

SB0025S02 compared with SB0025S01

~~text~~ shows text that was in SB0025S01 but was deleted in SB0025S02.

text shows text that was not in SB0025S01 but was inserted into SB0025S02.

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Senator Curtis S. Bramble proposes the following substitute bill:

FINANCIAL INSTITUTION AND CONSUMER ~~LENDER~~

~~NOTIFICATION~~ AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: ~~Curtis S. Bramble~~

House Sponsor: ~~A. Cory Maloy~~

LONG TITLE

General Description:

This bill modifies ~~the requirements for engaging in business as a~~ provisions relating to commercial financing transactions and consumer lender ~~in the state~~ notifications.

Highlighted Provisions:

This bill:

- ▶ ~~amends what is considered a deceptive act or practice by a supplier~~ repeals provisions relating to disclosures for commercial financing transactions;
- ▶ requires a consumer lender to submit to the commissioner of financial institutions evidence of registration through the Nationwide Multistate Licensing System and Registry; and

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- ▶ defines terms; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{13-11-4}~~7-27-101, as ~~{last amended}~~enacted by Laws of Utah ~~{2021}~~2022, ~~{Chapters~~
~~138}~~Chapter 449
7-27-202, as enacted by Laws of Utah 2022, ~~{154}~~Chapter 449
70C-1-302, as last amended by Laws of Utah 2009, Chapter 72
70C-8-202, as last amended by Laws of Utah 2013, Chapter 73
70C-8-203, as last amended by Laws of Utah 2014, Chapter 97

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

Section 1. Section 7-27-101 is amended to read:

7-27-101. Definitions.

As used in this chapter:

(1) "Accounts receivable purchase transaction" means a transaction in which a business forwards or otherwise sells to a person all or a portion of the business's accounts, as defined in Section 70A-9a-102, or payment intangibles, as defined in Section 70A-9a-102, at a discount to the accounts' or payment intangibles' expected value.

(2) (a) "Broker" means ~~[a person who, for compensation or the expectation of compensation, arranges a commercial financing transaction between a third party and a business in the state {·}]~~ a person who:

(i) for compensation or the expectation of compensation, obtains a commercial financing product or an offer for a commercial financing product from a third party that, if executed, would bind the third party; and

(ii) communicates the offer described in Subsection (2)(a)(i) to a business located in the state.

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(b) "Broker" does not include:

(i) a provider; or

(ii) a person whose compensation is not based or dependent on the terms of a specific commercial financing product that the person obtains or offers.

(3) "Business" means a private enterprise carried on for the purpose of gain or economic profit.

(4) (a) "Business purpose transaction" means a transaction from which the resulting proceeds that a business receives are:

(i) provided to the business; or

(ii) intended to be used to carry on the business.

(b) "Business purpose transaction" does not include a transaction from which the resulting proceeds are intended to be used for personal, family, or household purposes.

(c) For purposes of determining whether a transaction is a business purpose transaction, a provider may rely on a written statement of intended purpose, signed by an individual authorized to sign on behalf of the business. The written statement may be contained in an application, agreement, or other document signed by an individual authorized to sign on behalf of the business.

(5) "Commercial financing transaction" means a business purpose transaction:

(a) under which a person extends a business a commercial loan or a commercial open-end credit plan; or

(b) that is an accounts receivable purchase transaction.

(6) "Commercial loan" means a loan to a business, regardless of whether the loan is secured.

(7) "Commercial open-end credit plan" means commercial financing extended to a business on terms under which:

(a) the creditor reasonably contemplates repeat transactions; and

(b) subject to any limit set by the creditor, the amount of financing that the creditor may extend to the business during the term of the plan is made available to the extent that any outstanding balance is repaid.

(8) "Motor vehicle dealer" means a dealer as defined in Section 41-3-102.

(9) (a) "Provider" means a person who consummates more than five commercial

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financing transactions in the state during any calendar year.

(b) "Provider" includes a person who, under a written agreement with a depository institution, offers one or more commercial financing products provided by the depository institution via an online platform that the person administers.

Section 2. Section 7-27-202 is amended to read:

7-27-202. Disclosures for commercial financing transactions.

(1) ~~[(a)]~~ Before consummating a commercial financing transaction, a provider shall disclose the terms of the commercial financing transaction in accordance with this section and rules made by the commissioner.

~~[(b) In addition to the requirements of Subsection (1)(a), for a commercial open-end credit plan, the provider shall make the disclosures described in this section:]~~

~~[(i) after any disbursement of funds that occurs after the parties consummate the commercial financing transaction; and]~~

~~[(ii) no later than 15 days after the last day of the calendar month in which the disbursement of funds occurs.]~~

(2) A provider shall disclose the following information in connection with each commercial financing transaction:

(a) the total amount of funds provided to the business under the terms of the commercial financing transaction;

(b) the total amount of funds disbursed to the business under the terms of the commercial financing transaction, if less than the amount described in Subsection (2)(a);

(c) the total amount to be paid to the provider under the terms of the commercial financing transaction;

(d) the total dollar cost of the commercial financing transaction, calculated by finding the difference between:

(i) the amount described in Subsection (2)(a); and

(ii) the amount described in Subsection (2)(c);

(e) (i) the manner, frequency, and amount of each payment; or

(ii) if the amount of each payment may vary, the manner, frequency, and estimated amount of the initial payment; and

(f) a statement of whether there are any costs or discounts associated with prepayment

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under the commercial financing transaction, including a reference to the paragraph in the commercial financing transaction agreement that creates each cost or discount ~~and~~.

~~(g) any amount of the funds described in Subsection (2)(a) that the provider pays to a broker in connection with the commercial financing transaction.~~

(3) The commercial financing transaction agreement shall include a description of the methodology for calculating any variable payment amount and the circumstances that may cause a payment amount to vary.

(4) The provisions of this section apply to a commercial financing transaction consummated on or after January 1, 2023.

Section ~~{1}~~3. Section ~~{13-11-4}~~70C-1-302 is amended to read:

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

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

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

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

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

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

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

~~(i) "going out of business";~~

~~(ii) "bankruptcy sale";~~

~~(iii) "lost our lease";~~

~~(iv) "building coming down";~~

~~(v) "forced out of business";~~

~~(vi) "final days";~~

~~(vii) "liquidation sale";~~

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- ~~—— (viii) "fire sale";~~
- ~~—— (ix) "quitting business"; or~~
- ~~—— (x) an expression similar to any of the expressions in Subsections (2)(d)(i) through (ix);~~
- ~~—— (c) indicates that the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not;~~
- ~~—— (f) indicates that the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;~~
- ~~—— (g) indicates that replacement or repair is needed, if it is not;~~
- ~~—— (h) indicates that a specific price advantage exists, if it does not;~~
- ~~—— (i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier does not have;~~
- ~~—— (j) (i) indicates that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if the representation is false; or~~
- ~~—— (ii) fails to honor a warranty or a particular warranty term;~~
- ~~—— (k) indicates that the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if receipt of the benefit is contingent on an event occurring after the consumer enters into the transaction;~~
- ~~—— (l) after receipt of payment for goods or services, fails to ship the goods or furnish the services within the time advertised or otherwise represented or, if no specific time is advertised or represented, fails to ship the goods or furnish the services within 30 days, unless within the applicable time period the supplier provides the buyer with the option to:~~
 - ~~—— (i) cancel the sales agreement and receive a refund of all previous payments to the supplier if the refund is mailed or delivered to the buyer within 10 business days after the day on which the seller receives written notification from the buyer of the buyer's intent to cancel the sales agreement and receive the refund; or~~
 - ~~—— (ii) extend the shipping date to a specific date proposed by the supplier;~~
 - ~~—— (m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the~~

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~~requirements of Subsection (3)(a) of the purchaser's right to cancel a direct solicitation sale within three business days of the time of purchase if:~~

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

~~—— (ii) the sale price exceeds \$25;~~

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

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

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

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

~~—— (A) the total estimated cost of the repair; and~~

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

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

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

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

~~—— (q) includes in any contract, receipt, or other written documentation of a consumer~~

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~~transaction, or any addendum to any contract, receipt, or other written documentation of a consumer transaction, any confession of judgment or any waiver of any of the rights to which a consumer is entitled under this chapter;~~

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

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

~~—— (i) the consumer transaction; or~~

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

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

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

~~—— (ii) an affiliate of a depository institution; [or]~~

~~—— (iii) an entity regulated under Title 7, Financial Institutions Act; or~~

~~—— (iv) an entity engaging in activities subject to Title 70C, Utah Consumer Credit Code;~~

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

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

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

~~—— (x) fails to comply with the restrictions of Section 15-10-201 on automatic renewal provisions;~~

~~—— (y) violates Section 13-59-201; or~~

~~—— (z) fails to comply with the restrictions of Subsection 13-54-202(2).~~

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

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

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

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

~~—— (i) is communicated to the buyer; and~~

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

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

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

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

~~—— Section 2. Section 70C-1-302 is amended to read:~~

‡ **70C-1-302. Definitions.**

As used in this title:

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

- (a) course of dealing;
- (b) usage of trade; or
- (c) course of performance.

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

~~[(2)]~~ (3) "Contract" means a document containing written terms and conditions of a

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credit agreement.

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

(i) a party:

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

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

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

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

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

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

(A) is subject to a finance charge; or

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

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

(A) more than 25 times; or

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

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

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

(a) a condominium unit;

(b) a cooperative unit;

(c) a manufactured home; or

(d) a house.

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

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

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

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

Section ~~33~~4. Section **70C-8-202** is amended to read:

70C-8-202. Notification.

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

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

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

(i) state the name of the party;

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

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

(iv) state the address of:

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

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

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

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

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

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

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

(2) If information in a notification becomes inaccurate after filing, a party is not required to file further notification until required to renew the party's notification.

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

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

Section ~~(4)~~5. Section **70C-8-203** is amended to read:

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

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

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

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

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

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

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

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

Section ~~(5)~~6. **Effective date.**

This bill takes effect on May 1, 2024.