

RÉSUMÉ DIGEST

SB 43

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 would provide relative to the advertisement of certain legal services.

Proposed law would define "advertisement for legal services" as a solicitation for legal services through a media entity. The term would 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 would define "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 would prohibit 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 would require 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 would require 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 would provide 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 would provide 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 would provide 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 would not apply to any media entity responsible for the production or publication of any advertisement found to be in violation of proposed law.

Proposed law would provide 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 would prohibit 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 would 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 would be a deceptive and unfair trade practice and subject the violator to all penalties provided in the Unfair Trade Practices and Consumer Protection Law.

Proposed law would 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.

Would have become effective August 1, 2021.

(Proposed to add R.S. 51:3221-3223)

VETO MESSAGE: "Please be advised that I have vetoed Senate Bill 43 of the 2021 Regular Session.

I have vetoed this bill for the same reasons that I vetoed Senate Bill 395 from the 2020 Regular Session, a very similar bill to Senate Bill 43 (see attached). Senate Bill 43 is likely unconstitutional in that it vests regulation of attorney advertising with the legislature and the Attorney General rather than the Louisiana Supreme Court. I did sign into law Senate Bill 115 of the 2020 Regular Session on this same issue, and the Louisiana Supreme Court published rules regarding regulation of attorney advertising just last month. Those rules can be found at [https://www.lasc.org/press room/press releases/2021/2021-14-Order Amending LA Professional rules of Conduct Attorney Advertising Rules.pdf](https://www.lasc.org/press%20room/press%20releases/2021/2021-14-Order%20Amending%20LA%20Professional%20rules%20of%20Conduct%20Attorney%20Advertising%20Rules.pdf). Should additional changes be needed in the area of attorney advertising, it should be done by the Louisiana Supreme Court in a manner consistent with the Louisiana and United States constitutions."