

A solid yellow right-angled triangle pointing towards the top-left corner.

BLOGS

Legislation and Rulemaking

Bill to Renew Vertical Price-Fixing Ban May Head to Full Vote in the U.S. House of Representatives

Congress is considering overruling the United States Supreme Court's decision in *Leegin Creative Leather Products, Inc. v. PSKS, Inc.*, 127 S.Ct. 2705 (2007), in which the court overturned near century-old precedent and held that manufacturers could set minimum price standards for retailers if they encouraged competition. By eliminating the threat of *per se* liability, some have believed that *Leegin* provided suppliers and franchisors with at least limited comfort in setting minimum resale prices for their dealers and franchisees. But even this may be short-lived. On January 13, 2010, the Discount Pricing Consumer Protection Act of 2009 (H.R. 3190) cleared the judiciary committee of the House of Representatives and could head to the House for a full vote. The bill states: "Any agreement setting a price below which a product or service cannot be sold by a retailer, wholesaler, or distributor shall violate section 1 of the Sherman Act."

A related bill (S. 148) was introduced in the Senate on January 6, 2010, by Senator Kohl (D-Wis.) and was referred to the Senate's judiciary committee for consideration. The purpose of the Senate bill is to "correct the Supreme Court's mistaken interpretation of the Sherman Act in the *Leegin* decision."