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By:  Buckingham, et al. S.B. No. 1189

A BILL TO BE ENTITLED

AN ACT

relating to certain deceptive advertising of legal services; imposing civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Chapter 81, Government Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. DECEPTIVE ADVERTISING PRACTICES

Sec. 81.151.  DEFINITIONS. In this subchapter:

(1)  "Advertisement" means a communication that provides information promoting a person's provision of legal services. The term includes a communication through television, radio, newspaper or other periodical, outdoor display, or other written, electronic, or recorded communication, including an Internet website operated for a commercial purpose.

(2)  "Soliciting" means offering to provide legal services through a written, recorded, or electronic communication or by an in-person, telephone, or real-time electronic contact.

Sec. 81.152.  PROHIBITED ADVERTISING. An advertisement for legal services may not:

(1)  present the advertisement as a "medical alert," "health alert," "consumer alert," "public service announcement," or similar phrase;

(2)  display the logo of a federal or state government agency in a manner that suggests affiliation with or sponsorship by that agency; or

(3)  use 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) An advertisement for legal services must disclose:

(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 that provides legal services to a client; or

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

(b)  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 must:

(1)  include the warning: "Do not stop taking a prescribed medication without first consulting with your physician. Discontinuing a prescribed medication without seeking your physician's advice can result in injury or death."; and

(2)  disclose that the drug is approved by the United States Food and Drug Administration unless the product has been recalled or withdrawn.

(c)  An advertisement for legal services soliciting clients who may allege an injury from a medical device approved by the United States Food and Drug Administration must disclose that the medical device is approved by the United States Food and Drug Administration unless the product has been recalled or withdrawn.

Sec. 81.154.  FORM OF REQUIRED WARNINGS AND DISCLOSURES. (a) Any warning or disclosure statement required by this subchapter to appear in an advertisement must be presented clearly and conspicuously.

(b)  A written disclosure must be legible and, if televised or displayed electronically, must be displayed for sufficient time to enable the viewer to easily see and read the disclosure.

(c)  A verbal disclosure must be audible and intelligible.

Sec. 81.155.  INJUNCTION; RESTITUTION. (a) If the attorney general or the prosecuting attorney in the county in which a violation of this subchapter occurs has reason to believe that a person is engaging in, has engaged in, or is about to engage in an act or practice that violates this subchapter, the attorney general or prosecuting attorney may bring an action in the name of the state against the person to restrain that act or practice by temporary or permanent injunction if an injunction is in the public interest.

(b)  If a court issues a permanent injunction to restrain and prevent a violation of this subchapter, the court may make an additional order requiring restitution to a victim for medical expenses or other expenses related to the violation.

Sec. 81.156.  CIVIL PENALTY. (a) A person who violates this subchapter is liable to the state for a civil penalty in an amount not to exceed $20,000 for each violation. Each advertisement that violates this subchapter constitutes a separate violation.

(b)  The attorney general or the prosecuting attorney in the county in which a violation occurs may bring suit to recover the civil penalty imposed under Subsection (a).

(c)  The attorney general or prosecuting attorney may recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, attorney's fees, investigative costs, witness fees, and deposition expenses.

(d)  The civil penalty provided by this section is in addition to injunctive relief or any other remedy that may be granted under Section 81.155.

Sec. 81.157.  CONSTRUCTION OF SUBCHAPTER. This subchapter may not be 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.  The change in law made by this Act applies only to a cause of action that accrues on or after the effective date of this Act. A cause of action that accrued before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3.  This Act takes effect September 1, 2019.