

House Substitute for SENATE BILL No. 291

By Committee on Judiciary

5-16

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

3
4 WHEREAS, The purpose of this act is to correct the interpretation of
5 the Kansas restraint of trade act, K.S.A. 50-101 through 50-162, and
6 amendments thereto, made in O'Brien v. Leegin Creative Leather
7 Products, Inc., No. 101,000, 2012 WL 1563976 (Kan. Sup. Ct., May 4,
8 2012), which is contrary to the intent of the Kansas Legislature in enacting
9 the Kansas restraint of trade act, K.S.A. 50-101 through 50-162, and
10 amendments thereto; and

11 **{WHEREAS, Prior to May 4, 2012, the Supreme Court of Kansas**
12 **had accurately interpreted the Kansas restraint of trade act, K.S.A.**
13 **50-101 through 50-162, and amendments thereto, and such**
14 **interpretations have been consistent with the intent of the Kansas**
15 **Legislature in enacting the Kansas restraint of trade act, K.S.A. 50-**
16 **101 through 50-162, and amendments thereto, and such**
17 **interpretations made prior to May 4, 2012, shall continue to be**
18 **considered viable precedent in the state of Kansas; and}**

19 WHEREAS, The Kansas Legislature intended for the doctrine of the
20 rule of reason to be applied in cases involving an arrangement, contract,
21 agreement, trust, understanding or combination under the Kansas restraint
22 of trade act, K.S.A. 50-101 through 50-162, and amendments thereto, **as**
23 **heretofore articulated by the Supreme Court of Kansas prior to May**
24 **4, 2012};**

25 Now, therefore,

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

27 New Section 1. (a) An arrangement, contract, agreement, trust,
28 understanding or combination shall not be deemed a trust pursuant to the
29 Kansas restraint of trade act, K.S.A. 50-101 through 50-162, and
30 amendments thereto, and shall not be deemed unlawful, void, prohibited or
31 wrongful under any provision of the Kansas restraint of trade act, K.S.A.
32 50-101 through 50-162, and amendments thereto, if that arrangement,
33 contract, agreement, trust, understanding or combination is a reasonable
34 restraint of trade or commerce. An arrangement, contract, agreement, trust,
35 understanding or combination is a reasonable restraint of trade or
36 commerce if such restraint is reasonable in view of all of the facts and

1 circumstances of the particular case and does not contravene public
2 welfare.

3 (b) If any provision of this section or the application thereof to any
4 person or circumstance is held invalid, the invalidity does not affect other
5 provisions or applications of this section which can be given effect without
6 the invalid provision or application, and to this end the provisions of this
7 section are severable.

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

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

12 Sec. 2. K.S.A. 50-101 is hereby amended to read as follows:
13 50-101. *Except as provided in section 1, and amendments thereto*, a trust
14 is a combination of capital, skill, or acts, by two or more persons, for
15 either, any or all of the following purposes:

16 First. To create or carry out restrictions in trade or commerce, or aids to
17 commerce, or to carry out restrictions in the full and free pursuit of any
18 business authorized or permitted by the laws of this state.

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

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

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

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

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

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

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

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

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

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