

1 **UTAH CONSUMER CREDIT CODE**

2 **AMENDMENTS**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Peter C. Knudson**

6 House Sponsor: J. Stuart Adams

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Utah Consumer Credit Code.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ expands exempted transactions related to education loans;
- 14 ▶ requires that notice of a change of terms of open-end consumer credit contracts be:
- 15 • mailed or written notice delivered; and
- 16 • in a manner consistent with the federal Truth in Lending Act and implementing
- 17 regulations; 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 **70C-1-202**, as last amended by Chapter 200, Laws of Utah 1994

26 **70C-4-102**, as last amended by Chapter 180, Laws of Utah 1999



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

29 Section 1. Section **70C-1-202** is amended to read:

30 **70C-1-202. Exempted transactions.**

31 (1) Notwithstanding the exceptions in Subsection (2), parties to a credit transaction that
32 is otherwise exempt from this title may explicitly agree in writing that the transaction is subject
33 to this title. The agreement shall specifically reference Title 70C, Utah Consumer Credit Code.

34 (2) This title does not apply to any of the following:

35 (a) any extension of credit;

36 (i) primarily for business, commercial, or agricultural purposes[;]; or

37 (ii) to other than a natural person including government agencies or instrumentalities;

38 (b) any closed-end extension of credit secured by a first lien or equivalent security
39 interest on a dwelling or building lot;

40 (c) any transaction in securities or commodities accounts in which credit is extended by
41 a broker-dealer registered with the;

42 (i) Securities and Exchange Commission; or [the]

43 (ii) Commodity Futures Trading Commission;

44 (d) any extension of credit;

45 (i) not secured by;

46 (A) real property[;]; or [by]

47 (B) personal property used or expected to be used as the principal dwelling of the
48 consumer[;]; and

49 (ii) (A) in which the amount financed exceeds \$25,000; or

50 (B) in which there is an express written commitment to extend credit in excess of
51 \$25,000;

52 (e) any transaction under public utility or common carrier tariffs if a subdivision of this
53 state or the United States regulates;

54 (i) the charges for the services involved[;];

55 (ii) the charges for delayed payment[;]; and

56 (iii) any discount allowed for early payment;

57 (f) any sale of insurance by an insurer except as otherwise provided in [~~the chapter on~~
58 ~~insurance, Sections 70C-6-101 through 70C-6-304~~] Chapter 6, Insurance;

59 (g) any transaction with a party acting as a pawnbroker and licensed by any
60 governmental authority in this state;

61 (h) (i) [~~loans~~] a loan made, insured, or guaranteed pursuant to a program authorized by
62 Title IV of the Higher Education Act of 1965, 20 U.S.C. Sections 1070, et seq.; [~~and~~] or

63 (ii) a loan:

64 (A) that finances tuition and other expenses:

65 (I) charged in connection with enrollment:

66 (Aa) at a public or proprietary preprimary, secondary, vocational, or postsecondary
67 school; or

68 (Bb) in any tutorial, continuing education, test preparation, distance-learning, or similar
69 program; and

70 (II) including:

71 (Aa) tuition;

72 (Bb) fees;

73 (Cc) books;

74 (Dd) housing; and

75 (Ee) other expenses;

76 (B) that is:

77 (I) made, insured, or guaranteed under a state program; or

78 (II) made by a federally insured depository institution; and

79 (C) including a loan that consolidates or refinances a loan described in this Subsection
80 (2)(h)(ii); and

81 (i) a rental purchase agreement as defined in Section 15-8-3.

82 Section 2. Section **70C-4-102** is amended to read:

83 **70C-4-102. Change of terms of open-end consumer credit contracts.**

84 (1) For purposes of this section, "change" includes to add, delete, or otherwise change a
85 term of an open-end consumer credit contract.

86 (2) Notwithstanding Section 25-5-4, a creditor may change any written term of an
87 open-end consumer credit contract at any time while the [~~agreement~~] open-end consumer credit
88 contract is in effect and apply the new term to the unpaid balance in the account if:

89 (a) the creditor [~~gives~~] mails or delivers written notice of the change:

90 (i) to all other parties to the open-end consumer credit contract that may be affected
 91 [~~not less than 30 days advance written notice of~~] by the change; and

92 (ii) in a manner consistent with the provisions in effect on the day on which the notice
 93 is given of the Truth in Lending Act, 15 U.S.C. Section 1601 et seq., and its implementing
 94 Regulation Z; and

95 (b) the open-end consumer credit contract expressly provides that the creditor may
 96 change terms of the open-end consumer credit contract agreement from time to time.

97 **§→ [F] (3) If the creditor has taken a security interest in any real property of the**
 97a **debtor to**
 98 **secure payment of the debt, and if the term to be changed affects the method for calculating**
 99 **minimum payments, or is part of the finance charge, [F]**

100 [F] the [~~(3) A~~] ←**§** creditor may apply **§→ [F] the [~~1a~~] ←**§** new term **§→ [of an**
 100a **open-end consumer credit**
 101 **contract] ←**§**** to an account balance relating to a credit transaction that occurred prior to the effective
 102 date of the change only if:**

103 (a) **§→ [(f)] ←**§**** the debtor expressly so agrees after notice of the change has been given by the
 104 creditor; or

105 **§→ [F] (b) (i) [~~(ii)(A)~~] ←**§**** the creditor notifies the debtor that:

106 **§→ [F] (A) [~~(f)~~] ←**§**** further extensions of credit will not be permitted unless the debtor
 106a agrees that

107 the new term may be applied to an existing account balance; and

108 **§→ [F] (B) [~~(f)~~] ←**§**** any future charges to the account will constitute agreement; and

109 **§→ [F] (ii) [~~(B)~~] ←**§**** the debtor makes a charge to the account after receiving notice
 109a described in

110 Subsection (3) **§→ [F] (b)(i). [~~(a)(ii)(A)~~]; and**

111 ~~—— (b) (i) the creditor has taken a security interest in any real property of the debtor to~~

112 ~~secure payment of the debt under an open-end consumer credit contract; and~~

113 ~~—— (ii) the term to be changed in the open-end consumer credit contract;~~

114 ~~—— (A) affects the method for calculating minimum payments; or~~

115 ~~—— (B) is part of the finance charge.] ←**§**~~

116 (4) Notice under this section is not required when:

117 (a) the change involves:

118 (i) late payment charges;

119 (ii) charges for documentary evidence;

120 (iii) over-the-limit charges;

- 121 (iv) a reduction of any component of a finance or other charge;
- 122 (v) suspension of future credit privileges; or
- 123 (vi) termination of an account or plan; or
- 124 (b) other than an increase in the periodic rate or other finance charge, the change
- 125 results from:
 - 126 (i) an agreement involving a court proceeding; or
 - 127 (ii) the consumer's default or delinquency.
- 128 (5) (a) The actual unpaid balance of the account at any point in time is not a term of the
- 129 [~~credit agreement~~] open-end consumer credit contract for purposes of this section.
- 130 (b) With regard to a variable or adjustable interest rate, a periodic change in the
- 131 applicable rate is not a change subject to this section if no term of the [~~credit agreement~~]
- 132 open-end consumer credit contract pertaining to calculation of the applicable rate is changed.
- 133 (6) (a) A creditor may include a notice required by this section of a change to an
- 134 open-end consumer credit contract on or in the same envelope as a periodic statement or other
- 135 material sent to the borrower by the creditor.
- 136 (b) Notwithstanding Subsection (6)(a), a creditor is not required to include a notice
- 137 required by this section with any other material sent to the borrower.

Legislative Review Note
as of 1-9-06 2:00 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 SB0123

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14-Jan-06

7:34 PM

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst