

1 **HEALTH CARE CONSUMER PROTECTION ACT**

2 2021 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Norman K. Thurston**

5 Senate Sponsor: Kirk A. Cullimore

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts the Health Care Consumer Protection Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ prohibits a health care provider from misrepresenting that the provider is a
- 14 contracted provider under a health benefit plan; and
- 15 ▶ makes technical changes.

16 **Money Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 **AMENDS:**

22 **13-11-4**, as last amended by Laws of Utah 2013, Chapter 124

23 **ENACTS:**

24 **13-58-101**, Utah Code Annotated 1953

25 **13-58-102**, Utah Code Annotated 1953

26 **13-58-201**, Utah Code Annotated 1953

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

29 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, including any of the following reasons falsely used in an
43 advertisement:

44 (i) "going out of business";

45 (ii) "bankruptcy sale";

46 (iii) "lost our lease";

47 (iv) "building coming down";

48 (v) "forced out of business";

49 (vi) "final days";

50 (vii) "liquidation sale";

51 (viii) "fire sale";

52 (ix) "quitting business"; or

53 (x) an expression similar to any of the expressions in Subsections (2)(d)(i) through
54 (ix);

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

57 (f) indicates that the subject of a consumer transaction will be supplied in greater

58 quantity than the supplier intends;

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

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

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

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

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

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

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

76 (i) cancel the sales agreement and receive a refund of all previous payments to the
77 supplier if the refund is mailed or delivered to the buyer within 10 business days after the day
78 on which the seller receives written notification from the buyer of the buyer's intent to cancel
79 the sales agreement and receive the refund; or

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

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

84 (i) the sale is made other than at the supplier's established place of business pursuant to
85 the supplier's personal contact, whether through mail, electronic mail, facsimile transmission,

86 telephone, or any other form of direct solicitation; and

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

88 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
89 76, Chapter 6a, Pyramid Scheme Act;

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

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

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

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

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

100 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
101 consumer was initially told the consumer was responsible to pay as an insurance deductible or
102 other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that
103 amount is less than the full amount the motor vehicle insurance policy requires the insured to
104 pay as a deductible or other copay arrangement, unless:

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

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

112 (q) includes in any contract, receipt, or other written documentation of a consumer
113 transaction, or any addendum to any contract, receipt, or other written documentation of a

114 consumer transaction, any confession of judgment or any waiver of any of the rights to which a
115 consumer is entitled under this chapter;

116 (r) charges a consumer for a consumer transaction or a portion of a consumer
117 transaction that has not previously been agreed to by the consumer;

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

120 (i) the consumer transaction; or

121 (ii) the person's ability to benefit from the consumer transaction;

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

125 (i) a depository institution under Section [7-1-103](#);

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

127 (iii) an entity regulated under Title 7, Financial Institutions Act;

128 (u) sends an unsolicited mailing to a person that appears to be a billing, statement, or
129 request for payment for a product or service the person has not ordered or used, or that implies
130 that the mailing requests payment for an ongoing product or service the person has not received
131 or requested;

132 (v) issues a gift certificate, instrument, or other record in exchange for payment to
133 provide the bearer, upon presentation, goods or services in a specified amount without printing
134 in a readable manner on the gift certificate, instrument, packaging, or record any expiration
135 date or information concerning a fee to be charged and deducted from the balance of the gift
136 certificate, instrument, or other record;

137 (w) misrepresents the geographical origin or location of the supplier's business; [~~or~~]

138 (x) fails to comply with the restrictions of Section [15-10-201](#) on automatic renewal
139 provisions[~~;~~]; or

140 (y) violates Section [13-58-201](#).

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

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

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

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

151 (i) is communicated to the buyer; and

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

153 (4) (a) A gift certificate, instrument, or other record that does not print an expiration
154 date in accordance with Subsection (2)(v) does not expire.

155 (b) A gift certificate, instrument, or other record that does not include printed
156 information concerning a fee to be charged and deducted from the balance of the gift
157 certificate, instrument, or other record is not subject to the charging and deduction of the fee.

158 (c) Subsections (2)(v) and (4)(b) do not apply to a gift certificate, instrument, or other
159 record useable at multiple, unaffiliated sellers of goods or services if an expiration date is
160 printed on the gift certificate, instrument, or other record.

161 Section 2. Section **13-58-101** is enacted to read:

162 **CHAPTER 58. HEALTH CARE CONSUMER PROTECTION ACT**

163 **Part 1. General Provisions**

164 **13-58-101. Title.**

165 This chapter is known as the "Health Care Consumer Protection Act."

166 Section 3. Section **13-58-102** is enacted to read:

167 **13-58-102. Definitions.**

168 As used in this chapter:

169 (1) "Enrollee" means the same as that term is defined in Section [31A-1-301](#).

170 (2) "Health benefit plan" means the same as that term is defined in Section [31A-1-301](#).

171 (3) "Health care provider" means a person licensed to provide health care under:

172 (a) Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

173 (b) Title 58, Occupations and Professions.

174 Section 4. Section **13-58-201** is enacted to read:

175 **Part 2. Consumer Protection Violations**

176 **13-58-201. Misrepresentation of health insurance coverage.**

177 (1) A health care provider or a health care provider's representative may not represent
178 to an enrollee that the health care provider is a contracted provider under the enrollee's health
179 benefit plan if the health care provider is not a contracted provider under the enrollee's health
180 benefit plan.

181 (2) A knowing or intentional violation of Subsection (1) is a deceptive act or practice
182 under Section [13-11-4](#).