

2021 Kansas Statutes

16a-3-404. (UCCC) Assignee subject to defenses; application of payments received by assignee; limitation of actions; assignee may require seller or lessor to repurchase obligation; joinder of parties; procedure.

(1) An assignee of the rights of the seller or lessor under a consumer credit sale or consumer lease is subject to all claims and defenses of the buyer or lessee against the seller or lessor arising out of the sale or lease, notwithstanding that:

(a) There is an agreement to the contrary; or
(b) the assignee is a holder in due course of a negotiable instrument issued in violation of the provisions prohibiting certain negotiable instruments (section 16a-3-307).

(2) Claims or defenses of a buyer or lessee specified in subsection (1) may be asserted against the assignee only:

(a) If the buyer or lessee has attempted in good faith to obtain reasonable satisfaction from the seller or lessor with respect to claims or defenses;

(b) if the buyer or lessee, when requested in writing to do so by the seller, lessor or the assignee, has given notice in writing to the seller or lessee and the assignee stating the claims or defenses;

(c) to the extent of the amount owing to the assignee with respect to the sale or lease at the time the assignee has notice of such claims or defenses. Such notice, generally stating the claims or defenses, must be in writing and shall be sent to the seller (or lessor), and to the assignee if the buyer or lessee has received written notice of the name and address of the assignee; and

(d) as a matter of defense to or setoff against claims by the assignee except that the buyer or lessee shall not be prohibited from bringing an action to rescind an obligation against which it has a defense or setoff.

(3) For the purpose of determining the amount owing to the assignee with respect to the sale or lease:

(a) Payments received by the assignee after the consolidation of two or more consumer credit sales, other than pursuant to open end credit, are deemed to have been first applied to the payment of the sales first made; if the sales consolidated arose from sales made on the same day, payments are deemed to have been first applied to the smaller or smallest sale or sales;

(b) payments received upon an open end credit account are deemed to have been first applied to the payment of finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

(4) Any action by an assignee or the original seller or lessor who has repurchased an obligation under subsection (5) to enforce an obligation, or any action by a buyer or lessee to rescind, or any request to repurchase the obligation, shall be brought within one year from the date of receipt of the notice of the claim or defense, or default in payment, whichever is later.

(5) If a claim or defense of a buyer or lessee against a seller or lessor is asserted against an assignee, the assignee may, regardless of any existing agreement to the contrary, require the seller or lessor to repurchase the obligation for an amount equal to the price for which the obligation was assigned, plus that portion of the finance charge earned by the assignee, minus payments previously made to the assignee by the buyer or lessee. In any action by the buyer or lessee to rescind an obligation held by the assignee, the seller or lessor shall have the right to intervene and any party may join as a defendant any manufacturer or other person who is or may be liable to another party. If the action to rescind is brought

against the seller or lessor, such seller or lessor shall have the right to join as a defendant any manufacturer or other person who is or may be liable to such seller or lessor.

(6) An agreement may not provide greater rights for an assignee than this section permits.

History: L. 1973, ch. 85, § 59; L. 1975, ch. 127, § 1; L. 1976, ch. 145, § 40; L. 1981, ch. 93, § 13; July 1.