

2020 Regular Session

SENATE BILL NO. 346

BY SENATOR PEACOCK

COMMERCIAL REGULATIONS. Provides for the regulation of legal advertising in the field of medical alerts. (8/1/20)

1 AN ACT
2 To enact Chapter 61 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 51:3211 through 3213, relative to unfair and deceptive acts or practices; to
4 provide for advertisement and solicitation for legal services; to provide relative to
5 advertisement for legal services relating to drugs or medical devices; to provide
6 relative to the use of certain health information for the purpose of soliciting for legal
7 services; to provide for requirements and disclosures in an advertisement; to provide
8 for definitions, terms, conditions, and procedures; to provide for penalties as an
9 unfair and deceptive trade practice; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 61 of Title 51 of the Louisiana Revised Statutes of 1950,
12 comprised of R.S. 51:3211 through 3213, is hereby enacted to read as follows:

13 **CHAPTER 61. ADVERTISEMENT FOR LEGAL SERVICES**
14 **§3211. Advertisement for services; unfair or deceptive acts or practices**
15 **A. For the purposes of this Section, "advertisement for legal services"**
16 **means a solicitation of legal services through television, radio, newspaper, or**
17 **other periodical, or other written, electronic, or recorded communication.**

1 **B. An advertisement for legal services shall not do any of the following:**

2 **(1) Present the advertisement as a medical alert, health alert, drug alert,**
3 **public service announcement, or substantially similar phrase that suggests to**
4 **a reasonable viewer the advertisement is offering professional, medical, or**
5 **government agency advice about any medication or medical device rather than**
6 **legal services.**

7 **(2) Display the logo of a federal or state government agency in a manner**
8 **that suggests to a reasonable viewer the advertisement is presented by a federal**
9 **or state government agency or by an entity approved by or affiliated with a**
10 **federal or state government agency.**

11 **(3) Use the term "recall" when referring to a product that has not been**
12 **recalled by a government agency or through an agreement between a**
13 **manufacturer and government agency.**

14 **C. An advertisement for legal services shall state all of the following:**

15 **(1) At the beginning of the advertisement, "This is a paid advertisement**
16 **for legal services".**

17 **(2) The identity of the sponsor of the advertisement.**

18 **(3) The identity of the attorney or law firm primarily responsible for**
19 **providing solicited legal services to a person who engages the attorney or law**
20 **firm in response to the advertisement, or the manner in which a responding**
21 **person's case is referred to an attorney or law firm if the sponsor of the**
22 **advertisement is not legally authorized to provide legal services to clients.**

23 **D. An advertisement for legal services soliciting clients who may allege**
24 **an injury from a prescription drug approved by the United States Food and**
25 **Drug Administration shall include the statement: "Do not stop taking a**
26 **prescribed medication without first consulting a physician".**

27 **E. An advertisement for legal services soliciting clients who may allege**
28 **an injury from a prescription drug or medical device approved by the United**
29 **States Food and Drug Administration shall include a statement indicating that**

1 the drug or medical device remains approved by the United States Food and
2 Drug Administration, unless the product has been recalled by a government
3 agency or through an agreement between a manufacturer and a government
4 agency.

5 F.(1) A statement in print required by this Section to appear in an
6 advertisement shall be presented clearly, conspicuously, and for a sufficient
7 length of time for a reasonable viewer to see and read the statement.

8 (2) A court may find that a printed statement in an advertisement is
9 compliant with the provisions of this Subsection if the statement is presented in
10 the same size and style of font and for the same duration as a printed reference
11 to the telephone number or internet website of the entity a responding person
12 contacts for the legal services offered or discussed in the advertisement.

13 G.(1) A statement required by this Section appearing verbally in an
14 advertisement shall be audible, intelligible, and presented with equal
15 prominence as the other parts of the advertisement.

16 (2) A court may find that a verbal statement in an advertisement is
17 compliant with the provisions of this Subsection if the statement is made at
18 approximately the same volume and uses approximately the same number of
19 words per minute as the voice-over of longest duration in the advertisement,
20 other than information required by this Section.

21 H. Any violation of this Section shall be a deceptive and unfair trade
22 practice and shall subject the violator to any and all penalties provided for in
23 the Unfair Trade Practices and Consumer Protection Law, R.S. 51:1401 et seq.

24 I. If the Rules of Professional Conduct Committee or any designated
25 subcommittee of the Louisiana State Bar Association reviews, in accordance
26 with the committee's procedures, an advertisement for compliance with this
27 Section before the first dissemination of the advertisement and the committee
28 informs the sponsor of the advertisement that the advertisement is in
29 compliance with the provisions of this Section and applicable advertising

1 standards provided in the Rules of Professional Conduct, no person may pursue
2 an action under Subsection H unless all of the following occur:

3 (1) The attorney general demanded that the sponsor of the advertisement
4 cease further dissemination of the advertisement.

5 (2) The sponsor of the advertisement is given a reasonable amount of
6 time to ensure the advertisement is withdrawn from dissemination to the public.

7 (3) The sponsor of the advertisement fails to ensure the advertisement
8 is withdrawn from dissemination to the public within the time provided.

9 §3212. Use of protected health information to solicit for legal services; unfair
10 or deceptive acts or practices

11 A. A person shall not use, cause to be used, obtain, sell, transfer, or
12 disclose protected health information to another person for the purpose of
13 soliciting an individual for legal services without written authorization from the
14 individual who is the subject of the information.

15 B. As used in this Section:

16 (1) "Protected health information" shall have the same meaning as the
17 meaning given to it in 45 CFR § 160.103.

18 (2) "Solicit" means offering to provide legal services by print, video or
19 audio recording, or electronic communication or by personal, telephone, or
20 real-time electronic contact.

21 C. Any violation of this Section shall be a deceptive and unfair trade
22 practice and shall subject the violator to any and all penalties provided for in
23 the Unfair Trade Practices and Consumer Protection Law, R.S. 51:1401 et seq.

24 D. This section does not apply to the use or disclosure of protected health
25 information to an individual's legal representative in the course of any judicial
26 or administrative proceeding or as otherwise permitted or required by law.

27 §3213. Regulation of the practice of law; applicability

28 The provisions of this Chapter shall not limit or otherwise affect the
29 authority of the Louisiana Supreme Court to regulate the practice of law,

- 1 **enforce the Louisiana Rules of Professional Conduct, or discipline persons**
2 **admitted to the state bar.**

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Michelle Ridge.

DIGEST

SB 346 Original

2020 Regular Session

Peacock

Present law provides relative to the Unfair Trade Practices and Consumer Protection Law.

Proposed law prohibits an advertisement for legal services from doing any of the following:

- (1) Present the advertisement as a medical alert, health alert, drug alert, public service announcement, or substantially similar phrase that suggests to a reasonable viewer the advertisement is offering professional, medical, or government agency advice about medications or medical devices rather than legal services.
- (2) Display the logo of a federal or state government agency in a manner that suggests to a reasonable viewer 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) Use the term "recall" when referring to a product that has not been recalled by a government agency or through an agreement between a manufacturer and government agency.

Proposed law defines "advertisement for legal services" (advertisement) as a solicitation of legal services through television, radio, newspaper, or other periodical, or other written, electronic, or recorded communication.

Proposed law requires an advertisement to make the following disclosures:

- (1) At the beginning of the advertisement, state "This is a paid advertisement for legal services".
- (2) The identity of the sponsor of the advertisement.
- (3) The identity of the attorney or law firm primarily responsible for providing solicited legal services to a person who engages the attorney or law firm in response to the advertisement, or the manner in which a responding person's case is referred to an attorney or law firm if the sponsor of the advertisement is not legally authorized to provide legal services to clients.

Proposed law requires an advertisement soliciting clients who may allege an injury from a prescription drug approved by the United States Food and Drug Administration (FDA) to include a verbal and printed statement: "Do not stop taking a prescribed medication without first consulting a physician".

Proposed law provides that in an advertisement soliciting clients who may allege an injury from a prescription drug or medical device approved by the FDA shall include a verbal and printed statement indicating that the drug or medical device remains approved by the FDA, unless the product has been recalled by a government agency or through an agreement between a manufacturer and government agency.

Proposed law provides format requirements for printed and verbal statements in an

advertisement.

Proposed law provides that if a printed or verbal statement meets the requirements of proposed law, the court may find the advertisement complies with proposed law.

Also provides that any violation of proposed law shall be a deceptive and unfair trade practice and shall subject the violator to any and all penalties provided for in the Unfair Trade Practices and Consumer Protection Law.

Proposed law provides for the review of the advertisement by the La. State Bar Association. Provides that if an advertisement is approved as being compliant with the law, the sponsor shall not be subject to action against him under the Unfair Trade Practices and Consumer Protection Law unless all the following occur:

- (1) The attorney general demanded that the sponsor of the advertisement cease further dissemination of the advertisement.
- (2) The sponsor of the advertisement is given a reasonable amount of time to ensure the advertisement is withdrawn from dissemination to the public.
- (3) The sponsor of the advertisement fails to ensure the advertisement is withdrawn from dissemination to the public within the time provided.

Proposed law provides that a person shall not use, cause to be used, obtain, sell, transfer, or disclose protected health information to another person for the purpose of soliciting an individual for legal services without written authorization from the individual who is the subject of the information. Provides that any person who violates proposed law shall be subject to all penalties provided in the Unfair Trade Practices and Consumer Protection Law.

Proposed law does not apply to the use or disclosure of protected health information to an individual's legal representative in the course of any judicial or administrative proceeding or as otherwise permitted or required by law.

Proposed law provides that it shall not limit or otherwise affect the authority of the supreme court to regulate the practice of law, enforce the La. Rules of Professional Conduct, or discipline persons admitted to the state bar.

Effective August 1, 2020.

(Adds R.S. 51:3211-3213)