

1 A bill to be entitled

2 An act relating to legal advertising; creating s.
3 501.2106, F.S.; providing definitions; prohibiting
4 legal advertisements from containing certain
5 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.; providing definitions;
12 prohibiting certain use, sale, or transfer of
13 protected health information without specified
14 authorization for purposes of soliciting legal
15 services; providing that a person who uses, sells, or
16 transfers protected health information in violation of
17 the act commits a deceptive and unfair trade practice,
18 subject to the penalties and remedies of the Florida
19 Deceptive and Unfair Trade Practices Act; providing
20 criminal penalties for willful and knowing violations
21 and enhanced penalties for violations committed for
22 financial gain; providing applicability; providing an
23 effective date.

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

26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50

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

501.2106 Legal advertising; deceptive and unfair trade practices.—

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

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

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

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

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

(b) If the advertisement includes information regarding the amount of a damage award obtained on behalf of a client,

51 fails to clearly and conspicuously disclose the award amount the
52 client received after paying for legal services and costs.

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

56 (d) Includes terminology, including use of the term
57 "recall" when referring to a product, implying that the product
58 has been recalled when, in fact, the product has not been
59 recalled by a government agency or through agreement between a
60 manufacturer and a government agency.

61 (e) Fails to clearly and conspicuously disclose the
62 sponsor of the advertisement.

63 (f) Fails to clearly and conspicuously disclose the
64 attorney or law firm who will represent persons responding to
65 the advertisement or how those persons will be referred to
66 attorneys or law firms for representation if the sponsor of the
67 advertisement will not represent those persons.

68 (g) If the advertisement solicits clients who may allege
69 injury from a prescription drug approved, cleared, or the
70 subject of a monograph authorized by the United States Food and
71 Drug Administration, fails to clearly and conspicuously disclose
72 the following warning: "Do not stop taking a prescribed
73 medication without first consulting your doctor. Discontinuing a
74 prescribed medication without your doctor's advice can result in
75 injury or death."

76 (h) If the advertisement solicits clients who may allege
77 injury from a prescription drug or medical device approved,
78 cleared, or the subject of a monograph authorized by the United
79 States Food and Drug Administration, fails to clearly and
80 conspicuously disclose that the drug or medical device remains
81 approved by the United States Food and Drug Administration,
82 unless the product is recalled or withdrawn.

83 (i) Fails to present any disclosure required by this
84 subsection such that:

85 1. Written disclosures are clearly legible and, if
86 televised or displayed electronically, are displayed for
87 sufficient time to enable the viewer to easily see and fully
88 read the disclosure.

89 2. Spoken disclosures are plainly audible and clearly
90 intelligible.

91 (3) Notwithstanding any other provision of law, in any
92 action brought by a person who has suffered a physical injury as
93 a result of a violation of this section, the person may recover
94 compensatory damages and attorney fees and court costs as
95 provided in s. 501.2105.

96 Section 2. Section 877.025, Florida Statutes, is created
97 to read:

98 877.025 Solicitation of legal services; wrongful use or
99 disclosure of protected health information.—

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

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

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

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

109 (2) A person may not use, cause to be used, obtain, sell,
 110 transfer, or disclose to another person without written
 111 authorization protected health information to solicit legal
 112 services.

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

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

119 (c) A person who willfully and knowingly violates
 120 subsection (2) with intent to sell, transfer, or use protected
 121 health information for financial gain commits a felony of the
 122 second degree, punishable as provided in s. 775.082, s. 775.083,
 123 or s. 775.084, except the term of imprisonment may not exceed 10
 124 years and the fine may exceed \$10,000 but may not exceed
 125 \$250,000.

HB 7083

2020

126 (4) This section does not apply to disclosure of protected
127 health information to an attorney, or the attorney's use of such
128 protected health information, in any judicial or administrative
129 proceeding or such other use or disclosure otherwise permitted
130 or required by law.

131 Section 3. This act shall take effect July 1, 2020.