

1 **CONSUMER CREDIT CODE AMENDMENTS**

2 2006 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Curtis S. Bramble**

5 House Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Utah Consumer Credit Code.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ imposes requirements on the waiver of class action rights related to an open-end
- 13 consumer credit contract;
- 14 ▶ limits a creditor's rights if the creditor violates the requirements on waiver of class
- 15 action rights;
- 16 ▶ modifies provisions related to changing an open-end consumer credit contract; and
- 17 ▶ makes technical changes.

18 **Monies Appropriated in this Bill:**

19 None

20 **Other Special Clauses:**

21 This bill provides an immediate effective date.

22 **Utah Code Sections Affected:**

23 AMENDS:

24 **70C-4-102**, as last amended by Chapter 180, Laws of Utah 1999

25 ENACTS:

26 **70C-3-104**, Utah Code Annotated 1953

27 **70C-4-105**, Utah Code Annotated 1953



28

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

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

31 **70C-3-104. Class action.**

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

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

37 (a) to the debtor;

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

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

40 (i) bold type; and

41 (ii) all capital letters.

42 (3) Notwithstanding the other provisions of this title and subject to any other remedy
43 the debtor may have under this chapter, a creditor that violates this section may not retain from
44 a debtor:

45 (a) a late charge that exceeds \$35 for any delinquent installment; or

46 (b) default interest exceeding 25% per annum.

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

48 **70C-4-102. Change of terms of open-end consumer credit contracts.**

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

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

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

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

58 (b) A creditor may change an open-end consumer credit contract in accordance with

59 this section to include arbitration or other alternative dispute resolution mechanism.

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

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

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

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

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

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

72 Subsection (3)(b)(i).

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

74 (a) the change involves:

75 (i) late payment charges;

76 (ii) charges for documentary evidence;

77 (iii) over-the-limit charges;

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

79 (v) suspension of future credit privileges; or

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

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

82 from:

83 (i) an agreement involving:

84 (A) a court proceeding; [or]

85 (B) an arbitration proceeding; or

86 (C) another alternative dispute resolution proceeding; or

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

88 (5) (a) The actual unpaid balance of the account at any point in time is not a term of the

89 [~~credit agreement~~] open-end credit contract for purposes of this section.

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

93 (6) (a) A creditor may include a notice required by this section of a change to an
94 open-end consumer credit contract on or in the same envelope as a periodic statement or other
95 material sent to the borrower by the creditor.

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

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

99 **70C-4-105. Class actions.**

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

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

105 (a) to the debtor;

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

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

108 in:

109 (i) bold type; and

110 (ii) all capital letters.

111 (3) Notwithstanding the other provisions of this title and subject to any other remedy
112 the debtor may have under this chapter, a creditor that violates this section may not retain from
113 a debtor:

114 (a) a late charge that exceeds \$35 for any delinquent installment; or

115 (b) default interest exceeding 25% per annum.

116 Section 4. **Effective date.**

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

Legislative Review Note
as of 2-9-06 12:08 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0252

Consumer Credit Code Amendments

15-Feb-06

9:53 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst