

By Senator Wright

14-01664-20

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1                   A bill to be entitled  
2       An act relating to the solicitation of legal services;  
3       creating s. 501.2106, F.S.; defining terms;  
4       prohibiting legal advertisements from containing  
5       certain terminology or failing to include specified  
6       disclosures; providing that a person who places or  
7       sponsors an advertisement in violation of certain  
8       provisions commits a deceptive and unfair trade  
9       practice, subject to the penalties and remedies of the  
10      Florida Deceptive and Unfair Trade Practices Act;  
11      creating s. 877.025, F.S.; defining terms; prohibiting  
12      certain use, sale, or transfer of protected health  
13      information without specified authorization for  
14      purposes of soliciting legal services; providing that  
15      a person who uses, sells, or transfers protected  
16      health information in violation of the act commits a  
17      deceptive and unfair trade practice, subject to the  
18      penalties and remedies of the Florida Deceptive and  
19      Unfair Trade Practices Act; providing criminal  
20      penalties for willful and knowing violations and  
21      enhanced penalties for violations committed for  
22      financial gain; providing applicability; providing  
23      effective dates.

24  
25       WHEREAS, unethical practices in legal advertising have  
26      become pervasive throughout this state and contribute to the  
27      exploitation of persons vulnerable to deceptive or otherwise  
28      misleading statements in legal advertisements, particularly  
29      those suffering from the infirmities of aging, and this state

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30 has a substantial interest in curtailing these unethical  
31 practices, and

32 WHEREAS, although section 15 of Article V of the State  
33 Constitution vests exclusive jurisdiction in the Florida Supreme  
34 Court to regulate the admission of persons to the practice of  
35 law and to discipline those persons admitted, and although the  
36 rules regulating The Florida Bar provide current restrictions on  
37 legal advertising, the pervasive extent of these unethical  
38 practices necessitates that the Legislature exercise the state's  
39 police power to further curtail these unethical practices, and

40 WHEREAS, this act's restrictions on legal advertising will  
41 directly and materially curtail these unethical practices and  
42 protect vulnerable populations, and

43 WHEREAS, this act's restrictions on legal advertising are  
44 narrowly drawn and tailored specifically to curtail these  
45 unethical practices, NOW, THEREFORE,

46

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

48

49 Section 1. Section 501.2106, Florida Statutes, is created  
50 to read:

51 501.2106 Legal advertising; deceptive and unfair trade  
52 practices.—

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

54 (a) "Legal advertisement" means a paid solicitation for  
55 legal services which is directed to the public through  
56 television; radio; the Internet, including a domain name; a  
57 newspaper or other periodical; an outdoor advertising sign; or  
58 another written, electronic, or recorded communication.

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59 (b) "Person" has the same meaning as provided in s. 1.01  
60 and includes an attorney or law firm or an employee or agent  
61 thereof.

62 (2) A person who submits or approves the submittal of a  
63 legal advertisement for publication, broadcast, or  
64 dissemination, or who pays for or otherwise sponsors a legal  
65 advertisement, commits a deceptive and unfair trade practice  
66 under this part if the advertisement, once published, broadcast,  
67 or disseminated, does any of the following:

68 (a) Fails to clearly and conspicuously disclose at the  
69 outset of the advertisement the phrase, "This is a paid  
70 advertisement for legal services."

71 (b) Includes terminology implying that the advertisement is  
72 a "medical alert," "health alert," "consumer alert," "public  
73 service announcement," or similar public alert or announcement.

74 (c) Displays the logo, or a similar facsimile thereof, of a  
75 federal or state government agency in a manner implying  
76 affiliation with, or sponsorship by, a government agency.

77 (d) Includes terminology, including use of the term  
78 "recall" when referring to a product, implying that the product  
79 has been recalled when, in fact, the product has not been  
80 recalled by a government agency or through agreement between a  
81 manufacturer and a government agency.

82 (e) Fails to clearly and conspicuously disclose the sponsor  
83 of the advertisement.

84 (f) Fails to clearly and conspicuously disclose the  
85 attorney or law firm who will represent persons responding to  
86 the advertisement or how those persons will be referred to  
87 attorneys or law firms for representation if the sponsor of the

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88 advertisement will not represent those persons.

89 (g) If the advertisement solicits clients who may allege  
90 injury from a prescription drug approved, cleared, or the  
91 subject of a monograph authorized by the United States Food and  
92 Drug Administration, fails to clearly and conspicuously disclose  
93 the following warning: "Do not stop taking a prescribed  
94 medication without first consulting your doctor. Discontinuing a  
95 prescribed medication without your doctor's advice can result in  
96 injury or death."

97 (h) If the advertisement solicits clients who may allege  
98 injury from a prescription drug or medical device approved,  
99 cleared, or the subject of a monograph authorized by the United  
100 States Food and Drug Administration, fails to clearly and  
101 conspicuously disclose that the drug or medical device remains  
102 approved by the United States Food and Drug Administration,  
103 unless the product is recalled or withdrawn.

104 (i) Fails to present any disclosure required by this  
105 subsection such that:

106 1. Written disclosures are clearly legible and, if  
107 televised or displayed electronically, are displayed for  
108 sufficient time to enable the viewer to easily see and fully  
109 read the disclosure.

110 2. Spoken disclosures are plainly audible and clearly  
111 intelligible.

112 Section 2. Effective October 1, 2020, section 877.025,  
113 Florida Statutes, is created to read:

114 877.025 Solicitation of legal services; wrongful use or  
115 disclosure of protected health information.-

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

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117 (a) "Person" has the same meaning as provided in s. 1.01  
118 and includes an attorney or law firm or an employee or agent  
119 thereof.

120 (b) "Protected health information" has the same meaning as  
121 provided in 45 C.F.R. s. 106.103.

122 (c) "Solicit" means to offer to provide legal services by  
123 written, recorded, or electronic communication or by in-person,  
124 telephone, or real-time electronic contact.

125 (2) A person may not use, cause to be used, obtain, sell,  
126 transfer, or disclose to another person without written  
127 authorization protected health information to solicit legal  
128 services.

129 (3) (a) A person who violates subsection (2) commits a  
130 deceptive and unfair trade practice subject to the penalties and  
131 remedies provided in part II of chapter 501.

132 (b) A person who willfully and knowingly violates  
133 subsection (2) commits a misdemeanor of the first degree,  
134 punishable as provided in s. 775.082 or s. 775.083.

135 (c) A person who willfully and knowingly violates  
136 subsection (2) with intent to sell, transfer, or use protected  
137 health information for financial gain commits a felony of the  
138 second degree, punishable as provided in s. 775.082, s. 775.083,  
139 or s. 775.084, except the term of imprisonment may not exceed 10  
140 years and the fine may exceed \$10,000 but may not exceed  
141 \$250,000.

142 (4) This section does not apply to disclosure of protected  
143 health information to an attorney, or the attorney's use of such  
144 protected health information, in any judicial or administrative  
145 proceeding or such other use or disclosure otherwise permitted

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146 or required by law.

147 Section 3. Except as otherwise expressly provided in this

148 act, this act shall take effect July 1, 2020.