

SENATE BILL No. 124

By Committee on Judiciary

2-5

1 AN ACT concerning the Kansas restraint of trade act; amending K.S.A.
2 50-101, 50-112 and 50-161 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 price-fixing 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 is governed by or becomes subject to the
7 provisions and application of article 16 of chapter 17 of the Kansas
8 Statutes Annotated, and amendments thereto, the cooperative marketing
9 act;

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

13 (3) any corporation organized under the electric cooperative act,
14 K.S.A. 17-4601 et seq., and amendments thereto, or which becomes
15 subject to the electric cooperative act in any manner therein provided; or
16 any limited liability company or corporation, or wholly owned subsidiary
17 thereof, providing electric service at wholesale in the state of Kansas that
18 is owned by four or more electric cooperatives that provide retail service
19 in the state of Kansas; or any member-owned corporation formed prior to
20 2004;

21 (4) any association that is governed by the provisions and application
22 of article 22 of chapter 17 of the Kansas Statutes Annotated, and
23 amendments thereto, the credit union act;

24 (5) any association, trust, agreement or arrangement that is governed
25 by the provisions and application of 7 U.S.C. § 181 et seq., the packers and
26 stockyards act; and

27 (6) any franchise agreements or covenants not to compete.

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, or to control the cost or rates of insurance.

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

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

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

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

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

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

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

39 Sec. 4. K.S.A. 50-161 is hereby amended to read as follows: 50-161.
40 (a) As used in this section, the term "person" means any individual,
41 corporation, partnership, firm, company or other association of persons,
42 and such term shall include the state of Kansas and any of its political
43 subdivisions.

1 (b) Except as provided in K.S.A. 12-205, and amendments thereto,
2 any person who may be damaged or injured by any agreement, monopoly,
3 trust, conspiracy or combination which is declared unlawful by any of the
4 acts contained in chapter 50 of the Kansas Statutes Annotated, *and*
5 *amendments thereto*, relating to unlawful acts, agreements, monopolies,
6 trusts, conspiracies or combinations in restraint of trade, shall have a cause
7 of action against any person causing such damage or injury. Such action
8 may be brought by any person who is injured in such person's business or
9 property by reason of anything forbidden or declared unlawful by this act,
10 regardless of whether such injured person dealt directly or indirectly with
11 the defendant. The plaintiff in any action commenced hereunder in the
12 district court of the county wherein such plaintiff resides, or the district
13 court of the county of the defendant's principal place of business, may sue
14 for and recover treble the *actual* damages sustained *or such damages as*
15 *provided for in K.S.A. 50-115, and amendments thereto, but not both*. In
16 addition, any person who is threatened with injury or additional injury by
17 reason of any person's violation of such acts may commence an action in
18 such district court to enjoin any such violation, and any damages suffered
19 may be sued for and recovered in the same action in addition to injunctive
20 relief. Any suit for injunctive relief against a municipality shall be subject
21 to the provisions of K.S.A. 12-205, and amendments thereto.

22 (c) In any action commenced under this section, the plaintiff may be
23 allowed reasonable attorney fees and costs. The remedies provided herein
24 shall be alternative and in addition to any other remedies now provided by
25 law.

26 Sec. 5. K.S.A. 50-101, 50-112 and 50-161 are hereby repealed.

27 Sec. 6. This act shall take effect and be in force from and after its
28 publication in the Kansas register.