

Bill No. SB 192

Barcode 692200

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 **substitute for amendment** (144328):

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 692200

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 the Rules Regulating The
5 Florida Bar which govern lawyer advertising;

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

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

15 (f) States one of the following:

16 1. That the person has filed the advertisement for
17 review with The Florida Bar;

18 2. That the person is responsible for filing and will
19 file the advertisement for review with The Florida Bar in
20 compliance with the Rules Regulating The Florida Bar; or

21 3. That the advertisement is exempt from the filing
22 requirement as set forth in the Rules Regulating The Florida
23 Bar.

24 (2) For advertisements for legal services or for
25 lawyer referral services which are submitted for publication
26 in this state in print or electronic media and to which
27 subsection (1) does not apply:

28 (a) Each advertisement must comply with the rules that
29 govern lawyer advertising by members of The Florida Bar as set
30 forth in the Rules Regulating The Florida Bar, and as
31 interpreted by The Florida Bar.

Bill No. SB 192

Barcode 692200

1 (b) Each advertisement submitted by a lawyer referral
2 service for publication must contain prominently within the
3 body of the advertisement the statement: "This advertisement
4 is by a lawyer referral service. Attorneys pay this service
5 for referrals of potential clients who respond to this
6 advertisement. This lawyer referral service is not licensed to
7 provide legal services in Florida." The provisions of this
8 paragraph do not apply to pro bono lawyer referral services.

9 (c) Each advertisement submitted for publication
10 pursuant to this subsection must be accompanied by the
11 following statement signed under oath: "The advertiser states
12 that, although not directly subject to the Rules Regulating
13 The Florida Bar which govern advertising for legal services,
14 the advertiser has read and, by submitting this advertisement,
15 agrees to comply with the rules governing advertising by
16 members of The Florida Bar, and that the submitted
17 advertisement complies with those rules as interpreted by The
18 Florida Bar. The advertiser further acknowledges that a
19 knowing violation of those rules shall subject the advertiser
20 to a civil penalty of \$1,000 for the first offense and a civil
21 penalty of \$10,000 for each subsequent offense."

22
23 A person who violates this subsection is liable for a civil
24 penalty of \$1,000 for the first offense and a civil penalty of
25 \$10,000 for each subsequent offense. The Florida Bar or the
26 Attorney General may, in a court of competent jurisdiction,
27 seek to enforce such penalties and seek an injunction against
28 any person who violates this subsection. For purposes of 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

Bill No. SB 192

Barcode 692200

1 in how many issues it is republished in the same publication
2 or through the same media outlet.

3 (3) Within 30 days after acceptance for publication of
4 an advertisement to which this section applies, the publisher
5 shall send a copy of the advertisement and the original
6 affidavit required pursuant to subsection (1) or the original
7 statement required by paragraph (2)(c), as applicable, to The
8 Florida Bar for review. The publisher shall retain a copy of
9 the affidavit or statement for a period of two years. The
10 entity submitting the advertisement for publication shall
11 provide to the publisher a copy of the advertisement for this
12 purpose. This subsection does not preclude an advertiser from
13 submitting an advertisement to The Florida Bar for review
14 before submitting it for publication. The requirement for a
15 publisher to submit an advertisement and affidavit does not
16 apply if the affidavit provided under subsection (1) states
17 that the advertisement is exempt from the filing requirements
18 as set forth in the Rules Regulating The Florida Bar.

19 (4) Notwithstanding any other provision of law to the
20 contrary, it is an unfair and deceptive trade practice for
21 purposes of s. 501.204(1) for legal services to be advertised
22 in this state in a false, deceptive, or misleading manner,
23 including, but not limited to, by the use of a name other than
24 the name of the law firm or lawyer that will be providing the
25 services, unless it is a qualified lawyer referral service,
26 except that a lawyer may advertise under a trade name that is
27 not otherwise false, misleading, or deceptive if the same name
28 appears on the lawyer's letterhead, business cards, office
29 sign, or fee contracts and appears with the lawyer's signature
30 on pleadings and other legal documents.

31 (5) This section shall be taken to be cumulative and

Bill No. SB 192

Barcode 692200

1 shall not be construed to amend or repeal any other valid law,
2 code, ordinance, rule, or penalty now in effect.

3 (6) As used in this section, the term "electronic
4 media" includes but is not limited to computer-accessed
5 communications.

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

7
8

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

10 And the title is amended as follows:

11 Delete everything before the enacting clause

12

13 and insert:

14 A bill to be entitled

15 An act relating to advertising for legal
16 services; creating s. 454.37, F.S., relating to
17 advertising for legal services in print or
18 electronic media; requiring an affidavit
19 certifying certain information to accompany an
20 advertisement for legal services submitted by
21 an attorney licensed in this state or by a
22 legal plan, organization, or association
23 composed of lawyers licensed in this state and
24 located in this state; requiring other
25 advertisements for legal services to include
26 certain statements; requiring that such
27 advertisements be accompanied by a sworn
28 statement certifying that the advertisement
29 complies with the standards required for
30 advertisements placed by lawyers licensed in
31 this state; providing for civil penalties and

Bill No. SB 192

Barcode 692200

1 for enforcement; requiring publishers of
 2 advertisements to send a copy of the
 3 advertisement and accompanying document to The
 4 Florida Bar and retain certain copies for a
 5 specified period; providing an exemption for
 6 certain advertisements; providing that false,
 7 deceptive, or misleading advertising of legal
 8 services is an unfair and deceptive trade
 9 practice; specifying that these provisions are
 10 cumulative; providing a definition for the term
 11 "electronic media"; providing an effective
 12 date.

13
 14 WHEREAS, the rule of law and the justice system play a
 15 vital role in our democracy, and

16 WHEREAS, the lawyers that serve the justice system
 17 therefore have both a special license and a special duty to
 18 conduct themselves in a manner that fosters respect for the
 19 rule of law and the justice system, and

20 WHEREAS, the Supreme Court of Florida through The
 21 Florida Bar is the rulemaker for lawyer advertising and has
 22 the sole jurisdiction over discipline of members of The
 23 Florida Bar, and

24 WHEREAS, the Supreme Court of Florida has adopted rules
 25 governing advertising by members of The Florida Bar which are
 26 designed to protect the public's confidence and trust in our
 27 judicial system, and

28 WHEREAS, the Rules Regulating The Florida Bar governing
 29 lawyer advertising are recognized as among the most strict in
 30 the country, and

31 WHEREAS, the authority of the Florida legislature and

Bill No. SB 192

Barcode 692200

1 the authority of the Supreme Court of Florida to regulate
 2 advertising by corporations and lawyers from outside the State
 3 that advertise for legal services within the State are
 4 co-extensive; and

5 WHEREAS, many of these advertising non-Florida lawyers
 6 and corporations are accustomed to lower advertising
 7 standards, or no standards at all, when advertising outside
 8 Florida, and

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

15 WHEREAS, the Legislature also has a duty to see that
 16 the public is protected from false, deceptive, or dishonest
 17 advertising, and

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

29
 30
 31