

SECOND REGULAR SESSION

HOUSE BILL NO. 2640

100TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE GREGORY.

4864H.021

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 493, RSMo, by adding thereto six new sections relating to legal advertisements, with penalty provisions.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 493, RSMo, is amended by adding thereto six new sections, to be known as sections 493.200, 493.203, 493.206, 493.209, 493.212, and 493.215, to read as follows:

493.200. As used in sections 493.200 to 493.215, the following terms mean:

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

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

(3) "Protected health information", as defined in 45 CFR 160.103;

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

493.203. 1. 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;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in bold-face type in the above bill is proposed language.

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

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

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

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

17 **2. A person shall not use a legal advertisement to solicit clients who may allege an**
18 **injury from a prescription drug or medical device approved by the United States Food and**
19 **Drug Administration unless the legal advertisement also includes the information required**
20 **in sections 493.200 to 493.215.**

21 **3. A legal advertisement soliciting clients who may allege an injury from a**
22 **prescription drug approved by the United States Food and Drug Administration shall:**

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

26 **(2) Disclose that the drug or medical device remains approved by the United States**
27 **Food and Drug Administration, unless the product has been recalled by a government**
28 **agency or through an agreement between a manufacturer and government agency.**

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

5 **2. In addition to any other remedy provided by law:**

6 **(1) A person who willfully and knowingly uses, causes to be used, obtains, sells,**
7 **transfers, or discloses protected health information in violation of this section is guilty of**
8 **a class A misdemeanor; and**

9 **(2) A person who violates this section with the intent to use, cause to be used,**
10 **obtain, sell, transfer, or disclose protected health information for the purpose of financial**
11 **gain is guilty of a class C felony.**

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

2 **493.209. 1. Any words or statements required by sections 493.200 to 493.215 to**
3 **appear in a legal advertisement shall be presented clearly and conspicuously.**

4 **2. Written disclosures shall be clearly legible and, if televised or displayed**
5 **electronically, displayed for a sufficient time to enable a viewer to easily see and fully read**
6 **the disclosure.**

7 **3. Spoken disclosures shall be plainly audible and clearly intelligible.**

8 **493.212. 1. A violation of sections 493.200 to 493.215 constitutes a violation under**
9 **chapter 407. Any violation of sections 493.200 to 493.215 constitutes an unfair or deceptive**
10 **act or practice affecting trade or commerce and is subject to the penalties and remedies as**
11 **provided under chapter 407, in addition to the penalties and remedies provided in sections**
12 **493.200 to 493.215.**

1 **2. The attorney general has the investigative and enforcement authority that the**
2 **attorney general has under chapter 407 relating to alleged violations of sections 493.200 to**
3 **493.215. The attorney general may institute any proceeding involving alleged violations**
4 **of sections 493.200 to 493.215 in the circuit court of Cole County or any other venue**
5 **otherwise permitted by law.**

6 **3. Costs of any kind or nature shall not be taxed against the attorney general or the**
7 **state in actions commenced under sections 493.200 to 493.215.**

8 **493.215. Nothing in sections 493.200 to 493.215:**

9 **(1) Limits or otherwise affects the authority of the Missouri supreme court to**
10 **regulate the practice of law, enforce the rules of professional conduct, or discipline persons**
11 **admitted to the bar; or**

12 **(2) Creates or implies liability on behalf of a broadcaster who holds a license for**
1 **over-the-air terrestrial broadcasting from the Federal Communications Commission, or**
2 **against a cable operator as defined in 47 U.S.C. Section 522(5).**

3 ✓