

## CHAPTER 723

## S.B. No. 1227

## AN ACT

relating to the offenses of barratry, falsely holding oneself out as a lawyer, and the unauthorized practice of law; relating to solicitations regarding certain investigative, legal, and health care professional employment; providing penalties.

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

SECTION 1. Section 38.01, Penal Code, is amended to read as follows:

Sec. 38.01. DEFINITIONS. In this chapter:

(1) "Complaining witness" means the victim of a crime or a person who signs a criminal complaint.

(2) "Custody" means detained or under arrest by a peace officer or under restraint by a public servant pursuant to an order of a court.

(3) "Escape" means unauthorized departure from custody or failure to return to custody following temporary leave for a specific purpose or limited period, but does not include a violation of conditions of probation or parole.

(4) "Economic benefit" means anything reasonably regarded as an economic gain or advantage, *including accepting or offering to accept employment for a fee, accepting or offering to accept a fee, entering into a fee contract, or accepting or agreeing to accept money or anything of value.*

(5) "*Finance*" means to provide funds or capital or to furnish with necessary funds [~~"Funeral establishment" means an establishment licensed under Section 4, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes)].~~]

(6) "Governmental function" includes any activity that a public servant is lawfully authorized to undertake on behalf of government.

(7) "*Invest funds*" means to commit money to earn a financial return [~~"Hospital" means a general hospital or special hospital as defined by Chapter 241, Health and Safety Code].~~]

(8) "Member of the family" means anyone related within the third degree of consanguinity or affinity, as determined under Article 5996h, Revised Statutes.

(9) "Official proceeding" means:

(A) a proceeding before a magistrate, court, or grand jury of this state;

(B) a proceeding before the legislature or an inquiry authorized by either house or any joint committee established by a joint or concurrent resolution of the two houses of the legislature or any committee or subcommittee of either house of the legislature;

(C) a proceeding in which pursuant to lawful authority a court orders attendance or the production of evidence; or

(D) a proceeding that otherwise is made expressly subject to this chapter.

(10) "Qualified nonprofit organization" means a nonprofit organization that meets the following conditions:

(A) the primary purposes of the organization do not include the rendition of legal services or education regarding legal services;

(B) the recommending, furnishing, paying for, or educating persons regarding legal services is incidental and reasonably related to the primary purposes of the organization;

(C) the organization does not derive a financial benefit from the rendition of legal services by a lawyer; and

(D) the person for whom the legal services are rendered, and not the organization, is recognized as the client of a lawyer.

(11) "*Public media*" means a telephone directory or legal directory, newspaper or other periodical, billboard or other sign, radio or television broadcast, recorded message the public may access by dialing a telephone number, or a written communication not prohibited by Section 38.12(d) of this code.

(12) "*Solicit employment*" means to communicate in person or by telephone or written communication with a prospective client [claimant] or [defendant or with] a member of the prospective client's [claimant's or defendant's] family concerning a legal matter arising out of a particular occurrence or event, or series of occurrences or events, or concerning an existing legal problem of the prospective client, for the purpose of providing legal representation to the prospective client, when neither the person receiving the communication nor anyone acting on that person's behalf has requested the communication. The term does not include a communication initiated [communicating] by a family member of the person receiving a communication, a communication [communicating] by an attorney who has a prior or existing attorney-client relationship with the person receiving the communication, or communication by an attorney for [communicating with] a qualified nonprofit organization with the organization's members for the purpose of educating the organization's members to understand the law, [laymen] to recognize legal problems, to make intelligent selection of legal counsel, or to use available legal services. *The term does not include an advertisement by an attorney through public media.*

SECTION 2. Section 38.12, Penal Code, is amended to read as follows:

Sec. 38.12. BARRATRY. (a) A person commits an offense if, with intent to obtain an economic benefit *the person* [for himself, he]:

(1) knowingly institutes a suit or claim that the person has not been authorized to pursue;

(2) solicits employment, either in person or by telephone, for himself or herself or for another;

(3) pays, gives, or advances or offers to pay, give, or advance to a prospective client money or anything of value to obtain legal representation from the prospective client;

(4) pays or gives or offers to pay or give a person money or anything of value to solicit employment;

(5) pays or gives or offers to pay or give a family member of a prospective client money or anything of value to solicit employment; or

(6) accepts or agrees to accept money or anything of value to solicit employment.

(b) A person commits an offense if the person:

(1) is an attorney, chiropractor, physician, surgeon, or private investigator licensed to practice in this state or any person licensed, certified, or registered by a health care regulatory agency of this state; and

(2) knowingly:

(A) finances or invests funds the person knows or believes are intended to further the commission of an offense under Subsection (a) of this section; or

(B) accepts employment within the scope of the person's license, registration, or certification that results from the solicitation of employment in violation of Subsection (a) of this section.

(c) It is an exception to prosecution under Subsection (a) or (b) of this section that the person's conduct is authorized by the Texas Disciplinary Rules of Professional Conduct or any rule of court.

(d) A person commits an offense if the person:

(1) is an attorney, chiropractor, physician, surgeon, or private investigator licensed to practice in this state or any person licensed, certified, or registered by a health care regulatory agency of this state; and

(2) with the intent to obtain professional employment for himself or herself or for another, sends or knowingly permits to be sent to an individual who has not sought the person's employment, legal representation, advice, or care a written communication that:

(A) concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person and that was mailed before the 31st day after the date on which the accident or disaster occurred unless the person involved in a vehicular accident designates a desire to be contacted on the form promulgated under Section 45(a), Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes);

(B) concerns a specific matter and relates to legal representation and the person knows or reasonably should know that the person to whom the communication is directed is represented by a lawyer in the matter;

(C) concerns an arrest or of issuance of a summons to the person to whom the communication is addressed or a relative of that person and that was mailed before the 31st day after the date on which the arrest or issuance of the summons occurred;

(D) concerns a lawsuit of any kind, including an action for divorce, in which the person to whom the communication is addressed is a defendant or a relative of that person, unless the lawsuit in which the person is named as a defendant has been on file for more than 31 days before the date on which the communication was mailed;

(E) is sent or permitted to be sent by a person who knows or reasonably should know that the injured person or relative of the injured person has indicated a desire not to be contacted by or receive communications concerning employment;

(F) involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence; or

(G) contains a false, fraudulent, misleading, deceptive, or unfair statement or claim.

(e) For purposes of Subsection (d)(2)(E) of this section, a desire not to be contacted is presumed if an accident report reflects that such an indication has been made by an injured person or that person's relative.

(f) An offense under Subsection (a) or (b) of this section is a felony of the third degree.

(g) Except as provided by Subsection (h) of this section, an offense under Subsection (d) of this section is a Class A misdemeanor.

(h) An offense under Subsection (d) of this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under Subsection (d) of this section.

~~(i) [(1) institutes any suit or claim in which he knows he has no interest;~~

~~[(2) institutes any suit or claim that he knows is false;~~

~~[(3) solicits employment for himself or another to prosecute or defend a suit or to collect a claim; or~~

~~[(4) procures another to solicit for him or another employment to prosecute or defend a suit or to collect a claim.~~

~~[(b) Intent to obtain an economic benefit is presumed if the person accepts employment for a fee, accepts a fee, or accepts or agrees to accept money or any economic benefit.~~

~~[(e) Except as provided by Subsection (d) of this section, an offense under Subsection (a) of this section is a Class A misdemeanor.~~

~~[(d) An offense under Subsection (a)(3) or (a)(4) of this section is a felony of the third degree if it is shown on the trial of the offense that:~~

~~[(1) the defendant has previously been convicted under Subsection (a)(3) or (a)(4) of this section; and~~

~~[(2) the solicitation is performed in whole or in part:~~

~~[(A) in a hospital, funeral establishment, or public or private cemetery or at the scene of an accident;~~

~~[(B) by using a person who is an employee of:~~

~~[(i) this state;~~

~~[(ii) a political subdivision of this state, including a county, municipality, or special purpose district or authority; or~~

~~[(iii) a hospital or funeral establishment; or~~

~~[(C) by impersonating a clergyman, public employee, or emergency assistance worker or volunteer.~~

~~[(e)] Final conviction of felony barratry is a serious crime for all purposes and acts, specifically including the State Bar Rules and the Texas Rules of Disciplinary Procedure.~~

SECTION 3. Subsection (a), Section 45, Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), is amended to read as follows:

(a) The department shall prepare and upon request supply to police departments, coroners, sheriffs, garages, and other suitable agencies or individuals, forms for accident reports required hereunder, appropriate with respect to the persons required to make such reports and the purposes to be served. The written reports to be made by person involved in accidents and by investigating officers shall call for sufficiently detailed information to disclose with reference to a traffic accident the cause, conditions then existing, and the persons and vehicle involved. Also, the forms for the written reports shall include a means for designating and identifying peace officers, fire fighters, and emergency medical services employees who during an emergency are involved in accidents while driving law enforcement vehicles, fire department vehicles, or emergency medical services vehicles in pursuit of their duties. The forms shall also contain a statement by the peace officers, fire fighters, and emergency medical services employees describing the nature of the emergency. *The forms must include a means of designating whether an individual involved in an accident does or does not desire to be contacted by persons seeking to obtain professional employment as a professional described by Section 38.12(b)(1), Penal Code. An individual's response as to whether the individual desires to be contacted is not admissible evidence in a civil trial.*

SECTION 4. Subchapter C, Chapter 415, Government Code, is amended by adding Section 415.0581 to read as follows:

Sec. 415.0581. **CONVICTION OF BARRATRY.** (a) *A person who has been convicted of barratry pursuant to Section 38.12, Penal Code, is disqualified to be an officer or county jailer. The commission may not license such a person and shall on conviction immediately revoke the license of a person previously licensed.*

(b) *For the purposes of this section, a person is convicted of barratry if a court of competent jurisdiction enters an adjudication of guilt against the person regardless of whether:*

*(1) the sentence is subsequently probated and the person is discharged from probation;*

*(2) the accusation, complaint, information, or indictment is dismissed following probation; or*

(3) the person is pardoned for the offense, unless the pardon is granted expressly for subsequent proof of innocence.

SECTION 5. Chapter 38, Penal Code, is amended by adding Sections 38.122 and 38.123 to read as follows:

Sec. 38.122. *FALSELY HOLDING ONESELF OUT AS A LAWYER.* (a) A person commits an offense if, with intent to obtain an economic benefit for himself or herself, the person holds himself or herself out as a lawyer, unless he or she is currently licensed to practice law in this state, another state, or a foreign country and is in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where licensed.

(b) An offense under Subsection (a) of this section is a felony of the third degree.

(c) Final conviction of falsely holding oneself out to be a lawyer is a serious crime for all purposes and acts, specifically including the State Bar Rules.

Sec. 38.123. *UNAUTHORIZED PRACTICE OF LAW.* (a) A person commits an offense if, with intent to obtain an economic benefit for himself or herself, the person:

(1) contracts with any person to represent that person with regard to personal causes of action for property damages or personal injury;

(2) advises any person as to the person's rights and the advisability of making claims for personal injuries or property damages;

(3) advises any person as to whether or not to accept an offered sum of money in settlement of claims for personal injuries or property damages;

(4) enters into any contract with another person to represent that person in personal injury or property damage matters on a contingent fee basis with an attempted assignment of a portion of the person's cause of action; or

(5) enters into any contract with a third person which purports to grant the exclusive right to select and retain legal counsel to represent the individual in any legal proceeding.

(b) This section does not apply to a person currently licensed to practice law in this state, another state, or a foreign country and in good standing with the State Bar of Texas and the state bar or licensing authority of any and all other states and foreign countries where licensed.

(c) Except as provided by Subsection (d) of this section, an offense under Subsection (a) of this section is a Class A misdemeanor.

(d) An offense under Subsection (a) of this section is a felony of the third degree if it is shown on the trial of the offense that the defendant has previously been convicted under Subsection (a) of this section.

SECTION 6. Section 215.034, Local Government Code, is amended to read as follows:

Sec. 215.034. *SUSPENSION OR REVOCATION OF OCCUPATION LICENSE.* (a) A judge of the municipal court, in addition to imposing a fine, may institute proceedings to suspend or revoke the license of a person if:

(1) the person is required, by law or by a municipal ordinance adopted under a law, to obtain the license from the municipality for an occupation, business, or avocation; and

(2) the judge finds the person guilty of violating a municipal ordinance relating to the occupation, business, or avocation or finds that the person has been convicted of barratry under Section 38.12, Penal Code.

(b) For the purpose of this section, a person is convicted of barratry if a court of competent jurisdiction enters an adjudication of guilt against the person regardless of whether:

(1) the sentence is subsequently probated and the person is discharged from probation;

(2) the accusation, complaint, information, or indictment is dismissed following probation; or

(3) the person is pardoned for the offense, unless the pardon is granted expressly for subsequent proof of innocence.

SECTION 7. (a) Not later than June 1, 1994, the State Bar of Texas shall adopt rules governing lawyer advertising and written solicitations to prospective clients.

(b) A rule adopted under this section shall not conflict with any other law.

SECTION 8. If enacted, S.B. No. 1067, Acts of the 73rd Legislature, Regular Session, 1993, does not affect Sections 38.122 and 38.123, Penal Code, as added by Section 5 of this Act, and those sections continue in effect on and after the enactment and effective date of S.B. No. 1067, Acts of the 73rd Legislature, Regular Session, 1993, as a part, and subject to the general provisions, of the Penal Code, as amended.

SECTION 9. (a) The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. For purposes of this section, an offense is committed before the effective date of this Act if any element of the offense occurs before the effective date.

(b) An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for this purpose.

SECTION 10. This Act takes effect September 1, 1993.

SECTION 11. 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 the Senate on April 29, 1993, by a viva-voce vote; the Senate concurred in House amendments on May 27, 1993, by a viva-voce vote; passed the House, with amendments, on May 26, 1993, by a non-record vote.

Approved June 16, 1993.

Effective Sept. 1, 1993.