

**Representative Jackie Biskupski** proposes the following substitute bill:

**RECOVERY OF DAMAGES FOR LOSS OF USE  
OF A MOTOR VEHICLE**

2002 GENERAL SESSION

STATE OF UTAH

**Sponsor: Greg J. Curtis**

**This act amends the Utah Consumer Sales Practices Act and the Insurance Code. The act expands the list of deceptive acts or practices by a supplier to include certain acts related to 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

**31A-22-312**, as enacted by Chapter 251, Laws of Utah 1989

*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;



26 (c) the sale of, offer or attempt to sell, or request of donations for any book, card, chance,  
27 coupon, device, magazine, membership, merchandise, subscription, ticket, flower, flag, button,  
28 sticker, ribbon, token, trinket, tag, souvenir, candy, or any other article in connection with which  
29 any appeal is made for any charitable purpose, or where the name of any charitable organization  
30 or movement is used or referred to as an inducement or reason for making any purchase donation,  
31 or where, in connection with any sale or donation, any statement is made that the whole or any part  
32 of the proceeds of any sale or donation will go to or be donated to any charitable purpose. A  
33 charitable solicitation is considered complete when made, whether or not the organization or  
34 person making the solicitation receives any contribution or makes any sale.

35 (2) "Consumer transaction" means a sale, lease, assignment, award by chance, or other  
36 written or oral transfer or disposition of goods, services, or other property, both tangible and  
37 intangible (except securities and insurance), including the use or misuse of personal identifying  
38 information of any person in relation to a consumer transaction to, or apparently to, a person for  
39 primarily personal, family, or household purposes, or for purposes that relate to a business  
40 opportunity that requires both his expenditure of money or property and his personal services on  
41 a continuing basis and in which he has not been previously engaged, or a solicitation or offer by  
42 a supplier with respect to any of these transfers or dispositions. It includes any offer or solicitation,  
43 any agreement, any performance of an agreement with respect to any of these transfers or  
44 dispositions, and any charitable solicitation as defined in this section.

45 (3) "Enforcing authority" means the Division of Consumer Protection.

46 (4) "Final judgment" means a judgment, including any supporting opinion, that determines  
47 the rights of the parties and concerning which appellate remedies have been exhausted or the time  
48 for appeal has expired.

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

50 [~~5~~] (6) "Person" means an individual, corporation, government, governmental  
51 subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or any  
52 other legal entity.

53 [~~6~~] (7) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person who  
54 regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly  
55 with the consumer.

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

57 **13-11-4. Deceptive act or practice by supplier.**

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

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

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

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

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

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

70 (e) indicates that the subject of a consumer transaction has been supplied in accordance  
71 with a previous representation, if it has not;

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

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

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

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

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

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

86 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the  
87 services within the time advertised or otherwise represented or, if no specific time is advertised

88 or represented, fails to ship the goods or furnish the services within 30 days, unless within the  
89 applicable time period the supplier provides the buyer with the option to either cancel the sales  
90 agreement and receive a refund of all previous payments to the supplier or to extend the shipping  
91 date to a specific date proposed by the supplier, but any refund shall be mailed or delivered to the  
92 buyer within ten business days after the seller receives written notification from the buyer of the  
93 buyer's right to cancel the sales agreement and receive the refund;

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

106 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title  
107 76, Chapter 6a, Pyramid Scheme Act;

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

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

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

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

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

118 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a

119 consumer was initially told he was responsible to pay as an insurance deductible or other copay  
120 arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that amount is less than  
121 the full amount the motor vehicle insurance policy requires the insured to pay as a deductible or  
122 other copay arrangement, unless:

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

125 (B) the consumer misstates, before the repair is commenced, the amount of money the  
126 insurance policy requires the consumer to pay as a deductible or other copay arrangement, in which  
127 case, the supplier may charge and collect from the consumer an amount that does not exceed the  
128 amount the insurance policy requires the consumer to pay as a deductible or other copay  
129 arrangement;

130 (q) includes in any contract, receipt, or other written documentation of a consumer  
131 transaction, or any addendum to any contract, receipt, or other written documentation of a  
132 consumer transaction, any confession of judgment or any waiver of any of the rights to which a  
133 consumer is entitled under this chapter; [~~or~~]

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

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

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

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

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

149 Section 3. Section **31A-22-312** is amended to read:

150           **31A-22-312. Liability for collision damage -- No security required -- No waiver --**  
151 **Section inapplicable to rental companies disclosing charges.**

152           (1) No rental company may, in rental agreements of 30 continuous days or less, hold any  
153 authorized driver liable for any damage except when:

154           (a) the damage is caused intentionally by an authorized driver or as a result of his willful  
155 and wanton misconduct;

156           (b) the damage arises out of the authorized driver's operation of the vehicle while illegally  
157 intoxicated or under the influence of any illegal drug as defined or determined under the law of the  
158 state where the damage occurred;

159           (c) the damage is caused while the authorized driver is engaged in any speed contest;

160           (d) the rental transaction is based on information supplied by the renter with the intent to  
161 defraud the rental company;

162           (e) the damage arises out of the use of the vehicle while committing or otherwise engaged  
163 in a criminal act in which the use of the motor vehicle is substantially related to the nature of the  
164 criminal activity;

165           (f) the damage arises out of the use of the motor vehicle to carry persons or property for  
166 hire; or

167           (g) the damage arises out of the use of the motor vehicle outside of the United States or  
168 Canada unless the use is specifically authorized by the rental agreement.

169           (2) No security or deposit for damage in any form may be required or requested by the  
170 rental company during the rental period, or pending the resolution of any dispute.

171           (3) No waiver may be offered to provide coverage for any of the exceptions listed in this  
172 section.

173           (4) [~~This~~] Except for the provisions of Subsection (5), this section does not apply to any  
174 rental company:

175           (a) whose advertising in this state clearly discloses all charges and costs incidental to the  
176 basic daily rental rate; and

177           (b) that provides written notice to renters clearly printed on the rental agreement and  
178 prominently displayed at its place of business, that the renter's own motor vehicle insurance or his  
179 credit card agreement may cover any damage or loss to the rental vehicle.

180           (5) No rental company may, in any rental agreement, hold any authorized driver liable for

181 any damages in excess of that permitted in Subsection 13-11-4(2)(s).