

**SENATE BILL No. 106**

By Committee on Judiciary

2-7

1 AN ACT concerning consumer protection; amending K.S.A. 50-623, 50-  
2 634 and 50-636 and K.S.A. 2010 Supp. 50-624 and repealing the  
3 existing sections.  
4

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

6 New Section 1. The amendments to the Kansas consumer protection  
7 act contained in the provisions of this act are to be construed and applied  
8 retroactively.

9 Sec. 2. K.S.A. 50-623 is hereby amended to read as follows: 50-623.

10 (a) ~~This~~ *The Kansas consumer protection* act shall be construed liberally  
11 to promote the following policies:

12 (a) (1) To simplify, clarify and modernize the law governing  
13 consumer transactions;

14 (b) (2) to protect consumers from suppliers who commit deceptive  
15 and unconscionable practices;

16 (c) (3) to protect consumers from unbargained for warranty  
17 disclaimers; and

18 (d) (4) to provide consumers with a three-day cancellation period for  
19 door-to-door sales.

20 (b) *It is the intent of the legislature that in construing the Kansas*  
21 *consumer protection act, courts shall be guided by the policies of the*  
22 *federal trade commission and interpretations given by the federal trade*  
23 *commission and the federal courts to section 5(a)(1) of the federal trade*  
24 *commission act, 15 U.S.C. § 45(a)(1).*

25 (c) *The Kansas consumer protection act shall not apply to actions or*  
26 *transactions otherwise permitted or regulated by the federal trade*  
27 *commission or any other regulatory body or officer acting under*  
28 *statutory authority of this state or the United States.*

29 Sec. 3. K.S.A. 2010 Supp. 50-624 is hereby amended to read as  
30 follows: 50-624. As used in ~~this~~ *the Kansas consumer protection* act:

31 (a) ~~"Agricultural purpose" means a purpose related to the~~  
32 ~~production, harvest, exhibition, marketing, transportation, processing or~~  
33 ~~manufacture of agricultural products by a consumer who cultivates,~~  
34 ~~plants, propagates or nurtures the agricultural products. "Agricultural~~  
35 ~~products" includes agricultural, horticultural, viticultural, and dairy~~  
36 ~~products, livestock, wildlife, poultry, bees, forest products, fish and~~

1 shellfish, and any products thereof, including processed and  
2 manufactured products, and any and all products raised or produced on  
3 farms and any processed or manufactured products thereof.

4 ~~(b)~~ (a) "Consumer" means an individual, ~~husband and wife, sole~~  
5 ~~proprietor, or family partnership~~ who seeks or acquires property or  
6 services for personal, family, *or* household, ~~business or agricultural~~  
7 purposes.

8 ~~(e)~~ (b) "Consumer transaction" means a sale, lease, assignment or  
9 other disposition for value of property or services within this state,  
10 (except insurance contracts regulated under state law) , to a consumer; or  
11 a solicitation by a supplier with respect to any of these dispositions.

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

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

21 ~~(f)~~ (d) "Lender" means a bank, savings and loan association, savings  
22 bank, credit union, finance company, mortgage bank, mortgage broker  
23 and any affiliate.

24 ~~(g)~~ (e) "Merchantable" means, in addition to the qualities prescribed  
25 in K.S.A. 84-2-314, and amendments thereto, in conformity in all  
26 material respects with applicable state and federal statutes and regulations  
27 establishing standards of quality and safety.

28 ~~(h)~~ (f) "Mortgage trigger lead" means a consumer report obtained  
29 pursuant to section 604(c)(1)(B) of the federal fair credit reporting act, 15  
30 U.S.C. § 1681b, where the issuance of the report is triggered by an  
31 inquiry made with a consumer reporting agency in response to an  
32 application for credit. Any consumer report on an applicant obtained by a  
33 lender with whom the applicant has initially applied for credit or who  
34 holds or services an existing extension of credit of the applicant who is  
35 the subject of the report is not considered a mortgage trigger lead.

36 ~~(i)~~ (g) "Person" means any individual, corporation, government,  
37 governmental subdivision or agency, business trust, estate, trust,  
38 partnership, association, cooperative or other legal entity.

39 ~~(j)~~ (h) "Property" includes real estate, goods and intangible personal  
40 property.

41 ~~(k)~~ (i) "Services" includes:

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

43 (2) privileges with respect to transportation, hotel and restaurant

1 accommodations, education, entertainment, recreation, physical culture,  
2 hospital accommodations, funerals and cemetery accommodations; and

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

4 (⊕) (j) "Supplier" means a manufacturer, distributor, dealer, seller,  
5 lessor, assignor, or other person who, in the ordinary course of business,  
6 solicits, engages in or enforces consumer transactions, whether or not  
7 dealing directly with the consumer. Supplier does not include any bank,  
8 trust company or lending institution which is subject to state or federal  
9 regulation with regard to disposition of repossessed collateral by such  
10 bank, trust company or lending institution.

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

12 (a) Whether a consumer seeks or is entitled to damages or otherwise has  
13 an adequate remedy at law or in equity, a consumer aggrieved by an  
14 alleged violation of ~~this~~ *the Kansas consumer protection* act may bring an  
15 action to:

16 (1) Obtain a declaratory judgment that an act or practice violates ~~this~~  
17 *the Kansas consumer protection* act; or

18 (2) enjoin or obtain a restraining order against a supplier who has  
19 violated, is violating or is likely to violate ~~this~~ *the Kansas consumer*  
20 *protection* act.

21 (b) A consumer who ~~is aggrieved by~~ *suffers loss as a result of a*  
22 *violation of this the Kansas consumer protection* act may recover, but not  
23 in a class action, damages ~~or a civil penalty as provided in subsection (a)~~  
24 ~~of K.S.A. 50-636 and amendments thereto, whichever is greater.~~

25 (c) Whether a consumer seeks or is entitled to recover damages or  
26 has an adequate remedy at law, a consumer may bring a class action for  
27 declaratory judgment, an injunction and appropriate ancillary relief,  
28 except damages, against an act or practice that violates ~~this~~ *the Kansas*  
29 *consumer protection* act.

30 (d) A consumer who suffers loss as a result of a violation of ~~this~~ *the*  
31 *Kansas consumer protection* act may bring a class action for the damages  
32 caused by an act or practice:

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

35 ~~(2) (1) Declared to violate K.S.A. 50-626 or 50-627, and~~  
36 ~~amendments thereto, by a final judgment of any district court or the~~  
37 ~~supreme court of this state that was either officially reported or made~~  
38 ~~available for public dissemination under subsection (a)(3) of K.S.A. 50-~~  
39 ~~630, and amendments thereto, by the attorney general 10 days before the~~  
40 ~~consumer transactions on which the action is based; ; or~~

41 ~~(3) (2) with respect to a supplier who agreed to it, was prohibited~~  
42 ~~specifically by the terms of a consent judgment which became final~~  
43 ~~before the consumer transactions on which the action is based.~~

1 (e) Except for services performed by the office of the attorney  
2 general or the office of a county or district attorney, the court may award  
3 to the prevailing party reasonable attorney fees, including those on  
4 appeal, limited to the work reasonably performed if:

5 (1) The consumer complaining of the act or practice that violates  
6 ~~this the Kansas consumer protection~~ act has brought or maintained an  
7 action the consumer knew to be groundless and the prevailing party is the  
8 supplier; or a supplier has committed an act or practice that violates ~~this~~  
9 ~~the Kansas consumer protection~~ act and the prevailing party is the  
10 consumer; and

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

13 (f) Except for consent judgments, a final judgment in favor of the  
14 attorney general under K.S.A. 50-632, and amendments thereto, is  
15 admissible as prima facie evidence of the facts on which it is based in  
16 later proceedings under this section against the same supplier or a  
17 supplier in privity.

18 (g) Notice of an action commenced pursuant to subsection (b) or (c),  
19 or an appeal of such action, shall be given to the attorney general, but  
20 failure to do so shall not provide a defendant a defense in such action.

21 (h) *As used in subsections (b) and (d), a consumer "suffers loss"*  
22 *only if the consumer can prove on an individual basis that a violation of*  
23 *the Kansas consumer protection act caused the consumer to enter into*  
24 *the transaction that resulted in the damages. An award of damages in an*  
25 *action under subsection (b) or (d) of this section shall not be made*  
26 *without proof that the person seeking the damages suffered an actual*  
27 *financial loss. If the person seeking damages suffered an actual financial*  
28 *loss, the damages shall not exceed the difference between the amount*  
29 *paid by the consumer for the good or service and the actual market value*  
30 *of the good or service that the consumer actually received.*

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

32 (a) The commission of any act or practice declared to be a violation of  
33 this act shall render the violator liable to ~~the aggrieved consumer, or~~  
34 the state or a county as provided in subsection (c); for the payment of a civil  
35 penalty, recoverable in an individual action, including an action brought  
36 by the attorney general or county attorney or district attorney, in a sum set  
37 by the court of not more than \$10,000 for each violation. An aggrieved  
38 consumer is not a required party in actions brought by the attorney  
39 general or a county or district attorney pursuant to this section.

40 (b) Any supplier who willfully violates the terms of any court order  
41 issued pursuant to this act shall forfeit and pay a civil penalty of not more  
42 than \$20,000 per violation, in addition to other penalties that may be  
43 imposed by the court, as the court shall deem necessary and proper. For

1 the purposes of this section, the district court issuing an order shall retain  
2 jurisdiction, and in such cases, the attorney general, acting in the name of  
3 the state, or the appropriate county attorney or district attorney may  
4 petition for recovery of civil penalties.

5 (c) In administering and pursuing actions under this act, the attorney  
6 general and the county attorney or district attorney are authorized to sue  
7 for and collect reasonable expenses and investigation fees as determined  
8 by the court. Civil penalties or contempt penalties sued for and recovered  
9 by the attorney general shall be paid into the general fund of the state.  
10 Civil penalties and contempt penalties sued for and recovered by the  
11 county attorney or district attorney shall be paid into the general fund of  
12 the county where the proceedings were instigated.

13 (d) Any act or practice declared to be a violation of this act not  
14 identified to be in connection with a specific identifiable consumer  
15 transaction but which is continuing in nature shall be deemed a separate  
16 violation each day such act or practice exists.

17 Sec. 6. K.S.A. 50-623, 50-634 and 50-636 and K.S.A. 2010 Supp.  
18 50-624 are hereby repealed.

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

21  
22