

**Senator Curtis S. Bramble** proposes the following substitute bill:

**CONSUMER LENDER NOTIFICATION AMENDMENTS**

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: A. Cory Maloy

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**LONG TITLE**

**General Description:**

This bill modifies the requirements for engaging in business as a consumer lender in the state.

**Highlighted Provisions:**

This bill:

- ▶ amends what is considered a deceptive act or practice by a supplier;
- ▶ requires a consumer lender to submit to the commissioner of financial institutions evidence of registration through the Nationwide Multistate Licensing System and Registry; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**13-11-4**, as last amended by Laws of Utah 2021, Chapters 138, 154

**70C-1-302**, as last amended by Laws of Utah 2009, Chapter 72



26 **70C-8-202**, as last amended by Laws of Utah 2013, Chapter 73

27 **70C-8-203**, as last amended by Laws of Utah 2014, Chapter 97

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

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

31 **13-11-4. Deceptive act or practice by supplier.**

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

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

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

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

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

42 (d) indicates that the subject of a consumer transaction is available to the consumer for  
43 a reason that does not exist, including any of the following reasons falsely used in an  
44 advertisement:

45 (i) "going out of business";

46 (ii) "bankruptcy sale";

47 (iii) "lost our lease";

48 (iv) "building coming down";

49 (v) "forced out of business";

50 (vi) "final days";

51 (vii) "liquidation sale";

52 (viii) "fire sale";

53 (ix) "quitting business"; or

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

55 (ix);

56 (e) indicates that the subject of a consumer transaction has been supplied in accordance

57 with a previous representation, if it has not;

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

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

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

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

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

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

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

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

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

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

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

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

- 88 (ii) the sale price exceeds \$25;
- 89 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title  
90 76, Chapter 6a, Pyramid Scheme Act;
- 91 (o) represents that the funds or property conveyed in response to a charitable  
92 solicitation will be donated or used for a particular purpose or will be donated to or used by a  
93 particular organization, if the representation is false;
- 94 (p) if a consumer indicates the consumer's intention of making a claim for a motor  
95 vehicle repair against the consumer's motor vehicle insurance policy:
  - 96 (i) commences the repair without first giving the consumer oral and written notice of:
    - 97 (A) the total estimated cost of the repair; and
    - 98 (B) the total dollar amount the consumer is responsible to pay for the repair, which  
99 dollar amount may not exceed the applicable deductible or other copay arrangement in the  
100 consumer's insurance policy; or
  - 101 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a  
102 consumer was initially told the consumer was responsible to pay as an insurance deductible or  
103 other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that  
104 amount is less than the full amount the motor vehicle insurance policy requires the insured to  
105 pay as a deductible or other copay arrangement, unless:
    - 106 (A) the consumer's insurance company denies that coverage exists for the repair, in  
107 which case, the full amount of the repair may be charged and collected from the consumer; or
    - 108 (B) the consumer misstates, before the repair is commenced, the amount of money the  
109 insurance policy requires the consumer to pay as a deductible or other copay arrangement, in  
110 which case, the supplier may charge and collect from the consumer an amount that does not  
111 exceed the amount the insurance policy requires the consumer to pay as a deductible or other  
112 copay arrangement;
  - 113 (q) includes in any contract, receipt, or other written documentation of a consumer  
114 transaction, or any addendum to any contract, receipt, or other written documentation of a  
115 consumer transaction, any confession of judgment or any waiver of any of the rights to which a  
116 consumer is entitled under this chapter;
  - 117 (r) charges a consumer for a consumer transaction or a portion of a consumer  
118 transaction that has not previously been agreed to by the consumer;

- 119 (s) solicits or enters into a consumer transaction with a person who lacks the mental  
120 ability to comprehend the nature and consequences of:
- 121 (i) the consumer transaction; or  
122 (ii) the person's ability to benefit from the consumer transaction;
- 123 (t) solicits for the sale of a product or service by providing a consumer with an  
124 unsolicited check or negotiable instrument the presentment or negotiation of which obligates  
125 the consumer to purchase a product or service, unless the supplier is:
- 126 (i) a depository institution under Section 7-1-103;  
127 (ii) an affiliate of a depository institution; [or]  
128 (iii) an entity regulated under Title 7, Financial Institutions Act; or  
129 (iv) an entity engaging in activities subject to Title 70C, Utah Consumer Credit Code;
- 130 (u) sends an unsolicited mailing to a person that appears to be a billing, statement, or  
131 request for payment for a product or service the person has not ordered or used, or that implies  
132 that the mailing requests payment for an ongoing product or service the person has not received  
133 or requested;
- 134 (v) issues a gift certificate, instrument, or other record in exchange for payment to  
135 provide the bearer, upon presentation, goods or services in a specified amount without printing  
136 in a readable manner on the gift certificate, instrument, packaging, or record any expiration  
137 date or information concerning a fee to be charged and deducted from the balance of the gift  
138 certificate, instrument, or other record;
- 139 (w) misrepresents the geographical origin or location of the supplier's business;
- 140 (x) fails to comply with the restrictions of Section 15-10-201 on automatic renewal  
141 provisions;
- 142 (y) violates Section 13-59-201; or  
143 (z) fails to comply with the restrictions of Subsection 13-54-202(2).
- 144 (3) (a) The notice required by Subsection (2)(m) shall:
- 145 (i) be a conspicuous statement written in dark bold with at least 12-point type on the  
146 first page of the purchase documentation; and  
147 (ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT  
148 ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period  
149 reflecting the supplier's cancellation policy but not less than three business days) AFTER THE

150 DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS  
151 LATER."

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

154 (i) is communicated to the buyer; and

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

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

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

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

164 Section 2. Section **70C-1-302** is amended to read:

165 **70C-1-302. Definitions.**

166 As used in this title:

167 (1) "Agreement" means the bargain of the parties in fact as stated in a written contract  
168 or otherwise as found in the parties' language or by implication from other circumstances,  
169 including:

170 (a) course of dealing;

171 (b) usage of trade; or

172 (c) course of performance.

173 (2) "Commissioner" means the commissioner of financial institutions appointed under  
174 Section 7-1-202.

175 [~~2~~] (3) "Contract" means a document containing written terms and conditions of a  
176 credit agreement.

177 [~~3~~] (4) (a) "Creditor" means:

178 (i) a party:

179 (A) who regularly extends consumer credit that is subject to a finance charge or is  
180 payable by written agreement in more than four installments, not including a down payment;

181 and

182 (B) to whom the obligation is initially payable, either on the face of the note or  
183 contract, or by agreement when there is no note or contract;

184 (ii) an issuer of a credit card that extends either open-end credit or credit that:

185 (A) is not subject to a finance charge; and

186 (B) is not payable by written agreement in more than four installments; and

187 (iii) an issuer of a credit card that extends closed-end credit that:

188 (A) is subject to a finance charge; or

189 (B) is payable by written agreement in more than four installments.

190 (b) (i) For purposes of this Subsection [~~(3)~~] (4), a party is considered to extend  
191 consumer credit regularly only if the party extends credit in the preceding calendar year:

192 (A) more than 25 times; or

193 (B) more than five times for a transaction secured by a dwelling.

194 (ii) If a person does not meet the numerical standards described in Subsection  
195 [~~(3)(b)(i)~~] (4)(b)(i) in the preceding calendar year, the numerical standards shall be applied to  
196 the current calendar year.

197 [~~(4)~~] (5) "Dwelling" means a residential structure attached to real property that contains  
198 one to four units including any of the following if used as a residence:

199 (a) a condominium unit;

200 (b) a cooperative unit;

201 (c) a manufactured home; or

202 (d) a house.

203 [~~(5)~~] (6) "Earnings" means compensation paid or payable to an individual or for the  
204 individual's account for personal services rendered or to be rendered by the individual whether  
205 denominated as wages, salary, commission, bonus, or otherwise, and includes periodic  
206 payments pursuant to a pension, retirement, or disability program.

207 [~~(6)~~] (7) "Installment" means a payment upon a debt that is part of a series of  
208 payments, each of which is less than the original amount of the debt and scheduled as to a  
209 specific amount and due date by agreement of the parties for the purpose of repaying the debt.

210 (8) "Nationwide database" means the Nationwide Multistate Licensing System and  
211 Registry, described in 12 U.S.C. Sec. 5101.

212           ~~[(7)]~~ (9) "Party" means an individual and any other entity legally capable of entering  
213 into a binding contract.

214           Section 3. Section **70C-8-202** is amended to read:

215           **70C-8-202. Notification.**

216           (1) (a) A party who is subject to this part shall file notification with the department at  
217 least 30 days before commencing business in this state.

218           (b) After filing the notification required by Subsection (1)(a), a party shall file a  
219 notification on or before ~~January~~ December 31 of each year.

220           (c) A notification required by this Subsection (1) shall:

221           (i) state the name of the party;

222           (ii) state the name in which the business is transacted if different from that required in  
223 Subsection (1)(c)(i);

224           (iii) state the address of the party's principal office, which may be outside this state;

225           (iv) state the address of:

226           (A) each office or retail store, if any, in this state at which credit is offered or extended  
227 to a consumer; or

228           (B) in the case of a party taking an assignment of an obligation, each office or place of  
229 business within this state at which business is transacted;

230           (v) if credit is extended to a consumer other than at an office or retail store in this state,  
231 state a brief description of the manner in which the credit transaction occurs;

232           (vi) state the name and address in this state of a designated agent upon whom service of  
233 process may be made;

234           (vii) ~~submit~~ include evidence satisfactory to the commissioner that the ~~person~~ party  
235 is authorized to conduct business in this state as a domestic or foreign entity pursuant to filings  
236 with the Division of Corporations and Commercial Code under Title 16, Corporations, or Title  
237 48, Unincorporated Business Entity Act; ~~and~~

238           (viii) include evidence satisfactory to the commissioner that the party is registered with  
239 the nationwide database; and

240           ~~(viii)~~ (ix) ~~provide~~ include any other information considered pertinent by the  
241 department.

242           (2) If information in a notification becomes inaccurate after filing, a party is not



243 required to file further notification until required to renew the party's notification.

244 (3) (a) A party who fails to file a notification or pay a fee required by this part may not  
245 extend credit to a consumer in this state until the party fully complies with this part.

246 (b) A party who willfully violates this Subsection (3) is guilty of a class B  
247 misdemeanor.

248 Section 4. Section **70C-8-203** is amended to read:

249 **70C-8-203. Fees -- Examinations.**

250 (1) A party required to file notification under Section **70C-8-202** shall, on or before  
251 [~~January 31~~] December 31 of each year, pay to the department an annual fee of \$100.

252 (2) In addition to filing notification, a party subject to this part, and a depository  
253 institution subject to this title:

254 (a) may be required to make a book or record relating to a consumer credit transaction  
255 available to the department or its authorized representative for examination; and

256 (b) shall pay to the department a fee to be set by the department based on an hourly rate  
257 per each examiner.

258 (3) No portion of a fee paid or owed to the department under this part is refundable  
259 because a party voluntarily or involuntarily ceases to extend credit to consumers:

260 (a) during the period covered by the fee; or

261 (b) before the time of an examination by the department of a book or record pertaining  
262 to a preceding consumer credit transaction.

263 Section 5. **Effective date.**

264 This bill takes effect on May 1, 2024.