



## **Senate Committee on Judiciary**

### **Testimony in Support of Senate Bill 241- Restrictive Covenants**

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

**Tuesday, February 11, 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.

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.