



**House Committee on Commerce, Labor and Economic Development
Testimony in Support of Senate Bill 150
Presented by Eric Stafford, Vice President of Government Affairs, Kansas Chamber**

Tuesday, February 16, 2021

Mister Chairman and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. The Kansas Chamber represents small, medium and large businesses of all industry segments across the state. We appreciate the opportunity to testify in support of Senate Bill 150, which establishes guidelines for legal advertisements in the state.

Kansas has seen its legal climate ranking drop from the top 10 to the low 30's over the last decade according to ILR. Kansas ranks 37th out of 50 states for tort costs as a % of state GDP. Several factors have contributed to this decline and as legal costs continue to rise for the business community, we are proactively pursuing ways to strengthen our legal climate. SB 150 is one such proposal.

In April 2020, the U.S. Chamber Institute for Legal Reform released a whitepaper titled *Gaming the System: How Lawsuit Advertising Drives the Litigation Lifecycle*. This paper includes five case studies on various product advertising and litigation ranging from medications like Pradaxa to Talcum Powder.

The paper states: "The Pradaxa litigation shows how plaintiffs' lawyers take advantage of known risks of medications combined with uncertainty regarding new drugs to create a mass tort. Pradaxa, like other anticoagulants, included a risk of bleeding. After the Food and Drug Administration (FDA) announced that it was investigating such reports, plaintiffs' lawyers pounced. The 4,000 cases that resulted from the initial advertising campaign settled for \$650 million before a single trial, even as the FDA found Pradaxa had no higher bleeding risk than warfarin—a medication widely used for preventing and treating blood clots in humans since the 1950s"

As shown, law firms are spending hundreds of millions of dollars on advertisements for products that have not even faced a recall, or shown any significant health risk. If SB 150 is passed, law firms cannot use logos of state or federal agencies. "Recall" cannot be used when referring to a product if that product has not been recalled. SB 150 adds protective language of "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." As the Texas Legislature considered (and passed) a similar bill, they heard testimony from an individual who saw an advertisement for a prescription medication and that individual quit taking their medicine due to health concerns. That individual ultimately had to have both legs amputated as a result of their action.

SB 150 also requires disclosure that if a drug or medical device remains approved by the food and drug administration if an advertisement seeks clients for alleged injury from such drug or device.

Section 2 of the bill prohibits the use, sale or transfer of protected health information for the purpose of soliciting an individual for legal services without written authorization. Such an act constitutes an unlawful and deceptive trade practice under the Kansas Consumer Protection Act. You cannot watch television without running across legal advertisements. Sometimes these solicitations are not even from law firms. They are advertisements by data collection firms who then sell consumer information to law firms.

In closing, we believe SB 150 offers reasonable protections for Kansas consumers and establishes fair and clear guidelines for law firms advertising in the state to follow. Thank you for allowing us to testify in support of SB 150, and I'm happy to answer questions at the appropriate time.

Examples of Non-Compliant Advertisement from Kansas

- **Brenes Law Group ad on HIV drugs**
 - http://mycmag.kantarmediana.com/KMlcmagvidbin2/LAWYERS_BRENES_ANTI_RETROVIRAL_MEDICATIONS_60.html
 - Transcript:
 - This is an **important alert** for anyone taking the HIV drugs , Viread , Truvada , Complera , Stribild , or Atripla . These drugs were **originally approved to treat HIV - 1 . They're now known to have serious side effects .** They include bone deterioration or bone fractures , chronic kidney disease and even kidney failure . The makers of these HIV drugs knew about the serious problems and almost immediately crafted a safer drug without the known side effects . The problem is they did not release the new and safer drug to the market until the patent ran out on their less safe HIV drugs . So for over 10 years , Viread , Truvada , Complera , Stribild , and Atripla provided billions of dollars in profit while thousands of people became sick and suffered . The makers of these drugs placed profits over patient safety . It's time they're held accountable . If you've suffered the side effects of Viread , Truvada , Complera , Stribild , or Atripla , call now for your free no obligation case evaluation . Together , we'll seek justice . Together , we will make a difference .
 - Problems with the ad could be said to include:
 - May be misinterpreted as suggesting these drugs are no longer approved because they were “originally approved to treat HIV-1, they are now known to have serious side effects” **(addressed by Sec. 1(a)(7-8))**
 - This aired nationally and in Topeka, KS (approx. Feb 2020 – Apr 2021). Overall there were about 37,000 impressions (views).
 - The disclosure at the end of this ad seems to read:
 - “Attorney advertising paid for by Brenes Law Group, P.C. The attorneys at Brenes Law Group, P.C. are only licensed in California. Brenes Law Group, P.C. may associate with attorneys from other states. No representation is being made that the quality of the legal services to be performed is greater than the quality of legal services performed by other lawyers. The facts of every case are different and prior results do not guarantee similar or successful outcomes in any case.”
 - This is a cookie cutter ad that is used by many law firms, though the disclosure at the end may be different.

Example Ad That Comply with SB 150

- **Knightline Legal Ad on HIV drugs**
 - http://mycmag.kantarmediana.com/KMlcmagvidbin2/LAWYERS_KNIGHTLINE_TRUVADA.html
 - Transcript:
 - Non attorney spokesperson . This is a paid advertisement for legal services sponsored by Knightline Legal . Cases assigned on a random basis to participating

law firms . See disclaimer for law firms . This drug remains approved by the FDA . Attention , HIV and Pre - exposure patients . If your loved one used Truvada to treat or prevent HIV infections and later experienced bone deterioration , fractures , or chronic kidney disease , call right now . You may be entitled to financial compensation . Call now . 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 or death . (800) 511 -0632.

- This ad has clear disclosures at the beginning and end of the ad, as well as additional disclosures in the text.
- Aired in Jackson, TN with approx. 20,000 impressions.
- Disclaimer at the end seems to read:
 - “Non-Attorney Spokesperson. This is a paid advertisement for legal services. Knightline Legal is not a law firm or Lawyer Referral Service. Knightline Legal does not provide legal advice.”
 - “Participating law firms: AVA Law Group, San Diego, CA. Participating law firms subject to change. See knightlinelegal.com/disclaimer for current list. Cases assigned on a random basis to participating law firms. Some cases may be transferred to other attorneys.”
 - “This drug remains approved by the FDA. 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 or death. Do not base any medical decisions on this or any other advertisement. No legal fee unless you win but a client may be responsible for costs of litigation and any awarded costs and fees. Your initial call may not be with a licensed attorney and does not constitute legal advice or create an attorney client relationship. An attorney client relationship will only be created by a written agreement between a law firm and a client. The statements made here do not fully state all the requirements needed for a successful case. Do not select an attorney solely based upon an advertisement. This advertisement is not a guarantee or warranty of any legal matter. No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers or that any attorney involved with this advertisement is a licensed specialist of any state. Do not respond if you already have an attorney. A participating law firm may accept or reject a case based on their sole discretion. Rejection of your case is not the rendering of a legal opinion and you are encouraged to discuss the matter with any attorney of your choice. By placing a call to us you acknowledge and agree to all of the above.”