

**SENATE BILL No. 445**

By Committee on Judiciary

2-14

1 AN ACT concerning legal services; relating to advertising; unlawful and  
2 deceptive trade practices; use or disclosure of protected health  
3 information for legal solicitation; prohibitions; penalties.  
4

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

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

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

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

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

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

17 (5) identify the sponsor of the advertisement;

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

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

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33 administration, unless the product has been recalled or withdrawn.

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

36 (2) Written disclosures shall be clearly legible and, if televised or

1 displayed electronically, shall be displayed for a sufficient time to enable  
2 the viewer to easily see and fully read the disclosure or disclaimer.

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

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

9 (d) As used in this section:

10 (1) "Legal advertisement" means a solicitation for legal services  
11 through television, radio, internet, including a domain name, newspaper or  
12 other periodical, outdoor display or any other written, electronic or  
13 recorded communication; and

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

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

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

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

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

31 (c) As used in this section:

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

35 (2) "protected health information" has the same meaning as in K.S.A.  
36 65-6822, and amendments thereto; and

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

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

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

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

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