

2020 Regular Session

SENATE BILL NO. 395

BY SENATORS CLOUD, FESI, HEWITT, JOHNS, MILLIGAN, ROBERT MILLS,
MIZELL, REESE AND WHITE AND REPRESENTATIVES AMEDEE,
BUTLER, CARRIER, DEVILLIER AND MIKE JOHNSON

ADVERTISING. Provides relative to false, misleading, or deceptive advertising. (8/1/20)

1 AN ACT

2 To enact R.S. 51:1429, relative to unfair or deceptive acts or practices; to provide relative

3 to advertisement for certain professional services; to provide relative to a false,

4 misleading, and deceptive statement in an advertisement; to provide for violations,

5 actions, and penalties; to provide for definitions, terms, conditions, and procedures;

6 and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. R.S. 51:1429 is hereby enacted to read as follows:

9 **§1429. Unfair or deceptive trade practice or act; misleading assertion of**

10 **monetary result obtained**

11 **A. As used in this Section, the following words and phrases shall have the**

12 **following meanings:**

13 **(1) "Actually received" means the net amount of money received by a**

14 **person, calculated by deducting from the person's gross recovery all expenses**

15 **including but not limited to attorney fees, broker fees, expert witness fees,**

16 **interest, court costs, costs of collection or recovery, and all other expenses**

17 **related to litigation.**

1 (2) "Advertisement" means any communication to the public regarding
2 services provided for a fee including but not limited to a communication
3 transmitted through any of the following:

4 (a) Print media, such as a telephone directory, legal directory,
5 newspaper, magazine, or other periodical publication.

6 (b) Outdoor advertising, such as billboards and other signs.

7 (c) Radio and television commercials.

8 (d) Any communication accessed by a computer, tablet, or handheld
9 device, such as a text message, instant message, or digital advertisement of any
10 kind.

11 (e) A recorded message the public may access by telephone.

12 (3) "False, misleading, or deceptive statement" means any
13 communication that states or infers that a person actually received an amount
14 of money that they did not actually receive.

15 (4) "Media entity" means a radio broadcast station, television broadcast
16 station, cable television company, newspaper company, periodical company,
17 billboard company, advertisement agency, media platform, or bona fide news
18 or public interest website operator.

19 (5) "Monetary result obtained" means any amount claimed to have been
20 recovered on behalf of a client through a legal judgment or settlement.

21 (6) "Person" means an individual, partnership, unincorporated
22 association of individuals, joint stock company, corporation, limited liability
23 company, or other legal entity of any kind. "Person" shall not include a media
24 entity.

25 B. No person in any advertisement shall make, or permit to be made, a
26 false, misleading, or deceptive statement about a monetary result obtained on
27 behalf of a client or fail to disclose information necessary to prevent the
28 information supplied in an advertisement from being false, misleading, or
29 deceptive.

1 **C.(1) Any violation of this Section shall be an unfair or deceptive trade**
2 **practice declared unlawful by this Chapter and shall subject the violator to any**
3 **and all actions and penalties provided for in this Chapter.**

4 **(2) For the purpose of this Section, each iteration of an advertisement**
5 **constitutes an unfair or deceptive trade practice.**

6 **(3)(a) The provisions of this Section shall not apply to any media entity**
7 **responsible for the production or publication of any advertisement found to be**
8 **in violation of this Section.**

9 **(b) The carriage, distribution, transmission, or display of any**
10 **advertisement, including but not limited to those for legal services, by a media**
11 **entity shall not be considered a violation of this Section.**

12 **D. In addition to all other remedies provided for in this Chapter, any**
13 **person who is found to have made, or to have permitted to be made on his**
14 **behalf, a false, misleading, or deceptive statement under the provisions of this**
15 **Section shall be liable to the attorney general for all costs, expenses, and fees**
16 **related to investigations and proceedings associated with the violation, including**
17 **attorney fees. An action to recover costs, expenses, fees, and attorney fees shall**
18 **be ancillary to and shall be filed and heard in the same court as a civil action**
19 **filed under the provisions of this Section.**

20 **E. The remedies and rights provided for in this Section are in addition**
21 **to and shall not preclude any right or remedy otherwise authorized by law,**
22 **including the enforcement of professional rules against the person by any**
23 **licensing board or court.**

The original instrument was prepared by Michelle D. Ridge. The following digest, which does not constitute a part of the legislative instrument, was prepared by Michelle D. Ridge.

Present law provides that unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

Proposed law provides that no person in any advertisement shall make, or permit to be made,

a false, misleading, or deceptive statement about a monetary result obtained on behalf of a client or fail to disclose information necessary to prevent the information supplied in an advertisement from being false, misleading, or deceptive.

Proposed law defines "actually received", "advertisement", "media entity", "monetary result obtained", "false, misleading, or deceptive statement", and "person".

Proposed law excludes a media entity as a person.

Proposed law provides that any violation of proposed law shall be an unfair or deceptive trade practice declared unlawful and shall subject the violator to any and all actions and penalties pursuant to the Unfair Trade Practices and Consumer Protection Law. Proposed law provides that each iteration of an advertisement constitutes an unfair or deceptive trade practice.

Proposed law does not apply to any media entity responsible for the production or publication of any advertisement found to violate proposed law.

Proposed law does not apply to a media entity that is responsible for the carriage, distribution, transmission, or display of any advertisement found to violate proposed law.

Proposed law provides that in addition to all other remedies provided in the Unfair Trade Practices and Consumer Protection Law, any person who is found to have made, or to have permitted to be made on his behalf, a false, misleading, or deceptive statement under the provisions of proposed law shall be liable to the attorney general for all costs, expenses, and fees related to investigations and proceedings associated with the violation, including attorney fees.

Proposed law provides that an action to recover costs, expenses, fees, and attorney fees shall be ancillary to and shall be filed and heard in the same court as a civil action filed for the unfair or deceptive trade practice.

The remedies and rights provided in proposed law are in addition to and shall not preclude any right or remedy otherwise authorized by law, including the enforcement of professional rules against the person by any licensing board or court.

Effective August 1, 2020.

(Adds R.S. 51:1429)

Summary of Amendments Adopted by Senate

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

1. Adds a definition for "media entity" that includes a radio broadcast station, television broadcast station, cable television company, newspaper company, periodical company, billboard company, or bona fide news or public interest website operator.
2. Adds to the definition of "person" that a media entity is not considered a person.
3. Adds a provision that a media entity that produces or publishes any advertisement for legal services, shall not be in violation of an unfair or deceptive trade practice that has been declared unlawful by this Chapter.

4. Adds a provision that the carriage, distribution, transmission or display of any advertisement for legal services by a media entity, shall not be in violation of an unfair or deceptive trade practice that has been declared unlawful by this Chapter.

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Includes in the definition of "media entity" an advertisement agency and a media platform.