

**SENATE BILL No. 129**

By Committee on Judiciary

1-28

10 AN ACT concerning consumer protection; relating to warranty modifi-  
11 cation or limitation; workmanlike performance; amending K.S.A. 2004  
12 Supp. 50-639 and repealing the existing section.  
13

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

15 Section 1. K.S.A. 2004 Supp. 50-639 is hereby amended to read as  
16 follows: 50-639. (a) Notwithstanding any other provisions of law, with  
17 respect to property which is the subject of or is intended to become the  
18 subject of a consumer transaction in this state, no supplier shall:

19 (1) Exclude, modify or otherwise attempt to limit the implied war-  
20 ranties of merchantability as defined in K.S.A. 84-2-314, and amendments  
21 thereto, ~~and~~ fitness for a particular purpose, as defined in K.S.A. 84-2-  
22 315, and amendments thereto, *or the implied warranty of workmanlike*  
23 *performance*; or

24 (2) exclude, modify or attempt to limit any remedy provided by law,  
25 including the measure of damages available, for a breach of implied war-  
26 ranty of merchantability ~~and~~, *for a breach of* fitness for a particular pur-  
27 pose, *or for a breach of workmanlike performance*.

28 ***(b) For the purposes of this section, "implied warranty of work-***  
29 ***manlike performance" means that in every written or oral contract***  
30 ***for work or services, the supplier of such work or services has a***  
31 ***duty to perform such work or services diligently and in a manner***  
32 ***consistent with that level of care, skill, practice and judgment or-***  
33 ***dinarily exercised by other suppliers in performing work or services***  
34 ***of a similar nature under similar conditions in the locale where such***  
35 ***work or services are performed.***

36 ~~(b)~~ (c) Notwithstanding any provision of law, no action for breach of  
37 warranty with respect to property subject to a consumer transaction shall  
38 fail because of a lack of privity between the claimant and the party against  
39 whom the claim is made. An action against any supplier for breach of  
40 warranty with respect to property subject to a consumer transaction shall  
41 not, of itself, constitute a bar to the bringing of an action against another  
42 person.

43 ~~(c)~~ (d) A supplier may limit the supplier's implied warranty of mer-

1 chantability and fitness for a particular purpose with respect to a defect  
2 or defects in the property only if the supplier establishes that the con-  
3 sumer had knowledge of the defect or defects, which became the basis  
4 of the bargain between the parties. In neither case shall such limitation  
5 apply to liability for personal injury or property damage.

6 ~~(d)~~ **(e)** Nothing in this section shall be construed to expand the im-  
7 plied warranty of merchantability as defined in K.S.A. 84-2-314, and  
8 amendments thereto, to involve obligations in excess of those which are  
9 appropriate to the property.

10 ~~(e)~~ **(f)** A disclaimer or limitation in violation of this section is void. If  
11 a consumer prevails in an action based upon breach of warranty, and the  
12 supplier has violated this section, the court may, in addition to any dam-  
13 ages recovered, award reasonable attorney fees and a civil penalty under  
14 K.S.A. 50-636, and amendments thereto, to be paid by the supplier who  
15 gave the improper disclaimer.

16 ~~(f)~~ **(g)** The making of a limited express warranty is not in itself a  
17 violation of this section.

18 ~~(g)~~ **(h)** This section shall not apply to seed for planting.

19 ~~(h)~~ **(i)** This section shall not apply to sales of livestock for agricultural  
20 purposes, other than sales of livestock for immediate slaughter, except in  
21 cases where the supplier knowingly sells livestock which is diseased.

22 ~~(i)~~ **(j)** This section shall not apply to the disposal of surplus property  
23 by any governmental entity if the governmental entity has given conspic-  
24 uous written notice of the warranty limitation, exclusion or disclaimer. In  
25 the case of surplus property which is a motor vehicle, a notice of such  
26 limitation, exclusion or disclaimer shall be affixed to a side window of the  
27 motor vehicle. Such notice shall comply with the buyers guide required  
28 by 16 CFR 455.2 and 16 CFR 455.3 (as in effect on the effective date of  
29 this act).

30 Sec. 2. K.S.A. 2004 Supp. 50-639 is hereby repealed.

31 Sec. 3. This act shall take effect and be in force from and after its  
32 publication in the statute book.