
 DIGEST

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DIGEST

SB 43 Reengrossed

2021 Regular Session

Peacock

Present law provides relative to the Unfair Trade Practices and Consumer Protection Law and penalties for violating that law.

Proposed law provides relative to the advertisement of certain legal services.

Proposed law defines "advertisement for legal services" as a solicitation for legal services through a media entity. The term shall include solicitation through such media entity by a person with the intent to transfer data obtained from the consumer to one or more attorneys for legal services.

Proposed law defines "media entity" as a radio broadcast station, television broadcast station, cable television company, newspaper company, periodical company, billboard company, advertisement agency, media platform, or bona fide news or public interest website operator.

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

- (1) Presenting the advertisement as a medical alert, health alert, drug alert, public service announcement, or substantially similar phrase that suggests to a viewer the advertisement is offering professional, medical, or government agency advice about any medication or medical device rather than legal services.
- (2) Displaying the logo of a federal or state government agency in a manner that suggests to a 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 agency.
- (3) Using 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 requires an advertisement for legal services soliciting a client who may allege injury from a prescription drug or medical device approved by the United States Food and Drug Administration (FDA) to state the following items:

- (1) "This is a paid advertisement for legal services." This statement shall appear at the beginning of the advertisement.
- (2) The identity of the sponsor of the advertisement.
- (3) Either 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 how 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.
- (4) The drug or medical device remains approved by the FDA, unless the drug or medical device has been recalled by a government agency or through an agreement between a manufacturer and a government agency.

Proposed law requires an advertisement soliciting a client who may allege an injury from a prescription drug approved by the FDA to include the statement: "Consult your physician before making decisions regarding prescribed medication or medical treatment."

Proposed law provides that the required statements shall be in written and verbal formats, except:

- (1) If the advertisement is in print format only, the statements shall be in writing.
- (2) If the advertisement is in audible format only, the statements shall be made verbally.

Proposed law provides that if the Rules of Professional Conduct Committee or any designated subcommittee of the La. State Bar Association reviews an advertisement for legal services for compliance before the first dissemination of the advertisement and informs the sponsor of the advertisement that the advertisement is in compliance with the provisions and applicable advertising standards provided in the Rules of Professional Conduct, no person may pursue an action under proposed law.

Proposed law provides that if an advertisement has not been reviewed by the Rules of Professional Conduct Committee or any designated subcommittee of the La. State Bar Association an individual may pursue a cause of action under the Unfair Trade Practices and Consumer Protection Law.

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

Proposed law provides that the carriage, distribution, transmission, or display of any advertisement by a media entity shall not be considered a violation of proposed law.

Proposed law prohibits a person from using, causing to be used, obtaining, selling, transferring, or disclosing 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. Proposed law shall not apply to the use of 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.

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

Proposed law does not limit or affect the authority of the Louisiana Supreme Court to regulate the practice of law, enforce the Rules of Professional Conduct, or discipline any person admitted to the state bar.

Effective August 1, 2021.

(Adds R.S. 51:3221-3223)

Summary of Amendments Adopted by Senate

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

1. Defines the term "media entity".
2. Provides for applicability of proposed law to a media entity responsible for the production or publication of any advertisement found to violate the provisions of proposed law.
3. Provides certain actions of a media entity does not violate proposed law.

Senate Floor Amendments to engrossed bill

1. Revise the statement required for inclusion on advertisements for legal services related to alleged injuries from certain drugs.

2. Make technical corrections.

Summary of Amendments Adopted by House

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

1. Revise the restriction of the use of the term "recall" from referring to a product that has not been recalled by a government agency or through an agreement between a manufacturer and a government agency to a product that has not been recalled in accordance with applicable state or federal regulation.
2. Remove references to the advertisement being in compliance with proposed law when reviewed by the Rules of Professional Conduct Committee and makes the advertisement subject only to the standards set forth in the Rules of Professional Conduct.
3. Remove the requirements that must be met in order for a person to pursue a cause of action for deceptive and unfair trade practices for an advertisement that was predetermined by the Rules of Professional Conduct Committee to be in compliance with the Rules of Professional Conduct.
4. Add that a person may only pursue a cause of action under proposed law pursuant to the provision of present law authorizing an individual right of action for unfair trade practices if the legal advertisement was not reviewed by the Rules of Professional Conduct Committee.