

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 accidents or injuries to comply with
6 certain requirements regarding content; requiring
7 advertisements or unsolicited written communications
8 from certain legal referral services related to
9 accidents or injuries to comply with the Supreme Court
10 of Florida's Rules Regulating The Florida Bar;
11 requiring that published advertisements from a lawyer
12 referral service related to accident or injury claims
13 be filed with The Florida Bar along with an affidavit
14 meeting certain criteria; requiring advertisements or
15 unsolicited written communications from a lawyer
16 referral service related to accident or injury claims
17 to display certain information; requiring a medical or
18 lawyer referral service to obtain certain information
19 from the person referred to a lawyer or health care
20 provider; prohibiting lawyer referral services and
21 medical referral services from conditioning
22 participation in those services on recommending
23 certain other services; prohibiting a medical referral
24 service from making referrals only to a medical clinic
25 or health care provider in which it has a financial or
26 ownership interest unless the service includes in its
27 advertisements notice of that interest and limitation;
28 providing civil and criminal penalties for violations

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29 relating to legal and medical referral advertising and
30 relief to persons affected; providing for the
31 disposition of the proceeds of civil penalties
32 collected; providing for cumulative effect; providing
33 for severability; providing an effective date.
34

35 WHEREAS, there have been numerous complaints concerning
36 misleading or deceptive advertisements directed at accident or
37 injury victims by entities that advertise that they are
38 available to assist accident victims or to refer accident or
39 injury victims to lawyers and health care providers, and

40 WHEREAS, it is important for the public to have an absolute
41 trust in public safety officers and officials, including, but
42 not limited to, firefighters, police officers, military
43 personnel, and paramedics, and it is in the best interest and
44 welfare of the state that the image, representation, and
45 likeness of public safety officers, armed services personnel,
46 and other officials not be used in a deceptive or misleading
47 manner to falsely misrepresent to the public that such officers,
48 service members, and officials are recommending that the public
49 call a help line for accident or injury victims which is the
50 phone number for either an accident or injury clinic or an
51 entity in business to refer accident or injury victims to a
52 specific health care provider clinic, lawyer, or law firm, and

53 WHEREAS, the public has been misled or deceived by health
54 care provider clinics and entities claiming to be medical
55 referral services and by nonlawyer-owned lawyer referral
56 services that advertise using a catchy phone number or slogan

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57 | and that represent themselves as an "Ask Us" informational
58 | service for accident or injury victims, without disclosing they
59 | are really a front for a specific health care provider clinic,
60 | patient broker, lawyer, or law firm, and

61 | WHEREAS, the public should not be deceived and misled by
62 | false or deceptive advertising that is for the purpose of
63 | steering accident or injury victims to a specific health care
64 | provider, patient broker, lawyer, or law firm, and

65 | WHEREAS, lawyer advertisements for accidents and injuries
66 | are regulated by the Supreme Court of Florida's Rules Regulating
67 | The Florida Bar; however, those rules are not directly
68 | applicable to nonlawyer entities that advertise to accident or
69 | injury victims and refer those victims to lawyers or law firms,
70 | and

71 | WHEREAS, the Supreme Court of Florida has promulgated Rules
72 | Regulating The Florida Bar and, specifically, rules regulating
73 | the communication of information about legal services, and

74 | WHEREAS, the Supreme Court of Florida and The Florida Bar
75 | may engage in disciplinary proceedings against lawyers who
76 | violate the Rules Regulating The Florida Bar, but discipline by
77 | The Florida Bar does not extend to nonlawyers; therefore, for
78 | the protection of the public from false or deceptive advertising
79 | by nonlawyers that specifically advertise in this state to
80 | accident or injury victims or for the referral of accident or
81 | injury victims for legal services, it is necessary to adopt the
82 | following act, NOW, THEREFORE,

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

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

(1) "Advertising" means an unsolicited communication to the general public for the purposes of procuring business related to any possible claims for accidents or injuries. The forms of such advertising include, but are not limited to, electronic media advertising, phone directory display advertising, display print advertising, motor vehicle wrap advertising, and billboard advertising.

(2) "Electronic media" includes, but is not limited to, radio, television, the Internet, electronic phone books, electronic billboards, and any other medium that delivers content by electronic technology.

(3) "Lawyer referral service" means any person, group of persons, association, organization, or entity that advertises using a common phone number, a common uniform resource locator (URL), or another form of contact shared by members of the service and that advertises to the general public that its services include making a referral to a lawyer or law firm for an accident or injury claim. The term does not include:

(a) A lawyer or law firm that advertises using the name of the lawyer or law firm;

(b) A pro bono or not-for-profit referral program in which participating lawyers do not pay a fee or charge of any kind to receive referrals or to belong to the referral panel and undertake the referred matters without expectation of remuneration.

(c) A lawyer referral service for or operated by a

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113 voluntary bar association or legal aid program recognized by The
114 Florida Bar.

115 (4) "Medical referral service" means any person, group of
116 persons, association, organization, or entity that specifically
117 advertises in this state to accident victims, that advertises
118 primarily for the purpose of a health care provider filing a
119 claim for payment of treatment of an accident or injury victim,
120 and that uses a common phone number, a uniform resource locator
121 (URL), or another form of contact shared by members of the
122 service. To refer to itself as a medical referral service in any
123 advertisement, the referral service must have at least four
124 independent health care providers to which it can refer
125 consumers and with which it or any of its principals does not
126 have any financial, contractual, or ownership interest.

127 Section 2. All advertising by or on behalf of a medical or
128 lawyer referral service to the general public for services
129 related to claims from an accident or injury must comply with
130 the following, unless compliance creates a conflict with the
131 Supreme Court of Florida's Rules Regulating The Florida Bar:

132 (1) If an advertisement includes any reference to
133 referring a person to a health care provider, lawyer, or law
134 firm, the advertisement must clearly disclose the county or
135 counties in which the health care provider, lawyer, or law firm
136 to whom the referral will be made has a bona fide office from
137 which the services will be provided.

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

- 141 (a) Contains a material misrepresentation of fact.
- 142 (b) Fails to fully disclose those facts and issues of law
 143 material to prevent the information supplied from being false or
 144 misleading.
- 145 (c) Claims facts that cannot be substantiated.
- 146 (d) Contains any reference to past successes or results
 147 that would deceive the public into having unjustified
 148 expectations. For purposes of this act, a disclaimer that
 149 "results will vary depending on the specific facts" is required
 150 for any reference to past successes or results, and such
 151 disclaimer must be communicated along with any reference to past
 152 successes or results.
- 153 (e) Contains a reference to monetary amounts and suggests
 154 an accident or injury victim is eligible to receive that amount
 155 when that suggestion is false or deceptive or fails to fully
 156 explain Florida law, such as using deceptive statements like
 157 "Don't make a million dollar mistake." or "You may be entitled
 158 to \$100,000." when there is no factual basis to suggest such
 159 monetary amount to the general public.
- 160 (f) Promises a specific result that cannot be guaranteed.
- 161 (g) Includes an advertisement using a person falsely
 162 claiming the referral service helped that person.
- 163 (h) Includes any testimonial or endorsement by a person
 164 who actually obtained the services of the referral service that
 165 is false or deceptive.
- 166 (i) Includes an advertisement using a person truthfully
 167 stating the referral service helped that person unless the
 168 advertisement includes a disclaimer, equal in size to any phone

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169 number or e-mail address contained within the advertisement,
170 that results may vary depending on the specific facts.

171 (j) Includes any truthful testimonial or endorsement by a
172 person who actually obtained the services of the referral
173 service, unless the advertisement includes a disclaimer, equal
174 in size to any phone number or e-mail address contained within
175 the advertisement, that results may vary depending on the
176 specific facts.

177 (k) Contains any verbal or visual reference suggesting a
178 connection between the referral service and any law enforcement
179 agency, public safety office, emergency medical service, or
180 armed service, including the use of any badge, emblem, uniform,
181 hat, vehicle, or replica of such item that falsely suggests the
182 referral service is connected with a law enforcement agency,
183 public safety office, emergency medical service, or armed
184 service.

185 Section 3. An advertisement or unsolicited written
186 communication for legal services related to accident or injury
187 victims disseminated in this state by or on behalf of any lawyer
188 referral service must comply with the Supreme Court of Florida's
189 Rules Regulating The Florida Bar pertaining to lawyer referral
190 and advertising services as if those services were provided by
191 members of The Florida Bar, including filing requirements.

192 Section 4. (1) Each advertisement by or on behalf of a
193 lawyer referral service that specifically advertises to accident
194 or injury victims and that is submitted for publication in
195 print, through electronic media, or on a billboard must be filed
196 with The Florida Bar, as required by the Rules Regulating The

197 Florida Bar when a lawyer advertises his or her business, and
 198 accompanied by an affidavit signed under oath by the owner,
 199 shareholder, principal, or officer of the referral service
 200 affirming under penalty of perjury that the person:

201 (a) Has read and understands the Supreme Court of
 202 Florida's Rules Regulating The Florida Bar that pertain to
 203 lawyer referral and advertising services;

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

207 (c) Affirms that the advertisement complies with the
 208 Supreme Court of Florida's Rules Regulating The Florida Bar that
 209 govern lawyer advertising;

210 (d) Acknowledges that a knowing violation of the Supreme
 211 Court of Florida's Rules Regulating The Florida Bar that govern
 212 lawyer advertising subjects the person to possible criminal
 213 penalties and to a civil penalty of \$1,000 for the first offense
 214 and \$5,000 for each subsequent offense; and

215 (e) Affirms that the person:

216 1. Has filed the advertisement for review with The Florida
 217 Bar in compliance with the Supreme Court of Florida's Rules
 218 Regulating The Florida Bar that govern lawyer advertising;

219 2. Is responsible for filing and will file the
 220 advertisement for review with The Florida Bar in compliance with
 221 the Supreme Court of Florida's Rules Regulating The Florida Bar
 222 that govern lawyer advertising; or

223 3. Has determined that the advertisement is exempt from
 224 the filing requirement as set forth in the Supreme Court of

225 Florida's Rules Regulating The Florida Bar that govern lawyer
 226 advertising.

227 (2) A copy of the affidavit must be submitted to The
 228 Florida Bar and maintained by the referral service for 7 years.

229 Section 5. An advertisement or unsolicited written
 230 communication disseminated in this state by or on behalf of a
 231 lawyer referral service relating to accident or injury victims
 232 must contain prominently within the body of the advertisement or
 233 unsolicited written communication the following statement: "This
 234 advertisement is by a lawyer referral service. Lawyers may pay
 235 this service for referrals of prospective clients who respond to
 236 this advertisement. This lawyer referral service is not licensed
 237 to provide legal services in Florida."

238 Section 6. When a lawyer referral service or medical
 239 referral service that advertises the service of referring
 240 accident or injury victims to a health care provider, lawyer, or
 241 law firm refers a person to a health care provider, lawyer, or
 242 law firm, the referring person or entity must obtain from the
 243 person referred an executed written disclosure that clearly and
 244 unambiguously states any financial interest, financial
 245 arrangement, financial relationship, or contractual obligation
 246 that the referring person or entity has with the health care
 247 provider, lawyer, or law firm to whom the referral is made. A
 248 copy of each executed written disclosure must be provided to the
 249 person referred within 15 days after the referral, with the
 250 original signed disclosure maintained by the referral service
 251 for 7 years.

252 Section 7. A lawyer referral service may not require a

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253 participating lawyer or law firm to recommend the services of a
254 particular health care provider or other professional as a
255 condition of participation in the referral service.

256 Section 8. A medical referral service may not require a
257 participating health care provider to recommend the services of
258 a particular lawyer, law firm, or other health care provider as
259 a condition of participation in the referral service.

260 Section 9. (1) A medical referral service may not make
261 referrals only to a medical clinic or health care provider with
262 which the medical referral service or any owner of the medical
263 referral service has any financial or ownership interest unless
264 each advertisement by the medical referral service includes a
265 statement that the referral service only makes referrals to a
266 medical clinic or health care provider in which the medical
267 referral service has a financial or ownership interest.

268 (2) If a medical referral service makes referrals to a
269 health care provider not owned by a physician, it must include
270 in its advertising the following notice: "Notice: We may refer a
271 patient to a health care provider not owned by a physician."
272 This notice must be included in each advertisement and must be
273 as conspicuous as the advertised name of the referral service in
274 the advertisement. If the name of the service is not included in
275 the advertisement, the notice must be as conspicuous as the
276 phone number or e-mail address in the advertisement, whichever
277 is more noticeable.

278 Section 10. (1) Any person or entity that violates this
279 act is subject to a civil penalty of \$1,000 for the first
280 offense and \$5,000 for each subsequent offense. All civil

281 penalties imposed shall be collected by the Department of Legal
282 Affairs. Any sums collected as a civil penalty under this
283 subsection shall be deposited by the Department of Legal Affairs
284 in the State Courts Revenue Trust Fund.

285 (2) A person who claims a violation of this act may file a
286 complaint with the Department of Agriculture and Consumer
287 Services. If the department fails to initiate legal proceedings
288 within 90 days after receiving the complaint, the person who
289 filed the complaint may, in a court of competent jurisdiction,
290 seek to enforce such civil penalties and may seek an injunction
291 against the person in violation of this act. The right of a
292 person to initiate court proceedings is limited to the first
293 person who filed the complaint with the department on each
294 individual violation. All legal actions related to the same
295 violation may be consolidated pursuant to court rules.

296 (3) A person who files a court action pursuant to this act
297 may recover attorney's fees and costs, if successful in
298 obtaining an injunction; civil penalties; or both and may
299 recover 25 percent of all moneys paid as a civil penalty as a
300 result of such person's action to enforce this act, whether in
301 court or through the actions of the Department of Agriculture
302 and Consumer Services. The Department of Legal Affairs is
303 responsible for collecting and disbursing all moneys paid as a
304 civil penalty and authorized by the court or Department of
305 Agriculture and Consumer Services for collection and
306 disbursement under this subsection.

307 (4) Each prohibited advertisement that appears on a
308 billboard, is published in print media, or is broadcast on radio

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309 or television, or appears on a computer website controlled by
310 the party advertising the services constitutes a separate
311 offense.

312 Section 11. A person who violates section 2 of this act
313 commits an unfair or deceptive trade practice as defined in part
314 II of chapter 501, Florida Statutes, and is subject to the
315 penalties and remedies provided therein. Further, any person
316 injured by a violation of this act may bring an action for
317 recovery of damages. A judgment in favor of the person shall be
318 for actual damages, and the losing party is liable for the
319 person's reasonable attorney's fees and costs.

320 Section 12. After a court finds that a person violated
321 this act or admitted liability or guilt to a violation of this
322 act, any subsequent knowing violation of the act by that person
323 is a misdemeanor of the second degree, punishable as provided in
324 s. 775.082 or s. 775.083, Florida Statutes.

325 Section 13. This act is cumulative and does not amend or
326 repeal any other valid law, code, ordinance, rule, or penalty
327 now in effect.

328 Section 14. If any provision of this act or its
329 application to any person or circumstance is held invalid, the
330 invalidity does not affect other provisions or applications of
331 the act which can be given effect without the invalid provision
332 or application, and to this end the provisions of the act are
333 severable.

334 Section 15. This act shall take effect July 1, 2012.