

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

1 that 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 disclose:

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

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

11 (3) either:

12 (A) the identity of the attorney or law firm that
13 provides legal services to a client; or

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

18 (b) An advertisement for legal services soliciting clients
19 who may allege an injury from a prescription drug approved by the
20 United States Food and Drug Administration must:

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

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27 recalled or withdrawn.

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5 Administration unless the product has been recalled or withdrawn.

6 Sec. 81.154. FORM OF REQUIRED WARNINGS AND DISCLOSURES.

7 (a) Any warning or disclosure statement required by this
8 subchapter to appear in an advertisement must be presented clearly
9 and conspicuously.

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

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

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

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

26 Sec. 81.156. CIVIL PENALTY. (a) A person who violates this
27 subchapter is liable to the state for a civil penalty in an amount

1 not to exceed \$20,000 for each violation. Each advertisement that
2 violates this subchapter constitutes a separate violation.

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

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

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

13 Sec. 81.157. CONSTRUCTION OF SUBCHAPTER. This subchapter
14 may not be construed to limit or otherwise affect the authority of
15 the Supreme Court of Texas to regulate the practice of law, enforce
16 the Texas Disciplinary Rules of Professional Conduct, or discipline
17 persons admitted to the state bar.

18 SECTION 2. The change in law made by this Act applies only
19 to a cause of action that accrues on or after the effective date of
20 this Act. A cause of action that accrued before the effective date
21 of this Act is governed by the law in effect immediately before the
22 effective date of this Act, and that law is continued in effect for
23 that purpose.

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