

2019 Regular Session

HOUSE BILL NO. 445

BY REPRESENTATIVE AMEDEE

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

ATTORNEYS: Provides relative to attorney advertising

1 AN ACT

2 To enact Chapter 4-A of Title 37 of the Louisiana Revised Statutes of 1950, to be comprised  
3 of R.S. 37:223 through 229, relative to advertisements for legal services; to provide  
4 for definitions; to prohibit certain information in advertisements; to require certain  
5 warnings and disclosures; to provide for the form of warnings and disclosures; to  
6 provide for injunctions and restitution; to provide for penalties; to provide for  
7 applicability; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Chapter 4-A of Title 37 of the Louisiana Revised Statutes of 1950,  
10 comprised of R.S. 37:223 through 229, is hereby enacted to read as follows:

11 CHAPTER 4-A. DECEPTIVE ADVERTISING PRACTICES  
12 FOR LEGAL SERVICES

13 §223. Definitions

14 As used in this Chapter:

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

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

4           §224. Prohibited advertising

5           An advertisement for legal services may not do any of the following:

6           (1) Present the advertisement as a "medical alert," "health alert," "consumer  
7           alert," "public service announcement," or similar phrase.

8           (2) Display the logo of a federal or state government agency in a manner that  
9           suggests affiliation with, or sponsorship by, that agency.

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

13          §225. Required warnings and disclosures

14          A. An advertisement for legal services shall disclose all of the following:

15          (1) At the beginning of the advertisement, "This is a paid advertisement for  
16          legal services."

17          (2) The identity of the sponsor of the advertisement.

18          (3) Either of the following:

19          (a) The identity of the attorney or law firm that provides legal services to a  
20          client.

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

24          B. An advertisement for legal services soliciting clients who may allege an  
25          injury from a prescription drug approved by the United States Food and Drug  
26          Administration shall contain all of the following:

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

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

3           C. An advertisement for legal services soliciting clients who may allege an  
4           injury from a medical device approved by the United States Food and Drug  
5           Administration shall disclose that the medical device is approved by the United  
6           States Food and Drug Administration unless the product has been recalled or  
7           withdrawn.

8           §226. Form of required warnings and disclosures

9           A. Any warning or disclosure statement required by this Chapter to appear  
10           in an advertisement shall be presented clearly and conspicuously.

11           B. A written disclosure shall be legible and, if televised or displayed  
12           electronically, shall be displayed for sufficient time to enable the viewer to easily see  
13           and read the disclosure.

14           C. A verbal disclosure shall be audible and intelligible.

15           §227. Injunction; restitution

16           A. If the attorney general or the prosecuting attorney in the parish in which  
17           a violation of this Chapter occurs has reason to believe that a person is engaging in,  
18           has engaged in, or will engage in an act or practice that violates this Chapter, the  
19           attorney general 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 permanent  
21           injunction if an injunction is in the public interest.

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

25           §228. Civil penalty

26           A. A person who violates any provision of this Chapter shall be liable to the  
27           state for a civil penalty in an amount not to exceed twenty thousand dollars for each  
28           violation. Each advertisement that violates any provision of this Chapter constitutes  
29           a separate violation.

1           B. The attorney general or the prosecuting attorney in the parish in which a  
2           violation occurs may bring suit to recover the civil penalty imposed under Subsection  
3           (A) of this Section.

4           C. The attorney general or prosecuting attorney may recover reasonable  
5           expenses incurred in obtaining a civil penalty under this Section, including court  
6           costs, attorney fees, investigative costs, witness fees, and deposition expenses.

7           D. The civil penalty provided by this Section is in addition to injunctive  
8           relief or any other remedy that may be granted under R.S. 37:227.

9           §229. Construction of this Chapter

10           The provisions of this Chapter may not be construed to limit or otherwise  
11           affect the authority of the Supreme Court of Louisiana to regulate the practice of law,  
12           enforce the Louisiana Rules of Professional Conduct, or discipline persons admitted  
13           to the state bar.

14           Section 2. The provisions of this Act shall apply prospectively only.

15           Section 3. The provisions of this Act shall become effective on September 1, 2019.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 445 Original

2019 Regular Session

Amedee

**Abstract:** Provides limitations, prohibitions, requirements, procedures, and penalties with respect to advertising practices for legal services.

Proposed law provides definitions for "advertisement" and "soliciting".

Proposed law prohibits the presentation of advertisements as a "medical alert," "health alert," "consumer alert," "public service announcement," or similar phrase; prohibits the displaying of the logo of a federal or state government agency; and prohibits using the term "recall" when referring to a product that has not been recalled by a government agency.

Proposed law requires disclosures that identify the advertisement as being a paid advertisement for legal services, that identify the sponsor of the advertisement, and that either identify the attorney or law firm that provides legal services or identify 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.

Proposed law provides required warning in advertisements regarding prescription drugs and medical devices approved by the U.S. Food and Drug Administration.

Proposed law requires warning and disclosures to be presented clearly and conspicuously, and that such verbal disclosures be audible and intelligible.

Proposed law authorizes the attorney general or prosecuting attorney to bring an action in the name of the state against the person to restrain that act or practice by temporary or permanent injunction.

Proposed law provides that if a court issues a permanent injunction to restrain and prevent a violation of proposed law, the court may make an additional order requiring restitution to a victim for medical expenses or other expenses related to the violation.

Proposed law authorizes the attorney general or the prosecuting attorney to bring an action for a civil penalty in an amount not to exceed \$20,000 for each violation, and provides that each advertisement that violates proposed law constitutes a separate violation.

Proposed law authorizes the attorney general or prosecuting attorney to recover reasonable expenses incurred in obtaining a civil penalty, including court costs, attorney fees, investigative costs, witness fees, and deposition expenses, and specifies that the civil penalty is in addition to injunctive relief or any other remedy authorized by proposed law.

Provides that proposed law may not be construed to limit or otherwise affect the authority of the Supreme Court of Louisiana to regulate the practice of law, enforce the Louisiana Rules of Professional Conduct, or discipline persons admitted to the state bar.

Provides that proposed law applies prospectively only.

Effective on Sept. 1, 2019.

(Adds R.S. 37:223 - 229)