By:  Buckingham, et al. S.B. No. 1189

(In the Senate - Filed February 26, 2019; March 7, 2019, read first time and referred to Committee on State Affairs; April 8, 2019, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; April 8, 2019, sent to printer.)

COMMITTEE VOTE

               Yea Nay Absent  PNV

Huffman         X

Hughes          X

Birdwell        X

Creighton       X

Fallon          X

Hall            X

Lucio           X

Nelson          X

Zaffirini       X

COMMITTEE SUBSTITUTE FOR S.B. No. 1189 By:  Hall

A BILL TO BE ENTITLED

AN ACT

relating to certain deceptive advertising of legal services.

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.  APPLICABILITY. (a)  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)  This subchapter does not apply to an advertisement by a federal, state, or local government entity.

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

(1)  present the advertisement as a "medical alert," "health alert," "consumer 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)  display 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 government agency or by an entity approved by or affiliated with a federal or state government 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 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)  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 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)  A visual statement required by this subchapter to appear in an advertisement must be presented clearly, conspicuously, and for a sufficient length of time for a viewer to see and read the statement.

(b)  A court may not find 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)  A verbal statement required by this subchapter to appear in an advertisement must be audible, intelligible, and presented with equal prominence as the other parts of the advertisement.

(d)  A court may not find 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 longest duration in the advertisement other than information required by this subchapter.

Sec. 81.155.  ENFORCEMENT; PRIVATE CAUSE OF ACTION NOT CREATED. (a)  A violation of this subchapter is a deceptive act or practice actionable under Subchapter E, Chapter 17, Business & Commerce Code, and may be enforced by the attorney general or a district or county attorney as provided by that subchapter. All remedies available under that subchapter are available for a violation of this subchapter.

(b)  This subchapter does not create a private cause of action.

Sec. 81.156.  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 an advertisement that is presented on or after the effective date of this Act. An advertisement presented 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.

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