

## Substitute for HOUSE BILL NO. 2797

By Committee on Judiciary

AN ACT concerning the Kansas restraint of trade act; amending K.S.A. 50-101 and 50-112 and repealing the existing sections.

WHEREAS, The purpose of this act is to correct the interpretation of the Kansas restraint of trade act, K.S.A. 50-101 through 50-162, and amendments thereto, made in *O'Brien v. Leegin Creative Leather Products, Inc.*, No. 101,000, 2012 WL 1563976 (Kan. Sup. Ct., May 4, 2012), which is contrary to the intent of the Kansas legislature in enacting the Kansas restraint of trade act, K.S.A. 50-101 through 50-162, and amendments thereto; and

WHEREAS, The Kansas Legislature intended for the doctrine of the rule of reason to be applied in cases involving an arrangement, contract, agreement, trust, understanding or combination under the Kansas restraint of trade act, K.S.A. 50-101 through 50-162, and amendments thereto:

Now, therefore,

*Be it enacted by the Legislature of the State of Kansas:*

New Section 1. (a) An arrangement, contract, agreement, trust, understanding or combination shall not be deemed a trust pursuant to the Kansas restraint of trade act, K.S.A. 50-101 through 50-162, and amendments thereto, and shall not be deemed unlawful, void, prohibited or wrongful under any provision of the Kansas restraint of trade act, K.S.A. 50-101 through 50-162, and amendments thereto, 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.

(b) 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.

(c) This section shall be a part of and supplemental to the Kansas restraint of trade act, K.S.A. 50-101 through 50-162, and amendments thereto.

(d) The provisions of this section shall expire on June 30, 2013.

Sec. 2. K.S.A. 50-101 is hereby amended to read as follows: 50-101. Except as provided in section 1, and amendments thereto, a trust is a combination of capital, skill, or acts, by two or more persons, for either, any or all of the following purposes:

*First.* To 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.

*Second.* To increase or reduce the price of merchandise, produce or commodities, or to control the cost or rates of insurance.

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

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

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

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

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

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

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

Sec. 4. K.S.A. 50-101 and 50-112 are hereby repealed.

Sec. 5. This act shall take effect and be in force from and after its publication in the Kansas register.