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CONSUMER PROTECTION REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Val L. Peterson

LONG TITLE

General Description:

This bill modifies statutes administered by the Division of Consumer Protection.

Highlighted Provisions:

This bill:

- ▶ updates the list of statutes administered by the Division of Consumer Protection;
- ▶ amends the Utah Consumer Sales Practices Act to address penalties;
- ▶ amends the Business Opportunity Disclosure Act to require the seller of an assisted marketing plan to, annually, file information and pay a fee;
- ▶ amends the Charitable Solicitations Act, including:
 - modifying the definition of a charitable organization;
 - eliminating the general membership solicitation exemption for a charitable organization; and
 - adding a solicitation exemption;
- ▶ amends the Health Spa Services Protection Act to specify the grounds for denial, suspension, or revocation of a health spa registration;
- ▶ modifies the registration exemptions in the Telephone Fraud Prevention Act;
- ▶ amends the Utah Postsecondary School State Authorization Act to:
 - modify definitions;
 - modify the exemption for interstate reciprocity agreements to include agreements signed by the State Board of Regents;
 - allow a postsecondary school to maintain state authorization while it is within a

29 grace period provided by the United States Department of Education or is considered
30 accredited by the United States Department of Education;

- 31 • allow the Division of Consumer Protection to stagger postsecondary school
32 renewal deadlines; and
- 33 • modify the timing and type of information to be provided by a postsecondary
34 school that is closing; and
- 35 ▶ makes technical changes.

36 **Money Appropriated in this Bill:**

37 None

38 **Other Special Clauses:**

39 None

40 **Utah Code Sections Affected:**

41 AMENDS:

- 42 13-2-1, as last amended by Laws of Utah 2015, Chapter 461
- 43 13-11-17, as last amended by Laws of Utah 2013, Chapter 124
- 44 13-15-4, as last amended by Laws of Utah 2010, Chapter 378
- 45 13-22-2, as last amended by Laws of Utah 2015, Chapter 120
- 46 13-22-8, as last amended by Laws of Utah 2016, Chapter 377
- 47 13-22-21, as last amended by Laws of Utah 1996, Chapter 187
- 48 13-26-4, as last amended by Laws of Utah 2014, Chapter 189
- 49 13-34a-102, as enacted by Laws of Utah 2014, Chapter 360
- 50 13-34a-104, as enacted by Laws of Utah 2014, Chapter 360
- 51 13-34a-204, as enacted by Laws of Utah 2014, Chapter 360
- 52 13-34a-207, as enacted by Laws of Utah 2014, Chapter 360

53 ENACTS:

- 54 13-23-8, Utah Code Annotated 1953



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

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

58 **13-2-1. Consumer protection division established -- Functions.**

59 (1) There is established within the Department of Commerce the Division of Consumer
60 Protection.

61 (2) The division shall administer and enforce the following:

62 (a) Chapter 5, Unfair Practices Act;

63 (b) Chapter 10a, Music Licensing Practices Act;

64 (c) Chapter 11, Utah Consumer Sales Practices Act;

65 (d) Chapter 15, Business Opportunity Disclosure Act;

66 (e) Chapter 20, New Motor Vehicle Warranties Act;

67 (f) Chapter 21, Credit Services Organizations Act;

68 (g) Chapter 22, Charitable Solicitations Act;

69 (h) Chapter 23, Health Spa Services Protection Act;

70 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;

71 (j) Chapter 26, Telephone Fraud Prevention Act;

72 (k) Chapter 28, Prize Notices Regulation Act;

73 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;

74 (m) Chapter 34, Utah Postsecondary Proprietary School Act;

75 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;

76 (o) Chapter 39, Child Protection Registry;

77 [~~(p)~~] (p) Chapter 41, Price Controls During Emergencies Act;

78 [~~(q)~~] (q) Chapter 42, Uniform Debt-Management Services Act;

79 [~~(r)~~] (r) Chapter 49, Immigration Consultants Registration Act; and

80 [~~(s)~~] (s) Chapter 51, Transportation Network Company Registration Act.

81 Section 2. Section **13-11-17** is amended to read:

82 **13-11-17. Actions by enforcing authority.**

83 (1) The enforcing authority may bring an action in a court of competent jurisdiction to:

84 (a) [~~to~~] obtain a declaratory judgment that an act or practice violates this chapter;

85 (b) [~~to~~] enjoin, in accordance with the principles of equity, a supplier who has violated,
86 is violating, or is otherwise likely to violate this chapter; [~~and~~]

87 (c) [~~to~~] recover, for each violation, actual damages, or obtain relief under Subsection
88 (2)(b), on behalf of consumers who complained to the enforcing authority within a reasonable
89 time after it instituted proceedings under this chapter[-]; and

90 (d) obtain a fine in an amount determined after considering the factors in Subsection
91 (6).

92 (2) (a) The enforcing authority may bring a class action on behalf of consumers for the
93 actual damages caused by an act or practice specified as violating this chapter in a rule adopted
94 by the enforcing authority under Subsection 13-11-8(2) before the consumer transactions on
95 which the action is based, or declared to violate Section 13-11-4 or 13-11-5 by final judgment
96 of courts of general jurisdiction and appellate courts of this state that was either reported
97 officially or made available for public dissemination under Subsection 13-11-7(1)(c) by the
98 enforcing authority 10 days before the consumer transactions on which the action is based, or,
99 with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent
100 judgment that became final before the consumer transactions on which the action is based.

101 (b) (i) On motion of the enforcing authority and without bond in an action under this
102 Subsection (2), the court may make appropriate orders, including appointment of a master or
103 receiver or sequestration of assets, but only if it appears that the defendant is threatening or is
104 about to remove, conceal, or dispose of the defendant's property to the damage of persons for
105 whom relief is requested. An appropriate order may include an order to:

106 (A) [~~to~~] reimburse consumers found to have been damaged;

107 (B) [~~to~~] carry out a transaction in accordance with consumers' reasonable expectations;

108 (C) [~~to~~] strike or limit the application of unconscionable clauses of contracts to avoid
109 an unconscionable result; [~~or~~]

110 (D) impose a fine in an amount determined after considering the factors listed in
111 Subsection (6); or

112 ~~[(D) to]~~ (E) grant other appropriate relief.

113 (ii) The court may assess the expenses of a master or receiver against a supplier.

114 (c) If an act or practice that violates this chapter unjustly enriches a supplier and
115 damages can be computed with reasonable certainty, damages recoverable on behalf of
116 consumers who cannot be located with due diligence shall be transferred to the state treasurer
117 pursuant to Title 67, Chapter 4a, Unclaimed Property Act.

118 (d) If a supplier shows by a preponderance of the evidence that a violation of this
119 chapter resulted from a bona fide error notwithstanding the maintenance of procedures
120 reasonably adapted to avoid the error, recovery under this Subsection (2) is limited to the
121 amount, if any, by which the supplier was unjustly enriched by the violation.

122 (e) An action may not be brought by the enforcing authority under this Subsection (2)
123 more than two years after the occurrence of a violation of this chapter.

124 (3) (a) The enforcing authority may terminate an investigation or an action other than a
125 class action upon acceptance of the supplier's written assurance of voluntary compliance with
126 this chapter. Acceptance of an assurance may be conditioned on a commitment to reimburse
127 consumers or take other appropriate corrective action.

128 (b) An assurance is not evidence of a prior violation of this chapter. Unless an
129 assurance has been rescinded by agreement of the parties or voided by a court for good cause,
130 subsequent failure to comply with the terms of an assurance is prima facie evidence of a
131 violation.

132 (4) (a) In addition to other penalties and remedies set out under this chapter, and in
133 addition to its other enforcement powers under ~~[Title 13,]~~ Chapter 2, Division of Consumer
134 Protection, the division director may issue a cease and desist order and impose an
135 administrative fine of up to \$2,500 for each violation of this chapter.

136 (b) All money received through ~~[administrative]~~ fines imposed under this section shall

137 be deposited in the Consumer Protection Education and Training Fund created by Section
138 13-2-8.

139 (5) (a) Within 30 days after agency or judicial review of a final division order imposing
140 an administrative fine, the supplier on whom the fine is imposed shall pay the fine in full.

141 (b) The unpaid amount of a fine is increased by 10%:

142 (i) if the fine has not been paid in full within 60 days after the final division order
143 imposing the fine; and

144 (ii) unless the division waives the 10% increase in a stipulated payment plan.

145 (6) A fine imposed under Subsection (1)(d) or Subsection (2)(b)(i)(D) shall be
146 determined after considering the following factors:

147 (a) the seriousness, nature, circumstances, extent, and persistence of the conduct
148 constituting the violation;

149 (b) the harm to other persons resulting either directly or indirectly from the violation;

150 (c) cooperation by the supplier in an inquiry or investigation conducted by the
151 enforcing authority concerning the violation;

152 (d) efforts by the supplier to prevent occurrences of the violation;

153 (e) efforts by the supplier to mitigate the harm caused by the violation, including a
154 reimbursement made to a consumer injured by the act of the supplier;

155 (f) the history of previous violations by the supplier;

156 (g) the need to deter the supplier or other suppliers from committing the violation in
157 the future; and

158 (h) other matters as justice may require.

159 Section 3. Section 13-15-4 is amended to read:

160 **13-15-4. Information to be filed by seller annually -- Representations -- Fees.**

161 (1) [~~Any~~] A seller of an assisted marketing plan shall annually file the following
162 information with the division:

163 (a) the name, address, and principal place of business of the seller, and the name,

164 address, and principal place of business of the parent or holding company of the seller, if any,
165 who is responsible for statements made by the seller;

166 (b) ~~[a]]~~ the trademarks, trade names, service marks, or advertising or other commercial
167 symbols that identify the products, equipment, supplies, or services to be offered, sold, or
168 distributed by the prospective purchaser;

169 (c) an individual detailed statement covering the past five years of the business
170 experience of each of the seller's current directors and executive officers and an individual
171 statement covering the same period for the seller and the seller's parent company, if any,
172 including the length of time each:

173 (i) has conducted a business of the type advertised or solicited for operation by a
174 prospective purchaser;

175 (ii) has offered or sold the assisted marketing plan; and

176 (iii) has offered for sale or sold assisted marketing plans in other lines of business,
177 together with a description of the other lines of business;

178 (d) (i) a statement of the total amount that shall be paid by the purchaser to obtain or
179 commence the business opportunity such as initial fees, deposits, down payments, prepaid rent,
180 and equipment and inventory purchases; ~~[provided, that]~~ and

181 (ii) if all or part of ~~[these]~~ the fees or deposits described in Subsection (1)(d)(i) are
182 returnable, the conditions under which ~~[they]~~ the fees or deposits are returnable ~~[shall also be~~
183 ~~disclosed]~~;

184 (e) a complete statement of the actual services the seller will perform for the purchaser;

185 (f) a complete statement of ~~[a]]~~ the oral, written, or visual representations that will be
186 made to prospective purchasers about specific levels of potential sales, income, gross and net
187 profits, or any other representations that suggest a specific level;

188 (g) a complete description of the type and length of any training promised to
189 prospective purchasers;

190 (h) (i) a complete description of any services promised to be performed by the seller in

191 connection with the placement of the equipment, products, or supplies at any location from
192 which they will be sold or used; and

193 (ii) a complete description of ~~[those]~~ the services described in Subsection (1)(h)(i)
194 together with any agreements that will be made by the seller with the owner or manager of the
195 location where the purchaser's equipment, products, or supplies will be placed;

196 (i) a statement that discloses any person identified in Subsection (1)(a) who:

197 (i) has been convicted of a felony or misdemeanor or pleaded nolo contendere to a
198 felony or misdemeanor charge if the felony or misdemeanor involved fraud, embezzlement,
199 fraudulent conversion, or misappropriation of property;

200 (ii) has been held liable or consented to the entry of a stipulated judgment in ~~[any]~~ a
201 civil action based upon fraud, embezzlement, fraudulent conversion, misappropriation of
202 property, or the use of untrue or misleading representations in the sale or attempted sale of any
203 real or personal property, or upon the use of any unfair, unlawful or deceptive business
204 practice; or

205 (iii) is subject to an injunction or restrictive order relating to business activity as the
206 result of an action brought by a public agency;

207 (j) a financial statement that is less than 13 months old of the seller signed by one of
208 the seller's officers, directors, trustees, or general or limited partners, under a declaration that
209 certifies that to the signatory's knowledge and belief the information in the financial statement
210 is true and accurate; ~~[a financial statement that is more than 13 months old is unacceptable;]~~

211 (k) a copy of the entire marketing plan contract;

212 (l) the number of marketing plans sold to date, and the number of plans under
213 negotiation;

214 (m) geographical information, including ~~[all]~~ the states in which the seller's assisted
215 marketing plans have been sold, and the number of plans in each ~~[such]~~ state;

216 (n) the total number of marketing plans that were cancelled by the seller in the past 12
217 months; and

218 (o) the number of marketing plans that were voluntarily terminated by purchasers
219 within the past 12 months and the total number of such voluntary terminations to date.

220 (2) The seller of an assisted marketing plan filing information under Subsection (1)
221 shall pay [a] an annual fee as determined by the department in accordance with Section
222 63J-1-504 when the seller files the information required under Subsection (1).

223 (3) (a) Before commencing business in this state, [~~the~~] a seller of an assisted marketing
224 plan shall file the information required under Subsection (1) and receive from the division
225 proof of receipt of the filing.

226 (b) A seller shall annually comply with Subsections (1) and (2) by no later than the
227 anniversary of the day on which the seller receives from the division proof of receipt of the
228 filing.

229 (4) A seller of an assisted marketing plan claiming an exemption from filing under this
230 chapter shall file a notice of claim of exemption from filing with the division. A seller
231 claiming an exemption from filing bears the burden of proving the exemption. The division
232 shall collect a fee for filing a notice of claim of exemption, as determined by the department in
233 accordance with Section 63J-1-504.

234 (5) A representation described in Subsection (1)(f) shall be relevant to the geographic
235 market in which the business opportunity is to be located. When the statements or
236 representations are made, a warning after the representation in not less than 12 point upper and
237 lower case boldface type shall appear as follows:

238 "CAUTION

239 No guarantee of earnings or ranges of earnings can be made. The number of purchasers
240 who have earned through this business an amount in excess of the amount of their initial
241 payment is at least _____ which represents _____% of the total number of purchasers of this
242 business opportunity."

243 Section 4. Section **13-22-2** is amended to read:

244 **13-22-2. Definitions.**

245 As used in this chapter:

246 (1) "Chapter" means a chapter, branch, area, office, or similar affiliate of a charitable
247 organization.

248 [(H)] (2) (a) "Charitable organization" or "organization" means any person, joint
249 venture, partnership, limited liability company, corporation, association, group, or other entity:

250 (i) who is or holds itself out to be:

251 (A) a benevolent, educational, voluntary health, philanthropic, humane, patriotic,
252 religious or eleemosynary, social welfare or advocacy, public health, environmental or
253 conservation, or civic organization;

254 (B) for the benefit of a public safety, law enforcement, or firefighter fraternal
255 association; or

256 (C) established for any charitable purpose;

257 (ii) who solicits or obtains contributions solicited from the public for a charitable
258 purpose; or

259 (iii) in any manner employs a charitable appeal as the basis of any solicitation or
260 employs an appeal that reasonably suggests or implies that there is a charitable purpose to any
261 solicitation.

262 (b) "Charitable organization" includes a chapter ~~[, branch, area, office, or similar~~
263 ~~affiliate]~~ or ~~[any]~~ a person who solicits contributions within the state for a charitable
264 organization ~~[whose principal place of business is outside the state].~~

265 [(2)] (3) "Charitable purpose" means any benevolent, educational, philanthropic,
266 humane, patriotic, religious, eleemosynary, social welfare or advocacy, public health,
267 environmental, conservation, civic, or other charitable objective or for the benefit of a public
268 safety, law enforcement, or firefighter fraternal association.

269 [(3)] (4) "Charitable sales promotion" means an advertising or sales campaign,
270 conducted by a commercial co-venturer, which represents that the purchase or use of goods or
271 services offered by the commercial co-venturer will benefit, in whole or in part, a charitable

272 organization or purpose.

273 ~~[(4)]~~ (5) (a) "Charitable solicitation" or "solicitation" means any request, directly or
274 indirectly, for money, credit, property, financial assistance, or any other thing of value on the
275 plea or representation that it will be used for a charitable purpose.

276 (b) "Charitable solicitation" or "solicitation" includes:

277 (i) any oral or written request, including any request by telephone, radio ~~[or]~~,
278 television, or other advertising or communications media;

279 (ii) the distribution, circulation, or posting of any handbill, written advertisement, or
280 publication;

281 (iii) an application or other request for a grant; or

282 (iv) the sale of, offer or attempt to sell, or request of donations in exchange for any
283 advertisement, membership, subscription, or other article in connection with which any appeal
284 is made for any charitable purpose, or the use of the name of any charitable organization or
285 movement as an inducement or reason for making any purchase donation, or, in connection
286 with any sale or donation, stating or implying that the whole or any part of the proceeds of any
287 sale or donation will go to or be donated to any charitable purpose.

288 ~~[(5)]~~ (6) "Commercial co-venturer" means a person who for profit is regularly and
289 primarily engaged in trade or commerce other than in connection with soliciting for a charitable
290 organization or purpose.

291 ~~[(6)]~~ (7) (a) "Contribution" means the pledge or grant for a charitable purpose of any
292 money or property of any kind, including any of the following:

293 (i) a gift, subscription, loan, advance, or deposit of money or anything of value;

294 (ii) a contract, promise, or agreement, express or implied, whether or not legally
295 enforceable, to make a contribution for charitable purposes; or

296 (iii) fees, dues, or assessments paid by members, when membership is conferred solely
297 as consideration for making a contribution.

298 (b) "Contribution" does not include:

299 (i) money loaned to a charitable organization by a financial institution in the ordinary
300 course of business; or

301 (ii) fees, dues, or assessments paid by members when membership is not conferred
302 solely as consideration for making a contribution.

303 [~~(7)~~] (8) "Contributor" means [~~any~~] a donor, pledgor, purchaser, or other person who
304 makes a contribution.

305 [~~(8)~~] (9) "Director" means the director of the Division of Consumer Protection.

306 [~~(9)~~] (10) "Division" means the Division of Consumer Protection of the Department of
307 Commerce.

308 [~~(10)~~] (11) "Material fact" means information that a person of ordinary intelligence and
309 prudence would consider relevant in deciding whether or not to make a contribution in
310 response to a charitable solicitation.

311 [~~(11)~~] (12) (a) "Professional fund raiser" means a person who:

312 (i) for compensation or any other consideration, solicits contributions for charitable
313 purposes, or plans or manages the solicitation of contributions for or on behalf of any
314 charitable organization or any other person;

315 (ii) engages in, or represents being independently engaged in, the business of soliciting
316 contributions for a charitable organization;

317 (iii) manages, supervises, or trains any solicitor whether as an employee or otherwise;

318 or

319 (iv) uses a vending device or vending device decal for financial or other consideration
320 that implies a solicitation of contributions or donations for any charitable organization or
321 charitable purposes.

322 (b) "Professional fund raiser" does not include a bona fide officer, director, volunteer,
323 or full-time employee of a charitable organization.

324 [~~(12)~~] (13) (a) "Professional fund raising counsel or consultant" or other comparable
325 designation or title means a person who:

326 (i) for compensation plans, manages, advises, counsels, consults, or prepares material
327 for, or with respect to, the solicitation in this state of contributions for a charitable
328 organization, whether or not at any time the person has custody of contributions from a
329 solicitation;

330 (ii) does not solicit contributions; and

331 (iii) does not employ, procure, or engage any compensated person to solicit or receive
332 contributions.

333 (b) "Professional fund raising counsel or consultant" does not include an attorney,
334 investment counselor, or banker who in the conduct of that person's profession advises a client
335 when actually engaged in the giving of legal, investment, or financial advice.

336 ~~[(13)]~~ (14) (a) "Vending device" means a container used by a charitable organization or
337 professional fund raiser, for the purpose of collecting a charitable solicitation, contribution, or
338 donation whether or not the device offers a product or item in return for the contribution or
339 donation.

340 (b) "Vending device" includes machines, boxes, jars, wishing wells, barrels, or any
341 other container.

342 ~~[(14)]~~ (15) "Vending device decal" means any decal, tag, or similar designation
343 material that is attached to a vending device, whether or not used or placed by a charitable
344 organization or professional fund raiser, that would indicate that all or a portion of the proceeds
345 from the purchase of items from the vending device will go to a specific charitable
346 organization.

347 Section 5. Section **13-22-8** is amended to read:

348 **13-22-8. Exemptions.**

349 (1) Section **13-22-5** does not apply to:

350 ~~[(a) a solicitation that an organization conducts among the organization's own
351 established and bona fide membership exclusively through the voluntarily donated efforts of
352 other members or officers of the organization;]~~

353 ~~[(b)]~~ (a) a bona fide religious, ecclesiastical, or denominational organization if:
354 (i) the solicitation is made for a church, missionary, religious, or humanitarian purpose;
355 and
356 (ii) the organization is either:
357 (A) a lawfully organized corporation, institution, society, church, or established
358 physical place of worship, at which nonprofit religious services and activities are regularly
359 conducted and carried on;
360 (B) a bona fide religious group:
361 (I) that does not maintain specific places of worship;
362 (II) that is not subject to federal income tax; and
363 (III) not required to file an IRS Form 990 under any circumstance; or
364 (C) a separate group or corporation that is an integral part of an institution that is an
365 income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) and is not primarily supported
366 by funds solicited outside the group's or corporation's own membership or congregation;
367 ~~[(c)]~~ (b) a solicitation by a broadcast media owned or operated by an educational
368 institution or governmental entity, or any entity organized solely for the support of that
369 broadcast media;
370 ~~[(d)]~~ (c) except as provided in Subsection 13-22-21(1), a solicitation for the relief of
371 any person sustaining a life-threatening illness or injury specified by name at the time of
372 solicitation if the entire amount collected without any deduction is turned over to the named
373 person;
374 ~~[(e)]~~ (d) a political party authorized to transact the political party's affairs within this
375 state and any candidate and campaign worker of the political party if the content and manner of
376 any solicitation make clear that the solicitation is for the benefit of the political party or
377 candidate;
378 ~~[(f)]~~ (e) a political action committee or group soliciting funds relating to issues or
379 candidates on the ballot if the committee or group is required to file financial information with

380 a federal or state election commission;
381 ~~(g)~~ (f) (i) a public school;
382 (ii) a public institution of higher learning;
383 (iii) a school accredited by an accreditation body recognized within the state or the
384 United States;
385 (iv) an institution of higher learning accredited by an accreditation body recognized
386 within the state or the United States;
387 (v) an organization within, and authorized by, an entity described in Subsections
388 (1)~~(g)~~(f)(i) through (iv); or
389 (vi) a parent organization, teacher organization, or student organization authorized by
390 an entity described in Subsection (1)~~(g)~~(f)(i) or (iii) if:
391 (A) the parent organization, teacher organization, or student organization is a branch
392 of, or is affiliated with, a central organization;
393 (B) the parent organization, teacher organization, or student organization is subject to
394 the central organization's general control and supervision;
395 (C) the central organization holds a United States Internal Revenue Service group tax
396 exemption that covers the parent organization, teacher organization, or student organization;
397 and
398 (D) the central organization is registered with the division under this chapter;
399 ~~(h)~~ (g) a public or higher education foundation established under Title 53A, State
400 System of Public Education, or Title 53B, State System of Higher Education;
401 ~~(i)~~ (h) a television station, radio station, or newspaper of general circulation that
402 donates air time or print space for no consideration as part of a cooperative solicitation effort
403 on behalf of a charitable organization, whether or not that organization is required to register
404 under this chapter;
405 ~~(j)~~ (i) a volunteer fire department, rescue squad, or local civil defense organization
406 whose financial oversight is under the control of a local governmental entity;

407 ~~[(k)]~~ (j) any governmental unit of any state or the United States;
408 ~~[(+)]~~ (k) any corporation:
409 (i) established by an act of the United States Congress; and
410 (ii) that is required by federal law to submit an annual report:
411 (A) on the activities of the corporation, including an itemized report of all receipts and
412 expenditures of the corporation; and
413 (B) to the United States Secretary of Defense to be:
414 (I) audited; and
415 (II) submitted to the United States Congress; ~~[and]~~
416 ~~[(m)]~~ (l) a solicitation by an applicant for a grant offered by a state agency if:
417 (i) the terms of the grant provide that the state agency monitors a grant recipient to
418 ensure that grant funds are used in accordance with the grant's purpose; and
419 (ii) the sum of the amount available to the applicant under grants offered by a state
420 agency that the applicant applies for in a calendar year is less than or equal to \$1,500[-]; and
421 (m) a chapter of a charitable organization or a person who solicits contributions for a
422 charitable organization, if the charitable organization is registered with the division pursuant to
423 Section 13-22-5, and:
424 (i) all contributions solicited by the chapter or person are delivered directly to the
425 control of the charitable organization; or
426 (ii) (A) the charitable organization holds a United States Internal Revenue Service
427 group tax exemption that covers the chapter;
428 (B) the charitable organization provides a list of its chapters to the division with its
429 registration or renewal of registration;
430 (C) the chapter is on the list provided under Subsection (2)(m)(ii)(B);
431 (D) the chapter maintains the information required under Section 13-22-15 and
432 provides the information to the division upon request; and
433 (E) solicitations by the chapter or the person are limited to the collection of

434 membership-related fees, dues, or assessments from new and existing members.

435 (2) [~~Any~~] An organization claiming an exemption under this section bears the burden
436 of proving [~~its~~] the organization's eligibility for, or the applicability of, the exemption claimed.

437 (3) [~~Each~~] An organization exempt from registration pursuant to this section that
438 makes a material change in the organization's legal status, officers, address, or similar changes
439 shall file a report informing the division of the organization's current legal status, business
440 address, business phone, officers, and primary contact person within 30 days of the change.

441 (4) The division may by rule:

442 (a) require an organization that is exempt from registration under this section to:

443 (i) file a notice of claim of exemption; and

444 (ii) file a renewal of a notice of claim of exemption;

445 (b) prescribe the contents of a notice of claim of exemption and a renewal of a notice
446 of claim of exemption; and

447 (c) require a filing fee for a notice of claim of exemption and a renewal of a notice of
448 claim of exemption as determined under Section [63J-1-504](#).

449 Section 6. Section **13-22-21** is amended to read:

450 **13-22-21. Appeal on behalf of individual.**

451 (1) If a charitable campaign consisting of exempt solicitations for the relief of a named
452 individual sustaining a life-threatening illness or injury, as described in Subsection
453 [13-22-8\(1\)\(~~d~~\)\(c\)](#), collects proceeds in excess of \$1,000, the organizer of the campaign shall
454 give the division written notice of the following:

455 (a) the organizer's name and address;

456 (b) the name, whereabouts, and present condition of the person for whose relief the
457 contributions are solicited including a letter from the person's attending physician detailing the
458 illness or injury;

459 (c) the date the charitable campaign commenced; and

460 (d) the purpose to which the collected contributions are to be applied.

461 (2) Notice under Subsection (1) is due within 10 days after commencing the appeal or
462 collecting in excess of \$1,000, whichever is later.

463 (3) If the organizer fails to file timely notice, the division shall inform the organizer of
464 the notice requirement and give the organizer 10 additional days as a grace period within which
465 to file the notice. If the organizer fails to file the notice within the grace period, the division
466 may issue a cease and desist order against the organizer.

467 (4) If, at any time, the division has reasonable cause to believe that the organizer is
468 perpetrating a fraud against the public, or in any other way intends to profit from harming the
469 public through the charitable campaign, it shall issue a cease and desist order against the
470 organizer.

471 Section 7. Section **13-23-8** is enacted to read:

472 **13-23-8. Grounds for denial, suspension, or revocation.**

473 The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures
474 Act, issue an order to deny, suspend, or revoke an application or registration upon a finding
475 that the order is in the public interest and that:

476 (1) the application for registration or renewal is incomplete or misleading in a material
477 respect;

478 (2) the applicant or person registered under this chapter or an officer, director, agent, or
479 employee of the applicant or registrant has:

480 (a) violated this chapter;

481 (b) violated Chapter 11, Utah Consumer Sales Practices Act;

482 (c) been enjoined by a court, or is the subject of an administrative order issued in this
483 or another state, if the injunction or order:

484 (i) includes a finding or admission of fraud, breach of fiduciary duty, or material
485 misrepresentation; or

486 (ii) is based on a finding of lack of integrity, truthfulness, or mental competence of the
487 applicant;

- 488 (d) obtained or attempted to obtain a registration by misrepresentation;
- 489 (e) failed to timely provide the division with any information required by this chapter;
- 490 or
- 491 (f) failed to pay a fine imposed by the division;
- 492 (3) the applicant's or registrant's bond, letter of credit, or certificate of deposit ceases to
- 493 be in effect;
- 494 (4) the applicant or registrant requested an exemption from maintaining a bond, letter
- 495 of credit, or certificate of deposit under Section 13-23-6, but does not meet the requirements
- 496 for exemption; or
- 497 (5) the applicant or registrant ceases to provide health spa services.

498 Section 8. Section 13-26-4 is amended to read:

499 **13-26-4. Exemptions from registration.**

- 500 (1) In any enforcement action initiated by the division, the person claiming an
- 501 exemption has the burden of proving that the person is entitled to the exemption.
- 502 (2) The following are exempt from the requirements of this chapter except for the
- 503 requirements of Sections 13-26-8 and 13-26-11:
- 504 (a) a broker, agent, dealer, or sales professional licensed under the licensure laws of
- 505 this state, when soliciting sales within the scope of his license;
- 506 (b) the solicitation of sales by:
 - 507 (i) a public utility that is regulated under Title 54, Public Utilities, or by an affiliate of
 - 508 the utility;
 - 509 (ii) a newspaper of general circulation;
 - 510 (iii) a solicitation of sales made by a broadcaster licensed by any state or federal
 - 511 authority;
 - 512 (iv) a nonprofit organization if no part of the net earnings from the sale inures to the
 - 513 benefit of any member, officer, trustee, or serving board member of the organization, or
 - 514 individual, or family member of an individual, holding a position of authority or trust in the

515 organization; and

516 (v) a person who periodically publishes and delivers a catalog of the solicitor's

517 merchandise to prospective purchasers, if the catalog:

518 (A) contains the price and a written description or illustration of each item offered for

519 sale;

520 (B) includes the business address of the solicitor;

521 (C) includes at least 24 pages of written material and illustrations;

522 (D) is distributed in more than one state; and

523 (E) has an annual circulation by mailing of not less than 250,000;

524 (c) any publicly-traded corporation registered with the Securities and Exchange

525 Commission, or any subsidiary of the corporation;

526 (d) the solicitation of any depository institution as defined in Section 7-1-103, a

527 subsidiary of a depository institution, personal property broker, securities broker, investment

528 adviser, consumer finance lender, or insurer subject to regulation by an official agency of this

529 state or the United States;

530 (e) the solicitation by a person soliciting only the sale of telephone services to be

531 provided by the person or the person's employer;

532 (f) the solicitation of a person relating to a transaction regulated by the Commodities

533 Futures Trading Commission, if:

534 (i) the person is registered with or temporarily licensed by the commission to conduct

535 that activity under the Commodity Exchange Act; and

536 (ii) the registration or license has not expired or been suspended or revoked;

537 (g) the solicitation of a contract for the maintenance or repair of goods previously

538 purchased from the person:

539 (i) who is making the solicitation; or

540 (ii) on whose behalf the solicitation is made;

541 (h) the solicitation of previous customers of the business on whose behalf the call is

542 made if the person making the call:

543 (i) does not offer any premium in conjunction with a sale or offer;

544 (ii) is not selling an investment or an opportunity for an investment that is not
545 registered with any state or federal authority; and

546 (iii) is not regularly engaged in telephone sales;

547 (i) the solicitation of a sale that is an isolated transaction and not done in the course of
548 a pattern of repeated transactions of a like nature;

549 (j) the solicitation of a person by a retail business establishment that has been in
550 operation for at least five years in Utah under the same name as that used in connection with
551 telemarketing if both of the following occur on a continuing basis:

552 (i) products are displayed and offered for sale at the place of business, or services are
553 offered for sale and provided at the place of business; and

554 (ii) a majority of the seller's business involves the buyer obtaining the products or
555 services at the seller's place of business;

556 (k) a person primarily soliciting the sale of a magazine or periodical sold by the
557 publisher or the publisher's agent through a written agreement, or printed or recorded material
558 through a contractual plan, such as a book or record club, continuity plan, subscription,
559 standing order arrangement, or supplement or series arrangement if:

560 (i) the seller provides the consumer with a form that the consumer may use to instruct
561 the seller not to ship the offered merchandise, and the arrangement is regulated by the Federal
562 Trade Commission trade regulation concerning use of negative option plans by sellers in
563 commerce; or

564 (ii) (A) the seller periodically ships merchandise to a consumer who has consented in
565 advance to receive the merchandise on a periodic basis; and

566 (B) the consumer retains the right to cancel at any time and receive a full refund for the
567 unused portion; [or]

568 (l) a telephone marketing service company that provides telemarketing sales services

569 under contract to sellers if:

570 (i) it has been doing business regularly with customers in Utah for at least five years
571 under the same business name and with its principal office in the same location;

572 (ii) at least 75% of its contracts are performed on behalf of persons exempted from
573 registration under this chapter; and

574 (iii) neither the company nor its principals have been enjoined from doing business or
575 subjected to criminal actions for their business activities in this or any other state[-];

576 (m) a credit services organization that holds a current registration with the division
577 under Chapter 21, Credit Services Organizations Act, if the credit services organization's
578 telephone solicitations are limited to the solicitation of services regulated under Chapter 21,
579 Credit Services Organizations Act; and

580 (n) a provider that holds a current registration with the division under Chapter 42,
581 Uniform Debt-Management Services Act, if the provider's telephone solicitations are limited to
582 the solicitation of services regulated under Chapter 21, Uniform Debt-Management Services
583 Act.

584 Section 9. Section **13-34a-102** is amended to read:

585 **13-34a-102. Definitions.**

586 As used in this chapter:

587 (1) "Accredited institution" means a postsecondary school that is accredited by an
588 accrediting agency.

589 (2) "Accrediting agency" means a regional or national private educational association
590 that:

591 (a) is recognized by the United States Department of Education;

592 (b) develops evaluation criteria; and

593 (c) conducts peer evaluations to assess whether a postsecondary school meets the
594 criteria described in Subsection (2)(b).

595 (3) "Agent" means a person who:

- 596 (a) (i) owns an interest in a postsecondary school; or
597 (ii) is employed by a postsecondary school; and
598 (b) (i) enrolls or attempts to enroll a Utah resident in a postsecondary school;
599 (ii) offers to award an educational credential for remuneration on behalf of a
600 postsecondary school; or
601 (iii) holds oneself out to Utah residents as representing a postsecondary school for any
602 purpose.
- 603 (4) "Certificate of postsecondary state authorization" means a certificate issued by the
604 division to a postsecondary school in accordance with the provisions of this chapter.
- 605 (5) "Division" means the Division of Consumer Protection.
- 606 (6) "Educational credential" means a degree, diploma, certificate, transcript, report,
607 document, letter of designation, mark, or series of letters, numbers, or words that represent
608 enrollment, attendance, or satisfactory completion of the requirements or prerequisites of an
609 educational program.
- 610 (7) "Intentional violation" means a violation of a provision of this chapter that occurs
611 or continues after the division, the attorney general, a county attorney, or a district attorney
612 gives the violator written notice, delivered by certified mail, that the violator is or has been in
613 violation of the provision.
- 614 (8) "Operate" means to:
- 615 (a) maintain a place of business in the state;
616 (b) conduct significant educational activities within the state; or
617 (c) provide postsecondary education to a Utah resident that:
618 (i) is intended to lead to a postsecondary degree or certificate; and
619 (ii) is provided from a location outside the state by correspondence or
620 telecommunications or electronic media technology.
- 621 (9) "Operating history" means a report, written evaluation, publication, or other
622 documentation regarding:

623 (a) the current accreditation status of a postsecondary school with an accrediting
624 agency; and

625 (b) an action taken by an accrediting agency that:

626 (i) places [a] the postsecondary school on probation;

627 (ii) imposes disciplinary action against [a] the postsecondary school; [or]

628 (iii) requires [a] the postsecondary school to take corrective action[.]; or

629 (iv) provides the postsecondary school with a warning or directive to show cause.

630 (10) "Ownership" means:

631 (a) the controlling interest in a postsecondary school; or

632 (b) if an entity holds the controlling interest in the postsecondary school, the
633 controlling interest in the entity that holds the controlling interest in the postsecondary school.

634 (11) "Postsecondary education" means education or educational services offered
635 primarily to individuals who:

636 (a) have completed or terminated their secondary or high school education; or

637 (b) are beyond the age of compulsory school attendance.

638 (12) (a) "Postsecondary school" means a person that provides or offers educational
639 services to individuals who:

640 (i) have completed or terminated secondary or high school education; or

641 (ii) are beyond the age of compulsory school attendance.

642 (b) "Postsecondary school" does not include an institution that is part of the state
643 system of higher education under Section 53B-1-102.

644 (13) "Private postsecondary school" means a postsecondary school that is not a public
645 postsecondary school.

646 (14) "Public postsecondary school" means a postsecondary school:

647 (a) established by a state or other governmental entity; and

648 (b) substantially supported with government funds.

649 Section 10. Section 13-34a-104 is amended to read:

650 **13-34a-104. Authority to execute interstate reciprocity agreement -- Rulemaking.**

651 (1) The division may execute an interstate reciprocity agreement that:

652 (a) is for purposes of state authorization under 34 C.F.R. Sec. 600.9; and

653 (b) is for the benefit of:

654 (i) postsecondary schools in the state; or

655 (ii) (A) postsecondary schools in the state; and

656 (B) institutions that are part of the state system of higher education under Section

657 [53B-1-102](#).

658 (2) If the division executes an interstate reciprocity agreement described in Subsection

659 (1) or the State Board of Regents executes an interstate reciprocity agreement under Section

660 [53B-16-109](#):

661 (a) except as provided by division rule, [~~the provisions of this chapter do~~] this chapter

662 does not apply to a postsecondary school that obtains state authorization under the reciprocity

663 agreement; and

664 (b) the division may, in accordance with Title 63G, Chapter 3, Utah Administrative
665 Rulemaking Act, make rules relating to:

666 (i) the standards for granting a postsecondary school state authorization under a
667 reciprocity agreement;

668 (ii) any filing, document, or fee required for a postsecondary school to obtain

669 authorization under a reciprocity agreement; and

670 (iii) penalties if a postsecondary school fails to comply with the rules that the division
671 makes under this Subsection (2).

672 (3) If the division executes an interstate reciprocity agreement described in Subsection

673 (1) that includes institutions that are part of the state system of higher education under Section

674 [53B-1-102](#), the State Board of Regents may make rules that:

675 (a) implement the reciprocity agreement; and

676 (b) relate to institutions that are part of the state system of higher education under

677 Section 53B-1-102.

678 Section 11. Section 13-34a-204 is amended to read:

679 **13-34a-204. Postsecondary school -- Procedure to obtain certificate of**
680 **postsecondary state authorization.**

681 (1) The division shall, in accordance with the provisions of this section, issue a
682 certificate of postsecondary state authorization to a postsecondary school.

683 (2) To obtain a certificate of postsecondary state authorization under this section, a
684 postsecondary school shall:

685 (a) submit a completed registration form to the division that includes:

686 (i) proof of current accreditation from the postsecondary school's accrediting agency;

687 (ii) proof that the postsecondary school is fiscally responsible and can reasonably fulfill
688 the postsecondary school's financial obligations, including:

689 (A) a copy of an audit of the postsecondary school's financial statements, with all
690 applicable footnotes, including a balance sheet, an income statement, a statement of retained
691 earnings, and a statement of cash flow, that was performed by a certified public accountant;

692 (B) at the postsecondary school's election, a copy of an audit of the postsecondary
693 school's parent company's financial statements, with all applicable footnotes, including a
694 balance sheet, an income statement, a statement of retained earnings, and a statement of cash
695 flow, that was performed by a certified public accountant; and

696 (C) a copy of all other financial documentation that the postsecondary school provided
697 to the postsecondary school's accrediting agency since the postsecondary school's last
698 registration with the division under this chapter or within the 12 months before the day on
699 which the postsecondary school submits a completed registration form under this section,
700 whichever is longer;

701 (iii) proof of good standing in the state where the postsecondary school is organized;

702 (iv) the postsecondary school's operating history with the postsecondary school's
703 accrediting agency since the postsecondary school's last registration with the division under this

704 chapter or within the 12 months before the day on which the postsecondary school submits a
705 completed registration form under this section, whichever is longer;

706 (v) the number of Utah residents who enrolled in the postsecondary school since the
707 postsecondary school's last registration with the division under this chapter or within the 12
708 months before the day on which the postsecondary school submits a completed registration
709 form under this section, whichever is longer;

710 (vi) satisfactory documentation that the postsecondary school has complied with the
711 complaint process requirements described in Section 13-34a-206;

712 (vii) (A) the number of complaints that a Utah resident has filed against the
713 postsecondary school since the postsecondary school's last registration with the division under
714 this chapter or within the 12 months before the day on which the postsecondary school submits
715 a completed registration form under this section, whichever is longer; and

716 (B) upon request, includes copies of the complaints described in Subsection
717 (2)(a)(vii)(A);

718 (viii) a disclosure that states whether the postsecondary school or an owner, officer,
719 director, or administrator of the postsecondary school has been:

720 (A) convicted of a crime;

721 (B) subject to an order issued by a court; or

722 (C) subject to an order issued by an administrative agency that imposed disciplinary
723 action; and

724 (ix) a notarized personal verification by the owner or a responsible officer of the
725 postsecondary school that the information provided under this Subsection (2)(a) is complete
726 and accurate; and

727 (b) pay a nonrefundable fee, established by the division, in accordance with Subsection
728 13-34a-103(2)(c) to pay for the cost of processing the registration form and issuing the
729 certificate of postsecondary state authorization.

730 (3) If a postsecondary school's accreditor loses its recognition by the United States

731 Department of Education, the postsecondary school may satisfy the requirement of Subsection
732 (2)(a)(i) by demonstrating to the division that the postsecondary school is within a grace period
733 provided by the United States Department of Education for obtaining new accreditation or is
734 otherwise considered by the United States Department of Education to have recognized
735 accreditation.

736 [~~3~~] (4) The division shall develop and make available to the public a registration form
737 described in Subsection (2)(a).

738 [~~4~~] (5) The division shall deposit money that the division receives under Subsection
739 (2)(b) into the Commerce Service Account, created in Section 13-1-2.

740 [~~5~~] (6) If a postsecondary school maintains more than one physical campus in the
741 state, the postsecondary school shall file a separate registration form for each physical campus
742 in the state.

743 [~~6~~] (7) (a) A certificate of postsecondary state authorization issued under this section
744 is not transferrable.

745 (b) (i) If a postsecondary school's ownership or governing body changes after the
746 postsecondary school obtains a certificate of postsecondary state authorization under this
747 section, the postsecondary school shall submit a new completed registration form in accordance
748 with Subsection (2) within 60 days after the day on which the change in ownership or
749 governing body occurs.

750 (ii) If a postsecondary school fails to timely comply with the requirements described in
751 Subsection [~~6~~] (7)(b)(i), the postsecondary school's certificate of postsecondary state
752 authorization immediately and automatically expires.

753 (c) If there is a change in circumstance that may affect a postsecondary school's status
754 under this section, the postsecondary school shall notify the division in writing of the change
755 within 30 days after the day on which the change occurs.

756 [~~7~~] (8) (a) A certificate of postsecondary state authorization issued under this section
757 expires one year after the day on which the certificate of postsecondary state authorization is

758 issued.

759 (b) Notwithstanding Subsection (8)(a), the division may extend the period for which
 760 the exemption certificate is effective so that expiration dates are staggered throughout the year.

761 Section 12. Section **13-34a-207** is amended to read:

762 **13-34a-207. Discontinuance of operations.**

763 (1) If a postsecondary school [~~ceases~~] determines that the postsecondary school will
 764 cease to operate, [at least] no later than 30 days [before] after the day on which the
 765 postsecondary school [~~ceases~~] determines it will cease to operate, the postsecondary school
 766 shall give the division written notice that includes:

767 (a) the date on which the postsecondary school will cease to operate; [~~and~~]

768 (b) [~~for an accredited institution,~~] a written certification, signed by the postsecondary
 769 school's owner or officer, that the postsecondary school [~~has complied~~] is compliant and will
 770 continue to be compliant with the postsecondary school's accrediting agency's closure
 771 requirements[-];

772 (c) a copy of any teach-out plan, as defined under 34 C.F.R. Sec. 602.3, approved by
 773 the postsecondary school's accrediting agency; and

774 (d) to the extent permitted by law:

775 (i) a current list of students residing in the state who are enrolled in the postsecondary
 776 school; and

777 (ii) for each student described in Subsection (1)(d)(i):

778 (A) a list of the one or more programs in which the student is enrolled; and

779 (B) the student's anticipated graduation date.

780 (2) After a postsecondary school submits a written notice described in Subsection (1),
 781 the postsecondary school may not recruit or enroll new students in the state.

782 (3) (a) The provisions of this Subsection (3) apply to the extent not prohibited by
 783 federal law.

784 (b) If a postsecondary school that ceases operation has a student transcript or student

785 diploma, the postsecondary school shall:

786 (i) provide for the storage of the student transcript or student diploma; and

787 (ii) make the student transcript or student diploma available to the same extent that an
788 education record is available under the Family Educational Rights and Privacy Act, 34 C.F.R.
789 Part 99.

790 (c) The division may:

791 (i) accept a copy of a student transcript or student diploma from a postsecondary school
792 that ceases operation; and

793 (ii) charge a reasonable fee for providing a copy of a student transcript or student
794 diploma.

795 (d) Notwithstanding Title 63G, Chapter 2, Government Records Access and
796 Management Act, for a student transcript or student diploma held by the division under this
797 chapter, the division shall treat the student transcript or student diploma as if it were an
798 education record under the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99, that
799 is controlled or maintained by a governmental entity and apply the Family Educational Rights
800 and Privacy Act, 34 C.F.R. Part 99, as it relates to disclosure of the student transcript or student
801 diploma.