

February 19, 2013

The Honorable Jeff King, Chairperson
Senate Committee on Judiciary
Statehouse, Room 341-E
Topeka, Kansas 66612

Dear Senator King:

SUBJECT: Fiscal Note for SB 123 by Senate Committee on Judiciary

In accordance with KSA 75-3715a, the following fiscal note concerning SB 123 is respectfully submitted to your committee.

SB 123 would amend the Kansas Restraint of Trade Act in response to the recent Kansas Supreme Court decision. The bill adds additional analysis factors to the consideration of the legality of restraints under the Kansas Restraint of Trade Act. Under current law, the standard for liability under the Kansas Restraint of Trade Act is commonly known as a “per se standard,” meaning people who restrain trade in a manner described in the Act are in violation of the Act. SB 123 replaces the current standards with a reasonableness standard, which requires analysis of the relevant industry, the effect on the inter-brand competition, business justifications for the restraint, and market power in the related industries, in an effort to determine whether a particular restraint has been unreasonable. Such analysis typically requires the review of an expert in economics and potentially the industry at issue. SB 123 would also add a four factor test to determine whether a trust is a “reasonable restraint of trade.”

The Attorney General enforces the Kansas Restraint of Trade Act. In this role the Attorney General can bring antitrust litigation alleging violations of the law in both state and federal court. Antitrust lawsuits are by their nature difficult, complicated cases. Litigation under a reasonableness standard is almost always protracted and expensive. Under SB 123, antitrust cases brought by the Attorney General’s Office will take longer to litigate, at a higher cost to the state, and require the employment of an economic expert in each instance to determine the reasonableness of the conduct at issue. Civil penalties, fees and costs recovered from antitrust litigation are distributed in accordance with court order and statute to harmed citizens and agencies; various fee funds including the Attorney General’s antitrust special revenue fund; and the State General Fund. The Attorney General states that the fiscal effect of SB 123 cannot be determined because the number of alleged violations of the Act, lawsuits filed or resolved, and the severity of such violations vary from year to year.

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February 19, 2013

Page 2—SB 123

The Attorney General has the authority to bring litigation and recover damages on behalf of any city, town, political subdivision or other governmental body when it has been harmed by a conspiracy, combination or agreement in restraint of trade. Each local government also has authority to bring its own action. If SB 123 is passed, local governments would also have increased antitrust enforcement costs and decreased revenues; however, no fiscal effect can be determined. Any fiscal effect associated with SB 123 is not reflected in *The FY 2014 Governor's Budget Report*.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", written in a cursive style.

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Mary Rinehart, Judiciary
Willie Prescott, Attorney General's Office