

SENATE BILL No. 124

AN ACT concerning the Kansas restraint of trade act; amending K.S.A. 50-101, 50-112, 50-158 and 50-161 and repealing the existing sections; also repealing K.S.A. 50-108 and 50-115.

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

New Section 1. (a) The purpose of this section, and the amendments to K.S.A. 50-101, 50-112, 50-158 and 50-161 by this act, is to clarify and reduce any uncertainty or ambiguity as to the application of the Kansas restraint of trade act and applicable evidentiary standards to certain types of business contracts, agreements and arrangements that are not intended to unreasonably restrain trade or commerce and do not contravene public welfare.

(b) Except as otherwise provided in subsections (d) and (e), the Kansas restraint of trade act shall be construed in harmony with ruling judicial interpretations of federal antitrust law by the United States supreme court. If such judicial interpretations are in conflict with or inconsistent with the express provisions of subsection (c), the provisions of subsection (c) shall control.

(c) An arrangement, contract, agreement, trust, understanding or combination shall not be deemed a trust pursuant to the Kansas restraint of trade act and shall not be deemed unlawful, void, prohibited or wrongful under any provision of the Kansas restraint of trade act 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.

(d) 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.

(e) The Kansas restraint of trade act shall not be construed to apply to:

- (1) Any association that complies with the provisions and application of article 16 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, the cooperative marketing act;
- (2) any association, trust, agreement or arrangement that is governed by the provisions and application of 7 U.S.C. § 291 et seq., the Capper-Volstead act;
- (3) any corporation organized under the electric cooperative act, K.S.A. 17-4601 et seq., and amendments thereto, or which becomes subject to the electric cooperative act in any manner therein provided; or any limited liability company or corporation, or wholly owned subsidiary thereof, providing electric service at wholesale in the state of Kansas that is owned by four or more electric cooperatives that provide retail service in the state of Kansas; or any member-owned corporation formed prior to 2004;
- (4) any association that is governed by the provisions and application of article 22 of chapter 17 of the Kansas Statutes Annotated, and amendments thereto, the credit union act;
- (5) any association, trust, agreement or arrangement that is governed by the provisions and application of 7 U.S.C. § 181 et seq., the packers and stockyards act; and
- (6) any franchise agreements or covenants not to compete.

(f) 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.

(g) This section shall be a part of and supplemental to the Kansas restraint of trade act.

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. 50-158 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.

Sec. 5. K.S.A. 50-161 is hereby amended to read as follows: 50-161. (a) As used in this section, the term "person" means any individual, corporation, partnership, firm, company or other association of persons, and such term shall include the state of Kansas and any of its political subdivisions.

(b) Except as provided in K.S.A. 12-205, and amendments thereto, any person who may be damaged or injured by any agreement, monopoly, trust, conspiracy or combination which is declared unlawful by ~~any of the acts contained in chapter 50 of the Kansas Statutes Annotated, and amendments thereto, relating to unlawful acts, agreements, monopolies, trusts, conspiracies or combinations in restraint of trade; the Kansas restraint of trade act~~ shall have a cause of action against any person causing such damage or injury. Such action may be brought by any person who is injured in such person's business or property by reason of anything

forbidden or declared unlawful by ~~this~~ *the Kansas restraint of trade* act, regardless of whether such injured person dealt directly or indirectly with the defendant. The plaintiff in any action commenced hereunder in the district court of the county wherein such plaintiff resides, or the district court of the county of the defendant's principal place of business, may sue for and recover treble the *actual* damages sustained. In addition, any person who is threatened with injury or additional injury by reason of any person's violation of ~~such acts~~ *the Kansas restraint of trade* act may commence an action in such district court to enjoin any such violation, and any damages suffered may be sued for and recovered in the same action in addition to injunctive relief. Any suit for injunctive relief against a municipality shall be subject to the provisions of K.S.A. 12-205, and amendments thereto.

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

New Sec. 6. Section 1 and the amendments to K.S.A. 50-101 and 50-112 by this act shall be applied retroactively to any choses in action or defenses premised on any provision of the Kansas restraint of trade act amended or repealed by this act, and any such choses in action or defenses that have accrued as of the effective date of this act shall be abated, but causes of action that were pending in any court before the effective date of this act, shall not be abated. All other non-remedial provisions of this section shall be applied prospectively.

Sec. 7. K.S.A. 50-101, 50-112, 50-108, 50-115, 50-158 and 50-161 are hereby repealed.

Sec. 8. This act shall take effect and be in force from and after its publication in the Kansas register.

I hereby certify that the above BILL originated in the SENATE, and passed that body

SENATE adopted
Conference Committee Report _____

President of the Senate.

Secretary of the Senate.

Passed the HOUSE
as amended _____

HOUSE adopted
Conference Committee Report _____

Speaker of the House.

Chief Clerk of the House.

APPROVED _____

Governor.