

SENATE BILL No. 241

By Committee on Judiciary

2-6

1 AN ACT concerning restraint of trade; relating to restrictive covenants;
2 providing that certain restrictive covenants are not considered a
3 restraint of trade and shall be enforceable; amending K.S.A. 2024
4 Supp. 50-163 and repealing the existing section.
5

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

7 Section 1. K.S.A. 2024 Supp. 50-163 is hereby amended to read as
8 follows: 50-163. (a) The purpose of this section, and the amendments to
9 K.S.A. 50-101, 50-112, 50-158 and 50-161 by ~~this act~~ *chapter 102 of the*
10 *2013 Session Laws of Kansas*, is to clarify and reduce any uncertainty or
11 ambiguity as to the application of the Kansas restraint of trade act and
12 applicable evidentiary standards to certain types of business contracts,
13 agreements and arrangements that are not intended to unreasonably
14 restrain trade or commerce and do not contravene public welfare.

15 (b) Except as otherwise provided in subsections (d) and (e), the
16 Kansas restraint of trade act shall be construed in harmony with ruling
17 judicial interpretations of federal antitrust law by the United States
18 supreme court. If such judicial interpretations are in conflict with or
19 inconsistent with the express provisions of subsection (c), the provisions of
20 subsection (c) shall control. *If a covenant is determined to be overbroad or*
21 *otherwise not reasonably necessary to protect a business interest of the*
22 *business entity seeking enforcement of the covenant, the court shall modify*
23 *the covenant, enforce the covenant as modified and grant only the relief*
24 *reasonably necessary to protect such interests.*

25 (c) (1) An arrangement, contract, agreement, trust, understanding or
26 combination shall not be deemed a trust pursuant to the Kansas restraint of
27 trade act and shall not be deemed unlawful, void, prohibited or wrongful
28 under any provision of the Kansas restraint of trade act if that arrangement,
29 contract, agreement, trust, understanding or combination is a reasonable
30 restraint of trade or commerce. An arrangement, contract, agreement, trust,
31 understanding or combination is a reasonable restraint of trade or
32 commerce if such restraint is reasonable in view of all of the facts and
33 circumstances of the particular case and does not contravene public
34 welfare.

35 (2) *A covenant in writing in which an owner agrees to not solicit,*
36 *recruit, induce, persuade, encourage, direct or otherwise interfere with,*

1 *directly or indirectly, one or more employees or owners of a business*
2 *entity shall be conclusively presumed to be enforceable and not a restraint*
3 *of trade if the covenant is between a business entity and an owner of the*
4 *business entity and the covenant does not continue for more than four*
5 *years following the end of the owner's business relationship with the*
6 *business entity.*

7 (3) *A covenant in writing in which an owner agrees to not solicit,*
8 *induce, persuade, encourage, service, direct or otherwise interfere with,*
9 *directly or indirectly, a business entity's customers, including any*
10 *reduction, termination, acceptance or transfer of any customer's business,*
11 *in whole or in part, for the purpose of providing any product or service*
12 *that is competitive with those provided by the business entity shall be*
13 *conclusively presumed to be enforceable and not a restraint of trade if the*
14 *covenant is limited to material contact customers and the covenant does*
15 *not continue for more than four years following the end of the owner's*
16 *business relationship with the business entity.*

17 (4) *A covenant in writing in which an employee agrees to not solicit,*
18 *recruit, induce, persuade, encourage, direct or otherwise interfere with,*
19 *directly or indirectly, one or more employees or owners of a business*
20 *entity shall be conclusively presumed to be enforceable and not a restraint*
21 *of trade if the covenant is between an employer and one or more*
22 *employees and the covenant:*

23 (A) *Seeks, on the part of the employer, to protect confidential or trade*
24 *secret business information or customer or supplier relationships,*
25 *goodwill or loyalty; or*

26 (B) *does not continue for more than two years following the*
27 *employee's employment.*

28 (5) *A covenant in writing in which an employee agrees not to solicit,*
29 *recruit, induce, persuade, encourage, direct or otherwise interfere with,*
30 *directly or indirectly, a business entity's customers, including any*
31 *reduction, termination, acceptance or transfer of any customer's business,*
32 *in whole or in part, for the purpose of providing any product or service*
33 *that is competitive with those provided by the employer shall be*
34 *conclusively presumed to be enforceable and not a restraint of trade if the*
35 *covenant is limited to material contact customers and the covenant is*
36 *between an employer and an employee and does not continue for more*
37 *than two years following the end of the employee's employment with the*
38 *employer.*

39 (6) *A provision in writing in which an owner agrees to provide prior*
40 *notice of the owner's intent to terminate, sell or otherwise dispose of such*
41 *owner's ownership interest in the business entity shall be conclusively*
42 *presumed to be enforceable and not a restraint of trade.*

43 (d) *The Kansas restraint of trade act shall not be construed to*

1 prohibit:

2 (1) Actions or proceedings concerning intrastate commerce;

3 (2) actions or proceedings by indirect purchasers pursuant to K.S.A.
4 50-161, and amendments thereto;

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

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

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

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

15 (1) Any association that complies with the provisions and application
16 of article 16 of chapter 17 of the Kansas Statutes Annotated, and
17 amendments thereto, the cooperative marketing act;

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

21 (3) any corporation organized under the electric cooperative act,
22 K.S.A. 17-4601 et seq., and amendments thereto, or which becomes
23 subject to the electric cooperative act in any manner therein provided; or
24 any limited liability company or corporation, or wholly owned subsidiary
25 thereof, providing electric service at wholesale in the state of Kansas that
26 is owned by four or more electric cooperatives that provide retail service
27 in the state of Kansas; or any member-owned corporation formed prior to
28 2004;

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

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

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

36 (f) If any provision of this section or the application thereof to any
37 person or circumstance is held invalid, the invalidity does not affect other
38 provisions or applications of this section which can be given effect without
39 the invalid provision or application, and to this end the provisions of this
40 section are severable.

41 (g) *As used in this section:*

42 (1) *"Material contact customer" means any customer or prospective*
43 *customer that is solicited, produced or serviced, directly or indirectly, by*

1 *the employee or owner at issue or any customer or prospective customer*
2 *about whom the employee or owner, directly or indirectly, had confidential*
3 *business or proprietary information or trade secrets in the course of the*
4 *employee's or owner's relationship with the customer.*

5 (2) *"Owner" means a current or former owner or seller of all or any*
6 *part of the assets of a business entity or any interest in a business entity,*
7 *including, but not limited to, a partnership interest, a membership interest*
8 *in a limited liability company or a series limited liability company or any*
9 *other equity interest or ownership interest.*

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

12 Sec. 2. K.S.A. 2024 Supp. 50-163 is hereby repealed.

13 Sec. 3. This act shall take effect and be in force from and after its
14 publication in the statute book.