

BILL ANALYSIS

Senate Research Center
86R6813 CAE-F

S.B. 1189
By: Buckingham et al.
State Affairs
3/19/2019
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 1189 prohibits intentionally misleading advertisements for legal services in order to protect vulnerable Texans against potential health risks associated with the false information presented in these advertisements.

In recent years, there has been a significant increase in the number of legal advertisements focusing on prescription drugs, medical devices, asbestos-caused cancer, and other health-related issues that inform viewers they may be entitled to financial compensation if they call the phone number on their screen. Many vulnerable viewers call these numbers and provide them with their personal health information under the assumption that they are speaking with a legal representative. In many instances, the entity paying for the ad is not actually an attorney, but in fact a "client harvester" that generates and sells clients in bulk to attorneys. Interested parties also have raised concerns that these type of attorney advertisements relating to prescription drugs can pose a significant public health risk. In fact, research has found that a number of individuals have stopped taking their necessary prescription drugs and suffered negative health consequences as a direct result of the information contained in these misleading advertisements.

To address this issue, S.B. 1189 works to protect vulnerable consumers who may fall victim to these deceptive advertisements by increasing disclosure requirements, prohibiting the use of intentionally misleading or manipulative information, and creating legal penalties to hold those who violate the bill's provisions accountable.

As proposed, S.B. 1189 amends current law relating to certain deceptive advertising of legal services and imposes civil penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 81, Government Code, by adding Subchapter J, as follows:

SUBCHAPTER J. DECEPTIVE ADVERTISING PRACTICES

Sec. 81.151. DEFINITIONS. Defines "advertisement" and "soliciting."

Sec. 81.152. PROHIBITED ADVERTISING. Prohibits an advertisement for legal services from:

- (1) presenting the advertisement as a "medical alert," "health alert," "consumer alert," "public service announcement," or similar phrase;
- (2) displaying the logo of a federal or state government agency in a manner that suggests affiliation with or sponsorship by that agency; or

(3) 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 government agency.

Sec. 81.153. **REQUIRED WARNINGS AND DISCLOSURES.** (a) Requires an advertisement for legal services to disclose:

(1) at the beginning of the advertisement, "This is a paid advertisement for legal services.";

(2) the identity of the sponsor of the advertisement; and

(3) either:

(A) the identity of the attorney or law firm that provides legal services to a client; or

(B) 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 to a person responding to the advertisement.

(b) Requires an advertisement for legal services soliciting clients who may allege an injury from a prescription drug approved by the United States Food and Drug Administration (FDA) to:

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

(2) disclose that the drug is approved by FDA unless the product has been recalled or withdrawn.

(c) Requires an advertisement for legal services soliciting clients who may allege an injury from a medical device approved by FDA to disclose that the medical device is approved by FDA unless the product has been recalled or withdrawn.

Sec. 81.154. **FORM OF REQUIRED WARNINGS AND DISCLOSURES.** (a) Requires any warning or disclosure statement required by this subchapter to appear in an advertisement to be presented clearly and conspicuously.

(b) Requires a written disclosure to be legible and, if televised or displayed electronically, to be displayed for sufficient time to enable the viewer to easily see and read the disclosure.

(c) Requires a verbal disclosure to be audible and intelligible.

Sec. 81.155. **INJUNCTION; RESTITUTION.** (a) Authorizes the Texas attorney general (attorney general) or the prosecuting attorney in the county in which a violation of this subchapter occurs, if the attorney general or the prosecuting attorney has reason to believe that a person is engaging in, has engaged in, or is about to engage in an act or practice that violates this subchapter, to bring an action in the name of the state against the person to restrain that act or practice by temporary or permanent injunction if an injunction is in the public interest.

(b) Authorizes a court, if the court issues a permanent injunction to restrain and prevent a violation of this subchapter, to make an additional order requiring restitution to a victim for medical expenses or other expenses related to the violation.

Sec. 81.156. CIVIL PENALTY. (a) Provides that a person who violates this subchapter is liable to the state for a civil penalty in an amount not to exceed \$20,000 for each violation. Provides that each advertisement that violates this subchapter constitutes a separate violation.

(b) Authorizes the attorney general or the prosecuting attorney in the county in which a violation occurs to bring suit to recover the civil penalty imposed under Subsection (a).

(c) Authorizes the attorney general or prosecuting attorney to recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, attorney's fees, investigative costs, witness fees, and deposition expenses.

(d) Provides that the civil penalty provided by this section is in addition to injunctive relief or any other remedy that is authorized to be granted under Section 81.155.

Sec. 81.157. CONSTRUCTION OF SUBCHAPTER. Prohibits this subchapter 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.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 2019.