

## Chapter 11 Utah Consumer Sales Practices Act

### 13-11-1 Citation of act.

This act shall be known and may be cited as the "Utah Consumer Sales Practices Act."

Enacted by Chapter 188, 1973 General Session

### 13-11-2 Construction and purposes of act.

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

- (1) to simplify, clarify, and modernize the law governing consumer sales practices;
- (2) to protect consumers from suppliers who commit deceptive and unconscionable sales practices;
- (3) to encourage the development of fair consumer sales practices;
- (4) to make state regulation of consumer sales practices not inconsistent with the policies of the Federal Trade Commission Act relating to consumer protection;
- (5) to make uniform the law, including the administrative rules, with respect to the subject of this act among those states which enact similar laws; and
- (6) to recognize and protect suppliers who in good faith comply with the provisions of this act.

Enacted by Chapter 188, 1973 General Session

### 13-11-3 Definitions.

As used in this chapter:

- (1) "Charitable solicitation" means any request directly or indirectly for money, credit, property, financial assistance, or any other thing of value on the plea or representation that it will be used for a charitable purpose. A charitable solicitation may be made in any manner, including:
  - (a) any oral or written request, including a telephone request;
  - (b) the distribution, circulation, or posting of any handbill, written advertisement, or publication; or
  - (c) the sale of, offer or attempt to sell, or request of donations for any book, card, chance, coupon, device, magazine, membership, merchandise, subscription, ticket, flower, flag, button, sticker, ribbon, token, trinket, tag, souvenir, candy, or any other article in connection with which any appeal is made for any charitable purpose, or where the name of any charitable organization or movement is used or referred to as an inducement or reason for making any purchase donation, or where, in connection with any sale or donation, any statement is made that the whole or any part of the proceeds of any sale or donation will go to or be donated to any charitable purpose. A charitable solicitation is considered complete when made, whether or not the organization or person making the solicitation receives any contribution or makes any sale.
- (2)
  - (a) "Consumer transaction" means a sale, lease, assignment, award by chance, or other written or oral transfer or disposition of goods, services, or other property, both tangible and intangible (except securities and insurance) to, or apparently to, a person for:
    - (i) primarily personal, family, or household purposes; or
    - (ii) purposes that relate to a business opportunity that requires:
      - (A) expenditure of money or property by the person described in Subsection (2)(a); and

- (B) the person described in Subsection (2)(a) to perform personal services on a continuing basis and in which the person described in Subsection (2)(a) has not been previously engaged.
- (b) "Consumer transaction" includes:
  - (i) any of the following with respect to a transfer or disposition described in Subsection (2)(a):
    - (A) an offer;
    - (B) a solicitation;
    - (C) an agreement; or
    - (D) performance of an agreement; or
  - (ii) a charitable solicitation.
- (3) "Enforcing authority" means the Division of Consumer Protection.
- (4) "Final judgment" means a judgment, including any supporting opinion, that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired.
- (5) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.
- (6) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly with the consumer.

Amended by Chapter 55, 2004 General Session

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

- (1) A deceptive act or practice by a supplier in connection with a consumer transaction violates this chapter whether it occurs before, during, or after the transaction.
- (2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:
  - (a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not;
  - (b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not;
  - (c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or has been used to an extent that is materially different from the fact;
  - (d) indicates that the subject of a consumer transaction is available to the consumer for a reason that does not exist, including any of the following reasons falsely used in an advertisement:
    - (i) "going out of business";
    - (ii) "bankruptcy sale";
    - (iii) "lost our lease";
    - (iv) "building coming down";
    - (v) "forced out of business";
    - (vi) "final days";
    - (vii) "liquidation sale";
    - (viii) "fire sale";
    - (ix) "quitting business"; or
    - (x) an expression similar to any of the expressions in Subsections (2)(d)(i) through (ix);
  - (e) indicates that the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not;

- (f) indicates that the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;
- (g) indicates that replacement or repair is needed, if it is not;
- (h) indicates that a specific price advantage exists, if it does not;
- (i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier does not have;
- (j)
  - (i) indicates that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if the representation is false; or
  - (ii) fails to honor a warranty or a particular warranty term;
- (k) indicates that the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if receipt of the benefit is contingent on an event occurring after the consumer enters into the transaction;
- (l) after receipt of payment for goods or services, fails to ship the goods or furnish the services within the time advertised or otherwise represented or, if no specific time is advertised or represented, fails to ship the goods or furnish the services within 30 days, unless within the applicable time period the supplier provides the buyer with the option to:
  - (i) cancel the sales agreement and receive a refund of all previous payments to the supplier if the refund is mailed or delivered to the buyer within 10 business days after the day on which the seller receives written notification from the buyer of the buyer's intent to cancel the sales agreement and receive the refund; or
  - (ii) extend the shipping date to a specific date proposed by the supplier;
- (m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the requirements of Subsection (3)(a) of the purchaser's right to cancel a direct solicitation sale within three business days of the time of purchase if:
  - (i) the sale is made other than at the supplier's established place of business pursuant to the supplier's personal contact, whether through mail, electronic mail, facsimile transmission, telephone, or any other form of direct solicitation; and
  - (ii) the sale price exceeds \$25;
- (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title 76, Chapter 6a, Pyramid Scheme Act;
- (o) represents that the funds or property conveyed in response to a charitable solicitation will be donated or used for a particular purpose or will be donated to or used by a particular organization, if the representation is false;
- (p) if a consumer indicates the consumer's intention of making a claim for a motor vehicle repair against the consumer's motor vehicle insurance policy:
  - (i) commences the repair without first giving the consumer oral and written notice of:
    - (A) the total estimated cost of the repair; and
    - (B) the total dollar amount the consumer is responsible to pay for the repair, which dollar amount may not exceed the applicable deductible or other copay arrangement in the consumer's insurance policy; or
  - (ii) requests or collects from a consumer an amount that exceeds the dollar amount a consumer was initially told the consumer was responsible to pay as an insurance deductible or other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that amount

is less than the full amount the motor vehicle insurance policy requires the insured to pay as a deductible or other copay arrangement, unless:

- (A) the consumer's insurance company denies that coverage exists for the repair, in which case, the full amount of the repair may be charged and collected from the consumer; or
  - (B) the consumer misstates, before the repair is commenced, the amount of money the insurance policy requires the consumer to pay as a deductible or other copay arrangement, in which case, the supplier may charge and collect from the consumer an amount that does not exceed the amount the insurance policy requires the consumer to pay as a deductible or other copay arrangement;
  - (q) includes in any contract, receipt, or other written documentation of a consumer transaction, or any addendum to any contract, receipt, or other written documentation of a consumer transaction, any confession of judgment or any waiver of any of the rights to which a consumer is entitled under this chapter;
  - (r) charges a consumer for a consumer transaction or a portion of a consumer transaction that has not previously been agreed to by the consumer;
  - (s) solicits or enters into a consumer transaction with a person who lacks the mental ability to comprehend the nature and consequences of:
    - (i) the consumer transaction; or
    - (ii) the person's ability to benefit from the consumer transaction;
  - (t) solicits for the sale of a product or service by providing a consumer with an unsolicited check or negotiable instrument the presentment or negotiation of which obligates the consumer to purchase a product or service, unless the supplier is:
    - (i) a depository institution under Section 7-1-103;
    - (ii) an affiliate of a depository institution; or
    - (iii) an entity regulated under Title 7, Financial Institutions Act;
  - (u) sends an unsolicited mailing to a person that appears to be a billing, statement, or request for payment for a product or service the person has not ordered or used, or that implies that the mailing requests payment for an ongoing product or service the person has not received or requested;
  - (v) issues a gift certificate, instrument, or other record in exchange for payment to provide the bearer, upon presentation, goods or services in a specified amount without printing in a readable manner on the gift certificate, instrument, packaging, or record any expiration date or information concerning a fee to be charged and deducted from the balance of the gift certificate, instrument, or other record;
  - (w) misrepresents the geographical origin or location of the supplier's business; or
  - (x) fails to comply with the restrictions of Section 15-10-201 on automatic renewal provisions.
- (3)
- (a) The notice required by Subsection (2)(m) shall:
    - (i) be a conspicuous statement written in dark bold with at least 12-point type on the first page of the purchase documentation; and
    - (ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period reflecting the supplier's cancellation policy but not less than three business days) AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS LATER."
  - (b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's cancellation policy:
    - (i) is communicated to the buyer; and
    - (ii) offers greater rights to the buyer than Subsection (2)(m).

- (4)
- (a) A gift certificate, instrument, or other record that does not print an expiration date in accordance with Subsection (2)(v) does not expire.
  - (b) A gift certificate, instrument, or other record that does not include printed information concerning a fee to be charged and deducted from the balance of the gift certificate, instrument, or other record is not subject to the charging and deduction of the fee.
  - (c) Subsections (2)(v) and (4)(b) do not apply to a gift certificate, instrument, or other record useable at multiple, unaffiliated sellers of goods or services if an expiration date is printed on the gift certificate, instrument, or other record.

Amended by Chapter 124, 2013 General Session

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

- (1) An unconscionable act or practice by a supplier in connection with a consumer transaction violates this act whether it occurs before, during, or after the transaction.
- (2) The unconscionability of an act or practice is a question of law for the court. If it is claimed or appears to the court that an act or practice may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making its determination.
- (3) In determining whether an act or practice is unconscionable, the court shall consider circumstances which the supplier knew or had reason to know.

Enacted by Chapter 188, 1973 General Session

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

- (1) In addition to any other method provided by rule or statute, personal jurisdiction over a supplier may be acquired in a civil action or proceeding instituted in the district court by the service of process as provided in Subsection (3).
- (2)
  - (a) A supplier that engages in any act or practice in this state governed by this chapter, or engages in a consumer transaction subject to this chapter, may designate an agent upon whom service of process may be made in the state.
  - (b) A designation of an agent under Subsection (2)(a) shall be in writing and filed with the Division of Corporations and Commercial Code.
  - (c) An agent designated under this Subsection (2) shall be a resident of or a corporation authorized to do business in the state.
- (3)
  - (a) Subject to Subsection (3)(b), process upon a supplier may be served as provided in Section 16-17-301 if:
    - (i) a designation is not made and filed under Subsection (2); or
    - (ii) process cannot be served in the state upon the designated agent.
  - (b) Service upon a supplier is not effective unless the plaintiff promptly mails a copy of the process and pleadings by registered or certified mail to the defendant at the defendant's last reasonably ascertainable address.
  - (c) The plaintiff shall file an affidavit of compliance with this section:
    - (i) with the clerk of the court; and
    - (ii) on or before the return day of the process, if any, or within any future time the court allows.

Amended by Chapter 152, 2012 General Session

**13-11-7 Duties of enforcing authority -- Confidentiality of identity of persons investigated -- Civil penalty for violation of restraining or injunctive orders.**

- (1) The enforcing authority shall:
  - (a) enforce this chapter throughout the state;
  - (b) cooperate with state and local officials, officials of other states, and officials of the federal government in the administration of comparable statutes;
  - (c) inform consumers and suppliers on a continuing basis of the provisions of this chapter and of acts or practices that violate this chapter including mailing information concerning final judgments to persons who request it, for which he may charge a reasonable fee to cover the expense;
  - (d) receive and act on complaints; and
  - (e) maintain a public file of final judgments rendered under this chapter that have been either reported officially or made available for public dissemination under Subsection (1)(c), final consent judgments, and to the extent the enforcing authority considers appropriate, assurances of voluntary compliance.
- (2) In carrying out his duties, the enforcing authority may not publicly disclose the identity of a person investigated unless his identity has become a matter of public record in an enforcement proceeding or he has consented to public disclosure.
- (3) On motion of the enforcing authority, or on its own motion, the court may impose a civil penalty of not more than \$5,000 for each day a temporary restraining order, preliminary injunction, or permanent injunction issued under this chapter is violated, if the supplier received notice of the restraining or injunctive order. Civil penalties imposed under this section shall be paid to the General Fund.

Amended by Chapter 92, 1987 General Session

**13-11-8 Powers of enforcing authority.**

- (1) The enforcing authority may conduct research, hold public hearings, make inquiries, and publish studies relating to consumer sales acts or practices.
- (2) The enforcing authority shall adopt substantive rules that prohibit with specificity acts or practices that violate Section 13-11-4 and appropriate procedural rules.

Enacted by Chapter 188, 1973 General Session

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

- (1) In addition to complying with other rule-making requirements imposed by this act, the enforcing authority shall:
  - (a) adopt as a rule a description of the organization of his office, stating the general course and method of operation of his office and method whereby the public may obtain information or make submissions or requests;
  - (b) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of the forms and instructions used by the enforcing authority of his office; and
  - (c) make available for public inspection all rules, written statements of policy, and interpretations formulated, adopted, or used by the enforcing authority in discharging his functions.

- (2) A rule of the enforcing authority is invalid, and may not be invoked by the enforcing authority for any purpose, until it has been made available for public inspection under Subsection (1). This provision does not apply to a person who has knowledge of a rule before engaging in an act or practice that violates this act.

Enacted by Chapter 188, 1973 General Session

**13-11-16 Investigatory powers of enforcing authority.**

- (1) If, by his own inquiries or as a result of complaints, the enforcing authority has reason to believe that a person has engaged in, is engaging in, or is about to engage in an act or practice that violates this act, he may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence.
- (2) If matter that the enforcing authority subpoenas is located outside this state, the person subpoenaed may either make it available to the enforcing authority at a convenient location within the state or pay the reasonable and necessary expenses for the enforcing authority or his representative to examine the matter at the place where it is located. The enforcing authority may designate representatives, including officials of the state in which the matter is located, to inspect the matter on his behalf, and he may respond to similar requests from officials of other states.
- (3) Upon failure of a person without lawful excuse to obey a subpoena and upon reasonable notice to all persons affected, the enforcing authority may apply to the court for an order compelling compliance.
- (4) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.

Amended by Chapter 296, 1997 General Session

**13-11-17 Actions by enforcing authority.**

- (1) The enforcing authority may bring an action in a court of competent jurisdiction to:
  - (a) obtain a declaratory judgment that an act or practice violates this chapter;
  - (b) enjoin, in accordance with the principles of equity, a supplier who has violated, is violating, or is otherwise likely to violate this chapter;
  - (c) recover, for each violation, actual damages, or obtain relief under Subsection (2)(b), on behalf of consumers who complained to the enforcing authority within a reasonable time after it instituted proceedings under this chapter; and
  - (d) obtain a fine in an amount determined after considering the factors in Subsection (6).
- (2)
  - (a) The enforcing authority may bring a class action on behalf of consumers for the actual damages caused by an act or practice specified as violating this chapter in a rule adopted by the enforcing authority under Subsection 13-11-8(2) before the consumer transactions on which the action is based, or declared to violate Section 13-11-4 or 13-11-5 by final judgment of courts of general jurisdiction and appellate courts of this state that was either reported officially or made available for public dissemination under Subsection 13-11-7(1)(c) by the enforcing authority 10 days before the consumer transactions on which the action is based, or, with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent judgment that became final before the consumer transactions on which the action is based.
  - (b)

- (i) On motion of the enforcing authority and without bond in an action under this Subsection (2), the court may make appropriate orders, including appointment of a master or receiver or sequestration of assets, but only if it appears that the defendant is threatening or is about to remove, conceal, or dispose of the defendant's property to the damage of persons for whom relief is requested. An appropriate order may include an order to:
  - (A) reimburse consumers found to have been damaged;
  - (B) carry out a transaction in accordance with consumers' reasonable expectations;
  - (C) strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result;
  - (D) impose a fine in an amount determined after considering the factors listed in Subsection (6); or
  - (E) grant other appropriate relief.
- (ii) The court may assess the expenses of a master or receiver against a supplier.
- (c) If an act or practice that violates this chapter unjustly enriches a supplier and damages can be computed with reasonable certainty, damages recoverable on behalf of consumers who cannot be located with due diligence shall be transferred to the state treasurer pursuant to Title 67, Chapter 4a, Revised Uniform Unclaimed Property Act.
- (d) If a supplier shows by a preponderance of the evidence that a violation of this chapter resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, recovery under this Subsection (2) is limited to the amount, if any, by which the supplier was unjustly enriched by the violation.
- (3)
  - (a) The enforcing authority may terminate an investigation or an action other than a class action upon acceptance of the supplier's written assurance of voluntary compliance with this chapter. Acceptance of an assurance may be conditioned on a commitment to reimburse consumers or take other appropriate corrective action.
  - (b) An assurance is not evidence of a prior violation of this chapter. Unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation.
- (4)
  - (a) In addition to other penalties and remedies set out under this chapter, and in addition to its other enforcement powers under Chapter 2, Division of Consumer Protection, the division director may issue a cease and desist order and impose an administrative fine of up to \$2,500 for each violation of this chapter.
  - (b) All money received through fines imposed under this section shall be deposited in the Consumer Protection Education and Training Fund created by Section 13-2-8.
- (5)
  - (a) Within 30 days after agency or judicial review of a final division order imposing an administrative fine, the supplier on whom the fine is imposed shall pay the fine in full.
  - (b) The unpaid amount of a fine is increased by 10%:
    - (i) if the fine has not been paid in full within 60 days after the final division order imposing the fine; and
    - (ii) unless the division waives the 10% increase in a stipulated payment plan.
- (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; and
- (h) other matters as justice may require.

Amended by Chapter 276, 2018 General Session

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

Any judgment granted in favor of the enforcing authority in connection with the enforcement of this chapter shall include, in addition to any other monetary award or injunctive relief, an award of reasonable attorney's fees, court costs, and costs of investigation.

Enacted by Chapter 105, 1987 General Session

**13-11-18 Noncompliance by supplier subject to other state supervision -- Cooperation of enforcing authority and other official or agency.**

- (1) If the enforcing authority receives a complaint or other information relating to noncompliance with this act by a supplier who is subject to other supervision in this state, the enforcing authority shall inform the official or agency having that supervision. The enforcing authority may request information about suppliers from the official or agency.
- (2) The enforcing authority and any other official or agency in this state having supervisory authority over a supplier shall consult and assist each other in maintaining compliance with this act. Within the scope of their authority, they may jointly or separately make investigations, prosecute suits, and take other official action they consider appropriate.

Enacted by Chapter 188, 1973 General Session

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

- (1) Whether he seeks or is entitled to damages or otherwise has an adequate remedy at law, a consumer may bring an action to:
  - (a) obtain a declaratory judgment that an act or practice violates this chapter; and
  - (b) enjoin, in accordance with the principles of equity, a supplier who has violated, is violating, or is likely to violate this chapter.
- (2) A consumer who suffers loss as a result of a violation of this chapter may recover, but not in a class action, actual damages or \$2,000, whichever is greater, plus court costs.
- (3) Whether a consumer seeks or is entitled to recover damages or has an adequate remedy at law, he may bring a class action for declaratory judgment, an injunction, and appropriate ancillary relief against an act or practice that violates this chapter.
- (4)
  - (a) A consumer who suffers loss as a result of a violation of this chapter may bring a class action for the actual damages caused by an act or practice specified as violating this chapter by a rule adopted by the enforcing authority under Subsection 13-11-8(2) before the consumer transactions on which the action is based, or declared to violate Section 13-11-4

or 13-11-5 by a final judgment of the appropriate court or courts of general jurisdiction and appellate courts of this state that was either officially reported or made available for public dissemination under Subsection 13-11-7(1)(c) by the enforcing authority 10 days before the consumer transactions on which the action is based, or with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent judgment which became final before the consumer transactions on which the action is based.

- (b) If an act or practice that violates this chapter unjustly enriches a supplier and the damages can be computed with reasonable certainty, damages recoverable on behalf of consumers who cannot be located with due diligence shall be transferred to the state treasurer pursuant to Title 67, Chapter 4a, Revised Uniform Unclaimed Property Act.
- (c) If a supplier shows by a preponderance of the evidence that a violation of this chapter resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, recovery under this section is limited to the amount, if any, in which the supplier was unjustly enriched by the violation.
- (5) Except for services performed by the enforcing authority, the court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed if:
  - (a) the consumer complaining of the act or practice that violates this chapter has brought or maintained an action he knew to be groundless; or a supplier has committed an act or practice that violates this chapter; and
  - (b) an action under this section has been terminated by a judgment or required by the court to be settled under Subsection 13-11-21(1)(a).
- (6) Except for consent judgment entered before testimony is taken, a final judgment in favor of the enforcing authority under Section 13-11-17 is admissible as prima facie evidence of the facts on which it is based in later proceedings under this section against the same person or a person in privity with him.
- (7) When a judgment under this section becomes final, the prevailing party shall mail a copy to the enforcing authority for inclusion in the public file maintained under Subsection 13-11-7(1)(e).

Amended by Chapter 276, 2018 General Session

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

- (1) An action may be maintained as a class action under this act only if:
  - (a) the class is so numerous that joinder of all members is impracticable;
  - (b) there are questions of law or fact common to the class;
  - (c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
  - (d) the representative parties will fairly and adequately protect the interests of the class; and
  - (e) either:
    - (i) the prosecution of separate actions by or against individual members of the class would create a risk of:
      - (A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or
      - (B) adjudications with respect to individual members of the class that would as a practical matter dispose of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
    - (ii) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or

- (iii) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.
- (2) The matters pertinent to the findings under Subsection (1)(e)(iii) include:
- (a) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
  - (b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
  - (c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
  - (d) the difficulties likely to be encountered in the management of a class action.
- (3) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subsection may be conditional, and it may be amended before decision on the merits.
- (4) In a class action maintained under Subsection (1)(e) the court may direct to the members of the class the best notice practicable under the circumstances, including individual notice to each member who can be identified through reasonable effort. The notice shall advise each member that:
- (a) the court will exclude him from the class, unless he requests inclusion, by a specified date;
  - (b) the judgment, whether favorable or not, will include all members who request inclusion; and
  - (c) a member who requests inclusion may, if he desires, enter an appearance through his counsel.
- (5) When appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class.
- (6) In the conduct of a class action the court may make appropriate orders:
- (a) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;
  - (b) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in the manner the court directs to some or all of the members or to the enforcing authority of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;
  - (c) imposing conditions on the representative parties or on intervenors;
  - (d) requiring that the pleadings be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly; or
  - (e) dealing with similar procedural matters.
- (7) A class action may not be dismissed or compromised without approval of the court. Notice of the proposed dismissal or compromise shall be given to all members of the class as the court directs.
- (8) The judgment in an action maintained as a class action under Subsection (1)(e)(i) or (ii), whether or not favorable to the class, shall describe those whom the court finds to be members of the class. The judgment in a class action under Subsection (1)(e)(iii), whether or not favorable to the class, shall specify or describe those to whom the notice provided in Subsection (4) was directed, and who have requested inclusion, and whom the court finds to be members of the class.

Amended by Chapter 378, 2010 General Session

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

- (1)
- (a) A defendant in a class action may file a written offer of settlement. If it is not accepted within a reasonable time by a plaintiff class representative, the defendant may file an affidavit reciting the rejection. The court may determine that the offer has enough merit to present to the members of the class. If it so determines, it shall order a hearing to determine whether the offer should be approved. It shall give the best notice of the hearing that is practicable under the circumstances, including notice to each member who can be identified through reasonable effort. The notice shall specify the terms of the offer and a reasonable period within which members of the class who request it are entitled to be included in the class. The statute of limitations for those who are excluded pursuant to this Subsection (1) is tolled for the period the class action has been pending, plus an additional year.
  - (b) If a member who has previously lost an opportunity to be excluded from the class is excluded at his request in response to notice of the offer of settlement during the period specified under Subsection (1)(a), he may not thereafter participate in a class action for damages respecting the same consumer transaction, unless the court later disapproves the offer of settlement or approves a settlement materially different from that proposed in the original offer of settlement. After the expiration of the period of limitations, a member of the class is not entitled to be excluded from it.
  - (c) If the court later approves the offer of settlement, including changes, if any, required by the court in the interest of a just settlement of the action, it shall enter judgment, which is binding on all persons who are then members of the class. If the court disapproves the offer or approves a settlement materially different from that proposed in the original offer, notice shall be given to a person who was excluded from the action at his request in response to notice of the offer under Subsection (1)(a), and he is entitled to rejoin the class and, in the case of the approval, participate in the settlement.
- (2) On the commencement of a class action under Section 13-11-19, the class representative shall mail by certified mail with return receipt requested or personally serve a copy of the complaint on the enforcing authority. Within 30 days after the receipt of a copy of the complaint, but not thereafter, the enforcing authority may intervene in the class action.

Amended by Chapter 324, 2010 General Session

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

- (1) This act does not apply to:
- (a) an act or practice required or specifically permitted by or under federal law, or by or under state law;
  - (b) a publisher, broadcaster, printer, or other person engaged in the dissemination of information or the reproduction of printed or pictorial matter so far as the information or matter has been disseminated or reproduced on behalf of others without actual knowledge that it violated this act;
  - (c) claim for personal injury or death or claim for damage to property other than the property that is the subject of the consumer transaction;
  - (d) credit terms of a transaction otherwise subject to this act; or

- (e) any public utility subject to the regulating jurisdiction of the Public Service Commission of the state of Utah.
- (2) A person alleged to have violated this act has the burden of showing the applicability of this section.

Enacted by Chapter 188, 1973 General Session

**13-11-23 Other remedies available -- Class action only as prescribed by act.**

The remedies of this act are in addition to remedies otherwise available for the same conduct under state or local law, except that a class action relating to a transaction governed by this act may be brought only as prescribed by this act.

Enacted by Chapter 188, 1973 General Session