

Bill No. CS for SB 192

Barcode 241242

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

24
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.

30
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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