

Bill No. CS for SB 192

Barcode 065472

CHAMBER ACTION

Senate

House

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The Committee on Commerce and Consumer Services (Aronberg) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

Section 1. Section 454.37, Florida Statutes, is created to read:

454.37 Lawyer advertising.--

(1) As used in this section, the term:

(a) "Electronic media" includes, but is not limited to, computer-accessed, radio, and television advertisements.

(b) "Lawyer-referral service" means:

1. Any person, group of persons, association, organization, or entity that receives a fee or charge for referring or causing the direct or indirect referral of a potential client to a lawyer drawn from a specific group or panel of lawyers; or

2. Any group or pooled advertising program operated by any person, group of persons, association, organization, or

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1 entity wherein the legal services advertisements use a common  
2 telephone number and potential clients are referred only to  
3 lawyers or law firms participating in the group or pooled  
4 advertising program.

5  
6 A not-for-profit lawyer-referral program in which the  
7 participating lawyers do not pay a fee or charge of any kind  
8 to receive referrals or to belong to the referral panel and  
9 undertake the referred matters without expectation of  
10 remuneration is not a lawyer-referral service.

11 (2) Each advertisement or unsolicited written  
12 communication for legal services disseminated in this state by  
13 or on behalf of a member of The Florida Bar, an authorized  
14 business entity properly organized under the rules regulating  
15 The Florida Bar, a lawyer licensed to practice in a foreign  
16 country or in another state, a law firm owned by a lawyer  
17 licensed to practice in a foreign country or in another state,  
18 a lawyer-referral service, or a group or prepaid legal plan  
19 shall comply with the rules regulating The Florida Bar which  
20 govern lawyer advertising as interpreted by The Florida Bar,  
21 including filing requirements.

22 (3) Each advertisement or unsolicited written  
23 communication disseminated in this state by or on behalf of a  
24 lawyer-referral service must contain prominently within the  
25 body of the advertisement or unsolicited written communication  
26 the statement: "This advertisement is by a lawyer-referral  
27 service. Lawyers pay this service for referrals of prospective  
28 clients who respond to this advertisement. This  
29 lawyer-referral service is not licensed to provide legal  
30 services in Florida."

31 (4) Each advertisement for legal services submitted

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1 for publication in the print or electronic media in this state  
2 by or on behalf of a member of The Florida Bar, an authorized  
3 business entity properly organized under the rules regulating  
4 The Florida Bar, a lawyer licensed to practice in a foreign  
5 country or in another state, a law firm owned by a lawyer  
6 licensed to practice in a foreign country or in another state,  
7 a lawyer-referral service, or a group or prepaid legal plan  
8 must be accompanied by an affidavit signed under oath and  
9 affirming under penalty of perjury that the person:

10       (a) Has read and understands the rules regulating The  
11 Florida Bar which govern lawyer advertising;

12       (b) Acknowledges that he or she is the person  
13 responsible for the advertisement;

14       (c) If the advertisement is by or on behalf of a  
15 member of The Florida Bar or an authorized business entity  
16 properly organized under the rules regulating The Florida Bar,  
17 acknowledges that he or she is the appropriate person for the  
18 Supreme Court of Florida to discipline if the advertisement is  
19 found to be in violation of the rules regulating The Florida  
20 Bar which govern lawyer advertising. If the advertisement is  
21 by or on behalf of a lawyer licensed to practice in a foreign  
22 country or in another state, a law firm owned by a lawyer  
23 licensed to practice in a foreign country or in another state,  
24 a lawyer-referral service, or a group or prepaid legal plan,  
25 the advertisement must contain the following statement: "The  
26 advertiser states that, although not directly subject to the  
27 rules regulating The Florida Bar which govern lawyer  
28 advertising, the advertiser has read and, by submitting this  
29 advertisement, agrees to comply with the rules regulating The  
30 Florida Bar which govern lawyer advertising, including filing  
31 requirements.";

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1 (d) Affirms that the advertisement complies with the  
2 rules regulating The Florida Bar which govern lawyer  
3 advertising;

4 (e) Acknowledges that a knowing violation of the rules  
5 regulating The Florida Bar which govern lawyer advertising  
6 subjects the person to a civil penalty of \$1,000 for the first  
7 offense and a civil penalty of \$10,000 for each subsequent  
8 offense; and

9 (f) Affirms that the person:

10 1. Has filed the advertisement for review with The  
11 Florida Bar in compliance with the rules regulating The  
12 Florida Bar which govern lawyer advertising;

13 2. Is responsible for filing and will file the  
14 advertisement for review with The Florida Bar in compliance  
15 with the rules regulating The Florida Bar which govern lawyer  
16 advertising; or

17 3. Is exempt from the filing requirement as set forth  
18 in the rules regulating The Florida Bar.

19 (5) The publisher shall retain a copy of each  
20 affidavit submitted to the publisher in accordance with  
21 subsection (4) for 2 years.

22 (6) A person who violates subsection (2), subsection  
23 (3), or subsection (4) is subject to a civil penalty of \$1,000  
24 for the first offense and a civil penalty of \$10,000 for each  
25 subsequent offense. The Florida Bar may, in a court of  
26 competent jurisdiction, seek to enforce such penalties and  
27 seek an injunction against any person who violates subsection  
28 (2), subsection (3), or subsection (4). As used in this  
29 subsection, the term "offense" means a single advertisement  
30 published in a single print publication or through a single  
31 electronic media outlet, regardless of the number of times or

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1 the number of issues it is republished in the same publication  
2 or through the same media outlet.

3 (7) Notwithstanding any other provision of law, it is  
4 an unfair and deceptive trade practice for purposes of s.  
5 501.204(1) for legal services to be advertised in this state  
6 in a false, deceptive, or misleading manner, including, but  
7 not limited to, by the use of a name other than the name of  
8 the law firm or lawyer that will be providing the services,  
9 unless it is a qualified lawyer-referral service, except that  
10 a lawyer may advertise under a trade name that is not  
11 otherwise false, misleading, or deceptive if that same trade  
12 name appears on the lawyer's letterhead, business cards,  
13 office sign, and fee contracts and appears with the lawyer's  
14 signature on pleadings and other legal documents.

15 (8) This section is cumulative and does not amend or  
16 repeal any other valid law, code, ordinance, rule, or penalty  
17 now in effect.

18 Section 2. This act shall take effect October 1, 2005.

21 ===== T I T L E A M E N D M E N T =====

22 And the title is amended as follows:

23 Delete everything before the enacting clause

25 and insert:

26 A bill to be entitled  
27 An act relating to advertising for legal  
28 services; creating s. 454.37, F.S., relating to  
29 advertising for legal services in print or  
30 electronic media; defining the terms  
31 "electronic media" and "lawyer referral

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1 service"; requiring advertisements and  
2 unsolicited written communications for legal  
3 services disseminated in Florida by certain  
4 entities to comply with the rules regulating  
5 The Florida Bar; requiring a specific statement  
6 to accompany advertisements for legal services  
7 and unsolicited written communications by  
8 lawyer-referral services; requiring an  
9 affidavit certifying certain information to  
10 accompany an advertisement for legal services  
11 submitted by an attorney licensed in this  
12 state, a business entity organized under the  
13 rules regulating The Florida Bar, a lawyer  
14 licensed out-of-state, a law firm owned by a  
15 lawyer licensed out-of-state, a lawyer-referral  
16 service, or a group or legal plan; requiring  
17 that such advertisements be accompanied by a  
18 sworn statement certifying that the  
19 advertisement complies with the standards  
20 required for advertisements placed by lawyers  
21 licensed in this state; requiring publishers of  
22 advertisements to retain certain copies for a  
23 specified period; providing for civil penalties  
24 and for enforcement; providing that false,  
25 deceptive, or misleading advertising of legal  
26 services is an unfair and deceptive trade  
27 practice; specifying that the act is cumulative  
28 and does not repeal any other law, rule, or  
29 penalty; providing an effective date.

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31 WHEREAS, the rule of law and the justice system play a

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1 vital role in our democracy, and

2           WHEREAS, the lawyers that serve the justice system  
3 therefore have both a special license and a special duty to  
4 conduct themselves in a manner that fosters respect for the  
5 rule of law and the justice system, and

6           WHEREAS, the Supreme Court of Florida through The  
7 Florida Bar is the rulemaker for lawyer advertising and has  
8 the sole jurisdiction over discipline of members of The  
9 Florida Bar, and

10           WHEREAS, the Supreme Court of Florida has adopted rules  
11 governing advertising by members of The Florida Bar which are  
12 designed to protect the public's confidence and trust in our  
13 judicial system, and

14           WHEREAS, the rules regulating The Florida Bar governing  
15 lawyer advertising are recognized as among the most strict in  
16 the country, and

17           WHEREAS, the authority of the Florida Legislature and  
18 the authority of the Supreme Court of Florida to regulate  
19 advertising by corporations and lawyers from outside the state  
20 advertising for legal services within the state are  
21 coextensive, and

22           WHEREAS, many of these advertising non-Florida lawyers  
23 and corporations are accustomed to lower advertising  
24 standards, or no standards at all, when advertising outside  
25 Florida, and

26           WHEREAS, as a result, there is a significant amount of  
27 lawyer advertising in Florida by non-Florida lawyers and  
28 corporations which falls below the standards set for members  
29 of The Florida Bar and thereby holds the law and lawyers up to  
30 ridicule and diminishes the public's trust in, respect for,  
31 and confidence in the law, and

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1           WHEREAS, the Legislature also has a duty to see that  
2 the public is protected from false, deceptive, or dishonest  
3 advertising, and

4           WHEREAS, the use of fictitious names in advertisements  
5 for legal services often creates an unreasonable expectation  
6 of results and contains an implied promise of performance;  
7 fails to disclose to the public the lawyers that would provide  
8 the services, and, therefore, prevents the public from making  
9 an informed decision in selecting an attorney; and fails to  
10 identify the lawyer or firm involved for purposes of  
11 accountability to The Florida Bar under its advertising  
12 regulatory authority or to identify the proper person to  
13 notify and serve with any enforcement action under the Florida  
14 Rules of Civil Procedure, NOW, THEREFORE,

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