

*{As Amended by Senate Committee of the Whole}*

*As Amended by Senate Committee*

*Session of 2013*

**SENATE BILL No. 124**

By Committee on Judiciary

2-5

1 AN ACT concerning the Kansas restraint of trade act, amending K.S.A.  
2 50-101, 50-112, ~~50-158~~ and 50-161 and repealing the existing sections;  
3 ~~also repealing K.S.A. 50-108 and 50-115.~~

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

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

12 ~~(b) (1) Except as provided in subsection (b)(2), an arrangement,  
13 contract, agreement, trust, understanding or combination shall not be  
14 deemed a trust pursuant to the Kansas restraint of trade act, K.S.A. 50-101  
15 through 50-162, and amendments thereto, and shall not be deemed  
16 unlawful, void, prohibited or wrongful under any provision of the Kansas  
17 restraint of trade act, K.S.A. 50-101 through 50-162, and amendments  
18 thereto, if that arrangement, contract, agreement, trust, understanding or  
19 combination is a reasonable restraint of trade or commerce. An  
20 arrangement, contract, agreement, trust, understanding or  
21 combination is a reasonable restraint of trade or commerce if such restraint is a  
22 reasonable restraint of trade or commerce if such restraint is reasonable in  
23 view of all of the facts and circumstances of the particular case and does  
24 not contravene public welfare.~~

25 ~~(2) Whether an arrangement, contract, agreement, trust,  
26 understanding or combination is a reasonable restraint of trade or  
27 commerce in view of all of the facts and circumstances, shall include, but  
28 not be limited to, an analysis of the following factors:~~

29 ~~(A) Specific information about the relevant industry;~~

30 ~~(B) whether the history, nature, and effect of the restraint stimulates  
31 or harms interbrand competition;~~

32 ~~(C) whether there were legitimate business justifications; and~~

33 ~~(D) whether the defendant involved has market power.~~

34 ~~(3) The reasonableness standard described in subsections (b)(1) and~~

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HOUSE JUDICIARY

DATE:

1 commodity or transportation between them or themselves and others to  
 2 preclude a free and unrestricted competition among themselves or others  
 3 in transportation, sale or manufacture of any such article or commodity; or  
 4 (d) agree to pool, combine or unite any interest they may have in  
 5 connection with the manufacture, sale or transportation of any such article  
 6 or commodity, that such person's price in any manner is affected. Any such  
 7 combinations are hereby declared to be against public policy, unlawful and  
 8 void.

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

23 *Sec. 4. K.S.A. 50-158 is hereby amended to read as follows: 50-158.*  
 24 *The provisions of article 1 of chapter 50 of the Kansas Statutes Annotated,*  
 25 *and amendments thereto, and the provisions of K.S.A. 50-158 through 50-*  
 26 *160 K.S.A. 50-101 through 50-162 and section 1, and amendments*  
 27 *thereto, may be cited as the Kansas restraint of trade act.*

28 *Sec. 4. 5. K.S.A. 50-161 is hereby amended to read as follows: 50-*  
 29 *161. (a) As used in this section, the term "person" means any individual,*  
 30 *corporation, partnership, firm, company or other association of persons,*  
 31 *and such term shall include the state of Kansas and any of its political*  
 32 *subdivisions.*

33 (b) Except as provided in K.S.A. 12-205, and amendments thereto,  
 34 any person who may be damaged or injured by any agreement, monopoly,  
 35 trust, conspiracy or combination which is declared unlawful by any of the  
 36 acts contained in chapter 50 of the Kansas Statutes Annotated, and  
 37 amendments thereto, relating to unlawful acts, agreements, monopolies,  
 38 trusts, conspiracies or combinations in restraint of trade, shall have a cause  
 39 of action against any person causing such damage or injury. Such action  
 40 may be brought by any person who is injured in such person's business or  
 41 property by reason of anything forbidden or declared unlawful by this act,  
 42 regardless of whether such injured person dealt directly or indirectly with  
 43 the defendant. The plaintiff in any action commenced hereunder in the

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the Kansas restraint of trade act

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either, but not both: (A)

; or (B) upon a showing of willful or wanton conduct by the defendant, the full consideration or sum paid by such person for any goods, wares, merchandise and articles included in or advanced or controlled in price by such defendant, or the full amount of money borrowed

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the Kansas restraint of trade act

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 ~~or such damages as provided for in K.S.A. 50-115, and amendments thereto, but not both.~~ In addition, any person who is threatened with injury or additional injury by reason of any person's violation of such acts 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.

Sec.-5- 6. K.S.A. 50-101, 50-112, 50-108, 50-115, 50-158 and 50-161 are hereby repealed.

Sec.-6- 7. This act shall take effect and be in force from and after its publication in the Kansas register statute book.

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