

HOUSE BILL No. 2952

By Committee on Appropriations

3-6

9 AN ACT concerning consumer protection; relating to homeowners' as-
10 sociations; amending K.S.A. 50-624 and 50-627 and repealing the ex-
11 isting sections.
12

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

14 Section 1. K.S.A. 50-624 is hereby amended to read as follows: 50-
15 624. As used in this act:

16 (a) "Agricultural purpose" means a purpose related to the production,
17 harvest, exhibition, marketing, transportation, processing or manufacture
18 of agricultural products by a consumer who cultivates, plants, propagates
19 or nurtures the agricultural products. "Agricultural products" includes
20 agricultural, horticultural, viticultural, and dairy products, livestock, wild-
21 life, poultry, bees, forest products, fish and shellfish, and any products
22 thereof, including processed and manufactured products, and any and all
23 products raised or produced on farms and any processed or manufactured
24 products thereof.

25 (b) "Consumer" means an individual, husband and wife, sole propri-
26 etor, or family partnership who seeks or acquires property or services for
27 personal, family, household, business or agricultural purposes *a hom-*
28 *owner who is a member of a homeowners' association.*

29 (c) "Consumer transaction" means a sale, lease, assignment or other
30 disposition for value of property or services within this state (except in-
31 surance contracts regulated under state law) to a consumer; or a solici-
32 tation by a supplier with respect to any of these dispositions. *Consumer*
33 *transaction shall also include, in the case of condominium or other com-*
34 *mon interest properties located in this state, the conduct of the board of*
35 *directors of homeowners' associations regarding the discharge of its gov-*
36 *ernance, oversight and operational duties for periods following the con-*
37 *sumer's purchase transaction.*

38 (d) "Family partnership" means a partnership in which all of the part-
39 ners are natural persons related to each other, all of whom have a common
40 ancestor within the third degree of relationship, by blood or by adoption,
41 or the spouses or the stepchildren of any such persons, or persons acting
42 in a fiduciary capacity for persons so related.

43 (e) "Final judgment" means a judgment, including any supporting

1 opinion, that determines the rights of the parties and concerning which
2 appellate remedies have been exhausted or the time for appeal has
3 expired.

4 ~~(f)~~ *“Homeowners’ association” means a nonprofit homeowners’ or-*
5 *ganization as defined in K.S.A. 60-3611, and amendments thereto.*

6 ~~(g)~~ *“Merchantable” means, in addition to the qualities prescribed*
7 *in K.S.A. 84-2-314, and amendments thereto, in conformity in all material*
8 *respects with applicable state and federal statutes and regulations estab-*
9 *lishing standards of quality and safety.*

10 ~~(h)~~ *“Person” means any individual, corporation, government, gov-*
11 *ernmental subdivision or agency, business trust, estate, trust, partnership,*
12 *association, cooperative or other legal entity.*

13 ~~(i)~~ *“Property” includes real estate, goods and intangible personal*
14 *property.*

15 ~~(j)~~ *“Services” includes:*

16 (1) Work, labor and other personal services;

17 (2) privileges with respect to transportation, hotel and restaurant ac-
18 commodated, education, entertainment, recreation, physical culture,
19 hospital accommodations, funerals and cemetery accommodations; and

20 (3) any other act performed for a consumer by a supplier.

21 ~~(k)~~ *“Supplier” means a manufacturer, distributor, dealer, seller,*
22 *lessor, assignor, or other person who, in the ordinary course of business,*
23 *solicits, engages in or enforces consumer transactions, whether or not*
24 *dealing directly with the consumer. Supplier does not include any bank,*
25 *trust company or lending institution which is subject to state or federal*
26 *regulation with regard to disposition of repossessed collateral by such*
27 *bank, trust company or lending institution.*

28 Sec. 2. K.S.A. 50-627 is hereby amended to read as follows: 50-627.

29 (a) No supplier *or homeowners’ association* shall engage in any uncon-
30 scionable act or practice *or any gross dereliction of duty* in connection
31 with a consumer transaction. An unconscionable act or practice *or any*
32 *gross dereliction of duty* violates this act whether it occurs before, during
33 or after the transaction.

34 (b) The unconscionability of an act or practice *or any gross dereliction*
35 *of duty* is a question for the court. In determining whether an act or
36 practice is unconscionable *or any gross dereliction of duty*, the court shall
37 consider circumstances of which the supplier *or homeowners’ association*
38 knew or had reason to know, such as, but not limited to the following
39 that:

40 (1) The supplier took advantage of the inability of the consumer
41 reasonably to protect the consumer’s interests because of the consumer’s
42 physical infirmity, ignorance, illiteracy, inability to understand the lan-
43 guage of an agreement or similar factor;

- 1 (2) when the consumer transaction was entered into, the price
2 grossly exceeded the price at which similar property or services were
3 readily obtainable in similar transactions by similar consumers;
- 4 (3) the consumer was unable to receive a material benefit from the
5 subject of the transaction;
- 6 (4) when the consumer transaction was entered into, there was no
7 reasonable probability of payment of the obligation in full by the
8 consumer;
- 9 (5) the transaction the supplier induced the consumer to enter into
10 was excessively onesided in favor of the supplier *or homeowners'*
11 *association*;
- 12 (6) the supplier *or homeowners' association* made a misleading state-
13 ment of opinion on which the consumer was likely to rely to the con-
14 sumer's detriment; and
- 15 (7) except as provided by K.S.A. 50-639, and amendments thereto,
16 the supplier excluded, modified or otherwise attempted to limit either
17 the implied warranties of merchantability and fitness for a particular pur-
18 pose or any remedy provided by law for a breach of those warranties.
- 19 Sec. 3. K.S.A. 50-624 and 50-627 are hereby repealed.
- 20 Sec. 4. This act shall take effect and be in force from and after its
21 publication in the statute book.