

SENATE BILL No. 90

By Committee on Judiciary

1-29

1 AN ACT concerning consumer protection; relating to private remedies;
2 amending K.S.A. 50-634 and repealing the existing section.

3
4 *Be it enacted by the Legislature of the State of Kansas:*

5 Section 1. K.S.A. 50-634 is hereby amended to read as follows: 50-
6 634. (a) Whether a consumer seeks or is entitled to damages or otherwise
7 has an adequate remedy at law or in equity, a consumer aggrieved by an
8 alleged violation of ~~this~~ *the Kansas consumer protection* act may bring an
9 action to:

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

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

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

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

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

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

29 (2) declared to violate K.S.A. 50-626 or 50-627, and amendments
30 thereto, by a final judgment of any district court or the supreme court of
31 this state that was either officially reported or made available for public
32 dissemination under subsection (a)(3) of K.S.A. 50-630, and amendments
33 thereto, by the attorney general 10 days before the consumer transactions
34 on which the action is based; or

35 (3) with respect to a supplier who agreed to it, was prohibited
36 specifically by the terms of a consent judgment which became final before

1 the consumer transactions on which the action is based.

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

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

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

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

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

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

32 (i) *The amendments to this section by this act are to be construed and*
33 *applied retroactively to any action pending on the effective date of this act.*

34 Sec. 2. K.S.A. 50-634 is hereby repealed.

35 Sec. 3. This act shall take effect and be in force from and after its
36 publication in the Kansas register.