

SENATE BILL NO. 378

BY SENATOR PEACOCK AND REPRESENTATIVE GAROFALO

1 AN ACT

2 To enact Chapter 62 of Title 51 of the Louisiana Revised Statutes of 1950, to be comprised
3 of R.S. 51:3221, relative to advertisements; to provide for requirements and
4 disclosures in an advertisement; to provide for unfair and deceptive acts or practices;
5 to provide for definitions, terms, conditions, and procedures; to provide for penalties;
6 and to provide for related matters.

7 Be it enacted by the Legislature of Louisiana:

8 Section 1. Chapter 62 of Title 51 of the Louisiana Revised Statutes of 1950,
9 comprised of R.S. 51:3221, is hereby enacted to read as follows:

10 **CHAPTER 62. ADVERTISEMENTS**

11 **§3221. Advertisements; unfair or deceptive acts or practices**

12 **A. For the purposes of this Section, the following terms apply:**

13 **(1) "Advertisement" means any communication through a media entity**
14 **for mass distribution of information.**

15 **(2) "Media entity" means a radio broadcast station, television broadcast**
16 **station, cable television company, newspaper company, periodical company,**
17 **billboard company, advertisement agency, media platform, or bona fide news**
18 **or public interest website operator.**

19 **B. An advertisement shall not be deceptive or misleading and shall not**

1 do any of the following:

2 (1)(a) Be presented as a medical alert, health alert, drug alert, public
3 service announcement, or a substantially similar phrase that suggests to a
4 reasonable viewer the advertisement is offering professional, medical, or
5 government agency advice about any medication or medical device.

6 (b) The provisions of this Paragraph shall not apply to an advertisement
7 that offers professional, medical, or government agency advice about any
8 medication or medical device if the person responsible for the advertisement is
9 authorized by law to offer the advice in an advertisement.

10 (2) Display the logo of a federal or state government agency in a manner
11 that suggests to a reasonable viewer the advertisement is presented by a federal
12 or state government agency or by an entity approved by or affiliated with a
13 federal or state government agency.

14 (3) Use the term "recall" when referring to a product that has not been
15 recalled in accordance with an applicable state or federal regulation.

16 C.(1) An advertisement that references a prescription drug or medical
17 device approved by the United States Food and Drug Administration shall state
18 both of the following:

19 (a) The identity of the sponsor of the advertisement.

20 (b) That the drug or medical device is approved by the United States
21 Food and Drug Administration, unless the drug or medical device has been
22 recalled in accordance with an applicable state or federal regulation.

23 (2) An advertisement referencing a prescription drug approved by the
24 United States Food and Drug Administration shall include the following
25 statement or a substantially similar statement: "Consult your physician before
26 making decisions regarding prescribed medication or medical treatment."

27 D. The statements required to appear in an advertisement pursuant to
28 this Section shall be made in written and verbal formats, except as follows:

29 (1) If the statements appear in an advertisement that is in print format
30 only, including but not limited to a newspaper or other periodical

1 advertisement, the statements shall be in writing.

2 (2) If the statements appear in an advertisement that is in audible format
3 only, including but not limited to a radio advertisement, the statements shall be
4 made verbally.

5 E.(1)(a) A written statement to appear in an advertisement pursuant to
6 this Section shall be presented clearly, conspicuously, and for a sufficient length
7 of time for a reasonable viewer to see and read the statement.

8 (b) A court may determine that a written statement in an advertisement
9 is in compliance with the provisions of this Section if the statement is printed in
10 the same size and style of font and for the same duration as other printed
11 information in the advertisement.

12 (2)(a) A verbal statement required to appear in an advertisement
13 pursuant to this Section shall be audible, intelligible, and presented with equal
14 prominence as the other parts of the advertisement.

15 (b) A court may determine that a verbal statement in an advertisement
16 is in compliance with the provisions of this Section if the statement is made at
17 approximately the same volume and uses approximately the same number of
18 words per minute as the voice-over of longest duration in the advertisement
19 other than the information required by this Section.

20 F. A violation of this Section shall be a deceptive and unfair trade
21 practice and shall subject the violator to all penalties provided for in the Unfair
22 Trade Practices and Consumer Protection Law, R.S. 51:1401 et seq.

23 G.(1) The provisions of this Section shall not apply to any media entity
24 responsible for the production or publication of any advertisement found to be
25 in violation of this Section.

26 (2) The carriage, distribution, transmission, or display of any
27 advertisement by a media entity shall not be considered a violation of this
28 Section.

29 H. The provisions of this Chapter shall not apply to any member of a
30 profession if the regulation of that profession has been granted to a

1 governmental entity pursuant to Article V, Section 5 of the Constitution of
2 Louisiana.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____