

By the Committees on Commerce and Consumer Services;
Judiciary; and Senators Campbell and Fasano

577-2142-05

1 A bill to be entitled
2 An act relating to advertising for legal
3 services; creating s. 454.37, F.S., relating to
4 advertising for legal services in print or
5 electronic media; defining the terms
6 "electronic media" and "lawyer referral
7 service"; requiring advertisements and
8 unsolicited written communications for legal
9 services disseminated in Florida by certain
10 entities to comply with the rules regulating
11 The Florida Bar; requiring a specific statement
12 to accompany advertisements for legal services
13 and unsolicited written communications by
14 lawyer-referral services; requiring an
15 affidavit certifying certain information to
16 accompany an advertisement for legal services
17 submitted by an attorney licensed in this
18 state, a business entity organized under the
19 rules regulating The Florida Bar, a lawyer
20 licensed out-of-state, a law firm owned by a
21 lawyer licensed out-of-state, a lawyer-referral
22 service, or a group or legal plan; requiring
23 that such advertisements be accompanied by a
24 sworn statement certifying that the
25 advertisement complies with the standards
26 required for advertisements placed by lawyers
27 licensed in this state; requiring publishers of
28 advertisements to retain certain copies for a
29 specified period; providing for civil penalties
30 and for enforcement; providing that false,
31 deceptive, or misleading advertising of legal

1 services is an unfair and deceptive trade
2 practice; specifying that the act is cumulative
3 and does not repeal any other law, rule, or
4 penalty; providing an effective date.
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6 WHEREAS, the rule of law and the justice system play a
7 vital role in our democracy, and

8 WHEREAS, the lawyers that serve the justice system
9 therefore have both a special license and a special duty to
10 conduct themselves in a manner that fosters respect for the
11 rule of law and the justice system, and

12 WHEREAS, the Supreme Court of Florida through The
13 Florida Bar is the rulemaker for lawyer advertising and has
14 the sole jurisdiction over discipline of members of The
15 Florida Bar, and

16 WHEREAS, the Supreme Court of Florida has adopted rules
17 governing advertising by members of The Florida Bar which are
18 designed to protect the public's confidence and trust in our
19 judicial system, and

20 WHEREAS, the rules regulating The Florida Bar governing
21 lawyer advertising are recognized as among the most strict in
22 the country, and

23 WHEREAS, the authority of the Florida Legislature and
24 the authority of the Supreme Court of Florida to regulate
25 advertising by corporations and lawyers from outside the state
26 advertising for legal services within the state are
27 coextensive, and

28 WHEREAS, many of these advertising non-Florida lawyers
29 and corporations are accustomed to lower advertising
30 standards, or no standards at all, when advertising outside
31 Florida, and

1 WHEREAS, as a result, there is a significant amount of
2 lawyer advertising in Florida by non-Florida lawyers and
3 corporations which falls below the standards set for members
4 of The Florida Bar and thereby holds the law and lawyers up to
5 ridicule and diminishes the public's trust in, respect for,
6 and confidence in the law, and

7 WHEREAS, the Legislature also has a duty to see that
8 the public is protected from false, deceptive, or dishonest
9 advertising, and

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

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

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

26 454.37 Lawyer advertising.--

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

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

30 (b) "Lawyer-referral service" means:
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1 1. Any person, group of persons, association,
2 organization, or entity that receives a fee or charge for
3 referring or causing the direct or indirect referral of a
4 potential client to a lawyer drawn from a specific group or
5 panel of lawyers; or

6 2. Any group or pooled advertising program operated by
7 any person, group of persons, association, organization, or
8 entity wherein the legal services advertisements use a common
9 telephone number and potential clients are referred only to
10 lawyers or law firms participating in the group or pooled
11 advertising program.

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13 A not-for-profit lawyer-referral program in which the
14 participating lawyers do not pay a fee or charge of any kind
15 to receive referrals or to belong to the referral panel and
16 undertake the referred matters without expectation of
17 remuneration is not a lawyer-referral service.

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

29 (3) Each advertisement or unsolicited written
30 communication disseminated in this state by or on behalf of a
31 lawyer-referral service must contain prominently within the

1 body of the advertisement or unsolicited written communication
2 the statement: "This advertisement is by a lawyer-referral
3 service. Lawyers pay this service for referrals of prospective
4 clients who respond to this advertisement. This
5 lawyer-referral service is not licensed to provide legal
6 services in Florida."

7 (4) Each advertisement for legal services submitted
8 for publication in the print or electronic media in this state
9 by or on behalf of a member of The Florida Bar, an authorized
10 business entity properly organized under the rules regulating
11 The Florida Bar, a lawyer licensed to practice in a foreign
12 country or in another state, a law firm owned by a lawyer
13 licensed to practice in a foreign country or in another state,
14 a lawyer-referral service, or a group or prepaid legal plan
15 must be accompanied by an affidavit signed under oath and
16 affirming under penalty of perjury that the person:

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

19 (b) Acknowledges that he or she is the person
20 responsible for the advertisement;

21 (c) If the advertisement is by or on behalf of a
22 member of The Florida Bar or an authorized business entity
23 properly organized under the rules regulating The Florida Bar,
24 acknowledges that he or she is the appropriate person for the
25 Supreme Court of Florida to discipline if the advertisement is
26 found to be in violation of the rules regulating The Florida
27 Bar which govern lawyer advertising. If the advertisement is
28 by or on behalf of a lawyer licensed to practice in a foreign
29 country or in another state, a law firm owned by a lawyer
30 licensed to practice in a foreign country or in another state,
31 a lawyer-referral service, or a group or prepaid legal plan,

1 the advertisement must contain the following statement: "The
2 advertiser states that, although not directly subject to the
3 rules regulating The Florida Bar which govern lawyer
4 advertising, the advertiser has read and, by submitting this
5 advertisement, agrees to comply with the rules regulating The
6 Florida Bar which govern lawyer advertising, including filing
7 requirements.";

8 (d) Affirms that the advertisement complies with the
9 rules regulating The Florida Bar which govern lawyer
10 advertising;

11 (e) Acknowledges that a knowing violation of the rules
12 regulating The Florida Bar which govern lawyer advertising
13 subjects the person to a civil penalty of \$1,000 for the first
14 offense and a civil penalty of \$10,000 for each subsequent
15 offense; and

16 (f) Affirms that the person:

17 1. Has filed the advertisement for review with The
18 Florida Bar in compliance with the rules regulating The
19 Florida Bar which govern lawyer advertising;

20 2. Is responsible for filing and will file the
21 advertisement for review with The Florida Bar in compliance
22 with the rules regulating The Florida Bar which govern lawyer
23 advertising; or

24 3. Has determined that the advertisement is exempt
25 from the filing requirement as set forth in the rules
26 regulating The Florida Bar.

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

30 (6) A person who violates subsection (2), subsection
31 (3), or subsection (4) is subject to a civil penalty of \$1,000

1 for the first offense and a civil penalty of \$10,000 for each
2 subsequent offense. The Florida Bar may, in a court of
3 competent jurisdiction, seek to enforce such penalties and
4 seek an injunction against any person who violates subsection
5 (2), subsection (3), or subsection (4). A person is entitled
6 to recover attorney's fees and costs if the person is
7 successful in obtaining penalties, an injunction, or both. As
8 used in this subsection, the term "offense" means a single
9 advertisement published in a single print publication or
10 through a single electronic media outlet, regardless of the
11 number of times or the number of issues it is republished in
12 the same publication or through the same media outlet.

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

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

28 Section 2. This act shall take effect October 1, 2005.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS/SB 192

This committee substitute differs from the committee substitute as filed in that it expands the definition of "electronic media" and includes a definition for "lawyer-referral service." Additionally, this committee substitute deletes the provision that requires, within 30 days after acceptance for publication, a publisher to send a copy of the advertisement and original affidavit or statement to the Florida Bar. This committee substitute also deletes the provision that requires the advertiser to provide the publisher with a copy of the advertisement when the advertisement is required to be forwarded to the Florida Bar.