



UTAH DEPARTMENT
OF COMMERCE

Division of Consumer Protection

Consumer Protection Updates

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Business & Labor Interim Committee,
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Overview

These proposed edits seek to:

- Enhance the mission of the Division and strengthen trust in Utah's commercial activities by protecting consumers through education and impartial enforcement
- Continue the Department's efforts to ensure regulation is Reasonable, Reliable, and Relevant
- Put industries and businesses (and ultimately the State as a whole) more clearly on notice of the responsibilities and jurisdiction of the Division
- Clarify language in the statute based on recent court rulings
- Include supplemental considerations for elderly victims
- Implement lessons learned throughout the Division's activities

Clarify the Division's Authority to Recover Costs



Add language to 13-2 to recover enforcement costs related to all statutes enforced by the Division, including subpoena enforcement actions

Suggested language: “A judgment granted by a court in the division’s favor in connection with the division’s enforcement of a chapter described in Section 13-2-1, or in connection with its exercise of any authority described by Sections 13-2-5 or 13-2-6, shall include, in addition to any other relief, an award of reasonable attorney’s fees, court costs, and costs of investigation.”

Updating CSPA Language to Match Style Guides

(CSPA was adopted in 1973)

- Replace “enforcing authority” with “Division” in 13-11-3(3)
- Simplify language around
 - the Division’s power to draft administrative rules and
 - overall complementary nature of its enforcement authority across statutes.

- Replace negatives

Suggested language: “Not consistent” with “inconsistent” in 13-11-2(4)

- Making references to "court" either "court" or "court with jurisdiction”
- Update language referring to suppliers and consumers
- Strike unnecessary language

Suggested language: Replace “administer oaths and affirmations, subpoena witnesses or matter, and collect evidence” with “investigate” in 13-11-16(1)

Clarify Deceptive Acts Standard Under CSPA

Clarify 13-11-4(1)

Suggested language: “(1) A supplier that engages in any deceptive act or practice in connection with a consumer transaction violates this chapter, whether the deceptive act or practice occurs before, during, or after the transaction.”

Move “knowingly or intentionally” from 13-11-4(2) to the fine factor in 13-11-17(6) to encompass the entire statute

Suggested language: “the seriousness, nature, circumstances, extent, and persistence of the conduct constituting the violation, including whether the supplier acted knowingly or intentionally to deceive...”

These edits are consistent with other state consumer protection laws and courts interpreting them. (see e.g. Indiana, Texas, and Ohio).

Clarify Remedies Available Under CSPA

Update 13-11-17's Remedy Section (court may order):

- Reference to actual damages to include restitution
 - “recover, for each violation, restitution for actual damages”
- Disgorgement is available remedy
 - “order disgorgement of money or any thing of value received in violation of this chapter”

These edits are consistent with other state consumer protection laws and courts interpreting them. (see e.g. Indiana, Texas, and Ohio).

Adding Additional Considerations for Vulnerable Populations

(6) A fine imposed under Subsection (1)(d) or Subsection (2)(b)(i)(D) shall be determined after considering the following factors:

- (a) the seriousness, nature, circumstances, extent, and persistence of the conduct constituting the violation;
- (b) the harm to other persons resulting either directly or indirectly from the violation;
- (c) cooperation by the supplier in an inquiry or investigation conducted by the enforcing authority concerning the violation;
- (d) efforts by the supplier to prevent occurrences of the violation;
- (e) efforts by the supplier to mitigate the harm caused by the violation, including a reimbursement made to a consumer injured by the act of the supplier;
- (f) the history of previous violations by the supplier;
- (g) the need to deter the supplier or other suppliers from committing the violation in the future;
- (h) whether the deception involved a member of a vulnerable population, and
- (i) other matters as justice may require.



Questions?

Thank you.