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CS/HB 1205

2023 Legislature

1  
2 An act relating to advertisements for legal services;  
3 creating s. 501.139, F.S.; defining terms; specifying  
4 prohibited practices relating to advertisements for  
5 legal services; requiring persons and entities that  
6 issue advertisements for legal services to solicit  
7 certain clients to include specified information and  
8 statements in such advertisements; providing  
9 requirements for such written and verbal statements;  
10 providing that the person or entity that issues an  
11 advertisement for legal services is solely responsible  
12 for ensuring such advertisements comply with specified  
13 provisions; providing media entities with immunity  
14 from liability for disseminating another person's or  
15 entity's advertisement for legal services which  
16 violates specified provisions; providing  
17 applicability; prohibiting the use, obtaining, sale,  
18 transfer, or disclosure of a consumer's protected  
19 health information for a specified purpose without  
20 written authorization; providing an exception;  
21 providing that certain violations are deemed deceptive  
22 and unfair trade practices; providing construction;  
23 providing an effective date.

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

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Section 1. Section 501.139, Florida Statutes, is created to read:

501.139 Advertisements for legal services.-

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

(a) "Advertisement for legal services" means any representation disseminated in any manner through a media entity for the purpose of soliciting prospective clients for legal services. The term includes such solicitation by a person with the intent to transfer data obtained from the consumer to one or more attorneys for legal services.

(b) "Media entity" means a radio broadcast station, a television broadcast station, a cable television company, a newspaper company, a periodical company, a billboard company, an advertising agency, a digital media platform, or a bona fide news or public interest website operator.

(c) "Protected health information" has the same meaning as provided in 45 C.F.R. s. 160.103.

(d) "Solicit" means attempting to procure a client for legal services by initiating unsolicited personal, telephone, or real-time electronic contact or by advertising such services through print media, video or audio recorded advertisements, or electronic communications.

(2) A person or an entity that issues an advertisement for legal services may not do any of the following:

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51 (a) Present the advertisement as a medical alert, health  
52 alert, drug alert, or public service announcement or use any  
53 substantially similar phrase that suggests to a reasonable  
54 consumer that the advertisement is offering professional or  
55 medical advice or advice from a state or federal governmental  
56 entity or an entity approved by or affiliated with a state or  
57 federal governmental entity.

58 (b) Display the logo of a state or federal governmental  
59 entity in a manner that suggests to a reasonable consumer that  
60 the advertisement is presented by a state or federal  
61 governmental entity or an entity approved by or affiliated with  
62 a state or federal governmental entity.

63 (c) Use the term "recall" when referring to a product that  
64 has not been recalled in accordance with applicable state or  
65 federal regulations.

66 (3) A person or an entity that issues an advertisement for  
67 legal services to solicit clients who may allege injury from a  
68 prescription drug or medical device approved by the United  
69 States Food and Drug Administration shall include all of the  
70 following in the advertisement:

71 (a) The statement, "This is a paid advertisement for legal  
72 services," which must appear at the beginning of the  
73 advertisement.

74 (b) The identity of the sponsor of the advertisement.

75 (c) Either the identity of the attorney or the law firm

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76 that will be primarily responsible for providing the solicited  
 77 legal services to a consumer who engages the attorney or the law  
 78 firm in response to the advertisement or an explanation of how a  
 79 responding consumer's case will be referred to an attorney or a  
 80 law firm if the sponsor of the advertisement is not licensed to  
 81 practice law.

82 (d) A statement that the prescription drug or medical  
 83 device approved by the United States Food and Drug  
 84 Administration remains approved unless it has been recalled in  
 85 accordance with applicable state or federal regulations.

86 (e) The statement, "Consult your physician before making  
 87 any decision regarding prescribed medication or medical  
 88 treatment."

89 (4) The statements required to appear in an advertisement  
 90 under this section must be made in both written and verbal  
 91 formats, except that a print-only advertisement may include the  
 92 statements in written format only and an audio-only  
 93 advertisement may include the statements in verbal format only.

94 (a) Required written statements must appear in a clear and  
 95 conspicuous font and manner and, for visual advertisements, must  
 96 appear on screen for a sufficient length of time for a  
 97 reasonable consumer to read the statement. A written statement  
 98 is presumed to comply with the requirements of this subsection  
 99 if it appears in the same font style and size and for the same  
 100 duration as a printed reference to the telephone number or

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101 website that a consumer is to use to contact the entity for the  
102 advertised legal services, provided that such duration is at  
103 least 10 seconds.

104 (b) Required verbal statements must be audible,  
105 intelligible, and presented with equal prominence and speed as  
106 the other parts of the advertisement. A verbal statement is  
107 presumed to comply with the requirements of this subsection if  
108 it is made at approximately the same volume and uses  
109 approximately the same number of words per minute as used when  
110 presenting other information in the advertisement which is not  
111 required under this section.

112 (5) The person or entity that issues an advertisement for  
113 legal services is solely responsible for ensuring that such  
114 advertisement complies with this section, and a media entity may  
115 not be held liable or subjected to any penalty for producing,  
116 distributing, transmitting, displaying, publishing, or otherwise  
117 disseminating another person's or entity's advertisement for  
118 legal services which violates this section.

119 (6) This section does not apply to an advertisement that  
120 has been reviewed and approved by an ethics or disciplinary  
121 committee of The Florida Bar in accordance with its rules of  
122 professional conduct.

123 (7) A person or an entity may not use, cause to be used,  
124 obtain, sell, transfer, or disclose a consumer's protected  
125 health information to another person or entity for the purpose

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126 | of soliciting the consumer for legal services without written  
127 | authorization from that consumer. This subsection does not apply  
128 | to the use or disclosure of protected health information to an  
129 | individual's legal representative in the course of any judicial  
130 | or administrative proceeding or as otherwise permitted or  
131 | required by law.

132 | (8) A violation of this section is deemed a deceptive and  
133 | unfair trade practice subject to enforcement under part II of  
134 | this chapter.

135 | (9) This section does not limit or otherwise affect the  
136 | authority of The Florida Bar to regulate the practice of law,  
137 | enforce its rules of professional conduct, or discipline any  
138 | person admitted to practice law in this state.

139 | Section 2. This act shall take effect July 1, 2023.