

2021 Regular Session

SENATE BILL NO. 43

BY SENATOR PEACOCK

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

COMMERCIAL REGULATIONS. Provides for the regulation of certain advertisements for legal services. (8/1/21)

1 AN ACT

2 To enact Chapter 62 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised

3 of R.S. 51:3221 through 3223, relative to unfair and deceptive acts or practices; to

4 provide relative to advertisement for legal services relating to prescription drugs or

5 medical devices; to provide relative to the use of certain health information for the

6 purpose of soliciting legal services; to provide for requirements and disclosures in

7 an advertisement; to provide for definitions, terms, conditions, and procedures; to

8 provide for penalties; and to provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Chapter 62 of Title 51 of the Louisiana Revised Statutes of 1950,

11 comprised of R.S. 51:3221 through 3223, is hereby enacted to read as follows:

12 **CHAPTER 62. ADVERTISEMENT FOR LEGAL SERVICES**

13 **§3221. Advertisement for legal services; unfair or deceptive acts or practices**

14 **A. For the purposes of this Section, "advertisement for legal services"**

15 **means a solicitation for legal services through television, radio, newspaper or**

16 **other periodical, or other written, electronic, or recorded communication.**

17 **"Advertisement for legal services" shall include solicitation through television,**

1 radio, newspaper or other periodical, or other written, electronic, or recorded
2 communication by a person with the intent to transfer data obtained from the
3 consumer to one or more attorneys for legal services.

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

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

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

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

17 C.(1) An advertisement for legal services soliciting a client who may
18 allege injury from a prescription drug or medical device approved by the
19 United States Food and Drug Administration shall state all of the following
20 items:

21 (a) "This is a paid advertisement for legal services". This statement shall
22 appear at the beginning of the advertisement.

23 (b) The identity of the sponsor of the advertisement.

24 (c) Either the identity of the attorney or law firm primarily responsible
25 for providing solicited legal services to a person who engages the attorney or law
26 firm in response to the advertisement or how a responding person's case is
27 referred to an attorney or law firm if the sponsor of the advertisement is not
28 legally authorized to provide legal services.

29 (d) The drug or medical device remains approved by the United States

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

4 (2) An advertisement for legal services soliciting a client who may allege
5 an injury from a prescription drug approved by the United States Food and
6 Drug Administration shall include the following statement: "Do not stop taking
7 a prescribed medication without first consulting a physician".

8 D. The statements required to appear in an advertisement for legal
9 services pursuant to this Section shall be made in written and verbal formats,
10 except as provided in this Subsection:

11 (1) If the statements appear in an advertisement for legal services that
12 is in print format only, including but not limited to a newspaper or other
13 periodical advertisement, the statements shall be in writing.

14 (2) If the statements appear in an advertisement for legal services that
15 is in audible format only, including but not limited to a radio advertisement, the
16 statements shall be made verbally.

17 E.(1)(a) A written statement to appear in an advertisement for legal
18 services pursuant to this Section shall be presented clearly, conspicuously, and
19 for a sufficient length of time for a reasonable viewer to see and read the
20 statement.

21 (b) A court may determine that a written statement in an advertisement
22 for legal services is in compliance with the provisions of this Section if the
23 statement is presented in the same size and style of font and for the same
24 duration as a printed reference to the telephone number or website of the entity
25 through which a person responding to the advertisement is to contact for the
26 legal services solicited in the advertisement.

27 (2)(a) A verbal statement required to appear in an advertisement for
28 legal services pursuant to this Section shall be audible, intelligible, and
29 presented with equal prominence as the other parts of the advertisement.

1 **(b) A court may determine that a verbal statement in an advertisement**
2 **is in compliance with the provisions of this Section if the statement is made at**
3 **approximately the same volume and uses approximately the same number of**
4 **words per minute as the voice-over of longest duration in the advertisement**
5 **other than information required by this Section.**

6 **F. A violation of this Section shall be a deceptive and unfair trade**
7 **practice and shall subject the violator to any and all penalties provided for in**
8 **the Unfair Trade Practices and Consumer Protection Law, R.S. 51:1401 et seq.**

9 **G. If the Rules of Professional Conduct Committee or any designated**
10 **subcommittee of the Louisiana State Bar Association reviews, in accordance**
11 **with the committee's procedures, an advertisement for legal services for**
12 **compliance with this Section before the first dissemination of the advertisement**
13 **and informs the sponsor of the advertisement that the advertisement is in**
14 **compliance with the provisions of this Section and applicable advertising**
15 **standards provided in the Rules of Professional Conduct, no person may pursue**
16 **an action under Subsection F of this Section unless both of the following occur:**

17 **(1) The attorney general sends a written demand by certified mail to the**
18 **sponsor of the advertisement for legal services to cease further dissemination**
19 **of the advertisement within ten days of receipt of the certified mail.**

20 **(2) The sponsor of the advertisement fails to ensure the advertisement**
21 **is withdrawn from dissemination to the public within the ten-day period.**

22 **§3222. Use of protected health information to solicit for legal services; unfair or**
23 **deceptive acts or practices**

24 **A. As used in this Section, the following definitions shall apply:**

25 **(1) "Protected health information" shall have the same meaning as**
26 **provided for that term in 45 CFR §160.103.**

27 **(2) "Solicit" means offering to provide legal services by print, video or**
28 **audio recording, or electronic communication or by personal, telephone, or**
29 **real-time electronic contact.**

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: "Do not stop taking a prescribed medication without first consulting a physician."

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 or any designated subcommittee of the La. State Bar Association reviews an advertisement for legal services for compliance with proposed law before the first dissemination of the advertisement and informs the sponsor of the advertisement that the advertisement is in compliance with the provisions of proposed law and other applicable advertising standards, no person may pursue an action under the Unfair Trade Practices and Consumer Protection Law unless both of the following occur:

- (1) The attorney general sends a written demand by certified mail to the sponsor of the advertisement for legal services to cease further dissemination of the advertisement within 10 days of receipt of the certified mail.
- (2) The sponsor of the advertisement fails to ensure the advertisement is withdrawn from dissemination to the public within the 10 day period.

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)