

HOUSE BILL No. 2795

By Committee on Judiciary

2-7

9 AN ACT concerning consumer protection; amending K.S.A. 50-623, 50-
10 624, 50-634 and 50-636 and repealing the existing sections.

11

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

13 New Section 1. The amendments to the Kansas consumer protection
14 act enacted by this act shall apply to any action pending on the effective
15 date of this act.

16 Sec. 2. K.S.A. 50-623 is hereby amended to read as follows: 50-623.
17 ~~This~~ (a) *The Kansas consumer protection act shall be construed liberally*
18 *to promote the following policies:*

19 ~~(a)~~ (1) To simplify, clarify and modernize the law governing consumer
20 transactions;

21 ~~(b)~~ (2) to protect consumers from suppliers who commit deceptive
22 and unconscionable practices;

23 ~~(c)~~ (3) to protect consumers from unbargained for warranty disclaim-
24 ers; and

25 ~~(d)~~ (4) to provide consumers with a three-day cancellation period for
26 door-to-door sales.

27 (b) *It is the intent of the legislature that in construing this act, courts*
28 *shall be guided by the policies of the federal trade commission and inter-*
29 *pretations given by the federal trade commission and the federal courts*
30 *to section 5(a)(1) of the federal trade commission act, 15 U.S.C. 45(a)(1).*

31 (c) *This act shall not apply to actions or transactions otherwise per-*
32 *mitted or regulated by the federal trade commission or any other regu-*
33 *latory body or officer acting under statutory authority of this state or the*
34 *United States.*

35 Sec. 3. K.S.A. 50-624 is hereby amended to read as follows: 50-624.
36 As used in ~~this~~ *the Kansas consumer protection act:*

37 (a) ~~“Agricultural purpose” means a purpose related to the production,~~
38 ~~harvest, exhibition, marketing, transportation, processing or manufacture~~
39 ~~of agricultural products by a consumer who cultivates, plants, propagates~~
40 ~~or nurtures the agricultural products. “Agricultural products” includes~~
41 ~~agricultural, horticultural, viticultural, and dairy products, livestock, wild-~~
42 ~~life, poultry, bees, forest products, fish and shellfish, and any products~~
43 ~~thereof, including processed and manufactured products, and any and all~~

1 ~~products raised or produced on farms and any processed or manufactured~~
2 ~~products thereof.~~

3 ~~—(b) “Consumer” means an individual, husband and wife, sole propri-~~
4 ~~etor, or family partnership who seeks or acquires property or services for~~
5 ~~personal, family, or household, business or agricultural purposes.~~

6 ~~(c) (b) “Consumer transaction” means a sale, lease, assignment or~~
7 ~~other disposition for value of property or services within this state (except~~
8 ~~insurance contracts regulated under state law) to a consumer; or a solici-~~
9 ~~tation by a supplier with respect to any of these dispositions.~~

10 ~~(d) “Family partnership” means a partnership in which all of the part-~~
11 ~~ners are natural persons related to each other, all of whom have a common~~
12 ~~ancestor within the third degree of relationship, by blood or by adoption,~~
13 ~~or the spouses or the stepchildren of any such persons, or persons acting~~
14 ~~in a fiduciary capacity for persons so related.~~

15 ~~—(e) (c) “Final judgment” means a judgment, including any supporting~~
16 ~~opinion, that determines the rights of the parties and concerning which~~
17 ~~appellate remedies have been exhausted or the time for appeal has~~
18 ~~expired.~~

19 ~~(f) (d) “Merchantable” means, in addition to the qualities prescribed~~
20 ~~in K.S.A. 84-2-314, and amendments thereto, in conformity in all material~~
21 ~~respects with applicable state and federal statutes and regulations estab-~~
22 ~~lishing standards of quality and safety.~~

23 ~~(g) (e) “Person” means any individual, corporation, government, gov-~~
24 ~~ernmental subdivision or agency, business trust, estate, trust, partner-~~
25 ~~ship, association, cooperative or other legal entity.~~

26 ~~(h) (f) “Property” includes real estate, goods and intangible personal~~
27 ~~property.~~

28 ~~(i) (g) “Services” includes:~~

- 29 (1) Work, labor and other personal services;
30 (2) privileges with respect to transportation, hotel and restaurant ac-
31 commodations, education, entertainment, recreation, physical culture,
32 hospital accommodations, funerals and cemetery accommodations; and
33 (3) any other act performed for a consumer by a supplier.

34 ~~(j) (h) “Supplier” means a manufacturer, distributor, dealer, seller,~~
35 ~~lessor, assignor, or other person who, in the ordinary course of business,~~
36 ~~solicits, engages in or enforces consumer transactions, whether or not~~
37 ~~dealing directly with the consumer. Supplier does not include any bank,~~
38 ~~trust company or lending institution which is subject to state or federal~~
39 ~~regulation with regard to disposition of repossessed collateral by such~~
40 ~~bank, trust company or lending institution.~~

41 Sec. 4. K.S.A. 50-634 is hereby amended to read as follows: 50-634.

42 (a) Whether a consumer seeks or is entitled to damages or otherwise has
43 an adequate remedy at law or in equity, a consumer aggrieved by an

1 alleged violation of this act may bring an action to:

2 (1) Obtain a declaratory judgment that an act or practice violates this
3 act; or

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

6 (b) A consumer who ~~is aggrieved by~~ *suffers loss as a result of* a vio-
7 lation of this act may recover, but not in a class action, damages ~~or a civil~~
8 ~~penalty as provided in subsection (a) of K.S.A. 50-636 and amendments~~
9 ~~thereto, whichever is greater.~~

10 (c) Whether a consumer seeks or is entitled to recover damages or
11 has an adequate remedy at law, a consumer may bring a class action for
12 declaratory judgment, an injunction and appropriate ancillary relief, ex-
13 cept damages, against an act or practice that violates this act.

14 (d) A consumer who suffers loss as a result of a violation of this act
15 may bring a class action for the damages caused by an act or practice:

16 (1) Violating any of the acts or practices specifically proscribed in
17 K.S.A. 50-626, 50-627 and 50-640, and amendments thereto, or

18 (2) declared to violate K.S.A. 50-626 or 50-627, and amendments
19 thereto, by a final judgment of any district court or the supreme court of
20 this state that was either officially reported or made available for public
21 dissemination under subsection (a)(3) of K.S.A. 50-630 and amendments
22 thereto by the attorney general 10 days before the consumer transactions
23 on which the action is based, or

24 (3) with respect to a supplier who agreed to it, was prohibited spe-
25 cifically by the terms of a consent judgment which became final before
26 the consumer transactions on which the action is based.

27 (e) Except for services performed by the office of the attorney general
28 or the office of a county or district attorney, the court may award to the
29 prevailing party reasonable attorney fees, including those on appeal, lim-
30 ited to the work reasonably performed if:

31 (1) The consumer complaining of the act or practice that violates this
32 act has brought or maintained an action the consumer knew to be ground-
33 less and the prevailing party is the supplier; or a supplier has committed
34 an act or practice that violates this act and the prevailing party is the
35 consumer; and

36 (2) an action under this section has been terminated by a judgment,
37 or settled.

38 (f) Except for consent judgments, a final judgment in favor of the
39 attorney general under K.S.A. 50-632 and amendments thereto is admis-
40 sible as prima facie evidence of the facts on which it is based in later
41 proceedings under this section against the same supplier or a supplier in
42 privity.

43 (g) Notice of an action commenced pursuant to subsection (b) or (c),

1 or an appeal of such action, shall be given to the attorney general, but
2 failure to do so shall not provide a defendant a defense in such action.

3 *(h) Under subsections (b) and (d), a consumer “suffers loss” only if*
4 *the consumer can prove on an individual basis that a violation of this act*
5 *caused the consumer to enter into the transaction that resulted in the*
6 *damages. No award of damages in an action under subsection (b) or (d)*
7 *may be made without proof that the person seeking damages suffered an*
8 *actual out-of-pocket loss. The term “out-of-pocket loss” means an amount*
9 *of money equal to the difference between the amount paid by the con-*
10 *sumer for the good or service and the actual market value of the good or*
11 *service that the consumer actually received.*

12 Sec. 5. K.S.A. 50-636 is hereby amended to read as follows: 50-636.

13 (a) The commission of any act or practice declared to be a violation of
14 this act shall render the violator liable to ~~the aggrieved consumer, or the~~
15 state or a county as provided in subsection (c), for the payment of a civil
16 penalty, recoverable in an individual action, including an action brought
17 by the attorney general or county attorney or district attorney, in a sum
18 set by the court of not more than \$10,000 for each violation. An aggrieved
19 consumer is not a required party in actions brought by the attorney gen-
20 eral or a county or district attorney pursuant to this section.

21 (b) Any supplier who willfully violates the terms of any court order
22 issued pursuant to this act shall forfeit and pay a civil penalty of not more
23 than \$20,000 per violation, in addition to other penalties that may be
24 imposed by the court, as the court shall deem necessary and proper. For
25 the purposes of this section, the district court issuing an order shall retain
26 jurisdiction, and in such cases, the attorney general, acting in the name
27 of the state, or the appropriate county attorney or district attorney may
28 petition for recovery of civil penalties.

29 (c) In administering and pursuing actions under this act, the attorney
30 general and the county attorney or district attorney are authorized to sue
31 for and collect reasonable expenses and investigation fees as determined
32 by the court. Civil penalties or contempt penalties sued for and recovered
33 by the attorney general shall be paid into the general fund of the state.
34 Civil penalties and contempt penalties sued for and recovered by the
35 county attorney or district attorney shall be paid into the general fund of
36 the county where the proceedings were instigated.

37 (d) Any act or practice declared to be a violation of this act not iden-
38 tified to be in connection with a specific identifiable consumer transaction
39 but which is continuing in nature shall be deemed a separate violation
40 each day such act or practice exists.

41 Sec. 6. K.S.A. 50-623, 50-624, 50-634 and 50-636 are hereby
42 repealed.

43

1 Sec. 7. This act shall take effect and be in force from and after its
2 publication in the Kansas register.