

## **Chapter 2**

### **Division of Consumer Protection**

#### **13-2-1 Consumer protection division established -- Functions.**

- (1) There is established within the Department of Commerce the Division of Consumer Protection.
- (2) The division shall administer and enforce the following:
  - (a)Chapter 5, Unfair Practices Act;
  - (b)Chapter 10a, Music Licensing Practices Act;
  - (c)Chapter 11, Utah Consumer Sales Practices Act;
  - (d)Chapter 15, Business Opportunity Disclosure Act;
  - (e)Chapter 20, New Motor Vehicle Warranties Act;
  - (f)Chapter 21, Credit Services Organizations Act;
  - (g)Chapter 22, Charitable Solicitations Act;
  - (h)Chapter 23, Health Spa Services Protection Act;
  - (i)Chapter 25a, Telephone and Facsimile Solicitation Act;
  - (j)Chapter 26, Telephone Fraud Prevention Act;
  - (k)Chapter 28, Prize Notices Regulation Act;
  - (l)Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
  - (m)Chapter 34, Utah Postsecondary Proprietary School Act;
  - (n)Chapter 34a, Utah Postsecondary School State Authorization Act;
  - (o)Chapter 41, Price Controls During Emergencies Act;
  - (p)Chapter 42, Uniform Debt-Management Services Act;
  - (q)Chapter 49, Immigration Consultants Registration Act; and
  - (r)Chapter 51, Transportation Network Company Registration Act.

Amended by Chapter 461, 2015 General Session

#### **13-2-2 Director of division -- Appointment.**

The division shall be under the supervision, direction, and control of a director. The director shall be appointed by the executive director of commerce with the approval of the governor. The director shall hold office at the pleasure of the governor.

Amended by Chapter 93, 1990 General Session

#### **13-2-3 Employment of personnel -- Compensation of director.**

- (1) The director, with the approval of the executive director, may employ personnel necessary to carry out the duties and responsibilities of the division at salaries established by the executive director according to standards established by the Department of Administrative Services.
- (2) The executive director shall establish the salary of the director according to standards established by the Department of Administrative Services.
- (3) The director may employ specialists, technical experts, or investigators to participate or assist in investigations if they reasonably require expertise beyond that normally required for division personnel.
- (4) An investigator employed pursuant to Subsection (3) may be designated a special function officer, as defined in Section 53-13-105, by the director, but is not eligible for retirement benefits under the Public Safety Employee's Retirement System.

Amended by Chapter 21, 1999 General Session

**13-2-4 Annual report -- Budget.**

- (1) On or before the 1st day of October each year, the director in connection with the executive director shall report to the governor and the Legislature for the preceding fiscal year on the operations, activities, and goals of the division.
- (2) The director shall prepare and submit to the executive director a budget of the administrative expenses for the division.

Enacted by Chapter 57, 1983 General Session

**13-2-5 Powers of director.**

The director has authority to:

- (1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, issue rules to administer and enforce the chapters listed in Section 13-2-1;
- (2) investigate the activities of any business governed by the laws administered and enforced by the division;
- (3) take administrative and judicial action against persons in violation of the division rules and the laws administered and enforced by it, including the issuance of cease and desist orders;
- (4) coordinate, cooperate, and assist with business and industry desiring or attempting to correct unfair business practices between competitors;
- (5) provide consumer information and education to the public and assist any organization providing such services; and
- (6) coordinate with, assist, and utilize the assistance of federal, state, and local agencies in the performance of the director's duties and the protection of the public.

Amended by Chapter 382, 2008 General Session

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

- (1) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division shall have authority to convene administrative hearings, issue cease and desist orders, and impose fines under all the chapters identified in Section 13-2-1.
- (2) Any person who intentionally violates a final cease and desist order entered by the division of which the person has notice is guilty of a third degree felony.
- (3) If the division has reasonable cause to believe that any person is engaged in violating any chapter listed in Section 13-2-1, the division may promptly issue the alleged violator a citation signed by the division's director or the director's designee.
  - (a) Each citation shall be in writing and shall:
    - (i) set forth with particularity the nature of the violation, including a reference to the statutory or administrative rule provision being violated;
    - (ii) state that any request for review of the citation shall be made in writing and be received by the division no more than 10 days following issuance;
    - (iii) state the consequences of failing to make a timely request for review; and
    - (iv) state all other information required by Subsection 63G-4-201(2).
  - (b) In computing any time period prescribed by this section, the following days may not be included:
    - (i) the day a citation is issued by the division;
    - (ii) the day the division received a request for review of a citation;

- (iii) Saturdays and Sundays; and
- (iv) a legal holiday set forth in Subsection 63G-1-301(1)(a).
- (c) If the recipient of a citation makes a timely request for review, within 10 days of receiving the request, the division shall convene an adjudicative proceeding in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- (d)
  - (i) If the presiding officer finds that there is not substantial evidence that the recipient violated a chapter listed in Section 13-2-1 at the time the citation was issued, the citation may not become final, and the division shall immediately vacate the citation and promptly notify the recipient in writing.
  - (ii) If the presiding officer finds there is substantial evidence that the recipient violated a chapter listed in Section 13-2-1 at the time the citation was issued, the citation shall become final and the division may enter a cease and desist order against the recipient.
- (e) A citation issued under this chapter may be personally served upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure. A citation also may be served by first-class mail, postage prepaid.
- (f) If the recipient fails to make a timely request for review, the citation shall become the final order of the division. The period to contest the citation may be extended by the director for good cause shown.
- (g) If the chapter violated allows for an administrative fine, after a citation becomes final, the director may impose the administrative fine.
- (4)
  - (a) A person violating a chapter identified in Section 13-2-1 is subject to the division's jurisdiction if:
    - (i) the violation or attempted violation is committed either wholly or partly within the state;
    - (ii) conduct committed outside the state constitutes an attempt to commit a violation within the state; or
    - (iii) transactional resources located within the state are used by the offender to directly or indirectly facilitate a violation or attempted violation.
  - (b) As used in this section, "transactional resources" means:
    - (i) any mail drop or mail box, whether or not located on the premises of a United States Post Office;
    - (ii) any telephone or facsimile transmission device;
    - (iii) any internet connection by a resident or inhabitant of this state with either a resident or nonresident maintained internet site;
    - (iv) any business office or private residence used for a business-related purpose;
    - (v) any account with or services of a financial institution;
    - (vi) the services of a common or private carrier; or
    - (vii) the use of any city, county, or state asset or facility, including any road or highway.
- (5) The director or the director's designee, for the purposes outlined in any chapter administered by the division, may administer oaths, issue subpoenas, compel the attendance of witnesses, and compel the production of papers, books, accounts, documents, and evidence.

Amended by Chapter 378, 2010 General Session

**13-2-7 Violation of restraining or injunctive order -- Civil penalty.**

If any restraining order, any chapter administered by the division, or injunction granted under this chapter is violated, the division may submit a motion for, or the court on its own motion,

may impose a civil penalty of not more than \$2,000 for each day a temporary restraining order, preliminary injunction or permanent injunction issued under this chapter is violated, if the party has received notice of the restraining or injunctive order.

Amended by Chapter 177, 1994 General Session

**13-2-8 Consumer Protection Education and Training Fund.**

- (1) There is created an expendable special revenue fund known as the "Consumer Protection Education and Training Fund."
- (2)
  - (a) Unless otherwise provided by a chapter listed in Section 13-2-1, all money not distributed as consumer restitution that is received by the division from administrative fines and settlements, from criminal restitution, or from civil damages, forfeitures, penalties, and settlements when the division receives the money on its own behalf and not in a representative capacity, shall be deposited into the fund.
  - (b) Any portion of the fund may be maintained in an interest-bearing account.
  - (c) All interest earned on fund money shall be deposited into the fund.
- (3) Notwithstanding Title 63J, Chapter 1, Budgetary Procedures Act, the division may use the fund with the approval of the executive director of the Department of Commerce in a manner consistent with the duties of the division under this chapter for:
  - (a) consumer protection education for members of the public;
  - (b) equipment for and training of division personnel;
  - (c) publication of consumer protection brochures, laws, policy statements, or other material relevant to the division's enforcement efforts; and
  - (d) investigation and litigation undertaken by the division.
- (4) If the balance in the fund exceeds \$500,000 at the close of any fiscal year, the excess shall be transferred to the General Fund.

Amended by Chapter 124, 2013 General Session

Amended by Chapter 400, 2013 General Session

**13-2-9 Internet -- Consumer education.**

- (1) The Division of Consumer Protection shall, subject to appropriation, contract with a person to make public service announcements advising consumers about the dangers of using the Internet, especially:
  - (a) material harmful to minors;
  - (b) steps a consumer may take to learn more about the dangers of using the Internet;
  - (c) information about how a service provider can help a consumer learn more about the dangers of using the Internet, including the service provider's duties created by this bill; and
  - (d) how a consumer can monitor the Internet usage of family members.
- (2) Money appropriated under Subsection (1) shall be paid by the Division of Consumer Protection to a person only if:
  - (a) the person is a nonprofit organization; and
  - (b) the person agrees to spend private money amounting to two times the amount of money provided by the Division of Consumer Protection during each fiscal year in accordance with Subsection (1).
- (3) In administering any money appropriated for use under this section, the Division of Consumer Protection shall comply with Title 63G, Chapter 6a, Utah Procurement Code.

Amended by Chapter 347, 2012 General Session