

BILL ANALYSIS

S.B. 1189
By: Buckingham
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Concerns have been raised regarding the prevalence of certain television advertisements for legal services, particularly those involving health-related topics such as prescription drugs. There have been indications that such advertisements may encourage viewers to make unfounded health care decisions that have serious negative consequences. S.B. 1189 seeks to address these concerns by prohibiting the use of certain terminology and logos in television advertisements for legal services, requiring the inclusion of certain disclosure language and health warnings, and making violations of those regulations actionable under the Deceptive Trade Practices-Consumer Protection Act.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1189 amends the Government Code to prohibit a television advertisement that promotes a person's provision of legal services or solicits clients to receive legal services from doing the following:

- presenting the advertisement as a "medical alert," "health alert," "consumer alert," "drug alert," "public service announcement," or substantially similar phrase that suggests to a reasonable viewer the advertisement is offering professional, medical, or government agency advice about medications or medical devices rather than legal services;
- displaying the logo of a federal or state government agency in a manner that suggests to a reasonable viewer the advertisement is presented by a federal or state government agency or by an entity approved by or affiliated with a federal or state government agency; and
- using the term "recall" when referring to a product that has not been recalled by a government agency or through an agreement between a manufacturer and a government agency.

S.B. 1189 requires an advertisement for legal services to state the following both verbally and visually:

- at the beginning of the advertisement, "This is a paid advertisement for legal services.";
- the identity of the sponsor of the advertisement; and

- either the identity of the attorney or law firm primarily responsible for providing solicited legal services to a person who engages the attorney or law firm in response to the advertisement or the manner in which a responding person's case is referred to an attorney or law firm if the sponsor of the advertisement is not legally authorized to provide legal services to clients.

The bill requires an advertisement for legal services soliciting clients who may allege an injury from a prescription drug approved by the U.S. Food and Drug Administration (FDA) to include a verbal and visual statement: "Do not stop taking a prescribed medication without first consulting a physician."

S.B. 1189 requires a visual statement required to appear in an advertisement to be presented clearly, conspicuously, and for a sufficient length of time for a viewer to see and read the statement. The bill prohibits a court from finding that a visual statement in an advertisement is noncompliant with these requirements if the statement is presented in the same size and style of font and for the same duration as a visual reference to the telephone number or website of the entity a responding person contacts for the legal services offered or discussed in the advertisement. The bill requires a verbal statement required to appear in an advertisement to be audible, intelligible, and presented with equal prominence as the other parts of the advertisement. The bill prohibits a court from finding that a verbal statement in an advertisement is noncompliant with this provision if the statement is made at approximately the same volume and uses approximately the same number of words per minute as the voice-over of longest duration in the advertisement other than information required by the bill's provisions.

S.B. 1189 establishes that a violation of the bill's provisions is a deceptive act or practice actionable under the Deceptive Trade Practices-Consumer Protection Act and may be enforced by the attorney general or a district or county attorney. The bill establishes that all remedies available under that act are available for a violation of the bill's provisions but that the bill's provisions do not create a private cause of action. The bill exempts an advertisement by a federal, state, or local government entity from the application of its provisions and prohibits those provisions from being construed to limit or otherwise affect the authority of the Supreme Court of Texas to regulate the practice of law, enforce the Texas Disciplinary Rules of Professional Conduct, or discipline persons admitted to the state bar.

EFFECTIVE DATE

September 1, 2019.