

KANSAS ASSOCIATION  
FOR JUSTICE



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To: Representative Lance Kinzer, Chairperson  
Members of the House Judiciary Committee Committee

From: Callie Jill Denton JD  
Director of Public Policy

Date: March 13, 2013

RE: **SB 124 Concerning the Kansas Restraint of Trade Act (OPPOSED)**

The Kansas Association for Justice (KsAJ) is a professional association of attorneys. KsAJ opposes changes to the Kansas Restraint of Trade Act (KRTA), and SB 124.

SB 124 is the culmination of nearly a year of public policy debate that began on May 4, 2012, when the Kansas Supreme Court issued an opinion in *O'Brien v. Leegin Creative Leather Products, Inc., No. 101,000* (Kan. Sup. Ct., May 4, 2012). Defendants in the *O'Brien* case and others, dissatisfied with the ruling of the Court, sought to change it by coming before the Legislature. Proponents of changing the KRTA said that if the Legislature failed to act, "business uncertainty" would irreparably damage the state's business climate.

In the subsequent months, across-the-board dissolution of and invalidation of contracts and other catastrophes that were threatened by proponents of the 2012 bills have not come to pass. And yet, proponents have continued to seek legislation that weakens the KRTA to the detriment of all Kansans.

**Before the Legislature amends the KRTA, strong consideration must be given to who the act is intended to protect: Kansas consumers and small businesses. Consumers and small businesses do not have market share to defend themselves against anti-competitive practices such as price fixing or other anti-competitive trade combinations. *Anti-competitive behavior never results in lower prices.***

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The Kansas Legislature has been vigilant in protecting the honesty and integrity of Kansas markets through the KRTA. The Kansas Legislature first enacted laws in 1887 to stop unlawful trade by grain dealers and to protect farmers. The KRTA has remained in force for over a century and has been largely unchanged except for amendments in 2000.

Passage of SB 124 by the Legislature is granting new authority to the Congress and federal courts to govern what the Kansas Legislature has vigilantly regulated for over 100 years. SB 124 erodes state regulatory authority of anti-competitive market behavior and the long standing traditions of Kansas antitrust laws and remedies. SB 124 is will protect perpetrators of anti-competitive behavior from harm caused to Kansas consumers and businesses. SB 124 erodes protections for the small Kansas farmers, businesses, and consumers who will be harmed by monopolistic and anti-competitive practices.

Kansas consumers and business benefit from a robust KRTA. Kansas Livestock Association members were directly injured by the worldwide conspiracy described in *In re: Vitamins Antitrust Litigation* M.D.L. No. 1285. This scheme involved defendants engaging in a massive horizontal conspiracy to raise, fix, and maintain the prices of vitamins, vitamin premixes and bulk vitamin products, allocating customers and controlling the global market for vitamins, vitamin premixes and choline chloride for at least ten years between 1988-1998. The United States Justice Department investigated this activity. Convictions and criminal fines (not civil damages) exceeded \$900,000,000.00 for violating the criminal laws.

*In re: Lorazepam and Clorazepate AntiTrust Litigation*, M.D.L. No. 1290, involved a claim pursued by BlueCross BlueShield of Kansas, Inc. and other Blue Cross and Blue Shield plans, health care payers, direct purchasers and consumers against Mylan Laboratories for entering into agreements with the global suppliers of certain raw materials known as active pharmaceutical ingredients used by Mylan to manufacture tablets of generic Lorazepam and Clorazepate distributed for sale in the United States. This conduct had the effect of cornering the global market for active ingredients for these drugs for a period of ten years which enabled Mylan to raise its wholesale prices to supra-competitive levels and which price increases were paid by direct purchasers, third party payers, such as BlueCross BlueShield of Kansas, Inc. and other consumers of the drugs.

The remedies in the KRTA are derived from English common law and have been in place in Kansas (largely unchanged) for well over 100 years. The KRTA is intended to protect local Kansas businesses and local Kansas consumers from large out-of-state interests, including large multi-national interests. The only beneficiaries of a weakened KRTA are those who profit from manipulating markets, which in turn weaken the integrity of the market. ***Price-fixing will never result in lower prices for consumers.***

Anti-competitive and monopolistic behavior must be vigilantly regulated and deterred, which has been the tradition of Kansas law and the Kansas Legislature. SB 124 is a loss to Kansas' tradition.

KsAJ members have serious substantive and policy concerns with SB 124. SB 124 eliminates protections that Kansans are relying upon right now. KsAJ sees no reason to change consumer and business protection laws that have been virtually unchanged for over 100 years, and that have served Kansans well.

**The Kansas Association for Justice respectfully requests that the Judiciary Committee retain state authority to regulate anti-competitive trade activity as currently enacted in the KRTA, and reject SB 124.**