

Senate Study Bill 3137 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ZAUN)

A BILL FOR

1 An Act relating to advertisements for legal services, including
2 the use of health information and the content related to
3 drugs and devices, and making penalties applicable.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. NEW SECTION. 126.13 Advertisements for legal
2 services.

3 1. An advertisement for legal services soliciting clients
4 who may allege an injury from a drug approved by the United
5 States food and drug administration must include the following
6 warning if discontinuing use of the drug may result in injury:

7 "Do not stop taking a prescribed medication without first
8 consulting with your doctor. Discontinuing a prescribed
9 medication without your doctor's advice can result in injury".

10 2. An advertisement for legal services soliciting clients
11 who may allege an injury from a drug approved by the United
12 States food and drug administration must include the following
13 warning if discontinuing use of the drug may result in death:

14 "Do not stop taking a prescribed medication without first
15 consulting with your doctor. Discontinuing a prescribed
16 medication without your doctor's advice can result in injury
17 or death".

18 3. An advertisement for legal services soliciting clients
19 who may allege an injury from a drug or device approved by the
20 United States food and drug administration must disclose that
21 the drug or device remains approved by the United States food
22 and drug administration, unless the drug or device has been
23 recalled or withdrawn.

24 Sec. 2. Section 714.16, subsection 2, Code 2020, is amended
25 by adding the following new paragraph:

26 NEW PARAGRAPH. *g.* (1) It is an unlawful practice for a
27 person advertising legal services to do any of the following:

28 (a) Present an advertisement as a "medical alert", "health
29 alert", "consumer alert", "public service announcement", or
30 words of similar import.

31 (b) Display the logo of a federal or state governmental
32 agency in the advertisement in a manner that suggests
33 affiliation with or the sponsorship of the agency.

34 (c) Use the word "recall" when referring to a product that
35 has not been recalled by a governmental agency or through an

1 agreement between a manufacturer and a governmental agency.

2 (d) Fail to identify the attorney or law firm that will
3 represent clients, or how cases will be referred to attorneys
4 or law firms that will represent clients, if the sponsor of
5 the advertisement may not represent a person responding to the
6 advertisement.

7 (e) Fail to identify the sponsor of the advertisement if
8 the sponsor is not the attorney or law firm that will represent
9 clients.

10 (2) It is an unlawful practice for a person to use, cause to
11 be used, obtain, sell, transfer, or disclose an individual's
12 protected health information, without the individual's written
13 authorization, for the purpose of soliciting the individual
14 for legal services. As used in this subparagraph, "*protected*
15 *health information*" means the same as defined in 45 C.F.R.
16 §160.103. A person who violates this subparagraph is guilty
17 of a serious misdemeanor. This subparagraph shall not be
18 construed to restrict a person's ability to disclose protected
19 health information to the person's attorney in the course of
20 a legal proceeding, or as otherwise permitted or required by
21 state or federal law.

22 (3) Nothing in this paragraph shall limit or otherwise
23 affect the authority of the Iowa supreme court to regulate
24 the practice of law or discipline individuals admitted to the
25 practice of law before the Iowa supreme court.

26 Sec. 3. Section 714.16, Code 2020, is amended by adding the
27 following new subsection:

28 NEW SUBSECTION. 7A. Notwithstanding the maximum civil
29 penalty in subsection 7, if a court finds that a person has
30 engaged in a method, act, or practice declared unlawful under
31 subsection 2, paragraph "g", with the intent to sell, transfer,
32 or use protected health information for financial gain, the
33 attorney general may request and the court may impose a civil
34 penalty not to exceed two hundred and fifty thousand dollars
35 per violation.

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EXPLANATION

The inclusion of this explanation does not constitute agreement with the explanation's substance by the members of the general assembly.

This bill relates to the advertisement of legal services and makes penalties applicable.

The bill establishes certain restrictions on the advertisement of legal services soliciting clients who may allege an injury from a drug. The bill provides that such advertisements must include the following warning if discontinuing use of the drug may result in injury: "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". The bill also provides that such advertisements must include the following warning if discontinuing use of the drug may result in death: "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". The bill requires an advertisement for legal services soliciting clients who may allege an injury from a drug or device to disclose that the drug or device remains approved by the United States food and drug administration, unless the drug or device has been recalled or withdrawn.

A person who violates these advertisement provisions for the first time is guilty of a serious misdemeanor, and a person who violates the provisions after a conviction for the first violation is guilty of an aggravated misdemeanor. A serious misdemeanor is punishable by confinement for no more than one year and a fine of at least \$315 but not more than \$1,875. An aggravated misdemeanor is punishable by confinement for no more than two years and a fine of at least \$625 but not more than \$6,250.

The bill provides that it is an unlawful practice under Code section 714.16 (consumer frauds) for a person advertising legal services to do any of the following: present an advertisement

1 as a "medical alert", "health alert", "consumer alert", "public
2 service announcement", or words of similar import; display
3 the logo of a federal or state governmental agency in the
4 advertisement in a manner that suggests affiliation with or the
5 sponsorship of the agency; use the word "recall" when referring
6 to a product that has not been recalled; fail to identify the
7 attorney or law firm that will represent clients, or how cases
8 will be referred to attorneys or law firms that will represent
9 clients; or fail to identify the sponsor of the advertisement
10 if the sponsor is not the attorney or law firm that will
11 represent clients.

12 The bill also provides that it is an unlawful practice for
13 a person to use, cause to be used, obtain, sell, transfer,
14 or disclose an individual's protected health information,
15 without the individual's written authorization, for the purpose
16 of soliciting the individual for legal services. The bill
17 defines "protected health information" by reference to federal
18 regulations, as individually identifiable health information
19 that is transmitted electronically, maintained in electronic
20 media, or transmitted or maintained in any other form or
21 medium.

22 A violation of this provision is a serious misdemeanor. A
23 serious misdemeanor is punishable by confinement for no more
24 than one year and a fine of at least \$315 but not more than
25 \$1,875. An aggravated misdemeanor is punishable by confinement
26 for no more than two years and a fine of at least \$625 but not
27 more than \$6,250. This provision does not restrict a person's
28 ability to disclose protected health information to their
29 attorney in the course of a legal proceeding, or as otherwise
30 required or permitted by law.

31 The bill provides that the amendments to Code section 714.16
32 shall not limit or otherwise affect the authority of the Iowa
33 supreme court to regulate the practice of law or discipline
34 individuals admitted to the practice of law.

35 Pursuant to Code section 714.16(7), the maximum civil

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1 penalty that a court may impose for engaging in an unlawful
2 practice is \$40,000 per violation. The bill provides that if
3 a person engaged in a method, act, or practice declared an
4 unlawful practice under the bill, with the intent to sell,
5 transfer, or use protected health information for financial
6 gain, the attorney general may request and the court may impose
7 a civil penalty not to exceed \$250,000 per violation.