

HB 1357

2004
CS

CHAMBER ACTION

1 The Committee on Judiciary recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to attorney practices; amending s. 877.02,
7 F.S.; prohibiting the solicitation of legal business for a
8 profit; providing criminal penalties; prohibiting
9 attorneys from advertising services for business for a
10 profit unless permitted by law; providing a definition for
11 the term "solicit"; prohibiting attorneys from initiating
12 contact for the purpose of soliciting legal business for a
13 profit; providing civil penalties; providing for equitable
14 relief; providing construction; providing an effective
15 date.

16
17 Be It Enacted by the Legislature of the State of Florida:

18
19 Section 1. Section 877.02, Florida Statutes, is amended to
20 read:

21 877.02 Solicitation of for-profit legal services or
22 retainers therefor; penalty.--

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23 (1) The Legislature has determined that legal advertising
 24 that solicits business by inciting a person to file a suit
 25 destroys the personal responsibility of individuals, fosters
 26 frivolous litigation, and demeans the judiciary and the practice
 27 of law. This form of solicitation has created a crisis in this
 28 state's judicial system, thus creating a compelling state
 29 interest in the state's limited regulation of advertising as set
 30 forth in this section.

31 (2)~~(1)~~ It shall be unlawful for any person or her or his
 32 agent, employee, or any person acting on her or his behalf, to
 33 solicit or procure through solicitation either directly or
 34 indirectly legal business for a profit, or to solicit or procure
 35 through solicitation a retainer, written or oral, or any
 36 agreement authorizing an attorney to perform or render legal
 37 service for a profit, or to make it a business to solicit or
 38 procure such business, retainers, or agreements; provided,
 39 however, that nothing herein shall prohibit or be applicable to
 40 banks, trust companies, lawyer reference services, legal aid
 41 associations, lay collection agencies, railroad companies,
 42 insurance companies and agencies, and real estate companies and
 43 agencies, in the conduct of their lawful businesses, and in
 44 connection therewith and incidental thereto, forwarding legal
 45 matters to attorneys at law when such forwarding is authorized
 46 by the customers or clients of said businesses and is done
 47 pursuant to the canons of legal ethics as pronounced by the
 48 Supreme Court of Florida.

49 (3)~~(2)~~ It shall be unlawful for any person in the employ
 50 of or in any capacity attached to any hospital, sanitarium,

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51 | police department, wrecker service or garage, prison, or court,
52 | or for a person authorized to furnish bail bonds, investigators,
53 | photographers, or insurance or public adjusters, to communicate
54 | directly or indirectly with any attorney or person acting on
55 | said attorney's behalf for the purpose of aiding, assisting, or
56 | abetting such attorney in the solicitation of legal business for
57 | a profit or the procurement through solicitation of a retainer,
58 | written or oral, or any agreement authorizing the attorney to
59 | perform or render legal services for a profit.

60 | (4) It shall be unlawful to advertise, using any form of
61 | electronic or other media, in a manner that solicits legal
62 | business for a profit by urging a person to consider bringing
63 | legal action against another.

64 | (5) The term "solicit" shall mean to entreat, request, or
65 | incite another to use the services of an attorney or a law firm.
66 | In any advertisement subject to this section, the term "solicit"
67 | shall not mean, include, or prohibit a statement by the attorney
68 | in writing or by the attorney of, or an appearance, picture, or
69 | voice of the attorney who states in such advertisement only the
70 | following information:

71 | (a) The name of the attorney or law firm;

72 | (b) The field of practice of such attorney or law firm,
73 | including the prices charged, so long as expressly permitted by
74 | Rule 4-7.2 of the rules regulating The Florida Bar;

75 | (c) The right of an injured or aggrieved person to seek
76 | redress if such person's rights have been violated;

77 | (d) A public service type announcement, so long as it does
78 | not entreat, request, or urge another to use the services of an

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79 | attorney or law firm for the purpose of bringing legal action
80 | against another; or

81 | (e) Those matters expressly permitted by Rule 4-7.2(c)(11)
82 | of the rules regulating The Florida Bar.

83 | (6)(a)(3) Except for violations of subsection (4), any
84 | person violating any provision of this section commits shall be
85 | guilty of a misdemeanor of the first degree, punishable as
86 | provided in s. 775.082 or s. 775.083.

87 | (b) A person violating subsection (4) shall be liable for
88 | a civil penalty of \$1,000 for the first offense and \$10,000 for
89 | each subsequent offense and shall be subject to imposition of
90 | injunctive relief based on a presumption that there is no
91 | adequate remedy at law available to the public. For purposes of
92 | this paragraph, an offense is a single advertisement published
93 | in a single print publication or through a single electronic
94 | media outlet, regardless of the number of times or in how many
95 | issues it is republished in the same publication or through the
96 | same media outlet. The Florida Bar and the Attorney General
97 | shall have standing to enforce such penalties and, upon
98 | prevailing in such action, shall recover costs and reasonable
99 | attorney's fees.

100 | (7)(4) This section shall be taken to be cumulative and
101 | shall not be construed to amend or repeal any other valid law,
102 | code, ordinance, rule, or penalty now in effect.

103 | Section 2. This act shall take effect upon becoming a law.