

BILL ANALYSIS

Senate Research Center

S.B. 1189
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State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1189 prohibits intentionally misleading advertisements for legal services in order to protect vulnerable Texans against potential health risks associated with the false information presented in these advertisements.

In recent years, there has been a significant increase in the number of legal advertisements focusing on prescription drugs, medical devices, asbestos-caused cancer, and other health-related issues that inform viewers they may be entitled to financial compensation if they call the phone number on their screen. Many vulnerable viewers call these numbers and provide them with their personal health information under the assumption that they are speaking with a legal representative. In many instances, the entity paying for the ad is not actually an attorney, but in fact a "client harvester" that generates and sells clients in bulk to attorneys. Interested parties also have raised concerns that these type of attorney advertisements relating to prescription drugs can pose a significant public health risk. In fact, research has found that a number of individuals have stopped taking their necessary prescription drugs and suffered negative health consequences as a direct result of the information contained in these misleading advertisements.

To address this issue, S.B. 1189 works to protect vulnerable consumers who may fall victim to these deceptive advertisements by increasing disclosure requirements, prohibiting the use of intentionally misleading or manipulative information, and creating legal penalties to hold those who violate the bill's provisions accountable. (Original Author's/Sponsor's Statement of Intent)

S.B. 1189 amends current law relating to certain deceptive advertising of legal services.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 81, Government Code, by adding Subchapter J, as follows:

SUBCHAPTER J. DECEPTIVE ADVERTISING PRACTICES

Sec. 81.151. **APPLICABILITY.** (a) Provides that this subchapter applies only to a television advertisement that promotes a person's provision of legal services or solicits clients to receive legal services.

(b) Provides that this subchapter does not apply to an advertisement by a federal, state, or local government entity.

Sec. 81.152. **PROHIBITED ADVERTISING.** Prohibits an advertisement for legal services from:

(1) presenting the advertisement as a "medical alert," "health alert," "drug alert," "public service announcement," or substantially similar phrase that suggests to a reasonable viewer the advertisement is offering professional,

medical, or government agency advice about medications or medical devices rather than legal services;

(2) displaying the logo of a federal or state government agency in a manner that suggests to a reasonable viewer the advertisement is presented by a federal or state governmental agency or by an entity approved or affiliated with a federal or state governmental agency; or

(3) using the term "recall" when referring to a product that has not been recalled by a government agency or through an agreement between a manufacturer and government agency.

Sec. 81.153. REQUIRED WARNINGS AND DISCLOSURES. (a) Requires an advertisement for legal services to state, both verbally and visually:

(1) at the beginning of the advertisement, "This is a paid advertisement for legal services.";

(2) the identity of the sponsor of the advertisement; and

(3) either:

(A) the identity of the attorney or law firm primarily responsible for providing solicited legal services to a person who engages the attorney or law firm in response to the advertisement; or

(B) the manner in which a responding person's case is referred to an attorney or law firm if the sponsor of the advertisement is not legally authorized to provide legal services to clients.

(b) Requires an advertisement for legal services soliciting clients who may allege an injury from a prescription drug approved by the United States Food and Drug Administration (FDA) to include a verbal and visual statement: "Do not stop taking a prescribed medication without first consulting a physician."

Sec. 81.154. FORM OF REQUIRED WARNINGS AND DISCLOSURES; COURT FINDINGS. (a) Requires a visual statement required by this subchapter to appear in an advertisement to be presented clearly, conspicuously, and for a sufficient length of time for a viewer to see and read the statement.

(b) Prohibits a court from finding that a visual statement in an advertisement is noncompliant with Subsection (a) if the statement is presented in the same size and style of font and for the same duration as a visual reference to the telephone number or Internet website of the entity a responding person contacts for the legal services offered or discussed in the advertisement.

(c) Requires a verbal statement required by this subchapter to appear in an advertisement to be audible, intelligible, and presented with equal prominence as the other parts of the advertisement.

(d) Prohibits a court from finding that a verbal statement in an advertisement is noncompliant with Subsection (c) if the statement is made at approximately the same volume and uses approximately the same number of words per minute as the voice-over of the longest duration in the advertisement other than information required by this subchapter.

Sec. 81.155. ENFORCEMENT; PRIVATE CAUSE OF ACTION NOT CREATED. (a) Provides that a violation of this subchapter is a deceptive act or practice actionable under Subchapter E (Deceptive Trade Practices and Consumer Protection), Chapter 17, Business & Commerce Code, solely as an enforcement action by the consumer protection

division of Office of the Attorney General (OAG) or by a district or county attorney as provided by that subchapter. Provides that all remedies available under that subchapter are available for a violation of this subchapter.

(b) Provides that this subchapter does not create a private cause of action.

(c) Prohibits the consumer protection division of OAG or a district or county attorney, notwithstanding Subsection (a), if the advertising review committee of the State Bar of Texas reviews, in accordance with the committee's procedures, an advertisement for compliance with this subchapter before the first dissemination of the advertisement and the committee informs the sponsor of the advertisement that the advertisement is in compliance with this subchapter and the applicable advertising standards in the Texas Disciplinary Rules of Professional Conduct, from pursuing an action under Subsection (a), unless:

(1) the consumer protection division or the district or county attorney demanded that the sponsor of the advertisement cease further dissemination of the advertisement;

(2) the sponsor of the advertisement is given a reasonable amount of time to ensure the advertisement is withdrawn from dissemination to the public; and

(3) the sponsor of the advertisement fails to ensure the advertisement is withdrawn from dissemination to the public within the time provided.

Sec. 81.156. CONSTRUCTION OF SUBCHAPTER. Prohibits this subchapter from being construed to limit or otherwise affect the authority of the Supreme Court of Texas to regulate the practice of law, enforce the Texas Disciplinary Rules of Professional Conduct, or discipline persons admitted to the state bar.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2019.