

Kansas Restraint of Trade Act—Harmonization; Reasonable Restraints; Exceptions; Damages; SB 124

SB 124 creates or amends sections of the Kansas Restraint of Trade Act (KRTA).

The bill creates a new section declaring the purpose of the new section and the amendments to existing sections is to clarify and reduce uncertainty or ambiguity in the application of the KRTA and applicable evidentiary standards to certain business contracts, agreements, and arrangements that are not intended to unreasonably restrain trade or commerce and do not contravene public welfare.

The new section directs that the KRTA be construed in harmony with ruling judicial interpretations of comparable federal antitrust law by the U.S. Supreme Court, with certain exceptions. These exceptions include:

- Actions or proceedings concerning intrastate commerce;
- Causes of action brought by indirect purchasers under the KRTA;
- Recovery of damages for violations under the KRTA;
- Remedies or penalties provided in the KRTA; and
- Actions or proceedings brought by the Attorney General under the KRTA, or other powers or duties of the Attorney General under the Act.

The new section specifies that the KRTA shall not be construed to apply to the following:

- Associations that comply with the Kansas Cooperative Marketing Act;
- Associations, trusts, agreements, or arrangements governed by the federal Capper-Volstead Act;
- Corporations organized under the Kansas Electric Cooperative Act, or Kansas wholesale electric service companies owned by four or more electric cooperatives, or any member-owned corporation formed before 2004;
- Associations governed by the Kansas Credit Union Act;
- Associations, trusts, agreements, or arrangements governed by the federal Packers and Stockyards Act; and
- Franchise agreements or covenants not to compete.

Further, the new section declares that an arrangement, contract, agreement, trust, understanding, or combination cannot be deemed a trust pursuant to the KRTA and cannot be deemed unlawful, void, prohibited, or wrongful under the KRTA if such arrangement, contract, agreement, trust, understanding, or combination is a reasonable restraint of trade or commerce. The reasonableness analysis depends on a view of all of the facts and circumstances of a particular case. A restraint contravening public welfare is not considered reasonable. To the extent U.S. Supreme Court judicial interpretations are in conflict with or inconsistent with this reasonableness provision, the reasonableness provision controls.

The new section contains a severability clause.

The KRTA section defining trusts is amended to recognize the applicability of the new section and to remove references to “aids in commerce.”

Additional KRTA sections are amended to recognize the applicability of the new section and make references consistent.

KRTA damages sections are amended or repealed to eliminate the ability to recover full consideration damages and clarify that a plaintiff may recover treble the *actual* damages sustained.

The bill contains a retroactivity clause applying the new law and amendments made by the bill to any choses in action or defenses based on any KRTA provision repealed by the bill. Any such choses in action or defenses accruing by the effective date of the Act (publication in the *Kansas Register*) shall be abated, but any cause of action pending in any court before the effective date shall not be abated. All other non-remedial provisions will be applied prospectively.

The bill will be in effect upon publication in the *Kansas Register*.