

SENATE BILL NO. 383

BY SENATOR PEACOCK

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

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

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

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

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

27 **E. The following communications in attorney advertisements shall be**
28 **prohibited:**

29 **(1) Any advertisement for legal services, in any format, that utilizes a**
30 **nickname, moniker, motto, or trade name that states or implies an ability to**

1 **obtain results in a matter.**

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

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

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

7 (a) Radio or television broadcast station.

8 (b) Cable television company.

9 (c) Newspaper or periodical company.

10 (d) Billboard company.

11 (e) Voice, data, or other communications.

12 (f) Information services.

13 (g) Internet access provider.

14 (h) Bona fide news or public interest website operator.

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

19 **H. Any court costs or attorney fees awarded to a prevailing party**
 20 **against the supreme court in an action challenging the constitutionality of this**
 21 **Section shall be paid by the state. Nothing in this Section shall prevent the**
 22 **supreme court from recovering court costs or attorney fees if the**
 23 **constitutionality of this Section is upheld.**

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

28 Section 3. Notwithstanding any other law to the contrary, the attorney general shall
 29 represent or supervise the representation of the interest of the state in any action or
 30 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.

 PRESIDENT OF THE SENATE

 SPEAKER OF THE HOUSE OF REPRESENTATIVES

 GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____