

SENATE BILL No. 370

By Committee on Judiciary

1-14

10 AN ACT concerning the Kansas consumer protection act; relating to cer-
11 tain victims; enhanced civil penalties; amending K.S.A. 50-676, 50-677,
12 50-678, 50-679 and 50-679a and repealing the existing sections.
13

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

15 Section 1. K.S.A. 50-676 is hereby amended to read as follows: 50-
16 676. As used in ~~this act~~ K.S.A. 50-676 through 50-679, and amendments
17 thereto:

18 (a) “Elder person” means a person who is 60 years of age or older.

19 (b) “Disabled person” means a person who has physical or mental
20 impairment, or both, which substantially limits one or more of such per-
21 son’s major life activities.

22 (c) “Immediate family member” means **parent, child, stepchild or**
23 **spouse.**

24 ~~(d)~~ (d) “Major life activities” includes functions such as caring for
25 one’s self, performing manual tasks, walking, seeing, hearing, speaking,
26 breathing, learning and working.

27 (e) “**Member of the military**” means **a member of the armed**
28 **forces or national guard on active duty or a member of an active**
29 **reserve unit in the armed forces or national guard.**

30 ~~(f)~~ (f) “Physical or mental impairment” means the following:

31 (1) Any physiological disorder or condition, cosmetic disfigurement
32 or anatomical loss substantially affecting one or more of the following
33 body systems: Neurological; musculoskeletal; special sense organs; res-
34 piratory, including speech organs; cardiovascular; reproductive; digestive;
35 genitourinary; hemic and lymphatic; skin; or endocrine; or

36 (2) any mental or psychological disorder, such as mental retardation,
37 organic brain syndrome, emotional or mental illness and specific learning
38 disabilities.

39 The term “physical or mental impairment” includes, but is not limited
40 to, such diseases and conditions as orthopedic, visual, speech and hearing
41 impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple scler-
42 rosis, cancer, heart disease, diabetes, mental retardation and emotional
43 illness.

- 1 ~~(f)~~ **(g)** “Protected consumer” means:
- 2 (1) An elder person;
- 3 (2) a disabled person;
- 4 (3) a veteran;
- 5 (4) the surviving spouse of a veteran; and
- 6 (5) an immediate family member of a ~~person on active military de-~~
- 7 ~~ployment~~ **member of the military.**
- 8 ~~(e)~~ ~~(g)~~ **(h)** “Substantially limits” means:
- 9 (1) Unable to perform a major life activity that the average person in
- 10 the general population can perform; or
- 11 (2) significantly restricted as to the condition, manner or duration
- 12 under which an individual can perform a particular major life activity as
- 13 compared to the condition, manner or duration under which the average
- 14 person in the general population can perform that same major life activity.
- 15 Minor temporary ailments or injuries shall not be considered physical or
- 16 mental impairments which substantially limit a person’s major life activ-
- 17 ities. Minor temporary ailments include, but are not limited to, colds,
- 18 influenza or sprains or minor injuries.
- 19 ~~(h)~~ **(i)** “Veteran” means a person who has served in the armed forces
- 20 of the United States of America **and separated from the armed forces**
- 21 **under honorable conditions.**
- 22 Sec. 2. K.S.A. 50-677 is hereby amended to read as follows: 50-677.
- 23 If any person is found to have violated any provision of the Kansas con-
- 24 sumer protection act, and such violation is committed against ~~elder or~~
- 25 ~~disabled persons~~ a protected consumer, in addition to any civil penalty
- 26 otherwise provided by law, the court may impose an additional civil pen-
- 27 alty not to exceed \$10,000 for each such violation.
- 28 Sec. 3. K.S.A. 50-678 is hereby amended to read as follows: 50-678.
- 29 In determining whether to impose a civil penalty as provided in ~~this act~~
- 30 ~~K.S.A. 50-676 through 50-679, and amendments thereto~~, and the amount
- 31 of such civil penalty, the court shall consider the extent to which one or
- 32 more of the following factors are present:
- 33 (a) Whether the defendant’s conduct was in disregard of the rights
- 34 of the ~~elder or disabled person~~ protected consumer;
- 35 (b) whether the defendant knew or should have known that the de-
- 36 fendant’s conduct was directed to ~~an elder or disabled person~~ a protected
- 37 consumer;
- 38 (c) whether the ~~elder or disabled person~~ protected consumer was
- 39 more vulnerable to the defendant’s conduct because of age, poor health,
- 40 infirmity, impaired understanding, restricted mobility or disability than
- 41 other persons and actually suffered substantial physical, emotional or ec-
- 42 onomic damage resulting from the defendant’s conduct;
- 43 (d) whether the defendant’s conduct caused ~~an elder or disabled per-~~

1 ~~son~~ a *protected consumer* to suffer any of the following:

- 2 (1) Mental or emotional anguish;
- 3 (2) loss of or encumbrance upon a primary residence of the ~~elder or~~
4 ~~disabled person~~ *protected consumer*;
- 5 (3) loss of or encumbrance upon the ~~elder or disabled person's~~ *pro-*
6 *ected consumer's* principal employment or principal source of income;
- 7 (4) loss of funds received under a pension or retirement plan or a
8 government benefits program;
- 9 (5) loss of property set aside for retirement or for personal or family
10 care and maintenance; or
- 11 (6) loss of assets essential to the health and welfare of the ~~elder or~~
12 ~~disabled person~~ *protected consumer*; or
- 13 (e) any other factors the court deems appropriate.

14 Sec. 4. K.S.A. 50-679 is hereby amended to read as follows: 50-679.
15 ~~An elder or disabled person~~ A *protected consumer* who suffers damage
16 or injury as a result of a violation of the Kansas consumer protection act
17 has a cause of action to recover actual damages, punitive damages, if
18 appropriate, and reasonable attorney fees. Restitution ordered pursuant
19 to this section has priority over a civil penalty imposed pursuant to K.S.A.
20 50-677, and amendments thereto.

21 Sec. 5. K.S.A. 50-679a is hereby amended to read as follows: 50-
22 679a. The provisions of K.S.A. 50-676 through 50-679, and amendments
23 thereto, shall be part of and supplemental to the consumer protection act.

24 Sec. 6. K.S.A. 50-676, 50-677, 50-678, 50-679 and 50-679a are
25 hereby repealed.

26 Sec. 7. This act shall take effect and be in force from and after its
27 publication in the statute book.