

SENATE BILL No. 123

By Committee on Judiciary

2-5

1 AN ACT concerning the Kansas restraint of trade act; amending K.S.A.
2 50-101 and 50-112 and repealing the existing sections.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 New Section 1. (a) The purpose of this section, and the amendments
6 to K.S.A. 50-101 and 50-112 by this act, is to clarify and reduce any
7 uncertainty or ambiguity as to the application of the Kansas restraint of
8 trade act and applicable evidentiary standards to certain types of business
9 contracts, agreements and arrangements that are not intended to
10 unreasonably restrain trade or commerce and do not contravene public
11 welfare.

12 (b) (1) Except as provided in subsection (b)(3), an arrangement,
13 contract, agreement, trust, understanding or combination shall not be
14 deemed a trust pursuant to the Kansas restraint of trade act, K.S.A. 50-101
15 through 50-162, and amendments thereto, and shall not be deemed
16 unlawful, void, prohibited or wrongful under any provision of the Kansas
17 restraint of trade act, K.S.A. 50-101 through 50-162, and amendments
18 thereto, if that arrangement, contract, agreement, trust, understanding or
19 combination is a reasonable restraint of trade or commerce. An
20 arrangement, contract, agreement, trust, understanding or combination is a
21 reasonable restraint of trade or commerce if such restraint is reasonable in
22 view of all of the facts and circumstances of the particular case and does
23 not contravene public welfare.

24 (2) Whether an arrangement, contract, agreement, trust,
25 understanding or combination is a reasonable restraint of trade or
26 commerce in view of all of the facts and circumstances, shall include, but
27 not be limited to, an analysis of the following factors:

28 (A) Specific information about the relevant industry;

29 (B) whether the history, nature, and effect of the restraint stimulates
30 or harms interbrand competition;

31 (C) whether there were legitimate business justifications; and

32 (D) whether the defendant involved has market power.

33 (3) The reasonableness standard described in subsections (b)(1) and
34 (b)(2) shall not apply to any claim of horizontal conduct between or
35 among competitors that otherwise violates the Kansas restraint of trade act,
36 K.S.A. 50-101 through 50-162, and amendments thereto. A manufacturer

1 or wholesaler that also engages in retail sales shall not be considered
2 engaged in horizontal conduct with respect to sales the manufacturer or
3 wholesaler makes to third-party retailers.

4 (c) The Kansas restraint of trade act, K.S.A. 50-101 through 50-162,
5 and amendments thereto, shall not apply to:

6 (1) Any association that complies with the provisions and application
7 of article 16 of chapter 17 of the Kansas Statutes Annotated, and
8 amendments thereto, the cooperative marketing act;

9 (2) any association, trust, agreement or arrangement that complies
10 with the provisions and application of 7 U.S.C. § 291 et seq., the Capper-
11 Volstead act;

12 (3) any association, trust, agreement or arrangement that complies
13 with the provisions and application of 7 U.S.C. § 181 et seq., the packers
14 and stockyards act;

15 (4) any franchise agreements or covenants not to compete;

16 (5) any association that complies with the provisions and application
17 of article 15 of chapter 17 of the Kansas Statutes Annotated, and
18 amendments thereto, the cooperative societies act;

19 (6) any group purchasing organization or group purchasing
20 cooperative engaged in coordinated purchasing activities designed to
21 obtain lower prices or increase efficiencies for its members so long as it
22 does not possess monopoly power;

23 (7) any company or corporation that complies with the electric
24 cooperative act, K.S.A. 17-4601 et seq., and amendments thereto; and

25 (8) any association that complies with the provisions and application
26 of article 22 of chapter 17 of the Kansas Statutes Annotated, and
27 amendments thereto, the credit union act.

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

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

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

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

43 *Second.* To increase or reduce the price of merchandise, produce or

1 commodities, *when such conduct may lead to increased prices*, or to
2 control the cost or rates of insurance.

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

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

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

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

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

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

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

41 Sec. 4. K.S.A. 50-101 and 50-112 are hereby repealed.

42 Sec. 5. This act shall take effect and be in force from and after its
43 publication in the Kansas register.