

HB0443S01 compared with HB0443

~~text~~ shows text that was in HB0443 but was deleted in HB0443S01.

text shows text that was not in HB0443 but was inserted into HB0443S01.

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Senator Kirk A. Cullimore proposes the following substitute bill:

UTAH CONSUMER SALES PRACTICES ACT AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: ~~James F. Cobb~~

Senate Sponsor: ~~_____~~ Kirk A. Cullimore

LONG TITLE

General Description:

This bill amends provisions of the Utah Consumer Sales Practices Act relating to class action lawsuits.

Highlighted Provisions:

This bill:

- ▶ clarifies provisions relating to targeted solicitations involving financial information;
- ▶ requires that a court provide notice to the enforcing authority 60 days before a hearing related to a filed offer of settlement in a class action lawsuit;
- ▶ allows the enforcing authority to intervene in the class action for the limited purpose of objecting to the offer of settlement; and
- ▶ increases the time period in which the enforcing authority may intervene as an interested party in a class action.

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Money Appropriated in this Bill:

None

Other Special Clauses:

~~{ None }~~ This bill provides revisor instructions.

Utah Code Sections Affected:

AMENDS:

13-11-4.1, as enacted by Laws of Utah 2020, Chapter 173

13-11-21, as last amended by Laws of Utah 2010, Chapter 324

ENACTS:

13-11-21.1, Utah Code Annotated 1953

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

Section 1. Section **13-11-4.1** is amended to read:

13-11-4.1. Targeted solicitations involving financial information -- Restrictions.

(1) As used in this section:

(a) "Account holder" means a person for whom a personal account is held by a financial institution.

(b) "Financial institution" means:

(i) a state or federally chartered:

(A) bank;

(B) savings and loan association;

(C) savings bank;

(D) industrial bank; or

(E) credit union;

(ii) any other institution under the jurisdiction of the commissioner of Financial Institutions as described in Title 7, Financial Institutions Act; or

(iii) a person who:

(A) is subject to Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act; and

(B) engages in the business of residential mortgage loans as defined in Section 61-2c-102.

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(c) (i) "Specific account information" means information that is:

(A) relative to the account of an account holder, in addition to the name of the account holder; and

(B) not provided by the financial institution that holds the account holder's account to the person offering a targeted solicitation.

(ii) "Specific account information" includes:

(A) a loan number;

(B) a loan amount; or

(C) any other specific account or loan information.

(d) "Targeted solicitation" means any written or oral advertisement or solicitation for products or services that:

(i) is addressed to an account holder;

(ii) contains specific account information;

(iii) is offered by a supplier that is not sponsored by or affiliated with the financial institution that holds the account holder's account; and

(iv) is not authorized by the financial institution that holds the account holder's account.

(2) (a) A supplier who is not the financial institution of an account holder may not represent, directly or indirectly, that the supplier is the financial institution of the account holder.

(b) If a presiding officer or court determines appropriate after considering other relevant factors, the following actions by a supplier who is not the financial institution of an account holder establish a presumption that the supplier is representing that the supplier is the financial institution of the account holder in violation of Subsection (2)(a):

(i) the use or reference to the name, trade name, or trademark of the financial institution of the account holder, when sending a targeted solicitation, unless the supplier has written authorization from the financial institution;

(ii) the placement of specific account information on the outside of an envelope, visible through the envelope window, or on a postcard, when sending a [~~target~~] targeted solicitation by direct mail; or

(iii) the placement of specific account information in the subject line, when sending a

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targeted solicitation by email.

(3) (a) A targeted solicitation, if offered in writing, shall include a clear and conspicuous statement in bold type on the front page of the document containing:

(i) the name, address, and telephone number of the supplier offering the targeted solicitation; and

(ii) a statement indicating that the supplier offering the targeted solicitation is not sponsored by or affiliated with the financial institution that holds the account holder's account.

(b) If the targeted solicitation is offered orally, the supplier offering the targeted solicitation shall verbally communicate the statement described in Subsection (3)(a) at the time the oral solicitation is offered to the account holder.

(4) A supplier who violates this section commits a deceptive act or practice under Subsection 13-11-4(1).

Section 2. Section **13-11-21** is amended to read:

13-11-21. Settlement of class action -- Complaint in class action delivered to enforcing authority.

(1) (a) (i) A defendant in a class action may file a written offer of settlement. If it is not accepted within a reasonable time by a plaintiff class representative, the defendant may file an affidavit reciting the rejection.

(ii) The court may determine that the offer has enough merit to present to the members of the class. If [it] the court so determines, [it] the court shall order a hearing to determine whether the offer should be approved.

(iii) [~~It shall give the best notice of the hearing that is practicable under the circumstances, including~~] The court shall provide at least 60 days advance notice of the hearing:

(A) to the enforcing authority; and

(B) [to] to the extent practicable, to each member who can be identified through reasonable effort.

(iv) The notice described in Subsection (1)(a)(iii) shall specify the terms of the offer and a reasonable period within which members of the class who request it are entitled to be included in the class.

(v) The statute of limitations for those who are excluded pursuant to this [~~Subsection~~

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(1)] Subsection (1)(a)(v) is tolled for the period the class action has been pending, plus an additional year. Within 60 days of receipt of the notice required by this Subsection (1)(a), the enforcing authority may intervene in the class action for the limited purpose of objecting to the offer of settlement.

(b) If a member who has previously lost an opportunity to be excluded from the class is excluded at his request in response to notice of the offer of settlement during the period specified under Subsection (1)(a), he may not thereafter participate in a class action for damages respecting the same consumer transaction, unless the court later disapproves the offer of settlement or approves a settlement materially different from that proposed in the original offer of settlement. After the expiration of the period of limitations, a member of the class is not entitled to be excluded from it.

(c) If the court later approves the offer of settlement, including changes, if any, required by the court in the interest of a just settlement of the action, it shall enter judgment, which is binding on all persons who are then members of the class. If the court disapproves the offer or approves a settlement materially different from that proposed in the original offer, notice shall be given to a person who was excluded from the action at his request in response to notice of the offer under Subsection (1)(a), and he is entitled to rejoin the class and, in the case of the approval, participate in the settlement.

(2) On the commencement of a class action under Section 13-11-19, the class representative shall mail by certified mail with return receipt requested or personally serve a copy of the complaint on the enforcing authority. Within [~~30~~] 180 days after the receipt of a copy of the complaint, but not thereafter, the enforcing authority may intervene in the class action for purposes of participation as an interested party in litigation of the class action.

The following section is affected by a revisor instruction at the end of this bill.

Section 3. Section 13-11-21.1 is enacted to read:

13-11-21.1. Retrospective Operation.

The provisions of this bill apply to any claim for which a court has not issued a final, unappealable judgment or order as of May 1, 2024.

Section ~~3~~4. **Effective date.**

This bill takes effect on May 1, 2024.

Section 5. Revisor instructions.

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The Legislature intends that the reference to "this bill" in Section 13-11-21.1 be replaced with the bill's designated chapter number in the Laws of Utah.