

1 **CONSUMER PROTECTION AMENDMENTS**

2 2000 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Jackie Biskupski**

5 AN ACT RELATING TO THE CONSUMER SALES PRACTICES ACT; EXPANDING THE
6 LIST OF DECEPTIVE ACTS OR PRACTICES BY A SUPPLIER; PROHIBITING EXCESSIVE
7 LOSS OF USE FEES FOR DAMAGED RENTAL PROPERTY; LIMITING THE TRANSFER
8 OF CERTAIN DEBTS; AND MAKING TECHNICAL CHANGES.

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

10 AMENDS:

11 **13-11-4**, as last amended by Chapter 21, Laws of Utah 1999

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

13 Section 1. Section **13-11-4** is amended to read:

14 **13-11-4. Deceptive act or practice by supplier.**

15 (1) A deceptive act or practice by a supplier in connection with a consumer transaction
16 violates this chapter whether it occurs before, during, or after the transaction.

17 (2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or
18 practice if the supplier knowingly or intentionally:

19 (a) indicates that the subject of a consumer transaction has sponsorship, approval,
20 performance characteristics, accessories, uses, or benefits, if it has not;

21 (b) indicates that the subject of a consumer transaction is of a particular standard, quality,
22 grade, style, or model, if it is not;

23 (c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or has
24 been used to an extent that is materially different from the fact;

25 (d) indicates that the subject of a consumer transaction is available to the consumer for a
26 reason that does not exist;

27 (e) indicates that the subject of a consumer transaction has been supplied in accordance

28 with a previous representation, if it has not;

29 (f) indicates that the subject of a consumer transaction will be supplied in greater quantity
30 than the supplier intends;

31 (g) indicates that replacement or repair is needed, if it is not;

32 (h) indicates that a specific price advantage exists, if it does not;

33 (i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier does
34 not have;

35 (j) indicates that a consumer transaction involves or does not involve a warranty, a
36 disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if the
37 representation is false;

38 (k) indicates that the consumer will receive a rebate, discount, or other benefit as an
39 inducement for entering into a consumer transaction in return for giving the supplier the names of
40 prospective consumers or otherwise helping the supplier to enter into other consumer transactions,
41 if receipt of the benefit is contingent on an event occurring after the consumer enters into the
42 transaction;

43 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the
44 services within the time advertised or otherwise represented or, if no specific time is advertised
45 or represented, fails to ship the goods or furnish the services within 30 days, unless within the
46 applicable time period the supplier provides the buyer with the option to either cancel the sales
47 agreement and receive a refund of all previous payments to the supplier or to extend the shipping
48 date to a specific date proposed by the supplier, but any refund shall be mailed or delivered to the
49 buyer within ten business days after the seller receives written notification from the buyer of the
50 buyer's right to cancel the sales agreement and receive the refund;

51 (m) fails to furnish a notice of the purchaser's right to cancel a direct solicitation sale
52 within three business days of the time of purchase if the sale is made other than at the supplier's
53 established place of business pursuant to the supplier's personal contact, whether through mail,
54 electronic mail, facsimile transmission, telephone, or [~~personal contact~~] any other form of direct
55 solicitation and if the sale price exceeds \$25, unless the supplier's cancellation policy is
56 communicated to the buyer and the policy offers greater rights to the buyer than this Subsection
57 (2)(m), which notice shall be a conspicuous statement written in dark bold at least 12 point type,
58 on the first page of the purchase documentation, and shall read as follows: "YOU, THE BUYER,

59 MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD
60 BUSINESS DAY (or time period reflecting the supplier's cancellation policy but not less than
61 three business days) AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE
62 PRODUCT, WHICHEVER IS LATER.";

63 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
64 76, Chapter 6a, Pyramid Scheme Act;

65 (o) represents that the funds or property conveyed in response to a charitable solicitation
66 will be donated or used for a particular purpose or will be donated to or used by a particular
67 organization, if the representation is false; [or]

68 (p) if a consumer indicates his intention of making a claim for a motor vehicle repair
69 against his motor vehicle insurance policy:

70 (i) commences the repair without first giving the consumer oral and written notice of:

71 (A) the total estimated cost of the repair; and

72 (B) the total dollar amount the consumer is responsible to pay for the repair, which dollar
73 amount may not exceed the applicable deductible or other copay arrangement in the consumer's
74 insurance policy; or

75 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
76 consumer was initially told he was responsible to pay as an insurance deductible or other copay
77 arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that amount is less than
78 the full amount the motor vehicle insurance policy requires the insured to pay as a deductible or
79 other copay arrangement, unless:

80 (A) the consumer's insurance company denies that coverage exists for the repair, in which
81 case, the full amount of the repair may be charged and collected from the consumer; or

82 (B) the consumer misstates, before the repair is commenced, the amount of money the
83 insurance policy requires the consumer to pay as a deductible or other copay arrangement, in which
84 case, the supplier may charge and collect from the consumer an amount that does not exceed the
85 amount the insurance policy requires the consumer to pay as a deductible or other copay
86 arrangement[-];

87 (q) in the case of a supplier who rents personal property, if there is a loss of or damage to
88 a rented item while that item is in the possession of the renter:

89 (i) charges a fee for loss of use of the item which is greater than the amount of actual

90 damages suffered by the supplier for the loss of use of the item:

91 (A) calculated by multiplying the rate for rental of the item stated in the renter's contract,
92 excluding optional charges, by the reasonable amount of time for the repairs to the item; and

93 (B) which the supplier can demonstrate by documenting that during the period of repair
94 of the item a rental opportunity for the item was lost because no other comparable item was
95 available for rental at that business location of the supplier or any other business location of the
96 supplier within 50 miles; or

97 (ii) charges a fee for the cost of processing the claim;

98 (r) negotiates, transfers, sells, or assigns any note or other evidence of indebtedness to a
99 finance company or other third party prior to midnight of the fifth business day following the later
100 of:

101 (i) the day the contract, note, or other evidence of indebtedness was signed; or

102 (ii) the day the consumer transaction was completed;

103 (s) includes in any contract, receipt, or other written documentation of a consumer
104 transaction, or any addendum to any contract, receipt, or other written documentation of a
105 consumer transaction, any confession of judgment or any waiver of any of the rights to which a
106 consumer is entitled under this chapter; or

107 (t) charges for a consumer transaction that has not previously been agreed to by the
108 consumer.

Legislative Review Note
as of 12-21-99 8:25 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel