

By Senator Margolis

35-00021-12

2012134\_\_

1                                   A bill to be entitled  
2           An act relating to the advertising of legal and  
3           medical referral services; providing definitions;  
4           requiring that advertising from a medical or lawyer  
5           referral service for services related to motor vehicle  
6           accidents comply with certain requirements regarding  
7           content; requiring that advertisements or unsolicited  
8           written communications from certain legal referral  
9           services for services related to motor vehicle  
10          accidents comply with the Supreme Court of Florida's  
11          Rules Regulating The Florida Bar; requiring that  
12          published advertisements from a lawyer referral  
13          service be filed with The Florida Bar along with an  
14          affidavit meeting certain criteria; requiring  
15          advertisements or unsolicited written communications  
16          from a lawyer referral service to display certain  
17          information; requiring that a referring person or  
18          entity provide certain financial information to the  
19          person referred to a lawyer, medical clinic, or health  
20          care provider; prohibiting a lawyer referral service  
21          from conditioning participation in the service based  
22          on certain criteria; prohibiting a medical referral  
23          service from making referrals only to a medical clinic  
24          or health care provider in which the referral service  
25          has a financial or ownership interest; providing civil  
26          and criminal penalties for violations relating to the  
27          advertising of legal and medical referral services;  
28          providing for relief to persons injured by a violation  
29          of the act, including attorney's fees and costs;

35-00021-12

2012134\_\_

30 providing an effective date.

31  
32 WHEREAS, there have been numerous complaints concerning  
33 misleading and deceptive advertisements directed to motor  
34 vehicle accident victims by entities who advertise that they are  
35 available to refer motor vehicle accident victims to lawyers and  
36 health care providers, and

37 WHEREAS, it is important for the public to have an absolute  
38 trust in public safety officers and officials, including, but  
39 not limited to, firefighters, police officers, and paramedics,  
40 and, as such, it is in the best interest and welfare of the  
41 state that the image, representation, and likeness of public  
42 safety officers and officials not be used in a deceptive and  
43 misleading manner to falsely misrepresent to the public that  
44 such officers and officials are recommending that the public  
45 call a help line for accident victims which is the phone number  
46 for an auto accident clinic or an entity in business to refer  
47 motor vehicle accident victims to a specific medical clinic,  
48 health care provider, lawyer, or law firm, and

49 WHEREAS, the public has been misled and deceived by medical  
50 clinics, health care providers, and entities claiming to be a  
51 medical referral service or lawyer referral service that  
52 advertises using a catchy phone number or slogan and represents  
53 itself as an "Ask Us" informational service for motor vehicle  
54 accident victims, without disclosing that it is actually a front  
55 for a specific medical clinic, health care provider, lawyer, or  
56 law firm, and

57 WHEREAS, the public should not be deceived and misled by  
58 false or deceptive advertising that is for the purpose of

35-00021-12

2012134\_\_

59 steering motor vehicle accident victims to a specific medical  
60 clinic, health care provider, lawyer, or law firm, and

61 WHEREAS, lawyer advertisements for services related to  
62 motor vehicle accidents are regulated by the Supreme Court of  
63 Florida's Rules Regulating The Florida Bar; however, those rules  
64 are not directly applicable to non-lawyer entities that  
65 advertise to motor vehicle accident victims and refer those  
66 victims to lawyers or law firms, and

67 WHEREAS, because the Supreme Court of Florida's Rules  
68 Regulating The Florida Bar concerning lawyer advertisements are  
69 for the express purpose of protecting the public from misleading  
70 or deceptive advertising by lawyers only, it is necessary to  
71 adopt the following broader approach to the protection of the  
72 public from false and deceptive advertising to motor vehicle  
73 accident victims, NOW, THEREFORE,

74

75 Be It Enacted by the Legislature of the State of Florida:

76

77 Section 1. As used in this act, the term:

78 (1) "Electronic media" includes, but is not limited to,  
79 computer-accessed, radio, and television advertisements.

80 (2) "Lawyer referral service" means any group or pooled  
81 advertising program operated by any person, group of persons,  
82 association, organization, or entity whose advertisements for  
83 legal services use a common telephone number, a uniform resource  
84 locator (URL), or other form of contact and whose clients or  
85 prospective clients are referred only to lawyers or law firms  
86 participating in the group or pooled advertising program. A not-  
87 for-profit referral program in which participating lawyers do

35-00021-12

2012134

88 not pay a fee or charge of any kind to receive referrals or to  
89 belong to the referral panel and undertake the referred matters  
90 without expectation of remuneration is not a lawyer referral  
91 service for purposes of this act. A lawyer referral service for  
92 or operated by a voluntary bar association or legal aid program  
93 recognized by The Florida Bar is exempt from this act.

94 (3) "Medical referral service" means any group or pooled  
95 advertising program operated by any person, group of persons,  
96 association, organization, or entity whose advertisements for  
97 medical services use a common telephone number, a uniform  
98 resource locator (URL), or other form of contact and whose  
99 patients or prospective patients are referred only to medical  
100 clinics or health care providers participating in the group or  
101 pooled advertising program.

102 Section 2. All advertising by or on behalf of a medical or  
103 lawyer referral service to the general public for services  
104 related to injuries from a motor vehicle accident must comply  
105 with the following:

106 (1) If an advertisement includes any reference to referring  
107 a person to a medical clinic, health care provider, lawyer, or  
108 law firm, the advertisement must clearly disclose the county or  
109 counties in which the medical clinic, health care provider,  
110 lawyer, or law firm to whom the referral will be made has a bona  
111 fide office from which the services will be provided.

112 (2) An advertisement may not include any false, misleading,  
113 or deceptive communication. A communication violates this  
114 subsection if it:

115 (a) Contains a material misrepresentation of fact.

116 (b) Fails to disclose material information necessary to

35-00021-12

2012134

117 prevent the information supplied from being false or misleading.

118 (c) Claims facts that cannot be substantiated.

119 (d) Contains any reference to past successes or results  
120 obtained which would deceive the public by creating unjustified  
121 expectations. For purposes of this act, a disclaimer that  
122 "results will vary depending on the specific facts" is required  
123 for any reference to past successes or results, and such  
124 disclaimer shall be communicated in the exact same manner as any  
125 reference to past successes or results.

126 (e) Contains a reference to monetary amounts that create  
127 unjustified expectations, such as using deceptive statements  
128 similar to "Don't make a million-dollar mistake." or "You may be  
129 entitled to \$100,000." when there is no factual basis to suggest  
130 such monetary amounts to the general public.

131 (f) Promises or suggests a specific result that cannot be  
132 guaranteed, including promising or suggesting a monetary result  
133 that cannot be guaranteed.

134 (g) Contains any testimonial by an actor, unless such  
135 testimonial includes a disclaimer, communicated in the exact  
136 same manner as the testimonial, that the testimonial is not a  
137 true story and the person providing the testimonial is an actor  
138 and not a real person.

139 (h) Contains any testimonial by a real person, unless such  
140 person actually obtained the services of the person or entity  
141 advertising the services, and the testimonial is completely  
142 truthful and verifiable and includes the disclaimer that  
143 "results may vary depending on the specific facts." Such  
144 disclaimer shall be communicated in the exact same manner as the  
145 testimonial by the real person.

35-00021-12

2012134

146        (i) Contains any verbal or visual reference, from the past  
147 or in the present, to any connection between any person in  
148 public safety, or purporting to be in public safety, or any  
149 public safety entity that has any connection of any kind to the  
150 person or entity advertising the services to motor vehicle  
151 accident victims. This prohibition includes the use of any  
152 visual or verbal reference to any actor purporting to be  
153 connected in any way to a public safety officer or public safety  
154 entity. This prohibition includes the use of any public safety  
155 badge, emblem, uniform, hat, or vehicle, or the use of any  
156 replica of any such item. An exception to this prohibition is  
157 authorized if the person in charge of a public safety entity  
158 gives express written consent for the use of the reference to  
159 such agency in the advertisement or communication.

160        Section 3. An advertisement or unsolicited written  
161 communication for legal services related to motor vehicle  
162 accidents disseminated in this state by or on behalf of any  
163 lawyer referral service, other than a lawyer referral service  
164 for or operated by a voluntary bar association or legal aid  
165 program recognized by The Florida Bar, must comply with the  
166 Supreme Court of Florida's Rules Regulating The Florida Bar  
167 pertaining to lawyer referral and advertising services as if  
168 those services were provided by members of The Florida Bar,  
169 including filing requirements.

170        Section 4. (1) Each advertisement by or on behalf of a  
171 lawyer referral service related to motor vehicle accidents which  
172 is submitted for publication in the print or electronic media or  
173 on a billboard in this state must at the same time be filed with  
174 The Florida Bar, accompanied by an affidavit signed under oath

35-00021-12

2012134\_\_

175 by the owner, shareholder, principal, or officer of the referral  
176 service affirming under penalty of perjury that the person:

177 (a) Has read and understands the Supreme Court of Florida's  
178 Rules Regulating The Florida Bar which pertain to lawyer  
179 referral and advertising services;

180 (b) Acknowledges that he or she is the person responsible  
181 for the advertisement and for the adverse consequences of any  
182 prohibited advertising, including the penalties provided under  
183 this act;

184 (c) Affirms that the advertisement complies with the  
185 Supreme Court of Florida's Rules Regulating The Florida Bar  
186 which govern lawyer advertising;

187 (d) Acknowledges that a knowing violation of the Supreme  
188 Court of Florida's Rules Regulating The Florida Bar which govern  
189 lawyer advertising subjects the person to a civil penalty of  
190 \$1,000 for the first offense and a civil penalty of \$5,000 for  
191 each subsequent offense; and

192 (e) Affirms that the person:

193 1. Has filed the advertisement for review with The Florida  
194 Bar in compliance with the Supreme Court of Florida's Rules  
195 Regulating The Florida Bar which govern lawyer advertising;

196 2. Is responsible for filing and will file the  
197 advertisement for review with The Florida Bar in compliance with  
198 the Supreme Court of Florida's Rules Regulating The Florida Bar  
199 which govern lawyer advertising; or

200 3. Has determined that the advertisement is exempt from the  
201 filing requirement as set forth in the Supreme Court of  
202 Florida's Rules Regulating The Florida Bar which govern lawyer  
203 advertising.

35-00021-12

2012134

204 (2) A copy of the affidavit must be submitted to The  
205 Florida Bar and maintained by the referral service for 2 years.

206 Section 5. An advertisement or unsolicited written  
207 communication disseminated in this state by or on behalf of a  
208 lawyer referral service for services relating to motor vehicle  
209 accidents must contain prominently within the body of the  
210 advertisement or unsolicited written communication the  
211 statement: "This advertisement is by a lawyer referral service.  
212 Lawyers may pay this service for referrals of prospective  
213 clients who respond to this advertisement. This lawyer referral  
214 service is not licensed to provide legal services in Florida."

215 Section 6. When a person or entity that advertises the  
216 service of referring motor vehicle accident victims to a medical  
217 clinic, health care provider, lawyer, or law firm refers a  
218 person to a medical clinic, health care provider, lawyer, or law  
219 firm, the referring person or entity must provide the person  
220 referred with a written disclosure that clearly and  
221 unambiguously states any financial interest or financial  
222 relationship that the referring person or entity has with the  
223 medical clinic, health care provider, lawyer, or law firm to  
224 which the referral is made. A copy of the written disclosure  
225 must be submitted to The Florida Bar and maintained by the  
226 referral service for 2 years.

227 Section 7. A lawyer referral service may not require a  
228 participating lawyer or law firm to recommend the services of a  
229 particular medical clinic, health care provider, or other  
230 professional as a condition of participation in the referral  
231 service.

232 Section 8. A medical referral service may not make



35-00021-12

2012134\_\_

233 referrals only to a medical clinic or health care provider in  
234 which the medical referral service has any financial or  
235 ownership interest.

236 Section 9. (1) (a) A person or entity that violates this act  
237 shall forfeit any monetary amount received as a result of an  
238 advertisement that violates this act.

239 (b) A person or entity that violates this act is subject to  
240 a civil penalty of \$1,000 for the first offense and \$5,000 for  
241 each subsequent offense.

242 (c) Any sums collected as a civil penalty under this  
243 subsection shall be deposited into the State Courts Revenue  
244 Trust Fund.

245 (2) A person who claims a violation of this act may file a  
246 complaint with the Department of Agriculture and Consumer  
247 Services. If the department fails to initiate legal proceedings  
248 within 90 days after receiving the complaint, the person who  
249 filed the complaint may, in a court of competent jurisdiction,  
250 seek to enforce such penalties and may seek an injunction  
251 against the person in violation of this act. The right of a  
252 person to initiate court proceedings is limited to the person  
253 who first filed the complaint with the department on each  
254 individual violation.

255 (3) A person who files a court action pursuant to this act  
256 may recover attorney's fees and costs if successful in obtaining  
257 an injunction or penalties, or both, and may recover 25 percent  
258 of all moneys paid as a civil penalty as a result of such  
259 person's action to enforce this act, whether in court or through  
260 the actions of the department.

261 (4) Each prohibited advertisement that appears on a

35-00021-12

2012134\_\_

262 billboard, is published in print media, airs on radio or  
263 television, or appears on a computer website controlled by the  
264 party advertising the services constitutes a separate offense.

265 Section 10. After an adjudication of guilt is entered for a  
266 first offense of violating this act, any subsequent knowing  
267 violation of this act is a misdemeanor of the second degree,  
268 punishable as provided in s. 775.082 or s. 775.083, Florida  
269 Statutes. A person who violates section 2 of this act commits an  
270 unfair or deceptive trade practice as defined in part II of  
271 chapter 501, Florida Statutes, and is subject to the penalties  
272 and remedies provided therein. Further, any person injured by a  
273 violation of this act may bring an action for recovery of  
274 damages. A judgment in favor of the person shall be for actual  
275 damages, and the losing party is liable for the person's  
276 reasonable attorney's fees and costs.

277 Section 11. This act is cumulative and does not amend or  
278 repeal any other valid law, code, ordinance, rule, or penalty in  
279 effect on July 1, 2012.

280 Section 12. This act shall take effect July 1, 2012.