

**Local Government Mandate Statement
Kentucky Legislative Research Commission
2022 Regular Session**

Part I: Measure Information

Bill Request #: 32

Bill #: SB 51

Document ID #: 30

Bill Subject/Title: AN ACT relating to deceptive lawsuit advertising and solicitation practices.

Sponsor: Senator Ralph Alvarado

Unit of Government: City County Urban-County
 Charter County Consolidated Local Unified Local
 Government

Office(s) Impacted: Jails, law enforcement

Requirement: Mandatory Optional

Effect on Powers & Duties: Modifies Existing Adds New Eliminates Existing

Part II: Bill Provisions and the Estimated Fiscal Impact Relating to Local Government

SB 51 **Section 1** would create a new section of KRS Chapter 367, containing Kentucky's Consumer Protection Act, to deem the following as deceptive trade practices in the advertising of drug or medical device liability lawsuits to potential claimants:

- a. Failing to disclose "This is a paid advertisement for legal services";
- b. Inaccurately presenting an ad as a "medical alert," "health alert," "consumer alert," "public service announcement," or similar term;
- c. Displaying the logo of a federal or state government agency in a manner suggesting affiliation with or sponsorship by the agency;
- d. Describing a product as "recalled" when the product has not been recalled;
- e. Failing to identify the sponsor of the ad; or
- f. Failing to indicate the identity of the attorney or law firm sponsoring the advertisement and whether the attorney or law firm will be performing legal services or will refer to others to perform those services.

Advertisements shall warn solicited clients not to stop taking a prescribed medication without first consulting their doctor, and that doing so risks injury or death. Advertisements must disclose that the drug or medical device remains approved by the U.S. Food and Drug Administration, if true. Additional specifics shall be included in such advertisements and solicitations, whether written or oral.

Section 2 of the bill would create a new section of KRS Chapter 367 and would deem it an unfair trade practice in violation of KRS 367.170 if, in soliciting people for legal services, a person uses, obtains, sells, transfers, or discloses protected health information to another person without written authorization. Willful and knowing violation of Section 2 could result in a Class A misdemeanor conviction, a fine up to \$1,000, or both.

The fiscal impact of SB 51 on local governments should be minimal. According to the Department of Corrections, the number of offenders expected to be generated through violations of the provisions of SB 51 would be minimal. The Administrative Office of the Courts, Research and Statistics, reports that, in the 10- year span from 2012-December 31, 2021 there were 66 convictions for violation of any section of KRS Chapter 367, and none for violation of KRS 367.170. Of the 66 convictions, 58 were misdemeanor convictions and 8 were felony convictions. While adding the prohibitions in SB 51 to the list of deceptive trade practices has the potential to increase the number of persons convicted of violation of Chapter 367, the number is expected to remain low. In addition, rather than charge a violator with a crime, a violator may be assessed a civil fine. Finally, the Office of the Attorney General has concurrent authority to enforce the provisions of the Consumer Protection Act. Therefore, generally the state would investigate and prosecute such acts, rather than local law enforcement.

A Class A misdemeanor is subject to a sentence of 90 days to 12 months in jail. Should SB 51 increase the number of misdemeanor convictions and so increase the jail population, even minimally, such costs would fall on local governments. Local governments are responsible for the cost of incarcerating individuals charged with a Class A misdemeanor until disposition of the case and thereafter while they serve their sentence. Misdemeanants are housed in one of Kentucky's 74 full service jails or three life safety jails. While the expense of housing inmates varies by jail, this estimated impact is based on an average cost to incarcerate of \$35.43 per day. While the majority of misdemeanor defendants are granted bail, those who do not will also cost local jails an average cost to incarcerate of \$35.43 per day.

Part III: Differences to Local Government Mandate Statement from Prior Versions

Part II pertains to SB 51 as submitted. There is no prior version for comparison.

Data Source(s): Department of Corrections; LRC staff; Administrative Office of the Courts Research and Statistics

Preparer: Mary Stephens **Reviewer:** KHC **Date:** 1/25/22

