

1 AN ACT relating to deceptive lawsuit advertising and solicitation practices.

2 *Be it enacted by the General Assembly of the Commonwealth of Kentucky:*

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO  
4 READ AS FOLLOWS:

5 *(1) A person engages in a deceptive trade practice under KRS 367.170 if in*  
6 *advertising to potential claimants in drug or medical device products liability*  
7 *actions the person:*

8 *(a) Fails to disclose: "This is a paid advertisement for legal services";*

9 *(b) Presents an advertisement as a "medical alert," "health alert," "consumer*  
10 *alert," "public service announcement," or similar term;*

11 *(c) Displays the logo of a federal or state government agency in a manner that*  
12 *suggests affiliation with or the sponsorship of that agency;*

13 *(d) Describes a product as being "recalled" when that product has not been*  
14 *recalled by a government agency or through an agreement between a*  
15 *manufacturer and government agency;*

16 *(e) Fails to identify the sponsor of the advertisement; or*

17 *(f) Fails to indicate the identity of the attorney or law firm sponsoring the*  
18 *advertisement and whether that attorney or law firm will be performing*  
19 *legal services or will be referring to others to perform those services.*

20 *(2) An advertisement for legal services soliciting clients who may allege an injury*  
21 *from a prescription drug approved by the United States Food and Drug*  
22 *Administration shall include the following warning: "Do not stop taking a*  
23 *prescribed medication without first consulting with your doctor. Discontinuing a*  
24 *prescribed medication without your doctor's advice can result in injury or death."*  
25 *The utilization of this disclaimer shall not constitute the practice of medicine.*

26 *(3) An advertisement for a lawsuit soliciting clients who may allege an injury from a*  
27 *prescription drug or medical device approved by the United States Food and Drug*

1 Administration, or from a medical device substantially equivalent to an approved  
2 medical device, shall disclose that the drug or medical device remains approved  
3 by the United States Food and Drug Administration, unless the product has been  
4 recalled or withdrawn.

5 (4) Any words or statements required by this section to appear in an advertisement  
6 shall be presented clearly and conspicuously.

7 (5) Written disclosures shall be clearly legible and, if televised or displayed  
8 electronically, shall be displayed to enable the viewer to easily see and fully read  
9 the disclosure or disclaimer.

10 (6) Spoken disclosures shall be plainly audible and clearly intelligible.

11 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO  
12 READ AS FOLLOWS:

13 (1) For the purpose of soliciting an individual for legal services, a person shall not  
14 use, cause to be used, obtain, sell, transfer, or disclose protected health  
15 information to another person without written authorization.

16 (2) For purposes of this section:

17 (a) "Protected health information" has the same meaning as in 45 C.F.R. sec.  
18 160.103; and

19 (b) "Solicit" means offer to provide legal services by written, recorded, or  
20 electronic communication or by in-person, telephone, or real-time  
21 electronic contact.

22 (3) A violation of this section constitutes an unfair trade practice, as defined in KRS  
23 367.170.

24 (4) In addition to any other remedy provided by law, a person who willfully and  
25 knowingly violates this section shall be guilty of a Class A misdemeanor or shall  
26 pay a fine not to exceed one thousand dollars (\$1,000), or both.

27 (5) This section shall not be construed to apply to the use or disclosure of protected

1        health information to an individual's legal representative, in the course of any  
2        judicial or administrative proceeding, or as otherwise permitted or required by  
3        law.

4        (6) This section shall not be construed to apply to referrals of unsolicited clients  
5        amongst attorneys.

6        ➔Section 3. Nothing in this Act shall be construed to limit or otherwise affect the  
7        authority of the Kentucky Supreme Court to regulate the practice of law, enforce the  
8        Kentucky Rules of Professional Conduct, or discipline persons admitted to the bar.