



**Senate Committee on Judiciary
Testimony in Support of Senate Bill 150
Presented by Eric Stafford, Vice President of Government Affairs, Kansas Chamber**

Tuesday, February 16, 2021

Madam Chair 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.