

By Senator Harrell

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1 A bill to be entitled
2 An act relating to the solicitation of nonmedical
3 services; creating s. 501.2106, F.S.; defining terms;
4 providing that a person who submits or sponsors a
5 nonmedical solicitation that contains certain
6 terminology or fails to include specified disclosures
7 commits a deceptive and unfair trade practice, subject
8 to the penalties and remedies of the Florida Deceptive
9 and Unfair Trade Practices Act; creating s. 877.025,
10 F.S.; defining terms; prohibiting the unauthorized
11 use, sale, or transfer of protected health information
12 for the purpose of soliciting professional services;
13 providing that a person who willfully and knowingly
14 violates such prohibition commits a deceptive and
15 unfair trade practice, subject to the penalties and
16 remedies of the Florida Deceptive and Unfair Trade
17 Practices Act; providing criminal penalties for
18 willful and knowing violations and enhanced criminal
19 penalties for violations committed for financial gain;
20 providing applicability; providing effective dates.

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

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

27 501.2106 Nonmedical solicitation; deceptive and unfair
28 trade practices.-

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

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30 (a) "Client" means a prospective customer, client, or
31 patron of nonmedical professional services.

32 (b) "Nonmedical solicitation" means a paid solicitation for
33 nonmedical professional services which contains information
34 about a drug or device as defined in s. 499.003 and which is
35 directed to the public through television; radio; the Internet,
36 including a domain name; a newspaper or other periodical; an
37 outdoor advertising sign; or another written, electronic, or
38 recorded communication.

39 (c) "Person" has the same meaning as in s. 1.01(3).

40 (2) A person who submits or approves the submittal of a
41 nonmedical solicitation for publication, broadcast, or
42 dissemination, or who pays for or otherwise sponsors a
43 nonmedical solicitation, commits a deceptive and unfair trade
44 practice under this part if the solicitation, once published,
45 broadcast, or disseminated, does any of the following:

46 (a) Fails to clearly and conspicuously disclose at the
47 outset of the solicitation the phrase: "This is a paid
48 advertisement for nonmedical services."

49 (b) Includes terminology implying that the advertisement is
50 a "medical alert," "health alert," "consumer alert," "public
51 service announcement," or similar public alert or announcement.

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

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

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59 manufacturer and a governmental agency.

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

62 (f) Fails to clearly and conspicuously disclose the
63 individual or entity that will provide professional services to
64 persons responding to the advertisement or how those persons
65 will be referred to such individual or entity.

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

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

81 (i) Fails to present any disclosure required by this
82 subsection such that:

83 1. A written disclosure is clearly legible and, if
84 televised or displayed electronically, is displayed for
85 sufficient time to enable the viewer to easily see and fully
86 read the disclosure.

87 2. A spoken disclosure is plainly audible and clearly

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88 intelligible.

89 Section 2. Effective October 1, 2021, section 877.025,
90 Florida Statutes, is created to read:

91 877.025 Solicitation of nonmedical services; wrongful use
92 or disclosure of protected health information.-

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

94 (a) "Person" has the same meaning as in s. 1.01(3).

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

97 (c) "Solicit" means to offer to provide professional
98 services by written, recorded, or electronic communication or by
99 in-person, telephone, or real-time electronic contact.

100 (2) A person may not use, cause to be used, obtain, sell,
101 transfer, or disclose to another person an individual's
102 protected health information, without that individual's written
103 authorization, to solicit professional services.

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

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

110 (c) A person who willfully and knowingly violates
111 subsection (2) with intent to sell, transfer, or use protected
112 health information for financial gain commits a felony of the
113 second degree, punishable as provided in s. 775.082, s. 775.083,
114 or s. 775.084, except that the term of imprisonment may not
115 exceed 10 years and the fine must be more than \$10,000 but may
116 not exceed \$250,000.

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117 (4) This section does not apply to the disclosure of
118 protected health information to an attorney, or the attorney's
119 use of such protected health information, in any judicial or
120 administrative proceeding or any other use or disclosure
121 otherwise authorized or required by law.

122 Section 3. Except as otherwise expressly provided in this
123 act, this act shall take effect July 1, 2021.