

SENATE BILL No. 150

By Committee on Judiciary

2-4

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

6
7 *Be it enacted by the Legislature of the State of Kansas:*

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

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

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

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

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

19 (5) identify the sponsor of the advertisement;

20 (6) indicate the identity of the attorney or law firm that will represent
21 clients, or how cases will be referred to attorneys or law firms that will
22 represent clients if the sponsor of the advertisement may not represent
23 individuals responding to the advertisement;

24 (7) if the advertisement is soliciting clients who may allege an injury
25 from a prescription drug approved by the federal food and drug
26 administration, include the following warning: "Do not stop taking a
27 prescribed medication without first consulting with your doctor.
28 Discontinuing a prescribed medication without your doctor's advice can
29 result in injury."; and

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35 administration, unless the product has been recalled or withdrawn.

36 (b) (1) Any words or statements required by this section to appear in

1 an advertisement shall be presented clearly and conspicuously.

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

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

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

11 (d) As used in this section:

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

17 (2) "person" means an attorney, a law firm, an individual or an entity
18 that advertises legal services or identifies potential clients for attorneys or
19 law firms.

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

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

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

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

34 (c) As used in this section:

35 (1) "Person" means an attorney, a law firm, an individual or an entity
36 that advertises legal services or identifies potential clients for attorneys or
37 law firms;

38 (2) "protected health information" has the same meaning as in K.S.A.
39 65-6822, and amendments thereto; and

40 (3) "soliciting" means offering to provide legal services by written,
41 recorded or electronic communication, or in-person, telephone or real-time
42 electronic contact.

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

1 (1) Apply to the use or disclosure of protected health information to
2 an individual's legal representative, in the course of any judicial or
3 administrative proceeding, or as otherwise permitted or required by law; or

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

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