

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 21

FISCAL
NOTE

BY SENATORS BALDWIN, JEFFRIES, LINDSAY, ROMANO,

WOELFEL, AND FACEMIRE

[Introduced January 8, 2020; referred

to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §46A-6O-1, §46A-6O-2, and §46A-6O-3, all relating to prohibiting certain
 3 misleading pharmaceutical advertising practices; providing for certain disclosures and
 4 warnings in pharmaceutical advertising for the protection of patients; and imposing
 5 criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6O. “SIDE EFFECTS MAY INCLUDE” PHARMACEUTICAL ADVERTISING
ACT.

§46A-6O-1. Short title.

1 This article shall be known and cited as the “Side Effects May Include” Pharmaceutical
 2 Advertising Act.

§46A-6O-2. Deceptive advertising practices.

1 (a) Specifically prohibited advertising practices. — A person engages in a deceptive trade
 2 practice if in advertising pharmaceutical products the person does any of the following:

3 (1) Fails to disclose at the outset of the advertisement: “This is a paid advertisement for a
 4 pharmaceutical product”;

5 (2) Presents an advertisement as a “medical alert”, “health alert”, “consumer alert”, “public
 6 service announcement”, or similar term;

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

9 (4) Fails to identify the sponsor of the advertisement;

10 (5) Causes consumers unwarranted anxiety that they are suffering from any ailment. Nor
 11 should it imply that suffering may arise if a consumer fails to respond to the advertisement’s claim.

12 Communication which brings fear or distress may not be used;

13 (6) Uses language or medical terminology that is confusing or misleading to the consumer;

14 (7) Suggests that the pharmaceutical has been recommended by scientists or health
15 professionals; or

16 (8) Includes a recommendation by a person who, because of their celebrity status, may
17 encourage consumers to take a pharmaceutical.

18 (b) Disclosures and warnings for protection of patients. — An advertisement for a
19 pharmaceutical product shall include:

20 (1) The trade/brand name or proprietary name, if any, including name(s) of the active
21 ingredient(s);

22 (2) The major indication(s) for use;

23 (3) The major precautions, contra-indications and warnings; and

24 (4) The average retail price.

25 (c) Appearance of required statements, disclosures, and warnings. — (1) Any words or
26 statements required by this section to appear in an advertisement must be presented clearly and
27 conspicuously.

28 (2) Written disclosures shall be clearly legible and, if televised or displayed electronically,
29 shall be displayed for a sufficient time to enable the viewer to easily see and fully read the
30 disclosure or disclaimer.

31 (3) Spoken disclosures shall be plainly audible and clearly intelligible.

§46A-60-3. Wrongful use or disclosure of protected health information for solicitation.

1 (a) Use or disclosure of protected health information for legal solicitation. — A person shall
2 not use, cause to be used, obtain, sell, transfer, or disclose to another person without written
3 authorization protected health information for the purposes of soliciting an individual for
4 pharmaceutical products.

5 (b) Definitions. — For purposes of this section:

6 “Protected health information” has the meaning given to the term in section 160.103 of title
7 45, Code of Federal Regulations.

8 “Solicit” means offer to provide pharmaceutical products by written, recorded, or electronic
9 communication, or by in-person, telephone, or real-time electronic contact.

10 (c) Enforcement. — (1) A violation of this section constitutes a violation of West Virginia’s
11 health privacy laws or §46A-6-101 et seq., of this code.

12 (2) In addition to any other remedy provided by law, a person who willfully and knowingly
13 violates this section shall be guilty of a misdemeanor and, upon conviction thereof, be confined
14 in jail not more than one year, be fined \$1,000, or both fined and confined.

15 (d) Construction. — This provision may not be construed to apply to the use or disclosure
16 of protected health information to an individual’s physician, in the course of treatment, or as
17 otherwise permitted or required by law.

NOTE: The purpose of this bill is to prevent the deceptive use of pharmaceutical advertising and solicitation by prohibiting people from engaging in those activities and providing criminal penalties.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.