ATTORNEYS. Provides relative to advertisements for legal services. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 37:223 relative to advertisements; to provide for advertisements
3 of legal services; to require certain disclosures; to provide for terms and conditions;
4 and to provide for related matters.
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6 Be it enacted by the Legislature of Louisiana:
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8 Section 1. R.S. 37:223 is hereby amended and reenacted to read as follows:
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10 § 223. Advertisements for legal services
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12 A. The legislature recognizes the following:
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14 (1) Legal advertisements in the state have the potential to mislead
15 individuals who need professional legal services and that potential litigants have the
16 right to know what expenses will be associated with legal representation.
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18 (2) Advertising that is inherently likely to deceive, or which is, or has in
19 fact been deceptive, receives no protection under the First Amendment to the
20 Constitution of the United States of America, and is prohibited entirely.
21
22 (3) Attorney advertising that is potentially misleading, because it may be
23 presented in a way that is not deceptive, may be regulated if the regulation
24 satisfies one of two standards: if the regulation directly advances a substantial
government interest and is not more extensive than necessary to serve that
interest, or if disclosure is required that is reasonably related to the state's
interest in preventing deception of consumers.

B.(1) Any advertisement for legal services, in any format, that contains a
reference to a monetary settlement agreement or an award by a jury verdict
previously obtained by the advertising attorney shall, in the same advertisement,
disclose all attorney fees paid to the advertising attorney that are associated with the
settlement agreement or award by jury verdict.

(2) The disclosure of all attorney fees associated with the settlement or jury
verdict when presented in print shall be in a font size no smaller than half the size of
the largest font size used in the advertisement and when presented verbally shall be
audible, intelligible, and presented with equal prominence and in the same manner
as the other parts of the advertisement.

C. Any advertisement for legal services, in any format, containing a
reference or testimonial to past successes or results obtained shall be presented
in a truthful, nondeceptive manner and shall include a disclaimer such as
"Results May Vary" or "Past Results are not a Guarantee of Future Success".

D. Any advertisement for legal services or any unsolicited written
communication, in any format, that includes the portrayal of a client by a
nonclient or the depiction of any event or scene or picture that is not actual or
authentic shall include a disclaimer. Any words or statements required by this
Section to appear in an advertisement or unsolicited written communication
must be clearly legible if written or intelligible if spoken aloud. All disclosures
and disclaimers shall be clear, conspicuous, and clearly associated with the item
requiring disclosure or disclaimer. Written disclosures and disclaimers shall be
clearly legible and, if televised or displayed electronically, shall be displayed for
a sufficient time to enable the viewer to easily see and read the disclosure or
disclaimer. Spoken disclosures and disclaimers shall be plainly audible and
clearly intelligible.
E. The following communications in attorney advertisements shall be prohibited:

(1) Any advertisement for legal services, in any format, that utilizes a nickname, moniker, motto, or trade name that states or implies an ability to obtain results in a matter.

(2) Any advertisement for legal services, in any format, that promises results.

C.F. The Louisiana Supreme Court may adopt rules as necessary to implement and enforce the provisions of this Section by December 22, 2022.

D.G.(1) For purposes of this Section, "media entity" includes the following:

(a) Radio or television broadcast station.

(b) Cable television company.

(c) Newspaper or periodical company.

(d) Billboard company.

(e) Voice, data, or other communications.

(f) Information services.

(g) Internet access provider.

(h) Bona fide news or public interest website operator.

(2) The provisions of this Section shall not limit or otherwise affect the carriage, distribution, transmission, or display of any advertisement by a media entity. Any carriage, distribution, transmission, or display of an advertisement by a media entity shall not be considered a violation of this Section by the media entity.

Section 2. R.S. 37:223(A), as amended by this Act, is consistent with prior jurisprudence and establishes the factors used to determine when communication in attorney advertising may be regulated. See, Public Citizen Inc. v. Louisiana Disciplinary Bd., 632 F.3d 212 (2011).

Section 3. Notwithstanding any other law to the contrary, the attorney general shall represent or supervise the representation of the interest of the state in any action or proceeding in which the constitutionality of this Act is challenged or assailed. Any expenses
incurred in such enforcement shall be recoverable from the person or entity whose actions
or inactions cause enforcement to be necessary.

Section 4. If any one or more provisions, sections, subsections, sentences, clauses,
phrases, or words of this Act or the application thereof to any person or circumstance is
found to be unconstitutional, the same is hereby declared to be severable in accordance with
R.S. 24:175 and the balance of this Act shall remain effective notwithstanding such
unconstitutionality.

Section 5. This Act shall become effective upon signature by the governor or, if not
signed by the governor, upon expiration of the time for bills to become law without signature
by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
vetoed by the governor and subsequently approved by the legislature, this Act shall become
effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
of the legislative instrument, were prepared by Lebra R. Bias.

DIGEST
SB383 Engrossed 2022 Regular Session Peacock

Proposed law provides the standard by which communication in attorney advertisements
may be regulated.

Present law provides that any advertisement for legal services, in any format, that contains
a reference to a monetary settlement agreement or an award by a jury verdict previously
obtained by the advertising attorney shall, in the same advertisement, disclose a full
accounting of all expenses associated with such settlement agreement or award by jury
verdict.

Proposed law retains present law and adds an additional requirement that any advertisement
for legal services containing a reference or testimonial to past successes or results obtained
be presented in a truthful, nondeceptive manner by including a disclaimer such as "Results
May Vary" or "Past Results are not a Guarantee of Future Success".

Present law requires that disclosure of all expenses associated with the settlement or jury
verdict be in a font size no smaller than half of the largest font size used in the
advertisement.

Proposed law retains present law and adds that any advertisement for legal services or any
unsolicited written communication, in any format, that includes the portrayal of a client by
a nonclient or the depiction of any event or scene or picture that is not actual or authentic
shall include a disclaimer.

Proposed law provides that any words or statements required by proposed law to appear in
an advertisement or unsolicited written communication must be clearly legible if written or
intelligible if spoken aloud. Further provides as follows: (1) All disclosures and disclaimers
shall be clear, conspicuous, and clearly associated with the item requiring disclosure or

Coding: Words which are struck through are deletions from existing law;
words in **boldface type and underscored** are additions.
Proposed law prohibits certain types of communication in attorney advertising.

Proposed law provides the factors used to determine when communication in attorney advertising may be regulated as determined by the court in Public Citizen Inc. v. Louisiana Disciplinary Bd., 632 F.3d 212 (2011).

Proposed law provides that the attorney general shall represent or supervise the representation of the interest of the state in any action or proceeding in which the constitutionality of proposed law is challenged or assailed, and that any expenses incurred are recoverable from the person or entity whose actions or inactions cause enforcement to be necessary.

Proposed law provides for severability in the event one or more provisions of present law are found to be unconstitutional.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 37:223)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Adds that any advertisement for legal services or any unsolicited written communication, in any format, that includes the portrayal of a client by a nonclient or the depiction of any event or scene or picture that is not actual or authentic shall include a disclaimer. Provides requirements for the format of written or spoken disclosures or disclaimers.