

Consumer Protection Amendments
2025 GENERAL SESSION
STATE OF UTAH
Chief Sponsor: Evan J. Vickers

LONG TITLE

Committee Note:

The Business and Labor Interim Committee recommended this bill.

Legislative Vote: 10 voting for 0 voting against 12 absent

General Description:

This bill amends provisions relating to consumer protection.

Highlighted Provisions:

This bill:

- describes the award a court must issue when granting a judgment in favor of the Division of Consumer Protection (division);

- clarifies what constitutes a deceptive and unconscionable sales practice;

- clarifies the division's rulemaking and investigatory authority;

- allows the division to request that a court order disgorgement of money under certain circumstances;

- clarifies the factors a court considers when issuing a fine;

- clarifies that a government agency may bring an enforcement action for defective construction; and

- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-2-6, as last amended by Laws of Utah 2024, Chapter 102

13-11-2, as enacted by Laws of Utah 1973, Chapter 188

13-11-3, as last amended by Laws of Utah 2004, Chapter 55

13-11-4, as last amended by Laws of Utah 2024, Chapters 102, 186

13-11-5, as enacted by Laws of Utah 1973, Chapter 188

32 **13-11-6**, as last amended by Laws of Utah 2024, Chapter 158
 33 **13-11-7**, as last amended by Laws of Utah 2024, Chapter 101
 34 **13-11-8**, as enacted by Laws of Utah 1973, Chapter 188
 35 **13-11-9**, as enacted by Laws of Utah 1973, Chapter 188
 36 **13-11-16**, as last amended by Laws of Utah 1997, Chapter 296
 37 **13-11-17**, as last amended by Laws of Utah 2018, Chapter 276
 38 **13-11-18**, as enacted by Laws of Utah 1973, Chapter 188
 39 **13-11-19**, as last amended by Laws of Utah 2018, Chapter 276
 40 **13-11-20**, as last amended by Laws of Utah 2010, Chapter 378
 41 **13-11-21**, as last amended by Laws of Utah 2024, Chapter 222
 42 **13-11-22**, as enacted by Laws of Utah 1973, Chapter 188
 43 **78B-4-513**, as enacted by Laws of Utah 2008, Chapter 280

44 REPEALS:

45 **13-11-17.5**, as enacted by Laws of Utah 1987, Chapter 105

46

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

48 Section 1. Section **13-2-6** is amended to read:

49 **13-2-6 . Enforcement powers.**

- 50 (1) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division
 51 shall have authority to convene administrative hearings, issue cease and desist orders,
 52 and impose fines under all the chapters identified in Section 13-2-1.
- 53 (2) A person who intentionally violates a final cease and desist order entered by the division
 54 of which the person has notice is guilty of a third degree felony.
- 55 (3) If the division has reasonable cause to believe that a person has violated or is violating
 56 any chapter listed in Section 13-2-1, the division may promptly issue the alleged violator
 57 a citation signed by the division's director or the director's designee.
- 58 (a) Each citation shall be in writing and shall:
- 59 (i) set forth with particularity the nature of the violation, including a reference to the
 60 statutory or administrative rule provision violated;
- 61 (ii) state that a request for review of the citation shall be made in writing and be
 62 received by the division no more than 20 calendar days after the day on which the
 63 division issues the citation;
- 64 (iii) state the consequences of failing to make a timely request for review; and
 65 (iv) state all other information required by Subsection 63G-4-201(2).

- 66 (b) In computing a time period under this section, the following days may not be
67 included:
- 68 (i) the day on which the division issues a citation; and
69 (ii) the day on which the division receives a request for review of a citation.
- 70 (c)(i) Except as provided in Subsection (3)(c)(iii), if the presiding officer finds that
71 there is not substantial evidence that the recipient violated a chapter listed in
72 Section 13-2-1:
- 73 (A) the citation may not become final; and
74 (B) the division shall immediately vacate the citation and promptly notify the
75 recipient in writing.
- 76 (ii) Except as provided in Subsection (3)(c)(iv), if the presiding officer finds that
77 there is substantial evidence that the recipient violated a chapter listed in Section
78 13-2-1:
- 79 (A) the citation shall become final; and
80 (B) the division may enter a cease and desist order against the recipient.
- 81 (iii) For a citation issued for a violation of Chapter 41, Price Controls During
82 Emergencies Act, if the presiding officer finds that there is not clear and
83 convincing evidence that the recipient violated the chapter:
- 84 (A) the citation may not become final; and
85 (B) the division shall immediately vacate the citation and promptly notify the
86 recipient in writing.
- 87 (iv) For a citation issued for a violation of Chapter 41, Price Controls During
88 Emergencies Act, if the presiding officer finds that there is clear and convincing
89 evidence that the recipient violated the chapter:
- 90 (A) the citation shall become final; and
91 (B) the division may enter a cease and desist order against the recipient.
- 92 (d)(i) A citation issued under this chapter may be personally served upon a person
93 upon whom a summons may be served in accordance with the Utah Rules of Civil
94 Procedure.
- 95 (ii) A citation also may be served by first-class mail, postage prepaid.
- 96 (e)(i) If the recipient fails to make a request for review within 20 calendar days after
97 the day on which the division issues the citation, the citation shall become the
98 final order of the division.
- 99 (ii) The period to contest the citation may be extended by the director for good cause

- 100 shown.
- 101 (f) If the chapter violated allows for an administrative fine, after a citation becomes
102 final, the director may impose the administrative fine.
- 103 (4)(a) A person who has violated, is violating, or has attempted to violate a chapter
104 identified in Section 13-2-1 is subject to the division's jurisdiction if:
- 105 (i) the violation or attempted violation is committed wholly or partly within the state;
106 (ii) conduct committed outside the state constitutes an attempt to commit a violation
107 within the state; or
108 (iii) transactional resources located within the state are used by the offender to
109 directly or indirectly facilitate a violation or attempted violation.
- 110 (b) As used in this section, "transactional resources" means:
- 111 (i) a mail drop or mail box, regardless of whether the mail drop or mail box is located
112 on the premises of a United States Post Office;
113 (ii) a telephone or facsimile transmission device;
114 (iii) an Internet connection by a resident or inhabitant of this state with a resident- or
115 nonresident-maintained Internet site;
116 (iv) a business office or private residence used for a business-related purpose;
117 (v) an account with or services of a financial institution;
118 (vi) the services of a common or private carrier; or
119 (vii) the use of a city, county, or state asset or facility, including a road or highway.
- 120 (5) The director or the director's designee, for the purposes outlined in a chapter
121 administered by the division, may administer oaths, issue subpoenas, compel the
122 attendance of witnesses, conduct audits, compel sworn responses to written questions, or
123 compel the production of papers, books, accounts, documents, or evidence.
- 124 (6)(a) An administrative action filed under this chapter or a chapter listed in Section
125 13-2-1 shall be commenced no later than 10 years after the day on which the alleged
126 violation occurs.
- 127 (b) A civil action filed under this chapter or a chapter listed in Section 13-2-1 shall be
128 commenced no later than five years after the day on which the alleged violation
129 occurs.
- 130 (c) The provisions of this Subsection (6) control over the provisions of Title 78B,
131 Chapter 2, Statutes of Limitations.
- 132 (7) When granting a judgment in the division's favor in connection with the division's
133 exercise of any authority described in Section 13-2-5 or 13-2-6, a court shall award:

- 134 (a) reasonable attorney fees;
 135 (b) court costs;
 136 (c) costs of investigation; and
 137 (d) any other relief the court deems appropriate.

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

139 **13-11-2 . Construction and purposes of act.**

140 This act shall be construed liberally to promote the following policies:

- 141 (1) to simplify, clarify, and modernize the law governing consumer sales practices;
 142 (2) to protect consumers from suppliers who commit deceptive and unconscionable sales
 143 practices, including by disgorging money or any thing of value obtained in violation of
 144 this chapter;
 145 (3) to encourage the development of fair consumer sales practices;
 146 (4) to make state regulation of consumer sales practices [~~not inconsistent~~] consistent with
 147 the policies of the Federal Trade Commission Act relating to consumer protection;
 148 (5) to make uniform the law, including the administrative rules, with respect to the subject
 149 of this [~~act~~] chapter among those states [~~which~~] that enact similar laws; and
 150 (6) to recognize and protect suppliers [~~who~~] that in good faith comply with the provisions of
 151 this [~~act~~] chapter.

152 Section 3. Section **13-11-3** is amended to read:

153 **13-11-3 . Definitions.**

154 As used in this chapter:

- 155 (1) "Charitable solicitation" means any request directly or indirectly for money, credit,
 156 property, financial assistance, or any other thing of value on the plea or representation
 157 that it will be used for a charitable purpose. A charitable solicitation may be made in
 158 any manner, including:
 159 (a) any oral or written request, including a telephone request;
 160 (b) the distribution, circulation, or posting of any handbill, written advertisement, or
 161 publication; or
 162 (c) the sale of, offer or attempt to sell, or request of donations for any book, card,
 163 chance, coupon, device, magazine, membership, merchandise, subscription, ticket,
 164 flower, flag, button, sticker, ribbon, token, trinket, tag, souvenir, candy, or any other
 165 article in connection with which any appeal is made for any charitable purpose, or
 166 where the name of any charitable organization or movement is used or referred to as
 167 an inducement or reason for making any purchase donation, or where, in connection

168 with any sale or donation, any statement is made that the whole or any part of the
169 proceeds of any sale or donation will go to or be donated to any charitable purpose.
170 A charitable solicitation is considered complete when made, whether or not the
171 organization or person making the solicitation receives any contribution or makes any
172 sale.

173 (2)(a) "Consumer transaction" means a sale, lease, assignment, award by chance, or
174 other written or oral transfer or disposition of goods, services, or other property, both
175 tangible and intangible (except securities and insurance) to, or apparently to, a person
176 for:

177 (i) primarily personal, family, or household purposes; or

178 (ii) purposes that relate to a business opportunity that requires:

179 (A) expenditure of money or property by the person described in Subsection (2)(a);

179a

180 and

181 (B) the person described in Subsection (2)(a) to perform personal services on a
182 continuing basis and in which the person described in Subsection (2)(a) has not
183 been previously engaged.

184 (b) "Consumer transaction" includes:

185 (i) any of the following with respect to a transfer or disposition described in
186 Subsection (2)(a):

187 (A) an offer;

188 (B) a solicitation;

189 (C) an agreement; or

190 (D) performance of an agreement; or

191 (ii) a charitable solicitation.

192 (3) [~~"Enforcing authority"~~] "Division" means the Division of Consumer Protection.

193 (4) "Final judgment" means a judgment, including any supporting opinion, that determines
194 the rights of the parties and concerning which appellate remedies have been exhausted
195 or the time for appeal has expired.

196 [~~(5) "Person" means an individual, corporation, government, governmental subdivision or
197 agency, business trust, estate, trust, partnership, association, cooperative, or any other
198 legal entity.~~]

199 [~~(6)~~] (5) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person who
200 regularly solicits, engages in, or enforces consumer transactions, whether or not [he] the

201 person deals directly with the consumer.

202 (6) "Vulnerable adult" means the same as that term is defined in Section 26B-6-201.

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

204 **13-11-4 . Deceptive act or practice by supplier.**

205 (1) ~~[A deceptive act or practice by a supplier in connection with a consumer transaction~~
 206 ~~violates this chapter whether it occurs before, during, or after the transaction]~~ A supplier
 207 that engages in a deceptive act or practice in connection with a consumer transaction
 208 violates this chapter, whether the deceptive act or practice occurs before, during, or after
 209 the transaction.

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

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

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

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

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

221 (i) "going out of business";

222 (ii) "bankruptcy sale";

223 (iii) "lost our lease";

224 (iv) "building coming down";

225 (v) "forced out of business";

226 (vi) "final days";

227 (vii) "liquidation sale";

228 (viii) "fire sale";

229 (ix) "quitting business"; or

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

232 (e) indicates that the subject of a consumer transaction has been supplied in accordance
 233 with a previous representation, if ~~[it]~~ the subject has not;

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

- 235 quantity than the supplier intends;
- 236 (g) indicates that replacement or repair is needed, if ~~[it]~~ the replacement or repair is not;
- 237 (h) indicates that a specific price advantage exists, if ~~[it]~~ the specific price advantage
- 238 does not;
- 239 (i) indicates that the supplier has a sponsorship, approval, license, certification, or
- 240 affiliation the supplier does not have;
- 241 (j)(i) indicates that a consumer transaction involves or does not involve a warranty, a
- 242 disclaimer of warranties, particular warranty terms, or other rights, remedies, or
- 243 obligations, if the representation is false; or
- 244 (ii) fails to honor a warranty or a particular warranty term;
- 245 (k) indicates that the consumer will receive a rebate, discount, or other benefit as an
- 246 inducement for entering into a consumer transaction in return for giving the supplier
- 247 the names of prospective consumers or otherwise helping the supplier to enter into
- 248 other consumer transactions, if receipt of the benefit is contingent on an event
- 249 occurring after the consumer enters into the transaction;
- 250 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the
- 251 services within the time advertised or otherwise represented or, if no specific time is
- 252 advertised or represented, fails to ship the goods or furnish the services within 30
- 253 days, unless within the applicable time period the supplier provides the buyer with
- 254 the option to:
- 255 (i) cancel the sales agreement and receive a refund of all previous payments to the
- 256 supplier if the refund is mailed or delivered to the buyer within 10 business days
- 257 after the day on which the seller receives written notification from the buyer of the
- 258 buyer's intent to cancel the sales agreement and receive the refund; or
- 259 (ii) extend the shipping date to a specific date proposed by the supplier;
- 260 (m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the
- 261 requirements of Subsection (3)(a) of the purchaser's right to cancel a direct
- 262 solicitation sale within three business days of the time of purchase if:
- 263 (i) the sale is made other than at the supplier's established place of business pursuant
- 264 to the supplier's personal contact, whether through mail, electronic mail, facsimile
- 265 transmission, telephone, or any other form of direct solicitation; and
- 266 (ii) the sale price exceeds \$25;
- 267 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
- 268 76, Chapter 6a, Pyramid Scheme Act;

- 269 (o) in connection with a charitable solicitation:
- 270 (i) falsely indicates that:
- 271 (A) the supplier is affiliated with a charitable organization;
- 272 (B) the supplier is an employee, officer, or representative of a public safety
- 273 agency;
- 274 (C) the supplier has sponsorship or approval of a given charitable organization;
- 275 (D) a charitable contribution will be provided to a given charitable organization;
- 276 (E) providing a charitable contribution has an additional benefit, including a tax
- 277 benefit; or
- 278 (F) the recipient of the solicitation has previously contributed to a given charitable
- 279 organization;
- 280 (ii) uses a fictitious name or a name the supplier is not authorized to use; or
- 281 (iii) with intent to deceive:
- 282 (A) uses a name that is substantially similar to that of another charitable
- 283 organization; or
- 284 (B) falsely indicates that a charitable contribution will be used for a particular
- 285 purpose;
- 286 (p) if a consumer indicates the consumer's intention of making a claim for a motor
- 287 vehicle repair against the consumer's motor vehicle insurance policy:
- 288 (i) commences the repair without first giving the consumer oral and written notice of:
- 289 (A) the total estimated cost of the repair; and
- 290 (B) the total dollar amount the consumer is responsible to pay for the repair,
- 291 which dollar amount may not exceed the applicable deductible or other copay
- 292 arrangement in the consumer's insurance policy; or
- 293 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
- 294 consumer was initially told the consumer was responsible to pay as an insurance
- 295 deductible or other copay arrangement for a motor vehicle repair under Subsection
- 296 (2)(p)(i), even if that amount is less than the full amount the motor vehicle
- 297 insurance policy requires the insured to pay as a deductible or other copay
- 298 arrangement, unless:
- 299 (A) the consumer's insurance company denies that coverage exists for the repair,
- 300 in which case, the full amount of the repair may be charged and collected from
- 301 the consumer; or
- 302 (B) the consumer misstates, before the repair is commenced, the amount of money

- 303 the insurance policy requires the consumer to pay as a deductible or other
304 copay arrangement, in which case, the supplier may charge and collect from
305 the consumer an amount that does not exceed the amount the insurance policy
306 requires the consumer to pay as a deductible or other copay arrangement;
- 307 (q) includes in any contract, receipt, or other written documentation of a consumer
308 transaction, or any addendum to any contract, receipt, or other written documentation
309 of a consumer transaction, any confession of judgment or any waiver of any of the
310 rights to which a consumer is entitled under this chapter;
- 311 (r) charges a consumer for a consumer transaction or a portion of a consumer transaction
312 that has not previously been agreed to by the consumer;
- 313 (s) solicits or enters into a consumer transaction with [~~a person~~] an individual who lacks
314 the mental ability to comprehend the nature and consequences of:
- 315 (i) the consumer transaction; or
316 (ii) the [~~person's~~] individual's ability to benefit from the consumer transaction;
- 317 (t) solicits for the sale of a product or service by providing a consumer with an
318 unsolicited check or negotiable instrument the presentment or negotiation of which
319 obligates the consumer to purchase a product or service, unless the supplier is:
- 320 (i) a depository institution under Section 7-1-103;
321 (ii) an affiliate of a depository institution; or
322 (iii) an entity regulated under Title 7, Financial Institutions Act;
- 323 (u) sends an unsolicited mailing to a person that appears to be a billing, statement, or
324 request for payment for a product or service the person has not ordered or used, or
325 that implies that the mailing requests payment for an ongoing product or service the
326 person has not received or requested;
- 327 (v) issues a gift certificate, instrument, or other record in exchange for payment to
328 provide the bearer, upon presentation, goods or services in a specified amount
329 without printing in a readable manner on the gift certificate, instrument, packaging,
330 or record any expiration date or information concerning a fee to be charged and
331 deducted from the balance of the gift certificate, instrument, or other record;
- 332 (w) misrepresents the geographical origin or location of the supplier's business;
- 333 (x) fails to comply with the restrictions of Section 15-10-201 on automatic renewal
334 provisions;
- 335 (y) violates Section 13-59-201;
- 336 (z) fails to comply with the restrictions of Subsection 13-54-202(2); or

- 337 (aa) states or implies that a registration or application administered or enforced by the
 338 division is an endorsement, sanction, or approval by the division or a governmental
 339 agency or office.
- 340 (3)(a) The notice required by Subsection (2)(m) shall:
- 341 (i) be a conspicuous statement written in dark bold with at least 12-point type on the
 342 first page of the purchase documentation; and
- 343 (ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT
 344 ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time
 345 period reflecting the supplier's cancellation policy but not less than three business
 346 days) AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE
 347 PRODUCT, WHICHEVER IS LATER."
- 348 (b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's
 349 cancellation policy:
- 350 (i) is communicated to the buyer; and
- 351 (ii) offers greater rights to the buyer than Subsection (2)(m).
- 352 (4)(a) A gift certificate, instrument, or other record that does not print an expiration date
 353 in accordance with Subsection (2)(v) does not expire.
- 354 (b) A gift certificate, instrument, or other record that does not include printed
 355 information concerning a fee to be charged and deducted from the balance of the gift
 356 certificate, instrument, or other record is not subject to the charging and deduction of
 357 the fee.
- 358 (c) Subsections (2)(v) and (4)(b) do not apply to a gift certificate, instrument, or other
 359 record useable at multiple, unaffiliated sellers of goods or services if an expiration
 360 date is printed on the gift certificate, instrument, or other record.

361 Section 5. Section **13-11-5** is amended to read:

362 **13-11-5 . Unconscionable act or practice by supplier.**

- 363 (1) ~~[An]~~ A supplier that commits an unconscionable act or practice [by a supplier] in
 364 connection with a consumer transaction violates this [act] chapter whether [it] the
 365 unconscionable act or practice occurs before, during, or after the transaction.
- 366 (2)(a) The unconscionability of an act or practice is a question of law for ~~[the]~~ a court
 367 with jurisdiction.
- 368 (b) If it is claimed or appears to the court that an act or practice may be unconscionable,
 369 the parties shall be given a reasonable opportunity to present evidence as to ~~[its] the~~
 370 act or practice's setting, purpose, and effect to aid the court in making [its] the court's

371 determination.

372 (3) In determining whether an act or practice is unconscionable, the court shall consider the
373 circumstances [~~which~~] that the supplier knew or had reason to know.

374 Section 6. Section **13-11-6** is amended to read:

375 **13-11-6 . Service of process.**

376 (1) In addition to any other method provided by rule or statute, personal jurisdiction over a
377 supplier may be acquired in a civil action or proceeding instituted in a court [~~of this state~~]
378 with jurisdiction by the service of process as provided in Subsection (3).

379 (2)(a) A supplier that engages in any act or practice in this state governed by this
380 chapter, or engages in a consumer transaction subject to this chapter, may designate
381 an agent upon whom service of process may be made in the state.

382 (b) A supplier shall make a designation of an agent under Subsection (2)(a) [~~shall be~~] in
383 writing and [~~filed~~] file the designation with the Division of Corporations and
384 Commercial Code.

385 (c) An agent designated under this Subsection (2) shall be a resident of or a corporation
386 authorized to do business in the state.

387 (3)(a) Subject to Subsection (3)(b), process upon a supplier may be served as provided
388 in Section 16-17-301 if:

389 (i) a designation is not made and filed under Subsection (2); or

390 (ii) process cannot be served in the state upon the designated agent.

391 (b) Service upon a supplier is not effective unless the plaintiff promptly mails a copy of
392 the process and pleadings by registered or certified mail to the [~~defendant~~] supplier at
393 the [~~defendant's~~] supplier's last reasonably ascertainable address.

394 (c) The plaintiff shall file an affidavit of compliance with this section:

395 (i) with the clerk of the court; and

396 (ii) on or before the return day of the process, if any, or within any future time the
397 court allows.

398 Section 7. Section **13-11-7** is amended to read:

399 **13-11-7 . Duties of division -- Civil penalty for violation of restraining or**
400 **injunctive orders.**

401 (1) The [~~enforcing authority~~] division shall:

402 (a) enforce this chapter throughout the state;

403 (b) cooperate with state and local officials, officials of other states, and officials of the
404 federal government in the administration of comparable statutes;

405 (c) inform consumers and suppliers on a continuing basis of the provisions of this
 406 chapter and of acts or practices that violate this chapter[-];
 407 (d) receive and act on complaints; and
 408 (e) maintain a public file of final judgments rendered under this chapter that have been
 409 either reported officially or made available for public dissemination under Subsection
 410 (1)(c), final consent judgments, and to the extent the [enforeing authority] division
 411 considers appropriate, assurances of voluntary compliance.

412 (2)(a) On motion of the [enforeing authority] division, or on [its] the court's own motion,
 413 the court may impose a civil penalty of not more than \$5,000 for each day a
 414 temporary restraining order, preliminary injunction, or permanent injunction issued
 415 under this chapter is violated, if the supplier received notice of the restraining or
 416 injunctive order.

417 (b) Civil penalties imposed under this section shall be paid to the General Fund.

418 Section 8. Section **13-11-8** is amended to read:

419 **13-11-8 . Powers of division.**

420 [~~(1) The enforcing authority.] In addition to the authority described in Sections 13-2-5 and
 421 13-2-6, the division may conduct research, hold public hearings, make inquiries, and
 422 publish studies relating to consumer sales acts or practices.~~

423 [~~(2) The enforcing authority shall adopt substantive rules that prohibit with specificity acts~~
 424 ~~or practices that violate Section 13-11-4 and appropriate procedural rules.]~~

425 Section 9. Section **13-11-9** is amended to read:

426 **13-11-9 . Rule-making requirements.**

427 [~~(1) In addition to complying with other rule-making requirements imposed by this act, the~~
 428 ~~enforcing authority shall:]~~

429 [~~(a) adopt as a rule a description of the organization of his office, stating the general course~~
 430 ~~and method of operation of his office and method whereby the public may obtain~~
 431 ~~information or make submissions or requests;]~~

432 [~~(b) adopt rules of practice setting forth the nature and requirements of all formal and~~
 433 ~~informal procedures available, including a description of the forms and instructions used~~
 434 ~~by the enforcing authority of his office; and]~~

435 [~~(c) make available for public inspection all rules, written statements of policy, and~~
 436 ~~interpretations formulated, adopted, or used by the enforcing authority in discharging his~~
 437 ~~functions;]~~

438 [~~(2) A rule of the enforcing authority is invalid, and may not be invoked by the enforcing~~

439 authority for any purpose, until it has been made available for public inspection under
 440 Subsection (1). This provision does not apply to a person who has knowledge of a rule
 441 before engaging in an act or practice that violates this act.]

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules that specify acts or practices that violate Subsection 13-11-4(1).

442 Section 10. Section **13-11-16** is amended to read:

443 **13-11-16 . Investigatory powers of the division.**

444 (1) If ~~by his own inquiries or as a result of complaints, the enforcing authority]~~ the
 445 division has reason to believe that a person has engaged in, is engaging in, or is about to
 446 engage in an act or practice that violates this ~~[act, he] chapter, the division may [~~
 447 ~~administer oaths and affirmations, subpoena witnesses or matter, and collect evidence]~~
 448 investigate and otherwise act in accordance with Sections 13-2-5 and 13-2-6 and other
 449 provisions of this chapter.

450 (2)(a) If the matter that the ~~[enforcing authority]~~ division subpoenas is located outside
 451 this state, the person subpoenaed may either make ~~[it]~~ the matter available to the [~~enforcing authority]~~ division at a convenient location within the state or pay the
 452 reasonable and necessary expenses for the ~~[enforcing authority]~~ division or ~~[his]~~ the
 453 division's representative to examine the matter at the place where ~~[it]~~ the matter is
 454 located.~~[-]~~

456 (b) The ~~[enforcing authority]~~ division may designate representatives, including officials
 457 of the state in which the matter is located, to inspect the matter on ~~[his]~~ the division's
 458 behalf, and ~~[he-]~~ may respond to similar requests from officials of other states.

459 (3) Upon failure of a person without lawful excuse to obey a subpoena and upon reasonable
 460 notice to all persons affected, the ~~[enforcing authority]~~ division may apply to the court
 461 for an order compelling compliance.

462 (4) In the event a witness asserts a privilege against self-incrimination, testimony and
 463 evidence from the witness may be compelled ~~[pursuant to]~~ in accordance with Title 77,
 464 Chapter 22b, Grants of Immunity.

465 Section 11. Section **13-11-17** is amended to read:

466 **13-11-17 . Actions by the division.**

467 (1) The ~~[enforcing authority]~~ division may bring an action in a court ~~[of competent]~~ with
 468 jurisdiction to:

469 (a) obtain a declaratory judgment that an act or practice violates this chapter;

470 (b) enjoin, in accordance with the principles of equity, a supplier ~~[who]~~ that has violated,

- 471 is violating, or is otherwise likely to violate this chapter;
- 472 (c) order disgorgement of money or any thing of value received in violation of this
 473 chapter;
- 474 (d) recover, for each violation, restitution for actual damages, or obtain relief under
 475 Subsection (2)(b), on behalf of impacted consumers~~[who complained to the~~
 476 ~~enforcing authority within a reasonable time after it instituted proceedings under this~~
 477 ~~chapter]~~; and
- 478 ~~[(d)]~~ (e) obtain a fine in an amount determined after considering the factors in Subsection
 479 (6).
- 480 (2)(a) The ~~[enforcing authority]~~ division may bring a class action on behalf of
 481 consumers for the actual damages caused by an act or practice specified as violating
 482 this chapter in a rule adopted by the ~~[enforcing authority]~~ division under ~~[Subsection~~
 483 ~~13-11-8(2)]~~ Section 13-11-9 before the consumer transactions on which the action is
 484 based, or declared to violate Section 13-11-4 or 13-11-5 by final judgment of courts
 485 of general jurisdiction and appellate courts of this state that was either reported
 486 officially or made available for public dissemination under Subsection 13-11-7(1)(c)
 487 by the ~~[enforcing authority]~~ division 10 days before the consumer transactions on
 488 which the action is based, or, with respect to a supplier who agreed to ~~[it]~~ a consent
 489 judgment, was prohibited specifically by the terms of a consent judgment that
 490 became final before the consumer transactions on which the action is based.
- 491 (b)(i) On motion of the ~~[enforcing authority]~~ division and without bond in an action
 492 under this Subsection (2), the court may make appropriate orders, including
 493 appointment of a master or receiver or sequestration of assets, but only if it
 494 appears that the defendant is threatening or is about to remove, conceal, or dispose
 495 of the defendant's property to the damage of persons for whom relief is requested.[
 496]
- 497 (ii) An appropriate order described in Subsection (2)(b)(i) may include an order to:
 498 (A) reimburse consumers found to have been damaged;
 499 (B) carry out a transaction in accordance with consumers' reasonable expectations;
 500 (C) strike or limit the application of unconscionable clauses of contracts to avoid
 501 an unconscionable result;
 502 (D) impose a fine in an amount determined after considering the factors listed in
 503 Subsection (6); or
 504 (E) grant other appropriate relief.

- 505 ~~[(ii)]~~ (iii) The court may assess the expenses of a master or receiver against a supplier.
- 506 (c) If an act or practice that violates this chapter unjustly enriches a supplier and
- 507 damages can be computed with reasonable certainty, damages recoverable on behalf
- 508 of consumers who cannot be located with due diligence shall be transferred to the
- 509 state treasurer ~~[pursuant to]~~ in accordance with Title 67, Chapter 4a, Revised Uniform
- 510 Unclaimed Property Act.
- 511 (d) If a supplier shows by a preponderance of the evidence that a violation of this
- 512 chapter resulted from a bona fide error notwithstanding the maintenance of
- 513 procedures reasonably adapted to avoid the error, recovery under this Subsection (2)
- 514 is limited to the amount, if any, by which the supplier was unjustly enriched by the
- 515 violation.
- 516 (3)(a)(i) The ~~[enforcing authority]~~ division may terminate an investigation or an
- 517 action other than a class action upon acceptance of the supplier's written assurance
- 518 of voluntary compliance with this chapter.[-]
- 519 (ii) Acceptance of an assurance may be conditioned on a commitment to reimburse
- 520 consumers or take other appropriate corrective action.
- 521 (b)(i) An assurance is not evidence of a prior violation of this chapter.[-]
- 522 (ii) Unless an assurance has been rescinded by agreement of the parties or voided by
- 523 a court for good cause, subsequent failure to comply with the terms of an
- 524 assurance is prima facie evidence of a violation.
- 525 (4)(a) In addition to other penalties and remedies set out under this chapter, and in
- 526 addition to ~~[its]~~ the division's other enforcement powers under Chapter 2, Division of
- 527 Consumer Protection, the division director may issue a cease and desist order and
- 528 impose an administrative fine of up to \$2,500 for each violation of this chapter.
- 529 (b) All money received through fines imposed under this section shall be deposited in
- 530 the Consumer Protection Education and Training Fund created by Section 13-2-8.
- 531 (5)(a) Within 30 days after agency review or, if appealed to a court with jurisdiction, 30
- 532 days after judicial review of a final division order imposing an administrative fine,
- 533 the supplier on whom the fine is imposed shall pay the fine in full.
- 534 (b) The unpaid amount of a fine is increased by 10%:
- 535 (i) if the fine has not been paid in full within 60 days after the final division order
- 536 imposing the fine; and
- 537 (ii) unless the division waives the 10% increase in a stipulated payment plan.
- 538 (6) A court shall determine the fine imposed under Subsection ~~[(1)(d)]~~ (1)(e) or Subsection [

- 539 ~~(2)(b)(i)(D) shall be determined]~~ (2)(b)(ii)(D) after considering the following factors:
- 540 (a) the seriousness, nature, circumstances, extent, and persistence of the conduct
- 541 constituting the violation, including whether the supplier acted knowingly or
- 542 intentionally to deceive;
- 543 (b) the harm to other persons resulting either directly or indirectly from the violation;
- 544 (c) cooperation by the supplier in an inquiry or investigation conducted by the [~~enforcing authority]~~ division concerning the violation;
- 545
- 546 (d) efforts by the supplier to prevent occurrences of the violation;
- 547 (e) efforts by the supplier to mitigate the harm caused by the violation, including a
- 548 reimbursement made to a consumer injured by the act of the supplier;
- 549 (f) the history of previous violations by the supplier;
- 550 (g) the need to deter the supplier or other suppliers from committing the violation in the
- 551 future;~~and]~~
- 552 (h) whether the individual harmed by the violation was a vulnerable adult; and
- 553 ~~(h)]~~ (i) other matters as justice may require.

554 Section 12. Section **13-11-18** is amended to read:

555 **13-11-18 . Noncompliance by supplier subject to other state supervision --**

556 **Cooperation of division and other official or agency.**

- 557 (1)(a) If the [~~enforcing authority]~~ division receives a complaint or other information
- 558 relating to noncompliance with this [~~aet]~~ chapter by a supplier [~~who]~~ that is subject to
- 559 other supervision in this state, the [~~enforcing authority]~~ division shall inform the
- 560 official or agency having that supervision.~~[-]~~
- 561 (b) The [~~enforcing authority]~~ division may request information about [~~suppliers]~~ a supplier
- 562 from the official or agency.
- 563 (2)(a) The [~~enforcing authority]~~ division and any other official or agency in this state
- 564 having supervisory authority over a supplier shall consult and assist each other in
- 565 maintaining compliance with this [~~aet]~~ chapter.
- 566 (b) Within the scope of [~~their]~~ the division's authority, [~~they]~~ the division and any other
- 567 official or agency in this state may jointly or separately make investigations,
- 568 prosecute suits, and take other official action [~~they consider]~~ the division considers
- 569 appropriate.

570 Section 13. Section **13-11-19** is amended to read:

571 **13-11-19 . Actions by consumer.**

- 572 (1) Whether [~~he]~~ a consumer seeks or is entitled to damages or otherwise has an adequate

- 573 remedy at law, [a] the consumer may bring an action to:
- 574 (a) obtain a declaratory judgment that an act or practice violates this chapter; and
- 575 (b) enjoin, in accordance with the principles of equity, a supplier [~~who~~] that has violated,
- 576 is violating, or is likely to violate this chapter.
- 577 (2) A consumer who suffers loss as a result of a violation of this chapter may recover~~[, but~~
- 578 ~~not in a class action,]~~ actual damages [~~or \$2,000, whichever is greater,]~~ plus court costs,
- 579 but not in a class action except as provided in this section.
- 580 (3) Whether a consumer seeks or is entitled to recover damages or has an adequate remedy
- 581 at law, [~~he~~] the consumer may bring a class action for declaratory judgment, an
- 582 injunction, and appropriate ancillary relief against an act or practice that violates this
- 583 chapter.
- 584 (4)(a) A consumer who suffers loss as a result of a violation of this chapter may bring a
- 585 class action for the actual damages caused by an act or practice specified as violating
- 586 this chapter by a rule adopted by the [~~enforcing authority~~] division under [~~Subsection~~
- 587 ~~13-11-8(2)]~~ Section 13-11-9 before the consumer transactions on which the action is
- 588 based, or declared to violate Section 13-11-4 or 13-11-5 by a final judgment of the
- 589 appropriate court or courts of general jurisdiction and appellate courts of this state
- 590 that was either officially reported or made available for public dissemination under
- 591 Subsection 13-11-7(1)(c) by the [~~enforcing authority~~] division 10 days before the
- 592 consumer transactions on which the action is based, or with respect to a supplier who
- 593 agreed to [~~it~~] a consent judgment, was prohibited specifically by the terms of a
- 594 consent judgment [~~which~~] that became final before the consumer transactions on
- 595 which the action is based.
- 596 (b) If an act or practice that violates this chapter unjustly enriches a supplier and the
- 597 damages can be computed with reasonable certainty, damages recoverable on behalf
- 598 of consumers who cannot be located with due diligence shall be transferred to the
- 599 state treasurer [~~pursuant to~~] in accordance with Title 67, Chapter 4a, Revised Uniform
- 600 Unclaimed Property Act.
- 601 (c) If a supplier shows by a preponderance of the evidence that a violation of this chapter
- 602 resulted from a bona fide error notwithstanding the maintenance of procedures
- 603 reasonably adapted to avoid the error, recovery under this section is limited to the
- 604 amount, if any, in which the supplier was unjustly enriched by the violation.
- 605 (5) Except for services performed by the [~~enforcing authority~~] division, the court may award
- 606 to the prevailing party a reasonable attorney's fee limited to the work reasonably

607 performed if:

608 (a) the consumer complaining of the act or practice that violates this chapter has brought
609 or maintained an action [~~he~~] the consumer knew to be groundless; or a supplier has
610 committed an act or practice that violates this chapter; and

611 (b) an action under this section has been terminated by a judgment or required by the
612 court to be settled under Subsection 13-11-21(1)(a).

613 (6) Except for consent judgment entered before testimony is taken, a final judgment in
614 favor of the [~~enforcing authority~~] division under Section 13-11-17 is admissible as prima
615 facie evidence of the facts on which [~~it~~] an action is based in later proceedings under this
616 section against the same person or a person in privity with [~~him~~] the person against
617 which the judgment is entered.

618 (7) When a judgment under this section becomes final, the prevailing party shall mail a
619 copy to the [~~enforcing authority~~] division for inclusion in the public file maintained
620 under Subsection 13-11-7(1)(e).

621 Section 14. Section **13-11-20** is amended to read:

622 **13-11-20 . Class actions.**

623 (1) An action may be maintained as a class action under this act only if:

624 (a) the class is so numerous that joinder of all members is impracticable;

625 (b) there are questions of law or fact common to the class;

626 (c) the claims or defenses of the representative parties are typical of the claims or
627 defenses of the class;

628 (d) the representative parties will fairly and adequately protect the interests of the class;
629 and

630 (e) [~~either:~~]

631 (i) the prosecution of separate actions by or against individual members of the class
632 would create a risk of:

633 (A) inconsistent or varying adjudications with respect to individual members of
634 the class which would establish incompatible standards of conduct for the party
635 opposing the class; or

636 (B) adjudications with respect to individual members of the class that would as a
637 practical matter dispose of the interests of the other members not parties to the
638 adjudications or substantially impair or impede their ability to protect [~~their~~] the
639 other members' interests; [~~or~~]

640 (ii) the party opposing the class has acted or refused to act on grounds generally

641 applicable to the class, thereby making appropriate final injunctive relief or
642 corresponding declaratory relief with respect to the class as a whole; or
643 (iii) the court finds that the questions of law or fact common to the members of the
644 class predominate over any questions affecting only individual members, and that
645 a class action is superior to other available methods for the fair and efficient
646 adjudication of the controversy.

647 (2) The matters pertinent to the findings under Subsection (1)(e)(iii) include:

648 (a) the interest of members of the class in individually controlling the prosecution or
649 defense of separate actions;

650 (b) the extent and nature of any litigation concerning the controversy already
651 commenced by or against members of the class;

652 (c) the desirability or undesirability of concentrating the litigation of the claims in the
653 particular forum; and

654 (d) the difficulties likely to be encountered in the management of a class action.

655 (3)(a) As soon as practicable after the commencement of an action brought as a class
656 action, the court shall determine by order whether ~~[it]~~ the action is to be so maintained.[
657]

658 ~~(b)~~ An order under this subsection may be conditional, and ~~[it]~~ the order may be
659 amended before decision on the merits.

660 (4)(a) In a class action maintained under Subsection (1)(e), the court may direct to the
661 members of the class the best notice practicable under the circumstances, including
662 individual notice to each member who can be identified through reasonable effort.

663 (b) The notice shall advise each member that:

664 ~~[(a)]~~ (i) the court will exclude ~~[him]~~ the member from the class, unless ~~[he]~~ the member
665 requests inclusion, by a specified date;

666 ~~[(b)]~~ (ii) the judgment, whether favorable or not, will include all members who
667 request inclusion; and

668 ~~[(c)]~~ (iii) a member who requests inclusion may, if ~~[he]~~ the member desires, enter an
669 appearance through ~~[his]~~ counsel.

670 (5) When appropriate, an action may be brought or maintained as a class action with respect
671 to particular issues, or a class may be divided into subclasses and each subclass treated
672 as a class.

673 (6) In the conduct of a class action the court may make appropriate orders:

674 (a) determining the course of proceedings or prescribing measures to prevent undue

- 675 repetition or complication in the presentation of evidence or argument;
- 676 (b) requiring, for the protection of the members of the class or otherwise for the fair
677 conduct of the action, that notice be given in the manner the court directs to some or
678 all of the members or to the ~~[enforcing authority]~~ division of any step in the action, or
679 of the proposed extent of the judgment, or of the opportunity of members to signify
680 whether ~~[they]~~ the members consider the representation fair and adequate, to
681 intervene and present claims or defenses, or otherwise to come into the action;
- 682 (c) imposing conditions on the representative parties or on intervenors;
- 683 (d) requiring that the pleadings be amended to eliminate allegations as to representation
684 of absent persons, and that the action proceed accordingly; or
- 685 (e) dealing with similar procedural matters.

686 (7)(a) A class action may not be dismissed or compromised without approval of the
687 court.[-]

688 (b) Notice of the proposed dismissal or compromise shall be given to all members of the
689 class as the court directs.

690 (8)(a) The judgment in an action maintained as a class action under Subsection (1)(e)(i)
691 or (ii), whether or not favorable to the class, shall describe those whom the court
692 finds to be members of the class.[-]

693 (b) The judgment in a class action under Subsection (1)(e)(iii), whether or not favorable
694 to the class, shall specify or describe ~~[those]~~ the members to whom the notice
695 provided in Subsection (4) was directed, and who have requested inclusion, and
696 whom the court finds to be members of the class.

697 Section 15. Section **13-11-21** is amended to read:

698 **13-11-21 . Settlement of class action -- Complaint in class action delivered to**
699 **enforcing authority.**

700 (1)(a)(i)(A) A defendant in a class action may file a written ~~[offer of settlement]~~
701 settlement offer.[-]

702 (B) If ~~[it]~~ the settlement offer is not accepted within a reasonable time by a
703 plaintiff class representative, the defendant may file an affidavit reciting the
704 rejection.

705 (ii)(A) The court may determine that the settlement offer has enough merit to
706 present to the members of the class.[-]

707 (B) If the court ~~[so determines]~~ determines that the settlement offer merits
708 presenting, the court shall order a hearing to determine whether the settlement

- 709 offer should be approved.
- 710 (iii) The court shall provide at least 60 days advance notice of the hearing:
- 711 (A) to the ~~[enforcing authority]~~ division; and
- 712 (B) to the extent practicable, to each member who can be identified through
- 713 reasonable effort.
- 714 (iv) The notice described in Subsection (1)(a)(iii) shall specify the terms of the
- 715 settlement offer and a reasonable period within which members of the class who
- 716 request ~~[it]~~ to be included in the class are entitled to be included in the class.
- 717 (v)(A) The statute of limitations for ~~[those who]~~ the members that are excluded [
- 718 ~~pursuant to]~~ in accordance with this Subsection [(1)(a)(v)] (1)(a)(v)(A) is tolled
- 719 for the period the class action has been pending, plus an additional year.[-]
- 720 (B) Within 60 days of receipt of the notice required by this Subsection (1)(a), the [
- 721 ~~enforcing authority]~~ division may intervene in the class action for the limited
- 722 purpose of objecting to the ~~[offer of settlement]~~ settlement offer.
- 723 (b)(i) If a member who has previously lost an opportunity to be excluded from the
- 724 class is excluded at ~~[his]~~ the member's request in response to notice of the
- 725 settlement offer~~[-of settlement]~~ during the period specified under Subsection
- 726 (1)(a), ~~[he]~~ the member may not thereafter participate in a class action for damages
- 727 respecting the same consumer transaction, unless the court later disapproves the
- 728 settlement offer~~[-of settlement]~~ or approves a settlement materially different from
- 729 that proposed in the original settlement offer~~[-of settlement]~~.
- 730 (ii) After the expiration of the period of limitations, a member of the class is not
- 731 entitled to be excluded from ~~[it]~~ the class.
- 732 (c)(i) If the court later approves the settlement offer~~[-of settlement]~~, including
- 733 changes, if any, required by the court in the interest of a just settlement of the
- 734 action, ~~[it]~~ the court shall enter judgment, which is binding on all persons who are
- 735 then members of the class.[-]
- 736 (ii) If the court disapproves the settlement offer or approves a settlement materially
- 737 different from that proposed in the original settlement offer, notice shall be given
- 738 to a person who was excluded from the action at ~~[his]~~ the person's request in
- 739 response to notice of the settlement offer under Subsection (1)(a), and ~~[he]~~ the
- 740 person is entitled to rejoin the class and, in the case of the approval, participate in
- 741 the settlement.
- 742 (2)(a) On the commencement of a class action under Section 13-11-19, the class

743 representative shall mail by certified mail with return receipt requested or personally
 744 serve a copy of the complaint on the [~~enforcing authority~~] division.[-]

745 (b) Within 180 days after the receipt of a copy of the complaint, but not thereafter, the [
 746 ~~enforcing authority~~] division may intervene in the class action for purposes of
 747 participation as an interested party in litigation of the class action.

748 Section 16. Section **13-11-22** is amended to read:

749 **13-11-22 . Exemptions from application of act.**

750 (1) This act does not apply to:

751 (a) an act or practice required or specifically permitted by or under state or federal law[-;
 752 ~~or by or under state law~~];

753 (b) a publisher, broadcaster, printer, or other person engaged in the dissemination of
 754 information or the reproduction of printed or pictorial matter so far as the information
 755 or matter has been disseminated or reproduced on behalf of others without actual
 756 knowledge that it violated this act;

757 (c) claim for personal injury or death or claim for damage to property other than the
 758 property that is the subject of the consumer transaction;

759 (d) credit terms of a transaction otherwise subject to this act; or

760 (e) any public utility subject to the regulating jurisdiction of the Public Service
 761 Commission of the state of Utah.

762 (2) A person alleged to have violated this act has the burden of showing the applicability of
 763 this section.

764 Section 17. Section **78B-4-513** is amended to read:

765 **78B-4-513 . Cause of action for defective construction.**

766 (1) Except as provided in Subsection (2), an action for defective design or construction is
 767 limited to breach of the contract, whether written or otherwise, including both express
 768 and implied warranties.

769 (2) An action for defective design or construction may include damage to other property or
 770 physical personal injury if the damage or injury is caused by the defective design or
 771 construction.

772 (3) For purposes of Subsection (2), property damage does not include:

773 (a) the failure of construction to function as designed; or

774 (b) diminution of the value of the constructed property because of the defective design
 775 or construction.

776 (4) Except as provided in Subsections (2) and (6), an action for defective design or

777 construction may be brought only by a person in privity of contract with the original
778 contractor, architect, engineer, or [~~the~~]real estate developer.

779 (5) If a person in privity of contract sues for defective design or construction under this
780 section, nothing in this section precludes the person from bringing, in the same suit,
781 another cause of action to which the person is entitled based on an intentional or willful
782 breach of a duty existing in law.

783 (6) Nothing in this section precludes[-] :

784 (a) a person from assigning a right under a contract to another person, including to a
785 subsequent owner or a homeowners association[-] ; or

786 (b) a government agency from bringing an enforcement action in accordance with any
787 other statute for matters involving defective construction.

788 **Section 18. Repealer.**
789 This bill repeals:
790 **Section 13-11-17.5, Costs and attorney's fees.**
791 **Section 19. Effective Date.**
792 This bill takes effect on May 7, 2025.