

2022 Regular Session

SENATE BILL NO. 378

BY SENATOR PEACOCK

COMMERCIAL REGULATIONS. Provides for the regulation of advertisements. (8/1/22)

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, relative to advertisements; to provide for requirements and
4 disclosures in an advertisement; to provide for unfair and deceptive acts or practices;
5 to provide for definitions, terms, conditions, and procedures; to provide for penalties;
6 and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 62 of Title 51 of the Louisiana Revised Statutes of 1950,
9 comprised of R.S. 51:3221, is hereby enacted to read as follows:

10 **CHAPTER 62. ADVERTISEMENTS**

11 **§3221. Advertisements; unfair or deceptive acts or practices**

12 **A. For the purposes of this Section:**

13 **(1) "Advertisement" means any communication through a media entity**
14 **for mass distribution of information.**

15 **(2) "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**

1 or public interest website operator.

2 B. An advertisement shall not be deceptive or misleading and shall not
3 do any of the following:

4 (1)(a) Be presented as a medical alert, health alert, drug alert, public
5 service announcement, or a substantially similar phrase that suggests to a
6 reasonable viewer the advertisement is offering professional, medical, or
7 government agency advice about any medication or medical device.

8 (b) The provisions of this Paragraph shall not apply to an advertisement
9 that offers professional, medical, or government agency advice about any
10 medication or medical device provided the person responsible for the
11 advertisement is authorized by law to offer the advice in an advertisement.

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

16 (3) Use the term "recall" when referring to a product that has not been
17 recalled in accordance with applicable state or federal regulation.

18 C.(1) An advertisement that references a prescription drug or medical
19 device approved by the United States Food and Drug Administration shall state
20 all of the following items:

21 (a) The identity of the sponsor of the advertisement.

22 (b) That the drug or medical device is approved by the United States
23 Food and Drug Administration, unless the drug or medical device has been
24 recalled in accordance with applicable state or federal regulation.

25 (2) An advertisement referencing a prescription drug approved by the
26 United States Food and Drug Administration shall include the following
27 statement or a substantially similar statement: "Consult your physician before
28 making decisions regarding prescribed medication or medical treatment."

29 D. The statements required to appear in an advertisement pursuant to

1 this Section shall be made in written and verbal formats, except as follows:

2 (1) If the statements appear in an advertisement that is in print format
3 only, including but not limited to a newspaper or other periodical
4 advertisement, the statements shall be in writing.

5 (2) If the statements appear in an advertisement that is in audible format
6 only, including but not limited to a radio advertisement, the statements shall be
7 made verbally.

8 E.(1)(a) A written statement to appear in an advertisement pursuant to
9 this Section shall be presented clearly, conspicuously, and for a sufficient length
10 of time for a reasonable viewer to see and read the statement.

11 (b) A court may determine that a written statement in an advertisement
12 is in compliance with the provisions of this Section if the statement is printed in
13 the same size and style of font and for the same duration as other printed
14 information in the advertisement.

15 (2)(a) A verbal statement required to appear in an advertisement
16 pursuant to this Section shall be audible, intelligible, and presented with equal
17 prominence as the other parts of the advertisement.

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

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

26 G.(1) The provisions of this Section shall not apply to any media entity
27 responsible for the production or publication of any advertisement found to be
28 in violation of this Section.

29 (2) The carriage, distribution, transmission, or display of any

1 advertisement by a media entity shall not be considered a violation of this

2 Section.

3 H. The provisions of this Chapter shall not apply to any member of a

4 profession if the regulation of that profession has been granted to a

5 governmental entity pursuant to Article V, Section 5 of the Constitution of

6 Louisiana.

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 Tyler McCloud.

DIGEST

SB 378 Reengrossed

2022 Regular Session

Peacock

Proposed law prohibits deceptive or misleading advertisements and provides that an advertisement shall not do any of the following:

- (1) Be presented 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 any medication or medical device. Proposed law does not apply to any advertisement by a person who is authorized by law to offer professional, medical, or government advice about any medication or medical device in an advertisement.
- (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 in accordance with applicable state or federal regulation.

Proposed law provides that an advertisement that references a prescription drug or medical device approved by the FDA shall state the identity of the advertisement's sponsor and that the drug or medical device is FDA approved, unless the drug or medical device has been recalled in accordance with state or federal law.

Proposed law requires an advertisement that references an FDA approved prescription drug include the following statement or a substantially similar statement: "Consult your physician before making decisions regarding prescribed medication or medical treatment."

Proposed law provides that the required disclosures be made in written and verbal formats, except if the statements appear in an advertisement that is in print format only or audible format only.

Proposed law provides that a written statement to appear in an advertisement shall be presented clearly, conspicuously, and for a sufficient length of time for a reasonable viewer to see and read the statement.

Proposed law provides that a verbal statement required to appear in an advertisement shall be audible, intelligible, and presented with equal prominence as the other parts of the advertisement.

Proposed law provides that a court may find a statement is in compliance with proposed law if:

- (1) The written statement is printed in the same size and style of font and for the same duration as other printed information in the advertisement.
- (2) The verbal statement is made at approximately the same volume and uses approximately the same number of words per minute as the voice-over of longest duration in the advertisement, excluding any statement required by proposed law.

A violation of proposed law shall be a deceptive and unfair trade practice and the violator shall be subject to all penalties provided for in 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 in violation of proposed law. Further 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 does not apply to any member of a profession regulated by the Supreme Court.

Effective August 1, 2022.

(Adds R.S. 51:3221)

Summary of Amendments Adopted by Senate

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

1. Exempts from proposed law the regulation of any member of a profession if the regulation of that profession has been granted to a governmental entity by the Louisiana Constitution.

Senate Floor Amendments to engrossed bill

1. Exempts from proposed law those professions regulated by the Supreme Court.
2. Makes a technical amendment.