

**MOTOR VEHICLE REPAIR - INSURANCE**

**DEDUCTIBLE**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Scott N. Howell**

AN ACT RELATING TO COMMERCE AND TRADE; MAKING IT A DECEPTIVE TRADE PRACTICE TO COMMENCE A MOTOR VEHICLE REPAIR WITHOUT DISCLOSING THE ESTIMATED COST OF REPAIR AND THE AMOUNT OF INSURANCE DEDUCTIBLE A CONSUMER IS REQUIRED TO PAY AND TO COLLECT AN AMOUNT IN EXCESS OF THE INSURANCE DEDUCTIBLE CHARGED UNLESS AN EXCEPTION APPLIES; ~~§ [AND] §~~ REPEALING EXISTING LAW ON INSURANCE DEDUCTIBLES

**§ ; AND PROVIDING A COORDINATION CLAUSE § .**

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**13-11-4**, as last amended by Chapter 237, Laws of Utah 1995

REPEALS:

**41-6-149.5**, as enacted by Chapter 246, Laws of Utah 1997

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **13-11-4** is amended to read:

**13-11-4. Deceptive act or practice by supplier.**

(1) A deceptive act or practice by a supplier in connection with a consumer transaction violates this chapter whether it occurs before, during, or after the transaction.

(2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:

(a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not;

(b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not;

1 (c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or has  
2 been used to an extent that is materially different from the fact;

3 (d) indicates that the subject of a consumer transaction is available to the consumer for a  
4 reason that does not exist;

5 (e) indicates that the subject of a consumer transaction has been supplied in accordance  
6 with a previous representation, if it has not;

7 (f) indicates that the subject of a consumer transaction will be supplied in greater quantity  
8 than the supplier intends;

9 (g) indicates that replacement or repair is needed, if it is not;

10 (h) indicates that a specific price advantage exists, if it does not;

11 (i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier does  
12 not have;

13 (j) indicates that a consumer transaction involves or does not involve a warranty, a  
14 disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if the  
15 representation is false;

16 (k) indicates that the consumer will receive a rebate, discount, or other benefit as an  
17 inducement for entering into a consumer transaction in return for giving the supplier the names of  
18 prospective consumers or otherwise helping the supplier to enter into other consumer transactions,  
19 if receipt of the benefit is contingent on an event occurring after the consumer enters into the  
20 transaction;

21 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the  
22 services within the time advertised or otherwise represented or, if no specific time is advertised  
23 or represented, fails to ship the goods or furnish the services within 30 days, unless within the  
24 applicable time period the supplier provides the buyer with the option to either cancel the sales  
25 agreement and receive a refund of all previous payments to the supplier or to extend the shipping  
26 date to a specific date proposed by the supplier, but any refund shall be mailed or delivered to the  
27 buyer within ten business days after the seller receives written notification from the buyer of the  
28 buyer's right to cancel the sales agreement and receive the refund;

29 (m) fails to furnish a notice of the purchaser's right to cancel a direct solicitation sale  
30 within three business days of the time of purchase if the sale is made other than at the supplier's  
31 established place of business pursuant to the supplier's mail, telephone, or personal contact and if

1 the sale price exceeds \$25, unless the supplier's cancellation policy is communicated to the buyer  
2 and the policy offers greater rights to the buyer than Subsection (2)(m), which notice shall be a  
3 conspicuous statement written in dark bold at least 12 point type, on the first page of the purchase  
4 documentation, and shall read as follows: "YOU, THE BUYER, MAY CANCEL THIS  
5 CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or  
6 time period reflecting the supplier's cancellation policy but not less than three business days)  
7 AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT,  
8 WHICHEVER IS LATER.";

9 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title  
10 76, Chapter 6a, Pyramid Scheme Act; [or]

11 (o) represents that the funds or property conveyed in response to a charitable solicitation  
12 will be donated or used for a particular purpose or will be donated to or used by a particular  
13 organization, if the representation is false[-]; or

14 (p) if a consumer indicates his intention of making a claim for a motor vehicle repair  
15 against his motor vehicle insurance policy:

16 (i) commences the repair without first giving the consumer oral and written notice of:

17 (A) the total estimated cost of the repair; and

18 (B) the total dollar amount the consumer is responsible to pay for the repair, which dollar  
19 amount may not exceed the applicable deductible or other copay arrangement in the consumer's  
20 insurance policy; or

21 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a  
22 consumer was initially told he was responsible to pay as an insurance deductible or other copay  
23 arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that amount is less than  
24 the full amount the motor vehicle insurance policy requires the insured to pay as a deductible or  
25 other copay arrangement, unless:

26 (A) the consumer's insurance company denies that coverage exists for the repair, in which  
27 case the full amount of the repair may be charged and collected from the consumer; or

28 (B) the consumer misstates, before the repair is commenced, the amount of money the  
29 insurance policy requires the consumer to pay as a deductible or other copay arrangement, in  
30 which case, the supplier may charge and collect from the consumer an amount that does not exceed  
31 the amount the insurance policy requires the consumer to pay as a deductible or other copay

1 arrangement.

2 Section 2. **Repealer.**

3 This act repeals:

4 Section **41-6-149.5, Insurance deductible for motor vehicle repairs.**

4a **§ Section 3. Coordination clause.**

4b **IF THIS BILL AND 4<sup>th</sup> SUB. S.B. 76, INSURANCE LAW CHANGES, BOTH PASS, IT IS THE INTENT**

4c **OF THE LEGISLATURE THAT IN ENROLLING, THE OFFICE OF LEGISLATIVE RESEARCH AND**

4d **GENERAL COUNSEL SHALL REMOVE SECTION 31A-31-108 FROM 4<sup>th</sup> SUB. S.B. 76. §**

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**Legislative Review Note**

**as of 2-6-98 10:24 AM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**