

By Senator Margolis

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

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

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

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

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

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

57 WHEREAS, lawyer advertisements for motor vehicle accidents
58 are regulated by the Supreme Court of Florida's Rules Regulating

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59 The Florida Bar; however, those rules are not directly
60 applicable to non-lawyer entities that advertise to motor
61 vehicle accident victims and refer those victims to lawyers or
62 law firms, and

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

70

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

72

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

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

76 (2) "Lawyer referral service" means any group or pooled
77 advertising program operated by any person, group of persons,
78 association, organization, or entity whose legal services
79 advertisements use a common telephone number, a uniform resource
80 locator (URL), or other form of contact and whose clients or
81 prospective clients are referred only to lawyers or law firms
82 participating in the group or pooled advertising program. A not-
83 for-profit referral program in which participating lawyers do
84 not pay a fee or charge of any kind to receive referrals or to
85 belong to the referral panel and undertake the referred matters
86 without expectation of remuneration is not considered a lawyer
87 referral service for purposes of this act. A lawyer referral

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88 service for or operated by a voluntary bar association or legal
89 aid program recognized by The Florida Bar is exempt from the
90 provisions of this act related to the regulation of legal and
91 medical referral services advertising to motor vehicle accident
92 victims.

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

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

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

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

114 (a) Contains a material misrepresentation of fact.

115 (b) Fails to disclose material information necessary to
116 prevent the information supplied from being false or misleading.

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117 (c) Claims facts that cannot be substantiated.

118 (d) Contains any reference to past successes or results
119 obtained that would deceive the public into having unjustified
120 expectations. For purposes of this act, a disclaimer that
121 "results will vary depending on the specific facts" is required
122 for any reference to past successes or results, and such
123 disclaimer shall be communicated in the exact same manner as any
124 reference to past successes or results.

125 (e) Contains a reference to monetary amounts that create
126 unjustified expectations, such as using deceptive statements
127 like "Don't make a million dollar mistake." or "You may be
128 entitled to \$100,000." when there is no factual basis to suggest
129 such monetary amounts to the general public.

130 (f) Promises or suggests a specific result that cannot be
131 guaranteed, including promising or suggesting a monetary result
132 that cannot be guaranteed.

133 (g) Contains any testimonial by an actor, unless such
134 testimonial includes a disclaimer, communicated in the exact
135 same manner as the testimonial, that the testimonial is not a
136 true story and the person providing the testimonial is an actor
137 and not a real person.

138 (h) Contains any testimonial by a real person, unless such
139 person actually obtained the services of the person or entity
140 advertising the services, and the testimonial is completely
141 truthful and verifiable, and includes the disclaimer that
142 "results may vary depending on the specific facts." Such
143 disclaimer shall be communicated in the exact same manner as the
144 real person testimonial.

145 (i) Contains any verbal or visual reference, from the past

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

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

169 Section 4. (1) Each advertisement by or on behalf of a
170 lawyer referral service related to motor vehicle accidents which
171 is submitted for publication in the print or electronic media or
172 on a billboard in this state must at the same time be filed with
173 The Florida Bar, accompanied by an affidavit signed under oath
174 by the owner, shareholder, principal, or officer of the referral

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175 service affirming under penalty of perjury that the person:

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

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

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

185 (d) Acknowledges that a knowing violation of the Supreme
186 Court of Florida's Rules Regulating The Florida Bar, which
187 govern lawyer advertising, subjects the person to a civil
188 penalty of \$1,000 for the first offense and a civil penalty of
189 \$5,000 for each subsequent offense; and

190 (e) Affirms that the person:

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

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

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

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

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

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

224 Section 7. A lawyer referral service may not require a
225 participating lawyer or law firm to recommend the services of a
226 particular health care provider or other professional as a
227 condition of participation in the referral service.

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

232 Section 9. (1) (a) A person or entity that violates this act

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233 shall forfeit any monetary amount received as a result of an
234 advertisement that violates this act.

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

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

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

251 (3) A person who files a court action pursuant to this act
252 may recover attorney's fees and costs if successful in obtaining
253 an injunction, penalties, or both and may recover 25 percent of
254 all moneys paid as a civil penalty as a result of such person's
255 action to enforce this act, whether in court or through the
256 actions of the department.

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

261 Section 10. After an adjudication of guilt is entered for a

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

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

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