

**Senator Curtis S. Bramble** proposes the following substitute bill:

**CONSUMER CREDIT CODE AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Stephen H. Urquhart

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Consumer Credit Code.

**Highlighted Provisions:**

This bill:

- ▶ imposes requirements on the waiver of class action rights related to closed-end consumer contracts and open-end consumer credit contracts;
- ▶ modifies provisions related to changing an open-end consumer credit contract; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

This bill provides an immediate effective date.

**Utah Code Sections Affected:**

AMENDS:

**70C-4-102**, as last amended by Chapter 180, Laws of Utah 1999

ENACTS:

**70C-3-104**, Utah Code Annotated 1953

**70C-4-105**, Utah Code Annotated 1953



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

Section 1. Section **70C-3-104** is enacted to read:

**70C-3-104. Class action.**

(1) In accordance with this section, a creditor may contract with the debtor of a closed-end consumer contract for a waiver by the debtor of the right to initiate or participate in a class action related to the closed-end consumer contract.

(2) To contract for the waiver described in Subsection (1), the creditor shall disclose the waiver:

(a) to the debtor;

(b) in the closed-end consumer contract; and

(c) for a closed-end consumer contract entered into on or after August 1, 2006, in:

(i) bold type;  $\hat{S}$ → [and] or ← $\hat{S}$

(ii) all capital letters.

Section 2. Section **70C-4-102** is amended to read:

**70C-4-102. Change of terms of open-end consumer credit contracts.**

(1) For purposes of this section, "change" includes to add, delete, or otherwise change a term of an open-end consumer credit contract.

(2) ~~(a)~~ Notwithstanding Section 25-5-4, a creditor may change any written term of an open-end consumer credit contract at any time while the ~~[agreement]~~ open-end consumer credit contract is in effect and apply the new term to the unpaid balance in the account if:

~~[(a)]~~ (i) the creditor gives all other parties to the open-end consumer credit contract that may be affected not less than 30 days advance written notice of the change; and

~~[(b)]~~ (ii) the open-end consumer credit contract expressly provides that the creditor may change terms of the ~~[agreement]~~ open-end consumer credit contract from time to time.

(b) A creditor may change an open-end consumer credit contract in accordance with this section to include arbitration or other alternative dispute resolution mechanism.

(3) If the creditor has taken a security interest in any real property of the debtor to secure payment of the debt, and if the term to be changed affects the method for calculating minimum payments, or is part of the finance charge, the creditor may apply the new term to an account balance relating to a credit transaction that occurred prior to the effective date of the

57 change only if:

58 (a) the debtor expressly so agrees after notice of the change has been given by the  
59 creditor; or

60 (b) (i) the creditor notifies the debtor that:

61 (A) further extensions of credit will not be permitted unless the debtor agrees that the  
62 new term may be applied to an existing account balance; and

63 (B) any future charges to the account will constitute agreement; and

64 (ii) the debtor makes a charge to the account after receiving notice described in

65 Subsection (3)(b)(i).

66 (4) Notice under this section is not required when:

67 (a) the change involves:

68 (i) late payment charges;

69 (ii) charges for documentary evidence;

70 (iii) over-the-limit charges;

71 (iv) a reduction of any component of a finance or other charge;

72 (v) suspension of future credit privileges; or

73 (vi) termination of an account or plan; or

74 (b) other than an increase in the periodic rate or other finance charge, the change results

75 from:

76 (i) an agreement involving:

77 (A) a court proceeding; [or]

78 (B) an arbitration proceeding; or

79 (C) another alternative dispute resolution proceeding; or

80 (ii) the consumer's default or delinquency.

81 (5) (a) The actual unpaid balance of the account at any point in time is not a term of the  
82 [~~credit agreement~~] open-end credit contract for purposes of this section.

83 (b) With regard to a variable or adjustable interest rate, a periodic change in the  
84 applicable rate is not a change subject to this section if no term of the [~~credit agreement~~]  
85 open-end credit contract pertaining to calculation of the applicable rate is changed.

86 (6) (a) A creditor may include a notice required by this section of a change to an  
87 open-end consumer credit contract on or in the same envelope as a periodic statement or other

88 material sent to the borrower by the creditor.

89 (b) Notwithstanding Subsection (6)(a), a creditor is not required to include a notice  
90 required by this section with any other material sent to the borrower.

91 Section 3. Section **70C-4-105** is enacted to read:

92 **70C-4-105. Class actions.**

93 (1) In accordance with this section, a creditor may contract with the debtor of an  
94 open-end consumer credit contract for a waiver by the debtor of the right to initiate or  
95 participate in a class action related to the open-end consumer credit contract.

96 (2) To contract for the waiver described in Subsection (1), the creditor shall disclose  
97 the waiver:

98 (a) to the debtor;

99 (b) in the open-end consumer credit contract; and

100 (c) for an open-end consumer credit contract entered into on or after August 1, 2006,

101 in:

102 (i) bold type; ~~§~~→ [and] or ←~~§~~

103 (ii) all capital letters.

104 Section 4. **Effective date.**

105 If approved by two-thirds of all the members elected to each house, this bill takes effect  
106 upon approval by the governor, or the day following the constitutional time limit of Utah  
107 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,  
108 the date of veto override.

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**Fiscal Note**  
**Bill Number SB0252S01**

**Consumer Credit Code Amendments**

*15-Feb-06*

*1:02 PM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**