

HOUSE BILL No. 2270

By Committee on Judiciary

2-2

9 AN ACT concerning consumer warranties; amending K.S.A. 2004 Supp.
10 50-624, 50-627 and 50-639 and repealing the existing sections.

11

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

13 Section 1. K.S.A. 2004 Supp. 50-624 is hereby amended to read as
14 follows: 50-624. As used in this act:

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

24 (b) "Consumer" means an individual, husband and wife, sole propri-
25 etor, or family partnership who seeks or acquires property or services for
26 personal, family, household, business or agricultural purposes.

27 (c) "Consumer transaction" means a sale, lease, assignment or other
28 disposition for value of property or services within this state (except in-
29 surance contracts regulated under state law) to a consumer; or a solici-
30 tation by a supplier with respect to any of these dispositions.

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

36 (e) "Final judgment" means a judgment, including any supporting
37 opinion, that determines the rights of the parties and concerning which
38 appellate remedies have been exhausted or the time for appeal has
39 expired.

40 (f) "Merchantable" means, in addition to the qualities prescribed in
41 K.S.A. 84-2-314 and amendments thereto, in conformity in all material
42 respects with applicable state and federal statutes and regulations estab-
43 lishing standards of quality and safety.

1 (g) "Person" means any individual, corporation, government, govern-
2 mental subdivision or agency, business trust, estate, trust, partnership,
3 association, cooperative or other legal entity.

4 (h) "Property" includes real estate, goods and intangible personal
5 property.

6 (i) "Services" includes:

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

8 (2) privileges with respect to transportation, hotel and restaurant ac-
9 commodation, education, entertainment, recreation, physical culture,
10 hospital accommodations, funerals and cemetery accommodations; and

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

12 (j) "Supplier" means a manufacturer, distributor, dealer, seller, les-
13 sor, assignor, or other person who, in the ordinary course of business,
14 solicits, engages in or enforces consumer transactions, whether or not
15 dealing directly with the consumer.

16 (k) "*Workmanlike performance*" means the quality of work
17 performed:

18 (1) *By one who has the knowledge, training or experience necessary*
19 *for successful practice of a trade or occupation; and*

20 (2) *in a manner generally considered proficient by those capable of*
21 *judging such work.*

22 Sec. 2. K.S.A. 2004 Supp. 50-627 is hereby amended to read as fol-
23 lows: 50-627. (a) No supplier shall engage in any unconscionable act or
24 practice in connection with a consumer transaction. An unconscionable
25 act or practice violates this act whether it occurs before, during or after
26 the transaction.

27 (b) The unconscionability of an act or practice is a question for the
28 court. In determining whether an act or practice is unconscionable, the
29 court shall consider circumstances of which the supplier knew or had
30 reason to know, such as, but not limited to the following; that:

31 (1) The supplier took advantage of the inability of the consumer rea-
32 sonably to protect the consumer's interests because of the consumer's
33 physical infirmity, ignorance, illiteracy, inability to understand the lan-
34 guage of an agreement or similar factor;

35 (2) when the consumer transaction was entered into, the price grossly
36 exceeded the price at which similar property or services were readily
37 obtainable in similar transactions by similar consumers;

38 (3) the consumer was unable to receive a material benefit from the
39 subject of the transaction;

40 (4) when the consumer transaction was entered into, there was no
41 reasonable probability of payment of the obligation in full by the
42 consumer;

43 (5) the transaction the supplier induced the consumer to enter into

1 was excessively onesided in favor of the supplier;

2 (6) the supplier made a misleading statement of opinion on which
3 the consumer was likely to rely to the consumer's detriment; and

4 (7) except as provided by K.S.A. 50-639, and amendments thereto,
5 the supplier excluded, modified or otherwise attempted to limit ~~either~~
6 the implied warranties of merchantability ~~and~~ fitness for a particular pur-
7 pose *or workmanlike performance* or any remedy provided by law for a
8 breach of those warranties.

9 Sec. 3. K.S.A. 2004 Supp. 50-639 is hereby amended to read as fol-
10 lows: 50-639. (a) Notwithstanding any other provisions of law, with re-
11 spect to property which is the subject of or is intended to become the
12 subject of a consumer transaction in this state, no supplier shall:

13 (1) Exclude, modify or otherwise attempt to limit the implied war-
14 ranties of merchantability, as defined in K.S.A. 84-2-314, and amend-
15 ments thereto, ~~and~~ fitness for a particular purpose, as defined in K.S.A.
16 84-2-315, and amendments thereto, *and workmanlike performance, as*
17 *defined in section 1*; or

18 (2) exclude, modify or attempt to limit any remedy provided by law,
19 including the measure of damages available, for a breach of implied war-
20 ranty of merchantability ~~and~~ fitness for a particular purpose *and work-*
21 *manlike performance*.

22 (b) Notwithstanding any provision of law, no action for breach of
23 warranty with respect to property subject to a consumer transaction shall
24 fail because of a lack of privity between the claimant and the party against
25 whom the claim is made. An action against any supplier for breach of
26 warranty with respect to property subject to a consumer transaction shall
27 not, of itself, constitute a bar to the bringing of an action against another
28 person.

29 (c) A supplier may limit the supplier's implied warranty of merchant-
30 ability ~~and~~ fitness for a particular purpose *and workmanlike performance*
31 with respect to a defect or defects in the property only if the supplier
32 establishes that the consumer had knowledge of the defect or defects,
33 which became the basis of the bargain between the parties. In neither
34 case shall such limitation apply to liability for personal injury or property
35 damage.

36 (d) Nothing in this section shall be construed to expand the implied
37 warranty of merchantability as defined in K.S.A. 84-2-314, and amend-
38 ments thereto, to involve obligations in excess of those which are appro-
39 priate to the property.

40 (e) A disclaimer or limitation in violation of this section is void. If a
41 consumer prevails in an action based upon breach of warranty, and the
42 supplier has violated this section, the court may, in addition to any dam-
43 ages recovered, award reasonable attorney fees and a civil penalty under

1 K.S.A. 50-636, and amendments thereto, to be paid by the supplier who
2 gave the improper disclaimer.

3 (f) The making of a limited express warranty is not in itself a violation
4 of this section.

5 (g) This section shall not apply to seed for planting.

6 (h) This section shall not apply to sales of livestock for agricultural
7 purposes, other than sales of livestock for immediate slaughter, except in
8 cases where the supplier knowingly sells livestock which is diseased.

9 (i) This section shall not apply to the disposal of surplus property by
10 any governmental entity if the governmental entity has given conspicuous
11 written notice of the warranty limitation, exclusion or disclaimer. In the
12 case of surplus property which is a motor vehicle, a notice of such limi-
13 tation, exclusion or disclaimer shall be affixed to a side window of the
14 motor vehicle. Such notice shall comply with the buyers guide required
15 by 16 CFR 455.2 and 16 CFR 455.3 (as in effect on the effective date of
16 this act).

17 Sec. 4. K.S.A. 2004 Supp. 50-624, 50-627 and 50-639 are hereby
18 repealed.

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