

TESTIMONY IN SUPPORT OF SB 201

My name is Gaye Tibbets and I am an attorney in Wichita, Kansas. I have some expertise in consumer protection claims, especially as they relate to mortgage fraud.

Last year I represented an active duty service member named Joe Wylie.

Joe and his wife and two children are stationed in Great Britain, but they own a home in Wichita to which they plan to return. In the meantime, the property is rented and the tenants' checks are deposited into a bank account from which the mortgage payments are to be withdrawn. Joe has a property management company that takes care of the property for him.

Joe's military work is confidential, but it requires him to leave his home in Great Britain for periods of weeks and sometimes months without notice and without knowing when he will return. During the times he is gone from his home, he has difficulty communicating stateside, both because communication facilities are not good and because of the time difference.

Joe's mortgage company had assured him that it would debit his bank account to pay for his mortgage. It did not. It did not notify him that it had decided not to debit his bank account and it did not notify him that his mortgage was not being paid.

Joe first learned of the problem with his mortgage when his tenants called to report that there was a Notice of Foreclosure on their door.

Joe called the mortgage company repeatedly and was told a number of falsehoods. One was that the mortgage company had tried to debit his account but there was not money in it. That was not true.

He was also told that he had never qualified to have his payment debited and this is why his account was not debited. However, he had letters that said that his account would be debited and we eventually recovered a recorded phone call of customer service assuring him that his account would be debited while he was overseas.

The mortgage company said that it would not dismiss the foreclosure until he paid the back payments (which he was willing to do) and also paid thousands of dollars in late fees and attorneys' fees. Joe refused, because it was the mortgage company's mistake, not his.

The hit to his credit report was devastating. The young family was unable to buy a car that summer because of the foreclosure. His unit had difficulty getting funds for travel because military policy understandably limits access to funds for those with credit problems. Even his security clearance was at stake. Despite his requests, the mortgage company would not remedy the situation.

Joe hired me and I knew that he had grounds to dismiss the foreclosure action and also a counterclaim for violation of the Kansas Consumer Protection Act.

I also knew that he should be considered a "protected consumer" under the Act, which would entitle him to double penalties.

However, when I read the statute carefully, I found a problem. This is how the statute reads today:

50-676. Protected consumer; definitions. As used in K.S.A. 50-676 through 50-679, and amendments thereto:

(a) "Elder person" means a person who is 60 years of age or older.

(b) "Disabled person" means a person who has physical or mental impairment, or both, which substantially limits one or more of such person's major life activities.

(c) "Immediate family member" means parent, child, stepchild or spouse.

(d) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(e) "Member of the military" means a member of the armed forces or national guard on active duty or a member of an active reserve unit in the armed forces or national guard.

(f) "Physical or mental impairment" means the following:

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

(2) any mental or psychological disorder, such as intellectual disability, organic brain syndrome, emotional or mental illness and specific learning disabilities.

The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairment, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability and emotional illness.

(g) "Protected consumer" means:

(1) An elder person;

(2) a disabled person;

(3) a veteran;

(4) the surviving spouse of a veteran; and

(5) an immediate family member of a member of the military.

(h) "Substantially limits" means:

(1) Unable to perform a major life activity that the average person in the general population can perform; or

(2) significantly restricted as to the condition, manner or duration under which an individual can perform a particular major life activity as compared to the condition, manner or duration under which the average person in the general population can perform that same major life activity. Minor temporary ailments or injuries shall not be considered physical or mental impairments which substantially limit a person's major life activities. Minor temporary ailments include, but are not limited to, colds, influenza or sprains or minor injuries.

(i) "Veteran" means a person who has served in the armed forces of the United States of America and separated from the armed forces under honorable conditions.

History: L. 1996, ch. 121, § 1; L. 2010, ch. 129, § 6; L. 2012, ch. 91, § 34; July 1.

We were able to settle Joe's case so that the problem with the statute did not prohibit his claim. However, had it been brought to the judge's attention, the judge would not have discretion to do what the legislature intended, but would need to apply the statute as written.

SB 201 amends the statute to correct what was likely a drafting error. It adds "member of the military" to the list of those defined as "protected consumers."

The object of KSA 50-676 is to provide extra consumer protection to certain citizens whose health, age or occupation render them more vulnerable to consumer fraud. However, as written, the statute does not include active members of the armed forces in its definition of "protected consumer."

A long list of definitions is included at the beginning of the statute. These include an elder person, a disabled person, a veteran, and an actively serving military member.

All defined groups except "active duty military" are repeated in section (g), which is the definition of "protected consumer." As it now stands, a member of the military on active duty is not considered a protected consumer.

This omission could cause unnecessary trouble for members of the military who may, because of their work, have difficulty protecting themselves from unscrupulous business practices. Members of the military are often working overseas, where time zone differences make it very difficult for them to communicate with banks and businesses to sort out problems. Active servicemen and women may also have unconventional work schedules or be unable to communicate for long periods of time.

SB 201 solves the problem. The definition of "protected consumer" is amended to include "member of the military". Then this rule would do what it was clearly intended to do, which is to protect consumers who need a little extra protection.

Thank you for fixing this problem so other active military families do not encounter this problem.