

1 WHEREAS, the rule of law and the justice system play a
2 vital role in our democracy, and

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

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

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

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

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

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

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

1 ridicule and diminishes the public's trust in, respect for,
2 and confidence in the law, and

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

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

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18 Be It Enacted by the Legislature of the State of Florida:

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

22 454.37 Attorney advertising.--

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

1 plan, organization, or association, or a combination thereof,
2 a member lawyer whose services are being advertised, and
3 affirming, under penalty of perjury, that he or she:
4 (a) Is a member in good standing of The Florida Bar;
5 (b) Is presently practicing law in this state;
6 (c) Has read and understands the rules regulating The
7 Florida Bar which govern lawyer advertising;
8 (d) Represents, if the advertising entity is a legal
9 plan, organization, or association, or a combination thereof,
10 that the entity is composed entirely of members of The Florida
11 Bar and is located in this state;
12 (e) Acknowledges that he or she is the person
13 responsible for the advertisement and the appropriate person
14 for the Supreme Court of Florida to discipline if the
15 submitted advertisement is found to be in violation of the
16 rules of The Florida Bar governing lawyer advertising; and
17 (f) States one of the following:
18 1. The person has filed the advertisement for review
19 with The Florida Bar;
20 2. The person is responsible for filing and will file
21 the advertisement for review with The Florida Bar in
22 compliance with the rules regulating The Florida Bar; or
23 3. The advertisement is exempt from the filing
24 requirement as set forth in the rules regulating The Florida
25 Bar.
26 (2) For advertisements for legal services or for
27 lawyer-referral services which are submitted for publication
28 in this state in print or electronic media and to which
29 subsection (1) does not apply:
30 (a) Each advertisement must comply with the rules that
31 govern lawyer advertising by members of The Florida Bar as set

1 forth in the rules regulating The Florida Bar and as
2 interpreted by The Florida Bar.

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

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

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

1 published in a single print publication or through a single
2 electronic media outlet, regardless of the number of times or
3 the number of issues it is republished in the same publication
4 or through the same media outlet.

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

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

3 (5) This section is cumulative and does not amend or
4 repeal any other valid law, code, ordinance, rule, or penalty
5 now in effect.

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

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

10
11 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
12 COMMITTEE SUBSTITUTE FOR
13 Senate Bill 192

14 -- This committee substitute requires certain legal entities
15 located in Florida, who also publish in-state through
16 print or electronic media, to provide to the publisher
specific affidavits with each advertisement.

17 -- Regarding out-of-state legal service providers or
18 lawyer-referral services advertising in-state, a signed,
19 sworn statement must accompany all advertisements
20 submitted for publication through print or electronic
media, and these advertisements are subject to Florida
Bar rules on lawyer advertising. Lawyer referral services
are required to include a prominent disclosure in all
advertisements.

21 -- Certain legal services advertisers and lawyer referral
22 services are subject to \$1,000 in civil fines for a first
offense and \$10,000 for each subsequent offense.

23 -- Within 30 days after acceptance for publication, a
24 publisher is required to send a copy of the advertisement
and original affidavit or statement to the Florida Bar
25 and to retain a copy for two years, unless the affidavit
states that the advertisement is exempt from filing with
26 the Florida Bar.

27 -- Legal services that are advertised in a false, deceptive,
28 or misleading manner are subject to unfair and deceptive
29 trade practice penalties.