

**CONSUMER PROTECTION AMENDMENTS -
RENTAL MOTOR VEHICLES**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Jackie Biskupski

This act amends the Utah Consumer Sales Practices Act. The act expands the list of deceptive acts or practices by a supplier to include rental motor vehicles. The act prohibits a fee for loss of use or damage to rental motor vehicles which is greater than the actual damages incurred. The act makes technical changes.

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

AMENDS:

13-11-3, as last amended by Chapter 57, Laws of Utah 2000

13-11-4, as last amended by Chapter 196, Laws of Utah 2001

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

Section 1. Section **13-11-3** is amended to read:

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;

(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) "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), including the use or misuse of personal identifying information of any person in relation to a consumer transaction to, or apparently to, a person for primarily personal, family, or household purposes, or for purposes that relate to a business opportunity that requires both his expenditure of money or property and his personal services on a continuing basis and in which he has not been previously engaged, or a solicitation or offer by a supplier with respect to any of these transfers or dispositions. It includes any offer or solicitation, any agreement, any performance of an agreement with respect to any of these transfers or dispositions, and any charitable solicitation as defined in this section.

(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) "Motor vehicle" has the same meaning as defined in Section 41-3-102.

~~[(5)]~~ (6) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

~~[(6)]~~ (7) "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.

Section 2. Section **13-11-4** is amended to read:

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;

(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) 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;

(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 either cancel the sales agreement and receive a refund of all previous payments to the supplier or to extend the shipping date to a specific date proposed by the supplier, but any refund shall be mailed or delivered to the

90 buyer within ten business days after the seller receives written notification from the buyer of the
91 buyer's right to cancel the sales agreement and receive the refund;

92 (m) fails to furnish a notice of the purchaser's right to cancel a direct solicitation sale
93 within three business days of the time of purchase if the sale is made other than at the supplier's
94 established place of business pursuant to the supplier's personal contact, whether through mail,
95 electronic mail, facsimile transmission, telephone, or any other form of direct solicitation and if
96 the sale price exceeds \$25, unless the supplier's cancellation policy is communicated to the buyer
97 and the policy offers greater rights to the buyer than this Subsection (2)(m), which notice shall be
98 a conspicuous statement written in dark bold at least 12 point type, on the first page of the purchase
99 documentation, and shall read as follows: "YOU, THE BUYER, MAY CANCEL THIS
100 CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or
101 time period reflecting the supplier's cancellation policy but not less than three business days)
102 AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT,
103 WHICHEVER IS LATER.";

104 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
105 76, Chapter 6a, Pyramid Scheme Act;

106 (o) represents that the funds or property conveyed in response to a charitable solicitation
107 will be donated or used for a particular purpose or will be donated to or used by a particular
108 organization, if the representation is false;

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

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

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

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

116 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
117 consumer was initially told he was responsible to pay as an insurance deductible or other copay
118 arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that amount is less than
119 the full amount the motor vehicle insurance policy requires the insured to pay as a deductible or
120 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; ~~or~~

(r) charges a consumer for a consumer transaction that has not previously been agreed to by the consumer[-];

(s) (i) charges a fee for loss of use of or damage to a rental motor vehicle which fee is greater than the amount of actual damages incurred by the supplier for the loss of use of or damage to the motor vehicle;

(ii) fails to provide to the renter, within 30 days of receiving a written request from the renter, documentation to show that during the period of replacement or repair of the motor vehicle a rental opportunity for the item was lost because no other comparable motor vehicle was available for rental at any business location of the supplier within 50 miles of the place where the renter took possession of the rental motor vehicle; or

(iii) charges a fee for processing the damage claim described in Subsection (2)(s)(i).

(3) A supplier that rents motor vehicles shall calculate actual loss of use under Subsection (2)(s)(i) by multiplying the rental rate stated in the renter's contract by the reasonable amount of time for the replacement of or repairs to the motor vehicle and shall exclude optional charges from the rental rate in making this calculation.

Legislative Review Note

as of 1-9-02 4:45 PM

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

Office of Legislative Research and General Counsel