

Bill No. SB 192

Barcode 144328

CHAMBER ACTION

Senate

House

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

.
. .
. .
. .
. .
. .

The Committee on Judiciary (Campbell) 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 Attorney advertising.--

(1) Each advertisement for legal services which is submitted by a member of The Florida Bar; by a legal plan, organization, or association that is composed entirely of members of The Florida Bar and located in this state; or by a combination of such legal plans, organizations or associations that are located in this state, for publication in this state in print or electronic media must be accompanied by an affidavit signed under oath by the lawyer whose services are being advertised or, in the case of a legal plan, organization, or association, or a combination thereof, a member lawyer whose services are being advertised, and

Bill No. SB 192

Barcode 144328

1 affirming, under penalty of perjury, that he or she:

2 (a) Is a member in good standing of The Florida Bar;

3 (b) Is presently practicing law in this state;

4 (c) Has read and understands Rule 4-7.2 of the rules
5 governing The Florida Bar, which governs lawyer advertising;

6 (d) Represents that, if the advertising entity is a
7 legal plan, organization, or association, or a combination
8 thereof, that it is composed entirely of members of The
9 Florida Bar and is located in this state; and

10 (e) Acknowledges that he or she is the person
11 responsible for the advertisement and the appropriate person
12 for The Florida Bar to discipline if the submitted
13 advertisement is found to be in violation of the rules of The
14 Florida Bar governing lawyer advertising.

15 (2) For advertisements for legal services or for
16 lawyer referral services which are submitted for publication
17 in this state in print or electronic media and to which
18 subsection (1) does not apply:

19 (a) Each advertisement must comply with the rules that
20 govern advertising by members of The Florida Bar as set forth
21 in Rule 4-7.2 of the rules governing The Florida Bar and as
22 interpreted by The Florida Bar.

23 (b) Each advertisement submitted by a lawyer referral
24 service for publication must contain prominently within the
25 body of the advertisement the statement: "This advertisement
26 is by a lawyer referral service. Attorneys pay this service
27 for referrals of potential clients who respond to this
28 advertisement. This lawyer referral service is not licensed to
29 provide legal services in Florida." The provisions of this
30 paragraph do not apply to pro bono lawyer referral services.

31 (c) Each advertisement submitted for publication

Bill No. SB 192

Barcode 144328

1 pursuant to this subsection must be accompanied by the
 2 following statement signed under oath: "The advertiser states
 3 that although he, she, or it is not directly subject to the
 4 rules governing The Florida Bar regarding advertising for
 5 legal services, he, she, or it has read and, by submitting
 6 this advertisement, agrees to comply with the rules governing
 7 advertising by members of The Florida Bar as set forth in Rule
 8 4-7.2 of the rules of The Florida Bar, and that the submitted
 9 advertisement complies with the rules as interpreted by The
 10 Florida Bar. The advertiser further acknowledges that a
 11 knowing violation of those rules shall subject the advertiser
 12 to a civil penalty of \$1,000 for the first offense and a civil
 13 penalty of \$10,000 for each subsequent offense."

14
 15 A person who violates this subsection is liable for a civil
 16 penalty of \$1,000 for the first offense and a civil penalty of
 17 \$10,000 for each subsequent offense. The Florida Bar or the
 18 Attorney General may, in a court of competent jurisdiction,
 19 seek to enforce such penalties and seek an injunction against
 20 any person who violates this subsection. For purposes of this
 21 subsection, the term "offense" means a single advertisement
 22 published in a single print publication or through a single
 23 electronic media outlet, regardless of the number of times or
 24 in how many issues it is republished in the same publication
 25 or through the same media outlet.

26 (3) Within 30 days after acceptance for publication of
 27 an advertisement to which this section applies, the publisher
 28 shall send a copy of the advertisement and the affidavit
 29 required pursuant to subsection (1) or the statement required
 30 by paragraph (2)(c), as applicable, to The Florida Bar for
 31 review. The entity submitting the advertisement for

Bill No. SB 192

Barcode 144328

1 publication shall provide to the publisher a copy of the
 2 advertisement for this purpose. This subsection does not
 3 preclude an advertiser from submitting an advertisement to The
 4 Florida Bar for review before submitting it for publication.

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

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

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

21 And the title is amended as follows:

22 Delete everything before the enacting clause

24 and insert:

25 A bill to be entitled

26 An act relating to advertising for legal
 27 services; creating s. 454.37, F.S., relating to
 28 advertising for legal services in print or
 29 electronic media; requiring an affidavit
 30 certifying certain information to accompany an
 31 advertisement for legal services submitted by

Bill No. SB 192

Barcode 144328

1 an attorney licensed in this state or by a
2 legal plan, organization, or association
3 composed of lawyers licensed in this state and
4 located in this state; requiring other
5 advertisements for legal services to include
6 certain statements; requiring that such
7 advertisements be accompanied by a sworn
8 statement certifying that the advertisement
9 complies with the standards required for
10 advertisements placed by lawyers licensed in
11 this state; providing for civil penalties and
12 for enforcement; requiring publishers of
13 advertisements to send a copy of the
14 advertisement and accompanying document to The
15 Florida Bar; providing that false, deceptive,
16 or misleading advertising of legal services is
17 an unfair and deceptive trade practice;
18 providing an effective date.

19
20 WHEREAS, the rule of law and the justice system play a
21 vital role in our democracy, and

22 WHEREAS, the lawyers that serve the justice system
23 therefore have both a special license and a special duty to
24 conduct themselves in a manner that fosters respect for the
25 rule of law and the justice system, and

26 WHEREAS, the Florida Supreme Court through The Florida
27 Bar is the rulemaker for lawyer advertising and has the sole
28 jurisdiction over discipline of members of The Florida Bar,
29 and

30 WHEREAS, The Florida Bar has adopted rules governing
31 advertising by members of The Florida Bar which are designed

Bill No. SB 192

Barcode 144328

1 to protect the public's confidence and trust in our judicial
2 system, and

3 WHEREAS, The Florida Bar's rules governing attorney
4 advertising are recognized as among the most strict in the
5 country, and

6 WHEREAS, The Florida Bar cannot regulate advertising by
7 corporations and lawyers from outside the state advertising
8 for legal services within the state, and

9 WHEREAS, many of these advertising non-Florida lawyers
10 and corporations are accustomed to lower advertising
11 standards, or no standards at all, when advertising outside
12 Florida, and

13 WHEREAS, as a result, there is a significant amount of
14 lawyer advertising in Florida by non-Florida lawyers and
15 corporations which falls below the standards set for members
16 of The Florida Bar and thereby holds the law and lawyers up to
17 ridicule and diminishes the public's trust, respect, and
18 confidence in the law, and

19 WHEREAS, the Legislature also has a duty to see that
20 the public is protected from false, deceptive, or dishonest
21 advertising, and

22 WHEREAS, the use of fictitious names in advertisements
23 for legal services often creates an unreasonable expectation
24 of results and contains an implied promise of performance;
25 fails to disclose to the public the lawyers that would provide
26 the services, and, therefore, prevents the public from making
27 an informed attorney selection decision; and fails to identify
28 the lawyer or firm involved for purposes of accountability to
29 The Florida Bar under its advertising regulatory authority or
30 identify the proper person to notify and serve with any
31 enforcement action under the Florida Rules of Civil Procedure,

Bill No. SB 192

Barcode 144328

1 and

2 WHEREAS, although The Florida Bar cannot address those
3 false, deceptive, and untrue advertisements for legal services
4 by non-Florida corporations and lawyers, the Legislature has
5 the ability to do so, NOW, THEREFORE,

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31