

SENATE THIRD READING
SB 37 (Umberg)
As Amended September 2, 2025
Majority vote

SUMMARY

Strengthens the existing prohibitions on misleading attorney advertisements, attorney solicitations, and the use of referral services.

Major Provisions

- 1) Authorizes a person to bring a civil action against a person who acts as a runner or capper for any attorneys or to solicit any business on behalf of any attorney at a location in which such solicitation is prohibited in existing law, as specified.
- 2) Requires, when assessing the damages provided in 1), the court to consider any one or more of the relevant circumstances presented by the case, including, but not limited to, the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.
- 3) Authorizes a person to bring a civil action against a person who operates an attorney referral service not authorized by the State Bar of California.
- 4) Provides that a person found to have violated the prohibition in 3) is liable for statutory damages of a minimum of five thousand dollars (\$5,000) up to a maximum of one hundred thousand dollars (\$100,000) per violation, or three times the amount of actual damages, whichever is larger, and specified fees and costs.
- 5) Requires, when assessing the damages provided in 4), the court to consider any one or more of the relevant circumstances presented by the case, including, but not limited to, the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.
- 6) Prohibits, in addition to the prohibitions in existing law, an advertisement for legal services from containing any of the following:
 - a) Misleading, deceptive, or false statements, words, or phrases regarding a lawyer's or law firm's skills, experience, or record;
 - b) References to a lawyer's or a law firm's recognition by, or awards from, an organization, unless the recognition or award is not conferred by virtue of being a member of the organization and the organization does not charge or solicit a fee, cost, or payment for the recognition or award.
- 7) Requires an advertisement for legal services to a conspicuously displayed, or intelligible, if spoken disclosure specifying the city, town, or county of at least one bona fide office location or the address of record listed with the State Bar for the lawyer or law firm.

- 8) Authorizes a person misled by an advertisement in violation of 6) or 7) to bring a civil action if the following conditions are met:
 - a) The consumer files a complaint in accordance with the procedures of existing law;
 - b) The State Bar determines that substantial evidence of a violation exists, as specified; and
 - c) The advertiser does not withdraw the advertisement as specified in 9) or the advertiser withdraws an advertisement upon a State Bar determination that substantial evidence of a violation exists and subsequently rebroadcasts the same advertisement without a finding by the trier of fact in a civil action that the advertisement does not violate the law.
- 9) Provides that upon a State Bar determination that substantial evidence of a violation exists, if the licensee or certified lawyer referral service withdraws that advertisement from electronic media within 72 hours, no further action may be taken by the complainant. For any other medium, notice of withdrawal must be submitted to the State Bar within 72 hours and withdrawal shall occur as soon as practicable but not to exceed 30 days. Specifies that this review applies to joint legal advertising arrangements.
- 10) Provides that a violation of 6) or 7) subjects a person to statutory damages of a minimum of five thousand dollars (\$5,000) up to a maximum of one hundred thousand dollars (\$100,000) per violation, or three times the amount of actual damages, whichever is larger, plus specified costs and fees.
- 11) Requires, when assessing the damages provided in 10), the court to consider any one or more of the relevant circumstances presented by the case, including, but not limited to, the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth.
- 12) Provides that nothing in this bill limits any other right available under existing law or otherwise available to a citizen seeking redress for false, misleading, or deceptive advertisements.
- 13) Clarifies that a permissible joint advertising arrangement requires each participating attorney or law firm to execute a joint advertising agreement with the advertising agency that states that the attorney is to assume express liability for the content of the advertisement.
- 14) Clarifies that liability for legal advertising does not attach to the broadcaster of the advertisement.
- 15) Makes various technical and conforming changes.

COMMENTS

The existing law regulating attorney's ability to solicit business stems from the unfortunate reality that some attorneys have resorted to highly unethical practices to obtain business. One of the most notorious practices historically used by some attorneys and law firms involves the practice of "capping" or using non-attorneys to retain clients when they are at their most vulnerable. Many people are familiar with the term "ambulance chasing," which refers to

soliciting legal business from persons recently detained, injured in an accident, or involved in other mishaps that may require future legal representation. Recognizing that people are highly vulnerable to solicitations in these circumstances, the existing law prohibits soliciting would-be clients at hospitals, law enforcement detention facilities, and other public places in which vulnerable parties may not be able to resist the high-pressure tactics of cappers seeking to sign up clients. In recognition of how unethical capping is, the existing law provides severe sanctions for the practice. A person convicted of capping may face imprisonment for up to five years and fines of up to \$15,000 per violation. Similarly, the existing law seeks to prevent attorney referral services from receiving kickbacks in return for directing clients to a law firm. These laws are in place to prevent a referral service from sending a client to a firm that may not be properly equipped to handle a specific legal case simply to receive a payout. Indeed, in order to ensure that referral services act ethically, all such services must be registered with the State Bar of California and submit to the State Bar's rules for such services.

Furthermore, while not as unseemly as capping or taking kickbacks for legal referrals, the existing law also prevents attorneys from making overly grandiose statements promising positive outcomes in litigation. No matter how strong a legal case may appear, the legal system is unpredictable. Accordingly, existing law prohibits legal advertising from making any false, misleading, or deceptive statements. Similarly, the existing law limits attorneys from using endorsements or testimonials that promise specific legal outcomes in court.

Despite these prohibitions, the highly competitive nature of the legal market, particularly for attorneys taking on personal injury, family law, and consumer-facing legal matters, results in some legal professionals pushing the limits of the existing law in order to obtain business. Questionable attorney advertisements can mislead consumers, who often lack the expertise necessary to distinguish between deceptive promises and legitimate legal representation. Additionally, many in the business community complain that these advertisements do little more than generate business for "litigation mills" or law firms that file a high volume of legally suspect lawsuits seeking quick settlements from unsophisticated business owners who would rather pay a quick settlement than defend their rights in court. In totality, these tactics, including false guarantees, hurried settlements, and undisclosed conflicts of interest, erode public trust in the legal profession.

Currently, the enforcement of most regulations of attorney advertisements and solicitations falls to only the State Bar of California and the Bar's Office of Chief Trial Counsel. As the Judiciary Committee is well aware, the State Bar's enforcement unit has struggled, at times, in the last decade to adequately police the profession. While the Office of Chief Trial Counsel, under its current leadership, has made great strides in improving oversight and regulation of the profession, stakeholders note that more tools may be needed to police the industry.

This bill, sponsored by the Consumer Attorneys of California and supported by dozens of individual attorneys, reflects the legal profession's attempt to better regulate itself and restore public confidence. First, this bill enhances the existing regulations on attorney advertising by prohibiting attorneys from making misleading, deceptive, or false statements regarding a lawyer's or law firm's skills, experience, or record. Similarly, the bill limits attorneys and firms from making claims about awards and other honors, most notably prohibiting an attorney from claiming credit for honors awarded to the attorney for simply being a paid member of a professional organization.

Recognizing that the State Bar's Office of Chief Trial Counsel, like all government regulators, faces resource constraints, this bill enables the public to assist in policing attorney advertisements and client solicitations. The bill authorizes a private right of action to be filed against an attorney, law firm, "capper," referral service, or other individual who violates the prohibitions on unethical attorney advertising and client solicitation. The bill provides significant deterrence in the form of statutory damages of a minimum of five thousand dollars up to a maximum of one hundred thousand dollars per violation or three times the amount of actual damages, whichever is larger. The bill directs the court, when assessing these damages, to consider any one or more of the relevant circumstances presented by the case, including, but not limited to, the nature and seriousness of the misconduct, the number of violations, the persistence of the misconduct, the length of time over which the misconduct occurred, the willfulness of the defendant's misconduct, and the defendant's assets, liabilities, and net worth. This balancing test is designed to delineate between a solo practitioner who may inadvertently over promise in a quirky ad for legal services and a firm with a pattern and practice of deceptive behavior. Similarly, this bill provides a 72-hour "safe harbor" whereby an attorney may withdraw an unlawful advertisement from public circulation and avoid civil liability.

The bill also seeks to improve transparency in attorney advertisements. Currently, it is difficult to determine if some advertisements for legal services are from an actual law firm, or an attorney referral service.

According to the Author

Unethical attorney advertising misleads consumers, who often lack legal expertise to distinguish between deceptive promises and legitimate legal representation. False guarantees, misleading settlements, and undisclosed conflicts of interest erode public trust in the legal profession. Current law in statute and ethics rules regulate attorney conduct for advertising. However, these rules are currently enforced by The State Bar of California, the regulatory arm for California attorneys, which has limited resources to investigate and prosecute every violation of attorney advertising rules.

Updating the advertising definitions and adding prohibitions paired with authorizing citizen lawsuits against unethical attorney advertising is a necessary step to protect consumers, supplement state regulatory efforts, deter misconduct, empower victims, and foster a fair legal marketplace. By giving individuals the ability to hold unethical attorneys accountable, the legal profession can restore public trust and ensure that consumers receive honest and competent representation.

Arguments in Support

This bill is sponsored by the Consumer Attorneys of California. In support of the bill, they write:

Unethical attorney advertising misleads vulnerable consumers—many of whom are navigating the legal system for the first time. False guarantees, exaggerated claims, and undisclosed affiliations confuse the public and undermine confidence in the legal profession. While existing ethics rules and statutes already prohibit many of these practices, enforcement has been hampered by limited resources at the State Bar. SB 37 empowers harmed consumers by authorizing citizen enforcement against unlawful attorney advertising, capping, and illegal referral services.

A significant concern in attorney advertising is the proliferation of so-called "vanity" or "ego" awards. As highlighted in a Reuters article, the Federal Trade Commission (FTC) has

cautioned consumers about these awards, which often involve lawyers paying for seals or badges that falsely suggest professional excellence. Such accolades can mislead individuals seeking legal assistance, making it challenging to distinguish between genuinely qualified attorneys and those leveraging purchased recognitions.

SB 37 directly tackles this issue by prohibiting references to awards or recognitions in attorney advertisements unless they are not conferred simply by virtue of being a member of the organization and there is no payment for the award. This measure ensures that consumers are not swayed by misleading claims and can make informed decisions when selecting legal representation.

The bill also codifies current ethics rules to prohibit misleading, deceptive, or false statements about an attorneys experience or record. Further all ads must identify who is responsible for the ad and disclosure of one office location for the lawyer or law firm.

Arguments in Opposition

None on file

FISCAL COMMENTS

According to the Assembly Appropriations Committee, cost pressures (Trial Court Trust Fund, General Fund) of an unknown but potentially significant amount to the courts to adjudicate civil actions authorized by this bill, possibly in the hundreds of thousands of dollars annually. Actual costs will depend on the number of cases filed and the amount of court time needed to resolve each case. It generally costs approximately \$1,000 to operate a courtroom for one hour. Although courts are not funded on the basis of workload, increased pressure on the Trial Court Trust Fund may create a demand for increased funding for courts from the General Fund. The fiscal year 2025-26 state budget provides \$82 million ongoing General Fund to the Trial Court Trust Fund for court operations.

VOTES

SENATE FLOOR: 36-0-4

YES: Allen, Archuleta, Arreguín, Ashby, Becker, Blakespear, Cabaldon, Caballero, Cervantes, Choi, Cortese, Dahle, Durazo, Gonzalez, Grayson, Grove, Hurtado, Jones, Laird, Limón, McGuire, McNERNEY, Menjivar, Niello, Ochoa Bogh, Padilla, Richardson, Rubio, Seyarto, Stern, Strickland, Umberg, Valladares, Wahab, Weber Pierson, Wiener

ABS, ABST OR NV: Alvarado-Gil, Pérez, Reyes, Smallwood-Cuevas

ASM JUDICIARY: 12-0-0

YES: Kalra, Dixon, Hart, Bryan, Connolly, Harabedian, Macedo, Pacheco, Papan, Sanchez, Stefani, Zbur

ASM APPROPRIATIONS: 11-0-4

YES: Wicks, Arambula, Calderon, Caloza, Elhawary, Fong, Mark González, Ahrens, Pacheco, Pellerin, Solache

ABS, ABST OR NV: Sanchez, Dixon, Ta, Tangipa

UPDATED

VERSION: September 2, 2025

CONSULTANT: Nicholas Liedtke / JUD. / (916) 319-2334

FN: 0001371