



109 SW 9th Street, 4th Floor  
Topeka, Kansas 66612-1280

Phone: (785) 296-3556  
Fax: (785) 296-8389  
Email: ksag@kda.ks.gov  
www.ksda.gov

Dale A. Rodman, Secretary

Sam Brownback, Governor

**Testimony on HB 2797, Concerning the Kansas Restraint of Trade Act  
to  
The House Judiciary Committee**

**By Secretary of Agriculture Dale Rodman  
Kansas Department of Agriculture**

**May 11, 2012**

Chairman Kinzer and members of the committee, thank you for the opportunity to provide these comments. As you will likely hear from others today, House Bill 2797 is a necessary response to the decision recently handed down by the Kansas Supreme Court in O'Brien v. Leegin Creative Leather Products.

The administration's main goal is to help grow the Kansas economy and jobs in our state. This bill supports this goal, and is needed in order to help ensure that Kansas businesses will not be driven out of the state for fear of costly litigation over necessary contracts that improve the efficiency of commerce.

My testimony focuses on the impact on Kansas agriculture, but this is an issue that all industries will be facing. An understanding of how the agricultural marketplace works, especially when it comes to marketing agreements, is helpful in demonstrating why the court's decision is a special concern to our industry.

Marketing agreements are two or more parties coming together and agreeing to produce and market a specific product. These tools are popular in agriculture production, and are in fact necessary in many cases. These agreements in the agriculture industry have provided improved efficiency to farmers and ranchers as well as the businesses and companies that further process their products. The increased efficiency benefits consumers and producers alike.

Marketing agreements are used in many segments of agriculture to improve demand for farm and ranch products, provide risk management opportunities, and reduce transaction costs. They are the preferred method of coordination of production and marketing in many segments of agriculture so that higher value and value-added products can be sold to the consumers that value and demand these products.

Some of the segments of our industry that this decision could potentially affect include milk, cheese, yogurt, cattle, hogs, poultry, commodities, raw food ingredients and ingredient processing.

While not specifically directed at how Kansas agriculture does business, the law of unintended consequences makes the O'Brien decision of concern for the agricultural industry. Many have concerns about the impact the O'Brien holding may have on future cases analyzing common agricultural contracts. Growing animal agriculture is a part of the Governor's roadmap for Kansas. We have worked hard at making strides towards this goal. Kansas farmers, ranchers and agribusiness professionals have joined in on the effort, providing feedback and ideas in many forums, including the Governor's Animal Agriculture Summit in Garden City last year.

Together, we are identifying our agriculture strengths and addressing our challenges. We want to retain and serve current farms, ranches and agribusinesses in Kansas. We also want to help these businesses grow if that is their goal. In addition, we want to encourage dairies, cattle feeders, and other agricultural entities to come to Kansas because it is a good place to conduct business. The O'Brien decision sends the wrong message to the agriculture businesses we are recruiting. We should not take the risk of creating doubt about whether or not Kansas is business-friendly. HB 2797 is the type of message that we need to send: This is Kansas, and we are open for business.

Thank you for the opportunity to speak with you today. I will stand for questions at the appropriate time.