

Office of the Governor
State of Louisiana

JOHN BEL EDWARDS
GOVERNOR



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June 12, 2020

VIA HAND DELIVERY

Honorable Patrick Page Cortez
President
Louisiana State Senate
Post Office Box 94183
Baton Rouge, Louisiana 70804

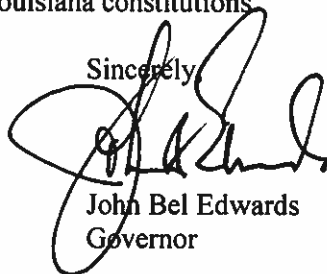
RE: Veto of Senate Bill 395 of the 2020 Regular Session

Dear President Cortez:

Please be advised that I have vetoed Senate Bill 395 of the 2020 Regular Session.

Senate Bill 395 provides for restrictions on attorney advertising and authorizes the Attorney General to investigate advertising claims under the Unfair Trade Practices Act. This bill is very similar to Senate Bill 115 of the 2020 Regular Session by Senator Pat Connick, which I have signed into law. I have thus vetoed Senate Bill 395 for two reasons. First, since Senate Bill 115 is now signed, the enactment of Senate Bill 395 would lead to confusion and duplication, as many of the provisions in the bills are nearly identical. Secondly, there is a significant difference between the bills that raises concerns about the constitutionality of Senate Bill 395. While Senate Bill 115 vests enforcement of its provisions with the Louisiana Supreme Court, Senate Bill 395 gives that authority to the executive branch, namely the Attorney General. This likely violates Article 5, Section 5 of the Louisiana Constitution which vests authority over the practice of law with the Louisiana Supreme Court. The Louisiana Supreme Court, by constitutional requirement and by practice, is best positioned to implement any restrictions in a manner consistent with the protections in the United States and Louisiana constitutions.

Sincerely,



John Bel Edwards
Governor

cc: Honorable Clay Schexnayder
Louisiana Speaker of the House

SENATE BILL NO. 395

BY SENATORS CLOUD, FESI, HEWITT, JOHNS, MILLIGAN, ROBERT MILLS, MIZELL, REESE AND WHITE AND REPRESENTATIVES AMEDEE, BACALA, BUTLER, CARRIER, CREWS, DEVILLIER, EDMONDS, EMERSON, FIRMENT, FRIEMAN, GAROFALO, GOUDEAU, HARRIS, HORTON, MIKE JOHNSON, MCCORMICK, CHARLES OWEN, PRESSLY, ROMERO, SCHAMERHORN, SEABAUGH, STEFANSKI AND THOMAS

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AN ACT

To enact R.S. 51:1407(F) and 1429, relative to unfair or deceptive acts or practices; to allow the attorney general to be awarded certain costs and fees; to provide relative to advertisement for services; to provide relative to a false, misleading, and deceptive statement in an advertisement; to provide for violations, actions, and penalties; to provide for definitions, terms, conditions, and procedures; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 51:1407(F) and 1429 are hereby enacted to read as follows:

§1407. Restraining prohibited acts

* * *

F. In any action brought by the attorney general, wherein the state prevails, the court shall, in addition to the relief granted pursuant to this Chapter, award reasonable costs, investigative expenses, and attorney fees to the attorney general.

* * *

§1429. Unfair or deceptive trade practice or act; misleading assertion of monetary result obtained

1 **A. As used in this Section, the following words and phrases shall have the**
2 **following meanings:**

3 **(1) "Actually received" means the net amount of money received by a**
4 **person, calculated by deducting from the person's gross recovery all expenses**
5 **including but not limited to attorney fees, broker fees, expert witness fees,**
6 **interest, court costs, costs of collection or recovery, and all other expenses**
7 **related to litigation.**

8 **(2) "Advertisement" means any communication to the public regarding**
9 **services provided for a fee including but not limited to a communication**
10 **transmitted through any of the following:**

11 **(a) Print media, such as a telephone directory, legal directory,**
12 **newspaper, magazine, or other periodical publication.**

13 **(b) Outdoor advertising, such as billboards and other signs.**

14 **(c) Radio and television commercials.**

15 **(d) Any communication accessed by a computer, tablet, or handheld**
16 **device, such as a text message, instant message, or digital advertisement of any**
17 **kind.**

18 **(e) A recorded message the public may access by telephone.**

19 **(3) "False, misleading, or deceptive statement" means any**
20 **communication that states or infers that a person actually received an amount**
21 **of money that they did not actually receive.**

22 **(4) "Media entity" means a radio broadcast station, television broadcast**
23 **station, cable television company, newspaper company, periodical company,**
24 **billboard company, advertisement agency, media platform, or bona fide news**
25 **or public interest website operator.**

26 **(5) "Monetary result obtained" means any amount claimed to have been**
27 **recovered on behalf of a client through a legal judgment or settlement.**

28 **(6) "Person" means an individual, partnership, unincorporated**
29 **association of individuals, joint stock company, corporation, limited liability**
30 **company, or other legal entity of any kind. "Person" shall not include a media**

1 entity.

2 B. No person in any advertisement shall make, or permit to be made, a
3 false, misleading, or deceptive statement about a monetary result obtained on
4 behalf of a client or fail to disclose information necessary to prevent the
5 information supplied in an advertisement from being false, misleading, or
6 deceptive.

7 C.(1) Any violation of this Section shall be an unfair or deceptive trade
8 practice declared unlawful by this Chapter and shall subject the violator to any
9 and all actions and penalties provided for in this Chapter.

10 (2) For the purpose of this Section, each iteration of an advertisement
11 constitutes an unfair or deceptive trade practice.

12 (3)(a) The provisions of this Section shall not apply to any media entity
13 responsible for the production or publication of any advertisement found to be
14 in violation of this Section.

15 (b) The carriage, distribution, transmission, or display of any
16 advertisement, including but not limited to those for legal services, by a media
17 entity shall not be considered a violation of this Section.

18 D. In addition to all other remedies provided for in this Chapter, any
19 person who is found to have made, or to have permitted to be made on his
20 behalf, a false, misleading, or deceptive statement under the provisions of this
21 Section shall be liable to the attorney general for all costs, expenses, and fees
22 related to investigations and proceedings associated with the violation, including
23 attorney fees. An action to recover costs, expenses, fees, and attorney fees shall
24 be ancillary to and shall be filed and heard in the same court as a civil action
25 filed under the provisions of this Section.

26 E. The remedies and rights provided for in this Section are in addition
27 to and shall not preclude any right or remedy otherwise authorized by law,
28 including the enforcement of professional rules against the person by any
29 licensing board or court. If a licensing board or court adopts a comparable rule
30 and a process for approval of advertisements, then the approval of an

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advertisement under that rule and process shall constitute prima facie evidence
of compliance with the provisions of this Section.

Patrick Poy Coates

PRESIDENT OF THE SENATE

Clayton K. Kopp

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____

Voted
Clayton Kopp

MCS
11 June 2020