

May 17, 2012

The Honorable Lance Kinzer, Chairperson
House Committee on Judiciary
Statehouse, Room 165-W
Topeka, Kansas 66612

Dear Representative Kinzer:

SUBJECT: Fiscal Note for HB 2797 by House Committee on Appropriations

In accordance with KSA 75-3715a, the following fiscal note concerning HB 2797 is respectfully submitted to your committee.

HB 2797 states that the purpose of this act is to correct the recent interpretation of the Kansas Restraint of Trade Act, which is contrary to the intent of the Kansas Legislature in enacting the Act. Under the bill, restraint would be lawful in Kansas if it would be considered a reasonable restraint of trade or commerce under Section 1 of the Sherman Act, 15 U.S.C. as determined by the federal courts. The bill would also prohibit any private action to enforce any provision of the Kansas Restraint of Trade Act. The bill's provisions would apply retroactively in any pending or future litigation.

The Office of Judicial Administration notes that HB 2797 could have a fiscal effect on expenditures of the Judicial Branch. If the option of a class action lawsuit were not available, individual litigants might file numerous individual lawsuits, and court staff may be needed. In addition, increased docket fees revenue could result.

Under the bill, the Attorney General could bring antitrust litigation alleging violations of Kansas law in both state and federal court. Litigation under the rule of reason, rather than under the *per se* rule, is often more protracted and expensive. As a result, antitrust cases brought by the Attorney General's Office will likely take longer to litigate, at a higher cost to the state, and require the employment of an economic expert in every investigation to determine the reasonableness of the conduct at issue. Civil penalties, fees and cost recovered from the litigation are distributed according to court order and state statutory provisions to harmed citizens and agencies, to various fee funds including the Attorney General's antitrust special revenue fund, and to the State General Fund. It is impossible to calculate what the fiscal effect of these changes would be. Any fiscal effect associated with HB 2797 is not reflected in *The FY 2013 Governor's Budget Report*.

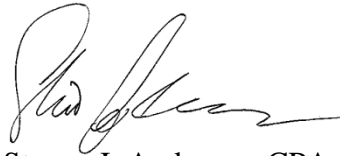
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In addition, if passed HB 2797 local governments will have increased antitrust enforcement costs and decreased revenues, just as the state would have increased enforcement costs.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven J. Anderson", with a long horizontal flourish extending to the right.

Steven J. Anderson, CPA, MBA
Director of the Budget

cc: Mary Rinehart, Judiciary
Megan Henry, Attorney General's Office