



AdvaMed

Advanced Medical Technology Association

Texas & Tennessee Legislation

In 2019, Texas and Tennessee passed first-of-its kind legislation in response to deceptive attorney advertising targeting prescription drugs and medical devices.

Tennessee: HB 352

- In April 2019, Tennessee became the first state in the nation to pass legislation in response to deceptive attorney advertising targeting prescription drugs and medical devices.
- The bill prohibits ads that display the logo of a government agency, use the word “recall” in relation to a product that has not been recalled, or fail to disclose that they are paid ads for legal services.
- The measure also requires that the firms, particularly those soliciting clients who say they’ve been harmed by taking a prescription drug approved by the FDA, include a clear statement: “Do not stop taking a prescribed medication without first consulting a physician.”
- The Tennessee law applies to all forms of advertising regardless of medium.

Texas: SB 1189

- In June 2019, Texas passed a similar bill to combat mass tort litigation that strategically pressure companies with overwhelming claims to enter global settlements, regardless of merit.
- The bill prohibits ads that display the logo of a government agency; use the word “recall” in relation to a product that has not been recalled; use certain phrases such as “medical alert,” “public service announcement,” or “drug alert;” or fail to disclose that they are paid ads for legal services.
- The measure also requires that the firms, particularly those soliciting clients who say they’ve been harmed by taking a prescription drug approved by the FDA, include a clear statement: “Do not stop taking a prescribed medication without first consulting a physician.”
- Texas law applies only to television advertising and provides no private right of action.

Critics have challenged that the law denies them their First Amendment rights and that the laws “unfairly singles out lawyers” and are “an unconstitutional restraint on commercial free speech.”

Tennessee and Texas have simply mandated the minimum oversight necessary to protect the public. Their laws target specific misleading practices that would be illegal if used in advertisements associated with any other product or service.

Although the Supreme Court has recognized states cannot bar attorney ads, the Court has also made it clear that false, deceptive, or misleading advertising is subject to restraint. Further, the Court has upheld restrictions on attorney advertising that unduly influence injured people or mislead the public.