

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 legal services the person:*

7 *(a) Fails to disclose at the outset of the advertisement: "This is a paid*
8 *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) Uses the word "recall" when referring to a product that 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 that will represent*
18 *clients, or how cases will be referred to attorneys or law firms that will*
19 *represent clients if the sponsor of the advertisement may not represent*
20 *persons responding to the advertisement.*

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

27 *(3) An advertisement for a lawsuit soliciting clients who may allege an injury from a*

1 prescription drug or medical device approved, cleared, or the subject of a
2 monograph authorized by the United States Food and Drug Administration shall
3 disclose that the drug or medical device remains approved by the United States
4 Food and Drug Administration, unless the product has been recalled or
5 withdrawn.

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

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

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

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

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

17 (2) For purposes of this section:

18 (a) "Protected health information" has the meaning given such term in 45
19 C.F.R. sec. 106.103; and

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

23 (3) A violation of this section constitutes an unfair trade practice, as defined in KRS
24 367.170.

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

1 offense is committed with intent to sell, transfer, or use protected health
2 information for financial gain, in which case the person shall be guilty of a Class
3 C felony and shall pay a fine not to exceed two hundred fifty thousand dollars
4 (\$250,000), or both.

5 (5) This provision shall not be construed to apply to the use or disclosure of protected
6 health information to an individual’s legal representative, in the course of any
7 judicial or administrative proceeding, or as otherwise permitted or required by
8 law.

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