



House Committee on Judiciary

Testimony in Support of Senate Bill 241- Restrictive Covenants

Presented by Eric Stafford, VP of Government Affairs, Kansas Chamber

Thursday, February 27, 2025

Madam Chair and members of the committee, my name is Eric Stafford, Vice President of Government Affairs for the Kansas Chamber. The Kansas Chamber represents small, medium and large businesses of all industry segments across the state. We appreciate the opportunity to testify today in support of Senate Bill 241.

Before we get into the contents of the bill, I'd like to start by mentioning the attached balloon at the end of our testimony. These proposed language changes take into consideration input we received from some businesses in support of our proposal, as well as input received from representatives from the Kansas Trial Lawyers Association to improve provisions in the bill by providing additional clarity in the language.

SB 241 establishes clear guidelines and limitations on what constitutes reasonable, and legal non-solicitation covenants for employees as well as owners that sell a business. It is important to note, SB 241 does not address or provide any guidance relative to non-compete covenants. Non-compete covenants prohibit someone from working within an industry or geography. For this reason, non-compete covenants are oftentimes viewed as overly broad restrictions on trade. Indeed, non-compete clauses are the most restrictive form of a restrictive covenant and are illegal in certain states and subject to federal scrutiny.

By comparison, SB 241 focuses on non-solicitation covenants which are widely recognized as imperative to businesses of all sizes. Non-solicitation clauses are the least restrictive form of restrictive covenants. Non-solicitation provisions do not prohibit anyone from working in any field that they desire; they merely prevent that individual from soliciting employees and certain customers they worked with while they were employed by a business, or that they worked with as an owner of a business. Because non-solicitation provisions are the least restrictive form of restrictive covenants, and because they protect the legitimate business interests of a company, courts in pro-business states recognize the importance of these provisions and enforce them so long as they are reasonable in scope and duration.

Kansas, unlike California, Colorado and a few other states that are not viewed as pro-business states, recognizes the validity and enforces reasonable non-solicitation provisions. While Kansas has good case law on restrictive covenants, it's still not as extensive as other states like Missouri. SB 241 proposes a structure to provide guidance and judicial efficiency relative to the determination of what constitutes reasonable non-solicitation provisions. To this end, SB 241

provides a presumption of enforceability so long as the scope and duration of the non-solicitation clause is reasonable.

In the context of the employer/employee relationship, the restrictions are limited to (i) a duration of two years, and (ii) material contact customers, meaning only customers of the business with whom the individual had a relationship. Within the ownership context, the duration of the restrictions are limited to (i) four years, and (ii) material contact customers. The reason that SB 241 proposes a longer non-solicitation period for owners is because additional judicial deference is permitted between owners of a business where one owner sells their interest subject to a negotiated transaction.

Again SB 241 does not speak to non-competes, this law would not prevent or prohibit a Kansas employee or business owner from taking a new job or starting a new company. Instead, SB 241 simply prevents someone from quitting a job or selling an ownership interest and then violating their agreement with their former company by bringing employees or customers with them to their new company during the restricted period.

The guidelines found in SB 241 are based on good business principles that address fairness for the owner, seller and employees, and these reasonable principles are found in almost every pro-business state. If passed in Kansas, SB 241 will be viewed favorably by businesses because it protects work force stability and client relationships. It will also protect Kansas employees and owners from overly broad restrictive covenants.

Thank you for the opportunity to speak today in support of Senate Bill 241. We would respectfully ask for the committee's support and I'd be happy to answer questions at the appropriate time.

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 conclusively 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 set forth in K.S.A. 50-163(c)(4) and K.S.A. 50-163(c)(5), an employee 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) "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.

(2) "Owner" means an individual that is the 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.