SENATE BILL No. 241

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

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

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

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

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

(2) A covenant in writing in which an owner agrees to not solicit, recruit, induce, persuade, encourage, direct or otherwise interfere with, directly or indirectly, one or more employees or owners of a business entity for the purpose of interfering with the employment or ownership relationship of such employees or owners shall be conclusively presumed to be enforceable and not a restraint of trade if the covenant is between a business entity and an owner of the business entity and the covenant does not continue for more than four years following the end of the owner's business relationship with the business entity.

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

(4) A covenant in writing in which an employee of a business entity agrees to not solicit, recruit, induce, persuade, encourage, direct or otherwise interfere with, directly or indirectly, one or more employees or owners of a business entity for the purpose of interfering with the employment or ownership relationship of such employees or

owners shall be conclusively presumed to be enforceable and not a restraint of trade if the covenant is between an employer and one or more employees and the covenant:

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

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

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

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

(7) Notwithstanding the presumption of enforceability provided in subsections (c)(2) through (c)(5), an employee or owner shall be permitted to assert any applicable defense available at law or in equity for the court's consideration in a dispute regarding a written covenant.

(d) The Kansas restraint of trade act shall not be construed to prohibit:

(1) Actions or proceedings concerning intrastate commerce;

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

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

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

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

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

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

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

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

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

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

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

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

(g) *As used in this section:*

(1) "Employee" means a current or former employee that agreed to a covenant in writing described in subsection (c)(4) or (c)(5).

(2) "Material contact customer" means any customer or prospective customer that is solicited, produced or serviced, directly or indirectly, by the employee or owner at issue or any customer or prospective customer about whom the employee or owner, directly or indirectly, had confidential business or proprietary information or trade secrets in the course of the employee's or owner's relationship with the customer.

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

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

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

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

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SENATE concurred in
HOUSE amendments _____

_____
President of the Senate.

_____
Secretary of the Senate.

Passed the HOUSE
as amended _____

_____
Speaker of the House.

_____
Chief Clerk of the House.

APPROVED _____

_____
Governor.