

DIGEST

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SB 383 Reengrossed

2022 Regular Session

Peacock

Proposed law provides the standard by which communication in attorney advertisements may be regulated.

Present law provides that any advertisement for legal services, in any format, that contains a reference to a monetary settlement agreement or an award by a jury verdict previously obtained by the advertising attorney shall, in the same advertisement, disclose a full accounting of all expenses associated with such settlement agreement or award by jury verdict.

Proposed law retains present law and adds an additional requirement that any advertisement for legal services containing a reference or testimonial to past successes or results obtained be presented in a truthful, nondeceptive manner by including a disclaimer such as "Results May Vary" or "Past Results are not a Guarantee of Future Success".

Present law requires that disclosure of all expenses associated with the settlement or jury verdict be in a font size no smaller than half of the largest font size used in the advertisement.

Proposed law retains present law and adds that any advertisement for legal services or any unsolicited written communication, in any format, that includes the portrayal of a client by a nonclient or the depiction of any event or scene or picture that is not actual or authentic shall include a disclaimer.

Proposed law provides that any words or statements required by proposed law to appear in an advertisement or unsolicited written communication must be clearly legible if written or intelligible if spoken aloud. Further provides as follows:

- (1) All disclosures and disclaimers shall be clear, conspicuous, and clearly associated with the item requiring disclosure or disclaimer.
- (2) Written disclosures and disclaimers shall be clearly legible and, if televised or displayed electronically, shall be displayed for a sufficient time to enable the viewer to easily see and read the disclosure or disclaimer.
- (3) Spoken disclosures and disclaimers shall be plainly audible and clearly intelligible.

Proposed law prohibits certain types of communication in attorney advertising.

Proposed law provides the factors used to determine when communication in attorney advertising may be regulated as determined by the court in *Public Citizen Inc. v. Louisiana Disciplinary Bd.*, 632 F.3d 212 (2011).

Proposed law provides that the attorney general shall represent or supervise the representation of the interest of the state in any action or proceeding in which the constitutionality of proposed law is challenged or assailed.

Proposed law provides for severability in the event one or more provisions of present law are found to be unconstitutional.

Proposed law provides that any court costs or attorney fees awarded to a prevailing party against the supreme court in an action challenging the constitutionality of advertisements for legal services shall be paid by the state and allows the supreme court to recover court costs or attorney fees if the constitutionality of advertisements for legal services is upheld.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 37:223)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Adds that any advertisement for legal services or any unsolicited written communication, in any format, that includes the portrayal of a client by a nonclient or the depiction of any event or scene or picture that is not actual or authentic shall include a disclaimer. Provides requirements for the format of written or spoken disclosures or disclaimers.

Senate Floor Amendments to engrossed bill

1. Deletes the provision which states that any expenses incurred in any action or proceeding in which the constitutionality of proposed law is challenged or assailed are recoverable from the person or entity whose actions or inactions cause enforcement to be necessary.
2. Makes technical changes.

Summary of Amendments Adopted by House

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

1. Add the requirement of awarding court costs or attorney fees to a prevailing party.