

DIGEST

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SB 378 Reengrossed

2022 Regular Session

Peacock

Proposed law prohibits deceptive or misleading advertisements and presentations of advertisements as follows:

- (1) Being presented as a medical alert, health alert, drug alert, public service announcement, or substantially similar phrase that suggests to a reasonable viewer that the advertisement is offering professional, medical, or government agency advice about any medication or medical device. Proposed law does not apply to any advertisement by a person who is authorized by law to offer professional, medical, or government advice about any medication or medical device in an advertisement.
- (2) Displaying the logo of a federal or state government agency in a manner that suggests to a reasonable viewer that the advertisement is presented by a federal or state government agency or by an entity approved by or affiliated with a federal or state government agency.
- (3) Using the term "recall" when referring to a product that has not been recalled in accordance with an applicable state or federal regulation.

Proposed law requires an advertisement that references a prescription drug or medical device approved by the Food and Drug Administration (FDA) to state the identity of the advertisement's sponsor and that the drug or medical device is FDA approved, unless the drug or medical device has been recalled in accordance with state or federal law.

Proposed law requires an advertisement that references an FDA approved prescription drug to include the following statement or a substantially similar statement: "Consult your physician before making decisions regarding prescribed medication or medical treatment."

Proposed law provides that the required disclosures be made in written and verbal formats, except if the statements appear in an advertisement that is in print format only or audible format only.

Proposed law requires a written statement appearing in an advertisement to be presented clearly, conspicuously, and for a sufficient length of time for a reasonable viewer to see and read the statement.

Proposed law requires a verbal statement appearing in an advertisement to be audible, intelligible, and presented with equal prominence as the other parts of the advertisement.

Proposed law provides that a court may find a statement of advertisement to be in compliance with proposed law if such statement meets either of the following criteria:

- (1) The written statement is printed in the same size and style of font and for the same duration as other printed information in the advertisement.
- (2) The verbal statement is made at approximately the same volume and uses approximately the same number of words per minute as the voice-over of longest duration in the advertisement.

Proposed law provides that a violation of proposed law is a deceptive and unfair trade practice and subjects the violator to all penalties provided for in the Unfair Trade Practices and Consumer Protection Law (R.S. 51:1401 et seq.)

Proposed law does not apply to any media entity responsible for the production or publication of any advertisement found to be in violation of proposed law. Further provides that the carriage, distribution, transmission, or display of any advertisement by a media entity is not considered a violation of proposed law.

Proposed law does not apply to any member of a profession regulated by the La. Supreme Court.

(Adds R.S. 51:3221)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Commerce, Consumer Protection, and International Affairs to the original bill

1. Exempts from proposed law the regulation of any member of a profession if the regulation of that profession has been granted to a governmental entity by the Louisiana Constitution.

Senate Floor Amendments to engrossed bill

1. Exempts from proposed law those professions regulated by the Supreme Court.
2. Makes a technical amendment.

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Commerce to the reengrossed bill:

1. Make technical changes.