

**Testimony on Restraint of Trade Legislation
to
The Committee on Judiciary
By Kim Christiansen
Kansas Department of Agriculture
February 20, 2013**

Support

HB 2224 - AN ACT concerning the Kansas restraint of trade act; amending K.S.A. 50-101 and 50-112 and repealing the existing sections. of Trade Act

Neutral

HB 2225 - AN ACT repealing the Kansas restraint of trade act;

And

HB 2275 - AN ACT concerning the Kansas restraint of trade act; amending K.S.A. 50-101 and 50-112 and repealing the existing sections

Good afternoon, Chairman Kinzer and members of the committee. I am Kim Christiansen, assistant secretary of the Kansas Department of Agriculture. The Kansas Department of Agriculture's primary function is to support the entire agricultural sector. We achieve this mission by fulfilling our statutory obligations while always helping Kansas agriculture grow.

Kansas farmers and ranchers should be able to sell their products wherever, whenever and to whomever they choose. Farmers and ranchers have greatly benefited from the ability to enter into alternative marketing agreements to earn a premium for the value they add to their products. As a state, we need to ensure our statutes do not hinder that core function of a free market and open system.

Several bills have been introduced in the Kansas legislature to address restraint of trade issues in order to help ensure that Kansas businesses will not be driven out of the state for fear of costly litigation over necessary contracts that improve the efficiency of commerce. These pieces of legislation are a necessary response to the decision handed down by the Kansas Supreme Court in *O'Brien v. Leegin Creative Leather Products, Inc.*, No 101,000 (Kansas Sup. Ct. May 4, 2012.)

While this testimony focuses on the impact on Kansas agriculture, the *O'Brien* decision creates issues that all industries face without legislation to address the uncertainty in contract problems. We support, overwhelmingly, legislative efforts to correct the void created by the *O'Brien* decision.

An understanding of how the agricultural marketplace works, especially when it comes to marketing agreements, is helpful in demonstrating why the court's *O'Brien* decision is especially concerning to the Kansas agricultural community. Marketing agreements are simply two or more parties coming together and agreeing to produce and market a specific product. These tools are popular in agriculture production, and are in fact necessary in many cases.

Marketing agreements are used in many segments of agriculture to improve demand for farm and ranch products, provide risk management opportunities and reduce transaction costs. They are the preferred method of coordination of production and marketing in many segments of agriculture, providing higher value and value-added products can be sold to the consumers that value and demand these products. Some of the segments of our industry that this decision could potentially affect include milk, cheese, yogurt, cattle, hogs, poultry, commodities, raw food ingredients and ingredient processing.

Alternative marketing agreements in agriculture have provided improved efficiency to farmers and ranchers as well as the businesses and companies that further process these products. Over the years, farmers and ranchers have listened to demand from consumers and have worked to grow products to meet that demand. Alternative marketing agreements allow them to earn a premium for the value added to a "commodity product." Under these marketing arrangements, farmers and ranchers as well as consumers benefit.

O'Brien's departure from Kansas' long accepted "reasonableness standard" must be addressed to protect many facets of Kansas' economy- but we emphasize that a "fix" is critical to continue efforts to grow Kansas' agricultural sector. A clearly articulated standard would assist Kansas agriculture.

While not specifically directed at how Kansas agriculture does business, the law of unintended consequences makes the *O'Brien* decision of great concern for agriculture. Many have concerns about the impact the *O'Brien* holding may have on future cases analyzing common agricultural contracts.

KDA fully supports HB 2224, which provides sensible solutions for agriculture, including an articulated reasonableness standard. This bill also includes a narrower term, horizontal price fixing, which should better serve Kansas' interests. In addition, the bill classifies exemptions by outlining that activity is "governed by" a law and that the defendant is not required to be in compliance with any particular law at the time of the activity. This slight variation recognizes that activities that are not in compliance with a law can be the subject to separate enforcement and would streamline cases in judicial consideration. Finally, HB 2224 also addresses the treble damages provisions, allowing full consideration or treble damages but not both. We believe the damage component is an important issue to address.

We are neutral on other restraint of trade bills pending before the Kansas legislature, including HB 2225 and HB 2275, as each bill has specific issues that do not address issues that we believe are crucial to Kansas agriculture. While we urge passage of HB 2224 to specifically address concerns related to agriculture, we believe the other bills will also help create a more favorable trade environment in Kansas, which is necessary to grow the state's economy.

KDA works each day to capitalize on our strengths and overcome our challenges in order to achieve overall growth and ensure agriculture remains the largest economic driver in the state. We want to retain and serve current farms, ranches, and agribusinesses in Kansas. We also want to help these businesses grow if that is their goal. In addition, as demand for protein continues increasing worldwide, we want to solidify Kansas as a global leader in the beef cattle sector and to grow our presence in pork, dairy and poultry.

As agricultural entities look to grow and relocate their businesses, we need them to know that Kansas is open for business. The *O'Brien* decision sends the wrong message to the agriculture businesses we are recruiting. We should not take the risk of creating doubt about whether or not Kansas is business-friendly. HB 2224 is the type of message that we need to send. I encourage the committee to stand with us in this effort to grow Kansas agriculture and pass this legislation.

Thank you for the opportunity to speak with you today. I will stand for questions at the appropriate time.