

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:**

15 **(1) "Advertisement for legal services" means a solicitation for legal**

16 **services through a media entity. "Advertisement for legal services" shall include**

17 **solicitation through a media entity by a person with the intent to transfer data**

1 obtained from the consumer to one or more attorneys for legal services.

2 (2) "Media entity" means a radio broadcast station, television broadcast  
3 station, cable television company, newspaper company, periodical company,  
4 billboard company, advertisement agency, media platform, or bona fide news  
5 or public interest website operator.

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

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

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 by a government agency or through an agreement between a  
18 manufacturer and a government agency.

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

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

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

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

1 legally authorized to provide legal services.

2 (d) The drug or medical device remains approved by the United States  
3 Food and Drug Administration, unless the drug or medical device has been  
4 recalled by a government agency or through an agreement between a  
5 manufacturer and a government agency.

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

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

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

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

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

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

29 (2)(a) A verbal statement required to appear in an advertisement for

1 legal services pursuant to this Section shall be audible, intelligible, and  
2 presented with equal prominence as the other parts of the advertisement.

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

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

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

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

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

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

27 (2) The carriage, distribution, transmission, or display of any  
28 advertisement, including but not limited to those for legal services, by a media  
29 entity shall not be considered a violation of this Section.

1           §3222. Use of protected health information to solicit for legal services; unfair or  
2                           deceptive acts or practices

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

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

6                   (2) "Solicit" means offering to provide legal services by print, video or  
7                   audio recording, or electronic communication or by personal, telephone, or  
8                   real-time electronic contact.

9                   B. A person shall not use, cause to be used, obtain, sell, transfer, or  
10                  disclose protected health information to another person for the purpose of  
11                  soliciting an individual for legal services without written authorization from the  
12                  individual who is the subject of the information.

13                  C. Any violation of this Section shall be a deceptive and unfair trade  
14                  practice and shall subject the violator to all penalties provided for in the Unfair  
15                  Trade Practices and Consumer Protection Law, R.S. 51:1401 et seq.

16                  D. This Section shall not apply to the use or disclosure of protected  
17                  health information to an individual's legal representative in the course of any  
18                  judicial or administrative proceeding or as otherwise permitted or required by  
19                  law.

20           §3223. Regulation of the practice of law; applicability

21                  The provisions of this Chapter shall not limit or otherwise affect the  
22                  authority of the Louisiana Supreme Court to regulate the practice of law,  
23                  enforce the Louisiana Rules of Professional Conduct, or discipline any person  
24                  admitted to the state bar.

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The original instrument and the following digest, which constitutes no part  
of the legislative instrument, were prepared by Michelle Ridge.

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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: "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 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.