

50-639. Disclaimer or limitation of warranties; liabilities; attorney fees, when; section inapplicable to seed for planting, livestock for agricultural purposes or disposal of surplus property by a governmental entity. (a) Notwithstanding any other provisions of law, with respect to property which is the subject of or is intended to become the subject of a consumer transaction in this state, no supplier shall:

(1) Exclude, modify or otherwise attempt to limit the implied warranties of merchantability as defined in K.S.A. 84-2-314, and amendments thereto, and fitness for a particular purpose, as defined in K.S.A. 84-2-315, and amendments thereto; or

(2) Exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of implied warranty of merchantability and fitness for a particular purpose.

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

(c) A supplier may limit the supplier's implied warranty of merchantability and fitness for a particular purpose with respect to a defect or defects in the property only if the supplier establishes that the consumer had knowledge of the defect or defects, which became the basis of the bargain between the parties. In neither case shall such limitation apply to liability for personal injury or property damage.

(d) Nothing in this section shall be construed to expand the implied warranty of merchantability as defined in K.S.A. 84-2-314, and amendments thereto, to involve obligations in excess of those which are appropriate to the property.

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

(f) The making of a limited express warranty is not in itself a violation of this section.

(g) This section shall not apply to seed for planting.

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

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

History: L. 1973, ch. 217, § 17; L. 1974, ch. 230, § 5; L. 1976, ch. 236, § 8; L. 1981, ch. 215, § 1; L. 1988, ch. 193, § 2; L. 1991, ch. 159, § 11; L. 1998, ch. 99, § 2; Apr. 16.