

SENATE BILL No. 175

By Committee on Judiciary

1-31

AN ACT concerning consumer protection; relating to certain remedies under the consumer protection act; amending K.S.A. 50-632 and repealing the existing section.

Be it enacted by the Legislature of the State of Kansas:

Section 1. K.S.A. 50-632 is hereby amended to read as follows: 50-632. (a) The attorney general or any county or district attorney may bring an action:

(1) To obtain a declaratory judgment that an act or practice violates this act;

(2) to enjoin, or to obtain a restraining order against a supplier who has violated, is violating, or is otherwise likely to violate this act; or

(3) to recover damages on behalf of consumers by reason of violations of this act; and

(4) to recover reasonable expenses and investigation fees.

(b) In lieu of instigating or continuing an action or proceeding, the attorney general may accept a consent judgment with respect to any act or practice declared to be a violation of this act. Such a consent judgment shall provide for the discontinuance by the supplier entering the same of any act or practice declared to be a violation of this act, and it may include a stipulation for the payment by such supplier of reasonable expenses and investigation fees incurred by the attorney general. The consent judgment also may include a stipulation for restitution to be made by such supplier to consumers of money, property or other things received from such consumers in connection with a violation of this act and also may include a stipulation for specific performance. Any consent judgment entered into pursuant to this section shall not be deemed to admit the violation, unless it does so by its terms. Before any consent judgment entered into pursuant to this section shall be effective, it must be approved by the district court and an entry made thereof in the manner required for making an entry of judgment. Once such approval is received, any breach of the conditions of such consent judgment shall be treated as a violation of a court order, and shall be subject to all the penalties provided by law therefor.

(c) In any action brought by the attorney general or the county or

1 district attorney, the court may, without requiring bond of the attorney
2 general or the county or district attorney:

3 (1) Make such orders or judgments as may be necessary to prevent
4 the use or employment by a supplier of any practices declared to be a
5 violation of this act;

6 (2) make such orders or judgments as may be necessary to compen-
7 sate any consumer for damages sustained;

8 (3) make such orders or judgments as may be necessary to carry out
9 a transaction in accordance with consumers' reasonable expectations;

10 (4) appoint a master or receiver or order sequestration of ~~assets~~ *prop-*
11 *erty* whenever it shall appear that the supplier threatens or is about to
12 remove, conceal or dispose of property to the damage of consumers to
13 whom restoration would be made under this subsection or whenever it
14 shall appear that the property was derived or is commingled with other
15 property derived from transactions involving violations of the act, the
16 court shall assess the expenses of a master or receiver against the supplier;

17 (5) revoke any license or certificate authorizing that supplier to en-
18 gage in business in this state;

19 (6) issue a temporary restraining order or enjoin any supplier from
20 engaging in business in this state;

21 (7) award reasonable expenses and investigation fees, civil penalties
22 and costs; and

23 (8) grant other appropriate relief.

24 (d) *If an order of sequestration is issued pursuant to paragraph (4)*
25 *of subsection (c):*

26 (1) *Application for such order shall be by motion verified by an af-*
27 *fidavit setting forth facts in support thereof and the court may hear such*
28 *motion ex parte;*

29 (2) *such order shall operate as a lien on the sequestered property and*
30 *may contain other provisions as the court deems appropriate;*

31 (3) *if such order of sequestration was issued ex parte, such order shall*
32 *be served upon the supplier whose property is sequestered not later than*
33 *five days after such order is issued. Service shall be by any manner per-*
34 *mitted by the code of civil procedure or by ordinary first class mail to the*
35 *last known address of the supplier;*

36 (4) *a supplier whose property is sequestered may file a motion to*
37 *dissolve the sequestration, verified by affidavit, putting in issue the suf-*
38 *ficiency of the proceedings, the supplier's claim of exemption as to any*
39 *property which has been sequestered, or the truth of the facts alleged in*
40 *the affidavit on which the sequestration was ordered. The court shall hold*
41 *a hearing on the motion within five days after the filing; and*

42 (5) *upon a finding that the party which obtained an ex parte order*
43 *of sequestration knew or should have known that grounds for sequestra-*

1 *tion did not exist, the court, upon a motion to dissolve, may allow actual*
2 *damages for the wrongful sequestration.*

3 Sec. 2. K.S.A. 50-632 is hereby repealed.

4 Sec. 3. This act shall take effect and be in force from and after its
5 publication in the statute book.

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