

By Senator Brandes

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1                   A bill to be entitled  
2           An act relating to the solicitation of nonmedical  
3           services; creating s. 501.20791, 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, transfer, or disclosure of protected health  
12          information for the purpose of soliciting professional  
13          services; providing that a person who willfully and  
14          knowingly violates such prohibition commits a  
15          deceptive and unfair trade practice, subject to the  
16          penalties and remedies of the Florida Deceptive and  
17          Unfair Trade Practices Act; providing criminal  
18          penalties for willful and knowing violations and  
19          enhanced criminal penalties for violations committed  
20          for financial gain; providing applicability; providing  
21          effective dates.

22  
23 Be It Enacted by the Legislature of the State of Florida:

24  
25           Section 1. Section 501.20791, Florida Statutes, is created  
26 to read:

27           501.20791 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, 2022, 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, 2022.