

1 **CONSUMER SALES PRACTICES ACT**

2 **AMENDMENTS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: M. Susan Lawrence**

6 Senate Sponsor: Michael G. Waddoups

8 **LONG TITLE**

9 **General Description:**

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

12 **Highlighted Provisions:**

13 This bill:

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

18 ▶ makes technical changes.

19 **Monies Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **13-11-4**, as last amended by Chapters 18 and 27, Laws of Utah 2005

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



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

29 **13-11-4. Deceptive act or practice by supplier.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

80 (p) if a consumer indicates the consumer's intention of making a claim for a motor
81 vehicle repair against the consumer's motor vehicle insurance policy:

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

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

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

87 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
88 consumer was initially told the consumer was responsible to pay as an insurance deductible or
89 other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that

90 amount is less than the full amount the motor vehicle insurance policy requires the insured to
91 pay as a deductible or other copay arrangement, unless:

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

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

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

103 (r) charges a consumer for a consumer transaction that has not previously been agreed
104 to by the consumer;

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

107 (i) the consumer transaction; or

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

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

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

113 (ii) an affiliate of a depository institution; or

114 (iii) an entity regulated under Title 7, Financial Institutions Act[-]; or

115 (u) without including a conspicuous statement written in dark bold with at least
116 12-point type at the top of the first page stating, "This is not a bill", sends an unsolicited
117 mailing to a person that appears to be a billing, statement, or request for payment:

118 (i) for a product or service the person has not ordered or used; or

119 (ii) that implies that the mailing requests payment for an ongoing product or service the
120 person has not received.

- 121 (3) (a) The notice required by Subsection (2)(m) shall:
- 122 (i) be a conspicuous statement written in dark bold with at least 12 point type on the
- 123 first page of the purchase documentation; and
- 124 (ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT
- 125 ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period
- 126 reflecting the supplier's cancellation policy but not less than three business days) AFTER THE
- 127 DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS
- 128 LATER".
- 129 (b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's
- 130 cancellation policy:
- 131 (i) is communicated to the buyer; and
- 132 (ii) offers greater rights to the buyer than Subsection (2)(m).

Legislative Review Note
as of 2-3-06 2:51 PM

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

Fiscal Note
Bill Number HB0428

Consumer Sales Practices Act Amendments

09-Feb-06

10:23 AM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst