Session of 2020

SENATE BILL No. 445

By Committee on Judiciary

AN ACT concerning legal services; relating to advertising; unlawful and deceptive trade practices; use or disclosure of protected health information for legal solicitation; prohibitions; 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 if the sponsor of the advertisement may not represent individuals responding to the advertisement;
(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or medical device remains approved by the federal food and drug administration, unless the product has been recalled or withdrawn.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
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 attorney, a law firm, an individual or an entity
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 attorney, a law firm, an individual or an entity
that advertises legal services or identifies potential clients for attorneys or
law firms;
(2) "protected health information" has the same meaning as in K.S.A.
65-6822, and amendments thereto; and
(3) "soliciting" means offering to provide legal services 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.