

2022 Regular Session

SENATE BILL NO. 383

BY SENATOR PEACOCK

ATTORNEYS. Provides relative to advertisements for legal services. (gov sig)

1 AN ACT

2 To amend and reenact R.S. 37:223 relative to advertisements; to provide for advertisements
3 of legal services; to require certain disclosures; to provide for terms and conditions;
4 and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 37:223 is hereby amended and reenacted to read as follows:

7 §223. Advertisements for legal services

8 A. The legislature recognizes **the following:**

9 **(1) Legal** ~~that legal~~ advertisements in the state have the potential to mislead
10 individuals who need professional legal services and that potential litigants have the
11 right to know what expenses will be associated with legal representation.

12 **(2) Advertising that is inherently likely to deceive, or which is, or has in**
13 **fact been deceptive, receives no protection under the First Amendment to the**
14 **Constitution of the United States of America, and is prohibited entirely.**

15 **(3) Attorney advertising that is potentially misleading, because it may be**
16 **presented in a way that is not deceptive, may be regulated if the regulation**
17 **satisfies one of two standards: if the regulation directly advances a substantial**

1 government interest and is not more extensive than necessary to serve that
2 interest, or if disclosure is required that is reasonably related to the state's
3 interest in preventing deception of consumers.

4 B.(1) Any advertisement for legal services, in any format, that contains a
5 reference to a monetary settlement agreement or an award by a jury verdict
6 previously obtained by the advertising attorney shall, in the same advertisement,
7 disclose all attorney fees paid to the advertising attorney that are associated with the
8 settlement agreement or award by jury verdict.

9 (2) The disclosure of all attorney fees associated with the settlement or jury
10 verdict when presented in print shall be in a font size no smaller than half the size of
11 the largest font size used in the advertisement and when presented verbally shall be
12 audible, intelligible, and presented with equal prominence and in the same manner
13 as the other parts of the advertisement.

14 C. Any advertisement for legal services, in any format, containing a
15 reference or testimonial to past successes or results obtained shall be presented
16 in a truthful, nondeceptive manner and shall include a disclaimer such as
17 "Results May Vary" or "Past Results are not a Guarantee of Future Success".

18 D. Any advertisement for legal services or any unsolicited written
19 communication, in any format, that includes the portrayal of a client by a
20 nonclient or the depiction of any event or scene or picture that is not actual or
21 authentic shall include a disclaimer. Any words or statements required by this
22 Section to appear in an advertisement or unsolicited written communication
23 shall be clearly legible if written or intelligible if spoken aloud. All disclosures
24 and disclaimers shall be clear, conspicuous, and clearly associated with the item
25 requiring disclosure or disclaimer. Written disclosures and disclaimers shall be
26 clearly legible and, if televised or displayed electronically, shall be displayed for
27 a sufficient time to enable the viewer to easily see and read the disclosure or
28 disclaimer. Spoken disclosures and disclaimers shall be plainly audible and
29 clearly intelligible.

1 **E. The following communications in attorney advertisements shall be**
 2 **prohibited:**

3 **(1) Any advertisement for legal services, in any format, that utilizes a**
 4 **nickname, moniker, motto, or trade name that states or implies an ability to**
 5 **obtain results in a matter.**

6 **(2) Any advertisement for legal services, in any format, that promises**
 7 **results.**

8 ~~E.F.~~ The Louisiana Supreme Court may adopt rules as necessary to
 9 implement and enforce the provisions of this Section **by December 22, 2022.**

10 ~~D.G.~~(1) For purposes of this Section, "media entity" includes the following:

- 11 (a) Radio or television broadcast station.
- 12 (b) Cable television company.
- 13 (c) Newspaper or periodical company.
- 14 (d) Billboard company.
- 15 (e) Voice, data, or other communications.
- 16 (f) Information services.
- 17 (g) Internet access provider.
- 18 (h) Bona fide news or public interest website operator.

19 (2) The provisions of this Section shall not limit or otherwise affect the
 20 carriage, distribution, transmission, or display of any advertisement by a media
 21 entity. Any carriage, distribution, transmission, or display of an advertisement by a
 22 media entity shall not be considered a violation of this Section by the media entity.

23 Section 2. R.S. 37:223(A), as amended by this Act, is consistent with prior
 24 jurisprudence and establishes the factors used to determine when communication in attorney
 25 advertising may be regulated. See, *Public Citizen Inc. v. Louisiana Disciplinary Bd.*, 632
 26 F.3d 212 (2011).

27 Section 3. Notwithstanding any other law to the contrary, the attorney general shall
 28 represent or supervise the representation of the interest of the state in any action or
 29 proceeding in which the constitutionality of this Act is challenged or assailed.

1 Section 4. If any one or more provisions, sections, subsections, sentences, clauses,
 2 phrases, or words of this Act or the application thereof to any person or circumstance is
 3 found to be unconstitutional, the same is hereby declared to be severable in accordance with
 4 R.S. 24:175 and the balance of this Act shall remain effective notwithstanding such
 5 unconstitutionality.

6 Section 5. This Act shall become effective upon signature by the governor or, if not
 7 signed by the governor, upon expiration of the time for bills to become law without signature
 8 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
 9 vetoed by the governor and subsequently approved by the legislature, this Act shall become
 10 effective on the day following such approval.

The original instrument and the following digest, which constitutes no part
 of the legislative instrument, were prepared by Lebra R. Bias.

DIGEST

SB 383 Reengrossed

2022 Regular Session

Peacock

Proposed law provides the standard by which communication in attorney advertisements may be regulated.

Present law provides that any advertisement for legal services, in any format, that contains a reference to a monetary settlement agreement or an award by a jury verdict previously obtained by the advertising attorney shall, in the same advertisement, disclose a full accounting of all expenses associated with such settlement agreement or award by jury verdict.

Proposed law retains present law and adds an additional requirement that any advertisement for legal services containing a reference or testimonial to past successes or results obtained be presented in a truthful, nondeceptive manner by including a disclaimer such as "Results May Vary" or "Past Results are not a Guarantee of Future Success".

Present law requires that disclosure of all expenses associated with the settlement or jury verdict be in a font size no smaller than half of the largest font size used in the advertisement.

Proposed law retains present law and adds that any advertisement for legal services or any unsolicited written communication, in any format, that includes the portrayal of a client by a nonclient or the depiction of any event or scene or picture that is not actual or authentic shall include a disclaimer.

Proposed law provides that any words or statements required by proposed law to appear in an advertisement or unsolicited written communication must be clearly legible if written or intelligible if spoken aloud. Further provides as follows: (1) All disclosures and disclaimers shall be clear, conspicuous, and clearly associated with the item requiring disclosure or disclaimer; (2) Written disclosures and disclaimers shall be clearly legible and, if televised or displayed electronically, shall be displayed for a sufficient time to enable the viewer to easily see and read the disclosure or disclaimer; and (3) Spoken disclosures and disclaimers shall be plainly audible and clearly intelligible.

Proposed law prohibits certain types of communication in attorney advertising.

Proposed law provides the factors used to determine when communication in attorney advertising may be regulated as determined by the court in *Public Citizen Inc. v. Louisiana Disciplinary Bd.*, 632 F.3d 212 (2011).

Proposed law provides that the attorney general shall represent or supervise the representation of the interest of the state in any action or proceeding in which the constitutionality of proposed law is challenged or assailed.

Proposed law provides for severability in the event one or more provisions of present law are found to be unconstitutional.

Effective upon signature of the governor or lapse of time for gubernatorial action.

(Amends R.S. 37:223)

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary A to the original bill

1. Adds that any advertisement for legal services or any unsolicited written communication, in any format, that includes the portrayal of a client by a nonclient or the depiction of any event or scene or picture that is not actual or authentic shall include a disclaimer. Provides requirements for the format of written or spoken disclosures or disclaimers.

Senate Floor Amendments to engrossed bill

1. Deletes the provision which states that any expenses incurred in any action or proceeding in which the constitutionality of proposed law is challenged or assailed are recoverable from the person or entity whose actions or inactions cause enforcement to be necessary.
2. Makes technical changes.