

**Testimony on SB 124  
to  
The House Committee on Judiciary  
By Chelsea Good  
Kansas Department of Agriculture  
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Good afternoon, Chairman Kinzer and members of the committee. I am Chelsea Good, a staff attorney with the Kansas Department of Agriculture. I am here to express KDA's support for SB 124. The Kansas Department of Agriculture's primary function is to support the entire agricultural sector. We achieve this mission by fulfilling our statutory obligations while always helping Kansas agriculture grow.

Kansas farmers and ranchers should be able to sell their products wherever, whenever and to whomever they choose. Farmers and ranchers have greatly benefited from the ability to enter into alternative marketing agreements to earn a premium for the value they add to their products. As a state, we need to ensure our statutes do not hinder that core function of a free market system.

This bill is a necessary response to the decision handed down by the Kansas Supreme Court in *O'Brien v. Leegin Creative Leather Products, Inc.*, No 101,000 (Kansas Sup. Ct. May 4, 2012.) While this testimony focuses on the impact on Kansas agriculture, the *O'Brien* decision creates issues that all industries face without legislation to address the uncertainty in contract problems. We strongly support legislative efforts to correct the void created by the *O'Brien* decision.

An understanding of how the agricultural marketplace works, especially when it comes to marketing agreements, is helpful in demonstrating why the court's *O'Brien* decision is especially concerning to the Kansas agricultural community. Marketing agreements are simply two or more parties coming together and agreeing to produce and market a specific product. These tools are popular in agriculture production and are in fact necessary in many cases.

Marketing agreements are used in many segments of agriculture to improve demand for farm and ranch products, provide risk management opportunities and reduce transaction costs. They are the preferred method of coordination of production and marketing in many segments of agriculture, providing higher value and value-added products to be sold to the consumers that value and demand these products. Some of the segments of our industry that this decision could potentially affect include milk, cheese, yogurt, cattle, hogs, poultry, commodities, raw food ingredients and ingredient processing.

Alternative marketing agreements in agriculture have provided improved efficiency to farmers and ranchers as well as the businesses and companies that further process these products. Over the years, farmers and ranchers have listened to demand from consumers and have worked to grow products to meet that demand. Alternative marketing agreements allow them to earn a premium for the value added to a “commodity product.” Under these marketing arrangements, farmers and ranchers as well as consumers benefit.

*O'Brien's* departure from Kansas' long accepted “reasonableness standard” must be addressed to protect many facets of Kansas' economy and the agricultural sector in particular. While not specifically directed at Kansas agriculture, the law of unintended consequences makes the *O'Brien* decision of great concern for agriculture. Many have concerns about the impact the *O'Brien* holding may have on future cases analyzing common agricultural contracts.

KDA supports SB 124 as a sensible solution to *O'Brien*. Specifically, SB 124 removes the possibility of duplicative damages by stating clearly that treble the actual damages plus attorneys fees are the damage that apply, rather than a multi-level system also allowing full consideration. We believe the damage component is an important issue to address and that SB 124 will fairly compensate aggrieved parties while also better aligning Kansas with the damages allowed by other jurisdictions. KDA also supports the long held exemptions to the Kansas restraint of trade act that are laid out in SB 124.

A priority for KDA is putting a reasonableness standard back into the law. This is critical as it provides a framework which allows alleged anti-competitive activity to be evaluated considering surrounding circumstances and benefits to the activity. Under the reasonableness standard, an activity may still be found to be in violation of the Kansas restraint of trade act. This provides a more balanced approach to evaluate activities than a standard automatically declaring certain activities to be in violation of the law. Currently, SB 124 directs courts to review actions in harmony with judicial interpretations of comparable federal antitrust laws. There are legitimate concerns about the “comparable” language. KDA supports efforts to amend this section of the bill to follow the original intent and make it clear that a reasonableness analysis applies.

KDA works each day to capitalize on our strengths and overcome our challenges in order to achieve overall growth and ensure agriculture remains the largest economic driver in the state. We want to retain and serve current farms, ranches, and agribusinesses in Kansas. We also want to help these businesses grow if that is their goal.

As agricultural entities look to grow and relocate their businesses, we need them to know that Kansas is open for business. The *O'Brien* decision sends the wrong message to the agriculture businesses we are recruiting. We should not take the risk of creating doubt about whether or not Kansas is business-friendly. SB 124 is the type of message that we need to send. I encourage the committee to stand with us in this effort to grow Kansas agriculture and pass this legislation.

Thank you for the opportunity to speak with you today. I will stand for questions at the appropriate time.