

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 advertisement be filed with The
24 Florida Bar; requiring that such advertisements
25 be accompanied by a sworn statement certifying
26 that the advertisement complies with the
27 standards required for advertisements placed by
28 lawyers licensed in this state; requiring The
29 Florida Bar to retain certain copies of
30 advertisements for a specified period;
31 providing for civil penalties and for

1 enforcement; providing that false, deceptive,
2 or misleading advertising of legal services is
3 an unfair and deceptive trade practice;
4 specifying that the act is cumulative and does
5 not repeal any other law, rule, or penalty;
6 providing an effective date.

7
8 WHEREAS, the rule of law and the justice system play a
9 vital role in our democracy, and

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

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

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

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

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

30 WHEREAS, many of these advertising non-Florida lawyers
31 and corporations are accustomed to lower advertising

1 standards, or no standards at all, when advertising outside
2 Florida, and

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

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

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

23
24 Be It Enacted by the Legislature of the State of Florida:

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

28 454.37 Lawyer advertising.--

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

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

1 (b) "Lawyer-referral service" means:

2 1. Any person, group of persons, association,
3 organization, or entity that receives a fee or charge for
4 referring or causing the direct or indirect referral of a
5 potential client to a lawyer drawn from a specific group or
6 panel of lawyers; or

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

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

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

30 (3) Each advertisement or unsolicited written
31 communication disseminated in this state by or on behalf of a

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

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

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

21 (b) Acknowledges that he or she is the person
22 responsible for the advertisement;

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

1 licensed to practice in a foreign country or in another state,
2 a lawyer-referral service, or a group or prepaid legal plan,
3 the advertisement must contain the following statement: "The
4 advertiser states that, although not directly subject to the
5 rules regulating The Florida Bar which govern lawyer
6 advertising, the advertiser has read and, by submitting this
7 advertisement, agrees to comply with the rules regulating The
8 Florida Bar which govern lawyer advertising, including filing
9 requirements.";

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

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

18 (f) Affirms that the person:

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

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

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

29 (5) The Florida Bar shall retain a copy of each
30 affidavit submitted to The Florida Bar in accordance with
31 subsection (4) for 2 years.

1 (6) A person who violates subsection (2), subsection
2 (3), or subsection (4) is subject to a civil penalty of \$1,000
3 for the first offense and a civil penalty of \$10,000 for each
4 subsequent offense. Any person who, upon information and
5 belief, claims a violation of subsection (2), subsection (3),
6 or subsection (4) may, in a court of competent jurisdiction,
7 seek to enforce such penalties and seek an injunction against
8 any person who violates subsection (2), subsection (3), or
9 subsection (4). As used in this subsection, the term "offense"
10 means a single advertisement published in a single print
11 publication or through a single electronic media outlet,
12 regardless of the number of times or the number of issues it
13 is republished in the same publication or through the same
14 media outlet.

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

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

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

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