

CONSUMER PROTECTION REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

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;
- ▶ 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 grace period provided by the United States Department of Education or is considered accredited by the United States Department of Education;
 - allow the Division of Consumer Protection to stagger postsecondary school renewal deadlines; and
 - modify the timing and type of information to be provided by a postsecondary school that is closing; and
- ▶ makes technical changes.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

39 **13-2-1**, as last amended by Laws of Utah 2015, Chapter 461

40 **13-11-17**, as last amended by Laws of Utah 2013, Chapter 124

41 **13-15-4**, as last amended by Laws of Utah 2010, Chapter 378

42 **13-22-2**, as last amended by Laws of Utah 2015, Chapter 120

43 **13-22-8**, as last amended by Laws of Utah 2016, Chapter 377

44 **13-22-21**, as last amended by Laws of Utah 1996, Chapter 187

45 **13-34a-102**, as enacted by Laws of Utah 2014, Chapter 360

46 **13-34a-104**, as enacted by Laws of Utah 2014, Chapter 360

47 **13-34a-204**, as enacted by Laws of Utah 2014, Chapter 360

48 **13-34a-207**, as enacted by Laws of Utah 2014, Chapter 360

49 ENACTS:

50 **13-23-8**, Utah Code Annotated 1953



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

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

54 **13-2-1. Consumer protection division established -- Functions.**

55 (1) There is established within the Department of Commerce the Division of Consumer
56 Protection.

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

58 (a) Chapter 5, Unfair Practices Act;

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

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

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

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

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

- 64 (g) Chapter 22, Charitable Solicitations Act;
 65 (h) Chapter 23, Health Spa Services Protection Act;
 66 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
 67 (j) Chapter 26, Telephone Fraud Prevention Act;
 68 (k) Chapter 28, Prize Notices Regulation Act;
 69 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
 70 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
 71 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
 72 (o) Chapter 39, Child Protection Registry;
 73 ~~(p)~~ (p) Chapter 41, Price Controls During Emergencies Act;
 74 ~~(q)~~ (q) Chapter 42, Uniform Debt-Management Services Act;
 75 ~~(r)~~ (r) Chapter 49, Immigration Consultants Registration Act; and
 76 ~~(s)~~ (s) Chapter 51, Transportation Network Company Registration Act.

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

78 **13-11-17. Actions by enforcing authority.**

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

- 80 (a) ~~(a)~~ obtain a declaratory judgment that an act or practice violates this chapter;
 81 (b) ~~(b)~~ enjoy, in accordance with the principles of equity, a supplier who has violated,

82 is violating, or is otherwise likely to violate this chapter; ~~and~~

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

86 (d) obtain a fine in an amount determined after considering the factors in Subsection
 87 (6).

88 (2) (a) The enforcing authority may bring a class action on behalf of consumers for the
 89 actual damages caused by an act or practice specified as violating this chapter in a rule adopted
 90 by the enforcing authority under Subsection 13-11-8(2) before the consumer transactions on
 91 which the action is based, or declared to violate Section 13-11-4 or 13-11-5 by final judgment
 92 of courts of general jurisdiction and appellate courts of this state that was either reported
 93 officially or made available for public dissemination under Subsection 13-11-7(1)(c) by the
 94 enforcing authority 10 days before the consumer transactions on which the action is based, or,

95 with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent
96 judgment that became final before the consumer transactions on which the action is based.

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

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

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

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

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

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

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

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

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

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

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

124 (b) An assurance is not evidence of a prior violation of this chapter. Unless an
125 assurance has been rescinded by agreement of the parties or voided by a court for good cause,

126 subsequent failure to comply with the terms of an assurance is prima facie evidence of a
127 violation.

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

132 (b) All money received through [~~administrative~~] fines imposed under this section shall
133 be deposited in the Consumer Protection Education and Training Fund created by Section
134 13-2-8.

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

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

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

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

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

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

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

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

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

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

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

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

154 (h) other matters as justice may require.

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

156 **13-15-4. Information to be filed by seller annually -- Representations -- Fees.**

157 (1) ~~Any~~ A seller of an assisted marketing plan shall annually file the following
158 information with the division:

159 (a) the name, address, and principal place of business of the seller, and the name,
160 address, and principal place of business of the parent or holding company of the seller, if any,
161 who is responsible for statements made by the seller;

162 (b) ~~all~~ the trademarks, trade names, service marks, or advertising or other commercial
163 symbols that identify the products, equipment, supplies, or services to be offered, sold, or
164 distributed by the prospective purchaser;

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

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

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

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

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

177 (ii) if all or part of ~~these~~ the fees or deposits described in Subsection (1)(d)(i) are
178 returnable, the conditions under which ~~they~~ the fees or deposits are returnable shall also be
179 disclosed;

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

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

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

186 (h) (i) a complete description of any services promised to be performed by the seller in
187 connection with the placement of the equipment, products, or supplies at any location from

188 which they will be sold or used; and

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

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

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

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

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

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

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

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

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

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

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

216 (2) The seller of an assisted marketing plan filing information under Subsection (1)
217 shall pay ~~[a]~~ an annual fee as determined by the department in accordance with Section
218 63J-1-504 when the seller files the information required under Subsection (1).

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

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

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

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

234 "CAUTION

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

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

240 **13-22-2. Definitions.**

241 As used in this chapter:

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

244 ~~(1)~~ (2) (a) "Charitable organization" or "organization" means any person, joint
245 venture, partnership, limited liability company, corporation, association, group, or other entity:

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

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

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

252 (C) established for any charitable purpose;

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

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

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

261 ~~[(2)]~~ (3) "Charitable purpose" means any benevolent, educational, philanthropic,
262 humane, patriotic, religious, eleemosynary, social welfare or advocacy, public health,
263 environmental, conservation, civic, or other charitable objective or for the benefit of a public
264 safety, law enforcement, or firefighter fraternal association.

265 ~~[(3)]~~ (4) "Charitable sales promotion" means an advertising or sales campaign,
266 conducted by a commercial co-venturer, which represents that the purchase or use of goods or
267 services offered by the commercial co-venturer will benefit, in whole or in part, a charitable
268 organization or purpose.

269 ~~[(4)]~~ (5) (a) "Charitable solicitation" or "solicitation" means any request, directly or
270 indirectly, for money, credit, property, financial assistance, or any other thing of value on the
271 plea or representation that it will be used for a charitable purpose.

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

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

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

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

278 (iv) the sale of, offer or attempt to sell, or request of donations in exchange for any
279 advertisement, membership, subscription, or other article in connection with which any appeal
280 is made for any charitable purpose, or the use of the name of any charitable organization or

281 movement as an inducement or reason for making any purchase donation, or, in connection
282 with any sale or donation, stating or implying that the whole or any part of the proceeds of any
283 sale or donation will go to or be donated to any charitable purpose.

284 ~~[(5)]~~ (6) "Commercial co-venturer" means a person who for profit is regularly and
285 primarily engaged in trade or commerce other than in connection with soliciting for a charitable
286 organization or purpose.

287 ~~[(6)]~~ (7) (a) "Contribution" means the pledge or grant for a charitable purpose of any
288 money or property of any kind, including any of the following:

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

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

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

294 (b) "Contribution" does not include:

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

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

299 ~~[(7)]~~ (8) "Contributor" means ~~[any]~~ a donor, pledgor, purchaser, or other person who
300 makes a contribution.

301 ~~[(8)]~~ (9) "Director" means the director of the Division of Consumer Protection.

302 ~~[(9)]~~ (10) "Division" means the Division of Consumer Protection of the Department of
303 Commerce.

304 ~~[(10)]~~ (11) "Material fact" means information that a person of ordinary intelligence and
305 prudence would consider relevant in deciding whether or not to make a contribution in
306 response to a charitable solicitation.

307 ~~[(11)]~~ (12) (a) "Professional fund raiser" means a person who:

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

311 (ii) engages in, or represents being independently engaged in, the business of soliciting

312 contributions for a charitable organization;

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

314 or

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

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

320 ~~[(12)]~~ (13) (a) "Professional fund raising counsel or consultant" or other comparable
321 designation or title means a person who:

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

326 (ii) does not solicit contributions; and

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

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

332 ~~[(13)]~~ (14) (a) "Vending device" means a container used by a charitable organization or
333 professional fund raiser, for the purpose of collecting a charitable solicitation, contribution, or
334 donation whether or not the device offers a product or item in return for the contribution or
335 donation.

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

338 ~~[(14)]~~ (15) "Vending device decal" means any decal, tag, or similar designation
339 material that is attached to a vending device, whether or not used or placed by a charitable
340 organization or professional fund raiser, that would indicate that all or a portion of the proceeds
341 from the purchase of items from the vending device will go to a specific charitable
342 organization.

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

344 **13-22-8. Exemptions.**

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

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

349 ~~[(b)]~~ (a) a bona fide religious, ecclesiastical, or denominational organization if:

350 (i) the solicitation is made for a church, missionary, religious, or humanitarian purpose;

351 and

352 (ii) the organization is either:

353 (A) a lawfully organized corporation, institution, society, church, or established
354 physical place of worship, at which nonprofit religious services and activities are regularly
355 conducted and carried on;

356 (B) a bona fide religious group:

357 (I) that does not maintain specific places of worship;

358 (II) that is not subject to federal income tax; and

359 (III) not required to file an IRS Form 990 under any circumstance; or

360 (C) a separate group or corporation that is an integral part of an institution that is an
361 income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) and is not primarily supported
362 by funds solicited outside the group's or corporation's own membership or congregation;

363 ~~[(c)]~~ (b) a solicitation by a broadcast media owned or operated by an educational
364 institution or governmental entity, or any entity organized solely for the support of that
365 broadcast media;

366 ~~[(d)]~~ (c) except as provided in Subsection 13-22-21(1), a solicitation for the relief of
367 any person sustaining a life-threatening illness or injury specified by name at the time of
368 solicitation if the entire amount collected without any deduction is turned over to the named
369 person;

370 ~~[(e)]~~ (d) a political party authorized to transact the political party's affairs within this
371 state and any candidate and campaign worker of the political party if the content and manner of
372 any solicitation make clear that the solicitation is for the benefit of the political party or
373 candidate;

374 ~~[(f)]~~ (e) a political action committee or group soliciting funds relating to issues or
375 candidates on the ballot if the committee or group is required to file financial information with
376 a federal or state election commission;

377 ~~[(g)]~~ (f) (i) a public school;

378 (ii) a public institution of higher learning;

379 (iii) a school accredited by an accreditation body recognized within the state or the
380 United States;

381 (iv) an institution of higher learning accredited by an accreditation body recognized
382 within the state or the United States;

383 (v) an organization within, and authorized by, an entity described in Subsections
384 (1)~~[(g)]~~(f)(i) through (iv); or

385 (vi) a parent organization, teacher organization, or student organization authorized by
386 an entity described in Subsection (1)~~[(g)]~~(f)(i) or (iii) if:

387 (A) the parent organization, teacher organization, or student organization is a branch
388 of, or is affiliated with, a central organization;

389 (B) the parent organization, teacher organization, or student organization is subject to
390 the central organization's general control and supervision;

391 (C) the central organization holds a United States Internal Revenue Service group tax
392 exemption that covers the parent organization, teacher organization, or student organization;
393 and

394 (D) the central organization is registered with the division under this chapter;

395 ~~[(h)]~~ (g) a public or higher education foundation established under Title 53A, State
396 System of Public Education, or Title 53B, State System of Higher Education;

397 ~~[(i)]~~ (h) a television station, radio station, or newspaper of general circulation that
398 donates air time or print space for no consideration as part of a cooperative solicitation effort
399 on behalf of a charitable organization, whether or not that organization is required to register
400 under this chapter;

401 ~~[(j)]~~ (i) a volunteer fire department, rescue squad, or local civil defense organization
402 whose financial oversight is under the control of a local governmental entity;

403 ~~[(k)]~~ (j) any governmental unit of any state or the United States;

404 ~~[(l)]~~ (k) any corporation;

- 405 (i) established by an act of the United States Congress; and
- 406 (ii) that is required by federal law to submit an annual report:
- 407 (A) on the activities of the corporation, including an itemized report of all receipts and
- 408 expenditures of the corporation; and
- 409 (B) to the United States Secretary of Defense to be:
- 410 (I) audited; and
- 411 (II) submitted to the United States Congress; [~~and~~]
- 412 [~~(m)~~] (l) a solicitation by an applicant for a grant offered by a state agency if:
- 413 (i) the terms of the grant provide that the state agency monitors a grant recipient to
- 414 ensure that grant funds are used in accordance with the grant's purpose; and
- 415 (ii) the sum of the amount available to the applicant under grants offered by a state
- 416 agency that the applicant applies for in a calendar year is less than or equal to \$1,500[-]; and
- 417 (m) a chapter of a charitable organization or a person who solicits contributions for a
- 418 charitable organization, if the charitable organization is registered with the division pursuant to
- 419 Section 13-22-5 and:
- 420 (i) all contributions solicited by the chapter or person are delivered directly to the
- 421 control of the charitable organization; or
- 422 (ii) (A) the charitable organization holds a United States Internal Revenue Service
- 423 group tax exemption that covers the chapter;
- 424 (B) the charitable organization provides a list of its chapters to the division with its
- 425 registration or renewal of registration;
- 426 (C) the chapter is on the list provided under Subsection (2)(m)(ii)(B);
- 427 (D) the chapter maintains the information required under Section 13-22-15 and
- 428 provides the information to the division upon request; and
- 429 (E) solicitations by the chapter or the person are limited to the collection of
- 430 membership-related fees, dues, or assessments from new and existing members.
- 431 (2) [~~Any~~] An organization claiming an exemption under this section bears the burden
- 432 of proving [~~its~~] the organization's eligibility for, or the applicability of, the exemption claimed.
- 433 (3) [~~Each~~] An organization exempt from registration pursuant to this section that
- 434 makes a material change in the organization's legal status, officers, address, or similar changes
- 435 shall file a report informing the division of the organization's current legal status, business

436 address, business phone, officers, and primary contact person within 30 days of the change.

437 (4) The division may by rule:

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

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

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

441 (b) prescribe the contents of a notice of claim of exemption and a renewal of a notice
442 of claim of exemption; and

443 (c) require a filing fee for a notice of claim of exemption and a renewal of a notice of
444 claim of exemption as determined under Section 63J-1-504.

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

446 **13-22-21. Appeal on behalf of individual.**

447 (1) If a charitable campaign consisting of exempt solicitations for the relief of a named
448 individual sustaining a life-threatening illness or injury, as described in Subsection

449 13-22-8(1)[~~(b)~~](c), collects proceeds in excess of \$1,000, the organizer of the campaign shall
450 give the division written notice of the following:

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

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

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

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

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

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

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

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

468 **13-23-8. Grounds for denial, suspension, or revocation.**

469 (1) The director may, in accordance with Title 63G, Chapter 4, Administrative
470 Procedures Act, issue an order to deny, suspend, or revoke an application or registration upon a
471 finding that the order is in the public interest and that:

472 (a) the application for registration or renewal is incomplete or misleading in a material
473 respect;

474 (b) the applicant or person registered under this chapter or an officer, director, agent, or
475 employee of the applicant or registrant has:

476 (i) violated this chapter;

477 (ii) violated Chapter 11, Utah Consumer Sales Practices Act;

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

480 (A) includes a finding or admission of fraud, breach of fiduciary duty, or material
481 misrepresentation; or

482 (B) is based on a finding of lack of integrity, truthfulness, or mental competence of the
483 applicant;

484 (iv) obtained or attempted to obtain a registration by misrepresentation;

485 (v) failed to timely provide the division with any information required by this chapter;

486 or

487 (vi) failed to pay a fine imposed by the division;

488 (c) the applicant's or registrant's bond, letter of credit, or certificate of deposit ceases to
489 be in effect;

490 (d) the applicant or registrant requested an exemption from maintaining a bond, letter
491 of credit, or certificate of deposit under Section 13-23-6, but does not meet the requirements
492 for exemption; or

493 (e) the applicant or registrant ceases to provide health spa services.

494 Section 8. Section **13-34a-102** is amended to read:

495 **13-34a-102. Definitions.**

496 As used in this chapter:

497 (1) "Accredited institution" means a postsecondary school that is accredited by an

498 accrediting agency.

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

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

502 (b) develops evaluation criteria; and

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

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

506 (a) (i) owns an interest in a postsecondary school; or

507 (ii) is employed by a postsecondary school; and

508 (b) (i) enrolls or attempts to enroll a Utah resident in a postsecondary school;

509 (ii) offers to award an educational credential for remuneration on behalf of a
510 postsecondary school; or

511 (iii) holds oneself out to Utah residents as representing a postsecondary school for any
512 purpose.

513 (4) "Certificate of postsecondary state authorization" means a certificate issued by the
514 division to a postsecondary school in accordance with the provisions of this chapter.

515 (5) "Division" means the Division of Consumer Protection.

516 (6) "Educational credential" means a degree, diploma, certificate, transcript, report,
517 document, letter of designation, mark, or series of letters, numbers, or words that represent
518 enrollment, attendance, or satisfactory completion of the requirements or prerequisites of an
519 educational program.

520 (7) "Intentional violation" means a violation of a provision of this chapter that occurs
521 or continues after the division, the attorney general, a county attorney, or a district attorney
522 gives the violator written notice, delivered by certified mail, that the violator is or has been in
523 violation of the provision.

524 (8) "Operate" means to:

525 (a) maintain a place of business in the state;

526 (b) conduct significant educational activities within the state; or

527 (c) provide postsecondary education to a Utah resident that:

528 (i) is intended to lead to a postsecondary degree or certificate; and

529 (ii) is provided from a location outside the state by correspondence or
530 telecommunications or electronic media technology.

531 (9) "Operating history" means a report, written evaluation, publication, or other
532 documentation regarding:

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

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

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

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

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

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

540 (10) "Ownership" means:

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

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

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

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

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

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

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

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

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

554 (13) "Private postsecondary school" means a postsecondary school that is not a public
555 postsecondary school.

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

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

558 (b) substantially supported with government funds.

559 Section 9. Section **13-34a-104** is amended to read:

560 **13-34a-104. Authority to execute interstate reciprocity agreement -- Rulemaking.**

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

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

563 (b) is for the benefit of:

564 (i) postsecondary schools in the state; or

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

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

567 53B-1-102.

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

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

570 53B-16-109:

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

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

573 agreement; and

574 (b) the division may, in accordance with Title 63G, Chapter 3, Utah Administrative

575 Rulemaking Act, make rules relating to:

576 (i) the standards for granting a postsecondary school state authorization under a

577 reciprocity agreement;

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

579 authorization under a reciprocity agreement; and

580 (iii) penalties if a postsecondary school fails to comply with the rules that the division

581 makes under this Subsection (2).

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

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

584 53B-1-102, the State Board of Regents may make rules that:

585 (a) implement the reciprocity agreement; and

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

587 Section 53B-1-102.

588 Section 10. Section **13-34a-204** is amended to read:

589 **13-34a-204. Postsecondary school -- Procedure to obtain certificate of**

590 **postsecondary state authorization.**

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

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

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

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

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

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

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

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

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

612 (iv) the postsecondary school's operating history with the postsecondary school's
613 accrediting agency since the postsecondary school's last registration with the division under this
614 chapter or within the 12 months before the day on which the postsecondary school submits a
615 completed registration form under this section, whichever is longer;

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

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

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

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

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

630 (A) convicted of a crime;

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

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

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

637 (b) pay a nonrefundable fee, established by the division, in accordance with Subsection
638 13-34a-103(2)(c) to pay for the cost of processing the registration form and issuing the
639 certificate of postsecondary state authorization.

640 (3) If a postsecondary school's accreditor loses its recognition by the United States
641 Department of Education, the postsecondary school may satisfy the requirements of Subsection
642 (2)(a)(i) by demonstrating to the division that the postsecondary school is within a grace period
643 provided by the United States Department of Education for obtaining new accreditation or is
644 otherwise considered by the United States Department of Education to have recognized
645 accreditation.

646 [~~3~~] (4) The division shall develop and make available to the public a registration form
647 described in Subsection (2)(a).

648 [~~4~~] (5) The division shall deposit money that the division receives under Subsection
649 (2)(b) into the Commerce Service Account, created in Section 13-1-2.

650 [~~5~~] (6) If a postsecondary school maintains more than one physical campus in the
651 state, the postsecondary school shall file a separate registration form for each physical campus
652 in the state.

653 ~~[(6)]~~ (7) (a) A certificate of postsecondary state authorization issued under this section
654 is not transferrable.

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

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

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

666 ~~[(7)]~~ (8) (a) A certificate of postsecondary state authorization issued under this section
667 expires one year after the day on which the certificate of postsecondary state authorization is
668 issued.

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

671 Section 11. Section **13-34a-207** is amended to read:

672 **13-34a-207. Discontinuance of operations.**

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

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

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

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

684 (d) to the extent permitted by law:

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

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

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

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

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

692 (3) The following applies to the extent not prohibited by federal law:

693 (a) If a postsecondary school that ceases operation has a student transcript or student
694 diploma, the postsecondary school shall provide for:

695 (i) storage of the student transcript or student diploma; and

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

699 (b) The division may:

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

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

704 (c) Notwithstanding Title 63G, Chapter 2, Government Records Access and
705 Management Act, for a student transcript or student diploma held by the division under this
706 chapter, the division shall treat the student transcript or student diploma as if it were an
707 education record under the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99, that
708 is controlled or maintained by a governmental entity and apply the Family Educational Rights
709 and Privacy Act, 34 C.F.R. Part 99 as it relates to disclosure of the student transcript or student
710 diploma.