

RÉSUMÉ DIGEST

SB 395

2020 Regular Session

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Present law provides that unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

Proposed law would provide that in any action brought by the attorney general under the Uniform Trade Practices and Consumer Protection Law in which the state prevails, the court is required, in addition to relief granted by law, to award reasonable costs, investigative expenses, and attorney fees to the attorney general.

Proposed law would provide that no person in any advertisement shall make, or permit to be made, a false, misleading, or deceptive statement about a monetary result obtained on behalf of a client or fail to disclose information necessary to prevent the information supplied in an advertisement from being false, misleading, or deceptive.

Proposed law would define "actually received", "advertisement", "media entity", "monetary result obtained", "false, misleading, or deceptive statement", and "person".

Proposed law would exclude a media entity as a person.

Proposed law would provide that any violation of proposed law shall be an unfair or deceptive trade practice declared unlawful and shall subject the violator to any and all actions and penalties pursuant to the Unfair Trade Practices and Consumer Protection Law. Proposed law would provide that each iteration of an advertisement constitutes an unfair or deceptive trade practice.

Proposed law would not apply to any media entity responsible for the production or publication of any advertisement found to violate proposed law.

Proposed law would not apply to a media entity that is responsible for the carriage, distribution, transmission, or display of any advertisement found to violate proposed law.

Proposed law would provide that in addition to all other remedies provided in the Unfair Trade Practices and Consumer Protection Law, any person who is found to have made, or to have permitted to be made on his behalf, a false, misleading, or deceptive statement under the provisions of proposed law shall be liable to the attorney general for all costs, expenses, and fees related to investigations and proceedings associated with the violation, including attorney fees.

Proposed law would provide that an action to recover costs, expenses, fees, and attorney fees shall be ancillary to and shall be filed and heard in the same court as a civil action filed for the unfair or deceptive trade practice.

Would provide that the remedies and rights provided in proposed law are in addition to and shall not preclude any right or remedy otherwise authorized by law, including the enforcement of professional rules against the person by any licensing board or court.

Would provide that if a licensing board or court adopts a comparable rule and a process for approval of advertisements, then the approval of an advertisement under that rule and process shall constitute prima facie evidence of compliance with proposed law.

Would have become effective August 1, 2020.

(Proposed to adds R.S. 51:1407(F) and 1429)

VETO MESSAGE: "Please be advised that I have vetoed Senate Bill 395 of the 2020 Regular Session.

Senate Bill 395 provides for restrictions on attorney advertising and authorizes the Attorney General to investigate advertising claims under the Unfair Trade Practices Act. This bill is very similar to Senate Bill 115 of the 2020 Regular Session by Senator Pat Connick, which I have signed into law. I have thus vetoed Senate Bill 395 for two reasons. First, since Senate

Bill 115 is now signed, the enactment of Senate Bill 395 would lead to confusion and duplication, as many of the provisions in the bills are nearly identical. Secondly, there is a significant difference between the bills that raises concerns about the constitutionality of Senate Bill 395. While Senate Bill 115 vests enforcement of its provisions with the Louisiana Supreme Court, Senate Bill 395 gives that authority to the executive branch, namely the Attorney General. This likely violates Article 5, Section 5 of the Louisiana Constitution which vests authority over the practice of law with the Louisiana Supreme Court. The Louisiana Supreme Court, by constitutional requirement and by practice, is best positioned to implement any restrictions in a manner consistent with the protections in the United States and Louisiana constitutions."