

# State of Tennessee

## PUBLIC CHAPTER NO. 119

### SENATE BILL NO. 352

By Briggs, Johnson, Massey, Haile, Dickerson, Bailey

Substituted for: House Bill No. 352

By Cameron Sexton, Jernigan, Smith, Cochran; Mr. Speaker Casada; Crawford, Hardaway, Calfee, Helton, Moon, White, Hazlewood, Marsh, Ogles, Vaughan

AN ACT to amend Tennessee Code Annotated, Title 16; Title 23 and Title 47, Chapter 18, relative to unfair and deceptive acts.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following new part:

#### **47-18-5601.**

As used in this part:

(1) "Legal advertisement" means a solicitation of legal services through television; radio; internet, including a domain name; newspaper or other periodical; outdoor display; or other written, electronic, or recorded communication;

(2) "Person" means an individual or legal entity that advertises legal services or that identifies potential clients for attorneys or law firms;

(3) "Protected health information" has the meaning given that term in 45 C.F.R. § 160.103; and

(4) "Solicit" means offering to provide legal services by print; video or audio recording; or electronic communication or by personal, telephone, or real-time electronic contact.

#### **47-18-5602.**

(a) A person shall not do any of the following in a legal advertisement:

(1) Fail to disclose at the beginning of any recorded advertisement or display in a conspicuous location on any printed or electronic written legal advertisement that the legal advertisement is a paid advertisement for legal services;

(2) Present a legal advertisement as a "medical alert," "health alert," "consumer alert," "public service announcement," or other similar language;

(3) Display the logo of a federal or state government agency in a manner that suggests an affiliation with or the sponsorship by that agency;

(4) Use the word "recall" to refer to a product that has not been recalled by a government agency or through an agreement between a manufacturer and government agency;

(5) Fail to identify the person responsible for the legal advertisement;

or

(6) Fail to identify the attorney or law firm that will represent clients, or to disclose that cases may be referred to another attorney or law firm to represent clients if the sponsor of the legal advertisement does not represent persons responding to the legal advertisement.

(b) A person shall not use a legal advertisement to solicit clients who may allege an injury from a prescription drug or medical device approved, cleared, or the subject of a drug monograph authorized by the United States food and drug administration unless the legal advertisement also includes the information required in this section.

(c) A legal advertisement soliciting clients who may allege an injury from a prescription drug approved, cleared, or the subject of a drug monograph authorized by the United States food and drug administration must:

(1) Include the following warning: "Do not stop taking a prescribed medication without first consulting with your doctor. Discontinuing a prescribed medication without your doctor's advice can result in injury or death."; and

(2) Disclose that the drug or medical device remains approved by the United States food and drug administration, unless the product has been recalled by a government agency or through an agreement between a manufacturer and government agency.

**47-18-5603.**

(a) A person shall not use, cause to be used, obtain, sell, transfer, or disclose protected health information to another person for the purpose of soliciting an individual for legal services without written authorization from the individual who is the subject of the information.

(b) In addition to any other remedy provided by law:

(1) A person who willfully and knowingly uses, causes to be used, obtains, sells, transfers, or discloses protected health information in violation of this section commits a Class A misdemeanor, punishable by a fine of one thousand dollars (\$1,000), imprisonment, or both; and

(2) A person who violates this section with the intent to use, cause to be used, obtain, sell, transfer, or disclose protected health information for the purpose of financial gain commits a Class C felony, punishable by a fine not to exceed two hundred fifty thousand dollars (\$250,000), imprisonment of not less than three (3) years nor more than ten (10) years, or both.

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

**47-18-5604.**

(a) Any words or statements required by this section to appear in a legal advertisement must be presented clearly and conspicuously.

(b) Written disclosures must be clearly legible and, if televised or displayed electronically, displayed for a sufficient time to enable a viewer to easily see and fully read the disclosure.

(c) Spoken disclosures must be plainly audible and clearly intelligible.

**47-18-5605.**

(a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act of 1977, compiled in part 1 of this chapter. Any violation of this part constitutes an unfair or deceptive act or practice affecting trade or commerce and is subject to the penalties and remedies as provided in the Tennessee Consumer Protection Act of 1977, in addition to the penalties and remedies in this part.

(b) The attorney general and reporter has all of the investigative and enforcement authority that the attorney general and reporter has under the Tennessee Consumer Protection Act of 1977 relating to alleged violations of this part.

The attorney general and reporter may institute any proceedings involving alleged violations of this part in Davidson County circuit or chancery court or any other venue otherwise permitted by law.

(c) Costs of any kind or nature cannot be taxed against the attorney general and reporter or the state in actions commenced under this part.

**47-18-5606.**

Nothing in this part:

(1) Limits or otherwise affects the authority of the Tennessee Supreme Court to regulate the practice of law, enforce the Rules of Professional Conduct, or discipline persons admitted to the bar; or

(2) Creates or implies liability on behalf of a broadcaster who holds a license for over-the-air terrestrial broadcasting from the federal communications commission, or against a cable operator as defined in 47 U.S.C. § 522(5).


SECTION 2. If any provision of this act or its application to any person or circumstance is held invalid, then the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to that end the provisions of this act are severable.

SECTION 3. This act shall take effect July 1, 2019, the public welfare requiring it, and applies to conduct occurring on or after that date.

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PASSED: March 25, 2019

  
RANDY McNALLY  
SPEAKER OF THE SENATE

  
GLEN CASADA, SPEAKER  
HOUSE OF REPRESENTATIVES

APPROVED this 9<sup>th</sup> day of April 2019

  
BILL LEE, GOVERNOR