

**Consumer Protection Amendments**

2025 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor:**

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**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 (Effective 05/07/25)**, as last amended by Laws of Utah 2024, Chapter 102
- 13-11-2 (Effective 05/07/25)**, as enacted by Laws of Utah 1973, Chapter 188
- 13-11-3 (Effective 05/07/25)**, as last amended by Laws of Utah 2004, Chapter 55
- 13-11-4 (Effective 05/07/25)**, as last amended by Laws of Utah 2024, Chapters 102, 186
- 13-11-5 (Effective 05/07/25)**, as enacted by Laws of Utah 1973, Chapter 188
- 13-11-6 (Effective 05/07/25)**, as last amended by Laws of Utah 2024, Chapter 158
- 13-11-7 (Effective 05/07/25)**, as last amended by Laws of Utah 2024, Chapter 101
- 13-11-8 (Effective 05/07/25)**, as enacted by Laws of Utah 1973, Chapter 188

- 32 **13-11-9 (Effective 05/07/25)**, as enacted by Laws of Utah 1973, Chapter 188  
 33 **13-11-16 (Effective 05/07/25)**, as last amended by Laws of Utah 1997, Chapter 296  
 34 **13-11-17 (Effective 05/07/25)**, as last amended by Laws of Utah 2018, Chapter 276  
 35 **13-11-18 (Effective 05/07/25)**, as enacted by Laws of Utah 1973, Chapter 188  
 36 **13-11-19 (Effective 05/07/25)**, as last amended by Laws of Utah 2018, Chapter 276  
 37 **13-11-20 (Effective 05/07/25)**, as last amended by Laws of Utah 2010, Chapter 378  
 38 **13-11-21 (Effective 05/07/25)**, as last amended by Laws of Utah 2024, Chapter 222  
 39 **13-11-22 (Effective 05/07/25)**, as enacted by Laws of Utah 1973, Chapter 188  
 40 **78B-4-513 (Effective 05/07/25)**, 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

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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 (Effective 05/07/25). 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 (Effective 05/07/25). 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 [act] 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 [act] chapter.

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

150 **13-11-3 (Effective 05/07/25). 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 (Effective 05/07/25). 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 (Effective 05/07/25). 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 (Effective 05/07/25). 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 (Effective 05/07/25). Duties of division -- Civil penalty for violation of**  
 397 **restraining or 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 (Effective 05/07/25). 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 (Effective 05/07/25). 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 course~~  
 427 ~~and method of operation of his office and method whereby the public may obtain~~  
 428 ~~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 used~~  
 431 ~~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 his~~  
 434 ~~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, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules that specify acts or practices that violate Subsection 13-11-4(1).

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

440 **13-11-16 (Effective 05/07/25). Investigatory powers of the division.**

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

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

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

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

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

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

463 **13-11-17 (Effective 05/07/25). Actions by the division.**

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

- 466 (a) obtain a declaratory judgment that an act or practice violates this chapter;  
 467 (b) enjoin, in accordance with the principles of equity, a supplier ~~[who]~~ that has violated,  
 468 is violating, or is otherwise likely to violate this chapter;  
 469 (c) order disgorgement of money or any thing of value received in violation of this  
 470 chapter;

471 (d) recover, for each violation, restitution for actual damages, or obtain relief under  
 472 Subsection (2)(b), on behalf of impacted consumers~~[who complained to the~~  
 473 ~~enforcing authority within a reasonable time after it instituted proceedings under this~~  
 474 ~~chapter]~~; and

475 ~~[(d)]~~ (e) obtain a fine in an amount determined after considering the factors in Subsection  
 476 (6).

477 (2)(a) The ~~[enforcing authority]~~ division may bring a class action on behalf of  
 478 consumers for the actual damages caused by an act or practice specified as violating  
 479 this chapter in a rule adopted by the ~~[enforcing authority]~~ division under ~~[Subsection~~  
 480 ~~13-11-8(2)]~~ Section 13-11-9 before the consumer transactions on which the action is  
 481 based, or declared to violate Section 13-11-4 or 13-11-5 by final judgment of courts  
 482 of general jurisdiction and appellate courts of this state that was either reported  
 483 officially or made available for public dissemination under Subsection 13-11-7(1)(c)  
 484 by the ~~[enforcing authority]~~ division 10 days before the consumer transactions on  
 485 which the action is based, or, with respect to a supplier who agreed to ~~[it]~~ a consent  
 486 judgment, was prohibited specifically by the terms of a consent judgment that  
 487 became final before the consumer transactions on which the action is based.

488 (b)(i) On motion of the ~~[enforcing authority]~~ division and without bond in an action  
 489 under this Subsection (2), the court may make appropriate orders, including  
 490 appointment of a master or receiver or sequestration of assets, but only if it  
 491 appears that the defendant is threatening or is about to remove, conceal, or dispose  
 492 of the defendant's property to the damage of persons for whom relief is requested.[  
 493 ]

494 (ii) An appropriate order described in Subsection (2)(b)(i) may include an order to:

- 495 (A) reimburse consumers found to have been damaged;
- 496 (B) carry out a transaction in accordance with consumers' reasonable expectations;
- 497 (C) strike or limit the application of unconscionable clauses of contracts to avoid  
 498 an unconscionable result;
- 499 (D) impose a fine in an amount determined after considering the factors listed in  
 500 Subsection (6); or
- 501 (E) grant other appropriate relief.

502 ~~[(ii)]~~ (iii) The court may assess the expenses of a master or receiver against a supplier.

503 (c) If an act or practice that violates this chapter unjustly enriches a supplier and  
 504 damages can be computed with reasonable certainty, damages recoverable on behalf

505 of consumers who cannot be located with due diligence shall be transferred to the  
 506 state treasurer ~~[pursuant to]~~ in accordance with Title 67, Chapter 4a, Revised Uniform  
 507 Unclaimed Property Act.

508 (d) If a supplier shows by a preponderance of the evidence that a violation of this  
 509 chapter resulted from a bona fide error notwithstanding the maintenance of  
 510 procedures reasonably adapted to avoid the error, recovery under this Subsection (2)  
 511 is limited to the amount, if any, by which the supplier was unjustly enriched by the  
 512 violation.

513 (3)(a)(i) The ~~[enforcing authority]~~ division may terminate an investigation or an  
 514 action other than a class action upon acceptance of the supplier's written assurance  
 515 of voluntary compliance with this chapter.[-]

516 (ii) Acceptance of an assurance may be conditioned on a commitment to reimburse  
 517 consumers or take other appropriate corrective action.

518 (b)(i) An assurance is not evidence of a prior violation of this chapter.[-]

519 (ii) Unless an assurance has been rescinded by agreement of the parties or voided by  
 520 a court for good cause, subsequent failure to comply with the terms of an  
 521 assurance is prima facie evidence of a violation.

522 (4)(a) In addition to other penalties and remedies set out under this chapter, and in  
 523 addition to ~~[its]~~ the division's other enforcement powers under Chapter 2, Division of  
 524 Consumer Protection, the division director may issue a cease and desist order and  
 525 impose an administrative fine of up to \$2,500 for each violation of this chapter.

526 (b) All money received through fines imposed under this section shall be deposited in  
 527 the Consumer Protection Education and Training Fund created by Section 13-2-8.

528 (5)(a) Within 30 days after agency review or, if appealed to a court with jurisdiction, 30  
 529 days after judicial review of a final division order imposing an administrative fine,  
 530 the supplier on whom the fine is imposed shall pay the fine in full.

531 (b) The unpaid amount of a fine is increased by 10%:

532 (i) if the fine has not been paid in full within 60 days after the final division order  
 533 imposing the fine; and

534 (ii) unless the division waives the 10% increase in a stipulated payment plan.

535 (6) A court shall determine the fine imposed under Subsection ~~[(+)(d)]~~ (1)(e) or Subsection [  
 536 ~~(2)(b)(i)(D) shall be determined-~~] (2)(b)(ii)(D) after considering the following factors:

537 (a) the seriousness, nature, circumstances, extent, and persistence of the conduct  
 538 constituting the violation, including whether the supplier acted knowingly or



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

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

552 **13-11-18 (Effective 05/07/25). Noncompliance by supplier subject to other state**  
553 **supervision -- Cooperation of division and other official or agency.**

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

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

568 **13-11-19 (Effective 05/07/25). Actions by consumer.**

- 569 (1) Whether [~~he~~] a consumer seeks or is entitled to damages or otherwise has an adequate  
570 remedy at law, [~~a~~] the consumer may bring an action to:
- 571 (a) obtain a declaratory judgment that an act or practice violates this chapter; and  
572 (b) enjoin, in accordance with the principles of equity, a supplier [~~who~~] that has violated,

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

607 (b) an action under this section has been terminated by a judgment or required by the  
608 court to be settled under Subsection 13-11-21(1)(a).

609 (6) Except for consent judgment entered before testimony is taken, a final judgment in  
610 favor of the ~~[enforcing authority]~~ division under Section 13-11-17 is admissible as prima  
611 facie evidence of the facts on which ~~[it]~~ an action is based in later proceedings under this  
612 section against the same person or a person in privity with ~~[him]~~ the person against  
613 which the judgment is entered.

614 (7) When a judgment under this section becomes final, the prevailing party shall mail a  
615 copy to the ~~[enforcing authority]~~ division for inclusion in the public file maintained  
616 under Subsection 13-11-7(1)(e).

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

618 **13-11-20 (Effective 05/07/25). Class actions.**

619 (1) An action may be maintained as a class action under this act only if:

620 (a) the class is so numerous that joinder of all members is impracticable;

621 (b) there are questions of law or fact common to the class;

622 (c) the claims or defenses of the representative parties are typical of the claims or  
623 defenses of the class;

624 (d) the representative parties will fairly and adequately protect the interests of the class;  
625 and

626 (e) ~~[either:]~~

627 (i) the prosecution of separate actions by or against individual members of the class  
628 would create a risk of:

629 (A) inconsistent or varying adjudications with respect to individual members of  
630 the class which would establish incompatible standards of conduct for the party  
631 opposing the class; or

632 (B) adjudications with respect to individual members of the class that would as a  
633 practical matter dispose of the interests of the other members not parties to the  
634 adjudications or substantially impair or impede their ability to protect ~~[their]~~ the  
635 other members' interests;~~[-or]~~

636 (ii) the party opposing the class has acted or refused to act on grounds generally  
637 applicable to the class, thereby making appropriate final injunctive relief or  
638 corresponding declaratory relief with respect to the class as a whole; or

639 (iii) the court finds that the questions of law or fact common to the members of the  
640 class predominate over any questions affecting only individual members, and that

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

- 675 of the proposed extent of the judgment, or of the opportunity of members to signify  
 676 whether [~~they~~] the members consider the representation fair and adequate, to  
 677 intervene and present claims or defenses, or otherwise to come into the action;  
 678 (c) imposing conditions on the representative parties or on intervenors;  
 679 (d) requiring that the pleadings be amended to eliminate allegations as to representation  
 680 of absent persons, and that the action proceed accordingly; or  
 681 (e) dealing with similar procedural matters.

682 (7)(a) A class action may not be dismissed or compromised without approval of the  
 683 court.[-]

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

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

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

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

694 **13-11-21 (Effective 05/07/25). Settlement of class action -- Complaint in class**  
 695 **action delivered to enforcing authority.**

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

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

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

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

706 (iii) The court shall provide at least 60 days advance notice of the hearing:

707 (A) to the [~~enforcing authority~~] division; and

708 (B) to the extent practicable, to each member who can be identified through

- 709 reasonable effort.
- 710 (iv) The notice described in Subsection (1)(a)(iii) shall specify the terms of the  
711 settlement offer and a reasonable period within which members of the class who  
712 request [it] to be included in the class are entitled to be included in the class.
- 713 (v)(A) The statute of limitations for ~~[those who]~~ the members that are excluded [  
714 ~~pursuant to]~~ in accordance with this Subsection ~~[(1)(a)(v)]~~ (1)(a)(v)(A) is tolled  
715 for the period the class action has been pending, plus an additional year.[-]
- 716 (B) Within 60 days of receipt of the notice required by this Subsection (1)(a), the [  
717 ~~enforcing authority]~~ division may intervene in the class action for the limited  
718 purpose of objecting to the ~~[offer of settlement]~~ settlement offer.
- 719 (b)(i) If a member who has previously lost an opportunity to be excluded from the  
720 class is excluded at [his] the member's request in response to notice of the  
721 settlement offer~~[-of settlement]~~ during the period specified under Subsection  
722 (1)(a), [he] the member may not thereafter participate in a class action for damages  
723 respecting the same consumer transaction, unless the court later disapproves the  
724 settlement offer~~[-of settlement]~~ or approves a settlement materially different from  
725 that proposed in the original settlement offer.~~[-of settlement.-]~~
- 726 (ii) After the expiration of the period of limitations, a member of the class is not  
727 entitled to be excluded from [it] the class.
- 728 (c)(i) If the court later approves the settlement offer~~[-of settlement]~~, including  
729 changes, if any, required by the court in the interest of a just settlement of the  
730 action, [it] the court shall enter judgment, which is binding on all persons who are  
731 then members of the class.[-]
- 732 (ii) If the court disapproves the settlement offer or approves a settlement materially  
733 different from that proposed in the original settlement offer, notice shall be given  
734 to a person who was excluded from the action at [his] the person's request in  
735 response to notice of the settlement offer under Subsection (1)(a), and [he] the  
736 person is entitled to rejoin the class and, in the case of the approval, participate in  
737 the settlement.
- 738 (2)(a) On the commencement of a class action under Section 13-11-19, the class  
739 representative shall mail by certified mail with return receipt requested or personally  
740 serve a copy of the complaint on the ~~[enforcing authority]~~ division.[-]
- 741 (b) Within 180 days after the receipt of a copy of the complaint, but not thereafter, the [  
742 ~~enforcing authority]~~ division may intervene in the class action for purposes of

743 participation as an interested party in litigation of the class action.

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

745 **13-11-22 (Effective 05/07/25). Exemptions from application of act.**

746 (1) This act does not apply to:

747 (a) an act or practice required or specifically permitted by or under state or federal law;

748 ~~or by or under state law~~];

749 (b) a publisher, broadcaster, printer, or other person engaged in the dissemination of  
750 information or the reproduction of printed or pictorial matter so far as the information  
751 or matter has been disseminated or reproduced on behalf of others without actual  
752 knowledge that it violated this act;

753 (c) claim for personal injury or death or claim for damage to property other than the  
754 property that is the subject of the consumer transaction;

755 (d) credit terms of a transaction otherwise subject to this act; or

756 (e) any public utility subject to the regulating jurisdiction of the Public Service  
757 Commission of the state of Utah.

758 (2) A person alleged to have violated this act has the burden of showing the applicability of  
759 this section.

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

761 **78B-4-513 (Effective 05/07/25). Cause of action for defective construction.**

762 (1) Except as provided in Subsection (2), an action for defective design or construction is  
763 limited to breach of the contract, whether written or otherwise, including both express  
764 and implied warranties.

765 (2) An action for defective design or construction may include damage to other property or  
766 physical personal injury if the damage or injury is caused by the defective design or  
767 construction.

768 (3) For purposes of Subsection (2), property damage does not include:

769 (a) the failure of construction to function as designed; or

770 (b) diminution of the value of the constructed property because of the defective design  
771 or construction.

772 (4) Except as provided in Subsections (2) and (6), an action for defective design or  
773 construction may be brought only by a person in privity of contract with the original  
774 contractor, architect, engineer, or ~~the~~ real estate developer.

775 (5) If a person in privity of contract sues for defective design or construction under this  
776 section, nothing in this section precludes the person from bringing, in the same suit,

777 another cause of action to which the person is entitled based on an intentional or willful  
778 breach of a duty existing in law.

779 (6) Nothing in this section precludes[-] :

780 (a) a person from assigning a right under a contract to another person, including to a  
781 subsequent owner or a homeowners association[-] ; or

782 (b) a government agency from bringing an enforcement action in accordance with any  
783 other statute for matters involving defective construction.

784 Section 18. **Repealer.**

785 This bill repeals:

786 Section **13-11-17.5, Costs and attorney's fees.**

787 Section 19. **Effective Date.**

788 This bill takes effect on May 7, 2025.