

SENATE BILL NO. 1505

102ND GENERAL ASSEMBLY

INTRODUCED BY SENATOR ESLINGER.

6001S.01I

KRISTINA MARTIN, Secretary

AN ACT

To amend chapter 407, RSMo, by adding thereto four new sections relating to unlawful merchandising practices in the advertising of legal services.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto
2 four new sections, to be known as sections 407.3050, 407.3055,
3 407.3060, and 407.3065, to read as follows:

**407.3050. For purposes of sections 407.3050 to
2 407.3065, the following terms mean:**

3 (1) "Advertisement for legal services", a solicitation
4 for legal services through television, radio, internet
5 including a domain name, newspaper or other periodical,
6 outdoor display, or other written, electronic, or recorded
7 communication;

8 (2) "Approved by the federal Food and Drug
9 Administration", a drug or medical device that has been
10 authorized for use through a premarket approval, monograph,
11 clearance process, or other authorization process in
12 accordance with applicable regulations by the United States
13 Food and Drug Administration;

14 (3) "Person", an individual or entity that advertises
15 legal services, identifies potential clients for attorneys
16 or law firms, or pays for or authorizes an advertisement
17 that solicits potential clients for attorneys or law firms;

18 (4) "Protected health information", any information
19 regarding an individual's medical history, mental or
20 physical condition, or medical treatment or diagnosis by a
21 health care professional;

22 (5) "Solicit", offering to provide legal services by
23 written, recorded, or electronic communication or by
24 personal, telephone, or real-time electronic contact.

 407.3055. 1. It is an unlawful merchandising practice
2 pursuant to section 407.020 to issue an advertisement for
3 legal services that:

4 (1) Fails to disclose at the beginning of any recorded
5 advertisement or display in a conspicuous location on any
6 printed or electronic advertisement for legal services that
7 the advertisement is a paid advertisement for legal services;

8 (2) Presents the advertisement as a medical alert,
9 health alert, drug alert, or public service announcement or
10 uses any substantially similar phrase that suggests to a
11 reasonable viewer that the advertisement is offering
12 professional, medical, or government advice rather than
13 legal services;

14 (3) Displays the logo of a state or federal
15 governmental entity in a manner that suggests affiliation
16 with, or endorsement by, a state or federal governmental
17 entity;

18 (4) Uses the term "recall" when referring to a product
19 that has not been recalled in accordance with applicable
20 regulations;

21 (5) Fails to identify the person responsible for the
22 advertisement; or

23 (6) Fails to identify the attorney or the law firm
24 that will be primarily responsible for providing the
25 solicited legal services to a consumer who responds to the

26 advertisement or indicate how a responding consumer's case
27 will be referred to an attorney or a law firm if the sponsor
28 of the advertisement is not licensed to practice law.

29 2. (1) It is an unlawful merchandising practice
30 pursuant to section 407.020 to issue an advertisement for
31 legal services with false, deceptive, or misleading
32 information that is likely to cause a reasonable viewer to
33 fail to use or discontinue use of a medication or medical
34 device, or to not seek beneficial medical treatment.

35 (2) An advertisement for legal services to solicit
36 clients in connection with a drug or device that is approved
37 by the federal Food and Drug Administration shall include a
38 statement that the drug or device remains approved by the
39 federal Food and Drug Administration unless it has been
40 recalled in accordance with applicable regulations or is
41 otherwise no longer approved by the federal Food and Drug
42 Administration.

43 (3) An advertisement for legal services to solicit
44 clients in connection with a prescription drug approved by
45 the federal Food and Drug Administration shall include the
46 following statement or a substantially similar statement:

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

49 (4) Claims regarding the risks of a drug or device
50 shall be substantiated by competent and reliable scientific
51 evidence that has been accepted for publication in a
52 generally accepted scientific journal.

53 3. The statements required to appear in an
54 advertisement under this section shall be made in both
55 written and verbal formats, except that a print-only
56 advertisement may include the statements in written format

57 only and an audio-only advertisement may include the
58 statements in verbal format only.

59 (1) Required written statements shall appear in a
60 clear and conspicuous font and manner and, for visual
61 advertisements, shall appear on screen for a sufficient
62 length of time for a reasonable consumer to read the
63 statement. A written statement is presumed to comply with
64 the requirements of this subsection if it appears in the
65 same font style and size and for the same duration as a
66 printed reference to the telephone number or website that a
67 consumer is to use to contact the entity for the advertised
68 legal services.

69 (2) Required verbal statements shall be audible,
70 intelligible, and presented with equal prominence and speed
71 as the other parts of the advertisement. A verbal statement
72 is presumed to comply with the requirements of this
73 subsection if it is made at approximately the same volume
74 and uses approximately the same number of words per minute
75 as used when presenting other information in the
76 advertisement that is not required under this section.

77 4. The person who issues an advertisement for legal
78 services is solely responsible for ensuring that such
79 advertisement complies with this section. No provision of
80 this section shall apply to a media entity that disseminates
81 another person's advertisement for legal services that
82 violates this section.

407.3060. 1. It is an unlawful merchandising practice
2 pursuant to section 407.020 to use, cause to be used,
3 obtain, sell, transfer, or disclose an individual's
4 protected health information to another person or entity for
5 the purpose of soliciting an individual for legal services
6 without written authorization from that individual.

7 2. No provision of this section shall apply to the use
8 or disclosure of protected health information to an
9 individual's legal representative in the course of any
10 judicial or administrative proceeding or as otherwise
11 permitted or required by law.

 407.3065. The provisions of sections 407.3050 to
2 407.3065 do not limit or otherwise affect the authority of
3 the supreme court to regulate the practice of law, enforce
4 supreme court rules of professional conduct, or discipline
5 any person admitted to practice law in this state.

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