

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

House Bill 2671

**FISCAL
NOTE**

BY DELEGATES KESSINGER, WAXMAN, HIGGINBOTHAM

AND WESTFALL

[Introduced January 25, 2019; Referred
to the Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article
 2 designated §47-28-1, §47-28-2, §47-28-3, and §47-28-4, all relating to prohibiting certain
 3 misleading lawsuit advertising practices; providing for certain disclosures and warnings in
 4 lawsuit advertising for the protection of patients; and imposing criminal penalties.

Be it enacted by the Legislature of West Virginia:

**ARTICLE 28. PREVENTION OF DECEPTIVE LAWSUIT ADVERTISING AND
 SOLICITATION PRACTICES.**

§47-28-1. Short title.

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

§47-28-2. Deceptive lawsuit advertising practices.

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

3 (1) Fails to disclose at the outset of advertisement: "This is a paid advertisement for legal
 4 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 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 U.S. Food
18 and Drug Administration shall include the following warning: "Do not stop taking a prescribed
19 medication without first consulting with your doctor. Discontinuing a prescribed medication without
20 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 U.S. Food and Drug Administration shall disclose that the drug or medical device remains
24 approved by the U.S. Food and Drug Administration, unless the product has been recalled or
25 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 an attorney, law firm, or individual entity that advertises legal
38 services or identifies potential clients for attorneys or law firms.

§47-28-3. 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 purpose of soliciting an individual for legal
4 services.

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

6 (1) "Person" includes an attorney, law firm, or individual entity 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 such term in section 106.103 of
9 title 45, Code of Federal Regulations; and

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 is a violation of West Virginia's health privacy laws or West
14 Virginia Code §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 section is:

17 (i) Guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more
18 than one year, or be fined \$1,000, or both; and

19 (ii) If the offense is committed with the intent to sell, transfer, or use protected health
20 information for financial gain, is guilty of a felony and, upon conviction thereof, shall be imprisoned
21 in a state correctional facility not more than 10 years, or be fined not more than \$250,000, or both.

22 (d) Construction. This section does not apply to the use or disclosure of protected health
23 information to an individual's legal representative, in the course of any judicial or administrative
24 proceeding, or as otherwise permitted or required by law.

§47-28-4 Authority of judiciary or State Bar to regulate practice of law.

1 Nothing in this article limits or otherwise affects 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.

NOTE: The purpose of this bill is to prevent the deceptive use of lawsuit advertising and solicitation by prohibiting people from engaging in those activities and providing criminal penalties.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.