

SENATE BILL No. 150

AN ACT concerning legal services; relating to advertising; defining and prohibiting certain legal advertisement practices as unlawful and deceptive trade practices; restricting the use or disclosure of protected health information for legal solicitation; prescribing civil and criminal penalties.

Be it enacted by the Legislature of the State of Kansas:

Section 1. (a) A person engaging in legal advertisement within this state shall:

(1) Disclose the following at the outset of the advertisement: "This is a paid advertisement for legal services.";

(2) not present an advertisement as a "medical alert," "health alert," "consumer alert," "public service announcement" or similar terms;

(3) not display the logo of a federal or state governmental agency in a manner that suggests affiliation with or the sponsorship of that agency;

(4) not use the word "recall" when referring to a product that has not been recalled by a governmental agency or through an agreement between a manufacturer and governmental agency;

(5) identify the sponsor of the advertisement;

(6) indicate the identity of the attorney or law firm that will represent clients, or how cases will be referred to attorneys or law firms that will represent clients;

(7) if the advertisement is soliciting clients who may allege an injury from a prescription drug approved by the federal food and drug administration, 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."; and

(8) if the advertisement for a lawsuit soliciting clients who may allege an injury from a prescription drug or medical device approved by the federal food and drug administration or from a medical device substantially equivalent to an approved medical device, disclose that the drug or medical device remains approved by the federal food and drug administration, unless the product has been recalled or withdrawn.

(b) (1) Any words or statements required by this section to appear in an advertisement shall be presented clearly and conspicuously.

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

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

(c) Any violation of this section shall constitute an unlawful and deceptive trade practice as provided in K.S.A. 50-626, and amendments thereto, and shall be subject to the penalties provided for in K.S.A. 50-623 et seq., and amendments thereto.

(d) As used in this section:

(1) "Legal advertisement" means a solicitation for legal services, other than legal services performed by a bona fide nonprofit provider of pro bono legal services, through television, radio, internet, including a domain name, newspaper or other periodical, outdoor display or any other written, electronic or recorded communication; and

(2) "person" means an individual or an entity that is not an attorney or law firm and that advertises legal services or identifies potential clients for attorneys or law firms.

(e) Nothing in this section shall be construed to limit or otherwise affect the authority of the Kansas supreme court to regulate the practice of law or enforce the rules of the Kansas supreme court relating to attorneys.

Sec. 2. (a) A person shall not use, cause to be used, obtain, sell, transfer or disclose to another person without written authorization protected health information for the purpose of soliciting an individual for

legal services.

(b) (1) Any violation of this section shall constitute an unlawful and deceptive trade practice as provided in K.S.A. 50-626, and amendments thereto, and shall be subject to the penalties provided for in K.S.A. 50-623 et seq., and amendments thereto.

(2) In addition to any other remedy provided by law, a person who knowingly violates this section shall be guilty of a class A nonperson misdemeanor.

(c) As used in this section:

(1) "Person" means an individual or an entity that is not an attorney or law firm and that advertises legal services or identifies potential clients for attorneys or law firms;

(2) "protected health information" means any information, including genetic information, whether oral or recorded in any form or medium that relates to the past, present or future physical or mental health or condition of an individual or the past, present or future payment for the provision of healthcare to an individual; and

(3) "soliciting" means offering to provide legal services, to be provided by an identified attorney or law firm, by written, recorded or electronic communication, or in-person, telephone or real-time electronic contact.

(d) Nothing in this section shall be construed to:

(1) 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; or

(2) limit or otherwise affect the authority of the Kansas supreme court to regulate the practice of law or enforce the rules of the Kansas supreme court relating to attorneys.

Sec. 3. This act shall take effect and be in force from and after its publication in the statute book.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE concurred in

HOUSE amendments _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE

as amended _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.