



Association Of Ethanol Processors

Ethanol - Made In Kansas

To: House Judiciary Committee

Re: Joint Testimony on House Bill 2797, Kansas Restraint of Trade Act

Date: May 11, 2012

Chairman Kinzer and members of the Committee, I am Ron Seeber, Senior Vice President of Government Affairs for the Kansas Association of Ethanol Processors (KAEP). The KAEP represents the ethanol manufacturers and affiliated industries in our state. On behalf of KAEP, thank you for allowing me the opportunity to provide written testimony in strong support of HB 2797 regarding the Kansas Restraint of Trade Act.

Recently, the Kansas Supreme Court released a decision in *O'Brien v. Leegin Creative Leather Products, Inc.*, which overturns decades of consistent judicial precedence in interpreting and applying the Kansas Restraint of Trade Act. The court's decision effectively makes certain business transactions involving pricing contracts potentially unlawful for violation of the Kansas restraint of trade act.

The new precedent set by the *O'Brien* decision fails to consider the legal precedence of reasonable restraint of trade or commerce, and makes void all contracts or agreements which "create or carry out restrictions in trade or commerce, or aids to commerce, or to carry out restrictions in the full and free pursuit of any business authorized or permitted by the laws of this state."

The *O'Brien* decision could make void what have historically been recognized as valid contractual agreements between processors, manufacturers, and wholesalers, and many other routine business transactions in our industry.

HB 2797 simply codifies what has been Kansas legal precedent for 60 years. As such, HB 2797 is a critically important legislative remedy. Failure to immediately act on this bill would likely have devastating ramifications to our industry. What this would do the ethanol, agribusiness industry, and the Kansas industry as a whole is inconceivable. Therefore, we strongly urge your support of HB 2797.