

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 66

SENATOR SWOPE, *original sponsor*

[Originating in the Committee on the Judiciary;

Reported on February 8, 2019]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article
2 designated §46A-6N-1, §46A-6N-2, §46A-6N-3, and §46A-6N-4, all relating to prohibiting
3 certain misleading lawsuit advertising practices; providing for certain disclosures and
4 warnings in lawsuit advertising for the protection of patients; and imposing criminal
5 penalties.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 6N. PREVENTION OF DECEPTIVE LAWSUIT ADVERTISING AND
SOLICITATION PRACTICES.**

§46A-6N-1. Short title.

1 This article shall be known and cited as the Prevention of Deceptive Lawsuit Advertising
2 and Solicitation Practices Act.

§46A-6N-2. Deceptive lawsuit advertising practices.

1 (a) Specifically prohibited lawsuit advertising practices. — A person engages in a
2 deceptive trade practice if in advertising legal services the person does any of the following:

3 (1) Fails to disclose at the outset of the advertisement: “This is a paid advertisement for
4 legal services”;

5 (2) Presents an advertisement as a “medical alert”, “health alert”, “consumer alert”, “public
6 service announcement”, or similar term;

7 (3) Displays the logo of a federal or state government agency in a manner that suggests
8 affiliation with the sponsorship of that agency;

9 (4) Uses the word “recall” when referring to a product that has not been recalled by a
10 government agency or through an agreement between a manufacturer and a government agency;

11 (5) Fails to identify the sponsor of the advertisement; or

12 (6) Fails to indicate the identity of the attorney or law firm that will represent clients, or how
13 cases will be referred to attorneys or law firms that will represent clients if the sponsor of the
14 advertisement may not represent persons responding to the advertisement.

15 (b) Disclosures and warnings for protection of patients. —

16 (1) An advertisement for legal services soliciting clients who may allege an injury from a
17 prescription drug approved, cleared, or the subject of a monograph authorized by the United
18 States Food and Drug Administration shall include the following warning: “Do not stop taking a
19 prescribed medication without first consulting with your doctor. Discontinuing a prescribed
20 medication without your doctor’s advice can result in injury or death”.

21 (2) An advertisement for a lawsuit soliciting clients who may allege an injury from a
22 prescription drug or medical device approved, cleared, or the subject of a monograph authorized
23 by the United States Food and Drug Administration shall disclose that the drug or medical device
24 remains approved by the United States Food and Drug Administration, unless the product has
25 been recalled or withdrawn.

26 (c) Appearance of required statements, disclosures, and warnings. — Any words or
27 statements required by this section to appear in an advertisement must be presented clearly and
28 conspicuously.

29 (1) Written disclosures shall be clearly legible and, if televised or displayed electronically,
30 shall be displayed for a sufficient time to enable the viewer to easily see and fully read the
31 disclosure or disclaimer.

32 (2) Spoken disclosures shall be plainly audible and clearly intelligible.

33 (d) Definitions. — For purposes of this section:

34 (1) “Legal advertisement” means a solicitation for legal services through television, radio,
35 internet (including a domain name), newspaper, or other periodical, outdoor display, or other
36 written, electronic, or recorded communications.

37 (2) "Person" includes any person, entity, attorney, or law firm that advertises legal services
38 or identifies potential clients for attorneys or law firms.

§46A-6N-3. Wrongful use or disclosure of protected health information for solicitation of legal services.

1 (a) Use or disclosure of protected health information for legal solicitation. — A person shall
2 not use, cause to be used, obtain, sell, transfer, or disclose to another person without written
3 authorization protected health information for the purposes of soliciting an individual for legal
4 services.

5 (b) Definitions. — For purposes of this section:

6 (1) "Person" includes any person, entity, attorney, or law firm that solicits individuals for
7 legal services or identifies potential clients for attorneys or law firms.

8 (2) "Protected health information" has the meaning given to the term in 45 C.F.R.
9 §160.103.

10 (3) "Solicit" means offer to provide legal services by written, recorded, or electronic
11 communication, or by in-person, telephone, or real-time electronic contact.

12 (c) Enforcement. —

13 (1) A violation of this section constitutes a violation of West Virginia's health privacy laws
14 or §46A-6-101 et seq. of this code.

15 (2) In addition to any other remedy provided by law, a person who willfully and knowingly
16 violates this is shall be guilty of a misdemeanor and, upon conviction thereof, be confined in jail
17 not more than one year, be fined \$1,000, or both.

18 (d) Construction. — This provision shall not be construed to apply to the use or disclosure
19 of protected health information to an individual's legal representative, in the course of any judicial
20 or administrative proceeding, or as otherwise permitted or required by law.

§46A-6N-4. Authority of judiciary or State Bar to regulate practice of law.

- 1 Nothing in this act shall limit or otherwise affect the authority of the judiciary or the Lawyer
- 2 Disciplinary Board to regulate the practice of law, enforce the West Virginia Rules of Professional
- 3 Conduct, or discipline persons admitted to the bar.