

SENATE BILL No. 55

AN ACT concerning consumer protection; relating to health care providers; amending K.S.A. 50-634 and repealing the existing section.

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

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

(1) Obtain a declaratory judgment that an act or practice violates this act; or

(2) enjoin or obtain a restraining order against a supplier who has violated, is violating or is likely to violate this act.

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

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

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

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

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

(3) with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent judgment which became final before the consumer transactions on which the action is based.

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

(1) The consumer complaining of the act or practice that violates this act has brought or maintained an action the consumer knew to be groundless and the prevailing party is the supplier; or a supplier has committed an act or practice that violates this act and the prevailing party is the consumer; and

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

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

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

(h) *Except for billing, advertising or other business services, nothing in this act shall be construed to create a private cause of action or private remedy under this act arising from the rendering of or failure to render professional services by a physician or other health care provider with respect to professional services for which such physician or health care provider is licensed by the state of Kansas. For the purposes of this subsection, "professional services" means any service, treatment, operation, prescription, communication or practice related to the care, treatment, diagnosis, ascertainment, cure, relief, palliation, adjustment or correction of any disease, condition, ailment, deformity or injury.*

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

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

I hereby certify that the above BILL originated in the SENATE, and passed that body

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SENATE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*President of the Senate.*

\_\_\_\_\_  
*Secretary of the Senate.*

Passed the HOUSE  
as amended \_\_\_\_\_

HOUSE adopted  
Conference Committee Report \_\_\_\_\_

\_\_\_\_\_  
*Speaker of the House.*

\_\_\_\_\_  
*Chief Clerk of the House.*

APPROVED \_\_\_\_\_

\_\_\_\_\_  
*Governor.*