

2020 Regular Session

SENATE CONCURRENT RESOLUTION NO. 57

BY SENATOR HEWITT

ATTORNEYS. Requests the Louisiana Supreme Court and the Louisiana State Bar Association to implement a lawyer advertisement review recognition program.

1 A CONCURRENT RESOLUTION

2 To urge and request the Louisiana Supreme Court and the Louisiana State Bar Association  
3 to implement a lawyer advertisement review recognition program.

4 WHEREAS, Article V, Section 5(B) of the Constitution of Louisiana provides that  
5 the Louisiana Supreme Court has exclusive original jurisdiction of disciplinary proceedings  
6 against a member of the bar; and

7 WHEREAS, the Louisiana Supreme Court has adopted the Louisiana Rules of  
8 Professional Conduct, and the Louisiana State Bar Association created the Handbook on  
9 Lawyer Advertising and Solicitation, which contains standards and guidance regarding  
10 attorney advertising; and

11 WHEREAS, the Louisiana State Bar Association has been tasked by the Louisiana  
12 Supreme Court with providing a review process for lawyer advertising and solicitation  
13 compliance; and

14 WHEREAS, challenges to the constitutionality of Rules of Professional Conduct  
15 regulating attorney advertising were filed in federal district court, and ultimately resulted in  
16 the federal Fifth Circuit Court of Appeals decision in *Public Citizen, Inc. v. Louisiana*  
17 *Attorney Disciplinary Board*, 632 F. 3d 212 (2011); and

18 WHEREAS, in the *Public Citizen* case, the Court struck down certain state rule

1 requirements as infringing upon First Amendment protections regarding commercial speech,  
2 but upheld other rule requirements as the legitimate exercise by the state of its substantial  
3 interests in protecting the public from unethical and false, deceptive, and misleading lawyer  
4 advertising, and also in preserving the ethical integrity of the legal profession; and

5 WHEREAS, in the *Public Citizens* case, the Court reaffirmed that commercial free  
6 speech in the form of attorney advertising is not absolute, but instead merits a limited  
7 measure of protection subject to differing levels; and

8 WHEREAS, in the *Public Citizens* case, the Court reaffirmed that the state does have  
9 substantial interests in regulating attorney advertising to prevent unlawful activity and the  
10 deception and confusion of consumers, including claims and depictions of scenes and  
11 pictures in attorney advertising inherently likely to deceive the public; and

12 WHEREAS, in the *Public Citizens* case, the Court pointed out that the United States  
13 Supreme Court has recognized the government's substantial interests in "ensuring the  
14 accuracy of commercial information in the marketplace" and "maintaining standard of  
15 ethical conduct in the licensed professions", and has further recognized that a state's interest  
16 in regulating attorneys is especially great since lawyers are essential to the primary  
17 governmental function of administering justice, and have historically been "officers of the  
18 courts"; and

19 WHEREAS, in light of these substantial interests, the Louisiana Supreme Court and  
20 the Louisiana State Bar Association should undertake the task of creating a lawyer  
21 advertisement review recognition program to identify all advertisements which have been  
22 reviewed by the Louisiana State Bar Association for compliance with the Louisiana Rules  
23 of Professional Conduct, and should further implement such a public database of the review  
24 recognition program.

25 THEREFORE, BE IT RESOLVED that the Legislature of Louisiana does hereby  
26 urge and request the Louisiana Supreme Court and the Louisiana State Bar Association to  
27 implement a lawyer advertisement review recognition program.

28 BE IT FURTHER RESOLVED that on or before December 1, 2020, the Louisiana  
29 Supreme Court and the Louisiana State Bar Association shall submit to the Senate  
30 Committee on Governmental Affairs, the House Committee on Governmental Affairs, and

