

Title 70C. Utah Consumer Credit Code

Chapter 1 General Provisions and Definitions

Part 1 Short Title, Construction, General Provisions

70C-1-101 Short title.

This title is known as the "Utah Consumer Credit Code."

Enacted by Chapter 159, 1985 General Session

70C-1-102 Purposes -- Rules of construction.

- (1) This title shall be liberally construed and applied to promote its underlying purposes and policies.
- (2) The underlying purposes and policies of this title are:
 - (a) to further consumer understanding of the terms of credit transactions and to foster competition among suppliers of consumer credit so that consumers may obtain credit at reasonable cost;
 - (b) to prohibit certain unfair practices; and
 - (c) to avoid the duplication of laws and regulations pertaining to consumer credit between state and federal authorities and to supplement applicable federal laws and regulations.

Enacted by Chapter 159, 1985 General Session

70C-1-103 General principles of law apply -- Treatment of charge or fee.

- (1) Unless displaced by the particular provisions of this title, the Uniform Commercial Code and the principles of law and equity, including without limitation the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, and bankruptcy shall supplement its provisions.
- (2) A charge or fee described in Section 70C-1-106 assessed by a depository institution as defined by Section 7-1-103 in accordance with this title may not be considered void as a penalty or otherwise unenforceable under statute or common law.

Amended by Chapter 180, 1999 General Session

70C-1-104 Construction against implied repeal.

No part of this title may be deemed to be impliedly repealed by subsequent legislation if the construction can reasonably be avoided.

Enacted by Chapter 159, 1985 General Session

70C-1-105 Limitations by other laws not displaced.

This title does not displace limitations on powers an organization is authorized to exercise under the laws of this state or the United States.

Enacted by Chapter 159, 1985 General Session

70C-1-106 Determination of interest rate.

For purposes of determining the interest rate allowed by the laws of this state under Section 85 of the National Bank Act and Sections 521 and 522 of the Depository Institutions Deregulation and Monetary Control Act of 1980, all finance charges, all fees charged for participation in a credit plan, whether assessed on an annual or other periodic basis, all transaction fees, all delinquency and deferral fees, all fees charged for exceeding a designated credit limit, all fees charged for each return of a dishonored check or negotiable order of withdrawal or draft, all fees charged for stopping payment, and all other charges permitted under Section 70C-2-101 are considered to be interest under the laws of the state of Utah. Notwithstanding the foregoing, a credit plan agreement that provides for any such fees shall disclose them separately from the interest rate in a manner consistent with Regulation Z of the Board of Governors of the Federal Reserve System.

Amended by Chapter 177, 1990 General Session

**Part 2
Scope and Jurisdiction**

70C-1-201 Covered transactions.

Except as provided in Section 70C-1-202, the provisions of this title apply to all credit offered or extended by a creditor to an individual person primarily for personal, family, or household purposes.

Enacted by Chapter 159, 1985 General Session

70C-1-202 Exempted transactions.

- (1) Notwithstanding the exceptions in Subsection (2), parties to a credit transaction that is otherwise exempt from this title may explicitly agree in writing that the transaction is subject to this title. The agreement shall specifically reference Title 70C, Utah Consumer Credit Code.
- (2) This title does not apply to any of the following:
 - (a) an extension of credit:
 - (i) primarily for business, commercial, or agricultural purposes; or
 - (ii) to other than a natural person including government agencies or instrumentalities;
 - (b) a closed-end extension of credit secured by a first lien or equivalent security interest on a dwelling or building lot;
 - (c) a transaction in securities or commodities accounts in which credit is extended by a broker-dealer registered with the:
 - (i) Securities and Exchange Commission; or
 - (ii) Commodity Futures Trading Commission;
 - (d) an extension of credit:
 - (i) not secured by:
 - (A) real property; or
 - (B) personal property used or expected to be used as the principal dwelling of the consumer;and
 - (ii)

- (A) in which the amount financed exceeds \$50,000 adjusted annually for inflation by the commissioner by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers; or
- (B) in which there is an express written commitment to extend credit in excess of the amount determined under Subsection (2)(d)(ii)(A);
- (e) a transaction under public utility or common carrier tariffs if a subdivision of this state or the United States regulates:
 - (i) the charges for the services involved;
 - (ii) the charges for delayed payment; and
 - (iii) a discount allowed for early payment;
- (f) the sale of insurance by an insurer except as otherwise provided in Chapter 6, Insurance;
- (g) a transaction with a party acting as a pawnbroker and licensed by any governmental authority in this state;
- (h)
 - (i) a loan made, insured, or guaranteed pursuant to a program authorized by Title IV of the Higher Education Act of 1965, 20 U.S.C. Sec. 1070, et seq.; or
 - (ii) a loan:
 - (A) that finances tuition and other expenses:
 - (I) charged in connection with enrollment:
 - (Aa) at a public or proprietary preprimary, secondary, vocational, or postsecondary school; or
 - (Bb) in any tutorial, continuing education, test preparation, distance-learning, or similar program; and
 - (II) including:
 - (Aa) tuition;
 - (Bb) fees;
 - (Cc) books;
 - (Dd) housing; and
 - (Ee) other expenses;
 - (B) that is:
 - (I) made, insured, or guaranteed under a state program; or
 - (II) made by a federally insured depository institution; and
 - (C) including a loan that consolidates or refinances a loan described in this Subsection (2)(h)(ii); and
- (i) a rental purchase agreement as defined in Section 15-8-3.

Amended by Chapter 97, 2014 General Session

70C-1-203 Limitation on creditor's remedies in out-of-state transactions.

The part on limitations on creditors' remedies, Sections 70C-7-101 through 70C-7-107, applies to any actions or other proceedings brought in this state to enforce rights arising from a consumer credit contract or consumer credit transaction of any kind, wherever made.

Amended by Chapter 93, 1990 General Session

Part 3

Definitions

70C-1-301 Interpretation consistent with federal law.

Except as otherwise defined, all definitions or terms used in this title have the same meaning as when used in the federal Consumer Credit Protection Act, 15 U.S.C. Sections 1601 through 1677, as amended, and its implementing Regulation Z.

Enacted by Chapter 159, 1985 General Session

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) "Contract" means a document containing written terms and conditions of a credit agreement.
- (3)
 - (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), 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) in the preceding calendar year, the numerical standards shall be applied to the current calendar year.
- (4) "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) "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.

- (6) "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.
- (7) "Party" means an individual and any other entity legally capable of entering into a binding contract.

Amended by Chapter 72, 2009 General Session

Chapter 2 Finance Charges and Related Provisions

Part 1 Consumer Credit Agreements

70C-2-101 Finance and other charges.

Except where restricted or otherwise covered by provisions of this title, the parties to a consumer credit agreement may contract for payment by the debtor of any finance charge and other charges and fees.

Enacted by Chapter 159, 1985 General Session

70C-2-102 Delinquency charges.

- (1)
 - (a) The parties to any consumer credit agreement may contract for a delinquency charge on any installment not paid in full by its scheduled due date in an amount not exceeding the greater of:
 - (i) \$30; or
 - (ii) 5% of the delinquent unpaid amount of the installment.
 - (b) Notwithstanding Subsection (1)(a), in a contract, renewed, executed, or modified on or after May 3, 1999, a depository institution as defined in Section 7-1-103 may contract for and collect a delinquency charge on an installment not paid in full by its scheduled due date in excess of the limitation imposed under Subsection (1)(a).
- (2) This section may not be interpreted to require a creditor to accept a partial payment for an installment.
- (3)
 - (a) A delinquency charge as authorized by this section may be collected only once on each installment regardless of how long it remains delinquent.
 - (b) A delinquency charge may not be collected if:
 - (i) the installment has been deferred; and
 - (ii) a deferral charge under Section 70C-2-103 has been paid or incurred.
 - (c) A delinquency charge may be collected:
 - (i) at the time it accrues; or
 - (ii) any time after it accrues.

Amended by Chapter 171, 1999 General Session

70C-2-103 Deferral charges.

- (1) The parties to any consumer credit agreement before or after default may agree in writing to defer all or part of one or more unpaid installments. Except in connection with an open-end credit agreement, the parties may also agree in writing at any time that if an installment is not paid within 10 days after its due date, the creditor may unilaterally grant a deferral. The creditor may collect a reasonable charge which the debtor expressly agrees to pay as consideration for a deferral. A deferral charge may be collected at the time it accrues or at any time thereafter.
- (2) A delinquency charge made by the creditor on an installment may not be retained if a deferral charge is agreed to under this section covering the same period of delinquency. A creditor that accelerates the maturity of a consumer credit debt may not make or collect a deferral charge for any period following the date acceleration is declared.

Enacted by Chapter 159, 1985 General Session

70C-2-104 Advances to perform covenants of buyer.

If a consumer credit agreement contains covenants by the debtor to perform certain duties pertaining to insuring or preserving collateral and the creditor pursuant to the agreement pays for performance of the duties on behalf of the debtor, the creditor may add the amounts paid to the unpaid principal of the debt.

Enacted by Chapter 159, 1985 General Session

70C-2-105 Attorney's fees.

A consumer credit agreement may provide for the payment of reasonable attorney's fees in the event of default and referral to an attorney including one who is a salaried employee of the creditor or its assignee.

Enacted by Chapter 159, 1985 General Session

Part 2
Limitations on Agreements and Practices

70C-2-201 Authorization to confess judgment prohibited.

A creditor or its successor in interest may not, directly or indirectly, take or receive from a debtor an obligation that constitutes or contains a cognovit or confession of judgment, warrant of attorney, or other waiver of the right to notice and the opportunity to be heard in the event of suit or process thereon.

Enacted by Chapter 159, 1985 General Session

70C-2-202 Assignment of earnings prohibited.

A creditor may not directly or indirectly take or receive from a debtor an obligation that constitutes or contains an assignment of wages or other earnings unless

- (1) the assignment by its own terms is revocable at the will of the debtor;
- (2) the assignment is a payroll deduction plan, commencing at the time of the transaction, in which the debtor authorized a series of wage deductions as a method of making each payment; or
- (3) the assignment applies only to wages or other earnings already earned at the time of the assignment.

Enacted by Chapter 159, 1985 General Session

70C-2-203 Additional security in consumer leases prohibited.

A lessor, in order to secure the debt arising from a consumer lease, may not take a security interest in the dwelling of the lessee. A security interest taken in violation of this section is void from its inception.

Enacted by Chapter 159, 1985 General Session

70C-2-204 Certain negotiable instruments prohibited.

With respect to a consumer credit sale not involving real property, the seller may not take a negotiable instrument under Section 70A-3-104 other than a check as evidence of the obligation of the buyer. A holder is not in good faith under Subsection 70A-1a-201(2)(t) if he takes a negotiable instrument with notice that it is issued in violation of this section. A holder in due course under Section 70A-3-302 is not subject to the liabilities set forth in the provisions on the effect of violations on rights of parties under Section 70C-7-201.

Amended by Chapter 272, 2007 General Session

70C-2-205 Assignee subject to defenses.

With respect to a consumer credit sale, an assignee of the rights of the seller is subject to all defenses of the buyer against the seller arising out of the credit sale, but the assignee's liability under this section may not exceed the amount owing to the assignee at the time the defense is asserted against the assignee, and the rights of the buyer may only be asserted as a matter of defense to or setoff against a claim by the assignee.

Enacted by Chapter 159, 1985 General Session

70C-2-206 Settlement of claims.

- (1) A claim by a debtor against a creditor for an excess charge, other violation of this title, or civil penalty if disputed in good faith, may be settled by agreement for less value than the amount claimed, unless a court, as a matter of law, finds the settlement to have been unconscionable at the time it was made.
- (2) A claim, whether or not disputed, against a debtor may be settled for less value than the amount claimed.

Enacted by Chapter 159, 1985 General Session

70C-2-207 Referral sales.

With respect to a consumer credit sale, the seller may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer as an inducement for a sale in consideration of his giving to the seller the names of prospective purchasers or otherwise aiding

the seller in making a sale to another person, if the earning of the rebate, discount, or other value is contingent upon the occurrence of an event subsequent to the time the buyer agrees to buy. If a buyer is induced by a violation of this section to enter into a consumer credit sale, the agreement is unenforceable by the seller and the buyer may rescind the agreement and retain any goods delivered until all payments made by the debtor have been fully refunded to him. The buyer may retain the benefit of any services performed without any obligation to pay for them. This section does not apply if any goods delivered to the buyer are damaged while in the buyer's possession or are not delivered to the seller at the buyer's residence, or at any other place agreed on by the parties, within a reasonable time after the seller tenders or delivers a full refund of all payments to the buyer.

Enacted by Chapter 159, 1985 General Session

Chapter 3 **Closed-End Consumer Credit Debt**

70C-3-101 Prepayment of debt.

- (1)
- (a) Subject to the other provisions of this section, a debtor may prepay the unpaid balance of a closed-end consumer credit debt at any time without penalty.
 - (b) Notwithstanding Subsection (1)(a), a debtor may be required to pay a prepayment fee for prepaying a closed-end extension of credit secured by a subordinate lien on a dwelling that is not subject to Section 32 of Regulation Z, 12 C.F.R., Sec. 226.32 if:
 - (i) the creditor offers the debtor the option of entering into either:
 - (A) a contract that does not contain a prepayment fee; or
 - (B) a contract containing:
 - (I) a prepayment fee; and
 - (II) a rate of finance charge or fee that is lower than the rate of finance charge or fee under the contract described in Subsection (1)(b)(i)(A); and
 - (ii) the debtor enters into the contract described in Subsection (1)(b)(i)(B).
- (2) For purposes of this section:
- (a) The unpaid balance of a closed-end consumer credit debt at any point in time shall consist only of:
 - (i) any unpaid earned finance charge;
 - (ii) the unpaid principal of the debt; and
 - (iii) any delinquency or deferral and other allowable charges that may have been assessed prior to prepayment.
 - (b) Except as provided in Subsection (2)(c), the earned finance charge and unpaid principal shall be calculated only by the actuarial or United States Rule method from the date the credit is first extended to the debtor, but the creditor may accrue finance charges during any delay period pertaining to a right of rescission.
 - (c)
 - (i) Any prepaid finance charge not exceeding 5% of the original principal amount of the debt which the parties expressly agree is nonrefundable in the event of prepayment shall be fully earned on the date the credit is extended.

- (ii) Any prepaid finance charges in addition to the prepaid finance charges described in Subsection (2)(c)(i) are considered to be earned proportionally over the entire term of the agreement, and in that event of prepayment, any unearned portion of such charge, calculated on a pro rata basis according to the remaining term of the agreement, shall be rebated.
- (iii) Notwithstanding Subsections (2)(c)(i) and (ii), on a closed-end extension of credit secured by a subordinate lien on a dwelling that is not subject to Section 32 of Regulation Z, 12 C.F.R., Sec. 226.32 any prepaid finance charge shall be fully earned on the date the credit is extended.
- (d) Any costs, charges, or fees paid to third parties in connection with setting up the credit are not subject to rebate unless the creditor becomes entitled to a rebate of any part of the cost, charge, or fee as a result of the prepayment.
- (3) If the maturity of a closed-end consumer credit debt is accelerated for any reason and judgment is obtained, the debtor is entitled to have the unpaid balance of the debt calculated, less any legal offset, as if payment in full had been made on the date judgment was entered. Interest on the judgment shall be the rate agreed on by the parties with respect to the debt.
- (4) The provisions of this section for calculating the unpaid balance of a debt apply to all prepayments of closed-end consumer credit debts after September 1, 1985, unless a different method for calculating the unpaid balance on prepayment is expressly provided for in a consumer credit contract which was entered into prior to July 1, 1985, and was lawful when made.

Amended by Chapter 162, 2005 General Session

70C-3-102 Balloon payment.

If any scheduled payment of a closed-end consumer credit debt is more than twice as large as the average of all earlier scheduled payments, the debtor has the right to refinance the amount of that payment at the time it is due if the creditor is still offering that type of credit and the debtor is credit worthy. Credit terms may be no less favorable than those offered to the general public by the creditor for the same type of credit at the time a request for refinancing is accepted.

Enacted by Chapter 159, 1985 General Session

70C-3-103 Delinquency charges -- Conversion of account.

- (1) With respect to a closed-end loan, a delinquency charge may not be assessed on a payment that is a payment in full for the scheduled installment period solely because of an unpaid delinquency charge relating to an earlier installment.
- (2)
 - (a) With respect to a closed-end loan other than one in which the finance charge is based on unpaid daily balances, if two payments or parts of two payments are past due for more than 10 days, the lender may convert the loan to one in which the finance charge is based on unpaid daily balances.
 - (b) In the event of conversion under Subsection (2)(a):
 - (i) the creditor shall calculate the unpaid balance of the debt in accordance with the provisions governing rebate on prepayment under Section 70C-3-101 as of the due date of the first delinquent installment; and
 - (ii) after the conversion the creditor may collect a finance charge not exceeding the annual rate agreed upon by the parties.

Amended by Chapter 162, 2005 General Session

70C-3-104 Class actions.

- (1) In accordance with this section, a creditor may contract with the debtor of a closed-end consumer contract for a waiver by the debtor of the right to initiate or participate in a class action related to the closed-end consumer contract.
- (2) To contract for the waiver described in Subsection (1), the creditor shall disclose the waiver:
 - (a) to the debtor;
 - (b) in the closed-end consumer contract; and
 - (c) for a closed-end consumer contract entered into on or after August 1, 2006, in:
 - (i) bold type; or
 - (ii) all capital letters.

Enacted by Chapter 172, 2006 General Session

Chapter 4
Open-End Consumer Credit Contract

70C-4-101 Minimum billing cycle charge.

If there is an unpaid balance in an open-end account on the date the finance charge is applied, the creditor may assess a minimum charge.

Amended by Chapter 162, 2005 General Session

70C-4-102 Change of terms of open-end consumer credit contracts.

- (1) For purposes of this section, "change" includes to add, delete, or otherwise change a term of an open-end consumer credit contract.
- (2)
 - (a) Notwithstanding Section 25-5-4, a creditor may change any written term of an open-end consumer credit contract at any time while the open-end consumer credit contract is in effect and apply the new term to the unpaid balance in the account if:
 - (i) the creditor mails or delivers written notice of the change:
 - (A) to all other parties to the open-end consumer credit contract that may be affected by the change; and
 - (B) in a manner consistent with the provisions in effect on the day on which the notice is given of the Truth in Lending Act, 15 U.S.C. Section 1601 et seq., and its implementing Regulation Z; and
 - (ii) the open-end consumer credit contract expressly provides that the creditor may change terms of the open-end consumer credit contract from time to time.
 - (b) A creditor may change an open-end consumer credit contract in accordance with this section to include arbitration or other alternative dispute resolution mechanism.
- (3) If the creditor has taken a security interest in any real property of the debtor to secure payment of the debt, and if the term to be changed affects the method for calculating minimum payments, or is part of the finance charge, the creditor may apply the new term to an account

balance relating to a credit transaction that occurred prior to the effective date of the change only if:

- (a) the debtor expressly so agrees after notice of the change has been given by the creditor; or
 - (b)
 - (i) the creditor notifies the debtor that:
 - (A) further extensions of credit will not be permitted unless the debtor agrees that the new term may be applied to an existing account balance; and
 - (B) any future charges to the account will constitute agreement; and
 - (ii) the debtor makes a charge to the account after receiving notice described in Subsection (3)(b)(i).
- (4) Notice under this section is not required when:
- (a) the change involves:
 - (i) late payment charges;
 - (ii) charges for documentary evidence;
 - (iii) over-the-limit charges;
 - (iv) a reduction of any component of a finance or other charge;
 - (v) suspension of future credit privileges; or
 - (vi) termination of an account or plan; or
 - (b) other than an increase in the periodic rate or other finance charge, the change results from:
 - (i) an agreement involving:
 - (A) a court proceeding;
 - (B) an arbitration proceeding; or
 - (C) another alternative dispute resolution proceeding; or
 - (ii) the consumer's default or delinquency.
- (5)
- (a) The actual unpaid balance of the account at any point in time is not a term of the open-end consumer credit contract for purposes of this section.
 - (b) With regard to a variable or adjustable interest rate, a periodic change in the applicable rate is not a change subject to this section if no term of the open-end consumer credit contract pertaining to calculation of the applicable rate is changed.
- (6)
- (a) A creditor may include a notice required by this section of a change to an open-end consumer credit contract on or in the same envelope as a periodic statement or other material sent to the borrower by the creditor.
 - (b) Notwithstanding Subsection (6)(a), a creditor is not required to include a notice required by this section with any other material sent to the borrower.

Amended by Chapter 161, 2006 General Session

Amended by Chapter 172, 2006 General Session

70C-4-103 Finance charge for open-end accounts.

With respect to an open-end consumer credit contract, a finance charge may only be calculated during any particular billing cycle on the basis of either:

- (1) the average or actual daily balance of the account; or
- (2) the unpaid balance of the account on the last day of the billing cycle after deducting payments and credits received during the same cycle.

Enacted by Chapter 159, 1985 General Session

70C-4-104 Redundant delinquency charges prohibited.

With respect to an open-end account, no delinquency charge may be assessed on a payment that is otherwise a payment in full for the applicable period solely because of an unpaid delinquency charge relating to an earlier installment.

Enacted by Chapter 133, 1991 General Session

70C-4-105 Class actions.

- (1) In accordance with this section, a creditor may contract with the debtor of an open-end consumer credit contract for a waiver by the debtor of the right to initiate or participate in a class action related to the open-end consumer credit contract.
- (2) To contract for the waiver described in Subsection (1), the creditor shall disclose the waiver:
 - (a) to the debtor;
 - (b) in the open-end consumer credit contract; and
 - (c) for an open-end consumer credit contract entered into on or after August 1, 2006, in:
 - (i) bold type; or
 - (ii) all capital letters.

Enacted by Chapter 172, 2006 General Session

**Chapter 5
Home Solicitation Sales**

70C-5-101 Definition -- Home solicitation sale.

As used in this chapter, "home solicitation sale" means a consumer credit sale of goods or services in which the seller or a person acting for him engages in a face-to-face solicitation of the sale at a residence or place of employment of the buyer and the buyer's agreement or offer to purchase is there given to the seller or a person acting for him. It does not include a sale made pursuant to preexisting open-end accounts, or a sale made between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.

Enacted by Chapter 159, 1985 General Session

70C-5-102 Buyer's right to cancel.

- (1) Except as provided in Subsection (5), in addition to any right otherwise to revoke an offer, the buyer has the right to cancel a home solicitation sale until midnight of the third business day after the day on which the buyer signs an agreement or offer to purchase which complies with this chapter.
- (2) Cancellation occurs when the buyer gives written notice of cancellation to the seller at the address stated in the agreement or offer to purchase.
- (3) Notice of cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid.
- (4) Notice of cancellation given by the buyer need not take a particular form and is sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale.

- (5) The buyer may not cancel a home solicitation sale if:
 - (a) the buyer requests the seller to provide goods or services without delay because of an emergency;
 - (b) the seller in good faith makes a substantial beginning of performance of the contract before the buyer gives notice of cancellation; and
 - (c) in the case of goods, the goods cannot be returned to the seller in substantially as good condition as when received by the buyer.
- (6) This section does not displace any rights the buyer may have under other sections of this title, other statutes of this state, or federal law.

Enacted by Chapter 159, 1985 General Session

70C-5-103 Form of agreement or offer -- Statement of buyer's rights.

- (1) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller shall present to the buyer and obtain his signature to a written agreement or offer to purchase which designates as the date of the transaction the date on which the buyer actually signs and contains a statement of the buyer's rights which complies with Subsection (2).
- (2) The statement shall:
 - (a) appear under the conspicuous caption: "BUYER'S RIGHT TO CANCEL"; and
 - (b) read as follows:

"If this agreement was solicited at your residence or place of employment and you do not want the goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight on the third business day after you sign this agreement. The notice must be mailed to: _____ (insert name and mailing address of seller)."
- (3) Compliance with any notice of cancellation or similar requirement of any rule of the Federal Trade Commission which by its terms applies to a home solicitation sale covered by this title is deemed compliance with Subsection (2)(b) if compliance is totally consistent with this title.
- (4) Until the seller has complied with this section the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his intention to cancel.

Enacted by Chapter 159, 1985 General Session

70C-5-104 Restoration of down payment.

- (1) Within 10 days after a home solicitation sale has been canceled or an offer to purchase revoked the seller shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.
- (2) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the seller. If the seller fails to tender the goods as provided by this section, the buyer may recover an amount equal to the trade-in allowance stated in the agreement.
- (3) A provision permitting the seller to keep all or any part of any payment, note, or evidence of indebtedness is in violation of this section and unenforceable.
- (4) Until the seller has complied with the obligations imposed by this section the buyer may retain possession of goods delivered to him by the seller and has a lien on the goods in his possession or control for any recovery to which he is entitled.

Enacted by Chapter 159, 1985 General Session

70C-5-105 Duty of buyer -- No compensation for services prior to cancellation.

- (1) Except as provided by the provisions on retention of goods by the buyer under Subsection 70C-5-104(4), within a reasonable time after a home solicitation sale has been canceled or an offer to purchase revoked, the buyer upon demand shall tender to the seller any goods delivered by the seller pursuant to the sale, but he is not obligated to tender at any place other than his residence or place of employment. If the seller fails to demand possession of goods within a reasonable period of time after cancellation or revocation, the goods become the property of the buyer without obligation to pay for them. For the purpose of this section, 40 days is a reasonable period of time.
- (2) The buyer has a duty to take reasonable care of the goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk.
- (3) If the seller has performed any services pursuant to a home solicitation sale prior to its cancellation, the seller is entitled to no compensation.

Enacted by Chapter 159, 1985 General Session

**Chapter 6
Insurance**

**Part 1
Insurance in General**

70C-6-101 Scope -- Relation to credit insurance -- Applicability to parties.

- (1) Except as provided in Subsection (2), this chapter applies to insurance provided or to be provided in connection with any consumer credit transaction subject to this title.
- (2) The provision on cancellation by a creditor under Section 70C-6-304 applies to extensions of credit, the primary purpose of which is the financing of insurance. No other provision of this chapter applies to insurance so financed.
- (3) Except as provided elsewhere under this title, this chapter supplements and does not supersede Title 31A, Chapter 22, Part 8, Credit Life and Accident and Health Insurance. The provisions of this title concerning administrative controls, liabilities, and penalties do not apply to persons acting as insurers, and the similar provisions of the Credit Insurance Act do not apply to creditors and debtors.

Amended by Chapter 90, 2004 General Session

70C-6-102 Definition -- Consumer credit insurance.

"Consumer credit insurance" means insurance, other than insurance on property, by which the satisfaction of debt in whole or in part is a benefit provided, but does not include:

- (1) insurance issued as an isolated transaction on the part of the insurer not related to an agreement or plan for insuring debtors of the creditor; or
- (2) insurance indemnifying the creditor against loss due to the debtor's default.

Enacted by Chapter 159, 1985 General Session

70C-6-103 Creditor's provision of and charge for insurance -- Excess amount of charge.

- (1) Except as otherwise provided in this chapter, a creditor may agree to provide insurance. If insurance is not required, a charge for such insurance shall be separate from and in addition to other charges. A creditor shall separately disclose any charge for insurance required and provided by it. This title does not authorize the issuance of any insurance prohibited under any statute, rule, or regulation.
- (2) A charge for insurance which exceeds the maximum authorized by Section 70C-6-105 is an excess charge for the purposes of Chapter 7, Remedies and Penalties, on remedies and penalties, as to effect of violations on rights of parties under Section 70C-7-201, and of Chapter 8, Administration, on administration.

Enacted by Chapter 159, 1985 General Session

70C-6-104 Conditions applying to insurance to be provided by creditor.

If a creditor agrees with a debtor to provide insurance:

- (1) the insurance shall be evidenced by an individual policy or certificate of insurance delivered to the debtor, or sent to him at his address as stated by him, within 30 days after the term of the insurance commences under the agreement between the creditor and debtor; or
- (2) the creditor shall promptly notify the debtor of any failure or delay in providing the insurance.

Enacted by Chapter 159, 1985 General Session

70C-6-105 Maximum charge by creditor for insurance.

If a creditor contracts for or receives a separate charge for insurance, the amount charged the debtor for the insurance may not exceed the premium to be charged by the insurer, without deduction for commissions, as computed at the time the charge to the debtor is determined, conforming to any rate filings required by law and made by the insurer with the commissioner of insurance.

Enacted by Chapter 159, 1985 General Session

70C-6-106 Refund or credit required -- Amount.

- (1) A debtor or his estate is entitled to any rebate or refund due from an insurer and to any unearned part of a separate charge for insurance previously paid by the debtor, resulting from the prepayment of a consumer credit debt, except when all refunds and credits due to the debtor under this title amount to less than \$5.
- (2) A creditor shall promptly make or cause to be made an appropriate refund or credit to the debtor with respect to any separate charge made to him for insurance if:
 - (a) the insurance is not provided or is provided for a shorter term than that for which the charge to a debtor for insurance was computed; or
 - (b) the insurance terminates prior to the end of the term for which it was written because of prepayment in full or otherwise.
- (3) All refunds or credit required by this section shall be computed according to a method prescribed or approved by the Insurance Department or formula filed by the insurer with the Insurance Department at least 30 days before any debtor's right to a refund or credit becomes

determinable, unless the method or formula is employed after the Insurance Department notifies the insurer that the method or formula has been disapproved.

- (4) Except as provided in Subsection (1), a creditor is not obligated to account to a debtor for any portion of a separate charge for insurance when:
- (a) the insurance is terminated by performance of the insurer's obligation;
 - (b) the creditor pays or accounts for premiums to the insurer in amounts and at times determined by the agreement between them; or
 - (c) the creditor receives directly or indirectly under any policy of insurance a gain or advantage not prohibited by law.

Enacted by Chapter 159, 1985 General Session

70C-6-107 Existing insurance -- Choice of insurer.

If a creditor requires insurance, upon notice to the creditor the debtor may provide the required insurance through an existing policy of insurance owned or controlled by the debtor, or through a policy to be obtained and paid for by the debtor, but the creditor may for reasonable cause decline the insurance provided by the debtor.

Enacted by Chapter 159, 1985 General Session

70C-6-108 Charge for insurance in connection with a deferral, refinancing, or consolidation -- Duplicate charges.

A creditor may contract for and receive a separate charge for insurance in connection with a deferral, a refinancing, or a consolidation if:

- (1) the debtor agrees at or before the time of the deferral, refinancing, or consolidation that the charge may be made;
- (2) the insurance is not required by the creditor as a condition of granting the deferral, refinancing, or consolidation, unless the insurance is of a type which the creditor may lawfully require a debtor to obtain in connection with an extension of credit;
- (3) the terms and conditions of the insurance to be provided comply with all requirements of this chapter; and
- (4) the debtor receives an appropriate refund or credit on account for any unexpired term of existing insurance which is duplicated to any degree by the insurance to be provided in connection with the deferral, refinancing, or consolidation.

Enacted by Chapter 159, 1985 General Session

Part 2
Consumer Credit Insurance

70C-6-201 Term of insurance.

- (1) Consumer credit insurance provided by a creditor may be subject to the furnishing of evidence of insurability satisfactory to the insurer. Whether or not this evidence is required, the term of the insurance shall commence no later than when the debtor becomes obligated to the creditor or when the debtor applies for the insurance, whichever is later, except as follows:

- (a) if any required evidence of insurability is not furnished until more than 30 days after the term would otherwise commence, the term may commence on the date when the insurer determines the evidence to be satisfactory; or
 - (b) if the creditor provides insurance not previously provided covering debts previously created, the term may commence on the effective date of the policy.
- (2) With respect to a closed-end credit agreement, the originally scheduled term of the insurance shall extend at least until the due date of the last scheduled payment of the debt, but may not extend more than 15 days after the originally scheduled due date of the last scheduled payment of the debt unless:
- (a) it is extended without additional cost to the debtor;
 - (b) it is extended in connection with a deferral, refinancing, or consolidation; or
 - (c) if the debtor is advised in writing that the insurance will be written for a specified shorter time, the term need extend only until the end of the specified time.
- (3) With respect to an open-end credit agreement, if the creditor agrees to provide consumer credit insurance, the creditor shall provide sufficient insurance to pay the unpaid balance in the open-end account at any point in time up to the limit of the line of credit granted, unless the parties to the credit agreement specifically agree in writing the insurance provided may be for a definite or limited term, and may be for a maximum amount less than the unpaid balance in the account at any time or less than the maximum amount of credit authorized.

Enacted by Chapter 159, 1985 General Session

70C-6-202 Maximum amount of insurance.

- (1) With respect to a closed-end credit agreement:
- (a) in the case of consumer credit insurance providing life coverage, the amount of insurance may not initially exceed the debt and, if the debt is payable in installments, may not at any time exceed the greater of the scheduled or actual amount of the debt; and
 - (b) in the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed the total of scheduled unpaid installments of the debt, and the amount of any periodic benefit may not exceed the original amount of debt divided by the number of periodic installments in which it is payable.
- (2) With respect to an open-end credit agreement:
- (a) in the case of consumer credit insurance providing life coverage, the amount of insurance may not exceed the unpaid balance in the account at any point in time; and
 - (b) in the case of any other consumer credit insurance, the total amount of periodic benefits payable may not exceed the total of scheduled installments to pay the unpaid balance of the debt at any point in time.

Enacted by Chapter 159, 1985 General Session

70C-6-203 Filing and approval of rates and forms.

- (1) A creditor may use a form or a schedule of premium rates or charges concerning consumer credit insurance only if the form or schedule has been on file with the Insurance Department for at least 30 days and has not been disapproved by the Insurance Department or has been specifically approved by the Insurance Department at any time after filing.
- (2) Except as provided in Subsection (3), all policies, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders relating to consumer credit insurance delivered or issued for delivery in this state, and the schedules of premium rates or

charges pertaining to them, shall be filed by the insurer with the Insurance Department. Within 30 days after the filing of any form or schedule, the Insurance Department shall disapprove it if the premium rates or charges are unreasonable in relation to the benefits provided under the form, or if the form contains provisions which are unjust, unfair, inequitable, or deceptive, or encourages misrepresentation, or are contrary to any provisions of this title, or Title 31A, Chapter 22, Part 8, Credit Life and Accident and Health Insurance, or of any rule adopted under that act or this title.

- (3) If a group policy has been delivered in another state, the forms to be filed by the insurer with the Insurance Department are the group certificates and notices of proposed insurance. The Insurance Department shall approve those certificates and notices if:
- (a) they provide the information that would be required if the group policy were delivered in this state; and
 - (b) the applicable premium rates or charges do not exceed those established by the Insurance Department's rules.

Amended by Chapter 90, 2004 General Session

Part 3

Property and Liability Insurance

70C-6-301 Property insurance.

- (1) A creditor may not contract for or receive a separate charge for insurance against loss of or damage to property related to the credit transaction unless:
- (a) the insurance covers a significant risk of loss of or damage to the property;
 - (b) the amount, terms, and conditions of the insurance are reasonable in relation to the character and value of the property insured or to be insured; and
 - (c) the term of the insurance is reasonable in relation to the terms of credit.
- (2) The term of insurance is reasonable if it is customary and does not extend substantially beyond a scheduled maturity.

Enacted by Chapter 159, 1985 General Session

70C-6-302 Insurance on creditor's interest only.

If a creditor contracts for or receives a separate charge for insurance against loss of or damage to property, the risk of loss or damage not willfully caused by the debtor is on the debtor only to the extent of any deficiency in the effective coverage of the insurance, even though the insurance covers only the interest of the creditor.

Enacted by Chapter 159, 1985 General Session

70C-6-303 Liability insurance.

A creditor may not contract for or receive a separate charge for insurance against liability arising out of the ownership or use of property related to the credit transaction, unless the insurance covers a significant risk of liability.

Enacted by Chapter 159, 1985 General Session

70C-6-304 Cancellation by creditor.

A creditor may not request cancellation of a policy of property or liability insurance except after the debtor's default or in accordance with a written authorization by the debtor, and in either case the cancellation does not take effect until written notice is delivered to the debtor or mailed to him at his address as stated by him. The notice shall state that the policy may be cancelled on a date not less than 10 days after the notice is delivered, or, if the notice is mailed, not less than 13 days after it is mailed.

Enacted by Chapter 159, 1985 General Session

**Chapter 7
Remedies and Penalties**

**Part 1
Limitation on Creditors' Remedies**

70C-7-101 Restriction on deficiency judgments in consumer credit sales.

- (1) If a seller repossesses or voluntarily accepts the surrender or return of goods that were the subject of a consumer credit sale and in which the seller has a security interest to secure a debt arising from the sale of goods or services or a combined sale of goods and services, and the cash price of the sale was \$3,000 or less, any debt remaining from the sale shall be fully satisfied and the seller has no further obligation to the buyer with respect to the goods taken or accepted.
- (2) If the seller brings an action against the buyer for a debt arising from a consumer credit sale of goods or services, when under this section the creditor would not be entitled to a deficiency judgment if it repossessed the collateral, and obtains judgment:
 - (a) it may not repossess the collateral; and
 - (b) the collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.
- (3)
 - (a) Subsections (1) and (2) do not apply if the goods that were the subject of the sale and that secured a debt arising from a consumer credit sale are damaged to a significant degree after the goods are delivered to the buyer through no fault of the creditor.
 - (b) Subsection (2) does not apply if, after default and before the filing of an action against the buyer, the buyer fails to surrender and deliver the collateral to the creditor.
 - (c) Subsections (1) and (2) do not apply if an action taken by the buyer would make the collection of a judgment unenforceable, including the filing of bankruptcy.
- (4) Notwithstanding any other provision of this section, a creditor has no obligation to accept the surrender of collateral.

Amended by Chapter 435, 2011 General Session

70C-7-102 No garnishment before judgment.

Prior to entry of judgment in an action against a debtor relating to a consumer credit agreement, the creditor may not attach unpaid earnings of the debtor by garnishment or like proceedings.

Enacted by Chapter 159, 1985 General Session

70C-7-103 Definitions -- Limitation on garnishment.

- (1) As used in this part:
 - (a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld.
 - (b) "Education loan" means a loan subject to this title, or notwithstanding Subsection 70C-1-202(2)(h)(ii)(B)(II), made by a depository institution that:
 - (i) is closed end;
 - (ii) is a qualified education loan as defined in 26 U.S.C. Sec. 221(d);
 - (iii) expressly states in the original loan documents that it is a qualified education loan or the proceeds will be used solely for qualified higher education expenses as defined in 26 U.S.C. Sec 221(d); and
 - (iv) in a bankruptcy filing, the loan or any indebtedness relating to the loan is subject to the provisions of 11 U.S.C. Sec. 523(a)(8).
 - (c) "Garnishment" means a legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.
- (2) The maximum part of the aggregate disposable earnings of an individual for any pay period that is subjected to garnishment to enforce payment of a judgment arising from a consumer credit agreement may not exceed the lesser of:
 - (a) 25% of the individual's disposable earnings for that pay period;
 - (b) the amount by which the individual's disposable earnings for that pay period exceed 30 hours per week multiplied by the federal minimum hourly wage prescribed by Section 6(a)(1) of the Fair Labor Standards Act of 1938, 29 U.S.C. Sec. 206(a)(1), in effect at the time the earnings are payable; or
 - (c) 15% of the individual's disposable earnings for that pay period if the judgment relates to an education loan.
- (3) A court may not make, execute, or enforce an order or process in violation of this section.

Amended by Chapter 84, 2014 General Session

70C-7-104 No discharge from employment for garnishment.

No employer may discharge any employee because his earnings have been subject to garnishment in connection with any one judgment.

Enacted by Chapter 159, 1985 General Session

70C-7-105 Extortionate extensions of credit.

If it is the understanding of the creditor and the debtor at the time an extension of credit is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person, the repayment of the extension of credit is unenforceable through any judicial proceedings against the debtor.

Enacted by Chapter 159, 1985 General Session

70C-7-106 Unconscionability.

- (1) With respect to a consumer credit agreement, if the court finds the agreement or any part of the agreement to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or it may enforce the remainder of the agreement without the unconscionable clause if that will avoid any unconscionable result.
- (2) If it is claimed or appears to a court that a consumer credit agreement or any part of it may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making the determination.
- (3) For the purposes of this section, a charge or practice expressly permitted by this title is not in itself unconscionable.
- (4) If the court as a matter of law finds a consumer credit agreement or any part of the agreement to have been unconscionable, then in addition to the relief provided for in Subsection (1), the party in violation of this section is liable and the debtor may recover from it a penalty in an amount determined by the court of:
 - (a) not less than \$100 nor more than \$5,000; and
 - (b) the cost of the action together with a reasonable attorney's fee.
- (5) The penalties provided for in Subsection (4) may not be imposed upon an assignee of the creditor's rights in a consumer credit contract found as a matter of law to be unconscionable in whole or in part unless the debtor establishes by a preponderance of the evidence that the assignee knew the agreement was a consumer credit contract at the time the assignment occurred and also knew of the facts or circumstances on which the court based its finding of unconscionability.
- (6) No class action may be brought under this section except for injunctive or declaratory relief.
- (7) Nothing contained in Subsection (6) prevents the recovery of penalties by a debtor as provided in Subsection (4).

Enacted by Chapter 159, 1985 General Session

70C-7-107 Notice of negative credit report required.

- (1) As used in this section:
 - (a) "Creditor," in addition to its definition under Section 70C-1-302, includes an agent of a creditor engaged in administering or collecting the creditor's accounts.
 - (b) "Credit reporting agency" means any credit bureau, consumer reporting agency, association of lending institutions, association of merchants, association of other creditors, any person, firm, partnership, cooperative, or corporation which, for a fee, dues, or on a cooperative nonprofit basis, is organized for the purpose of, or regularly engages in, the gathering or evaluating of consumer credit information or other information about consumers for the purpose of reporting to third parties on the credit rating or creditworthiness of any party.
 - (c)
 - (i) "Negative credit report" means information reflecting on the credit history of a party that, because of the party's past delinquencies, late or irregular payment history, insolvency, or any form of default, would reasonably be expected to affect adversely the party's ability to obtain or maintain credit.
 - (ii) Negative credit report does not include information or credit histories arising from a nonconsumer transaction or any other credit transaction outside the scope of this title, nor does it include inquiries about a consumer's record.

- (2) A creditor may submit a negative credit report to a credit reporting agency, only if the creditor notifies the party whose credit record is the subject of the negative report. After providing this notice, a creditor may submit additional information to a credit reporting agency respecting the same transaction or extension of credit that gave rise to the original negative credit report without providing any additional notice.
- (3)
 - (a) A creditor shall provide the notice described in Subsection (2):
 - (i) in writing;
 - (ii) by:
 - (A) in-person delivery;
 - (B) first class mail, postage prepaid, to the party's last-known address; or
 - (C) if the party has consented to receive notices by electronic mail, by electronic mail; and
 - (iii) no more than 30 days after the day on which the creditor submits the negative credit report to the credit reporting agency.
 - (b) The notice may be part of any notice of default, billing statement, or other correspondence from the creditor to the party.
 - (c) The notice is sufficient if it takes substantially the following form:

"As required by Utah law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations."
 - (d) The notice may, in the creditor's discretion, be more specific than the form given in Subsection (3)(c). For example, the notice may provide particular information regarding an account or list the approximate date on which the creditor submitted or intends to submit a negative credit report.
- (4)
 - (a) A creditor who fails to provide notice as required by this section is liable to the injured party for actual damages. In any cause of action filed to determine the liability of a creditor or damages, the prevailing party in such an action is entitled to court costs and attorney's fees.
 - (b) If a creditor willfully violates this section, the court may award punitive damages in an amount not in excess of two times the amount of the actual damages awarded.
 - (c) A creditor is not liable for failure to provide notice if he establishes by a preponderance of the evidence that, at the time of his failure to give notice, he maintained reasonable procedures to comply with this section.
- (5) A creditor is not required to comply with this section in violation of 11 U.S.C. Sec. 362, as amended.

Amended by Chapter 144, 2020 General Session

Part 2

Debtors' Remedies

70C-7-201 Effect of violations by creditors -- Penalties -- Debtor's rights.

- (1) A debtor is not obligated to pay a charge in excess of that allowed by this title, and if he has paid an excess charge he has a right to a refund. A refund may be made in whole or in part by reducing the debtor's obligation by the amount of the excess charge. If the debtor has paid an amount in excess of the lawful obligation under the agreement, the debtor may recover

the excess amount from the party who made the excess charge or from an assignee of the creditor's rights who undertakes direct collection of payments from or enforcement of rights against the debtor with respect to the debt.

- (2) If a debtor is entitled to a refund and a party liable to the debtor in bad faith refuses to make a refund within a reasonable time after demand, the debtor may recover from that party a penalty in an amount to be determined by a court not exceeding the greater of either the amount of the finance charge or 10 times the amount of the excess charge. If the creditor has made an excess charge in deliberate violation of or in reckless disregard for this title, the penalty may be recovered even though the creditor has refunded the excess charge.

Enacted by Chapter 159, 1985 General Session

70C-7-202 Assignees of creditor.

Except as otherwise specifically provided in this title, or unless the assignment is involuntary, any civil action for violation of this title which may be brought against the original creditor in any consumer credit transaction may be maintained against any subsequent assignee of the original creditor where the violation from which the alleged liability arose is apparent on the face of the instrument assigned.

Enacted by Chapter 159, 1985 General Session

70C-7-203 Refunds and penalties as setoff to obligation.

Refunds or penalties to which the debtor is entitled under this part may be set off against the debtor's obligation and may be raised as a defense to a suit on the obligation without regard to the time limitations prescribed by this part.

Enacted by Chapter 159, 1985 General Session

70C-7-204 Attorney's fees.

In any case where it is found that a creditor has violated this title or its agreement with the debtor, the court may award reasonable attorney's fees to the debtor.

Enacted by Chapter 159, 1985 General Session

70C-7-205 Statute of limitations.

No action under this title may be brought more than one year after the date of the occurrence of the violation. This section does not bar a person from asserting a violation of this title in an action to collect the debt which is brought more than one year after the date of the occurrence of the violation as a matter of defense by recoupment or setoff to the extent of the outstanding balance of the debt.

Enacted by Chapter 159, 1985 General Session

70C-7-206 Creditor's defenses.

- (1) If a creditor establishes by a preponderance of evidence that a violation of this title is unintentional or the result of a bona fide error, no penalty as specified in Sections 70C-7-201 and 70C-7-204 may be imposed and the validity of the transaction is not affected.

- (2) A creditor or assignee has no liability under this part for any failure to comply with any requirement imposed under this title if within 60 days after discovering an error, and prior to the institution of an action under this chapter or the receipt of written notice of the error from the debtor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.
- (3) No provision of this part imposing any penalty applies to any action done or omitted in good faith in conformity with some provision of this title, notwithstanding that after the action or omission has occurred the provision is amended, rescinded, or determined by judicial or other competent authority to be invalid for any reason.

Enacted by Chapter 159, 1985 General Session

Chapter 8 Administration

Part 1 Powers and Functions of Department

70C-8-101 Administration of title.

- (1) As used in this chapter, "department" means the Department of Financial Institutions.
- (2) This title shall be administered by the department.

Enacted by Chapter 159, 1985 General Session

70C-8-102 Powers of department -- Conformity with federal law -- Reliance on rules.

- (1) In addition to other powers granted by this title, the department, within the limitations provided by law, may:
 - (a) receive and act on complaints, take action designed to obtain voluntary compliance with this title, or commence administrative or judicial proceedings on its own initiative;
 - (b) counsel persons and groups on their rights and duties under this title;
 - (c) establish programs for the education of consumers with respect to credit practices and problems;
 - (d) make studies appropriate to effectuate the purposes and policies of this title and make the results available to the public;
 - (e) adopt, amend, and repeal rules to supplement, interpret, or carry out the provisions of this title;
 - (f) maintain offices within this state; and
 - (g) employ any necessary hearing examiners, clerks, and other employees and agents.
- (2) The department may adopt rules that supersede any provisions of this title that are or come into conflict with the Federal Consumer Credit Protection Act or its implementing Regulation Z if the department:
 - (a) finds such a conflict to exist; and
 - (b) declares that the purpose of superseding this title is to resolve that conflict.

- (3) Except for refund of an excess charge, no liability is imposed under this title for an act done or omitted in conformity with the rule of the department, notwithstanding that after the act or omission the rule may be amended or repealed or be determined by judicial or other competent authority to be invalid for any reason.
- (4) A rule or any part of a rule adopted by the department under this title may not be determined by any judicial or other authority to be invalid in whole or in part unless such judicial or other authority expressly finds that the rule or part of the rule is arbitrary, capricious, and constitutes an abuse of discretion, or exceeds the authority granted to the department by this title, or is otherwise unlawful.
- (5) The department shall coordinate with representatives of education, government, and the financial services industry and assist in the preparation of an initiative to develop, implement, and monitor a financial services education curriculum that is:
 - (a) to be made available to the public; and
 - (b) appropriate for use in the public schools.

Amended by Chapter 43, 2013 General Session

70C-8-103 Investigatory powers -- Evidence.

- (1) The department shall conduct studies and examinations of parties subject to this title it deems necessary and appropriate to monitor the kinds and amounts of credit that are being extended to consumers in this state to determine whether violations of this title and other applicable laws, rules, and regulations pertaining to consumer credit are occurring and the frequency and seriousness of them, and to obtain additional information the department deems necessary or useful to perform its duties as administrator of this title.
- (2) In addition to the studies and examinations provided for in Subsection (1), if the department has probable cause to believe that a party has engaged in an act which is subject to action by the department, it may make an investigation to determine if the act has been committed. To the extent necessary for this purpose, the department may administer oaths or affirmations under penalty of perjury, and, upon its own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence under penalty of perjury, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things of any kind or nature and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.
- (3) If the department requires the production of records which are located outside this state, the party shall either make them available to the department at a convenient location within this state or pay the reasonable and necessary expenses for the department to examine them at the place where they are maintained. The department may designate representatives, including officials of the state in which the records are located, to inspect them on its behalf.
- (4) Upon failure without lawful excuse to obey a subpoena or give testimony, and upon reasonable notice to all affected persons, the department may apply to the district court for an order compelling compliance.
- (5) The department may not make public the name or identity of a person whose acts or conduct it investigates pursuant to this section or the facts disclosed in the investigation.
- (6) Subsection (5) does not apply to disclosures in enforcement proceedings conducted pursuant to this title.

Enacted by Chapter 159, 1985 General Session

70C-8-104 Enforcement proceedings.

- (1)
 - (a) The department may take an action described in Subsection (1)(b) if the department determines that any party engaging in activities subject to this title is violating or has violated or the department has reasonable cause to believe is about to violate:
 - (i) any applicable provision of this title;
 - (ii) any rule or order under this title;
 - (iii) any condition imposed in writing in connection with the granting of any application or other request by the party; or
 - (iv) any federal statute or regulation pertaining to consumer credit in effect at the time of the determination described in Subsection (1)(a).
 - (b) If the department makes a determination described in Subsection (1)(a), the department may:
 - (i) order the party to cease and desist from committing any further violations; and
 - (ii) in the most serious instances, prohibit a party from making further extensions of credit to consumers.
 - (c) The department shall by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this chapter, designate which one or more federal statutes or regulations are federal statutes or regulations pertaining to consumer credit for purposes of this Subsection (1).
- (2) The department shall afford an opportunity for hearing upon request of any party described in Subsection (1)(a) if the request is filed with the department within 30 days after the party requesting the hearing first receives notice of the allegations.
- (3)
 - (a) If the department determines that a practice that it has alleged is unlawful should be enjoined during the pendency of any proceedings incident to that allegation, the department may issue a temporary order:
 - (i) at the commencement of the proceedings; or
 - (ii) at any time after commencement of the proceeding.
 - (b) The temporary order described in this Subsection (3) is fully binding on the party to whom the temporary order is directed until:
 - (i) the proceedings are concluded; or
 - (ii) the temporary order is modified or dissolved by the department.
 - (c) Any party to whom a temporary order is directed may request a hearing concerning the order, which shall be held:
 - (i) at the earliest mutually convenient time, but in no event more than 10 days, after the party's request is received by the department; or
 - (ii) at any other time the parties may mutually agree upon.
 - (d) Every temporary order shall include findings and conclusions in support of the order.
 - (e) A temporary order may not be issued unless the department finds from specific facts supported by sworn statement or the records of a party subject to the order that consumers are otherwise likely to suffer immediate and irreparable injury, loss, or damage before proceedings, incident to a final order, can be completed.
- (4) The department may not award damages or penalties against a creditor.
- (5)
 - (a) Any order issued by the department under authority of this title shall:
 - (i) be in writing;

- (ii) be delivered to or served upon the party affected; and
 - (iii) specify its effective date, which may be immediate or at a later date.
- (b) An order described in Subsection (5)(a) shall remain in effect until:
- (i) withdrawn by the department; or
 - (ii) terminated by a court order.
- (c)
- (i) An order of the department, upon application made on or after the effective date of the order by the department to a court of general jurisdiction in the county in which an office or the residence of the party is located, may be enforced ex parte and without notice by an order to comply entered by the court.
 - (ii) If the proceeding involves more than one party and each of the parties does not have an office or residence in one county, the department may file its application in any county of this state where one of the parties has an office or residence.
 - (iii) If no party to the proceeding has an office or residence in the state, the department's application shall be filed in the Third District Court.

Amended by Chapter 382, 2008 General Session

70C-8-105 Judicial review.

- (1) Any party aggrieved by any rule, order, temporary order, decision, ruling, or other act or failure to act by the department under this title is entitled to judicial review. Within 30 days after receiving notice of a rule, order, temporary order, decision, or other ruling, or within 120 days after the department has failed to act upon a request or application, the aggrieved party may file an application for judicial review with a court of competent jurisdiction in the county in which the applicant is located or in the Third District Court. The court may void any rule, order, temporary order, decision, ruling, or other act of the department it finds to be arbitrary, capricious, an abuse of discretion, in excess of the department's authority, or otherwise contrary to law.
- (2) Any party upon showing that it may be subject to potential irreparable injury by any proposed rule or order of the department may, without exhausting its administrative remedies, apply for a declaratory judgment as to any question of law arising out of the rule or order. The applications shall be filed in the Third District Court.
- (3) Any action for judicial review of acts or failures to act of the department shall be heard by the court and shall be based on the record made before the department unless the court finds good cause to admit additional and otherwise proper evidence.
- (4) Filing an application for judicial review does not stay the adoption or enforcement of any rule, order, temporary order, decision, or ruling of the department. The court may expressly stay any rule, order, decision, or ruling of the department during the pendency of judicial proceedings challenging them upon terms and conditions it deems appropriate after finding that the possible harm to all interested parties is, on balance, likely to be less if the stay is imposed, or if the applicant and the department stipulate to the imposition of a stay.

Enacted by Chapter 159, 1985 General Session

70C-8-106 Debtor's remedies not affected.

The grant of powers to the department in this chapter does not affect any remedies available to debtors under this title or under other principles of law or equity.

Enacted by Chapter 159, 1985 General Session

70C-8-107 Temporary or injunctive relief against unconscionable and fraudulent conduct.

- (1) The department may bring a civil action to enjoin a person subject to this title from:
 - (a) making or enforcing a term of consumer credit transactions that is unconscionable;
 - (b) engaging in fraudulent conduct in inducing consumers to enter into a consumer credit transaction; or
 - (c) engaging in conduct of the type specified in Subsection (1)(a) or (b) with respect to a transaction that gives rise to or leads a person to believe will give rise to a consumer credit transaction.
- (2) An action brought pursuant to this section is subject to the requirements of Utah Rules of Civil Procedure, Rule 65A.

Enacted by Chapter 208, 1999 General Session

**Part 2
Notification and Fees**

70C-8-201 Applicability.

- (1) Except as provided in Subsection (2), this part applies to:
 - (a) a creditor that is subject to this title; and
 - (b) a party who:
 - (i) has an office or place of business in this state; and
 - (ii) takes an assignment of or undertakes direct collection of a payment from or enforcement of a right against a debtor arising from a consumer credit transaction.
- (2) Except where otherwise indicated, the following are exempt from this part:
 - (a) a depository institution as defined in Section 7-1-103 that is federally insured; and
 - (b) a wholly owned subsidiary of a depository institution described in Subsection (2)(a).

Amended by Chapter 72, 2009 General Session

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 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 evidence satisfactory to the commissioner that the person 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
 - (viii) provide 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.

Amended by Chapter 73, 2013 General Session

70C-8-203 Fees -- Examinations.

- (1) A party required to file notification under Section 70C-8-202 shall, on or before January 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.

Amended by Chapter 97, 2014 General Session