

UNIFORM CONSUMER CREDIT CODE AMENDMENTS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Peter C. Knudson

AN ACT RELATING TO CONSUMER CREDIT; PROHIBITING CERTAIN CHARGES TO BE TREATED AS PENALTIES; ADDRESSING WHAT CONSTITUTES A PERMITTED CHANGE IN AN OPEN-END CREDIT CONTRACT; ADDRESSING MAILING OF NOTICES; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

70C-1-103, as enacted by Chapter 159, Laws of Utah 1985

70C-4-102, as last amended by Chapter 177, Laws of Utah 1990

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

Section 1. Section **70C-1-103** is amended to read:

70C-1-103. General principles of law apply -- Treatment of charge or fee.

(1) Unless displaced by the particular provisions of this title, the Uniform Commercial Code and the principles of law and equity, including without limitation the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, and bankruptcy shall supplement its provisions.

(2) A charge or fee described in Section 70C-1-106 assessed by a depository institution as defined by Section 7-1-103 in accordance with this title may not be considered void as a penalty or otherwise unenforceable under statute or common law.

Section 2. Section **70C-4-102** is amended to read:

70C-4-102. Change of terms of open-end credit contracts.

(1) For purposes of this section, "change" includes to add, delete, or otherwise change a term of an open-end consumer contract.

(2) Notwithstanding ~~[the provisions of]~~ Section 25-5-4, a creditor may change any written term of an open-end consumer credit contract at any time while the agreement is in effect and apply the new term to the unpaid balance in the account~~[, by giving]~~ if:

(a) the creditor gives all other parties to the open-end consumer contract that may be affected not less than [15] 30 days advance written notice of the change [to all other parties who may be affected, but only if]; and

(b) the contract expressly provides that the creditor may change terms of the agreement from time to time.

[~~(1)~~] (3) If the creditor has taken a security interest in any real property of the debtor to secure payment of the debt, and if the term to be changed affects the method for calculating minimum payments, or is part of the finance charge, the creditor may apply the new term to an account balance relating to a credit transaction [which] that occurred prior to the effective date of the change only if:

(a) the debtor expressly so agrees after notice of the change has been given by the creditor;
or

(b) (i) the creditor notifies the debtor that:

(A) further extensions of credit will not be permitted unless the debtor agrees that the new term may be applied to an existing account balance[~~;~~ and];

(B) any future charges to the account will constitute [such an] agreement[~~;~~]; and

(ii) the debtor makes a charge [or charges] to the account after receiving [such] notice described in Subsection (3)(b)(i).

[~~(2)~~] (4) [~~No notice~~] Notice under this section is not required when:

(a) [~~when~~] the change involves:

(i) late payment charges[~~;~~];

(ii) charges for documentary evidence[~~;~~ or];

(iii) over-the-limit charges;

[~~(ii)~~] (iv) a reduction of any component of a finance or other charge;

[~~(iii)~~] (v) suspension of future credit privileges; or

(vi) termination of an account or plan; or

(b) [~~when~~] other than an increase in the periodic rate or other finance charge, the change results from:

(i) an agreement involving a court proceeding~~[-];~~ or [from]

(ii) the consumer's default or delinquency~~[-, other than an increase in the periodic rate or other finance charge].~~

~~[(3)]~~ (5) (a) The actual unpaid balance of the account at any point in time is not a term of the credit agreement for purposes of this section.

(b) With regard to a variable or adjustable interest rate, a periodic change in the applicable rate is not a change subject to this section if no term of the credit agreement pertaining to calculation of the applicable rate is changed.

(6) (a) A creditor may include a notice required by this section of a change to an open-end consumer credit contract on or in the same envelope as a periodic statement or other material sent to the borrower by the creditor.

(b) Notwithstanding Subsection (6)(a), a creditor is not required to include a notice required by this section with any other material sent to the borrower.