

## CORRECTIONS IMPACT STATEMENT

SESSION: 19RS BILL # HB 225 Introduced . BR # 1067 DOC ID #: xxxx

BILL SPONSOR(S): Rep. K. Moser AMENDMENT SPONSOR(S): . .

SUBJECT: AN ACT relating to deceptive lawsuit advertising and solicitation practices.

SUMMARY OF LEGISLATION: Creates new sections of KRS Chapter 367 to regulate advertising for legal services.

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This  bill  amendment  committee substitute is expected to:

Have the following Corrections impact  Have no Corrections impact

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|--|--|
| <input checked="" type="checkbox"/> Creates new crime(s)                   | <input type="checkbox"/> Repeals existing crime(s)               |
| <input type="checkbox"/> Increases penalty for existing crime(s)           | <input type="checkbox"/> Decreases penalty for existing crime(s) |
| <input type="checkbox"/> Increases incarceration                           | <input type="checkbox"/> Decreases incarceration                 |
| <input type="checkbox"/> Reduces inmate/offender services                  | <input type="checkbox"/> Increases inmate/offender services      |
| <input type="checkbox"/> Increases staff time or positions                 | <input type="checkbox"/> Reduces staff time or positions         |
| <input type="checkbox"/> Changes elements of offense for existing crime(s) |  |
| <input type="checkbox"/> Otherwise impacts incarceration (Explain) .       |  |
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**STATE IMPACT:** Class A, B & C felonies are based on an average daily prison rate of \$71.10. Most Class D felons are housed in one of 76 full service jails for up to 5 years. DOC's cost to incarcerate a felony inmate in a jail is \$32.78 per day (includes jail per diem, medical & central office costs), not including substance abuse treatment. Projections are based on the daily rate x 365 x number of years.

**Projected Impact:**  NONE  MINIMAL to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

HB 225 regulates advertising for legal services.

Section 1 describes deceptive trade practices under KRS 367.170 if the advertised legal services fails to disclose at the outset that it is a paid advertisement; presents the advertisement as a medical, health, consumer alert, public service announcement, or similar announcement; displays a federal or state government logo in a manner that suggests affiliation or sponsorship of the agency; uses the word recall when referring to a product that has not been recalled by a government agency or through agreement with the manufacturer; fails to identify the sponsor of the advertisement; or fails to indicate the identity of the attorney or law firm that will represent clients, how cases will be referred if the sponsor may not represent persons responding to the advertisement.

An advertisement for legal services alleging an injury from a prescription drug approved by the US Food and Drug Administration shall include a warning to not stop taking a prescribed medication without first consulting with a doctor and that discontinuing a prescribed medication without a doctor's advice can result in injury or death.

An advertisement for a lawsuit alleging an injury from a prescription drug or medical device approved by the US Food and Drug Administration shall disclose that the drug or medical device remains approved by the FDA, unless the product has been recalled or withdrawn.

Any words or statements required by the legislation shall be presented clearly and conspicuously in the advertisement. Spoken disclosures shall be audible and clearly intelligible. Written disclosures shall be clearly legible and displayed long enough for a viewer to fully read.

Section 2 prohibits use, obtaining, selling, transferring, or disclosing to another person without written authorization protected health information for the purpose of soliciting an individual for legal services. A violation shall constitute an unfair trade practice defined in KRS 367.170.

In addition to any other civil remedy provided by law, a willful and knowing violation shall be a Class A misdemeanor with a \$1,000 fine.

If the offense is committed with the intent to sell, transfer or use protected health information for financial gain, the offense shall be a Class C felony with a \$250,000 fine.

The prohibition is not applicable to the use or disclosure of protected health information to an individual's legal representative in a judicial or administrative proceeding, or as otherwise permitted or required by law. This does not limit or affect the authority of the Kentucky Supreme Court to regulate the practice of law, to enforce the Kentucky Rules of Professional Conduct, or discipline persons admitted to the bar.

Currently the Department of Corrections has two (2) individuals either incarcerated or on supervision for offenses under KRS Chapter 367. AOC records indicate six (6) convictions for violations under KRS Chapter 367, though none of which are applicable to the current legislation.

Class C offenders established under this legislation may be eligible to serve their sentences at the county jail if qualifying for community custody, based on length of sentence remaining and custody classification. If not community custody eligible, offenders would be housed at a state prison at a cost of \$71.10 per day.

While a Class C felony carries a sentence of five (5) to ten (10) years, the number of offenders that may be convicted under HB 225 would be expected to be such that the impact to incarceration would likely be minimal to moderate.

A Class C Felony sentence is 5 to 10 years.	10 Class C Felons cost KY \$1.3M to \$2.6M
1 Class C Felon costs KY \$129,753 to \$259,506	100 Class C Felons cost KY \$13M to \$26M

**LOCAL IMPACT:** Local governments are responsible for the cost of incarcerating individuals charged with Class A or B misdemeanors and felony defendants until disposition of the case. While the expense varies by jail, this estimated impact will be based on \$31.34 per day, which equals the per diem and medical that DOC pays jails to house felony offenders.

**Projected Impact:**  NONE  MINIMAL to MODERATE (< \$1 million)  SIGNIFICANT (> \$1 million)

Misdemeanors as established under this legislation would be subject to the jurisdiction and cost of the county.

Class C offenders established under this act may be housed in a county jail facility. This does provide additional revenue for jails.

Due to limited capacity, any number of additional offenders does impact local jail populations.

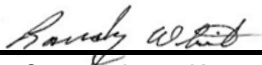
Overall, the number of offenders expected to be generated under this legislation would likely be minimal.

A Class A misdemeanor is 90 days to 1 year in jail.	10 Class A misdemeanants: \$28,206 to \$114,391
1 Class A misdemeanant: \$2,821 to \$11,439	100 Class A misdemeanants: \$282,060 to \$1,143,910

**The following offices contributed to this Corrections Impact Statement:**

Dept. of Corrections  Dept. of Kentucky State Police  Administrative Office of the Courts  Parole Board  Other

**NOTE: Consideration should be given to the cumulative impact of all bills that increase the felon population or that impose new obligations on state or local governments. The Department of Corrections and local jails continue to operate over capacity. Without steps to reduce the population, any legislation that increases population or lengthens the term of incarceration will have a significant impact on correctional operations.**

**APPROVED BY:**  **2/13/2019**  
Deputy Commissioner, Kentucky Department of Corrections Date