

By: Buckingham, et al.
(Capriglione)

S.B. No. 1189

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

1 government agency; or

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

5 Sec. 81.153. REQUIRED WARNINGS AND DISCLOSURES. (a) An
6 advertisement for legal services must state, both verbally and
7 visually:

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

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

12 (3) either:

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

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

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

26 Sec. 81.154. FORM OF REQUIRED WARNINGS AND DISCLOSURES;
27 COURT FINDINGS. (a) A visual statement required by this

1 subchapter to appear in an advertisement must be presented clearly,
2 conspicuously, and for a sufficient length of time for a viewer to
3 see and read the statement.

4 (b) A court may not find that a visual statement in an
5 advertisement is noncompliant with Subsection (a) if the statement
6 is presented in the same size and style of font and for the same
7 duration as a visual reference to the telephone number or Internet
8 website of the entity a responding person contacts for the legal
9 services offered or discussed in the advertisement.

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

13 (d) A court may not find that a verbal statement in an
14 advertisement is noncompliant with Subsection (c) if the statement
15 is made at approximately the same volume and uses approximately the
16 same number of words per minute as the voice-over of longest
17 duration in the advertisement other than information required by
18 this subchapter.

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

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

1 Sec. 81.156. CONSTRUCTION OF SUBCHAPTER. This subchapter
2 may not be construed to limit or otherwise affect the authority of
3 the Supreme Court of Texas to regulate the practice of law, enforce
4 the Texas Disciplinary Rules of Professional Conduct, or discipline
5 persons admitted to the state bar.

6 SECTION 2. The change in law made by this Act applies only
7 to an advertisement that is presented on or after the effective date
8 of this Act. An advertisement presented before the effective date
9 of this Act is governed by the law in effect immediately before the
10 effective date of this Act, and that law is continued in effect for
11 that purpose.

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