

## WHY LAWYERS SHOULD NOT BE INCLUDED IN HB 1519

(1) Lawyers are already subject to all of the provisions in Texas Penal Code §38.12 (“the Barratry Statute”). The statute has only been restricted as to chiropractors and non-lawyers. So in-person and telephone solicitation by a lawyer is already a 3rd degree felony!

(2) HB 1519 amends Penal Code §38.12. Section (a) completely prohibits telephone and in-person solicitation by lawyers, chiropractors, doctors, etc. Violation is a 3rd degree felony (section (f)). This section was overturned as to chiropractors and non-lawyers in *Bailey v. Morales*, 190 F.3d 320 (5th Cir. 1999). The statute was not overturned as to lawyers.

(3) Section (d) prohibits direct mail solcitation for the first 30 days. Violation is a Class A misdemeanor (section (g)).

(4) In addition to the criminal penalties of §38.12, the conduct of lawyers is controlled by statute as well as the Texas Disciplinary Rules of Professional Conduct, which are promulgated by the Texas Supreme Court. Rules 7.01 - 7.07 set out strict requirements and prohibitions concerning lawyer advertisements and related issues. Rule 7.03 prohibits in-person and telephone solicitation by lawyers. The Texas Rules of Disciplinary Procedure, Rules 8.01 - 8.08, set forth standards for issuance of punishment (from suspension to disbarment) for commission of crimes and violations of the Texas Disciplinary Rules of Professional Conduct.

(5) In addition to the criminal penalties of §38.12 and the Texas Disciplinary Rules of Professional Conduct, lawyer are also subject to punishment under Texas Government Code §82.062 which allows disbarment of attorneys for committing barratry, whether or not the lawyer is ever charged with the crime of barratry.

(6) In a group of cases consolidated into *Moore v. Morales*, 63 F3d 358 (5th Cir. 1995), the Fifth Circuit Court of Appeals held it is constitutional to prohibit lawyers from telephone and in-person solicitation, but it is not constitutional to completely ban chiropractors and non-lawyers from soliciting accident victims. The Court also found that a 30 day ban on direct mail to accident victims is constitutional. See, also, Texas Attorney General Opinion No. JC-0022 (March 12, 1999). In other words, it is constitutional to ban direct mail solicitation for 30 days. Anybody (lawyers, chiropractors, etc.) can send direct mail after 30 days. It is constitutional to completely ban lawyers from in-person and telephone solcitation. It is not constitutional to completely ban chiropractors, doctors, and non-lawyers from in-person and telephone solicitation.

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(7) The law in Texas right now under §38.12, the government code and TDRPC is that lawyers cannot solicit accident victims by telephone or in-person—ever. Chiropractors and non-lawyers can. No one can send direct mail for 30 days. Everyone can send direct mail after 30 days.

(8) Numerous federal courts have already upheld statutes banning chiropractor solicitation for 30 days. *See, e.g. Capobianco v. Summers*, 377 F3d 559 (6th Cir. 2004) (upholding Tennessee chiro statute banning solicitation for 30 days); *Speaks v. Kruse*, 445 F3d 396 (5th Cir. 2006)(expressly overturning Louisiana chiro statute because failed to include 30 day limit on the ban).

(9) Adding lawyers to HB 1519 would actually decrease the restrictions on lawyer solicitation. Currently lawyers are prohibited from ever soliciting in-person or on the telephone. But, if lawyers are added to HB 1519, then lawyers (and everyone else) would be permitted to solicit in-person and on the telephone after 30 days.

(10) If you want to see ambulance chasing stopped, then you should support HB 1519. It is the ambulance chasing chiropractors and the lawyers they refer cases to (as well as the case runners and telemarketers they employ) who are the opponents of HB 1519. Ethical lawyers and chiropractors strongly support HB 1519.