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Consumer Protection Amendments
2025 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Evan J. Vickers
House Sponsor: A. Cory Maloy

LONG TITLE

General Description:

This bill amends provisions relating to consumer protection.

Highlighted Provisions:

This bill:

- describes the award a court must issue when granting a judgment in favor of the Division of Consumer Protection (division);
- clarifies what constitutes a deceptive and unconscionable sales practice;
- clarifies the division's rulemaking and investigatory authority;
- allows the division to request that a court order disgorgement of money under certain circumstances;
- clarifies the factors a court considers when issuing a fine;
- clarifies that a government agency may bring an enforcement action for defective construction; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 13-2-6**, as last amended by Laws of Utah 2024, Chapter 102
- 13-11-2**, as enacted by Laws of Utah 1973, Chapter 188
- 13-11-3**, as last amended by Laws of Utah 2004, Chapter 55
- 13-11-4**, as last amended by Laws of Utah 2024, Chapters 102, 186

- 28 **13-11-5**, as enacted by Laws of Utah 1973, Chapter 188
 29 **13-11-6**, as last amended by Laws of Utah 2024, Chapter 158
 30 **13-11-7**, as last amended by Laws of Utah 2024, Chapter 101
 31 **13-11-8**, as enacted by Laws of Utah 1973, Chapter 188
 32 **13-11-9**, as enacted by Laws of Utah 1973, Chapter 188
 33 **13-11-16**, as last amended by Laws of Utah 1997, Chapter 296
 34 **13-11-17**, as last amended by Laws of Utah 2018, Chapter 276
 35 **13-11-18**, as enacted by Laws of Utah 1973, Chapter 188
 36 **13-11-19**, as last amended by Laws of Utah 2018, Chapter 276
 37 **13-11-20**, as last amended by Laws of Utah 2010, Chapter 378
 38 **13-11-21**, as last amended by Laws of Utah 2024, Chapter 222
 39 **13-11-22**, as enacted by Laws of Utah 1973, Chapter 188
 40 **78B-4-513**, as enacted by Laws of Utah 2008, Chapter 280

41 REPEALS:

- 42 **13-11-17.5**, as enacted by Laws of Utah 1987, Chapter 105

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

45 Section 1. Section **13-2-6** is amended to read:

46 **13-2-6 . Enforcement powers.**

- 47 (1) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division
 48 shall have authority to convene administrative hearings, issue cease and desist orders,
 49 and impose fines under all the chapters identified in Section 13-2-1.
 50 (2) A person who intentionally violates a final cease and desist order entered by the division
 51 of which the person has notice is guilty of a third degree felony.
 52 (3) If the division has reasonable cause to believe that a person has violated or is violating
 53 any chapter listed in Section 13-2-1, the division may promptly issue the alleged violator
 54 a citation signed by the division's director or the director's designee.
 55 (a) Each citation shall be in writing and shall:
 56 (i) set forth with particularity the nature of the violation, including a reference to the
 57 statutory or administrative rule provision violated;
 58 (ii) state that a request for review of the citation shall be made in writing and be
 59 received by the division no more than 20 calendar days after the day on which the
 60 division issues the citation;
 61 (iii) state the consequences of failing to make a timely request for review; and

- 62 (iv) state all other information required by Subsection 63G-4-201(2).
- 63 (b) In computing a time period under this section, the following days may not be
64 included:
- 65 (i) the day on which the division issues a citation; and
66 (ii) the day on which the division receives a request for review of a citation.
- 67 (c)(i) Except as provided in Subsection (3)(c)(iii), if the presiding officer finds that
68 there is not substantial evidence that the recipient violated a chapter listed in
69 Section 13-2-1:
- 70 (A) the citation may not become final; and
71 (B) the division shall immediately vacate the citation and promptly notify the
72 recipient in writing.
- 73 (ii) Except as provided in Subsection (3)(c)(iv), if the presiding officer finds that
74 there is substantial evidence that the recipient violated a chapter listed in Section
75 13-2-1:
- 76 (A) the citation shall become final; and
77 (B) the division may enter a cease and desist order against the recipient.
- 78 (iii) For a citation issued for a violation of Chapter 41, Price Controls During
79 Emergencies Act, if the presiding officer finds that there is not clear and
80 convincing evidence that the recipient violated the chapter:
- 81 (A) the citation may not become final; and
82 (B) the division shall immediately vacate the citation and promptly notify the
83 recipient in writing.
- 84 (iv) For a citation issued for a violation of Chapter 41, Price Controls During
85 Emergencies Act, if the presiding officer finds that there is clear and convincing
86 evidence that the recipient violated the chapter:
- 87 (A) the citation shall become final; and
88 (B) the division may enter a cease and desist order against the recipient.
- 89 (d)(i) A citation issued under this chapter may be personally served upon a person
90 upon whom a summons may be served in accordance with the Utah Rules of Civil
91 Procedure.
- 92 (ii) A citation also may be served by first-class mail, postage prepaid.
- 93 (e)(i) If the recipient fails to make a request for review within 20 calendar days after
94 the day on which the division issues the citation, the citation shall become the
95 final order of the division.

96 (ii) The period to contest the citation may be extended by the director for good cause
97 shown.

98 (f) If the chapter violated allows for an administrative fine, after a citation becomes
99 final, the director may impose the administrative fine.

100 (4)(a) A person who has violated, is violating, or has attempted to violate a chapter
101 identified in Section 13-2-1 is subject to the division's jurisdiction if:

102 (i) the violation or attempted violation is committed wholly or partly within the state;

103 (ii) conduct committed outside the state constitutes an attempt to commit a violation
104 within the state; or

105 (iii) transactional resources located within the state are used by the offender to
106 directly or indirectly facilitate a violation or attempted violation.

107 (b) As used in this section, "transactional resources" means:

108 (i) a mail drop or mail box, regardless of whether the mail drop or mail box is located
109 on the premises of a United States Post Office;

110 (ii) a telephone or facsimile transmission device;

111 (iii) an Internet connection by a resident or inhabitant of this state with a resident- or
112 nonresident-maintained Internet site;

113 (iv) a business office or private residence used for a business-related purpose;

114 (v) an account with or services of a financial institution;

115 (vi) the services of a common or private carrier; or

116 (vii) the use of a city, county, or state asset or facility, including a road or highway.

117 (5) The director or the director's designee, for the purposes outlined in a chapter
118 administered by the division, may administer oaths, issue subpoenas, compel the
119 attendance of witnesses, conduct audits, compel sworn responses to written questions, or
120 compel the production of papers, books, accounts, documents, or evidence.

121 (6)(a) An administrative action filed under this chapter or a chapter listed in Section
122 13-2-1 shall be commenced no later than 10 years after the day on which the alleged
123 violation occurs.

124 (b) A civil action filed under this chapter or a chapter listed in Section 13-2-1 shall be
125 commenced no later than five years after the day on which the alleged violation
126 occurs.

127 (c) The provisions of this Subsection (6) control over the provisions of Title 78B,
128 Chapter 2, Statutes of Limitations.

129 (7) When granting a judgment in the division's favor in connection with the division's

130 exercise of any authority described in Section 13-2-5 or 13-2-6, a court shall award:

131 (a) reasonable attorney fees;

132 (b) court costs;

133 (c) costs of investigation; and

134 (d) any other relief the court deems appropriate.

135 Section 2. Section **13-11-2** is amended to read:

136 **13-11-2 . Construction and purposes of act.**

137 This act shall be construed liberally to promote the following policies:

138 (1) to simplify, clarify, and modernize the law governing consumer sales practices;

139 (2) to protect consumers from suppliers who commit deceptive and unconscionable sales
140 practices, including by disgorging money or any thing of value obtained in violation of
141 this chapter;

142 (3) to encourage the development of fair consumer sales practices;

143 (4) to make state regulation of consumer sales practices [~~not inconsistent~~] consistent with
144 the policies of the Federal Trade Commission Act relating to consumer protection;

145 (5) to make uniform the law, including the administrative rules, with respect to the subject
146 of this [~~aet~~] chapter among those states [~~which~~] that enact similar laws; and

147 (6) to recognize and protect suppliers [~~who~~] that in good faith comply with the provisions of
148 this [~~aet~~] chapter.

149 Section 3. Section **13-11-3** is amended to read:

150 **13-11-3 . Definitions.**

151 As used in this chapter:

152 (1) "Charitable solicitation" means any request directly or indirectly for money, credit,
153 property, financial assistance, or any other thing of value on the plea or representation
154 that it will be used for a charitable purpose. A charitable solicitation may be made in
155 any manner, including:

156 (a) any oral or written request, including a telephone request;

157 (b) the distribution, circulation, or posting of any handbill, written advertisement, or
158 publication; or

159 (c) the sale of, offer or attempt to sell, or request of donations for any book, card,
160 chance, coupon, device, magazine, membership, merchandise, subscription, ticket,
161 flower, flag, button, sticker, ribbon, token, trinket, tag, souvenir, candy, or any other
162 article in connection with which any appeal is made for any charitable purpose, or
163 where the name of any charitable organization or movement is used or referred to as

164 an inducement or reason for making any purchase donation, or where, in connection
165 with any sale or donation, any statement is made that the whole or any part of the
166 proceeds of any sale or donation will go to or be donated to any charitable purpose.

167 A charitable solicitation is considered complete when made, whether or not the
168 organization or person making the solicitation receives any contribution or makes any
169 sale.

170 (2)(a) "Consumer transaction" means a sale, lease, assignment, award by chance, or
171 other written or oral transfer or disposition of goods, services, or other property, both
172 tangible and intangible (except securities and insurance) to, or apparently to, a person
173 for:

174 (i) primarily personal, family, or household purposes; or

175 (ii) purposes that relate to a business opportunity that requires:

176 (A) expenditure of money or property by the person described in Subsection (2)(a);
177 and

178 (B) the person described in Subsection (2)(a) to perform personal services on a
179 continuing basis and in which the person described in Subsection (2)(a) has not
180 been previously engaged.

181 (b) "Consumer transaction" includes:

182 (i) any of the following with respect to a transfer or disposition described in
183 Subsection (2)(a):

184 (A) an offer;

185 (B) a solicitation;

186 (C) an agreement; or

187 (D) performance of an agreement; or

188 (ii) a charitable solicitation.

189 (3) [~~"Enforcing authority"~~] "Division" means the Division of Consumer Protection.

190 (4) "Final judgment" means a judgment, including any supporting opinion, that determines
191 the rights of the parties and concerning which appellate remedies have been exhausted
192 or the time for appeal has expired.

193 [~~(5) "Person" means an individual, corporation, government, governmental subdivision or
194 agency, business trust, estate, trust, partnership, association, cooperative, or any other
195 legal entity.~~]

196 [~~(6)~~] (5) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person who
197 regularly solicits, engages in, or enforces consumer transactions, whether or not [he] the

198 person deals directly with the consumer.

199 (6) "Vulnerable adult" means the same as that term is defined in Section 26B-6-201.

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

201 **13-11-4 . Deceptive act or practice by supplier.**

202 (1) ~~[A deceptive act or practice by a supplier in connection with a consumer transaction~~
203 ~~violates this chapter whether it occurs before, during, or after the transaction]~~ A supplier
204 that engages in a deceptive act or practice in connection with a consumer transaction
205 violates this chapter, whether the deceptive act or practice occurs before, during, or after
206 the transaction.

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

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

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

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

215 (d) indicates that the subject of a consumer transaction is available to the consumer for a
216 reason that does not exist, including any of the following reasons falsely used in an
217 advertisement:

218 (i) "going out of business";

219 (ii) "bankruptcy sale";

220 (iii) "lost our lease";

221 (iv) "building coming down";

222 (v) "forced out of business";

223 (vi) "final days";

224 (vii) "liquidation sale";

225 (viii) "fire sale";

226 (ix) "quitting business"; or

227 (x) an expression similar to any of the expressions in Subsections (2)(d)(i) through
228 (ix);

229 (e) indicates that the subject of a consumer transaction has been supplied in accordance
230 with a previous representation, if ~~[it]~~ the subject has not;

231 (f) indicates that the subject of a consumer transaction will be supplied in greater

- 232 quantity than the supplier intends;
- 233 (g) indicates that replacement or repair is needed, if [it] the replacement or repair is not;
- 234 (h) indicates that a specific price advantage exists, if [it] the specific price advantage
235 does not;
- 236 (i) indicates that the supplier has a sponsorship, approval, license, certification, or
237 affiliation the supplier does not have;
- 238 (j)(i) indicates that a consumer transaction involves or does not involve a warranty, a
239 disclaimer of warranties, particular warranty terms, or other rights, remedies, or
240 obligations, if the representation is false; or
- 241 (ii) fails to honor a warranty or a particular warranty term;
- 242 (k) indicates that the consumer will receive a rebate, discount, or other benefit as an
243 inducement for entering into a consumer transaction in return for giving the supplier
244 the names of prospective consumers or otherwise helping the supplier to enter into
245 other consumer transactions, if receipt of the benefit is contingent on an event
246 occurring after the consumer enters into the transaction;
- 247 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the
248 services within the time advertised or otherwise represented or, if no specific time is
249 advertised or represented, fails to ship the goods or furnish the services within 30
250 days, unless within the applicable time period the supplier provides the buyer with
251 the option to:
- 252 (i) cancel the sales agreement and receive a refund of all previous payments to the
253 supplier if the refund is mailed or delivered to the buyer within 10 business days
254 after the day on which the seller receives written notification from the buyer of the
255 buyer's intent to cancel the sales agreement and receive the refund; or
- 256 (ii) extend the shipping date to a specific date proposed by the supplier;
- 257 (m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the
258 requirements of Subsection (3)(a) of the purchaser's right to cancel a direct
259 solicitation sale within three business days of the time of purchase if:
- 260 (i) the sale is made other than at the supplier's established place of business pursuant
261 to the supplier's personal contact, whether through mail, electronic mail, facsimile
262 transmission, telephone, or any other form of direct solicitation; and
- 263 (ii) the sale price exceeds \$25;
- 264 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
265 76, Chapter 6a, Pyramid Scheme Act;

- 266 (o) in connection with a charitable solicitation:
- 267 (i) falsely indicates that:
- 268 (A) the supplier is affiliated with a charitable organization;
- 269 (B) the supplier is an employee, officer, or representative of a public safety
- 270 agency;
- 271 (C) the supplier has sponsorship or approval of a given charitable organization;
- 272 (D) a charitable contribution will be provided to a given charitable organization;
- 273 (E) providing a charitable contribution has an additional benefit, including a tax
- 274 benefit; or
- 275 (F) the recipient of the solicitation has previously contributed to a given charitable
- 276 organization;
- 277 (ii) uses a fictitious name or a name the supplier is not authorized to use; or
- 278 (iii) with intent to deceive:
- 279 (A) uses a name that is substantially similar to that of another charitable
- 280 organization; or
- 281 (B) falsely indicates that a charitable contribution will be used for a particular
- 282 purpose;
- 283 (p) if a consumer indicates the consumer's intention of making a claim for a motor
- 284 vehicle repair against the consumer's motor vehicle insurance policy:
- 285 (i) commences the repair without first giving the consumer oral and written notice of:
- 286 (A) the total estimated cost of the repair; and
- 287 (B) the total dollar amount the consumer is responsible to pay for the repair,
- 288 which dollar amount may not exceed the applicable deductible or other copay
- 289 arrangement in the consumer's insurance policy; or
- 290 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
- 291 consumer was initially told the consumer was responsible to pay as an insurance
- 292 deductible or other copay arrangement for a motor vehicle repair under Subsection
- 293 (2)(p)(i), even if that amount is less than the full amount the motor vehicle
- 294 insurance policy requires the insured to pay as a deductible or other copay
- 295 arrangement, unless:
- 296 (A) the consumer's insurance company denies that coverage exists for the repair,
- 297 in which case, the full amount of the repair may be charged and collected from
- 298 the consumer; or
- 299 (B) the consumer misstates, before the repair is commenced, the amount of money

- 300 the insurance policy requires the consumer to pay as a deductible or other
301 copay arrangement, in which case, the supplier may charge and collect from
302 the consumer an amount that does not exceed the amount the insurance policy
303 requires the consumer to pay as a deductible or other copay arrangement;
- 304 (q) includes in any contract, receipt, or other written documentation of a consumer
305 transaction, or any addendum to any contract, receipt, or other written documentation
306 of a consumer transaction, any confession of judgment or any waiver of any of the
307 rights to which a consumer is entitled under this chapter;
- 308 (r) charges a consumer for a consumer transaction or a portion of a consumer transaction
309 that has not previously been agreed to by the consumer;
- 310 (s) solicits or enters into a consumer transaction with [~~a person~~] an individual who lacks
311 the mental ability to comprehend the nature and consequences of:
- 312 (i) the consumer transaction; or
313 (ii) the [~~person's~~] individual's ability to benefit from the consumer transaction;
- 314 (t) solicits for the sale of a product or service by providing a consumer with an
315 unsolicited check or negotiable instrument the presentment or negotiation of which
316 obligates the consumer to purchase a product or service, unless the supplier is:
- 317 (i) a depository institution under Section 7-1-103;
318 (ii) an affiliate of a depository institution; or
319 (iii) an entity regulated under Title 7, Financial Institutions Act;
- 320 (u) sends an unsolicited mailing to a person that appears to be a billing, statement, or
321 request for payment for a product or service the person has not ordered or used, or
322 that implies that the mailing requests payment for an ongoing product or service the
323 person has not received or requested;
- 324 (v) issues a gift certificate, instrument, or other record in exchange for payment to
325 provide the bearer, upon presentation, goods or services in a specified amount
326 without printing in a readable manner on the gift certificate, instrument, packaging,
327 or record any expiration date or information concerning a fee to be charged and
328 deducted from the balance of the gift certificate, instrument, or other record;
- 329 (w) misrepresents the geographical origin or location of the supplier's business;
- 330 (x) fails to comply with the restrictions of Section 15-10-201 on automatic renewal
331 provisions;
- 332 (y) violates Section 13-59-201;
- 333 (z) fails to comply with the restrictions of Subsection 13-54-202(2); or

334 (aa) states or implies that a registration or application administered or enforced by the
335 division is an endorsement, sanction, or approval by the division or a governmental
336 agency or office.

337 (3)(a) The notice required by Subsection (2)(m) shall:

338 (i) be a conspicuous statement written in dark bold with at least 12-point type on the
339 first page of the purchase documentation; and

340 (ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT
341 ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time
342 period reflecting the supplier's cancellation policy but not less than three business
343 days) AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE
344 PRODUCT, WHICHEVER IS LATER."

345 (b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's
346 cancellation policy:

347 (i) is communicated to the buyer; and

348 (ii) offers greater rights to the buyer than Subsection (2)(m).

349 (4)(a) A gift certificate, instrument, or other record that does not print an expiration date
350 in accordance with Subsection (2)(v) does not expire.

351 (b) A gift certificate, instrument, or other record that does not include printed
352 information concerning a fee to be charged and deducted from the balance of the gift
353 certificate, instrument, or other record is not subject to the charging and deduction of
354 the fee.

355 (c) Subsections (2)(v) and (4)(b) do not apply to a gift certificate, instrument, or other
356 record useable at multiple, unaffiliated sellers of goods or services if an expiration
357 date is printed on the gift certificate, instrument, or other record.

358 Section 5. Section **13-11-5** is amended to read:

359 **13-11-5 . Unconscionable act or practice by supplier.**

360 (1) ~~[An]~~ A supplier that commits an unconscionable act or practice [by a supplier] in
361 connection with a consumer transaction violates this [act] chapter whether [it] the
362 unconscionable act or practice occurs before, during, or after the transaction.

363 (2)(a) The unconscionability of an act or practice is a question of law for ~~[the]~~ a court
364 with jurisdiction.

365 (b) If it is claimed or appears to the court that an act or practice may be unconscionable,
366 the parties shall be given a reasonable opportunity to present evidence as to ~~[its] the~~
367 act or practice's setting, purpose, and effect to aid the court in making [its] the court's

368 determination.

369 (3) In determining whether an act or practice is unconscionable, the court shall consider the
370 circumstances [~~which~~] that the supplier knew or had reason to know.

371 Section 6. Section **13-11-6** is amended to read:

372 **13-11-6 . Service of process.**

373 (1) In addition to any other method provided by rule or statute, personal jurisdiction over a
374 supplier may be acquired in a civil action or proceeding instituted in a court [~~of this state~~]
375 with jurisdiction by the service of process as provided in Subsection (3).

376 (2)(a) A supplier that engages in any act or practice in this state governed by this
377 chapter, or engages in a consumer transaction subject to this chapter, may designate
378 an agent upon whom service of process may be made in the state.

379 (b) A supplier shall make a designation of an agent under Subsection (2)(a) [~~shall be~~] in
380 writing and [~~filed~~] file the designation with the Division of Corporations and
381 Commercial Code.

382 (c) An agent designated under this Subsection (2) shall be a resident of or a corporation
383 authorized to do business in the state.

384 (3)(a) Subject to Subsection (3)(b), process upon a supplier may be served as provided
385 in Section 16-17-301 if:

386 (i) a designation is not made and filed under Subsection (2); or

387 (ii) process cannot be served in the state upon the designated agent.

388 (b) Service upon a supplier is not effective unless the plaintiff promptly mails a copy of
389 the process and pleadings by registered or certified mail to the [~~defendant~~] supplier at
390 the [~~defendant's~~] supplier's last reasonably ascertainable address.

391 (c) The plaintiff shall file an affidavit of compliance with this section:

392 (i) with the clerk of the court; and

393 (ii) on or before the return day of the process, if any, or within any future time the
394 court allows.

395 Section 7. Section **13-11-7** is amended to read:

396 **13-11-7 . Duties of division -- Civil penalty for violation of restraining or**
397 **injunctive orders.**

398 (1) The [~~enforcing authority~~] division shall:

399 (a) enforce this chapter throughout the state;

400 (b) cooperate with state and local officials, officials of other states, and officials of the
401 federal government in the administration of comparable statutes;

- 402 (c) inform consumers and suppliers on a continuing basis of the provisions of this
 403 chapter and of acts or practices that violate this chapter[-];
 404 (d) receive and act on complaints; and
 405 (e) maintain a public file of final judgments rendered under this chapter that have been
 406 either reported officially or made available for public dissemination under Subsection
 407 (1)(c), final consent judgments, and to the extent the [~~enforcing authority~~] division
 408 considers appropriate, assurances of voluntary compliance.

409 (2)(a) On motion of the [~~enforcing authority~~] division, or on [its] the court's own motion,
 410 the court may impose a civil penalty of not more than \$5,000 for each day a
 411 temporary restraining order, preliminary injunction, or permanent injunction issued
 412 under this chapter is violated, if the supplier received notice of the restraining or
 413 injunctive order.

414 (b) Civil penalties imposed under this section shall be paid to the General Fund.

415 Section 8. Section **13-11-8** is amended to read:

416 **13-11-8 . Powers of division.**

417 [~~(1) The enforcing authority.] In addition to the authority described in Sections 13-2-5 and
 418 13-2-6, the division may conduct research, hold public hearings, make inquiries, and
 419 publish studies relating to consumer sales acts or practices.~~

420 [~~(2) The enforcing authority shall adopt substantive rules that prohibit with specificity acts~~
 421 ~~or practices that violate Section 13-11-4 and appropriate procedural rules.]~~

422 Section 9. Section **13-11-9** is amended to read:

423 **13-11-9 . Rule-making requirements.**

424 [~~(1) In addition to complying with other rule-making requirements imposed by this act, the~~
 425 ~~enforcing authority shall:]~~

426 [~~(a) adopt as a rule a description of the organization of his office, stating the general~~
 427 ~~course and method of operation of his office and method whereby the public may~~
 428 ~~obtain information or make submissions or requests;]~~

429 [~~(b) adopt rules of practice setting forth the nature and requirements of all formal and~~
 430 ~~informal procedures available, including a description of the forms and instructions~~
 431 ~~used by the enforcing authority of his office; and]~~

432 [~~(c) make available for public inspection all rules, written statements of policy, and~~
 433 ~~interpretations formulated, adopted, or used by the enforcing authority in discharging~~
 434 ~~his functions;]~~

435 [~~(2) A rule of the enforcing authority is invalid, and may not be invoked by the enforcing~~

436 authority for any purpose, until it has been made available for public inspection under
 437 Subsection (1). This provision does not apply to a person who has knowledge of a rule
 438 before engaging in an act or practice that violates this act.] In accordance with Title 63G,
 439 Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules that
 440 specify acts or practices that violate Subsection 13-11-4(1).

441 Section 10. Section **13-11-16** is amended to read:

442 **13-11-16 . Investigatory powers of the division.**

443 (1) If ~~by his own inquiries or as a result of complaints, the enforcing authority]~~ the
 444 division has reason to believe that a person has engaged in, is engaging in, or is about to
 445 engage in an act or practice that violates this ~~[act, he]~~ chapter, the division may [
 446 administer oaths and affirmations, subpoena witnesses or matter, and collect evidence]
 447 investigate and otherwise act in accordance with Sections 13-2-5 and 13-2-6 and other
 448 provisions of this chapter.

449 (2)(a) If the matter that the ~~[enforcing authority]~~ division subpoenas is located outside
 450 this state, the person subpoenaed may either make ~~[it]~~ the matter available to the [
 451 ~~enforcing authority]~~ division at a convenient location within the state or pay the
 452 reasonable and necessary expenses for the ~~[enforcing authority]~~ division or ~~[his]~~ the
 453 division's representative to examine the matter at the place where ~~[it]~~ the matter is
 454 located.[-]

455 (b) The ~~[enforcing authority]~~ division may designate representatives, including officials
 456 of the state in which the matter is located, to inspect the matter on ~~[his]~~ the division's
 457 behalf, and ~~[he-]~~ may respond to similar requests from officials of other states.

458 (3) Upon failure of a person without lawful excuse to obey a subpoena and upon reasonable
 459 notice to all persons affected, the ~~[enforcing authority]~~ division may apply to the court
 460 for an order compelling compliance.

461 (4) In the event a witness asserts a privilege against self-incrimination, testimony and
 462 evidence from the witness may be compelled ~~[pursuant to]~~ in accordance with Title 77,
 463 Chapter 22b, Grants of Immunity.

464 Section 11. Section **13-11-17** is amended to read:

465 **13-11-17 . Actions by the division.**

466 (1) The ~~[enforcing authority]~~ division may bring an action in a court ~~[of competent]~~ with
 467 jurisdiction to:

- 468 (a) obtain a declaratory judgment that an act or practice violates this chapter;
 469 (b) enjoin, in accordance with the principles of equity, a supplier ~~[who]~~ that has violated,

- 470 is violating, or is otherwise likely to violate this chapter;
- 471 (c) order disgorgement of money or any thing of value received in violation of this
472 chapter;
- 473 (d) recover, for each violation, restitution for actual damages, or obtain relief under
474 Subsection (2)(b), on behalf of impacted consumers~~[-who complained to the~~
475 ~~enforcing authority within a reasonable time after it instituted proceedings under this~~
476 ~~chapter]~~; and
- 477 ~~[(d)]~~ (e) obtain a fine in an amount determined after considering the factors in Subsection
478 (6).
- 479 (2)(a) The ~~[enforcing authority]~~ division may bring a class action on behalf of consumers
480 for the actual damages caused by an act or practice specified as violating this chapter
481 in a rule adopted by the ~~[enforcing authority]~~ division under ~~[Subsection 13-11-8(2)]~~
482 Section 13-11-9 before the consumer transactions on which the action is based, or
483 declared to violate Section 13-11-4 or 13-11-5 by final judgment of courts of general
484 jurisdiction and appellate courts of this state that was either reported officially or
485 made available for public dissemination under Subsection 13-11-7(1)(c) by the [
486 ~~enforcing authority]~~ division 10 days before the consumer transactions on which the
487 action is based, or, with respect to a supplier who agreed to ~~[it]~~ a consent judgment,
488 was prohibited specifically by the terms of a consent judgment that became final
489 before the consumer transactions on which the action is based.
- 490 (b)(i) On motion of the ~~[enforcing authority]~~ division and without bond in an action
491 under this Subsection (2), the court may make appropriate orders, including
492 appointment of a master or receiver or sequestration of assets, but only if it
493 appears that the defendant is threatening or is about to remove, conceal, or dispose
494 of the defendant's property to the damage of persons for whom relief is requested.
- 495 (ii) An appropriate order described in Subsection (2)(b)(i) may include an order to:
- 496 (A) reimburse consumers found to have been damaged;
- 497 (B) carry out a transaction in accordance with consumers' reasonable expectations;
- 498 (C) strike or limit the application of unconscionable clauses of contracts to avoid
499 an unconscionable result;
- 500 (D) impose a fine in an amount determined after considering the factors listed in
501 Subsection (6); or
- 502 (E) grant other appropriate relief.
- 503 ~~[(ii)]~~ (iii) The court may assess the expenses of a master or receiver against a supplier.

- 504 (c) If an act or practice that violates this chapter unjustly enriches a supplier and
 505 damages can be computed with reasonable certainty, damages recoverable on behalf
 506 of consumers who cannot be located with due diligence shall be transferred to the
 507 state treasurer ~~[pursuant to]~~ in accordance with Title 67, Chapter 4a, Revised Uniform
 508 Unclaimed Property Act.
- 509 (d) If a supplier shows by a preponderance of the evidence that a violation of this
 510 chapter resulted from a bona fide error notwithstanding the maintenance of
 511 procedures reasonably adapted to avoid the error, recovery under this Subsection (2)
 512 is limited to the amount, if any, by which the supplier was unjustly enriched by the
 513 violation.
- 514 (3)(a)(i) The ~~[enforcing authority]~~ division may terminate an investigation or an
 515 action other than a class action upon acceptance of the supplier's written assurance
 516 of voluntary compliance with this chapter.[-]
- 517 (ii) Acceptance of an assurance may be conditioned on a commitment to reimburse
 518 consumers or take other appropriate corrective action.
- 519 (b)(i) An assurance is not evidence of a prior violation of this chapter.[-]
- 520 (ii) Unless an assurance has been rescinded by agreement of the parties or voided by
 521 a court for good cause, subsequent failure to comply with the terms of an
 522 assurance is prima facie evidence of a violation.
- 523 (4)(a) In addition to other penalties and remedies set out under this chapter, and in
 524 addition to ~~[its]~~ the division's other enforcement powers under Chapter 2, Division of
 525 Consumer Protection, the division director may issue a cease and desist order and
 526 impose an administrative fine of up to \$2,500 for each violation of this chapter.
- 527 (b) All money received through fines imposed under this section shall be deposited in
 528 the Consumer Protection Education and Training Fund created by Section 13-2-8.
- 529 (5)(a) Within 30 days after agency review or, if appealed to a court with jurisdiction, 30
 530 days after judicial review of a final division order imposing an administrative fine,
 531 the supplier on whom the fine is imposed shall pay the fine in full.
- 532 (b) The unpaid amount of a fine is increased by 10%:
- 533 (i) if the fine has not been paid in full within 60 days after the final division order
 534 imposing the fine; and
- 535 (ii) unless the division waives the 10% increase in a stipulated payment plan.
- 536 (6) A court shall determine the fine imposed under Subsection ~~[(1)(d)]~~ (1)(e) or Subsection [
 537 ~~(2)(b)(i)(D) shall be determined]~~ (2)(b)(ii)(D) after considering the following factors:

- 538 (a) the seriousness, nature, circumstances, extent, and persistence of the conduct
 539 constituting the violation, including whether the supplier acted knowingly or
 540 intentionally to deceive;
- 541 (b) the harm to other persons resulting either directly or indirectly from the violation;
- 542 (c) cooperation by the supplier in an inquiry or investigation conducted by the [
 543 ~~enforcing authority~~] division concerning the violation;
- 544 (d) efforts by the supplier to prevent occurrences of the violation;
- 545 (e) efforts by the supplier to mitigate the harm caused by the violation, including a
 546 reimbursement made to a consumer injured by the act of the supplier;
- 547 (f) the history of previous violations by the supplier;
- 548 (g) the need to deter the supplier or other suppliers from committing the violation in the
 549 future;[~~and~~]
- 550 (h) whether the individual harmed by the violation was a vulnerable adult; and
 551 [~~h~~] (i) other matters as justice may require.

552 Section 12. Section **13-11-18** is amended to read:

553 **13-11-18 . Noncompliance by supplier subject to other state supervision --**

554 **Cooperation of division and other official or agency.**

- 555 (1)(a) If the [~~enforcing authority~~] division receives a complaint or other information
 556 relating to noncompliance with this [aet] chapter by a supplier [~~who~~] that is subject to
 557 other supervision in this state, the [~~enforcing authority~~] division shall inform the
 558 official or agency having that supervision.[~~-~~]
- 559 (b) The [~~enforcing authority~~] division may request information about [~~suppliers~~] a supplier
 560 from the official or agency.
- 561 (2)(a) The [~~enforcing authority~~] division and any other official or agency in this state
 562 having supervisory authority over a supplier shall consult and assist each other in
 563 maintaining compliance with this [aet] chapter.
- 564 (b) Within the scope of [~~their~~] the division's authority, [~~they~~] the division and any other
 565 official or agency in this state may jointly or separately make investigations,
 566 prosecute suits, and take other official action [~~they consider~~] the division considers
 567 appropriate.

568 Section 13. Section **13-11-19** is amended to read:

569 **13-11-19 . Actions by consumer.**

- 570 (1) Whether [~~he~~] a consumer seeks or is entitled to damages or otherwise has an adequate
 571 remedy at law, [~~a~~] the consumer may bring an action to:

- 572 (a) obtain a declaratory judgment that an act or practice violates this chapter; and
573 (b) enjoin, in accordance with the principles of equity, a supplier [~~who~~] that has violated,
574 is violating, or is likely to violate this chapter.
- 575 (2) A consumer who suffers loss as a result of a violation of this chapter may recover[~~, but~~
576 ~~not in a class action,~~] actual damages [~~or \$2,000, whichever is greater,~~] plus court costs,
577 but not in a class action except as provided in this section.
- 578 (3) Whether a consumer seeks or is entitled to recover damages or has an adequate remedy
579 at law, [~~he~~] the consumer may bring a class action for declaratory judgment, an
580 injunction, and appropriate ancillary relief against an act or practice that violates this
581 chapter.
- 582 (4)(a) A consumer who suffers loss as a result of a violation of this chapter may bring a
583 class action for the actual damages caused by an act or practice specified as violating
584 this chapter by a rule adopted by the [~~enforcing authority~~] division under [~~Subsection~~
585 ~~13-11-8(2)~~] Section 13-11-9 before the consumer transactions on which the action is
586 based, or declared to violate Section 13-11-4 or 13-11-5 by a final judgment of the
587 appropriate court or courts of general jurisdiction and appellate courts of this state
588 that was either officially reported or made available for public dissemination under
589 Subsection 13-11-7(1)(c) by the [~~enforcing authority~~] division 10 days before the
590 consumer transactions on which the action is based, or with respect to a supplier who
591 agreed to [~~it~~] a consent judgment, was prohibited specifically by the terms of a
592 consent judgment [~~which~~] that became final before the consumer transactions on
593 which the action is based.
- 594 (b) If an act or practice that violates this chapter unjustly enriches a supplier and the
595 damages can be computed with reasonable certainty, damages recoverable on behalf
596 of consumers who cannot be located with due diligence shall be transferred to the
597 state treasurer [~~pursuant to~~] in accordance with Title 67, Chapter 4a, Revised Uniform
598 Unclaimed Property Act.
- 599 (c) If a supplier shows by a preponderance of the evidence that a violation of this chapter
600 resulted from a bona fide error notwithstanding the maintenance of procedures
601 reasonably adapted to avoid the error, recovery under this section is limited to the
602 amount, if any, in which the supplier was unjustly enriched by the violation.
- 603 (5) Except for services performed by the [~~enforcing authority~~] division, the court may award
604 to the prevailing party a reasonable attorney's fee limited to the work reasonably
605 performed if:

- 606 (a) the consumer complaining of the act or practice that violates this chapter has brought
607 or maintained an action [~~he~~] the consumer knew to be groundless; or a supplier has
608 committed an act or practice that violates this chapter; and
- 609 (b) an action under this section has been terminated by a judgment or required by the
610 court to be settled under Subsection 13-11-21(1)(a).
- 611 (6) Except for consent judgment entered before testimony is taken, a final judgment in
612 favor of the [~~enforcing authority~~] division under Section 13-11-17 is admissible as prima
613 facie evidence of the facts on which [~~it~~] an action is based in later proceedings under this
614 section against the same person or a person in privity with [~~him~~] the person against
615 which the judgment is entered.
- 616 (7) When a judgment under this section becomes final, the prevailing party shall mail a
617 copy to the [~~enforcing authority~~] division for inclusion in the public file maintained
618 under Subsection 13-11-7(1)(e).

619 Section 14. Section **13-11-20** is amended to read:

620 **13-11-20 . Class actions.**

- 621 (1) An action may be maintained as a class action under this act only if:
- 622 (a) the class is so numerous that joinder of all members is impracticable;
- 623 (b) there are questions of law or fact common to the class;
- 624 (c) the claims or defenses of the representative parties are typical of the claims or
625 defenses of the class;
- 626 (d) the representative parties will fairly and adequately protect the interests of the class;
627 and
- 628 (e) [~~either:~~]
- 629 (i) the prosecution of separate actions by or against individual members of the class
630 would create a risk of:
- 631 (A) inconsistent or varying adjudications with respect to individual members of
632 the class which would establish incompatible standards of conduct for the party
633 opposing the class; or
- 634 (B) adjudications with respect to individual members of the class that would as a
635 practical matter dispose of the interests of the other members not parties to the
636 adjudications or substantially impair or impede their ability to protect [~~their~~] the
637 other members' interests; [~~or~~]
- 638 (ii) the party opposing the class has acted or refused to act on grounds generally
639 applicable to the class, thereby making appropriate final injunctive relief or

- 640 corresponding declaratory relief with respect to the class as a whole; or
- 641 (iii) the court finds that the questions of law or fact common to the members of the
- 642 class predominate over any questions affecting only individual members, and that
- 643 a class action is superior to other available methods for the fair and efficient
- 644 adjudication of the controversy.
- 645 (2) The matters pertinent to the findings under Subsection (1)(e)(iii) include:
- 646 (a) the interest of members of the class in individually controlling the prosecution or
- 647 defense of separate actions;
- 648 (b) the extent and nature of any litigation concerning the controversy already
- 649 commenced by or against members of the class;
- 650 (c) the desirability or undesirability of concentrating the litigation of the claims in the
- 651 particular forum; and
- 652 (d) the difficulties likely to be encountered in the management of a class action.
- 653 (3)(a) As soon as practicable after the commencement of an action brought as a class
- 654 action, the court shall determine by order whether ~~[it]~~ the action is to be so
- 655 maintained.
- 656 (b) An order under this subsection may be conditional, and ~~[it]~~ the order may be
- 657 amended before decision on the merits.
- 658 (4)(a) In a class action maintained under Subsection (1)(e), the court may direct to the
- 659 members of the class the best notice practicable under the circumstances, including
- 660 individual notice to each member who can be identified through reasonable effort.
- 661 (b) The notice shall advise each member that:
- 662 ~~[(a)]~~ (i) the court will exclude ~~[him]~~ the member from the class, unless ~~[he]~~ the member
- 663 requests inclusion, by a specified date;
- 664 ~~[(b)]~~ (ii) the judgment, whether favorable or not, will include all members who
- 665 request inclusion; and
- 666 ~~[(c)]~~ (iii) a member who requests inclusion may, if ~~[he]~~ the member desires, enter an
- 667 appearance through ~~[his]~~ counsel.
- 668 (5) When appropriate, an action may be brought or maintained as a class action with respect
- 669 to particular issues, or a class may be divided into subclasses and each subclass treated
- 670 as a class.
- 671 (6) In the conduct of a class action the court may make appropriate orders:
- 672 (a) determining the course of proceedings or prescribing measures to prevent undue
- 673 repetition or complication in the presentation of evidence or argument;

- 674 (b) requiring, for the protection of the members of the class or otherwise for the fair
675 conduct of the action, that notice be given in the manner the court directs to some or
676 all of the members or to the ~~[enforcing authority]~~ division of any step in the action, or
677 of the proposed extent of the judgment, or of the opportunity of members to signify
678 whether ~~[they]~~ the members consider the representation fair and adequate, to
679 intervene and present claims or defenses, or otherwise to come into the action;
- 680 (c) imposing conditions on the representative parties or on intervenors;
- 681 (d) requiring that the pleadings be amended to eliminate allegations as to representation
682 of absent persons, and that the action proceed accordingly; or
- 683 (e) dealing with similar procedural matters.

684 (7)(a) A class action may not be dismissed or compromised without approval of the
685 court.

686 (b) Notice of the proposed dismissal or compromise shall be given to all members of the
687 class as the court directs.

688 (8)(a) The judgment in an action maintained as a class action under Subsection (1)(e)(i)
689 or (ii), whether or not favorable to the class, shall describe those whom the court
690 finds to be members of the class.[-]

691 (b) The judgment in a class action under Subsection (1)(e)(iii), whether or not favorable
692 to the class, shall specify or describe ~~[those]~~ the members to whom the notice
693 provided in Subsection (4) was directed, and who have requested inclusion, and
694 whom the court finds to be members of the class.

695 Section 15. Section **13-11-21** is amended to read:

696 **13-11-21 . Settlement of class action -- Complaint in class action delivered to**
697 **enforcing authority.**

698 (1)(a)(i)(A) A defendant in a class action may file a written ~~[offer of settlement]~~
699 settlement offer.[-]

700 (B) If ~~[it]~~ the settlement offer is not accepted within a reasonable time by a
701 plaintiff class representative, the defendant may file an affidavit reciting the
702 rejection.

703 (ii)(A) The court may determine that the settlement offer has enough merit to
704 present to the members of the class.[-]

705 (B) If the court ~~[so determines]~~ determines that the settlement offer merits
706 presenting, the court shall order a hearing to determine whether the settlement
707 offer should be approved.

- 708 (iii) The court shall provide at least 60 days advance notice of the hearing:
 709 (A) to the ~~[enforcing authority]~~ division; and
 710 (B) to the extent practicable, to each member who can be identified through
 711 reasonable effort.
- 712 (iv) The notice described in Subsection (1)(a)(iii) shall specify the terms of the
 713 settlement offer and a reasonable period within which members of the class who
 714 request ~~[it]~~ to be included in the class are entitled to be included in the class.
- 715 (v)(A) The statute of limitations for ~~[those who]~~ the members that are excluded [
 716 ~~pursuant to]~~ in accordance with this Subsection ~~[(1)(a)(v)]~~ (1)(a)(v)(A) is tolled
 717 for the period the class action has been pending, plus an additional year.[-]
- 718 (B) Within 60 days of receipt of the notice required by this Subsection (1)(a), the [
 719 ~~enforcing authority]~~ division may intervene in the class action for the limited
 720 purpose of objecting to the ~~[offer of settlement]~~ settlement offer.
- 721 (b)(i) If a member who has previously lost an opportunity to be excluded from the
 722 class is excluded at ~~[his]~~ the member's request in response to notice of the
 723 settlement offer~~[-of settlement]~~ during the period specified under Subsection
 724 (1)(a), ~~[he]~~ the member may not thereafter participate in a class action for damages
 725 respecting the same consumer transaction, unless the court later disapproves the
 726 settlement offer~~[-of settlement]~~ or approves a settlement materially different from
 727 that proposed in the original settlement offer~~[-of settlement]~~.
- 728 (ii) After the expiration of the period of limitations, a member of the class is not
 729 entitled to be excluded from ~~[it]~~ the class.
- 730 (c)(i) If the court later approves the settlement offer~~[-of settlement]~~, including
 731 changes, if any, required by the court in the interest of a just settlement of the
 732 action, ~~[it]~~ the court shall enter judgment, which is binding on all persons who are
 733 then members of the class.[-]
- 734 (ii) If the court disapproves the settlement offer or approves a settlement materially
 735 different from that proposed in the original settlement offer, notice shall be given
 736 to a person who was excluded from the action at ~~[his]~~ the person's request in
 737 response to notice of the settlement offer under Subsection (1)(a), and ~~[he]~~ the
 738 person is entitled to rejoin the class and, in the case of the approval, participate in
 739 the settlement.
- 740 (2)(a) On the commencement of a class action under Section 13-11-19, the class
 741 representative shall mail by certified mail with return receipt requested or personally

742 serve a copy of the complaint on the ~~[enforcing authority]~~ division.[-]
743 (b) Within 180 days after the receipt of a copy of the complaint, but not thereafter, the [
744 ~~enforcing authority]~~ division may intervene in the class action for purposes of
745 participation as an interested party in litigation of the class action.

746 Section 16. Section **13-11-22** is amended to read:

747 **13-11-22 . Exemptions from application of act.**

- 748 (1) This act does not apply to:
- 749 (a) an act or practice required or specifically permitted by or under state or federal law[-;
750 ~~or by or under state law~~];
 - 751 (b) a publisher, broadcaster, printer, or other person engaged in the dissemination of
752 information or the reproduction of printed or pictorial matter so far as the information
753 or matter has been disseminated or reproduced on behalf of others without actual
754 knowledge that it violated this act;
 - 755 (c) claim for personal injury or death or claim for damage to property other than the
756 property that is the subject of the consumer transaction;
 - 757 (d) credit terms of a transaction otherwise subject to this act; or
 - 758 (e) any public utility subject to the regulating jurisdiction of the Public Service
759 Commission of the state of Utah.
- 760 (2) A person alleged to have violated this act has the burden of showing the applicability of
761 this section.

762 Section 17. Section **78B-4-513** is amended to read:

763 **78B-4-513 . Cause of action for defective construction.**

- 764 (1) Except as provided in Subsection (2), an action for defective design or construction is
765 limited to breach of the contract, whether written or otherwise, including both express
766 and implied warranties.
- 767 (2) An action for defective design or construction may include damage to other property or
768 physical personal injury if the damage or injury is caused by the defective design or
769 construction.
- 770 (3) For purposes of Subsection (2), property damage does not include:
- 771 (a) the failure of construction to function as designed; or
 - 772 (b) diminution of the value of the constructed property because of the defective design
773 or construction.
- 774 (4) Except as provided in Subsections (2) and (6), an action for defective design or
775 construction may be brought only by a person in privity of contract with the original

776 contractor, architect, engineer, or [~~the~~]real estate developer.
777 (5) If a person in privity of contract sues for defective design or construction under this
778 section, nothing in this section precludes the person from bringing, in the same suit,
779 another cause of action to which the person is entitled based on an intentional or willful
780 breach of a duty existing in law.
781 (6) Nothing in this section precludes[-] ;
782 (a) a person from assigning a right under a contract to another person, including to a
783 subsequent owner or a homeowners association[-] ;or
784 (b) a government agency from bringing an enforcement action in accordance with any
785 other statute for matters involving defective construction.
786 Section 18. **Repealer.**
787 This bill repeals:
788 Section **13-11-17.5, Costs and attorney's fees.**
789 Section 19. **Effective Date.**
790 This bill takes effect on May 7, 2025.