

SENATE BILL No. 124

By Committee on Judiciary

2-5

SB124-Balloon-King

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Office of Revisor of Statutes
February 27, 2013

1 AN ACT concerning the Kansas restraint of trade act; amending K.S.A.
2 50-101, 50-112 and 50-161 and repealing the existing sections

, 50-158

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

4 New Section 1. (a) The purpose of this section, and the amendments
5 to K.S.A. 50-101 and 50-112 by this act, is to clarify and reduce any
6 uncertainty or ambiguity as to the application of the Kansas restraint of
7 trade act and applicable evidentiary standards to certain types of business
8 contracts, agreements and arrangements that are not intended to
9 unreasonably restrain trade or commerce and do not contravene public
10 welfare.

11 (b) (1) Except as provided in subsection (b)(3), an arrangement,
12 contract, agreement, trust, understanding or combination shall not be
13 deemed a trust pursuant to the Kansas restraint of trade act, K.S.A. 50-101
14 through 50-162, and amendments thereto, and shall not be deemed
15 unlawful, void, prohibited or wrongful under any provision of the Kansas
16 restraint of trade act, K.S.A. 50-101 through 50-162, and amendments
17 thereto, if that arrangement, contract, agreement, trust, understanding or
18 combination is a reasonable restraint of trade or commerce. An
19 arrangement, contract, agreement, trust, understanding or
20 combination is a reasonable restraint of trade or commerce if such restraint is reasonable in
21 view of all of the facts and circumstances of the particular case and does
22 not contravene public welfare.

23 (2) Whether an arrangement, contract, agreement, trust,
24 understanding or combination is a reasonable restraint of trade or
25 commerce in view of all of the facts and circumstances, shall include, but
26 not be limited to, an analysis of the following factors:

- 27 (A) Specific information about the relevant industry;
- 28 (B) Whether the history, nature, and effect of the restraint stimulates
29 or harms interbrand competition;
- 30 (C) Whether there were legitimate business justifications; and
- 31 (D) Whether the defendant involved has market power.

32 (3) The reasonableness standard described in subsections (b)(1) and
33 (b)(2) shall not apply to any claim of horizontal price-fixing between or
34 among competitors that otherwise violates the Kansas restraint of trade act,
35 K.S.A. 50-101 through 50-162, and amendments thereto. A manufacturer
36

; also repealing K.S.A. 50-108 and 50-115

, 50-112, 50-158 and 50-161

Strike all in lines 12-36 and lines 1-3 on page 2
and insert the following:

(b) Except as otherwise provided in subsections (c) and
(d), the Kansas restraint of trade act shall be construed in
harmony with ruling judicial interpretations of comparable
federal antitrust law by the United States supreme court.

(c) The Kansas restraint of trade act shall not be
construed to prohibit:

(1) Actions or proceedings concerning intrastate
commerce;

(2) actions or proceedings by indirect purchasers
pursuant to K.S.A. 50-161, and amendments thereto;

(3) recovery of damages pursuant to K.S.A. 50-161, and
amendments thereto;

(4) any remedy or penalty provided in the Kansas
restraint of trade act, including, but not limited to, recovery
of civil penalties pursuant to K.S.A. 50-160, and
amendments thereto; and

(5) any action or proceeding brought by the attorney
general pursuant to authority provided in the Kansas
restraint of trade act, or any other power or duty of the
attorney general provided in such act.

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1 or wholesaler that also engages in retail sales shall not be considered
2 engaged in horizontal conduct with respect to sales the manufacturer or
3 wholesaler makes to third-party retailers.

4 **(d)** The Kansas restraint of trade act, K.S.A. 50-101 through 50-162,
5 and amendments thereto, shall not apply to:

be construed to
complies with

6 (1) Any association that is governed by or becomes subject to the
7 provisions and application of article 16 of chapter 17 of the Kansas
8 Statutes Annotated, and amendments thereto, the cooperative marketing
9 act;

10 (2) any association, trust, agreement or arrangement that is governed
11 by the provisions and application of 7 U.S.C. § 291 et seq., the Capper-
12 Volstead act;

13 (3) any corporation organized under the electric cooperative act,
14 K.S.A. 17-4601 et seq., and amendments thereto, or which becomes
15 subject to the electric cooperative act in any manner therein provided; or
16 any limited liability company or corporation, or wholly owned subsidiary
17 thereof, providing electric service at wholesale in the state of Kansas that
18 is owned by four or more electric cooperatives that provide retail service
19 in the state of Kansas; or any member-owned corporation formed prior to
20 2004;

(6) any association that complies with the
provisions and application of article 15 of chapter
17 of the Kansas Statutes Annotated, and
amendments thereto, the cooperative societies act;
(7) any group purchasing organization or group
purchasing cooperative engaged in coordinated
purchasing activities designed to obtain lower
prices or increase efficiencies for its members so
long as it does not possess monopoly power;

21 (4) any association that is governed by the provisions and application
22 of article 22 of chapter 17 of the Kansas Statutes Annotated, and
23 amendments thereto, the credit union act;

(8)

24 (5) any association, trust, agreement or arrangement that is governed
25 by the provisions and application of 7 U.S.C. § 181 et seq., the packers and
26 stockyards act; and

(6) any franchise agreements or covenants not to compete.

27 (6) any franchise agreements or covenants not to compete.
28 (4) If any provision of this section or the application thereof to any
29 person or circumstance is held invalid, the invalidity does not affect other
30 provisions or applications of this section which can be given effect without
31 the invalid provision or application, and to this end the provisions of this
32 section are severable.

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

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

40 *First. To create or carry out restrictions in trade or commerce, or ~~acts to~~*
41 *commerce; or to carry out restrictions in the full and free pursuit of any*
42 *business authorized or permitted by the laws of this state.*

43 *Second. To increase or reduce the price of merchandise, produce or*

(f)

1 commodities, or to control the cost or rates of insurance.

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

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

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

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

16 (c) in any manner establish or settle the price of any article or
17 commodity or transportation between them or themselves and others to
18 preclude a free and unrestricted competition among themselves or others
19 in transportation, sale or manufacture of any such article or commodity; or
20 (d) agree to pool, combine or unite any interest they may have in
21 connection with the manufacture, sale or transportation of any such article
22 or commodity, that such person's price in any manner is affected. Any such
23 combinations are hereby declared to be against public policy, unlawful and
24 void.

25 Sec. 3. K.S.A. 50-112 is hereby amended to read as follows: 50-112.

26 *Except as provided in section 1, and amendments thereto,* all
27 arrangements, contracts, agreements, trusts, or combinations between
28 persons made with a view or which tend to prevent full and free
29 competition in the importation, transportation or sale of articles imported
30 into this state, or in the product, manufacture or sale of articles of domestic
31 growth or product of domestic raw material, or for the loan or use of
32 money, or to fix attorney or doctor fees, and all arrangements, contracts,
33 agreements, trusts or combinations between persons, designed or which
34 tend to advance, reduce or control the price or the cost to the producer or
35 to the consumer of any such products or articles, or to control the cost or
36 rate of insurance, or which tend to advance or control the rate of interest
37 for the loan or use of moneys to the borrower, or any other services, are
38 hereby declared to be against public policy, unlawful and void. ←

39 Sec. 4. K.S.A. 50-161 is hereby amended to read as follows: 50-161.

40 (a) As used in this section, the term "person" means any individual,
41 corporation, partnership, firm, company or other association of persons,
42 and such term shall include the state of Kansas and any of its political
43 subdivisions.

Sec. 4. K.S.A. 50-158 is hereby amended to read as follows: 50-158. The provisions of article 1 of chapter 50 of the Kansas Statutes Annotated, and amendments thereto, and the provisions of K.S.A. 50-158 through 50-160 K.S.A. 50-101 through 50-162 and section 1, and amendments thereto, may be cited as the Kansas restraint of trade act. Redesignate sections accordingly.

1 (b) Except as provided in K.S.A. 12-205, and amendments thereto,
 2 any person who may be damaged or injured by any agreement, monopoly,
 3 trust, conspiracy or combination which is declared unlawful by any of the
 4 acts contained in chapter 50 of the Kansas Statutes Annotated, and
 5 amendments thereto, relating to unlawful acts, agreements, monopolies,
 6 trusts, conspiracies or combinations in restraint of trade, shall have a cause
 7 of action against any person causing such damage or injury. Such action
 8 may be brought by any person who is injured in such person's business or
 9 property by reason of anything forbidden or declared unlawful by this act,
 10 regardless of whether such injured person dealt directly or indirectly with
 11 the defendant. The plaintiff in any action commenced hereunder in the
 12 district court of the county wherein such plaintiff resides, or the district
 13 court of the county of the defendant's principal place of business, may sue
 14 for and recover treble the actual damages sustained ~~or such damages as~~
 15 ~~provided for in K.S.A. 50-115, and amendments thereto, but not both.~~ In Strike

16 addition, any person who is threatened with injury or additional injury by
 17 reason of any person's violation of such acts may commence an action in
 18 such district court to enjoin any such violation, and any damages suffered
 19 may be sued for and recovered in the same action in addition to injunctive
 20 relief. Any suit for injunctive relief against a municipality shall be subject
 21 to the provisions of K.S.A. 12-205, and amendments thereto.

22 (c) In any action commenced under this section, the plaintiff may be
 23 allowed reasonable attorney fees and costs. The remedies provided herein
 24 shall be alternative and in addition to any other remedies now provided by
 25 law.

26 Sec. 5. K.S.A. 50-101, 50-112 and 50-161 are hereby repealed.

27 Sec. 6. This act shall take effect and be in force from and after its
 28 publication in the Kansas register:

, 50-108, 50-115, 50-158

statute book

2012 Kansas Statutes

50-108. Recovery of damages and attorney fee by person injured; exception. Except as provided in K.S.A. 12-205, and amendments thereto, any person that may be damaged by any such agreement, trusts or combinations described in K.S.A. 50-101 and 50-102, and amendments thereto, may sue for and recover in any court of competent jurisdiction in this state, of any person operating such trust or combination, such damages sustained, together with reasonable attorney fees.

History: L. 1897, ch. 265, § 8; R.S. 1923, 50-108; L. 1985, ch. 181, § 2; L. 2000, ch. 136, § 7; July 1.

2012 Kansas Statutes

50-115. Recovery of damages by person injured by combination; exception. Except as provided in K.S.A. 12-205, and amendments thereto, any person injured or damaged by any such arrangement, contract, agreement, trust or combination, described in K.S.A. 50-112 and 50-113, and amendments thereto, may sue for and recover in any court of competent jurisdiction in this state, of any person, the full consideration or sum paid by such person for any goods, wares, merchandise and articles included in or advanced or controlled in price by such combination, or the full amount of money borrowed.

History: L. 1889, ch. 257, § 4; R.S. 1923, 50-115; L. 1985, ch. 181, § 3; L. 2000, ch. 136, § 12; July 1.