

## Chapter 7 Remedies and Penalties

### Part 1 Limitation on Creditors' Remedies

#### **70C-7-101 Restriction on deficiency judgments in consumer credit sales.**

- (1) If a seller repossesses or voluntarily accepts the surrender or return of goods that were the subject of a consumer credit sale and in which the seller has a security interest to secure a debt arising from the sale of goods or services or a combined sale of goods and services, and the cash price of the sale was \$3,000 or less, any debt remaining from the sale shall be fully satisfied and the seller has no further obligation to the buyer with respect to the goods taken or accepted.
- (2) If the seller brings an action against the buyer for a debt arising from a consumer credit sale of goods or services, when under this section the creditor would not be entitled to a deficiency judgment if it repossessed the collateral, and obtains judgment:
  - (a) it may not repossess the collateral; and
  - (b) the collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.
- (3)
  - (a) Subsections (1) and (2) do not apply if the goods that were the subject of the sale and that secured a debt arising from a consumer credit sale are damaged to a significant degree after the goods are delivered to the buyer through no fault of the creditor.
  - (b) Subsection (2) does not apply if, after default and before the filing of an action against the buyer, the buyer fails to surrender and deliver the collateral to the creditor.
  - (c) Subsections (1) and (2) do not apply if an action taken by the buyer would make the collection of a judgment unenforceable, including the filing of bankruptcy.
- (4) Notwithstanding any other provision of this section, a creditor has no obligation to accept the surrender of collateral.

Amended by Chapter 435, 2011 General Session

#### **70C-7-102 No garnishment before judgment.**

Prior to entry of judgment in an action against a debtor relating to a consumer credit agreement, the creditor may not attach unpaid earnings of the debtor by garnishment or like proceedings.

Enacted by Chapter 159, 1985 General Session

#### **70C-7-103 Definitions -- Limitation on garnishment.**

- (1) As used in this part:
  - (a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld.
  - (b) "Education loan" means a loan subject to this title, or notwithstanding Subsection 70C-1-202(2)(h)(ii)(B)(II), made by a depository institution that:
    - (i) is closed end;
    - (ii) is a qualified education loan as defined in 26 U.S.C. Sec. 221(d);

- (iii) expressly states in the original loan documents that it is a qualified education loan or the proceeds will be used solely for qualified higher education expenses as defined in 26 U.S.C. Sec 221(d); and
  - (iv) in a bankruptcy filing, the loan or any indebtedness relating to the loan is subject to the provisions of 11 U.S.C. Sec. 523(a)(8).
  - (c) "Garnishment" means a legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.
- (2) The maximum part of the aggregate disposable earnings of an individual for any pay period that is subjected to garnishment to enforce payment of a judgment arising from a consumer credit agreement may not exceed the lesser of:
- (a) 25% of the individual's disposable earnings for that pay period;
  - (b) the amount by which the individual's disposable earnings for that pay period exceed 30 hours per week multiplied by the federal minimum hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act of 1938, 29 U.S.C. Sec. 206(a)(1), in effect at the time the earnings are payable; or
  - (c) 15% of the individual's disposable earnings for that pay period if the judgment relates to an education loan.
- (3) A court may not make, execute, or enforce an order or process in violation of this section.

Amended by Chapter 84, 2014 General Session

**70C-7-104 No discharge from employment for garnishment.**

No employer may discharge any employee because his earnings have been subject to garnishment in connection with any one judgment.

Enacted by Chapter 159, 1985 General Session

**70C-7-105 Extortionate extensions of credit.**

If it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through any judicial proceedings against the debtor.

Enacted by Chapter 159, 1985 General Session

**70C-7-106 Unconscionability.**

- (1) With respect to a consumer credit agreement, if the court finds the agreement or any part of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause if that will avoid any unconscionable result.
- (2) If it is claimed or appears to a court that a consumer credit agreement or any part of it may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.
- (3) For the purposes of this section, a charge or practice expressly permitted by this title is not in itself unconscionable.
- (4) If the court as a matter of law finds a consumer credit agreement or any part of the agreement to have been unconscionable, then in addition to the relief provided for in Subsection (1), the

party in violation of this section is liable and the debtor may recover from it a penalty in an amount determined by the court of:

- (a) not less than \$100 nor more than \$5,000; and
  - (b) the cost of the action together with a reasonable attorney's fee.
- (5) The penalties provided for in Subsection (4) may not be imposed upon an assignee of the creditor's rights in a consumer credit contract found as a matter of law to be unconscionable in whole or in part unless the debtor establishes by a preponderance of the evidence that the assignee knew the agreement was a consumer credit contract at the time the assignment occurred and also knew of the facts or circumstances on which the court based its finding of unconscionability.
- (6) No class action may be brought under this section except for injunctive or declaratory relief.
- (7) Nothing contained in Subsection (6) prevents the recovery of penalties by a debtor as provided in Subsection (4).

Enacted by Chapter 159, 1985 General Session

**70C-7-107 Notice of negative credit report required.**

- (1) As used in this section:
- (a) "Creditor," in addition to its definition under Section 70C-1-302, includes an agent of a creditor engaged in administering or collecting the creditor's accounts.
  - (b) "Credit reporting agency" means any credit bureau, consumer reporting agency, association of lending institutions, association of merchants, association of other creditors, any person, firm, partnership, cooperative, or corporation which, for a fee, dues, or on a cooperative nonprofit basis, is organized for the purpose of, or regularly engages in, the gathering or evaluating of consumer credit information or other information about consumers for the purpose of reporting to third parties on the credit rating or creditworthiness of any party.
  - (c)
    - (i) "Negative credit report" means information reflecting on the credit history of a party that, because of the party's past delinquencies, late or irregular payment history, insolvency, or any form of default, would reasonably be expected to affect adversely the party's ability to obtain or maintain credit.
    - (ii) Negative credit report does not include information or credit histories arising from a nonconsumer transaction or any other credit transaction outside the scope of this title, nor does it include inquiries about a consumer's record.
- (2) A creditor may submit a negative credit report to a credit reporting agency, only if the creditor notifies the party whose credit record is the subject of the negative report. After providing this notice, a creditor may submit additional information to a credit reporting agency respecting the same transaction or extension of credit that gave rise to the original negative credit report without providing any additional notice.
- (3)
  - (a) A creditor shall provide the notice described in Subsection (2):
    - (i) in writing;
    - (ii) by:
      - (A) in-person delivery;
      - (B) first class mail, postage prepaid, to the party's last-known address; or
      - (C) if the party has consented to receive notices by electronic mail, by electronic mail; and
    - (iii) no more than 30 days after the day on which the creditor submits the negative credit report to the credit reporting agency.

- (b) The notice may be part of any notice of default, billing statement, or other correspondence from the creditor to the party.
  - (c) The notice is sufficient if it takes substantially the following form:

"As required by Utah law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations."
  - (d) The notice may, in the creditor's discretion, be more specific than the form given in Subsection (3)(c). For example, the notice may provide particular information regarding an account or list the approximate date on which the creditor submitted or intends to submit a negative credit report.
- (4)
- (a) A creditor who fails to provide notice as required by this section is liable to the injured party for actual damages. In any cause of action filed to determine the liability of a creditor or damages, the prevailing party in such an action is entitled to court costs and attorney's fees.
  - (b) If a creditor willfully violates this section, the court may award punitive damages in an amount not in excess of two times the amount of the actual damages awarded.
  - (c) A creditor is not liable for failure to provide notice if he establishes by a preponderance of the evidence that, at the time of his failure to give notice, he maintained reasonable procedures to comply with this section.
- (5) A creditor is not required to comply with this section in violation of 11 U.S.C. Sec. 362, as amended.

Amended by Chapter 144, 2020 General Session

## **Part 2**

### **Debtors' Remedies**

#### **70C-7-201 Effect of violations by creditors -- Penalties -- Debtor's rights.**

- (1) A debtor is not obligated to pay a charge in excess of that allowed by this title, and if he has paid an excess charge he has a right to a refund. A refund may be made in whole or in part by reducing the debtor's obligation by the amount of the excess charge. If the debtor has paid an amount in excess of the lawful obligation under the agreement, the debtor may recover the excess amount from the party who made the excess charge or from an assignee of the creditor's rights who undertakes direct collection of payments from or enforcement of rights against the debtor with respect to the debt.
- (2) If a debtor is entitled to a refund and a party liable to the debtor in bad faith refuses to make a refund within a reasonable time after demand, the debtor may recover from that party a penalty in an amount to be determined by a court not exceeding the greater of either the amount of the finance charge or 10 times the amount of the excess charge. If the creditor has made an excess charge in deliberate violation of or in reckless disregard for this title, the penalty may be recovered even though the creditor has refunded the excess charge.

Enacted by Chapter 159, 1985 General Session

#### **70C-7-202 Assignees of creditor.**

Except as otherwise specifically provided in this title, or unless the assignment is involuntary, any civil action for violation of this title which may be brought against the original creditor in any consumer credit transaction may be maintained against any subsequent assignee of the original creditor where the violation from which the alleged liability arose is apparent on the face of the instrument assigned.

Enacted by Chapter 159, 1985 General Session

**70C-7-203 Refunds and penalties as setoff to obligation.**

Refunds or penalties to which the debtor is entitled under this part may be set off against the debtor's obligation and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this part.

Enacted by Chapter 159, 1985 General Session

**70C-7-204 Attorney's fees.**

In any case where it is found that a creditor has violated this title or its agreement with the debtor, the court may award reasonable attorney's fees to the debtor.

Enacted by Chapter 159, 1985 General Session

**70C-7-205 Statute of limitations.**

No action under this title may be brought more than one year after the date of the occurrence of the violation. This section does not bar a person from asserting a violation of this title in an action to collect the debt which is brought more than one year after the date of the occurrence of the violation as a matter of defense by recoupment or setoff to the extent of the outstanding balance of the debt.

Enacted by Chapter 159, 1985 General Session

**70C-7-206 Creditor's defenses.**

- (1) If a creditor establishes by a preponderance of evidence that a violation of this title is unintentional or the result of a bona fide error, no penalty as specified in Sections 70C-7-201 and 70C-7-204 may be imposed and the validity of the transaction is not affected.
- (2) A creditor or assignee has no liability under this part for any failure to comply with any requirement imposed under this title if within 60 days after discovering an error, and prior to the institution of an action under this chapter or the receipt of written notice of the error from the debtor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.
- (3) No provision of this part imposing any penalty applies to any action done or omitted in good faith in conformity with some provision of this title, notwithstanding that after the action or omission has occurred the provision is amended, rescinded, or determined by judicial or other competent authority to be invalid for any reason.

Enacted by Chapter 159, 1985 General Session

