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1 A bill to be entitled
2 An act relating to legal and medical referral service
3 advertising; providing definitions; requiring advertising
4 from a medical or lawyer referral service related to motor
5 vehicle accidents to comply with certain requirements
6 regarding content; requiring advertisements or unsolicited
7 written communications from certain legal referral
8 services related to motor vehicle accidents to comply with
9 the Supreme Court of Florida's Rules Regulating The
10 Florida Bar; requiring that published advertisements from
11 a lawyer referral service be filed with The Florida Bar
12 along with an affidavit meeting certain criteria;
13 requiring advertisements or unsolicited written
14 communications from a lawyer referral service to display
15 certain information; requiring a referring person or
16 entity to provide certain financial information to the
17 person referred to a lawyer or health care provider;
18 prohibiting a lawyer referral service to condition
19 membership based on certain criteria; prohibiting a
20 medical referral service from making referrals only to a
21 medical clinic or health care provider in which it has a
22 financial or ownership interest; providing civil and
23 criminal penalties for violations relating to legal and
24 medical referral advertising and relief to persons
25 affected; providing an effective date.

26
27 WHEREAS, there have been numerous complaints concerning
28 misleading and deceptive advertisements directed to motor

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29 | vehicle accident victims by entities who advertise they are
30 | available to refer motor vehicle accident victims to lawyers and
31 | health care providers, and

32 | WHEREAS, it is important for the public to have an absolute
33 | trust in public safety officers and officials, including but not
34 | limited to, firefighters, police officers, and paramedics, and,
35 | as such, it is in the best interest and welfare of the state
36 | that the image, representation, and likeness of public safety
37 | officers and officials not be used in a deceptive and misleading
38 | manner to falsely misrepresent to the public that such officers
39 | and officials are recommending that the public call a help-line
40 | for accident victims which is the phone number for either an
41 | auto accident clinic or an entity in business to refer motor
42 | vehicle accident victims to a specific health care provider
43 | clinic, lawyer, or law firm, and

44 | WHEREAS, the public has been misled and deceived by health
45 | care provider clinics and entities claiming to be medical
46 | referral services and lawyer referral services that advertise
47 | using a catchy phone number or slogan and who represent
48 | themselves as an "Ask Us" informational service for motor
49 | vehicle accident victims, without disclosing they are really a
50 | front for a specific health care provider clinic, lawyer, or law
51 | firm, and

52 | WHEREAS, the public should not be deceived and misled by
53 | false or deceptive advertising that is for the purpose of
54 | steering motor vehicle accident victims to a specific health
55 | care provider, lawyer, or law firm, and

56 | WHEREAS, lawyer advertisements for motor vehicle accidents

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57 | are regulated by the Supreme Court of Florida's Rules Regulating
58 | The Florida Bar; however, those rules are not directly
59 | applicable to non-lawyer entities that advertise to motor
60 | vehicle accident victims and refer those victims to lawyers or
61 | law firms, and

62 | WHEREAS, because the Supreme Court of Florida's Rules
63 | Regulating The Florida Bar concerning lawyer advertisements are
64 | for the express purpose of protecting the public from misleading
65 | or deceptive advertising by lawyers only, it is necessary to
66 | adopt the following broader approach to the protection of the
67 | public from false and deceptive advertising to motor vehicle
68 | accident victims, NOW, THEREFORE,

69 |

70 | Be It Enacted by the Legislature of the State of Florida:

71 |

72 | Section 1. As used in this act, the term:

73 | (1) "Electronic media" includes, but is not limited to,
74 | computer-accessed, radio, and television advertisements.

75 | (2) "Lawyer referral service" means any group or pooled
76 | advertising program operated by any person, group of persons,
77 | association, organization, or entity whose legal services
78 | advertisements use a common telephone number, a uniform resource
79 | locator (URL), or other form of contact and whose clients or
80 | prospective clients are referred only to lawyers or law firms
81 | participating in the group or pooled advertising program. A not-
82 | for-profit referral program in which participating lawyers do
83 | not pay a fee or charge of any kind to receive referrals or to
84 | belong to the referral panel and undertake the referred matters

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85 without expectation of remuneration is not considered a lawyer
86 referral service for purposes of this act. A lawyer referral
87 service for or operated by a voluntary bar association or legal
88 aid program recognized by The Florida Bar is exempt from the
89 provisions of this act related to the regulation of legal and
90 medical referral services advertising to motor vehicle accident
91 victims.

92 (3) "Medical referral services" means any group or pooled
93 advertising program operated by any person, group of persons,
94 association, organization, or entity whose legal and medical
95 services advertisements use a common telephone number, a uniform
96 resource locator (URL), or other form of contact and whose
97 patients or prospective patients are referred only to medical
98 clinics or health care providers participating in the group or
99 pooled advertising program.

100 Section 2. All advertising by or on behalf of a medical or
101 lawyer referral service to the general public for services
102 related to injuries from a motor vehicle accident must comply
103 with the following:

104 (1) If an advertisement includes any reference to
105 referring a person to a health care provider, lawyer, or law
106 firm, the advertisement must clearly disclose the county or
107 counties in which the health care provider, lawyer, or law firm
108 to whom the referral will be made has a bona fide office from
109 which the services will be provided;

110 (2) Each advertisement is prohibited from including any
111 false, misleading, or deceptive communication. A communication
112 violates this subsection if it:

- 113 (a) Contains a material misrepresentation of fact.
- 114 (b) Fails to disclose material information necessary to
 115 prevent the information supplied from being false or misleading.
- 116 (c) Claims facts that cannot be substantiated.
- 117 (d) Contains any reference to past successes or results
 118 obtained that would deceive the public into having unjustified
 119 expectations. For purposes of this act, a disclaimer that
 120 "results will vary depending on the specific facts" is required
 121 for any reference to past successes or results, and such
 122 disclaimer shall be communicated in the exact same manner as any
 123 reference to past successes or results.
- 124 (e) Contains a reference to monetary amounts that create
 125 unjustified expectations, such as using deceptive statements
 126 like "Don't make a million dollar mistake." or "You may be
 127 entitled to \$100,000." when there is no factual basis to suggest
 128 such monetary amounts to the general public.
- 129 (f) Promises or suggests a specific result that cannot be
 130 guaranteed, including promising or suggesting a monetary result
 131 that cannot be guaranteed.
- 132 (g) Contains any testimonial by an actor, unless such
 133 testimonial includes a disclaimer, communicated in the exact
 134 same manner as the testimonial, that the testimonial is not a
 135 true story and the person providing the testimonial is an actor
 136 and not a real person.
- 137 (h) Contains any testimonial by a real person, unless such
 138 person actually obtained the services of the person or entity
 139 advertising the services, and the testimonial is completely
 140 truthful and verifiable, and includes the disclaimer that

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141 "results may vary depending on the specific facts." Such
142 disclaimer shall be communicated in the exact same manner as the
143 real person testimonial.

144 (i) Contains any verbal or visual reference, from the past
145 or in the present, to any connection between any person in
146 public safety, or purporting to be in public safety, or any
147 public safety entity that has any connection of any kind to the
148 person or entity advertising the services to motor vehicle
149 accident victims. This prohibition includes the use of any
150 visual or verbal reference to any actor purporting to be
151 connected in any way to a public safety officer or public safety
152 entity. This prohibition includes the use of any public safety
153 badge, emblem, uniform, hat, vehicle, or any replica of any such
154 item. An exception to this prohibition is when the person in
155 charge of a public safety entity gives express written consent
156 to the use of the reference to such agency in the advertisement
157 or communication.

158 Section 3. An advertisement or unsolicited written
159 communication for legal services related to motor vehicle
160 accidents disseminated in this state by or on behalf of any
161 lawyer referral service, other than a lawyer referral service
162 for or operated by a voluntary bar association or legal aid
163 program recognized by The Florida Bar, must comply with the
164 Supreme Court of Florida's Rules Regulating The Florida Bar
165 pertaining to lawyer referral and advertising services as if
166 those services were provided by members of The Florida Bar,
167 including filing requirements.

168 Section 4. (1) Each advertisement by or on behalf of a

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169 lawyer referral service related to motor vehicle accidents that
170 is submitted for publication in the print or electronic media or
171 on a billboard in this state must at the same time be filed with
172 The Florida Bar, accompanied by an affidavit signed under oath
173 by the owner, shareholder, principal, or officer of the referral
174 service affirming under penalty of perjury that the person:

175 (a) Has read and understands the Supreme Court of
176 Florida's Rules Regulating The Florida Bar, which pertain to
177 lawyer referral and advertising services;

178 (b) Acknowledges that he or she is the person responsible
179 for the advertisement and for the adverse consequences of any
180 prohibited advertising, including those within this act;

181 (c) Affirms that the advertisement complies with the
182 Supreme Court of Florida's Rules Regulating The Florida Bar,
183 which govern lawyer advertising;

184 (d) Acknowledges that a knowing violation of the Supreme
185 Court Florida's Rules Regulating The Florida Bar, which govern
186 lawyer advertising, subjects the person to a civil penalty of
187 \$1,000 for the first offense and a civil penalty of \$5,000 for
188 each subsequent offense; and

189 (e) Affirms that the person:

190 1. Has filed the advertisement for review with The Florida
191 Bar in compliance with the Supreme Court of Florida's Rules
192 Regulating The Florida Bar, which govern lawyer advertising;

193 2. Is responsible for filing and will file the
194 advertisement for review with The Florida Bar in compliance with
195 the Supreme Court of Florida's Rules Regulating The Florida Bar,
196 which govern lawyer advertising; or

197 3. Has determined that the advertisement is exempt from
 198 the filing requirement as set forth in the Supreme Court of
 199 Florida's Rules Regulating The Florida Bar, which govern lawyer
 200 advertising.

201 (2) A copy of the affidavit must be submitted to The
 202 Florida Bar and maintained by the referral services for 2 years.

203 Section 5. An advertisement or unsolicited written
 204 communication disseminated in this state by or on behalf of a
 205 lawyer referral service relating to motor vehicle accidents must
 206 contain prominently within the body of the advertisement or
 207 unsolicited written communication the statement: "This
 208 advertisement is by a lawyer referral service. Lawyers may pay
 209 this service for referrals of prospective clients who respond to
 210 this advertisement. This lawyer referral service is not licensed
 211 to provide legal services in Florida."

212 Section 6. When a person or entity that advertises the
 213 service of referring motor vehicle accident victims to a health
 214 care provider, lawyer, or law firm refers a person to a health
 215 care provider, lawyer, or law firm, the referring person or
 216 entity must provide the person referred with a written
 217 disclosure that clearly and unambiguously states any financial
 218 interest or financial relationship that the referring person or
 219 entity has with the health care provider, lawyer, or law firm to
 220 whom a referral is made. A copy of the written disclosure must
 221 be submitted to The Florida Bar and maintained by the referral
 222 service for 2 years.

223 Section 7. A lawyer referral service may not require a
 224 participating lawyer or law firm to recommend the services of a

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225 particular health care provider or other professional as a
226 condition of participation in the referral service.

227 Section 8. A medical referral service may not make
228 referrals only to a medical clinic or health care provider with
229 which the medical referral service has any financial or
230 ownership interest.

231 Section 9. (1)(a) A person or entity that violates this
232 act shall forfeit any monetary amount received as a result of an
233 advertisement that violates this act.

234 (b) A person or entity that violates this act is subject
235 to a civil penalty of \$1,000 for the first offense and \$5,000
236 for each subsequent offense.

237 (c) Any sums collected as a civil penalty under this
238 subsection shall be deposited in the State Courts Revenue Trust
239 Fund.

240 (2) A person who claims a violation of this act may file a
241 complaint with the Department of Agriculture and Consumer
242 Services. If the department fails to initiate legal proceedings
243 within 90 days after receiving the complaint, the person who
244 filed the complaint may, in a court of competent jurisdiction,
245 seek to enforce such penalties and may seek an injunction
246 against the person in violation of this act. The right of a
247 person to initiate court proceedings is limited to the person
248 who first filed the complaint with the department on each
249 individual violation.

250 (3) A person who files a court action pursuant to this act
251 may recover attorney's fees and costs if successful in obtaining
252 an injunction, penalties, or both and may recover 25 percent of

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253 all moneys paid as a civil penalty as a result of such person's
254 action to enforce this act, whether in court or through the
255 actions of the department.

256 (4) Each prohibited advertisement that appears on a
257 billboard, is published in print media, airs on radio or
258 television, or appears on a computer website controlled by the
259 party advertising the services constitutes a separate offense.

260 Section 10. After an adjudication of guilt is entered for
261 a first offense of violating this act, any subsequent knowing
262 violation of this act is a misdemeanor of the second degree,
263 punishable as provided in s. 775.082 or s. 775.083. A person who
264 violates section 2 of this act commits an unfair or deceptive
265 trade practice as defined in part II of chapter 501 and is
266 subject to the penalties and remedies provided therein. Further,
267 any person injured by a violation of this act may bring an
268 action for recovery of damages. A judgment in favor of the
269 person shall be for actual damages, and the losing party is
270 liable for the person's reasonable attorney's fees and costs.

271 Section 11. This act is cumulative and does not amend or
272 repeal any other valid law, code, ordinance, rule, or penalty
273 now in effect.

274 Section 12. This act shall take effect July 1, 2011.