



719 SW Van Buren St., Ste. 222, Topeka KS 66603  
Phone: 785-232-7756  
Fax: 785-232-7730  
[www.ksaj.org](http://www.ksaj.org)

To: Representative Lance Kinzer, Chairman  
Members of the House Judiciary Committee

From: Callie Jill Denton  
Director of Public Policy

Date: May 11, 2012

RE: HB 2797 Concerning the Kansas restraint of trade act (OPPOSED)

The Kansas Association for Justice (KsAJ) is a professional association of attorneys. KsAJ opposes HB 2797.

Passage of HB 2797 by the Legislature is granting new authority to the Congress and federal courts to govern what the Kansas Legislature has vigilantly regulated for over 100 years. HB 2797 seriously erodes the long standing traditions of Kansas antitrust laws and remedies. HB 2797 is clearly designed to protect perpetrators of anti-competitive behavior from harm caused to Kansas consumers and businesses. HB 2797 offers little protection to Kansas farmers, businesses, and consumers from monopolistic and anti-competitive practices.

The Kansas Legislature has been vigilant in protecting the honesty and integrity of Kansas markets through the Kansas Restraint of Trade Act (KRTA). The KRTA is intended to protect Kansas businesses and consumers from unlawful trade combinations. The Kansas Legislature first enacted laws in 1887 to stop unlawful trade by grain dealers and to protect farmers. The KRTA has remained in force for over a century and has been largely unchanged except for amendments in 2000.

HB 2797 diminishes state regulatory authority of anti-competitive market behavior, and diminishes protections for local businesses and consumers. For decades, Kansas citizens have had the ability to seek private redress under the KRTA. Private state anti-trust actions under Kansas law have been extremely rare in the last 20 years. However, Kansas citizens must retain the ability to bring private actions and class actions to enforce anti-trust laws. Class actions are a necessary enforcement mechanism for consumer laws because they deter illegal and anticompetitive activity.

Kansas consumers and business benefit from the KRTA. Kansas Livestock Association members were directly injured by the worldwide conspiracy described in *In re: Vitamins Antitrust Litigation* M.D.L. No. 1285. This scheme involved defendants engaging in a massive horizontal conspiracy to raise, fix, and maintain the prices of vitamins, vitamin premixes and bulk vitamin products, allocating customers and controlling the global market for vitamins, vitamin premixes and choline chloride for at least ten years between 1988-1998. The United States Justice Department investigated this activity. Convictions and criminal fines (not civil damages) exceeded \$900,000,000.00 for violating the criminal laws.

*In re: Lorazepam and Clorazepate AntiTrust Litigation*, M.D.L. No. 1290, involved a claim pursued by BlueCross BlueShield of Kansas, Inc. and other Blue Cross and Blue Shield plans, health care payers, direct purchasers and consumers against Mylan Laboratories for entering into agreements with the global suppliers of certain raw materials known as active pharmaceutical ingredients used by Mylan to manufacturer tablets of generic Lorazepam and Clorazepate distributed for sale in the United States. This conduct had the effect of cornering the global market for active ingredients for these drugs for a period of ten years which enabled Mylan to raise its wholesale prices to supra-competitive levels and which price increases were paid by direct purchasers, third party payers, such as BlueCross BlueShield of Kansas, Inc. and other consumers of the drugs.

The remedies in the KRTA are derived from English common law and have been in place in Kansas (largely unchanged) for well over 100 years. The KRTA is intended to protect Kansans from large out-of-state interests, including large multi-national interests. The only beneficiaries of a weakened KRTA are those who profit from manipulating markets, which in turn weakens the integrity of the market. Price-fixing and will never result in lower prices for consumers. Anti-competitive and monopolistic behavior must be vigilantly regulated, which has been the tradition of Kansas law and the Kansas Legislature. HB 2797 contradicts such regulation.

KsAJ members have serious substantive and policy concerns with HB 2797. HB 2797 eliminates rights and protections that Kansans are relying upon right now. HB 2797 and the remedies it eliminates deserve much greater attention and consideration than has been, and can be devoted during the Veto Session. KsAJ sees no urgency to change consumer and business protection laws that have been virtually unchanged for over 100 years, and that have served Kansans well.

**KsAJ requests that the Judiciary Committee retain state authority as currently enacted in article one of Chapter 50 in the KRTA, and reject HB 2797.**