

## HOUSE BILL No. 2835

By Representative Merrick

2-12

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AN ACT enacting the homeowner warranty act.

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

Section 1. As used in this act:

(a) "Building standards" means the structural, mechanical, electrical and quality standards of the home building industry for the geographic area in which the dwelling is situated;

(b) "dwelling" means a new building, not previously occupied, constructed for the purpose of habitation by human beings;

(c) "home improvement" means the repairing, remodeling, altering, converting, modernizing of or adding to a residential dwelling;

(d) "home improvement contractor" means a person who is engaged in the business of home improvement, either full time or part time, and who represents to the public that such person has knowledge and skill peculiar to the business of home improvement;

(e) "initial vendee" means the first person who contracts to purchase from a vendor a dwelling for the purpose of habitation and for resale in the ordinary course of business;

(f) "major construction defect" means and includes any actual damage to the load-bearing portion of the dwelling or the home improvement. Major construction defect includes damage to subsidence, expansion or lateral movement of the soil, which affects the load-bearing function of the soil and which substantially affects or is imminently likely to substantially affect use of the dwelling or the home improvement for residential purposes. Major construction defect does not include damage resulting from movement of the soil caused by flood, earthquake or other natural disaster;

(g) "owner" means any person who owns a residential dwelling on which home improvement work is performed. Owner also includes any subsequent owner of the residential dwelling;

(h) "vendee" means any purchaser of a dwelling. Vendee also includes the initial vendee and any subsequent purchasers of the dwelling;

(i) "vendor" means any person, firm, corporation or other entity which constructs dwellings for the purpose of sale, including the construction of dwellings on land owned by vendees;

1 (j) “warranty date” means the date from and after which any statutory  
2 warranty provided in sections 2 and 3, and amendments thereto, become  
3 effective.

4 (1) In the case of a dwelling, warranty date includes the earliest of:

5 (A) The date of the initial vendee’s first occupancy of the dwelling;  
6 or

7 (B) the date on which the initial vendee takes legal or equitable title  
8 in the dwelling.

9 (2) In the case of a home improvement, the warranty date is the date  
10 on which the home improvement was completed.

11 Sec. 2. (a) In every sale of a completed dwelling and every contract  
12 for the sale of a dwelling which has not been completed on the date such  
13 contract is executed, the vendor shall warrant to the vendee that:

14 (1) The dwelling shall be and remain free from defects caused by  
15 faulty workmanship and defective materials due to noncompliance with  
16 building standards during the three-year period commencing on the war-  
17 ranty date and ending on the third anniversary of such warranty date;

18 (2) the dwelling shall be and remain free from defects caused by  
19 faulty installation of plumbing, electrical, heating and cooling systems  
20 during the five-year period commencing on the warranty date and ending  
21 on the fifth anniversary of such warranty date; and

22 (3) the dwelling shall be and remain free from major construction  
23 defects during the ten-year period commencing on the warranty date and  
24 ending on the tenth anniversary of such warranty date.

25 (b) Each statutory warranty provided in this section shall survive the  
26 passing of legal title or equitable title in that dwelling to the vendee.

27 (c) Each warranty provided under this section shall not expire on the  
28 subsequent sale of a dwelling by the initial vendee. Such warranty shall  
29 continue to protect any subsequent vendee until such warranty expires as  
30 provided under this section. No warranty provided under this section shall  
31 apply to any defect caused by the initial vendee.

32 (d) Each warranty provided in this section shall be in addition to, and  
33 not in lieu of, any other express or implied warranty pertaining to the  
34 dwelling, its materials or fixtures.

35 Sec. 3. (a) In any sale or contract for the sale of home improvement  
36 work involving changes or additions to a residential dwelling, the home  
37 improvement contractor shall warrant to the owner that:

38 (1) The home improvement shall be free from defects caused by  
39 faulty workmanship and defective materials due to noncompliance with  
40 building standards during the two-year period commencing on the war-  
41 ranty date and ending on the second anniversary of such warranty date;  
42 and

43 (2) The home improvement shall be free from major construction

1 defects during the ten-year period commencing on the warranty date and  
2 ending on the tenth anniversary of such warranty date.

3 (b) In any sale or contract for the sale of home improvement work  
4 involving the installation of plumbing, electrical, heating or cooling sys-  
5 tems, the home improvement contractor shall warrant to the owner that  
6 the home improvement shall be free from defects caused by the faulty  
7 installation of such system or systems during the two-year period com-  
8 mencing on the warranty date and ending on the second anniversary of  
9 such warranty date.

10 (c) In any sale or contract for the sale of any home improvement work  
11 not covered by subsections (a) or (b) of this section, the home improve-  
12 ment contractor shall warrant to the owner that the home improvement  
13 shall be free from defects caused by faulty workmanship or defective  
14 materials due to noncompliance with building standards during the two-  
15 year period commencing on the warranty date and ending on the second  
16 anniversary of such warranty date.

17 Sec. 4. The liability of the vendor or the home improvement con-  
18 tractor under section 2 or 3, and amendments thereto, shall be limited  
19 to the specific items set forth in such sections and shall not extend to any  
20 loss or damage:

21 (a) Not reported by the vendee or the owner to the vendor or the  
22 home improvement contractor in writing within six months after the date  
23 the vendee or the owner discovers or should have discovered such loss  
24 or damage;

25 (b) caused by defects in design, installation or materials which the  
26 vendee or the owner supplied, installed or directed to be installed;

27 (c) such as personal injury or property damage;

28 (d) resulting from normal wear and tear;

29 (e) resulting from normal shrinkage caused by drying of the dwelling  
30 or the home improvement within established tolerances of building  
31 standards;

32 (f) resulting from dampness and condensation due to insufficient ven-  
33 tilation after occupancy;

34 (g) resulting from negligence, improper maintenance or alteration of  
35 the dwelling or the home improvement by any party other than the vendor  
36 or the home improvement contractor;

37 (h) resulting from changes in grading of the ground around the dwell-  
38 ing or the home improvement by any party other than the vendor or the  
39 home improvement contractor;

40 (i) resulting from landscaping or insect loss;

41 (j) resulting failure to maintain the dwelling or the home improve-  
42 ment in good repair;

43 (k) which the vendee or the owner has not taken reasonable and

1 timely action to minimize, whenever feasible;

2 (l) which occurs after the dwelling or the home improvement is no  
3 longer used primarily as a residence;

4 (m) resulting from an act of God, including, but not limited to: Fire,  
5 explosion, smoke, water escape, windstorm, hail, lightning, falling trees,  
6 aircraft, vehicles, flood and earthquake, except when such loss or damage  
7 results from failure to comply with building standards;

8 (n) resulting from soil movement which is compensated by legislation  
9 or covered by insurance;

10 (o) due to soil conditions where construction is done upon lands  
11 owned by the vendee or the owner and obtained by the vendee or owner  
12 from a source independent of the vendor or the home improvement con-  
13 tractor; and

14 (p) in the case of home improvement work, due to any defect in the  
15 existing structure and any system not caused by the home improvement.

16 Sec. 5. (a) Except as provided in subsections (b) and (c), the provi-  
17 sions of sections 3 and 4, and amendments thereto, cannot be waived or  
18 modified by contract or any other means. Except as provided in subsec-  
19 tions (b) and (c) of this section, any agreement which purports to waive  
20 or modify the provisions of sections 3 through 5, and amendments  
21 thereto, shall be void.

22 (b) At any time after a contract for the sale of a dwelling is entered  
23 into by and between a vendor and a vendee or a contract for home im-  
24 provement work is entered into by and between a home improvement  
25 contractor and an owner, any of the statutory warranties provided for in  
26 sections 3 and 4, and amendments thereto, may be excluded or modified  
27 only by a written instrument, signed by the vendee or the owner. Each  
28 such written instrument shall be printed in bold-face type of a minimum  
29 size of 10 points which sets forth in detail:

30 (1) The warranty involved;

31 (2) the consent of the vendee or the owner; and

32 (3) the terms of the new agreement specifically including the terms  
33 and conditions of any waiver or exclusion.

34 No such exclusion or modification shall be effective unless the vendor  
35 or the home improvement contractor provides to the vendee or the owner  
36 substitute express warranties offering substantially the same protections  
37 as the statutory warranties set forth in sections 3 and 4, and amendments  
38 thereto. Any vendor or home improvement contractor who attempts to  
39 exclude or modify any of the statutory warranties provided by sections 3  
40 or 4, and amendments thereto, shall be subject to a monetary penalty of  
41 \$1,000.

42 (c) If a major construction defect is discovered prior to the sale of a  
43 dwelling, the statutory warranty set forth in section 2, and amendments

1 thereto, may be waived for the defect specifically identified in the waiver  
2 instrument, after full oral disclosure of the specific defect. The waiver  
3 statement shall be in writing and shall disclose in specific detail:

4 (1) The specific defect;

5 (2) the difference between the fair market value of the dwelling with-  
6 out the presence of defect and the fair market value of the dwelling with  
7 the defect, as determined and attested to by an independent appraiser,  
8 contractor, insurance adjuster, engineer or any other similarly knowl-  
9 edgeable person selected by the vendee;

10 (3) the price reduction of the dwelling;

11 (4) the date the construction of the dwelling was completed;

12 (5) the legal description of the dwelling;

13 (6) the consent of the vendee to the waiver; and

14 (7) the signatures of the vendee, the vendor and two witnesses.

15 (d) No waiver made pursuant to subsection (c) shall apply to more  
16 than one major construction defect in a dwelling. No waiver made pur-  
17 suant to subsection (c) shall be effective unless filed with the registrar of  
18 deeds.

19 Sec. 6. (a) Upon breach of any warranty imposed by section 2, and  
20 amendments thereto, the vendee shall have a cause of action against the  
21 vendor for damages arising out of the breach or for specific performance.  
22 The vendee shall be entitled to:

23 (1) The amount necessary to remedy the defect or breach; or

24 (2) the difference between the fair market value of the dwelling with-  
25 out presence of the defect and the fair market value of the dwelling with  
26 the defect.

27 (b) In addition to actual damages, in any action brought under sec-  
28 tions 1 through 10, and amendments thereto, the court shall assess against  
29 the vendor the costs of the action, including reasonable attorney fees. The  
30 court may also assess punitive damages if the court finds that the breach  
31 of such warranty was willful, deceitful or based upon fraud.

32 Sec. 7. Upon breach of any warranty imposed by section 3, and  
33 amendments thereto, the owner shall have a cause of action against the  
34 home improvement contractor for damages arising out of the breach or  
35 for specific performance. Damages shall be limited to the amount nec-  
36 essary to remedy the defect or breach. In addition to actual damages, the  
37 court shall assess against the home improvement contractor the costs of  
38 the action; including reasonable attorney fees. The court may also assess  
39 punitive damages if the court finds that the breach of such warranty was  
40 willful, deceitful or based upon fraud.

41 Sec. 8. Each statutory warranty provided for in sections 2 and 3, and  
42 amendments thereto, shall be in addition to all other warranties imposed  
43 by law or by agreement. Each remedy provided in sections 6 and 7, and

1 amendments thereto, shall be in addition to any other remedy provided  
2 by law.

3 Sec. 9. Notwithstanding any other provision of sections 1 through 10,  
4 inclusive, and amendments thereto:

5 (a) The terms of any home improvement warranty required by sec-  
6 tion 3, and amendments thereto, shall commence upon completion of the  
7 home improvement and the term of such warranty shall not be required  
8 to be renewed or extended if the home improvement contractor performs  
9 additional improvements required by such warranty;

10 (b) the terms of any home improvement warranty required by section  
11 3, and amendments thereto, shall not include any product or material  
12 installed which is already covered by any implied or written warranty; and

13 (c) the terms of any home improvement warranty required by section  
14 3, and amendments thereto, are intended to be implied warranties im-  
15 posing an affirmative obligation upon home improvement contractors and  
16 shall not require that any written warranty be created and conveyed to  
17 the owner.

18 Sec. 10. Any action arising under sections 1 through 10, inclusive,  
19 and amendments thereto, shall be commenced:

20 (1) Within two years after the defect was discovered or should have  
21 been discovered; or

22 (2) within two years after the expiration of any statutory warranty  
23 imposed under this act, whichever occurs first.

24 Sec. 11. (a) The following unfair methods of competition and unfair  
25 or deceptive acts or practices, undertaken by any person in a transaction  
26 intended to result or which results in the sale or lease of goods or services  
27 to any consumer, are unlawful where the home solicitation of a consumer  
28 during which a loan is made encumbers the primary residence of such  
29 consumer for the purposes of paying for home improvements and the  
30 transaction violates any federal consumer credit protection law and fed-  
31 eral trade commission regulation that prohibit:

32 (1) The extension of mortgage credit secured by the consumer's  
33 dwelling without regard for the consumer's repayment ability;

34 (2) payment under a home improvement contract from amounts ex-  
35 tended as credit under a mortgage, except:

36 (A) Any payment in the form of an instrument that is payable to the  
37 consumer or jointly to the consumer and the contractor; or

38 (B) at the election of the consumer, any payment by a third party  
39 escrow agent in the form of a written agreement signed by the consumer,  
40 creditor and contractor before the date of payment; and

41 (C) the sale or assignment of certain mortgages without the provision  
42 of a notice stating that such mortgage is subject to special rules pursuant  
43 to the federal truth in lending act.

1 (b) No third party shall be liable pursuant to this section, unless:

2 (1) There was an agency relationship between the party who engaged  
3 in the home solicitation and the third party; or

4 (2) the third party had actual knowledge of or participated in the  
5 unfair or deceptive transaction. No third party who is a holder in due  
6 course under a home solicitation transaction shall be liable pursuant to  
7 this section.

8 (c) For the purposes of this section: (1) "Consumer" means an indi-  
9 vidual who seeks or acquires, by purchase or lease, any goods or services  
10 for personal, family or household purposes;

11 (2) "goods" means any tangible property bought or leased for use  
12 primarily for personal, family or household purposes. Goods also include  
13 any certificate or coupon exchangeable for such goods. Goods also in-  
14 cludes any tangible property which, at the time of the sale or subsequent  
15 to the sale, are to be so affixed to real property as to become a part of  
16 real property regardless of whether or not such tangible property is sev-  
17 erable from the real property;

18 (3) "home solicitation" means any transaction made at the consumer's  
19 primary residence, except for any transaction initiated by the consumer.  
20 Home solicitation shall not include a consumer response to an  
21 advertisement;

22 (4) "person" means an individual, partnership, corporation, limited  
23 liability company, association or other group, however organized;

24 (5) "services" means any work, labor and services performed fur-  
25 nished in connection with the sale or repair of goods. Services shall not  
26 include any work, labor and services performed for a commercial or busi-  
27 ness purpose;

28 (6) "transaction" means any agreement between a consumer and any  
29 other person, whether or not the agreement is a contract enforceable by  
30 action. Transaction also includes the making of the agreement and any  
31 performance pursuant to such agreement.

32 (d) Any person who violates the provisions of this section is guilty of  
33 a class A misdemeanor. In addition to any fine or other penalty imposed  
34 by law, any person who is convicted of, or pleads guilty or nolo contendere  
35 to a violation of this section shall be required to make restitution.

36 Sec. 12. Sections 1 through 12, inclusive, and amendments thereto,  
37 shall be known and may be cited as the homeowner warranty act.

38 Sec. 13. This act shall take effect and be in force from and after its  
39 publication in the statute book.

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