

**CONSUMER SALES PRACTICES ACT**

**AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: M. Susan Lawrence**

Senate Sponsor: Michael G. Waddoups

Cosponsors:

Ralph Becker

Todd E. Kiser

**LONG TITLE**

**General Description:**

This bill amends the list of deceptive acts or practices a supplier is prohibited from committing.

**Highlighted Provisions:**

This bill:

▶ prohibits a supplier from sending a mailing to a person that appears to be a bill, statement, or request for payment for an unsolicited product or service, or that implies that the mailing requests payment for an ongoing product or service the person has not received, without including notice that the mailing is not a bill; and

▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**13-11-4**, as last amended by Chapters 18 and 27, Laws of Utah 2005

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

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

30           **13-11-4. Deceptive act or practice by supplier.**

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

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

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

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

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

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

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

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

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

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

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

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

54           (ii) fails to honor a warranty or a particular warranty term;

55           (k) indicates that the consumer will receive a rebate, discount, or other benefit as an  
56 inducement for entering into a consumer transaction in return for giving the supplier the names  
57 of prospective consumers or otherwise helping the supplier to enter into other consumer

58 transactions, if receipt of the benefit is contingent on an event occurring after the consumer  
59 enters into the transaction;

60 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the  
61 services within the time advertised or otherwise represented or, if no specific time is advertised  
62 or represented, fails to ship the goods or furnish the services within 30 days, unless within the  
63 applicable time period the supplier provides the buyer with the option to:

64 (i) cancel the sales agreement and receive a refund of all previous payments to the  
65 supplier if the refund is mailed or delivered to the buyer within ten business days after the day  
66 on which the seller receives written notification from the buyer of the buyer's intent to cancel  
67 the sales agreement and receive the refund; or

68 (ii) extend the shipping date to a specific date proposed by the supplier;

69 (m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the  
70 requirements of Subsection (3)(a) of the purchaser's right to cancel a direct solicitation sale  
71 within three business days of the time of purchase if:

72 (i) the sale is made other than at the supplier's established place of business pursuant to  
73 the supplier's personal contact, whether through mail, electronic mail, facsimile transmission,  
74 telephone, or any other form of direct solicitation; and

75 (ii) the sale price exceeds \$25;

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 the consumer's intention of making a claim for a motor  
82 vehicle repair against 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 the consumer was responsible to pay as an insurance deductible or  
90 other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that  
91 amount is less than the full amount the motor vehicle insurance policy requires the insured to  
92 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;

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;

114 (ii) an affiliate of a depository institution; or  
115 (iii) an entity regulated under Title 7, Financial Institutions Act[-]; or  
116 (u) sends an unsolicited mailing to a person that appears to be a billing, statement, or  
117 request for payment for a product or service the person has not ordered or used, or that implies  
118 that the mailing requests payment for an ongoing product or service the person has not received  
119 or requested.

120 (3) (a) The notice required by Subsection (2)(m) shall:

121 (i) be a conspicuous statement written in dark bold with at least 12 point type on the  
122 first page of the purchase documentation; and

123 (ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT  
124 ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period  
125 reflecting the supplier's cancellation policy but not less than three business days) AFTER THE  
126 DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS  
127 LATER".

128 (b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's  
129 cancellation policy:

130 (i) is communicated to the buyer; and

131 (ii) offers greater rights to the buyer than Subsection (2)(m).