

Legal Advertising; Protected Health Information; SB 150

SB 150 creates law related to legal advertising and the use of protected health information to solicit individuals for legal services.

Requirements for Legal Advertisement

The bill creates a statutory section stating that a person engaging in legal advertisement within Kansas is required to:

- Disclose, at the outset of the advertisement, that “This is a paid advertisement for legal services”;
- Not present an advertisement as a “medical alert,” “health alert,” “consumer alert,” “public service announcement,” or similar terms;
- Not display the logo of a federal or state governmental agency in a manner that suggests affiliation with or the sponsorship of that agency;
- 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;
- Identify the sponsor of the advertisement;
- 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 advertisement is soliciting clients who may allege an injury from a U.S. Food and Drug Administration (FDA)-approved prescription drug, 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
- If the advertisement is for a lawsuit soliciting clients who may allege an injury from a FDA-approved prescription drug or medical device or from a medical device substantially equivalent to an approved medical device, disclose that the drug or medical device remains approved by the FDA, unless the product has been recalled or withdrawn.

The bill requires any words or statements that must appear in an advertisement to be presented clearly and conspicuously, and written disclosures to be clearly legible. If such disclosures are televised or displayed electronically, the bill requires them to be displayed for a sufficient time to enable the viewer to easily see and fully read the disclosure or disclaimer. If an advertisement contains spoken disclosures, the bill requires such disclosures to be plainly audible and clearly intelligible.

Use of Protected Health Information

The bill creates a statutory section stating a person may 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.

The bill specifies that nothing in this section applies 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.

Violations; Effect on Regulation of Attorneys

In both sections, the bill provides that any violation constitutes an unlawful and deceptive trade practice under the Kansas Consumer Protection Act (KCPA), subject to the penalties provided for in that act. In addition to the penalty under the KCPA, any person who knowingly violates the section regarding protected health information is guilty of a class A nonperson misdemeanor. The bill also states that nothing in either section may be construed to limit or otherwise affect the authority of the Kansas Supreme Court to regulate the practice of law or enforce rules relating to attorneys.

Definitions

The bill defines "person" to mean 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. "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. The term "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 health care to an individual. Finally, "soliciting" means offering to provide legal services provided by an identified attorney or law firm through written, recorded, or electronic communication, or in-person, telephone, or real-time electronic contact.