

As Amended by House Committee

{As Amended by Senate Committee of the Whole}

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Session of 2019

SENATE BILL No. 78

By Committee on Judiciary

2-1

1 AN ACT concerning consumer protection; relating to assignment of rights
2 or benefits to a residential contractor under a property and casualty
3 insurance policy insuring residential real estate; **consumer protection**
4 **act; definitions of consumer transaction and supplier; amending**
5 **K.S.A. 2018 Supp. 50-624 and repealing the existing section.**
6

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

8 **New Section 1.** (a) As used in this section:

9 (1) "Assignment" means a post-loss assignment of rights or benefits
10 to a residential contractor under a property and casualty insurance policy
11 insuring residential real estate;

12 (2) "residential contractor" means a person in the business of
13 contracting or offering to contract with an owner or possessor of
14 residential real estate to:

15 (A) Repair or replace a roof system or perform any other exterior
16 repair, replacement, construction or reconstruction work on residential real
17 estate;

18 (B) perform interior ~~repair~~ or exterior **repair and** cleanup services
19 on residential real estate;

20 (C) arrange for, manage or process the work referred to in
21 subparagraph (A) or (B); or

22 (D) serve as a representative, agent or assignee of the owner or
23 possessor of residential real estate;

24 (3) "residential real estate" means a new or existing building,
25 ~~including a detached garage structure,~~ constructed for habitation by at
26 least one but no more than four families **{and any related detached**
27 **structures}**; and

28 (4) "roof system" means and includes roof coverings, roof ~~sheathing~~
29 **deck, roof ventilation,** roof weatherproofing and insulation.

30 (b) (1) An assignment may authorize a residential contractor to be
31 named as a copayee for the payment of benefits under a property and
32 casualty insurance policy covering residential real estate.

1 (2) An assignment shall include ~~a statement that the residential~~
2 ~~contractor has made no assurances that the claimed loss will be fully~~
3 ~~covered by an insurance contract and shall include~~ the following notice in
4 capitalized 14-point type:

5 **"AN ASSIGNMENT OF RIGHTS OR BENEFITS IS VOLUNTARY.**
6 YOU ARE AGREEING TO ASSIGN CERTAIN RIGHTS THAT YOU
7 HAVE UNDER YOUR INSURANCE POLICY. WITH AN
8 ASSIGNMENT, THE RESIDENTIAL CONTRACTOR SHALL BE
9 ENTITLED TO PURSUE ANY RIGHTS OR REMEDIES THAT YOU,
10 THE INSURED—~~HOMEOWNER~~ **POLICY HOLDER**, HAVE UNDER
11 YOUR INSURANCE POLICY. PLEASE READ AND UNDERSTAND
12 THIS DOCUMENT BEFORE SIGNING.

13 THE INSURER MAY ONLY PAY FOR THE COST TO REPAIR OR
14 REPLACE DAMAGED PROPERTY CAUSED BY A COVERED PERIL,
15 SUBJECT TO THE TERMS OF THE POLICY."

16 (3) *The residential contractor shall provide a copy of the*
17 *assignment to the insurer of the residential real estate within three*
18 *business days after the assignment is signed.*

19 (4) An assignment shall provide that, in addition to any other right to
20 revoke, the named insured has the right to cancel the assignment within
21 five business days after execution. ~~The residential contractor shall provide~~
22 ~~the assignment to the insurer of the residential real estate within five~~
23 ~~business days after the five-day right-to-cancel period expires.~~

24 (4)(5) An assignment shall not:

25 (A) Impair the interest of a mortgagee listed on the declarations page
26 of the property and casualty insurance policy that is the subject of the
27 assignment; or

28 (B) prevent or inhibit an insurer from communicating with the named
29 insured or mortgagee listed on the declarations page of the property and
30 casualty insurance policy that is the subject of the assignment.

31 (c) The commissioner of insurance shall strictly enforce the
32 provisions of K.S.A. 40-2404(9)(n), and amendments thereto, which
33 requires insurers to promptly provide a named insured a reasonable
34 explanation of the basis in the insurance policy in relation to the facts or
35 applicable law for denial of a claim or for the offer of a compromise
36 settlement.

37 (d) An assignment is void if the residential contractor:

38 (1) Violates any provision of this section; or

39 (2) is not in compliance with any of the requirements of the Kansas
40 roofing registration act.

41 (e) Any violation of this section is a deceptive act or practice under
42 the Kansas consumer protection act.

43 (f) This section shall be a part of and supplemental to the Kansas

1 consumer protection act.

2 Sec. 2. K.S.A. 2018 Supp. 50-624 is hereby amended to read as
3 follows: 50-624. As used in this act:

4 (a) "Agricultural purpose" means a purpose related to the
5 production, harvest, exhibition, marketing, transportation, processing
6 or manufacture of agricultural products by a consumer who
7 cultivates, plants, propagates or nurtures the agricultural products.
8 "Agricultural products" includes agricultural, horticultural,
9 viticultural, and dairy products, livestock, wildlife, poultry, bees,
10 forest products, fish and shellfish, and any products thereof, including
11 processed and manufactured products, and any and all products
12 raised or produced on farms and any processed or manufactured
13 products thereof.

14 (b) "Consumer" means an individual, husband and wife, sole
15 proprietor, or family partnership who seeks or acquires property or
16 services for personal, family, household, business or agricultural
17 purposes.

18 (c) "Consumer transaction" means a sale, lease, assignment or
19 other disposition for value of property or services within this state~~,~~
20 except insurance contracts regulated under state law), to a consumer;
21 or a solicitation by a supplier with respect to any of these dispositions.
22 *"Consumer transaction" does not include the disposition of repossessed*
23 *collateral by any supplier that is subject to and compliant with any state*
24 *or federal law or rules and regulations with regard to disposition of such*
25 *repossessed collateral.*

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

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

35 (f) "Lender" means a bank, savings and loan association, savings
36 bank, credit union, finance company, mortgage bank, mortgage
37 broker and any affiliate.

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

42 (h) "Mortgage trigger lead" means a consumer report obtained
43 pursuant to section 604(c)(1)(B) of the federal fair credit reporting act,

1 15 U.S.C. § 1681b, where the issuance of the report is triggered by an
2 inquiry made with a consumer reporting agency in response to an
3 application for credit. Any consumer report on an applicant obtained
4 by a lender with whom the applicant has initially applied for credit or
5 who holds or services an existing extension of credit of the applicant
6 who is the subject of the report is not considered a mortgage trigger
7 lead.

8 (i) "Person" means any individual, corporation, government,
9 governmental subdivision or agency, business trust, estate, trust,
10 partnership, association, cooperative or other legal entity.

11 (j) "Property" includes real estate, goods and intangible personal
12 property.

13 (k) "Services" includes:

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

15 (2) privileges with respect to transportation, hotel and restaurant
16 accommodations, education, entertainment, recreation, physical
17 culture, hospital accommodations, funerals and cemetery
18 accommodations; and

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

20 (l) "Supplier" means a manufacturer, distributor, dealer, seller,
21 lessor, assignor, or other person who, in the ordinary course of
22 business, solicits, engages in or enforces consumer transactions,
23 whether or not dealing directly with the consumer. ~~Supplier does not
24 include any bank, trust company or lending institution which is subject to
25 state or federal regulation with regard to disposition of repossessed
26 collateral by such bank, trust company or lending institution.~~

27 **Sec. 3. K.S.A. 2018 Supp. 50-624 is hereby repealed.**

28 ~~Sec. 4.~~ 4. This act shall take effect and be in force from and after its
29 publication in the statute book.