

## 2021 Kansas Statutes

**50-163. Kansas restraint of trade act; construing and applying act; harmonization with federal law; reasonable restraint of trade or commerce.** (a) The purpose of this section, and the amendments to K.S.A. 50-101, 50-112, 50-158 and 50-161 by this act,\* is to clarify and reduce any uncertainty or ambiguity as to the application of the Kansas restraint of trade act and applicable evidentiary standards to certain types of business contracts, agreements and arrangements that are not intended to unreasonably restrain trade or commerce and do not contravene public welfare.

(b) Except as otherwise provided in subsections (d) and (e), the Kansas restraint of trade act shall be construed in harmony with ruling judicial interpretations of federal antitrust law by the United States supreme court. If such judicial interpretations are in conflict with or inconsistent with the express provisions of subsection (c), the provisions of subsection (c) shall control.

(c) An arrangement, contract, agreement, trust, understanding or combination shall not be deemed a trust pursuant to the Kansas restraint of trade act and shall not be deemed unlawful, void, prohibited or wrongful under any provision of the Kansas restraint of trade act if that arrangement, contract, agreement, trust, understanding or combination is a reasonable restraint of trade or commerce. 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.

(d) The Kansas restraint of trade act shall not be construed to prohibit:

- (1) Actions or proceedings concerning intrastate commerce;
- (2) actions or proceedings by indirect purchasers pursuant to K.S.A. 50-161, and amendments thereto;
- (3) recovery of damages pursuant to K.S.A. 50-161, and amendments thereto;
- (4) any remedy or penalty provided in the Kansas restraint of trade act, including, but not limited to, recovery of civil penalties pursuant to K.S.A. 50-160, and amendments thereto; and
- (5) any action or proceeding brought by the attorney general pursuant to authority provided in the Kansas restraint of trade act, or any other power or duty of the attorney general provided in such act.

(e) The Kansas restraint of trade act shall not be construed to apply to:

- (1) Any association that complies with the provisions and application of article 16 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, the cooperative marketing act;
- (2) any association, trust, agreement or arrangement that is governed by the provisions and application of 7 U.S.C. § 291 et seq., the Capper-Volstead act;
- (3) any corporation organized under the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto, or which becomes subject to the electric cooperative act in any manner therein provided; or any limited liability company or corporation, or wholly owned subsidiary thereof, providing electric service at wholesale in the state of Kansas that is owned by four or more electric cooperatives that provide retail service in the state of Kansas; or any member-owned corporation formed prior to 2004;
- (4) any association that is governed by the provisions and application of article 22 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, the credit union act;
- (5) any association, trust, agreement or arrangement that is governed by the provisions and application of 7 U.S.C. § 181 et seq., the packers and stockyards act; and

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

(f) 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.

(g) This section shall be a part of and supplemental to the Kansas restraint of trade act.

**History:** L. 2013, ch. 102, § 1; April 18.

\* "This act" means L. 2013, ch. 102.