

New Utah Consumer Credit Laws Take Effect

May 31, 2017 | [Eric D. Mulligan](#)

On May 9, most laws from the 2017 Utah legislative session took effect. Several of these laws are relevant to the consumer financial services industry. Here's a rundown of some important changes:

Mortgage Lending: House Bill 196 amends the Utah Residential Mortgage Practices and Licensing Act, Utah Code Ann. §§ 61-2c-101 *et seq.* The bill removes licensing exemptions for the following clerical and support duties related to origination:

- the receipt, collection or distribution of information for loan processing or underwriting;
- communicating with a potential borrower;
- word processing;
- sending correspondence;
- assembling files; and
- acting as a loan processor or underwriter (except as an employee of a licensed person).

It also makes clear that a loan processor or underwriter who is an independent contractor must be licensed. However, it adds an exemption for loan processors or underwriters who are employees of and under the supervision of licensed entities. We believe that the Legislature did not intend to change the scope of the licensing requirement. Rather, the changes simply moved some exemptions from one section of the statute to another. The changes most likely reflect an understanding that word processing, assembling files, and the other tasks above fall under the umbrella of loan processing and underwriting and do not need separate mentions in the statute.

The bill also specifies that each licensee must make its quarterly report to the Nationwide Multistate Licensing System and Registry within 75 days of the end of the reporting quarter.

Automobile Service Contracts: Senate Bill 55 expands the definition of "service contract" in the Insurance Code, Utah Code Ann. §§ 31a-1-101 *et seq.* The existing definition specifies that a service contract can provide for repairs to goods in case of a defect in materials or workmanship or normal wear and tear. The new definition also covers contracts that repair damage from "power surge or interruption, or accidental damage from handling." Additionally, the new definition specifically includes towing, a rental car, and emergency road service as items for which a service contract can provide indemnity. The bill removes prepaid maintenance contracts from the Insurance Code entirely.

Privacy Law: Senate Bill 99 adds to the remedies available under the Consumer Credit Protection Act, Utah Code Ann. §§ 13-44-101 *et seq.*, and the Protection of Personal Information Act, Utah Code Ann. §§ 13-45-101 *et seq.* Each act provides for civil penalties of up to \$2,500 for violations involving one consumer and up to \$100,000 for related violations concerning more than one consumer. Each act also provides for injunctive relief to prevent future violations. The new law allows the Attorney General to seek attorney fees and costs in an action to enforce either act. It also allows the Attorney General to enter into a confidentiality agreement with an individual who may have information relating to a violation of either act.

Unfair and Deceptive Acts and Practices: Senate Bill 33 allows the Division of Consumer Protection to seek a fine in an action against a person who violates the Utah Consumer Sales Practices Act, Utah Code Ann. §§ 13-11-1 *et seq.* A court deciding the amount of a fine must consider the seriousness of the violation and the resulting harm. The court may consider mitigating factors, such as whether the person cooperated in the investigation, tried to prevent the violation, or tried to mitigate damages from the violation, as well as any history of previous violations.

Other Consumer Finance Laws: House Bill 430 amends the Dishonored Instruments provisions, Utah Code Ann. §§ 7-15-1 *et seq.* The new law changed the model notice a payee must send if the payee wants to collect additional statutory penalties and sue for damages under the bad check law. The bill replaces the word "filed" in the notice (in reference to a lawsuit) to the word "commenced."

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