

1 **CONSUMER SALES PRACTICES ACT**

2 **AMENDMENTS**

3 2005 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Todd E. Kiser**

7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Consumer Sales Practices Act to make a deceptive sales practice
10 certain uses of an unsolicited check.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ makes a deceptive sale, act, or practice the use of an unsolicited check or negotiable
14 instrument that, when cashed, creates a contract for the sale of a product or service;
15 and

16 ▶ makes technical changes.

17 **Monies Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **13-11-4**, as last amended by Chapter 55, Laws of Utah 2004

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

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

27 **13-11-4. Deceptive act or practice by supplier.**



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

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

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

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

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

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

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

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

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

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

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

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

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

56 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the
57 services within the time advertised or otherwise represented or, if no specific time is advertised
58 or represented, fails to ship the goods or furnish the services within 30 days, unless within the

59 applicable time period the supplier provides the buyer with the option to either cancel the sales
60 agreement and receive a refund of all previous payments to the supplier or to extend the
61 shipping date to a specific date proposed by the supplier, but any refund shall be mailed or
62 delivered to the buyer within ten business days after the seller receives written notification
63 from the buyer of the buyer's right to cancel the sales agreement and receive the refund;

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

76 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
77 76, Chapter 6a, Pyramid Scheme Act;

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

81 (p) if a consumer indicates [~~his~~] the consumer's intention of making a claim for a motor
82 vehicle repair against [~~his~~] the consumer's motor vehicle insurance policy:

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

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

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

88 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
89 consumer was initially told [~~he~~] the consumer was responsible to pay as an insurance

90 deductible or other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i),
91 even if that amount is less than the full amount the motor vehicle insurance policy requires the
92 insured to pay as a deductible or other copay arrangement, unless:

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

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

100 (q) includes in any contract, receipt, or other written documentation of a consumer
101 transaction, or any addendum to any contract, receipt, or other written documentation of a
102 consumer transaction, any confession of judgment or any waiver of any of the rights to which a
103 consumer is entitled under this chapter;

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

106 (s) solicits or enters into a consumer transaction with a person who lacks the mental
107 ability to comprehend the nature and consequences of:

108 (i) the consumer transaction; or

109 (ii) the person's ability to benefit from the consumer transaction[~~;~~]; or

110 (t) solicits for the sale of a product or service by providing a consumer with an
111 unsolicited check or negotiable instrument the presentment or negotiation of which obligates
112 the consumer to purchase a product or service, unless the supplier is:

113 (i) a depository institution under Section 7-1-103; or

114 (ii) an affiliate of a depository institution.

Legislative Review Note
as of 12-7-04 8:42 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Interim Committee Note
as of 12-08-04 9:43 AM

The Business and Labor Interim Committee recommended this bill.

Fiscal Note
Bill Number HB0030

Consumer Sales Practices Act Amendments

13-Jan-05

11:12 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst