



To: House Judiciary Committee
From: Randy E. Stookey, General Counsel, Kansas Grain & Feed Association and Kansas Agribusiness Retailers Association; and, Leslie Kaufman, President and CEO, Kansas Cooperative Council
Re: Joint Testimony on House Bill 2797, Kansas Restraint of Trade Act
Date: May 11, 2012

Chairman Kinzer and members of the Committee, on behalf of the Kansas Agribusiness Retailers Association, Kansas Cooperative Council, and the Kansas Grain and Feed Association, thank you for allowing us the opportunity to provide written testimony in strong support of HB 2797 regarding the Kansas Restraint of Trade Act. Our association membership includes hundreds of diverse agricultural businesses in Kansas, including: grain handling, agricultural retail and crop input industries, and a full spectrum of the cooperative family — agricultural, utility, financial and consumer co-ops.

Recently, the Kansas Supreme Court released a decision in *O'Brien v. Leegin Creative Leather Products, Inc.*, which overturns decades of consistent judicial precedence in interpreting and applying the Kansas Restraint of Trade Act. The court's decision effectively makes certain agribusiness transactions involving pricing contracts potentially unlawful for violation of the Kansas restraint of trade act.

The new precedent set by the *O'Brien* decision fails to consider the legal precedence of reasonable restraint of trade or commerce, and makes void all contracts or agreements which “create or carry out restrictions in trade or commerce, or aids to commerce, or to carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state.”

The *O'Brien* decision could make void contractual agreements between elevators and producers, agriculture input processing plants and their wholesale customers, agribusiness retailers contracting with producers, and many other routine business transactions in our industry. As such, HB 2797 is a critically important legislative remedy.

This bill codifies what has been Kansas legal precedent for 60 years. Failure to immediately act on this bill would likely have devastating ramifications to our industry. We strongly urge your support of HB 2797.