

**Testimony submitted to the House Judiciary Committee by
Steve Six, Kansas Attorney General from 2008 to 2011
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I appreciate the opportunity to submit testimony on HR 2797 to the Committee on the Judiciary. As Kansas Attorney General, I worked hard to ensure that all consumers and businesses, benefited from open, free and competitive markets. The Kansas Restraint of Trade Act has operated for many years to help meet these goals. The protections in the KRTA have benefited Kansas businesses, from small family-run business to Kansas Fortune 500 companies. HB 2797 makes it harder for Kansas businesses to ensure that there is a level playing field with out-of-state and out-of-the-country companies that engage in illegal price fixing and bid rigging.

HR 2797 works to overturn 100 years of Kansas legal precedent. In 2010, the Kansas Attorney General's Office filed a amicus brief in the Leegin case endorsing the view ultimately taken by the Kansas Supreme Court last week. The amicus brief was submitted after careful research and study of the Kansas antitrust law and how it could best serve and protect Kansas businesses and consumers. Moving HR 2797 forward to change over 100 years of Kansas antitrust precedent without an opportunity for hearings, comment and careful study is unnecessary and unwise. Kansas has been well served for decades by the KTRA, if the statute requires revision, a bit more time to study these proposed changes is the better path.

Many new legal concepts and changes in the law are proposed in HR 2797. For instance, the bill forces Kansas judges to apply federal precedent when the federal Sherman Act and the KRTA are not identical. Long before the Leegin decision, Kansas courts recognized that the Kansas statute and federal statutes are different: "Kansas law is similar in some respects to the Sherman Act, but it is not identical. In fact, some of the statutes relied upon by [plaintiff] predate the Sherman Act." *Bergstrom v. Noah*, 266 Kan. 829, 844, 974 P.2d 520, 531 (1999). HR 2797 is retroactive. This will spur unnecessary litigation that will consume judicial resources to decide the Constitutionality of retroactively eliminating rights that have existed in Kansas for decades. Retroactivity additionally harms those Kansas companies and citizens currently protecting their rights in our courts. HR 2797 eliminates class actions, which will make Kansas one of the few (if only) states in the country to prohibit their citizens from challenging anticompetitive conduct in a class procedural format.

I urge the committee to delay action on HR 2797 to allow for public comment, input by Kansas businesses, and consumers. Thank you.