

MEMORANDUM

To: Senate Committee on Judiciary

From: Office of Revisor of Statutes

Date: February 14, 2025

Subject: Bill Brief on SB 241

Senate Bill 241 provides that restrictive covenants in certain contracts are enforceable and not considered a restraint of trade in certain circumstances.

The bill amends K.S.A. 50-163, the statute with provisions on construing and applying the Kansas restraint of trade act. Current law in subsection (b) provides that provides for how the act is to be interpreted. A provision is added that if a covenant 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.

Subsection (c) is amended to add five types of covenants that are deemed not restraints of trade.

1. A covenant in writing in which an owner agrees to not solicit, recruit, induce or otherwise interfere with one or more employees or owners of a business entity if the covenant is between a business entity and an owner of the business entity if the covenant does not continue for more than four years following the end of the owner's business relationship with the business entity.
2. A covenant in writing in which an owner agrees to not solicit, induce, persuade or otherwise interfere with a business entity's customers, including any reduction, termination, acceptance or transfer of any customer's business, for the purpose of providing any product or service that is competitive with those provided by the business entity 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.

3. A covenant in writing in which an employee agrees to not solicit, recruit, induce, or otherwise interfere with one or more employees or owners of a business entity if the covenant is between an employer and one or more employees and the covenant (1) seeks to protect confidential or trade secret business information or customer or supplier relationships, goodwill or loyalty, or (2) does not continue for more than two years following the employee's employment.
4. A covenant in writing in which an employee agrees not to solicit, recruit, induce or otherwise interfere with a business entity's customers, including any reduction, termination, acceptance or transfer of any customer's business for the purpose of providing any product or service that is competitive with those provided by the employer if the covenant is limited to material contact customers and the covenant is between an employer and employee and does not continue for more than two years following the end of the employee's employment with the employer.
5. 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.

Subsection (d) adds definitions of "material contact customer" and "owner".