

HOUSE BILL No. 2797

By Committee on Appropriations

HB 2797 Subcommittee  
Prepared By: Office of Revisor of Statutes  
FINAL - May 15, 2012, 5:00 P.M.

1 AN ACT concerning the Kansas restraint of trade act;

2  
3 WHEREAS, the purpose of this act is to correct the interpretation of the  
4 Kansas restraint of trade act, K.S.A. 50-101 through 50-162, and  
5 amendments thereto, made in *O'Brien v. Leegin Creative Leather*  
6 *Products, Inc.*, No. 101,000, 2012 WL 1563976 (Kan. Sup. Ct., May 4,  
7 2012), which is contrary to the intent of the Kansas legislature in enacting  
8 the Kansas restraint of trade act, K.S.A. 50-101 through 50-162, and  
9 amendments thereto; to prevent wasteful litigation that would likely result  
10 if such interpretation is not corrected; to forestall those potentially affected  
11 by such interpretation from ceasing or refusing to do business in Kansas  
12 in order to avoid potential liability; and to minimize conflicts between the  
13 Kansas restraint of trade act and section 1 of the Sherman Act, 15 U.S.C. §  
14 1, and reduce uncertainty as to the law applicable to commerce in Kansas.

15  
16 *Be it enacted by the Legislature of the State of Kansas:*

17 Section 1. (a) An arrangement, contract, agreement, trust,  
18 understanding or combination shall not be deemed a trust pursuant to the  
19 Kansas restraint of trade act, K.S.A. 50-101 through 50-162, and  
20 amendments thereto, and shall not be deemed unlawful, void, prohibited or  
21 wrongful under any provision of the Kansas restraint of trade act, K.S.A.  
22 50-101 through 50-162, and amendments thereto, if that arrangement,  
23 contract, agreement, trust, understanding or combination is or would be  
24 deemed a reasonable restraint of trade or commerce under section 1 of the  
25 Sherman Act, 15 U.S.C. § 1, as construed and interpreted by the federal  
26 courts.

27 ~~(b) Any private action to enforce any provision of the Kansas~~  
28 ~~restraint of trade act, K.S.A. 50-101 through 50-162, and amendments~~  
29 ~~thereto, shall not be brought as a class action.~~

30 ~~(c) The provisions of this section shall apply retroactively in any~~  
31 ~~pending or future litigation.~~

32 (d) This section shall be a part of and supplemental to the Kansas  
33 restraint of trade act, K.S.A. 50-101 through 50-162, and amendments  
34 thereto.

35 Sec. 2. This act shall take effect and be in force from and after its  
36 publication in the Kansas register.

; amending K.S.A. 50-101 and 50-112 and repealing  
the existing sections (SEE ATTACHED)

; and

WHEREAS, The Kansas legislature intended for the doctrine of the rule  
of reason to be applied in cases involving an arrangement, contract,  
agreement, trust, understanding or combination under the Kansas restraint  
of trade act, K.S.A. 50-101 through 50-162, and amendments thereto.

An arrangement, contract, agreement, trust, understanding or combination  
is a reasonable restraint of trade or commerce if such restraint is  
reasonable in view of all of the facts and circumstances of the particular  
case and does not contravene public welfare.

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(b) If any provision of this section or the application thereof to any person  
or circumstance is held invalid, the invalidity does not affect other  
provisions or applications of this section which can be given effect without  
the invalid provision or application, and to this end the provisions of this  
section are severable.

(c) The provisions of this section shall expire on June 30, 2013.

Sec 2. K.S.A. 50-101 is hereby amended to read as follows: 50-101. Except as provided in section 1, and amendments thereto, a trust is a combination of capital, skill, or acts, by two or more persons, for either, any or all of the following purposes:

*First.* To create or carry out restrictions in trade or commerce, or aids to commerce, or to carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state.

*Second.* To increase or reduce the price of merchandise, produce or commodities, or to control the cost or rates of insurance.

*Third.* To prevent competition in the manufacture, making, transportation, sale or purchase of merchandise, produce or commodities, or to prevent competition in aids to commerce.

*Fourth.* To fix any standard or figure, whereby such person's price to the public shall be, in any manner, controlled or established, any article or commodity of merchandise, produce or commerce intended for sale, use or consumption in this state.

*Fifth.* To make or enter into, or execute or carry out, any contract, obligation or agreement of any kind or description by which such person shall: (a) Bind or have to bind themselves not to sell, manufacture, dispose of or transport any article or commodity, or article of trade, use, merchandise, commerce or consumption below a common standard figure;

(b) agree in any manner to keep the price of such article, commodity or transportation at a fixed or graded figure;

(c) in any manner establish or settle the price of any article or commodity or transportation between them or themselves and others to preclude a free and unrestricted competition among themselves or others in transportation, sale or manufacture of any such article or commodity; or

(d) agree to pool, combine or unite any interest they may have in connection with the manufacture, sale or transportation of any such article or commodity, that such person's price in any manner is affected. Any such combinations are hereby declared to be against public policy, unlawful and void.

Sec 3. K.S.A. 50-112 is hereby amended to read as follows: 50-112. Except as provided in section 1, and amendments thereto, all arrangements, contracts, agreements, trusts, or combinations between persons made with a view or which tend to prevent full and free competition in the importation, transportation or sale of articles imported into this state, or in the product, manufacture or sale of articles of domestic growth or product of domestic raw material, or for the loan or use of money, or to fix attorney or doctor fees, and all arrangements, contracts, agreements, trusts or combinations between persons, designed or which tend to advance, reduce or control the price or the cost to the producer or to the consumer of any such products or articles, or to control the cost or rate of insurance, or which tend to advance or control the rate of interest for the loan or use of moneys to the borrower, or any other services, are hereby declared to be against public policy, unlawful and void.