of Texas acting through its board of directors or the board's designee.*

Sec. 4. **CERTIFICATION REQUIRED; FEES; RENEWAL.** (a) *An entity must be certified by the state bar as provided by this article to operate a lawyer referral service in this state.*

(b) *The state bar may adopt reasonable fees for the issuance and renewal of a certificate under this article. A fee adopted under this subsection shall be in an amount sufficient to cover the costs of administering this article.*

(c) A certificate under this section is valid for one year from the date issued and may be renewed annually on the payment of the required renewal fee.

Sec. 5. CERTIFICATION REQUIREMENTS. (a) To be certified under this article, an entity must:

(1) be operated by a governmental entity or a nonprofit entity exempt from federal taxation under Section 501(c)(3), 501(c)(4), or 501(c)(6) of the Internal Revenue Code of 1986 and its subsequent amendments; and

(2) certify on the application provided by the state bar that the entity is operated primarily for the benefit of the public.

(b) An applicant for certification or renewal of a certification under this article must provide the state bar with a list containing the name, firm name, address, and business telephone number of not fewer than 25 lawyers who are from different law firms who have contracted with the entity to be a recipient of referral services. The list required under this subsection must include each attorney or firm that is a subscriber or potential subscriber to the entity's services.

Sec. 6. LAWYER PARTICIPATION. A lawyer who is licensed and in good standing in this state who maintains an office in the geographical area served by a lawyer referral service may receive referrals of potential clients from the service if the lawyer:

(1) meets the requirements of Section 7 of this article; and

(2) pays the entity a reasonable registration and membership fee not to exceed the amounts set by rules adopted by the state bar.

Sec. 7. COSTS AND FEES FOR LAWYERS AND REFERRAL SERVICES. (a) A lawyer's charge to a potential client referred by a referral service may not exceed the total cost, including legal fees and expenses, that the client would be required to pay if a referral service had not referred the client.

(b) The combined charges for a potential client by both the lawyer and the referral service may not exceed \$20 for the first 30 minutes of the initial office visit with the lawyer.

(c) An agreement between a lawyer and a referral service to eliminate or restrict the fee for the first 30 minutes of an initial office visit with the lawyer is in the public interest and does not violate Chapter 15, Business & Commerce Code (Texas Free Enterprise and Antitrust Act of 1983), and its subsequent amendments or any other statute or rule.

(d) A fee permitted under Subsection (b) of this section shall be dedicated to paying the reasonable operating expenses of the referral service and to pay for public service programs including pro bono publico legal programs.

Sec. 8. INSURANCE REQUIREMENT. A lawyer referral service may, as a condition of membership, require a member to obtain a policy of errors and omissions insurance, or require other proof of financial responsibility in an amount to be determined by the lawyer referral service.

Sec. 9. SUBJECT MATTER PANELS. (a) A lawyer referral service shall establish specific subject matter panels.

(b) In addition to the requirement of Subsection (a) of this section, a lawyer referral service may establish:

(1) moderate and no-fee panels;

(2) alternative dispute resolution panels; and

(3) other special panels that respond to the referral needs of the public.

Sec. 10. COMMENTS AND COMPLAINT PROCEDURES. A lawyer referral service shall establish policies and procedures to determine client satisfaction with the services the referral service provides and to address client complaints with regard to the referral service or attorneys and firms that subscribe to the referral service.

Sec. 11. SUSPENSION AND REMOVAL OF LAWYERS AND FIRMS. (a) A lawyer referral service shall establish written policies and procedures to suspend or remove a lawyer or firm from the referral service's list of subscribers.

(b) *The policies and procedures established under Subsection (a) of this section shall include the suspension and removal of a lawyer who fails to handle referred clients in a diligent and responsible manner.*

Sec. 12. NOTICE REQUIREMENTS. A lawyer referral service shall include the following statement in all advertising or other promotional efforts:

"This service is certified as a lawyer referral service as required by the State of Texas under Article 320d, Revised Statutes."

Sec. 13. RULES; ENFORCEMENT. (a) The state bar shall adopt reasonable rules subject to the approval of the supreme court to administer this article.

(b) The state bar may enforce this article and the rules adopted under this article.

Sec. 14. INJUNCTION. (a) The state bar or a lawyer referral service certified under this article may seek to enjoin a violation of this article and may recover costs and attorney's fees related to obtaining the injunction.

(b) Bond or other security may not be required of the state bar or a referral service as a condition for the issuance of an injunction under this section. [(a) An individual, firm, corporation, organization, or any other entity may not operate as a lawyer referral service in this state, or use the term "referral service" or similar terms, if the purpose of the individual, firm, corporation, organization, or entity is to refer potential clients to attorneys unless:

[(1) the referral service is offered primarily for the benefit of the public;

[(2) the referral service is operated by a governmental entity or a nonprofit organization or entity exempt from federal taxation under Section 501(c)(3), 501(c)(4), or 501(c)(6) of the Internal Revenue Code of 1954;

[(3) the combined charges to the potential client by the referral service and the attorney to whom the potential client is referred do not exceed \$20 for the first 30 minutes of the initial office visit with the participating attorney;

[(4) the organization or entity providing referral services is the type that a lawyer may cooperate with under the Code of Professional Responsibility (Section 9, Article X, Rules Governing the State Bar of Texas); and

[(5) all attorneys licensed by this state and maintaining an office within the geographical area of the population of potential clients served by the referral service are eligible to participate in the referral service and to receive the referral of potential clients if they comply with reasonable participation requirements.

[(b) This article does not apply to any bona fide organization that:

[(1) recommends, furnishes, or pays for legal services to its members or beneficiaries; and

[(2) satisfies the conditions of DR 2-103(E)(5) of the Code of Professional Responsibility (Section 9, Article X, Rules Governing the State Bar of Texas).

[(c) This article does not apply to a lawyer who refers a potential client to another lawyer or law firm and receives a forwarding fee in conformity with DR 2-107 of the Code of Professional Responsibility (Section 9, Article X, Rules Governing the State Bar of Texas).

[(d) A lawyer referral service and any participating attorney accepting referrals from the referral service must comply with any representation made to the public by the referral service concerning a free or fixed limited-fee initial consultation period between a referred potential client and a participating attorney if:

[(1) the potential client qualifies under the conditions for the free or limited-fee consultation period; and

[(2) the participating attorney has consented in writing to accept referral of potential clients from the referral service for free or for a fixed limited fee.

[(e) An agreement between a referral service and a participating attorney to eliminate or restrict the attorney's fee for the first 30 minutes of the initial consultation period for each potential client is in the public interest and does not violate the Texas Free Enterprise and Antitrust Act of 1983 (Section 15.01 et seq., Business & Commerce Code).

~~[(f) A violation or threatened violation of this article may be enjoined by any person on proof that a violation has occurred or is about to occur.]~~

SECTION 2. This Act takes effect September 1, 1993, except that a lawyer referral service is not required to obtain a certification required under this Act until on or after December 1, 1993.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 11, 1993, by a non-record vote; passed by the Senate on May 30, 1993, by a viva-voce vote.

Approved June 18, 1993.

Effective Sept. 1, 1993.