



## SB0038S01 compared with SB0038S02

- 20       ▶ amends provisions relating to an entity's surety bond and certificate of deposit;
- 21       ▶ provides the circumstances under which the division may recover costs from a surety bond or a certificate of deposit;
- 23       ▶ provides that a person correct information contained in a filing the person makes with the division if the information becomes incorrect or incomplete;
- 25       ▶ provides that certain persons may not represent that the division or the state endorses or approves the person;
- 27       ▶ clarifies that the issuance of certain documents does not constitute an approval or endorsement by the division or the state;
- 29       ▶ provides the circumstances under which the division may deny, suspend, or revoke certain documents;
- 31       ▶ requires that a person that registers with the division maintain a registered agent in this state;
- 33       ▶ provides requirements for the information a person shall maintain for a registered agent in this state;
- 35       ▶ amends provisions relating to the division's enforcement powers and penalties the division may impose;
- 37       ▶ provides the actions a court may take when the division brings an enforcement action;
- 38       ▶ provides the circumstances under which a court may order disgorgement of money;
- 39       ▶ amends charitable solicitation financial report requirements;
- 40       ▶ changes references in Title 13, Chapter 23, Health Spa Service Protection Act from "health spa" to "fitness center";
- 42       ▶ provides registration and renewal requirements for certain entities and individuals;
- 43       ▶ provides the length of a term for certain registrations;
- 44       ▶ amends provisions relating to criminal background checks for an entity applying for registration with the division;
- 46       ▶ provides that a seller or a seller's solicitor provide a consumer certain disclosures;
- 47       ▶ provides the circumstances under which the attorney general shall give legal advice to and act as counsel for the division;
- 49       ▶ updates terminology to refer to the division;
- 50       ▶ removes redundant provisions from provisions the division enforces;
- 51       ▶ amends provisions relating to an annual report a person is required to file with the division;

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- 53       ▶ removes references to the attorney general's enforcement powers in relation to the division; and  
55       ▶ makes technical and conforming changes.

### 56 **Money Appropriated in this Bill:**

57       None

### 58 **Other Special Clauses:**

59       This bill provides a special effective date.

### 60 **Utah Code Sections Affected:**

61       AMENDS:

- 62       **10-3-209 (Effective 05/06/26)**, as last amended by Laws of Utah 2024, Chapter 447  
63       **13-11-8 (Effective 05/06/26)**, as last amended by Laws of Utah 2025, Chapter 442  
64       **13-11-16 (Effective 05/06/26)**, as last amended by Laws of Utah 2025, Chapters 302, 442  
65       **13-11-17 (Effective 05/06/26)**, as last amended by Laws of Utah 2025, Chapter 442  
66       **13-15-102 (Effective 05/06/26)**, as renumbered and amended by Laws of Utah 2022, Chapter 243  
68       **13-15-201 (Effective 05/06/26)**, as enacted by Laws of Utah 2022, Chapter 243  
69       **13-15-301 (Effective 05/06/26)**, as renumbered and amended by Laws of Utah 2022, Chapter 243  
71       **13-25a-105 (Effective 05/06/26)**, as last amended by Laws of Utah 2021, Chapter 289  
72       **13-28-7 (Effective 05/06/26)**, as last amended by Laws of Utah 2025, Chapter 302  
73       **13-32a-102.5 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 284  
74       **13-32a-106.5 (Effective 05/06/26)**, as last amended by Laws of Utah 2022, Chapter 201  
75       **13-34-102 (Effective 05/06/26)**, as repealed and reenacted by Laws of Utah 2023, Chapter 458  
77       **13-34-103 (Effective 05/06/26)**, as repealed and reenacted by Laws of Utah 2023, Chapter 458  
79       **13-34-104 (Effective 05/06/26)**, as repealed and reenacted by Laws of Utah 2023, Chapter 458  
81       **13-34-105 (Effective 05/06/26)**, as repealed and reenacted by Laws of Utah 2023, Chapter 458  
83       **13-34-106 (Effective 05/06/26)**, as repealed and reenacted by Laws of Utah 2023, Chapter 458  
85       **13-34-108 (Effective 05/06/26)**, as repealed and reenacted by Laws of Utah 2023, Chapter 458  
87       **13-34-109 (Effective 05/06/26)**, as last amended by Laws of Utah 2025, Chapter 19  
88       **13-34-111 (Effective 05/06/26)**, as repealed and reenacted by Laws of Utah 2023, Chapter 458  
90       **13-34-201 (Effective 05/06/26)**, as repealed and reenacted by Laws of Utah 2023, Chapter 458  
92       **13-34-202 (Effective 05/06/26)**, as enacted by Laws of Utah 2023, Chapter 458  
93       **13-34-302 (Effective 05/06/26)**, as enacted by Laws of Utah 2023, Chapter 458  
94       **13-41-202 (Effective 05/06/26)**, as last amended by Laws of Utah 2021, Chapter 226

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95       **13-42-102 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
96       **13-42-103 (Effective 05/06/26)**, as enacted by Laws of Utah 2006, Chapter 154  
97       **13-42-104 (Effective 05/06/26)**, as enacted by Laws of Utah 2006, Chapter 154  
98       **13-42-105 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
99       **13-42-106 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
100       **13-42-107 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
101       **13-42-108 (Effective 05/06/26)**, as enacted by Laws of Utah 2006, Chapter 154  
102       **13-42-109 (Effective 05/06/26)**, as last amended by Laws of Utah 2009, Chapter 183  
103       **13-42-110 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
104       **13-42-111 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
105       **13-42-112 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
106       **13-42-113 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
107       **13-42-114 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
108       **13-42-118 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
109       **13-42-119 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
110       **13-42-121 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
111       **13-42-122 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
112       **13-42-123 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
113       **13-42-128 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
114       **13-42-129 (Effective 05/06/26)**, as enacted by Laws of Utah 2006, Chapter 154  
115       **13-42-132 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
116       **13-42-133 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
117       **13-42-134 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
118       **13-42-135 (Effective 05/06/26)**, as last amended by Laws of Utah 2012, Chapter 152  
119       **13-49-102 (Effective 05/06/26)**, as last amended by Laws of Utah 2015, Chapter 236  
120       **13-49-201 (Effective 05/06/26)**, as last amended by Laws of Utah 2016, Chapter 348  
121       **13-49-202 (Effective 05/06/26)**, as last amended by Laws of Utah 2015, Chapter 236  
122       **13-49-204 (Effective 05/06/26)**, as last amended by Laws of Utah 2015, Chapter 236  
123       **13-49-301 (Effective 05/06/26)**, as last amended by Laws of Utah 2015, Chapter 236  
124       **13-49-302 (Effective 05/06/26)**, as enacted by Laws of Utah 2012, Chapter 375  
125       **13-49-303 (Effective 05/06/26)**, as last amended by Laws of Utah 2015, Chapter 236

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126 **13-49-305 (Effective 05/06/26)**, as last amended by Laws of Utah 2015, Chapter 236  
127 **13-49-401 (Effective 05/06/26)**, as enacted by Laws of Utah 2012, Chapter 375  
128 **13-49-402 (Effective 05/06/26)**, as last amended by Laws of Utah 2015, Chapter 236  
129 **13-49-403 (Effective 05/06/26)**, as enacted by Laws of Utah 2012, Chapter 375  
130 **13-49-404 (Effective 05/06/26)**, as enacted by Laws of Utah 2012, Chapter 375  
131 **13-51-102 (Effective 05/06/26)**, as last amended by Laws of Utah 2019, Chapter 459  
132 **13-51-104 (Effective 05/06/26)**, as enacted by Laws of Utah 2015, Chapter 461  
133 **13-51-105 (Effective 05/06/26)**, as last amended by Laws of Utah 2024, Chapter 351  
134 **13-52-102 (Effective 05/06/26)**, as last amended by Laws of Utah 2025, Chapter 181  
135 **13-52-202 (Effective 05/06/26)**, as last amended by Laws of Utah 2025, Chapter 181  
136 **13-52-207 (Effective 05/06/26)**, as enacted by Laws of Utah 2024, Chapter 136  
137 **13-52-301 (Effective 05/06/26)**, as last amended by Laws of Utah 2024, Chapter 136  
138 **13-52-302 (Effective 05/06/26)**, as enacted by Laws of Utah 2025, Chapter 181  
139 **13-53-103 (Effective 05/06/26)**, as last amended by Laws of Utah 2025, Chapter 51  
140 **13-53-104 (Effective 05/06/26)**, as last amended by Laws of Utah 2025, Chapter 51  
141 **13-53-105 (Effective 05/06/26)**, as last amended by Laws of Utah 2025, Chapter 51  
142 **13-53-108 (Effective 05/06/26)**, as last amended by Laws of Utah 2025, Chapter 51  
143 **13-53-110 (Effective 05/06/26)**, as last amended by Laws of Utah 2025, Chapter 51  
144 **13-57-102 (Effective 05/06/26)**, as enacted by Laws of Utah 2020, Chapter 118  
145 **13-57-201 (Effective 05/06/26)**, as enacted by Laws of Utah 2020, Chapter 118  
146 **13-57-202 (Effective 05/06/26)**, as enacted by Laws of Utah 2020, Chapter 118  
147 **13-57-203 (Effective 05/06/26)**, as enacted by Laws of Utah 2020, Chapter 118  
148 **13-57-302 (Effective 05/06/26)**, as enacted by Laws of Utah 2020, Chapter 118  
149 **13-57-401 (Effective 05/06/26)**, as enacted by Laws of Utah 2020, Chapter 118  
150 **13-57-402 (Effective 05/06/26)**, as enacted by Laws of Utah 2020, Chapter 118  
151 **13-57-502 (Effective 05/06/26)**, as enacted by Laws of Utah 2020, Chapter 118  
152 **13-61-101 (Effective 05/06/26)**, as last amended by Laws of Utah 2024, Chapter 186  
153 **13-64-101 (Effective 05/06/26)**, as enacted by Laws of Utah 2023, Chapter 509  
154 **13-64-301 (Effective 05/06/26)**, as enacted by Laws of Utah 2023, Chapter 509  
155 **13-65-203 (Effective 05/06/26)**, as enacted by Laws of Utah 2023, Chapter 377  
156 **13-68-101 (Effective 05/06/26)**, as enacted by Laws of Utah 2023, Chapter 536

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157 **13-68-201 (Effective 05/06/26)**, as enacted by Laws of Utah 2023, Chapter 536  
158 **13-68-202 (Effective 05/06/26)**, as enacted by Laws of Utah 2023, Chapter 536  
159 **13-68-204 (Effective 05/06/26)**, as enacted by Laws of Utah 2023, Chapter 536  
160 **13-68-301 (Effective 05/06/26)**, as enacted by Laws of Utah 2023, Chapter 536  
161 **13-68-302 (Effective 05/06/26)**, as enacted by Laws of Utah 2023, Chapter 536  
162 **13-68-303 (Effective 05/06/26)**, as enacted by Laws of Utah 2023, Chapter 536  
163 **13-68-401 (Effective 05/06/26)**, as last amended by Laws of Utah 2024, Chapter 209  
164 **13-68-402 (Effective 05/06/26)**, as enacted by Laws of Utah 2023, Chapter 536  
165 **13-68-403 (Effective 05/06/26)**, as enacted by Laws of Utah 2023, Chapter 536  
166 **13-68-404 (Effective 05/06/26)**, as enacted by Laws of Utah 2023, Chapter 536  
167 **13-70-101 (Effective 05/06/26)**, as enacted by Laws of Utah 2024, Chapter 132  
168 **13-70-301 (Effective 05/06/26)**, as enacted by Laws of Utah 2024, Chapter 132  
169 **13-71-101 (Effective 05/06/26)**, as enacted by Laws of Utah 2024, Chapter 206  
170 **13-71-301 (Effective 05/06/26)**, as enacted by Laws of Utah 2024, Chapter 206  
171 **13-72a-101 (Effective 05/06/26)**, as enacted by Laws of Utah 2025, Chapter 269  
172 **13-72a-204 (Effective 05/06/26)**, as enacted by Laws of Utah 2025, Chapter 269  
173 **13-76-101 (Effective 05/06/26)**, as enacted by Laws of Utah 2025, Chapter 446  
174 **13-77-101 (Effective 05/06/26)**, as enacted by Laws of Utah 2025, Chapter 465  
175 **13-77-102 (Effective 05/06/26)**, as enacted by Laws of Utah 2025, Chapter 465  
176 **13-78-101 (Effective 05/06/26)**, as enacted by Laws of Utah 2025, Chapter 237  
177 **13-78-102 (Effective 05/06/26)**, as enacted by Laws of Utah 2025, Chapter 237  
178 **13-78-103 (Effective 05/06/26)**, as enacted by Laws of Utah 2025, Chapter 237  
179 **13-78-104 (Effective 05/06/26)**, as enacted by Laws of Utah 2025, Chapter 237  
180 **16-6a-102 (Effective 05/06/26)**, as last amended by Laws of Utah 2025, First Special Session,  
Chapter 9  
182 **16-6a-203 (Effective 05/06/26)**, as last amended by Laws of Utah 2024, Chapter 102  
183 **16-6a-1503 (Effective 05/06/26)**, as last amended by Laws of Utah 2024, Chapter 102  
184 **17-70-401 (Effective 05/06/26)**, as renumbered and amended by Laws of Utah 2025, First Special  
Session, Chapter 13  
186 **20A-11-104 (Effective 05/06/26)**, as last amended by Laws of Utah 2024, Chapter 447  
187

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36-11-102 (Effective 05/06/26), as last amended by Laws of Utah 2025, First Special Session, Chapter 16

189 51-9-801 (Effective 05/06/26), as last amended by Laws of Utah 2025, Chapter 167

190 54-8b-18 (Effective 05/06/26), as enacted by Laws of Utah 1999, Chapter 113

191 58-16a-305 (Effective 05/06/26), as last amended by Laws of Utah 2012, Chapter 256

192 63G-2-305 (Effective 05/06/26), as last amended by Laws of Utah 2025, First Special Session, Chapter 17

194 63G-26-103 (Effective 05/06/26), as last amended by Laws of Utah 2024, Chapter 416

195 71A-4-101 (Effective 05/06/26), as last amended by Laws of Utah 2025, Chapter 231

196 76-5c-401 (Effective 05/06/26), as renumbered and amended by Laws of Utah 2025, Chapter 173

198 76-5c-402 (Effective 05/06/26), as renumbered and amended by Laws of Utah 2025, Chapter 173

200 78B-3-112 (Effective 05/06/26), as enacted by Laws of Utah 2023, Chapter 365

201 ENACTS:

202 13-2-101 (Effective 05/06/26), Utah Code Annotated 1953

203 13-15-303 (Effective 05/06/26), Utah Code Annotated 1953

204 13-26-103 (Effective 05/06/26), Utah Code Annotated 1953

205 13-49-306 (Effective 05/06/26), Utah Code Annotated 1953

206 13-51-104.1 (Effective 05/06/26), Utah Code Annotated 1953

207 13-51-110 (Effective 05/06/26), Utah Code Annotated 1953

208 13-57-201.1 (Effective 05/06/26), Utah Code Annotated 1953

209 13-68-205 (Effective 05/06/26), Utah Code Annotated 1953

210 RENUMBERS AND AMENDS:

211 13-2-102 (Effective 05/06/26) (Superseded 07/01/26), (Renumbered from 13-2-1, as last amended by Laws of Utah 2025, Chapters 51, 181, 237, and 269)

213 13-2-102 (Effective 07/01/26), (Renumbered from 13-2-1, as last amended by Laws of Utah 2025, Chapter 468)

215 13-2-103 (Effective 05/06/26), (Renumbered from 13-2-2, as last amended by Laws of Utah 1990, Chapter 93)

217 13-2-104 (Effective 05/06/26), (Renumbered from 13-2-3, as last amended by Laws of Utah 2021, Chapter 344)

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- 13-2-105 (Effective 05/06/26), (Renumbered from 13-2-4, as enacted by Laws of Utah 1983, Chapter 57)
- 221 13-2-106 (Effective 05/06/26), (Renumbered from 13-2-5, as last amended by Laws of Utah 2008, Chapter 382)
- 223 13-2-107 (Effective 05/06/26), (Renumbered from 13-2-6, as last amended by Laws of Utah 2025, Chapter 442)
- 225 13-2-108 (Effective 05/06/26), (Renumbered from 13-2-7, as last amended by Laws of Utah 1994, Chapter 177)
- 227 13-2-109 (Effective 05/06/26), (Renumbered from 13-2-8, as last amended by Laws of Utah 2023, Chapter 375)
- 229 13-2-110 (Effective 05/06/26), (Renumbered from 13-2-9, as last amended by Laws of Utah 2012, Chapter 347)
- 231 13-2-111 (Effective 05/06/26), (Renumbered from 13-2-10, as enacted by Laws of Utah 2023, Chapter 76)
- 233 13-2-112 (Effective 05/06/26), (Renumbered from 13-2-11, as enacted by Laws of Utah 2024, Chapter 101)
- 235 13-21-101 (Effective 05/06/26), (Renumbered from 13-21-2, as last amended by Laws of Utah 2011, Chapter 289)
- 237 13-21-102 (Effective 05/06/26), (Renumbered from 13-21-3, as last amended by Laws of Utah 2009, Chapter 183)
- 239 13-21-103 (Effective 05/06/26), (Renumbered from 13-21-3.5, as enacted by Laws of Utah 1994, Chapter 186)
- 241 13-21-104 (Effective 05/06/26), (Renumbered from 13-21-4, as last amended by Laws of Utah 2025, Chapter 302)
- 243 13-21-105 (Effective 05/06/26), (Renumbered from 13-21-5, as enacted by Laws of Utah 1985, Chapter 29)
- 245 13-21-106 (Effective 05/06/26), (Renumbered from 13-21-6, as last amended by Laws of Utah 1988, Chapter 96)
- 247 13-21-107 (Effective 05/06/26), (Renumbered from 13-21-7, as last amended by Laws of Utah 2007, Chapter 306)
- 249

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- 13-21-108 (Effective 05/06/26), (Renumbered from 13-21-7.5, as enacted by Laws of Utah 2024, Chapter 109)
- 251 13-21-109 (Effective 05/06/26), (Renumbered from 13-21-8, as last amended by Laws of Utah 2024, Chapter 158)
- 253 13-21-110 (Effective 05/06/26), (Renumbered from 13-21-9, as last amended by Laws of Utah 1988, Chapter 96)
- 255 13-22-101 (Effective 05/06/26), (Renumbered from 13-22-2, as last amended by Laws of Utah 2024, Chapter 102)
- 257 13-22-102 (Effective 05/06/26), (Renumbered from 13-22-3, as last amended by Laws of Utah 2024, Chapter 158)
- 259 13-22-103 (Effective 05/06/26), (Renumbered from 13-22-4, as last amended by Laws of Utah 2024, Chapter 102)
- 261 13-22-104 (Effective 05/06/26), (Renumbered from 13-22-5, as last amended by Laws of Utah 2024, Chapter 102)
- 263 13-22-105 (Effective 05/06/26), (Renumbered from 13-22-9, as last amended by Laws of Utah 2024, Chapter 102)
- 265 13-22-106 (Effective 05/06/26), (Renumbered from 13-22-11, as last amended by Laws of Utah 2024, Chapter 102)
- 267 13-22-107 (Effective 05/06/26), (Renumbered from 13-22-12, as last amended by Laws of Utah 2024, Chapter 102)
- 269 13-22-108 (Effective 05/06/26), (Renumbered from 13-22-13, as last amended by Laws of Utah 2024, Chapter 102)
- 271 13-22-109 (Effective 05/06/26), (Renumbered from 13-22-14, as last amended by Laws of Utah 2024, Chapter 102)
- 273 13-22-110 (Effective 05/06/26), (Renumbered from 13-22-15, as repealed and reenacted by Laws of Utah 2024, Chapter 102)
- 275 13-22-111 (Effective 05/06/26), (Renumbered from 13-22-16, as last amended by Laws of Utah 2024, Chapter 102)
- 277 13-22-112 (Effective 05/06/26), (Renumbered from 13-22-17, as last amended by Laws of Utah 2024, Chapter 102)
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- 13-22-113 (Effective 05/06/26), (Renumbered from 13-22-19, as enacted by Laws of Utah 1993, Chapter 280)
- 281 13-22-114 (Effective 05/06/26), (Renumbered from 13-22-22, as last amended by Laws of Utah 2024, Chapter 102)
- 283 13-22-115 (Effective 05/06/26), (Renumbered from 13-22-23, as enacted by Laws of Utah 2001, Chapter 210)
- 285 13-22-116 (Effective 05/06/26), (Renumbered from 13-22-24, as enacted by Laws of Utah 2024, Chapter 102)
- 287 13-23-101 (Effective 05/06/26), (Renumbered from 13-23-2, as last amended by Laws of Utah 2022, Chapters 400, 415)
- 289 13-23-102 (Effective 05/06/26), (Renumbered from 13-23-3, as last amended by Laws of Utah 2022, Chapter 400)
- 291 13-23-103 (Effective 05/06/26), (Renumbered from 13-23-4, as last amended by Laws of Utah 2022, Chapter 274)
- 293 13-23-104 (Effective 05/06/26), (Renumbered from 13-23-5, as last amended by Laws of Utah 2022, Chapter 400)
- 295 13-23-105 (Effective 05/06/26), (Renumbered from 13-23-6, as last amended by Laws of Utah 2022, Chapter 400)
- 297 13-23-106 (Effective 05/06/26), (Renumbered from 13-23-7, as last amended by Laws of Utah 2021, Chapter 266)
- 299 13-23-107 (Effective 05/06/26), (Renumbered from 13-23-8, as last amended by Laws of Utah 2022, Chapter 400)
- 301 13-26-101 (Effective 05/06/26), (Renumbered from 13-26-2, as last amended by Laws of Utah 2022, Chapter 324)
- 303 13-26-102 (Effective 05/06/26), (Renumbered from 13-26-3, as last amended by Laws of Utah 2022, Chapter 324)
- 305 13-26-104 (Effective 05/06/26), (Renumbered from 13-26-4, as last amended by Laws of Utah 2022, Chapter 324)
- 307 13-26-105 (Effective 05/06/26), (Renumbered from 13-26-5, as last amended by Laws of Utah 2022, Chapter 324)
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13-26-106 (Effective 05/06/26), (Renumbered from 13-26-8, as last amended by Laws of Utah 2022, Chapter 324)

311 13-26-107 (Effective 05/06/26), (Renumbered from 13-26-10, as enacted by Laws of Utah 1991, Chapter 184)

313 13-26-108 (Effective 05/06/26), (Renumbered from 13-26-11, as last amended by Laws of Utah 2022, Chapter 324)

315 REPEALS:

316 13-15-101 (Effective 05/06/26), as renumbered and amended by Laws of Utah 2022, Chapter 243

318 13-21-1 (Effective 05/06/26), as enacted by Laws of Utah 1985, Chapter 29

319 13-22-1 (Effective 05/06/26), as enacted by Laws of Utah 1987, Chapter 122

320 13-23-1 (Effective 05/06/26), as enacted by Laws of Utah 1987, Chapter 105

321 13-25a-101 (Effective 05/06/26), as enacted by Laws of Utah 1996, Chapter 26

322 13-26-1 (Effective 05/06/26), as enacted by Laws of Utah 1990, Chapter 154

323 13-32a-101 (Effective 05/06/26), as last amended by Laws of Utah 2022, Chapter 201

324 13-32a-112.1 (Effective 05/06/26), as last amended by Laws of Utah 2022, Chapter 201

325 13-42-101 (Effective 05/06/26), as enacted by Laws of Utah 2006, Chapter 154

326 13-42-140 (Effective 05/06/26), as enacted by Laws of Utah 2006, Chapter 154

327 13-49-101 (Effective 05/06/26), as enacted by Laws of Utah 2012, Chapter 375

328 13-49-203 (Effective 05/06/26), as last amended by Laws of Utah 2016, Chapter 348

329 13-49-304 (Effective 05/06/26), as last amended by Laws of Utah 2015, Chapter 236

330 13-51-101 (Effective 05/06/26), as enacted by Laws of Utah 2015, Chapter 461

331 13-51-201 (Effective 05/06/26), as last amended by Laws of Utah 2018, Chapter 111

332 13-51-203 (Effective 05/06/26), as last amended by Laws of Utah 2018, Chapter 111

333 13-51-204 (Effective 05/06/26), as enacted by Laws of Utah 2016, Chapter 359

334 13-52-101 (Effective 05/06/26), as enacted by Laws of Utah 2018, Chapter 290

335 13-53-101 (Effective 05/06/26), as last amended by Laws of Utah 2025, Chapter 51

336 13-57-101 (Effective 05/06/26), as enacted by Laws of Utah 2020, Chapter 118

337 13-68-203 (Effective 05/06/26), as enacted by Laws of Utah 2023, Chapter 536

338 13-68-304 (Effective 05/06/26), as enacted by Laws of Utah 2023, Chapter 536

339 13-68-305 (Effective 05/06/26), as enacted by Laws of Utah 2023, Chapter 536

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## SB0038S01 compared with SB0038S02

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

342 Section 1. Section **10-3-209** is amended to read:

343 **10-3-209. Personal use expenditure -- Authorized and prohibited uses of campaign funds --**  
**Enforcement -- Penalties.**

345 (1) Unless a municipality adopts by ordinance more stringent definitions, the following are defined  
terms for the purposes of this section:

347 (a) "Candidate" means a person who:

348 (i) files a declaration of candidacy for municipal office; or

349 (ii) receives contributions, makes expenditures, or gives consent for any other person to receive  
contributions or make expenditures to bring about the person's nomination or election to a public  
office.

352 (b) "Officeholder" means a person who is elected to and currently holds a municipal office.

354 (c)

(i) "Personal use expenditure" means an expenditure that:

355 (A) is not excluded from the definition of personal use expenditure by Subsection (2) and primarily  
furthers a personal interest of a candidate or officeholder or a candidate's or officeholder's  
family, which interest is not connected with the performance of an activity as a candidate or an  
activity or duty of an officeholder; or

360 (B) would cause the candidate or officeholder to recognize the expenditure as taxable income under  
federal law.

362 (ii) "Personal use expenditure" includes:

363 (A) a mortgage, rent, utility, or vehicle payment;

364 (B) a household food item or supply;

365 (C) a clothing expense, except:

366 (I) clothing bearing the candidate's name or campaign slogan or logo that is used in the candidate's  
campaign;

368 (II) clothing bearing the logo or name of a jurisdiction, district, government organization, government  
entity, caucus, or political party that the officeholder represents or of which the officeholder is a  
member; or

371 (III) repair or replacement of clothing that is damaged while the candidate or officeholder is engaged in  
an activity of a candidate or officeholder;

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- 373 (D) an admission to a sporting, artistic, or recreational event or other form of entertainment;
- 375 (E) dues, fees, or gratuities at a country club, health club, or recreational facility;
- 376 (F) a salary payment made to a candidate, officeholder, or a person who has not provided a bona fide  
service to a candidate or officeholder;
- 378 (G) a vacation;
- 379 (H) a vehicle expense;
- 380 (I) a meal expense;
- 381 (J) a travel expense;
- 382 (K) a payment of an administrative, civil, or criminal penalty;
- 383 (L) a satisfaction of a personal debt;
- 384 (M) a personal service, including the service of an attorney, accountant, physician, or other professional  
person;
- 386 (N) a membership fee for a professional or service organization; and
- 387 (O) a payment in excess of the fair market value of the item or service purchased.
- 388 (2) As used in this section, "personal use expenditure" does not mean an expenditure made:
- 389 (a) for a political purpose;
- 390 (b) for candidacy for public office;
- 391 (c) to fulfill a duty or activity of an officeholder;
- 392 (d) for a donation to a registered political party;
- 393 (e) for a contribution to another candidate's campaign account, including sponsorship of or attendance  
at an event, the primary purpose of which is to solicit a contribution for another candidate's  
campaign account;
- 396 (f) to return all or a portion of a contribution to a donor;
- 397 (g) for the following items, if made in connection with the candidacy for public office or an activity or  
duty of an officeholder:
- 399 (i)
- (A) a mileage allowance at the rate established by the Division of Finance under Section 63A-3-107; or
- 401 (B) for motor fuel or special fuel, as defined in Section 59-13-102;
- 402 (ii) a meal expense;
- 403 (iii) a travel expense, including an expense incurred for airfare or a rental vehicle;
- 404 (iv) a payment for a service provided by an attorney or accountant;

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- 405 (v) a tuition payment or registration fee for participation in a meeting or conference;
- 406 (vi) a gift;
- 407 (vii) a payment for the following items in connection with an office space:
- 408 (A) rent;
- 409 (B) utilities;
- 410 (C) a supply; or
- 411 (D) furnishing;
- 412 (viii) a booth at a meeting or event; or
- 413 (ix) educational material;
- 414 (h) to purchase or mail informational material, a survey, or a greeting card;
- 415 (i) for a donation to a charitable organization, as defined by Section [~~13-22-2~~] 13-22-101, including admission to or sponsorship of an event, the primary purpose of which is charitable solicitation, as defined in Section [~~13-22-2~~] 13-22-101;
- 418 (j) to repay a loan a candidate makes from the candidate's personal account to the candidate's campaign account;
- 420 (k) to pay membership dues to a national organization whose primary purpose is to address general public policy;
- 422 (l) for admission to or sponsorship of an event, the primary purpose of which is to promote the social, educational, or economic well-being of the state or the candidate's or officeholder's community;
- 425 (m) for one or more guests of an officeholder or candidate to attend an event, meeting, or conference described in this Subsection (2); or
- 427 (n) to pay childcare expenses of:
- 428 (i) a candidate while the candidate is engaging in campaign activity; or
- 429 (ii) an officeholder while the officeholder is engaging in the duties of an officeholder.
- 430 (3)
- (a) A municipality may adopt an ordinance prohibiting a personal use expenditure by a candidate with requirements that are more stringent than the requirements provided in Subsection (4).
- 433 (b) The municipality may adopt definitions that are more stringent than those provided in Subsection (1) or (2).
- 435 (c) If a municipality fails to adopt a personal use expenditure ordinance described in Subsection (3)(a), a candidate shall comply with the requirements contained in Subsection (4).

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- 438 (4) A candidate or an officeholder may not use money deposited into a campaign account for:  
440 (a) a personal use expenditure; or  
441 (b) an expenditure prohibited by law.
- 442 (5) A municipality may enforce this section by adopting an ordinance:  
443 (a) to provide for the evaluation of a campaign finance statement to identify a personal use expenditure;  
and  
445 (b) to commence informal adjudicative proceedings if, after an evaluation described in Subsection  
(5)(a), there is probable cause to believe that a candidate or officeholder has made a personal use  
expenditure.
- 448 (6) If, in accordance with the proceedings described in Subsection (5)(b) established in municipal  
ordinance, a municipality determines that a candidate or officeholder has made a personal use  
expenditure, the municipality:  
451 (a) may require the candidate or officeholder to:  
452 (i) remit an administrative penalty of an amount equal to 50% of the personal use expenditure to the  
municipality; and  
454 (ii) deposit the amount of the personal use expenditure into the campaign account from which the  
personal use expenditure was disbursed; and  
456 (b) shall deposit the money received under Subsection (6)(a)(i) into the municipal general fund.
- 458 Section 2. Section 2 is enacted to read:  
460 **13-2-101. Definitions.**  
1. General Provisions  
As used in this chapter:
- 462 (1) "Director" means the director of the Division of Consumer Protection appointed under Section  
13-2-103.
- 464 (2) "Division" means the Division of Consumer Protection established in Section 13-2-102.
- 465 Section 3. Section **13-2-102** is renumbered and amended to read:  
467 **[13-2-1]13-2-102. Consumer protection division established -- Functions.**
- 469 (1) There is established within the Department of Commerce the Division of Consumer Protection.  
471 (2) The division shall administer and enforce the following:  
472 (a) Chapter 10a, Music Licensing Practices Act;  
473 (b) Chapter 11, Utah Consumer Sales Practices Act;

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- 474 (c) Chapter 15, Business Opportunity Disclosure Act;  
475 (d) Chapter 20, New Motor Vehicle Warranties Act;  
476 (e) Chapter 21, Credit Services Organizations Act;  
477 (f) Chapter 22, Charitable Solicitations Act;  
478 (g) Chapter 23, [~~Health Spa Services Protection Act~~] Fitness Center Services Protection Act;  
480 (h) Chapter 25a, Telephone and Facsimile Solicitation Act;  
481 (i) Chapter 26, Telephone Fraud Prevention Act;  
482 (j) Chapter 28, Prize Notices Regulation Act;  
483 (k) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter Transaction Information  
Act;  
485 (l) Chapter 34, Utah Postsecondary School and State Authorization Act;  
486 (m) Chapter 41, Price Controls During Emergencies Act;  
487 (n) Chapter 42, Uniform Debt-Management Services Act;  
488 (o) Chapter 49, Immigration Consultants Registration Act;  
489 (p) Chapter 51, Transportation Network Company Registration Act;  
490 (q) Chapter 52, Residential Solar Energy Consumer Protection Act;  
491 (r) Chapter 53, Residential, Vocational [~~or~~] and Life Skills Program Act;  
492 (s) Chapter 54, Ticket Website Sales Act;  
493 (t) Chapter 56, Ticket Transferability Act;  
494 (u) Chapter 57, Maintenance Funding Practices Act;  
495 (v) Chapter 61, Utah Consumer Privacy Act;  
496 (w) Chapter 64, Vehicle Value Protection Agreement Act;  
497 (x) Chapter 65, Utah Commercial Email Act;  
498 (y) Chapter 67, Online Dating Safety Act;  
499 (z) Chapter 68, Lawyer Referral Consultants Registration Act;  
500 (aa) Chapter 70, Automatic Renewal Contracts Act;  
501 (bb) Chapter 71, Utah Minor Protection in Social Media Act;  
502 (cc) Chapter 72a, Artificial Intelligence Applications Relating to Mental Health;[~~and~~]  
503 (dd) Chapter 77, Generative Artificial Intelligence - Consumer Disclosures and Enforcement; and  
505 [~~dd~~] (ee) Chapter 78, Earned Wage Access Services Act.  
506

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(3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules to establish:

- 508 (a) a public list that identifies a person that:  
509 (i) violates a chapter described in Subsection (2);  
510 (ii) without proper legal justification, fails to comply with an order, subpoena, judgment, or other legal  
process issued by:  
512 (A) the division; or  
513 (B) a court of competent jurisdiction; or  
514 (iii) breaches a settlement agreement, stipulation, assurance of voluntary compliance, or similar  
instrument signed by the person and the division; and  
516 (b) a process by which a person may be removed from the list the division establishes as described in  
Subsection (3)(a).

518 Section 4. Section **13-2-102** is renumbered and amended to read:

520 ~~[13-2-1]~~ **13-2-102. Consumer protection division established -- Functions.**

- 522 (1) There is established within the Department of Commerce the Division of Consumer Protection.  
524 (2) The division shall administer and enforce the following:  
525 (a) Chapter 10a, Music Licensing Practices Act;  
526 (b) Chapter 11, Utah Consumer Sales Practices Act;  
527 (c) Chapter 15, Business Opportunity Disclosure Act;  
528 (d) Chapter 20, New Motor Vehicle Warranties Act;  
529 (e) Chapter 21, Credit Services Organizations Act;  
530 (f) Chapter 22, Charitable Solicitations Act;  
531 (g) Chapter 23, ~~[Health Spa Services Protection Act]~~ Fitness Center Services Protection Act;  
533 (h) Chapter 25a, Telephone and Facsimile Solicitation Act;  
534 (i) Chapter 26, Telephone Fraud Prevention Act;  
535 (j) Chapter 28, Prize Notices Regulation Act;  
536 (k) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter Transaction Information  
Act;  
538 (l) Chapter 34, Utah Postsecondary School and State Authorization Act;  
539 (m) Chapter 41, Price Controls During Emergencies Act;  
540 (n) Chapter 42, Uniform Debt-Management Services Act;

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- 541 (o) Chapter 49, Immigration Consultants Registration Act;
- 542 (p) Chapter 51, Transportation Network Company Registration Act;
- 543 (q) Chapter 52, Residential Solar Energy Consumer Protection Act;
- 544 (r) Chapter 53, Residential, Vocational [~~or~~] and Life Skills Program Act;
- 545 (s) Chapter 54, Ticket Website Sales Act;
- 546 (t) Chapter 56, Ticket Transferability Act;
- 547 (u) Chapter 57, Maintenance Funding Practices Act;
- 548 (v) Chapter 61, Utah Consumer Privacy Act;
- 549 (w) Chapter 64, Vehicle Value Protection Agreement Act;
- 550 (x) Chapter 65, Utah Commercial Email Act;
- 551 (y) Chapter 67, Online Dating Safety Act;
- 552 (z) Chapter 68, Lawyer Referral Consultants Registration Act;
- 553 (aa) Chapter 70, Automatic Renewal Contracts Act;
- 554 (bb) Chapter 71, Utah Minor Protection in Social Media Act;
- 555 (cc) Chapter 72a, Artificial Intelligence Applications Relating to Mental Health;
- 556 (dd) Chapter 78, Earned Wage Access Services Act;~~and~~
- 557 (ee) Chapter 77, Generative Artificial Intelligence - Consumer Disclosures and Enforcement; and
- 559 ~~[(ee)]~~ (ff) Chapter 81, Utah Digital Choice Act.
- 560 (3) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may  
make rules to establish:
- 562 (a) a public list that identifies a person that:
- 563 (i) violates a chapter described in Subsection (2);
- 564 (ii) without proper legal justification, fails to comply with an order, subpoena, judgment, or other legal  
process issued by:
- 566 (A) the division; or
- 567 (B) a court of competent jurisdiction; or
- 568 (iii) breaches a settlement agreement, stipulation, assurance of voluntary compliance, or similar  
instrument signed by the person and the division; and
- 570 (b) a process by which a person may be removed from the list the division establishes as described in  
Subsection (3)(a).
- 572 Section 5. Section **13-2-103** is renumbered and amended to read:

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574 ~~[13-2-2]~~ **13-2-103. Director of division -- Appointment.**

575 (1) The division shall be under the supervision, direction, and control of a director.[-]

576 (2) The director shall be appointed by the executive director of commerce with the approval of the governor.[-]

578 (3) The director shall hold office at the pleasure of the governor.

579 Section 6. Section **13-2-104** is renumbered and amended to read:

581 ~~[13-2-3]~~ **13-2-104. Employment of personnel -- Compensation of director.**

583 (1) The director, with the approval of the executive director, may employ personnel necessary to carry out the duties and responsibilities of the division at salaries established by the executive director according to standards established by the Division of Human Resource Management.

587 (2) The executive director shall establish the salary of the director according to standards established by the Division of Human Resource Management.

589 (3) The director may employ specialists, technical experts, or investigators to participate or assist in ~~[investigations]~~ an investigation if ~~[they]~~ the investigation reasonably ~~[require]~~ requires expertise beyond that normally required for division personnel.

592 (4)

(a) ~~[An]~~ Subject to Subsection (4)(b), the director may designate an investigator employed ~~[pursuant to]~~ in accordance with Subsection (3) ~~[may be designated]~~ as a special function officer, as that term is defined in Section 53-13-105~~[-, by the director,]~~ .

595 (b) ~~[but]~~ An investigator designated as a special function officer in accordance with Subsection (4)(a) is not eligible for retirement benefits under the Public Safety Employee's Retirement System.

598 Section 7. Section **13-2-105** is renumbered and amended to read:

600 ~~[13-2-4]~~ **13-2-105. Annual report -- Budget.**

601 (1) On or before ~~[the 1st day of October]~~ October 1 of each year, the director in connection with the executive director shall report to the governor and the Legislature for the preceding fiscal year on the operations, activities, and goals of the division.

604 (2) The director shall prepare and submit to the executive director a budget of the administrative expenses for the division.

606 Section 8. Section **13-2-106** is renumbered and amended to read:

608 ~~[13-2-5]~~ **13-2-106. Powers of director.**

The director ~~[has authority to]~~ may:

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- 610 (1) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, issue rules to  
administer and enforce the chapters listed in Section ~~[13-2-1]~~ 13-2-102;
- 612 (2) investigate ~~[the activities of any business]~~ conduct governed by the laws ~~[administered and enforced  
by]~~ the division administers and enforces;
- 614 (3) take administrative and judicial action against ~~[persons in violation of the division rules and the laws  
administered and enforced by it]~~ a person that violates the division rules and the laws the division  
administers and enforces, including the issuance of cease and desist orders;
- 618 (4) coordinate, cooperate, and assist with business and industry desiring or attempting to correct unfair  
business practices between competitors;
- 620 (5) provide consumer information and education to the public and assist ~~[any]~~ an organization  
~~[providing such services]~~ that provides consumer information and education to the public; and
- 623 (6) coordinate with, assist, and utilize the assistance of federal, state, and local agencies in the  
performance of the director's duties and the protection of the public.

625 Section 9. Section **13-2-107** is renumbered and amended to read:

627 ~~[13-2-6]~~ **13-2-107. Enforcement powers.**

- 628 (1) As used in this section, "transactional resources" means:
- 629 (a) a mail drop or mail box, regardless of whether the mail drop or mail box is located on the premises  
of a United States Post Office;
- 631 (b) a telephone or facsimile transmission device;
- 632 (c) an internet connection by a resident or inhabitant of this state with a resident- or nonresident-  
maintained internet site;
- 634 (d) a business office or private residence used for a business-related purpose;
- 635 (e) an account with or services of a financial institution;
- 636 (f) the services of a common or private carrier; or
- 637 (g) the use of a city, county, or state asset or facility, including a road or highway.

638 ~~[(1)]~~ (2) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division ~~[shall  
have authority to]~~ may convene administrative hearings, issue cease and desist orders, and impose  
fines under all the chapters identified in Section ~~[13-2-1]~~ 13-2-102.

642 ~~[(2)]~~ (3) A person ~~[who]~~ that intentionally violates a final cease and desist order entered by the division  
of which the person has notice is guilty of a third degree felony.

644

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~~[(3)]~~ (4) If the division has reasonable cause to believe that a person has violated or is violating any chapter listed in Section ~~[13-2-1]~~ 13-2-102, the division may promptly issue the alleged violator a citation signed by the division's director or the director's designee.

648 (a) Each citation shall be in writing and shall:

649 (i) set forth with particularity the nature of the violation, including a reference to the statutory or administrative rule provision violated;

651 (ii) state that a request for review of the citation shall be made in writing and be received by the division no more than 20 calendar days after the day on which the division issues the citation;

654 (iii) state the consequences of failing to make a timely request for review; and

655 (iv) state all other information required by Subsection 63G-4-201(2).

656 (b) In computing a time period under this section, the following days may not be included:

658 (i) the day on which the division issues a citation; and

659 (ii) the day on which the division receives a request for review of a citation.

660 (c)

(i) Except as provided in Subsection ~~[(3)(e)(iii)]~~ (4)(c)(iii), if the presiding officer finds that there is not substantial evidence that the recipient violated a chapter listed in Section ~~[13-2-1]~~ 13-2-102:

663 (A) the citation may not become final; and

664 (B) the division shall immediately vacate the citation and promptly notify the recipient in writing.

666 (ii) Except as provided in Subsection ~~[(3)(e)(iv)]~~ (4)(c)(iv), if the presiding officer finds that there is substantial evidence that the recipient violated a chapter listed in Section ~~[13-2-1]~~ 13-2-102:

669 (A) the citation shall become final; and

670 (B) the division may enter a cease and desist order against the recipient.

671 (iii) For a citation issued for a violation of Chapter 41, Price Controls During Emergencies Act, if the presiding officer finds that there is not clear and convincing evidence that the recipient violated the chapter:

674 (A) the citation may not become final; and

675 (B) the division shall immediately vacate the citation and promptly notify the recipient in writing.

677 (iv) For a citation issued for a violation of Chapter 41, Price Controls During Emergencies Act, if the presiding officer finds that there is clear and convincing evidence that the recipient violated the chapter:

680 (A) the citation shall become final; and

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- 681 (B) the division may enter a cease and desist order against the recipient.
- 682 (d)
- (i) A citation issued under this chapter may be personally served upon a person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure.
- 685 (ii) A citation also may be served by first-class mail, postage prepaid.
- 686 (e)
- (i) If the recipient fails to make a request for review within 20 calendar days after the day on which the division issues the citation, the citation shall become the final order of the division.
- 689 (ii) The period to contest the citation may be extended by the director for good cause shown.
- 691 (f) If the chapter violated allows for an administrative fine, after a citation becomes final, the director may impose the administrative fine.
- 693 ~~[(4)]~~ (5)
- ~~[(a)]~~ A person ~~[who]~~ that ~~[-]~~has violated, is violating, or has attempted~~[-]~~ to violate a chapter identified in Section ~~[13-2-1]~~ 13-2-102 is subject to the division's jurisdiction if:
- 696 ~~[(i)]~~ (a) the violation or attempted violation is committed wholly or partly within the state;
- 697 ~~[(ii)]~~ (b) conduct committed outside the state constitutes an attempt to commit a violation within the state; or
- 699 ~~[(iii)]~~ (c) transactional resources located within the state are used by the offender to directly or indirectly facilitate a violation or attempted violation.
- 701 ~~[(b) As used in this section, "transactional resources" means:]~~
- 702 ~~[(i) a mail drop or mail box, regardless of whether the mail drop or mail box is located on the premises of a United States Post Office;]~~
- 704 ~~[(ii) a telephone or facsimile transmission device;]~~
- 705 ~~[(iii) an Internet connection by a resident or inhabitant of this state with a resident- or nonresident-maintained Internet site;]~~
- 707 ~~[(iv) a business office or private residence used for a business-related purpose;]~~
- 708 ~~[(v) an account with or services of a financial institution;]~~
- 709 ~~[(vi) the services of a common or private carrier; or]~~
- 710 ~~[(vii) the use of a city, county, or state asset or facility, including a road or highway.]~~
- 711 ~~[(5)]~~ (6) The director or the director's designee, for the purposes outlined in a chapter administered by the division, may administer oaths, issue subpoenas, compel the attendance of witnesses, conduct

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audits, compel sworn responses to written questions, or compel the production of papers, books, accounts, documents, or evidence.

715 [(6)] (7)

(a) An administrative action filed under this chapter or a chapter listed in Section [~~13-2-1~~] 13-2-102 shall be commenced no later than 10 years after the day on which the alleged violation occurs.

718 (b) A civil action filed under this chapter or a chapter listed in Section [~~13-2-1~~] 13-2-102 shall be commenced no later than five years after the day on which the alleged violation occurs.

721 (c) The provisions of this Subsection [(6)] (7) control over the provisions of Title 78B, Chapter 2, Statutes of Limitations.

723 [(7)] (8) When granting a judgment in the division's favor in connection with the division's exercise of any authority described in Section [~~13-2-5~~] 13-2-106 or [~~13-2-6~~] 13-2-107, a court shall award:

726 (a) reasonable attorney fees;

727 (b) court costs;

728 (c) costs of investigation; and

729 (d) any other relief the court deems appropriate.

730 Section 10. Section **13-2-108** is renumbered and amended to read:

732 [~~13-2-7~~] **13-2-108. Violation of restraining or injunctive order -- Civil penalty.**

If [~~any~~] a person violates a restraining order, [~~any~~] a chapter [administered by] the division administers, or an injunction granted under this chapter[is violated], the division may submit a motion for, or the court on [~~its~~] the court's own motion, may impose a civil penalty of not more than \$2,000 for each day a person violates a temporary restraining order, preliminary injunction or permanent injunction issued under this chapter[is violated], if the [~~party has received~~] person receives notice of the restraining or injunctive order.

740 Section 11. Section **13-2-109** is renumbered and amended to read:

742 [~~13-2-8~~] **13-2-109. Consumer Protection Education and Training Fund.**

744 (1) There is created an expendable special revenue fund known as the "Consumer Protection Education and Training Fund."

746 (2)

(a) Unless otherwise provided by a chapter listed in Section [~~13-2-1~~] 13-2-102, the division shall deposit into the Consumer Protection Education and Training Fund all money not distributed as consumer restitution that [is received by the division] the division receives from:

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- 750 (i) administrative fines and settlements~~[-]~~ ;
- 751 (ii) ~~[from-]~~criminal restitution~~[-]~~ ; or
- 752 (iii) ~~[from-]~~civil damages, forfeitures, penalties, and settlements when the division receives the money on ~~[its]~~ the division's own behalf and not in a representative capacity~~[-, shall be deposited into the fund]~~.
- 755 (b) ~~[Any]~~ The division may maintain any portion of the ~~[fund may be maintained-]~~ Consumer Protection Education and Training Fund in an interest-bearing account.
- 757 (c) ~~[All-]~~ The division shall deposit all interest earned on fund money ~~[shall be deposited-]~~ into the ~~[fund]~~ Consumer Protection Education and Training Fund.
- 759 (3) Notwithstanding Title 63J, Chapter 1, Budgetary Procedures Act, the division may use the ~~[fund]~~ Consumer Protection Education and Training Fund with the approval of the executive director of the Department of Commerce in a manner consistent with the duties of the division under this chapter for:
- 763 (a) consumer protection education for members of the public;
- 764 (b) equipment for and training of division personnel;
- 765 (c) publication of consumer protection brochures, laws, policy statements, or other material relevant to the division's enforcement efforts; and
- 767 (d) investigation and litigation undertaken by the division.
- 768 (4) If the balance in the ~~[fund]~~ Consumer Protection Education and Training Fund exceeds \$1,000,000 at the close of any fiscal year, the division shall transfer the excess ~~[shall be transferred-]~~ to the General Fund.
- 771 Section 12. Section **13-2-110** is renumbered and amended to read:
- 773 ~~[13-2-9]~~**13-2-110. Internet -- Consumer education.**
- 774 (1) The Division of Consumer Protection shall, subject to appropriation, contract with a person to make public service announcements advising consumers about the dangers of using the Internet, especially:
- 777 (a) material harmful to minors;
- 778 (b) steps a consumer may take to learn more about the dangers of using the Internet;
- 779 (c) information about how a service provider can help a consumer learn more about the dangers of using the Internet, including the service provider's duties created by this bill; and
- 782 (d) how a consumer can monitor the Internet usage of family members.

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783 (2) Money appropriated under Subsection (1) shall be paid by the Division of Consumer Protection to a  
person only if:

785 (a) the person is a nonprofit organization; and

786 (b) the person agrees to spend private money amounting to two times the amount of money provided by  
the Division of Consumer Protection during each fiscal year in accordance with Subsection (1).

789 (3) In administering any money appropriated for use under this section, the Division of Consumer  
Protection shall comply with Title 63G, Chapter 6a, Utah Procurement Code.

791 Section 13. Section **13-2-111** is renumbered and amended to read:

793 ~~[13-2-10]~~**13-2-111. Social credit score reporting system -- Rulemaking -- Referral to other  
agencies.**

795 (1) As used in this section:

796 ~~[(a) "Division" means the Division of Consumer Protection.]~~

797 ~~[(b)]~~ (a) "Financial institution" means the same as that term is defined in Section 7-1-103.

798 ~~[(c)]~~ (b) "Social credit score" means the same as that term is defined in Section 63G-29-101.

800 (2) The division shall:

801 (a) establish and operate a system to receive consumer reports regarding a financial institution's or  
company's use or creation of a social credit score; and

803 (b) before November 1 of each year, submit a written report to the Business and Labor Interim  
Committee that summarizes the reports received during the immediately preceding year that indicate  
a financial institution or company used a social credit score to discriminate against, advocate for, or  
cause adverse or preferential treatment of a person.

808 (3) The division may:

809 (a) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to  
establish and operate the system described in Subsection (2); and

811 (b) as appropriate, refer a consumer who provides a report through the system described in Subsection  
(2) to the Department of Financial Institutions or another agency for investigation of the report or  
other action.

814 Section 14. Section **13-2-112** is renumbered and amended to read:

816 ~~[13-2-11]~~**13-2-112. Publication of consumer complaints.**

817 (1) As used in this section:

818 (a) "Consumer complaint" means a complaint that:

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- 819 (i) is provided to the division;
- 820 (ii) alleges facts relating to conduct that the division regulates under Section [~~13-2-1~~] 13-2-102; and
- 822 (iii) may contain:
- 823 (A) information that identifies a respondent; and
- 824 (B) a narrative description of and information relevant to the conduct described in Subsection (1)(a)(ii).
- 826 (b) "Consumer narrative" means the narrative description contained in a consumer complaint as described in Subsection (1)(a)(iii)(B).
- 828 (c) "Filer" means a person who files a consumer complaint.
- 829 (d) "Respondent" means a person against whom a filer files a consumer complaint.
- 830 (2)
- (a) A consumer complaint is a protected record as provided in Subsection 63G-2-305(87).
- 832 (b) In carrying out the division's duties, the division may not publicly disclose the identity of a person the division investigates unless:
- 834 (i) the person's identity becomes a matter of public record in an enforcement proceeding; or
- 836 (ii) the person consents to public disclosure.
- 837 (3) Notwithstanding Subsection (2):
- 838 (a) the division may reclassify a consumer complaint as public if:
- 839 (i)
- (A) the consumer complaint is one of at least 10 consumer complaints filed with the division against the same person, alleging the same or similar conduct, and during the 12-month period immediately preceding the day on which the filer files the consumer complaint;
- 843 (B) the consumer complaint does not contain information that an agreement with another state or federal agency or a condition of participation in an investigation or litigation requires the division keep confidential;
- 846 (C) the consumer complaint is not classified as controlled, private, or protected as described in Sections 63G-2-302 through 63G-2-305, for a reason other than that identified by Subsection 63G-2-305(87); and
- 849 (D) access to the record is not restricted as described by Subsection 63G-2-201(3)(b); or
- 851 (ii) the division takes public enforcement action against a respondent as a result of the consumer complaint; and
- 853 (b) the division may disclose a consumer complaint to the respondent.

## SB0038S01 compared with SB0038S02

- 854 (4) In determining the number of complaints against the same person in accordance with Subsection  
855 (3)(a)(i)(A), the division may consider consumer complaints that are filed against multiple entities  
856 under common ownership as consumer complaints against the same person.
- 857 (5) A respondent's initial, written response to a consumer complaint that is public under Subsection (3)  
858 is a public record.
- 859 (6) Before making a consumer complaint that [~~is reclassified~~] the division reclassifies as public under  
860 Subsection (3), or a response described in Subsection (5), available to the public, the division:
- 861 (a) shall redact from the consumer complaint or the response any information that would disclose:
- 862 (i) the filer's:
- 863 (A) address;
- 864 (B) social security number;
- 865 (C) bank account information;
- 866 (D) email address; or
- 867 (E) telephone number; or
- 868 (ii) information similar in nature to the information described in Subsection (6)(a)(i); and
- 869 (b) may redact the filer's name and any other information that could, in the division's judgment, disclose  
870 the filer's identity.
- 871 (7) If the division discloses the consumer complaint to the respondent as described in Subsection (3)(b),  
872 the division may redact the filer's:
- 873 (a) bank account information;
- 874 (b) social security number;
- 875 (c) name and any other information that could, in the division's judgment, disclose the filer's identity, if  
876 the filer requests anonymity; and
- 877 (d) other information the disclosure of which constitutes a clearly unwarranted invasion of personal  
878 privacy.
- 879 (8) Nothing in this section precludes the division from disclosing a consumer complaint in accordance  
880 with Section 63G-2-201.

881 Section 15. Section **13-11-8** is amended to read:

882 **13-11-8. Powers of division.**

883 In addition to the authority described in Sections [~~13-2-5~~] 13-2-106 and [~~13-2-6~~] 13-2-107,  
884 the division may conduct research, hold public hearings, make inquiries, and publish studies

## SB0038S01 compared with SB0038S02

relating to consumer sales acts or practices.

890 Section 16. Section **13-11-16** is amended to read:

891 **13-11-16. Investigatory powers of the division.**

892 (1) If the division has reason to believe that a person has engaged in, is engaging in, or is about to  
engage in an act or practice that violates this chapter, the division may investigate and otherwise act  
in accordance with Sections [~~13-2-5~~] 13-2-106 and [~~13-2-6~~] 13-2-107 and other provisions of this  
chapter.

896 (2)

(a) If the matter that the division subpoenas is located outside this state, the person subpoenaed may  
either make the matter available to the division at a convenient location within the state or pay the  
reasonable and necessary expenses for the division or the division's representative to examine the  
matter at the place where the matter is located.

901 (b) The division may designate representatives, including officials of the state in which the matter is  
located, to inspect the matter on the division's behalf, and may respond to similar requests from  
officials of other states.

904 (3) Upon failure of a person without lawful excuse to obey a subpoena and upon reasonable notice to all  
persons affected, the division may apply to the court for an order compelling compliance.

907 (4) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the  
witness may be compelled in accordance with Title 77, Chapter 22b, Grants of Immunity.

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

911 **13-11-17. Actions by the division.**

912 (1) The division may bring an action in a court with jurisdiction to:

913 (a) obtain a declaratory judgment that an act or practice violates this chapter;

914 (b) enjoin, in accordance with the principles of equity, a supplier that has violated, is violating, or is  
otherwise likely to violate this chapter;

916 (c) order disgorgement of money or any thing of value received in violation of this chapter;

918 (d) recover, for each violation, restitution for actual damages, or obtain relief under Subsection (2)(b),  
on behalf of impacted consumers; and

920 (e) obtain a fine in an amount determined after considering the factors in Subsection (6).

921 (2)

## SB0038S01 compared with SB0038S02

- (a) The division may bring a class action on behalf of consumers for the actual damages caused by an act or practice specified as violating this chapter in a rule adopted by the division under Section 13-11-9 before the consumer transactions on which the action is based, or declared to violate Section 13-11-4 or 13-11-5 by final judgment of courts of general jurisdiction and appellate courts of this state that was either reported officially or made available for public dissemination under Subsection 13-11-7(1)(c) by the division 10 days before the consumer transactions on which the action is based, or, with respect to a supplier who agreed to a consent judgment, was prohibited specifically by the terms of a consent judgment that became final before the consumer transactions on which the action is based.
- 931 (b)
- (i) On motion of the division and without bond in an action under this Subsection (2), the court may make appropriate orders, including appointment of a master or receiver or sequestration of assets, but only if it appears that the defendant is threatening or is about to remove, conceal, or dispose of the defendant's property to the damage of persons for whom relief is requested.
- 936 (ii) An appropriate order described in Subsection (2)(b)(i) may include an order to:
- 937 (A) reimburse consumers found to have been damaged;
- 938 (B) carry out a transaction in accordance with consumers' reasonable expectations;
- 939 (C) strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result;
- 941 (D) impose a fine in an amount determined after considering the factors listed in Subsection (6); or
- 943 (E) grant other appropriate relief.
- 944 (iii) The court may assess the expenses of a master or receiver against a supplier.
- 945 (c) If an act or practice that violates this chapter unjustly enriches a supplier and damages can be computed with reasonable certainty, damages recoverable on behalf of consumers who cannot be located with due diligence shall be transferred to the state treasurer in accordance with Title 67, Chapter 4a, Revised Uniform Unclaimed Property Act.
- 950 (d) If a supplier shows by a preponderance of the evidence that a violation of this chapter resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, recovery under this Subsection (2) is limited to the amount, if any, by which the supplier was unjustly enriched by the violation.
- 955 (3)

## SB0038S01 compared with SB0038S02

- (a)
- (i) The division may terminate an investigation or an action other than a class action upon acceptance of the supplier's written assurance of voluntary compliance with this chapter.
- 958 (ii) Acceptance of an assurance may be conditioned on a commitment to reimburse consumers or take other appropriate corrective action.
- 960 (b)
- (i) An assurance is not evidence of a prior violation of this chapter.
- 961 (ii) Unless an assurance has been rescinded by agreement of the parties or voided by a court for good cause, subsequent failure to comply with the terms of an assurance is prima facie evidence of a violation.
- 964 (4)
- (a) In addition to other penalties and remedies set out under this chapter, and in addition to the division's other enforcement powers under Chapter 2, Division of Consumer Protection, the division director may issue a cease and desist order and impose an administrative fine of up to \$2,500 for each violation of this chapter.
- 968 (b) All money received through fines imposed under this section shall be deposited in the Consumer Protection Education and Training Fund created by Section [~~13-2-8~~] 13-2-109.
- 971 (5)
- (a) Within 30 days after agency review or, if appealed to a court with jurisdiction, 30 days after judicial review of a final division order imposing an administrative fine, the supplier on whom the fine is imposed shall pay the fine in full.
- 974 (b) The unpaid amount of a fine is increased by 10%:
- 975 (i) if the fine has not been paid in full within 60 days after the final division order imposing the fine; and
- 977 (ii) unless the division waives the 10% increase in a stipulated payment plan.
- 978 (6) A court shall determine the fine imposed under Subsection (1)(e) or Subsection (2)(b)(ii)(D) after considering the following factors:
- 980 (a) the seriousness, nature, circumstances, extent, and persistence of the conduct constituting the violation, including whether the supplier acted knowingly or intentionally to deceive;
- 983 (b) the harm to other persons resulting either directly or indirectly from the violation;
- 984

## SB0038S01 compared with SB0038S02

(c) cooperation by the supplier in an inquiry or investigation conducted by the division concerning the violation;

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

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

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

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

992 (h) whether the individual harmed by the violation was a vulnerable adult; and

993 (i) other matters as justice may require.

994 Section 18. Section **13-15-102** is amended to read:

995 **13-15-102. Definitions.**

As used in this chapter:

997 (1)

(a) "Business opportunity" means an arrangement under which a person:

998 (i) sells or leases a product, equipment, a supply, or a service:

999 (A) upon payment of initial required consideration of at least \$500; and

1000 (B) for the purpose of enabling the buyer or lessee to start a business; and

1001 (ii) represents to the buyer or lessee that:

1002 (A) the person will provide a location or assist the buyer or lessee find a location for the use or operation of a vending machine, rack, display case, or other similar device, or a currency-operated amusement machine or device, on premises neither owned nor leased by the person nor the buyer or lessee;

1006 (B) the person will purchase a product the buyer or lessee makes, produces, fabricates, grows, or modifies, using in whole or in part the product, equipment, supply, or service the buyer or lessee buys or leases from the person;

1010 (C) the person will provide the buyer or lessee with a guarantee that the buyer or lessee will receive income from the product, equipment, supply, or service the buyer or lessee buys or leases from the person that exceeds the amount the buyer or lessee pays to buy or lease the product, equipment, supply, or service, and if not the person will repurchase the product, equipment, supply, or service, if the buyer or lessee is dissatisfied; or

1016

## SB0038S01 compared with SB0038S02

- (D) the buyer or lessee will or may derive income from the business described in Subsection (1)(a)(i) that exceeds the amount the buyer or lessee pays to buy or lease the product, equipment, supply, or service.
- 1019 (b) "Business opportunity" does not include:
- 1020 (i) the sale of an ongoing business when the owner of that business sells and intends to sell only that one business; or
- 1022 (ii) not-for-profit sale of sales demonstration equipment, materials, or samples for a total price of \$500 or less.
- 1024 (2) "Division" means the Division of Consumer Protection [~~of the Department of~~  
~~Commerce~~] established by Section 13-2-102.
- 1026 (3) "Franchise" means the same as that term is defined by Federal Trade Commission rules governing franchise and business opportunity ventures.
- 1028 (4) "Guarantee" means a written agreement that:
- 1029 (a) a purchaser and seller sign; and
- 1030 (b) discloses the complete details and each limitation or exception of the agreement.
- 1031 (5)
- (a) "Initial required consideration" means the total amount a purchaser is obligated to pay under the terms of a business opportunity:
- 1033 (i) before the day on which the purchaser receives the product, equipment, supply, or service;
- 1035 (ii) the day on which the purchaser receives the product, equipment, supply, or service; or
- 1037 (iii) within six months after the day on which the purchaser and seller enter into the business opportunity.
- 1039 (b) "Initial required consideration" includes the sum of any down payment and the total of all additional payments, if the purchaser's payment under the terms of the business opportunity is over a period of time.
- 1042 (c) "Initial required consideration" does not include the not-for-profit sale of sales demonstration equipment, materials, or supplies for a total amount of less than \$500.
- 1044 (6) "Principal" means as the division determines by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 1046 (7) "Purchaser" means a person who buys or leases from another person a business opportunity.
- 1048

## SB0038S01 compared with SB0038S02

(8) "Registered trademark" or "service mark" means a trademark, trade name, or service mark registered with the United States Patent and Trademark Office, or Utah, or the state of incorporation if a corporation.

1051 (9)

(a) "Seller" means a person who offers to sell, offers to lease, sells, or leases to another person a business opportunity or a franchise.

1053 (b) "Seller" does not include an individual representative or salesperson, unless the individual is a principal of a sole proprietorship, partnership, association, joint venture, corporation, firm, or other organization or entity used in carrying on a business, that offers to sell, offers to lease, sells, or leases to another person a business opportunity or a franchise.

1058 Section 19. Section **13-15-201** is amended to read:

1059 **13-15-201. Required filings -- Fees -- Rulemaking.**

1060 (1)

(a) Except as provided in Subsection (2), before a person may act as a seller in the state, the person shall obtain a proof of disclosure receipt from the division.

1062 (b) To obtain a proof of disclosure receipt from the division, a person shall:

1063 (i) file with the division a disclosure statement that complies with Section 13-15-202;

1064 (ii) provide any information the division requires by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

1066 [~~iii~~] (iii) pay a filing fee as determined by the division in accordance with Section 63J-1-504.

1068 (c) A proof of disclosure receipt is valid for one year after the day on which the division issues the receipt.

1070 (d) To renew a proof of disclosure receipt, a seller shall comply with the provisions of Subsection (1)(b) at least 30 days before the day on which the seller's current proof of disclosure receipt expires.

1073 (2)

(a) Before a person offers for sale or sells a franchise to be located in the state or to a resident of the state, the person shall obtain a proof of notice receipt from the division.

1075 (b) To obtain a proof of notice receipt from the division, a person shall:

1076 (i) file with the division, in a manner the division determines, a notice that states:

1077

## SB0038S01 compared with SB0038S02

- (A) the franchisor is in substantial compliance with the requirements of the Federal Trade Commission rule found at Title 16, Chapter I, Subchapter d, Trade Regulation Rules, Part 436, Disclosure Requirements and Prohibitions Concerning Franchising;
- 1081 (B) the name of the applicant;
- 1082 (C) the name of the franchise;
- 1083 (D) the name under which the applicant intends to transact or transacts business, if different than the name of the franchise;
- 1085 (E) the address of the applicant's principal place of business;[~~and~~]
- 1086 (F) the applicant's state-issued business entity number or other government-issued, publicly available identifying number; and
- 1088 (G) any information that the division requires by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and
- 1090 (ii) pay a filing fee[~~determined by~~] the division sets in accordance with Section 63J-1-504[~~, not to exceed \$100~~].
- 1092 (c) A seller who does not qualify for a proof notice receipt under this Subsection (2) is subject to Subsection (1).
- 1094 (d) A proof of notice receipt is valid for one year after the day on which the division issues the receipt.
- 1096 (e) To renew a proof of notice receipt, a person offering for sale or selling a franchise to be located in the state or to a resident of the state, shall comply with the provisions of Subsection (2)(b) at least 30 days before the day on which the person's current proof of notice receipt expires.
- 1100 (3) The division shall deposit all fees collected under this section into the Commerce Service Account created in Section 13-1-2.
- 1102 (4) The division may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this section.
- 1104 (5) If information contained in a filing with the division becomes incorrect or incomplete, the filer shall update the information within 30 days after the day on which the information contained on the filing becomes incorrect or incomplete.
- 1107 (6) A proof of disclosure receipt or a proof of notice receipt does not constitute an approval or endorsement of the seller by the division or the state.
- 1109 (7) A seller may not:
- 1110 (a) represent the division or the state endorses or approves the seller;

## SB0038S01 compared with SB0038S02

- 1111 (b) omit from a filing with the division a material statement of fact required by this chapter or rule made  
1112 by the division in accordance with this chapter; or
- 1113 (c) include in a filing with the division a material statement of fact that the seller or the seller's principal  
1114 knew or should have known is false, deceptive, inaccurate, or misleading.
- 1115 Section 20. Section **13-15-301** is amended to read:
- 1116 **13-15-301. Administration and enforcement -- Powers -- Legal counsel -- Fees.**
- 1117 (1) The division shall administer and enforce the provisions of this chapter in accordance with Chapter
- 1118 2, Division of Consumer Protection.
- 1119 [~~2) The attorney general, upon request, shall give legal advice to, and act as counsel for, the division in~~  
1120 ~~the exercise of the division's responsibilities under this chapter.]~~
- 1121 [~~3) (2)~~
- 1122 (a) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:
- 1123 (i) the division director may impose an administrative fine of up to \$2,500 for each violation of this
- 1124 chapter; and
- 1125 (ii) the division may bring an action in a court of competent jurisdiction to enforce a provision of
- 1126 this chapter.
- 1127 (b) In a court action by the division to enforce a provision of this chapter, the court may:
- 1128 (i) declare that an act or practice violates a provision of this chapter;
- 1129 (ii) issue an injunction for a violation of this chapter;
- 1130 (iii) order disgorgement of any money received in violation of this chapter;
- 1131 (iv) order payment of disgorged money to an injured purchaser or consumer;
- 1132 (v) impose a fine of up to \$2,500 for each violation of this chapter; or
- 1133 (vi) award any other relief that the court deems reasonable and necessary.
- 1134 [~~4) (3) If a court of competent jurisdiction grants judgment or injunctive relief to the division, the~~  
1135 ~~court shall award the division:~~
- 1136 (a) reasonable attorney fees;
- 1137 (b) court costs; and
- 1138 (c) investigative fees.
- 1139 [~~5) (4)~~
- 1140 (a) A person who violates an administrative or court order issued for a violation of this chapter is
- 1141 subject to a civil penalty of no more than \$5,000 for each violation.

## SB0038S01 compared with SB0038S02

1143 (b) A civil penalty authorized under this section may be imposed in any civil action brought by [the  
attorney general on behalf of] the division.

1145 [~~(6) All money received for the payment of a fine or civil penalty imposed under this section shall be  
deposited into the Consumer Protection Education and Training Fund created in Section 13-2-8.]~~

1148 Section 21. Section **21** is enacted to read:

1149 **13-15-303. Denial, suspension, or revocation of proof of disclosure receipt or proof of notice  
receipt.**

In accordance with Chapter 2, Division of Consumer Protection, and Title 63G, Chapter  
4, Administrative Procedures Act, the division may initiate adjudicative proceedings to deny,  
suspend, or revoke, a proof of disclosure receipt or proof of notice receipt if:

1154 (1) the division finds that the denial, suspension, or revocation is in the public interest; and

1155 (2)

(a) the filing is incomplete, false, or misleading; or

1156 (b) the seller or seller's principal:

1157 (i) violates, causes a violation, or allows a violation or fails to satisfy the requirements of a provision of:

1159 (A) this chapter; or

1160 (B) a rule the division makes in accordance with this chapter;

1161 (ii) violates Chapter 11, Utah Consumer Sales Practices Act;

1162 (iii) is enjoined by a court, or is the subject of an administrative or judicial order issued in Utah or  
another state, if the order:

1164 (A) includes a finding or admission of fraud, breach of fiduciary duty, or material misrepresentation; or

1166 (B) is based on a finding of a lack of integrity, truthfulness, or mental competence;

1167 (iv) is convicted of a crime involving theft, fraud, or dishonesty;

1168 (v) obtains or attempts to obtain a proof of disclosure receipt or proof of notice receipt by  
misrepresenting a material fact;

1170 (vi) fails to provide information the division requests;

1171 (vii) fails to pay an administrative fine imposed by the division or an administrative or judicial order; or

1173 (viii) fails to pay the fee to file a registration application or a renewal application.

1174 Section 22. Section **13-21-101** is renumbered and amended to read:

1176 **Part 1. General Provisions**

1177 **~~13-21-2~~ 13-21-101. Definitions -- Exemptions.**

## SB0038S01 compared with SB0038S02

As used in this chapter:

- 1179 (1) "Buyer" means an individual who is solicited to purchase or who purchases the services of a credit  
services organization.
- 1181 (2) "Credit report" means a written, oral, or other communication of information by a consumer  
reporting agent relating to a consumer's credit worthiness, credit standing, credit capacity, character,  
general reputation, personal characteristics, or mode of living that the consumer reporting agent  
uses or collects to serve as a factor in establishing the consumer's eligibility for credit for personal,  
family, or household purposes.
- 1186 [~~(2)~~] (3) "Credit reporting agency" means a person who, for a monetary fee, dues, or on a cooperative  
nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating  
consumer credit information or other information on consumers for the purpose of furnishing  
consumer reports to third persons.
- 1190 (4)
- (a) "Credit score" means a numerical value or a categorization that a person:
- 1191 (i) derives from information in a consumer report;
- 1192 (ii) derives from a statistical tool or modeling system; and
- 1193 (iii) develops to predict the likelihood of credit behavior.
- 1194 (b) "Credit score" includes:
- 1195 (i) a risk predictor; or
- 1196 (ii) a risk score.
- 1197 [~~(3)~~] (5)
- (a) "Credit services organization" means a person who represents that the person or an employee is  
a debt professional or credit counselor, or, with respect to the extension of credit by others, sells,  
provides, or performs, or represents that the person can or will sell, provide, or perform, in return for  
the payment of money or other valuable consideration any of the following services:
- 1202 (i) improving a buyer's credit record, history, or rating;
- 1203 (ii) providing advice, assistance, instruction, or instructional materials to a buyer with regard to  
Subsection [~~(3)(a)(i)~~] (5)(a)(i); or
- 1205 (iii) debt reduction or debt management plans.
- 1206 (b) "Credit services organization" does not include:
- 1207

## SB0038S01 compared with SB0038S02

- (i) a person authorized to make loans or extensions of credit under the laws of this state or the United States who is subject to regulation and supervision by this state or the United States and who derives at least 35% of the person's income from making loans and extensions of credit;
- 1211 (ii) a depository institution:
- 1212 (A) as defined in Section 7-1-103; or
- 1213 (B) that is regulated or supervised by the Federal Deposit Insurance Corporation or the National Credit Union Administration;
- 1215 (iii) a person licensed as a principal broker under Title 61, Chapter 2f, Real Estate Licensing and Practices Act, if the person is acting within the course and scope of that license;
- 1218 (iv) a person licensed to practice law in this state if:
- 1219 (A) the person renders the services described in Subsection [(3)(a)] (5)(a) within the course and scope of the person's practice as an attorney; and
- 1221 (B) the services described in Subsection [(3)(a)] (5)(a) are incidental to the person's practice as an attorney;
- 1223 (v) a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission if the broker-dealer is acting within the course and scope of that regulation;
- 1226 (vi) a credit reporting agency if the services described in Subsection [(3)(a)] (5)(a) are incidental to the credit reporting agency's services; or
- 1228 (vii) a person who provides debt-management services and is required to be registered under Title 13, Chapter 42, Uniform Debt-Management Services Act.
- 1230 (6) "Division" means the Division of Consumer Protection established in Section 13-2-102.
- 1231 [(4)] (7) "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family, or household purposes.
- 1234 Section 23. Section **13-21-102** is renumbered and amended to read:
- 1236 **[13-21-3]13-21-102. Credit services organizations -- Prohibitions.**
- 1238 (1) A credit services organization, [its] the credit services organization's salespersons, agents, and representatives, and independent contractors who sell or attempt to sell the services of a credit services organization may not do any of the following:
- 1241 (a) conduct any business regulated by this chapter without first:
- 1242 (i) securing a certificate of registration from the division; and
- 1243

## SB0038S01 compared with SB0038S02

(ii) unless exempted under Section ~~[13-21-4, posting a bond, letter of credit, or certificate of deposit with the division in the amount of \$100,000]~~ 13-21-104, maintaining the following in a manner the division approves and in an amount of \$100,000:

- 1247 (A) a surety bond issued by a surety authorized to transact surety business in the state; or  
1249 (B) a certificate of deposit in a financial institution authorized under the laws of this state;  
1251 ~~[(b) make a false statement, or fail to state a material fact, in connection with an application for registration with the division;]~~
- 1253 ~~[(e)]~~ (b) charge or receive any money or other valuable consideration prior to full and complete performance of the services the credit services organization has agreed to perform for the buyer;
- 1256 ~~[(d)]~~ (c) dispute or challenge, or assist a person in disputing or challenging an entry in a credit report prepared by a consumer reporting agency without a factual basis for believing and obtaining a written statement for each entry from the person stating that that person believes that the entry contains a material error or omission, outdated information, inaccurate information, or unverifiable information;
- 1261 ~~[(e)]~~ (d) charge or receive any money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer, if the credit that is or will be extended to the buyer is upon substantially the same terms as those available to the general public;
- 1265 ~~[(f)]~~ (e) make, or counsel or advise any buyer to make, any statement that is untrue or misleading and that is known, or that by the exercise of reasonable care should be known, to be untrue or misleading, to a credit reporting agency or to any person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit, with respect to a buyer's creditworthiness, credit standing, or credit capacity;
- 1270 ~~[(g)]~~ (f) make or use any untrue or misleading representations in the offer or sale of the services of a credit services organization or engage, directly or indirectly, in any act, practice, or course of business that operates or would operate as fraud or deception upon any person in connection with the offer or sale of the services of a credit services organization;~~[-and]~~
- 1275 (g) represent that the division or the state endorses or approves the credit services organization;  
1277 (h) omit from a filing with the division a material statement of fact required by this chapter or rule that the division makes in accordance with this chapter;

1279

## SB0038S01 compared with SB0038S02

- (i) include in a filing with the division a material statement of fact that the credit service organization or credit service organization's principal knew or should have known to be false, deceptive, inaccurate, or misleading; or
- 1282 (j) cause or attempt to cause a buyer to waive a right established by this chapter.
- 1283 [~~(h) transact any business as a credit services organization, as defined in Section 13-21-2, without first having registered with the division by paying an annual fee set pursuant to Section 63J-1-504 and filing proof that it has obtained a bond or letter of credit as required by Subsection (2).]~~
- 1287 (2)
- (a) The division may claim a credit service organization's surety bond or certificate of deposit for the benefit of a buyer who incurs damages as the result of the credit service organization's failure to comply with this chapter.
- 1290 (b) After a buyer described in Subsection (2) recovers actual damages, the division may recover from the surety bond or certificate of deposit any administrative fines, civil penalties, investigative costs, attorney fees, and other costs of collecting and distributing funds in accordance with this chapter.
- 1294 [~~(2)~~
- (a) ~~A bond, letter of credit from a Utah depository, or certificate of deposit posted with the division shall be used to cover the losses of any person arising from a violation of this chapter by the posting credit services organization. A bond, letter of credit, or certificate of deposit may also be used to satisfy administrative fines and civil damages arising from any enforcement action against the posting credit service organization.]~~
- 1300 [~~(b) A bond, letter of credit, or certificate of deposit shall remain in force:]~~
- 1301 [~~(i) until replaced by a bond, letter of credit, or certificate of deposit of identical or superior coverage; or]~~
- 1303 [~~(ii) for one year after the credit servicing organization notifies the division in writing that it has ceased all activities regulated by this chapter.]~~
- 1305 Section 24. Section **13-21-103** is renumbered and amended to read:
- 1307 ~~[13-21-3.5]~~ **13-21-103. Registration and suspension of registration.**
- 1309 (1) A credit services organization shall file an application for registration with the division before engaging in any activity regulated by this chapter.
- 1311 (2) [–]The credit services organization shall include in the application [shall include] described in Subsection (1):

## SB0038S01 compared with SB0038S02

- 1313 (a) the name, [~~complete~~] mailing and physical address, and telephone number of the credit services organization;
- 1315 (b) the name of [~~any~~] a person [~~who~~] that owns or controls more than 5% of the credit services organization, either directly or through another person or entity;
- 1317 (c) the name of any individual who is responsible for the day-to-day operation of the credit services organization;
- 1319 (d) the credit service organization's registered agent for service of process in the state, and the registered agent's:
- 1321 (i) name;
- 1322 (ii) street address;
- 1323 (iii) mailing address; and
- 1324 (iv) telephone number;
- 1325 [~~(d)~~] (e)
- (i) the case title, docket number, the names and addresses of all parties, and a detailed explanation of any administrative, civil, or criminal action in which the organization or any person identified in Subsection [~~(1)(b)~~] (2)(b) or (c) is a party to an administrative, civil, or criminal action that arose in this state or any other jurisdiction involving the offer to provide or the provision of services described in Subsection [Section 13-21-2(3)(a)] 13-21-101(5)(a); or
- 1331 (ii) [~~a notarized statement of the-~~] an unsworn declaration made in accordance with Title 78B, Chapter 18a, Uniform Unsworn Declarations Act, made by the credit services organization's chief executive officer or principal that neither the organization nor any person identified in Subsection [(1)(b)] (2)(b) or (c) is a party to any administrative, civil, or criminal action described in Subsection [(1)(d)] (2)(e)(i);
- 1337 [~~(e)~~] (f) a detailed outline of the credit services organization's credit services program [~~to be offered in] that the credit services organization will offer in this state;[-, including two copies of any contract, form, sales literature, or other relevant document that will be used by the organization; and]~~
- 1341 (g) a copy of any contract and other document that the credit services organization requires the consumer to sign;
- 1343 [~~(f)~~] (h) a [~~reasonable-~~]registration fee [~~to be-~~]determined by the division[-] ; and
- 1344 (i) any information that the division requires by rule made in accordance with Title 63G, Chapter 3, Administrative Rulemaking Act.

## SB0038S01 compared with SB0038S02

- 1346 (3) A credit services organization shall update registration information within 30 days after the day  
1347 on which any information the credit services organization provided on the application described in  
1348 Subsection (1) becomes incorrect or incomplete.
- 1349 (4) In accordance with Chapter 2, Division of Consumer Protection, and Title 63G, Chapter 4,  
1350 Administrative Procedures Act, the division may initiate adjudicative proceedings to deny, suspend,  
1351 or revoke an application or registration if:
- 1352 (a) the division finds that the denial, suspension, or revocation is in the public interest; and  
1353 (b)
- 1354 (i) the registration is incomplete, false, or misleading; or  
1355 (ii) the applicant or applicant's principal:
- 1356 (A) violates, causes a violation, allows a violation, or fails to satisfy the requirements of a provision of  
1357 this chapter or a rule made by the division in accordance with this chapter;
- 1358 (B) violates Chapter 11, Utah Consumer Sales Practices Act;
- 1359 (C) is enjoined by a court;
- 1360 (D) is the subject of an administrative or judicial order issued in Utah or another state, if the order  
1361 includes a finding or admission of fraud, breach of fiduciary duty, or material representation or the  
1362 order was based on a finding of a lack of integrity, truthfulness, or mental competence;
- 1363 (E) is convicted of a crime involving theft, fraud, or dishonesty;
- 1364 (F) obtains or attempts to obtain a registration by misrepresenting a material fact;
- 1365 (G) fails to provide information that the division requests;
- 1366 (H) fails to pay an administrative fine imposed by the division or an administrative or a judicial order;  
1367 or
- 1368 (I) fails to pay the fee to file a registration application or a renewal application.
- 1369 (5) To renew a registration, a credit services organization shall submit a registration application at least  
1370 30 days before the day on which the credit service organization's current registration expires.
- 1371 (6) A credit services organization's registration is effective for one year after the day on which the  
1372 division issues the credit services organization's registration.
- 1373 (7) A credit services organization obtaining a registration in accordance with this section does not  
1374 constitute an approval or endorsement of the credit services organization by the division or the state.
- 1375 [~~(2) The division may deny, suspend, or revoke a registration under this chapter if:~~]
- 1376 [~~(a) a credit services organization has engaged, or is engaging in a violation of this chapter; or]~~

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1382 [(b) a person described in Subsection (1)(b) or (c) has been found in an administrative, civil, or criminal  
action in any jurisdiction to have violated a law relating to the offer to provide or provision of the  
types of services described in Subsection 13-21-2(3)(a).]

1385 Section 25. Section **13-21-104** is renumbered and amended to read:

1387 ~~[13-21-4]~~ **13-21-104. Surety bond or certificate of deposit -- Not required of agent if obtained  
by organization.**

1389 (1) If a credit services organization [~~has obtained~~] obtains a surety bond [~~-, letter of credit,~~] or certificate  
of deposit as [~~set forth~~] described in Subsection [~~13-21-3(1)~~] 13-21-102(1), a salesperson, agent,  
or representative who sells the services of that organization is not required to post a separate surety  
bond [~~-, letter of credit,~~] or certificate of deposit.

1393 (2) [~~As used in -~~] For purposes of this section, a person is [~~not~~] a salesperson, agent, or representative of  
a credit services organization [~~unless~~] if:

1395 (a) the person does business under the same name as the credit services organization; or

1396 (b) the credit services organization and the issuer of the surety bond or [~~letter of credit~~] certificate of  
deposit certify in writing that the surety bond or [~~letter of credit~~] certificate of deposit covers the  
person.

1399 Section 26. Section **13-21-105** is renumbered and amended to read:

1401 ~~[13-21-5]~~ **13-21-105. Written information statement required.**

1403 (1) Before the execution of a contract or agreement between the buyer and a credit services  
organization or before the receipt by the credit services organization of any money or other valuable  
consideration, whichever occurs first, the credit services organization shall provide the buyer with a  
statement in writing, containing all the information required by Section [~~13-21-6~~] 13-21-106.

1408 (2) [~~The~~] A credit services organization shall maintain on file for a period of two years an exact copy  
of the statement described in Subsection (1), personally signed by the buyer, acknowledging receipt  
of a copy of the statement.

1411 Section 27. Section **13-21-106** is renumbered and amended to read:

1413 ~~[13-21-6]~~ **13-21-106. Contents of statement.**

The information statement required under Section [~~13-21-5~~] 13-21-105 shall include all  
of the following:

1416

## SB0038S01 compared with SB0038S02

- (1) a complete and accurate statement of the buyer's right to review any file on the buyer [~~maintained by any~~] a credit reporting agency maintains, as provided under 15 U.S.C. Sec. 1681 et seq., as amended, the Fair Credit Reporting Act;
- 1419 (2) a statement that the credit reporting agency that issued a report upon which a credit denial was based shall conduct a review of the file on the buyer [~~will be conducted~~] free of charge [~~by the credit reporting agency that issued a report upon which a credit denial was based~~], if requested within 30 days [~~of the buyer receiving~~] after the day on which the buyer receives a notice of a denial of credit;
- 1424 (3) the approximate price a credit reporting agency will charge the buyer [~~will be charged by a credit reporting agency~~] for a copy of the file on the buyer;
- 1426 (4) a complete and accurate statement of the buyer's right to dispute the completeness or accuracy of any item contained in any file on the buyer [~~maintained by any credit reporting agency~~] that a credit reporting agency maintains;
- 1429 (5) a complete and detailed description of the services [~~to be performed by~~] the credit services organization will perform for the buyer and the total amount the buyer will have to pay, or become obligated to pay, for the services;
- 1432 (6) a statement asserting the buyer's right to proceed against the surety bond or trust account required under Section [~~13-21-3~~] 13-21-102; and
- 1434 (7) the name and address of the surety company which issued the surety bond, or the name and address of the depository and the trustee and the account number of the trust account.
- 1436 Section 28. Section **13-21-107** is renumbered and amended to read:
- 1438 ~~[13-21-7]~~ **13-21-107. Written contracts required -- Contents -- Notice of cancellation of contract.**
- 1440 (1) [~~Each~~] A contract between the buyer and a credit services organization for the purchase of the services of the credit services organization shall be in writing, dated, signed by the buyer, and include all of the following:
- 1443 (a) a conspicuous statement in bold type, in immediate proximity to the space reserved for the signature of the buyer, as follows: "You, the buyer, may cancel this contract at any time prior to midnight of the fifth day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right.";
- 1447 (b) the terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to some other person;

## SB0038S01 compared with SB0038S02

- 1449 (c) a full and detailed description of the services [~~to be performed by~~]the credit services organization  
will perform for the buyer, including all guarantees and all promises of full or partial refunds, and  
the estimated date by which the credit services organization will perform the services[~~are to be~~  
performed], or estimated length of time for performing the services; and
- 1454 (d) the credit services organization's principal business address and the name and address of its agent, in  
Utah, authorized to receive service of process.
- 1456 (2) The contract shall be accompanied by a completed form in duplicate, captioned "Notice of  
Cancellation," which shall be attached to the contract and easily detachable, and which shall contain  
in bold type the following statement written in the same language as used in the contract:
- 1460 "Notice of Cancellation
- 1461 You may cancel this contract, without any penalty or obligation, within five days from the date  
the contract is signed.
- 1463 If you cancel, any payment made by you under this contract will be returned within 10 days  
following receipt by the seller of your cancellation notice.
- 1465 To cancel this contract, mail or deliver a signed dated copy of this cancellation notice, or any  
other written notice, to \_\_\_\_\_(name of [~~seller~~] credit services organization)\_\_\_\_\_ at \_\_\_\_\_(address  
of [~~seller~~] credit services organization)\_\_\_\_\_ (place of business)\_\_\_\_\_ not later than midnight  
\_\_\_\_\_ (date)\_\_\_\_\_.
- 1469 I hereby cancel this transaction.
- 1470 \_\_\_\_\_(date)
- 1471 \_\_\_\_\_
- 1472 (purchaser's signature)"
- 1473 (3) The credit services organization shall give to the buyer:
- 1474 (a) a copy of the completed contract; and
- 1475 (b) all other documents the credit services organization requires the buyer to sign at the time [~~they are~~  
signed] the buyer signs the documents.
- 1477 Section 29. Section **13-21-108** is renumbered and amended to read:
- 1479 ~~[13-21-7.5]~~**13-21-108. Required disclosures.**
- 1480 [~~(1) As used in this section:~~]
- 1481 [(a) "Consumer reporting agency" means the same as that term is defined in Section 13-45-102.]
- 1483 [(b) "Credit report" means the same as that term is defined in Section 13-45-102.]

## SB0038S01 compared with SB0038S02

- 1484 [(e) "Credit score" means the same as that term is defined in Section 31A-22-320.]
- 1485 [(2)] When a [~~consumer~~] credit services organization provides a credit report to a buyer, the credit services organization shall provide to the buyer a written disclosure that identifies:
- 1487 [(a)] (1) the [~~consumer~~] credit reporting agency providing the information in the report;
- 1488 [(b)] (2) the name of the credit score model [~~used by~~] the credit reporting agency uses to calculate the credit score; and
- 1490 [(e)] (3) the minimum and maximum possible scores under the credit score model [~~used by~~] the credit reporting agency uses in the credit report.
- 1492 Section 30. Section **13-21-109** is renumbered and amended to read:
- 1494 **~~[13-21-8]~~ 13-21-109. Burden of proving exception -- Penalties -- Court's criminal and equitable jurisdiction -- Prosecution.**
- 1496 (1)
- [(a) ~~Any~~] A waiver by a buyer of [~~any~~] a part of this chapter is void.
- 1497 [(b) ~~Any attempt by a credit services organization to have a buyer waive rights given by this chapter is a violation of this chapter.~~]
- 1499 (2) In [~~any~~] a proceeding [~~involving~~] under this chapter, the person claiming the exemption or exception has the burden of proving an exemption or an exception from a definition [~~is upon the person claiming the exemption or exception~~].
- 1502 (3)
- (a) [~~Any~~] A person who violates this chapter is guilty of a class A misdemeanor.
- 1503 (b) A court with jurisdiction under Title 78A, Judiciary and Judicial Administration, may restrain and enjoin a violation of this chapter.
- 1505 (4) The attorney general, [~~any~~] a county attorney, [~~any~~] a district attorney, or [~~any~~] a city attorney may prosecute misdemeanor actions or institute injunctive or civil proceedings, or both, under this chapter.
- 1508 (5) The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.
- 1510 (6)
- [(a)] In addition to [~~other penalties under this section, the division director may issue a cease and desist order and impose an administrative fine of up to \$2,500 for each violation of this chapter.~~] the

## SB0038S01 compared with SB0038S02

division's enforcement powers described in Chapter 2, Division of Consumer Protection, the division may:

- 1514 (a) impose an administrative fine of up to \$2,500 for each violation of this chapter; and  
1515 (b) bring an action in a court with jurisdiction to enforce a provision of this chapter.  
1516 [~~(b) All money received through administrative fines imposed under this section shall be deposited into  
the Consumer Protection Education and Training Fund created by Section 13-2-8.]~~  
1519 (7) In an action described in Subsection (6)(b), a court may:  
1520 (a) declare that an act or a practice violates a provision of this chapter;  
1521 (b) issue an injunction for a violation of this chapter;  
1522 (c) order disgorgement of any money received in violation of this chapter;  
1523 (d) order payment of disgorged money to an injured purchaser or consumer;  
1524 (e) impose a fine of up to \$2,500 for each violation of this chapter; and  
1525 (f) award any other relief the court deems reasonable and necessary.

1526 Section 31. Section **13-21-110** is renumbered and amended to read:

1528 ~~[13-21-9]~~ **13-21-110. Damages -- Punitive damages -- Attorney fees and costs -- Remedies.**

- 1530 (1) ~~[Any]~~ A buyer injured by a violation of this chapter may bring any action for recovery of damages.  
1532 (2) ~~[Judgment shall be entered]~~ In an action brought by a buyer in accordance with Subsection (1):  
1534 (a) a court shall enter judgment for actual damages, ~~[but in no case less than]~~ that the court shall  
determine as at least the amount paid by the buyer to the credit services organization, plus  
reasonable ~~[attorneys']~~ attorney fees and costs~~[-]~~; and  
1537 (b) ~~[An award may also be entered for]~~ the court may award the buyer punitive damages.  
1538 ~~[(2)]~~ (3) The remedies provided under this chapter are in addition to any other procedures or remedies  
for ~~[any]~~ a violation or conduct provided for in any other law.  
1540 ~~[(3)]~~ (4)  
(a) The ~~[Division of Consumer Protection]~~ division may maintain an action for damages or injunctive  
relief on behalf of ~~[itself]~~ the division or ~~[any other]~~ another person to enforce compliance with this  
chapter.  
1543 (b) ~~[Any]~~ A court shall include in a judgment ~~[granted]~~ the court grants in favor of the division~~[~~  
shall include], in addition to any other monetary award or injunctive relief, an award of reasonable  
~~[attorneys']~~ attorney fees, court costs, and costs of investigation.

1547 Section 32. Section **13-22-101** is renumbered and amended to read:

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1549

### Part 1. General Provisions

1550

#### ~~[13-22-2]~~ 13-22-101. Definitions.

As used in this chapter:

1552

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

1554

(2)

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

1557

(i) [~~who~~] is or [~~holds itself out~~] claims to be[:]

1558

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

1561

~~[(B) for the benefit of a public safety, law enforcement, or firefighter fraternal association; or]~~

1563

~~[(C)]~~ established for any charitable purpose;

1564

(ii) [~~who~~] solicits or obtains contributions solicited from the public for a charitable purpose; or

1566

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

1569

(b) "Charitable organization" includes a chapter or a person who solicits contributions within the state for a charitable organization.

1571

(c) "Charitable organization" does not include a political organization.

1572

(3) "Charitable purpose" means:

1573

(a) [~~-~~]any benevolent, educational, philanthropic, humane, patriotic, religious, eleemosynary, social welfare or advocacy, public health, environmental, conservation, civic, or other charitable objective; or

1576

(b) for the benefit of a public safety, law enforcement, or firefighter fraternal association.

1577

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

1581

(5)

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- (a) [~~"Charitable solicitation" or "solicitation"~~] "Charitable solicitation" means [any] a person's request, directly or indirectly, for money, credit, property, financial assistance, or [any other] another thing of value based on the plea or representation that [it will be used] the person will use the money, credit, property, financial assistance, or any other thing of value for a charitable purpose.
- 1586 (b) [~~"Charitable solicitation" or "solicitation"~~] "Charitable solicitation" includes:
- 1587 (i) any of the following done, or purporting to be done, for a charitable purpose:
- 1588 (A) [any] an oral or a written request, including [any] a request by telephone, radio, television, or other advertising or communications media;
- 1590 (B) the distribution, circulation, or posting of [any] a handbill, written advertisement, or publication; or
- 1592 (C) an application or other request for a [a] private grant or, if made by an individual, a public grant; [or]
- 1594 (ii) the sale of, offer or attempt to sell, or request of donations in exchange for any advertisement, membership, subscription, or other article in connection with which [any] a person makes an appeal [is made for any] for a charitable purpose;
- 1597 (iii) [~~or the~~] a person's use of the name of [any] a charitable organization or movement as an inducement or reason for making [any] a purchase or donation[;] : or[;]
- 1600 (iv) in connection with [any] a sale or donation, a person stating or implying that the [whole] person will give or donate all or [any] a part of the proceeds of [any] a sale or donation [~~will go to or be donated~~] to [any] a charitable purpose.
- 1603 (c) [~~"Charitable solicitation" or "solicitation"~~] "Charitable solicitation" does not include an entity's application or other request for a public grant.
- 1605 (6) "Commercial co-venturer" means a person [who] that for profit [is] regularly and primarily [engaged] engages in trade or commerce other than in connection with soliciting for a charitable organization or purpose.
- 1608 (7)
- (a) "Contribution" means the pledge or grant for a charitable purpose of any money or property of any kind, including any of the following:
- 1610 (i) a gift, subscription, loan, advance, or deposit of money or anything of value;
- 1611 (ii) a contract, promise, or agreement, express or implied, whether or not legally enforceable, to make a contribution for charitable purposes; or
- 1613

## SB0038S01 compared with SB0038S02

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

1615 (b) "Contribution" does not include:

1616 (i) money [~~loaned~~] a financial institution loans to a charitable organization [~~by a financial institution~~] in the ordinary course of business; or

1618 (ii) fees, dues, or assessments [~~paid by members~~] members pay when membership is not conferred solely as consideration for making a contribution.

1620 (8) "Contributor" means a donor, pledgor, purchaser, or other person [~~who~~] that makes a contribution.

1622 (9) "Director" means the director of the [~~Division of Consumer Protection~~] division.

1623 (10) "Division" means the Division of Consumer Protection [~~of the Department of Commerce~~] established by Section 13-2-101.

1625 (11)

(a) "Exempt function" means the function of influencing or attempting to influence the selection, nomination, election, or appointment of an individual to a federal, state, or local public office or an office in a political organization, or the election of presidential or vice-presidential electors, regardless of whether the individual or the electors are selected, nominated, elected, or appointed.

1630 (b) "Exempt function" includes making an expenditure relating to an office described in Subsection (11) (a) which, if incurred by the individual, would be allowable as a deduction under section 162(a) of 26 I.R.C. Sec. 1.162-20.

1633 (12) "Foreign nonprofit corporation" means the same as that term is defined in Section 16-6a-102.

1635 (13) "Material fact" means information that [~~a person~~] an individual of ordinary intelligence and prudence would consider relevant in deciding whether [~~or not~~] to make a contribution in response to a charitable solicitation.

1638 (14) "Nonprofit corporation" means the same as that term is defined in Section 16-6a-102.

1639 (15) "Political organization" means an incorporated or unincorporated party, committee, association, fund, or other organization organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures for an exempt function.

1643 (16)

(a) "Professional [~~fund raiser~~] fundraiser" means a person [~~who~~] that:

1644 (i) for compensation or [~~any~~] other consideration, for or on behalf of a charitable organization that is a nonprofit corporation, or [~~any~~] other person that is not a political organization:

## SB0038S01 compared with SB0038S02

- 1647 (A) solicits [~~contributions~~] a contribution; or
- 1648 (B) promotes or sponsors the charitable solicitation of [~~contributions~~] a contribution;
- 1649 (ii)
- (A) for compensation or [~~any~~]other consideration, plans, manages, consults, or prepares material for, or with respect to, the charitable solicitation of contributions for a charitable organization that is a nonprofit corporation, or [~~any~~]other person that is not a political organization; and
- 1653 (B) at any time has custody of a contribution for the charitable organization;
- 1654 (iii) engages in, or represents being independently engaged in, the business of soliciting contributions for a charitable organization that is a nonprofit corporation;
- 1656 (iv) manages, supervises, or trains any solicitor whether as an employee or otherwise; or
- 1658 (v) uses a vending device or vending device decal for financial or other consideration that implies a charitable solicitation of contributions or donations for [~~any~~] a charitable organization or charitable purposes.
- 1661 (b) "Professional [~~fund-raiser~~] fundraiser" does not include:
- 1662 (i) an individual acting in the individual's capacity as a bona fide officer, director, volunteer, or full-time employee of a charitable organization;
- 1664 (ii) an attorney, investment counselor, or banker who, in the conduct of that [~~person's~~] individual's profession, advises a client regarding legal, investment, or financial advice;
- 1667 (iii) [~~a person~~] an individual who tangentially prepares materials, including [~~a person~~] an individual who:
- 1669 (A) makes copies;
- 1670 (B) cuts or folds flyers; or
- 1671 (C) creates a graphic design or other artwork without providing strategic or campaign-related input; or
- 1673 (iv) a political organization.
- 1674 (17)
- (a) "Professional [~~fund-raising~~] fundraising consultant" means [~~a person~~] an individual who:
- 1676 (i) for compensation or [~~any~~]other consideration, plans, manages, consults, or prepares material for, or with respect to, the charitable solicitation of contributions for a charitable organization that is a nonprofit corporation or any other person that is not a political organization;
- 1680 (ii) does not solicit contributions;
- 1681 (iii) does not at any time have custody of a contribution from a charitable solicitation; and

## SB0038S01 compared with SB0038S02

- 1683 (iv) does not employ, procure, or engage any compensated person to solicit or receive contributions.
- 1685 (b) "Professional [~~fund raising~~] fundraising counsel or consultant" does not include:
- 1686 (i) an individual acting in the individual's capacity as a bona fide officer, director, volunteer, or full-time employee of a charitable organization;
- 1688 (ii) an attorney, investment counselor, or banker who, in the conduct of that person's profession, advises a client regarding legal, investment, or financial advice; or
- 1690 (iii) [~~a person~~] an individual who tangentially prepares materials, including [~~a person~~] an individual who:
- 1692 (A) makes copies;
- 1693 (B) cuts or folds flyers; or
- 1694 (C) creates a graphic design or other artwork without providing strategic or campaign-related input.
- 1696 (18) "Public grant" means the same as the term "grant" is defined in Section 63G-6a-103.
- 1697 (19)
- (a) "Vending device" means a container used by a charitable organization or professional [~~fund raiser~~] fundraiser, for the purpose of collecting a charitable solicitation, contribution, or donation whether or not the device offers a product or item in return for the contribution or donation.
- 1701 (b) "Vending device" includes machines, boxes, jars, wishing wells, barrels, or any other container.
- 1703 (20) "Vending device decal" means [~~any~~] a decal, tag, or similar designation material that is attached to a vending device, [whether or not used or placed by a charitable organization or professional fund raiser] regardless of whether a charitable organization or professional fundraiser uses or places the decal, tag, or similar designation material, that would indicate that all or a portion of the proceeds from the purchase of items from the vending device will go to a specific charitable organization.
- 1709 Section 33. Section **13-22-102** is renumbered and amended to read:
- 1711 ~~[13-22-3]~~ **13-22-102. Investigative and enforcement powers -- Education.**
- 1713 (1) The division shall administer and enforce the provisions of this chapter in accordance with Chapter 2, Division of Consumer Protection.
- 1715 [~~(2) Upon request, the attorney general shall give legal advice to, and act as counsel for, the division in the exercise of the division's responsibilities under this chapter.~~]
- 1717 [~~(3)~~] (2)

## SB0038S01 compared with SB0038S02

- (a) The division may audit or investigate as necessary to determine whether a person is violating, has violated, or is about to violate a provision of this chapter or a rule made or order issued under this chapter.
- 1720 (b) ~~[-]~~As part of ~~[the]~~ an investigation the division conducts in accordance with this Subsection (2), the division may:
- 1722 ~~[(a)]~~ (i) require a person to file a statement in writing;
- 1723 ~~[(b)]~~ (ii) administer oaths, subpoena witnesses and compel a witness to attend, compel sworn responses to written questions, take evidence, and examine under oath a person in connection with an investigation; and
- 1726 ~~[(c)]~~ (iii) require the production of books, papers, documents, merchandise, or other material relevant to the investigation.
- 1728 ~~[(4)]~~ (3) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:
- 1730 (a) the director may impose an administrative fine of up to \$2,500 for each violation of this chapter; or
- 1732 (b) the division may bring an action in a court with jurisdiction to enjoin the ~~[aets]~~ act or ~~[praetiees]~~ practice constituting the violation or to enforce compliance with this chapter or a rule made or order issued under this chapter.
- 1735 ~~[(5)]~~ (4) Upon a proper showing, the court hearing an action brought under Subsection ~~[(4)(b)]~~ (3)(b) may:
- 1737 (a) issue an injunction;
- 1738 (b) ~~[enter a declaratory judgment]~~ declare that an act or practice violates a provision of this chapter;
- 1740 (c) appoint a receiver for the defendant or the defendant's assets;
- 1741 (d) order disgorgement of any money received in violation of this chapter;
- 1742 (e) order payment of money described in Subsection (4)(d) to an injured consumer;
- 1743 ~~[(e)]~~ (f) order rescission of ~~[agreements violating]~~ an agreement that violates this chapter;
- 1744 ~~[(f)]~~ (g) impose ~~[fines]~~ a fine of up to \$2,500 for each violation of this chapter; and
- 1745 ~~[(g)]~~ (h) ~~[impose a civil penalty or]~~ award any other relief the court determines reasonable and necessary.
- 1747 ~~[(6)]~~ (5) If a court with jurisdiction grants judgment or injunctive relief to the division, the court shall award the division:
- 1749 (a) reasonable attorney fees;

## SB0038S01 compared with SB0038S02

- 1750 (b) court costs; and
- 1751 (c) investigative fees.
- 1752 ~~[(7)]~~ (6) In assessing the amount of a fine or penalty under Subsection ~~[(4)(a), (5)(f), or (5)(g),]~~ (3)(a),  
or (4)(g) the director or court imposing the fine or penalty may consider the gravity of the violation.
- 1755 ~~[(8)]~~ (7)
- (a) A person ~~[who]~~ that violates an administrative or court order issued for a violation of this chapter is subject to a civil penalty of up to \$5,000 for each violation.
- 1757 (b) A court may impose a civil penalty authorized under this section in a civil action brought by ~~[the attorney general on behalf of]~~ the division.
- 1759 ~~[(9)]~~ (8)
- (a) The division may provide or contract to provide public education and voluntary education for applicants and registrants under this chapter.
- 1761 (b) The public education that the division provides or contracts to provide under this Subsection (8) may:
- 1763 (i) ~~[-]~~be in the form of publications, advertisements, seminars, courses, or other appropriate means~~[-]~~ ;  
and
- 1765 (ii) ~~[-The scope of the education may -]~~include:
- 1766 ~~[(a)]~~ (A) the requirements, prohibitions, and regulated practices under this chapter;
- 1767 ~~[(b)]~~ (B) suggestions for effective financial and organizational practices for charitable organizations;
- 1769 ~~[(c)]~~ (C) charitable giving and charitable solicitation;
- 1770 ~~[(d)]~~ (D) potential problems with charitable solicitations and fraudulent or deceptive practices; and
- 1772 ~~[(e)]~~ (E) any other matter relevant to the subject of this chapter.
- 1773 ~~[(10)]~~ (9) Nothing in this chapter limits other available rights or remedies authorized under the laws of this state or the United States.
- 1775 Section 34. Section **13-22-103** is renumbered and amended to read:
- 1777 ~~[13-22-4]~~13-22-103. Action for damages.  
Nothing in this chapter precludes ~~[any]~~ a person damaged as a result of a charitable solicitation from maintaining a civil action for damages or injunctive relief.
- 1780 Section 35. Section **13-22-104** is renumbered and amended to read:
- 1782 ~~[13-22-5]~~13-22-104. Registration required.
- 1783

## SB0038S01 compared with SB0038S02

- 1785 (1) Unless a person acting as a professional [~~fund-raiser is registered~~] fundraiser registers with the  
division in accordance with Section [~~13-22-9~~] 13-22-105, the person may not:
- 1787 (a) make or facilitate a charitable solicitation either directed toward the state or originating from the  
state; or
- 1788 (b) maintain a place of business in the state or employ an individual located in the state.
- 1791 (2) Unless a person acting as a professional [~~fund-raising~~] fundraising consultant [~~is registered~~] registers  
with the division in accordance with Section [~~13-22-9~~] 13-22-105, the person may not:
- 1793 (a) maintain a place of business in the state or employ an individual located in the state; or
- 1796 (b) provide any service of a professional [~~fund-raising~~] fundraising consultant to or for a charitable  
organization, or any other person, over which the state has general jurisdiction.
- 1799 (3) Registration as a professional fundraiser or professional fundraising consultant does not mean the  
division or the state approves or endorses the professional fundraiser or professional fundraising  
consultant.
- 1801 Section 36. Section **13-22-105** is renumbered and amended to read:
- 1803 **[~~13-22-9~~]13-22-105. Professional fundraiser's or fundraising consultant's registration.**
- 1805 (1) A person applying for or renewing a registration as a professional [~~fund-raiser~~] fundraiser or a  
professional [~~fund-raising~~] fundraising consultant shall:
- 1807 (a) pay an application fee [~~as determined~~] the division determines under Section 63J-1-504; and
- 1809 (b) submit a written application[~~, verified under oath,~~] [~~on~~] in a form [~~approved by~~] the division  
approves that includes:
- 1810 (i) the applicant's name, address, and telephone number[~~, facsimile number, if any~~];
- 1812 (ii) the name and address of each organization or person controlled by, controlling, or affiliated with the  
applicant;
- 1814 (iii) the applicant's business, occupation, or employment for the three-year period immediately  
preceding the date of the application;
- 1816 (iv) whether [~~it~~] the applicant is an individual, joint venture, partnership, limited liability company,  
corporation, association, or other entity;
- 1818 (v) the names and [~~residence~~] mailing addresses of the applicant's officers and directors;
- 1820 (vi) the [~~name and address of the~~]applicant's registered agent for service of process[~~and a consent to  
service of process~~] in this state, and the registered agent's:
- (A) name;

## SB0038S01 compared with SB0038S02

- 1821 (B) street address;
- 1822 (C) mailing address; and
- 1823 (D) telephone number;
- 1824 (vii) if the person is a professional [fund-raiser] fundraiser or applies for registration as a professional fundraiser:
- 1826 (A) the purpose of the charitable solicitation and use of the contributions [~~to be solicited~~] the person will solicit;
- 1828 (B) the method by which the person will conduct the charitable solicitation [~~will be conducted~~] and the projected length of time [~~it is to be conducted~~] the person will conduct the charitable solicitation;
- 1831 (C) a statement identifying how the person will be paid, and if the person charges a flat fee, the amount of the flat fee;
- 1833 [~~(C) the anticipated expenses of the solicitation, including all commissions, costs of collection, salaries, and other expenses;~~]
- 1835 (D) a statement of what percentage of the contributions [~~collected~~] the person collects as a result of the charitable solicitation are projected to remain available to the charitable organization declared in the application[, ~~including a satisfactory statement of the factual basis for the projected percentage and projected anticipated revenues provided to the charitable organization, and if a flat fee is charged, documentation to support the reasonableness of the flat fee~~]; and
- 1842 (E) a statement of total contributions collected or received by the [~~professional fund-raiser~~] person within the calendar year immediately preceding the [~~date of the application~~] day on which the person submits the person's application, including a description of the expenditures made from or the use made of the contributions;
- 1847 (viii) if the person is a professional [fund-raising] fundraising consultant or applies to become a professional fundraising consultant:
- 1849 (A) the purpose of the plan, management, advice, or preparation of materials for, or with respect to, the charitable solicitation and use of the contributions solicited;
- 1852 (B) the method by which the person will organize or coordinate the plan, management, advice, or preparation of materials for, or with respect to, the charitable solicitation [~~will be organized or coordinated~~] and the projected length of time of the charitable solicitation;
- 1856

## SB0038S01 compared with SB0038S02

~~[(C) the anticipated expenses of the plan, management, advice, or preparation of materials for, or with respect to, the solicitation, including all commissions, costs of collection, salaries, and other expenses;]~~

1859 ~~[(D)] (C)~~ a statement of ~~[total fees to be earned or received from the charitable organization declared in the application, and what]~~ the percentage of the contributions ~~[collected]~~ the person collects as a result of the plan, management, advice, or preparation of materials for, or with respect to, the charitable solicitation are projected after deducting the total fees ~~[to be earned or received]~~ the person will earn or receive remain available to the charitable organization declared in the application~~[-, including a satisfactory statement of the factual basis for the projected percentage and projected anticipated revenues provided to the charitable organization, and if a flat fee is charged, documentation to support the reasonableness of such flat fee];~~ and

1869 ~~[(E)] (D)~~ a statement of total net fees ~~[earned or received]~~ the person earns or receives within the calendar year immediately preceding the ~~[date of the application]~~ day on which the person submits the applicant's application, including a description of the expenditures ~~[made]~~ the person makes from or ~~[the use]~~ uses of the net ~~[earned or received]~~ fees the person earns or receives in the planning, management, advising, or preparation of materials for, or with respect to, the charitable solicitation and use of the contributions solicited for the charitable organization;

1877 (ix) disclosure of:

1878 (A) any injunction, judgment, or administrative order against the applicant; and

1879 (B) ~~[-or the applicant's conviction of a crime involving a charitable solicitation or a felony involving fraud, dishonesty, a false statement, forgery, or theft]~~ any felony or misdemeanor conviction of the person that involves theft, fraud, or dishonesty for the ten-year period before the day on which the applicant files the application;

1884 (x) each written agreement the applicant has with a charitable organization;

1885 (xi) disclosure of ~~[any]~~ an injunction, a judgment, or an administrative order or conviction of a crime involving a charitable solicitation or a felony involving fraud, dishonesty, a false statement, forgery, or theft with respect to ~~[any]~~ an officer, a director, a manager, an operator, or a principal of the applicant;

1889 ~~[(xii) a copy of all agreements to which the applicant is, or proposes to be, a party regarding the use of proceeds;]~~

1891

## SB0038S01 compared with SB0038S02

~~[(xiii)]~~ (xii) an acknowledgment that ~~[fund-raising]~~ fundraising in the state will not commence until both the professional ~~[fund-raiser]~~ fundraiser or professional ~~[fund-raising]~~ fundraising consultant ~~[and the charity, and its parent foundation, if any, are-]~~ are registered and in compliance with this chapter; and

1895 ~~[(xiv)]~~ (xiii) additional information the division may require by rule.

1896 (2) If information contained in the application for registration becomes incorrect or incomplete, the applicant or registrant shall, within 30 days after the information becomes incorrect or incomplete, correct the application or file the complete information required by the division.

1900 (3) In addition to the registration fee, an applicant failing to file an application for registration or renewal by the due date or filing an incomplete application for registration or renewal shall pay an additional fee of \$25 for each month or part of a month after the date on which the application for registration or renewal was due to be filed.

1905 Section 37. Section **13-22-106** is renumbered and amended to read:

1907 ~~[13-22-11]~~ **13-22-106. Expiration of registration.**

1908 (1) ~~[Each-]~~ A professional ~~[fund-raiser's]~~ fundraiser's or professional fundraising consultant's registration issued under this chapter expires ~~[annually on the date of issuance]~~ one year after the day on which the division issues the registration.

1911 ~~[(2) Each professional fund-raising consultant's registration issued under this chapter expires annually on the date of issuance.]~~

1913 ~~[(3)]~~ (2) A professional fundraiser or a professional fundraising consultant:

1914 (a) may renew a registration ~~[may be renewed-]~~ only by complying with the requirements for obtaining the original registration[-]; and

1916 (b) shall submit an application to renew a registration at least 30 days before the day on which the professional fundraiser's or the professional fundraising consultant's registration expires.

1919 Section 38. Section **13-22-107** is renumbered and amended to read:

1921 ~~[13-22-12]~~ **13-22-107. Grounds for denial, suspension, or revocation.**

~~[The director may, in-]~~ In accordance with Chapter 2, Division of Consumer Protection, and Title 63G, Chapter 4, Administrative Procedures Act, ~~[issue an order]~~ the division may initiate adjudicative proceedings to deny, suspend, or revoke an application or registration[-] upon a finding that the order is in the public interest and that if:

1927 (1) the division finds that the denial, suspension, or revocation is in the public interest; and

## SB0038S01 compared with SB0038S02

- 1928 ~~[(1)]~~ (2)
- (a) the application ~~[for]~~ or registration ~~[or renewal]~~ is incomplete or misleading in ~~[any]~~ a material respect;
- 1930 ~~[(2)]~~ (b) the applicant or ~~[registrant or an officer, director, agent, or employee of the applicant or registrant has]~~ the applicant's principal:
- 1932 ~~[(a)]~~ (i) ~~[violated]~~ violates this chapter ~~[or committed a prohibited act or practice described in this chapter]~~ , causes a violation of this chapter, allows a violation of this chapter, or fails to satisfy the requirements of a provision of:
- 1935 (A) this chapter; or
- 1936 (B) a rule the division makes in accordance with this chapter;
- 1937 (ii) violates Chapter 11, Utah Consumer Sales Practices Act;
- 1938 (iii) is enjoined by a court, or is subject to an administrative or judicial order, if the administrative or judicial order:
- 1940 (A) includes a finding or admission of the applicant's fraud, breach of fiduciary duty, or material misrepresentation; or
- 1942 (B) is based on a finding of the applicant's lack of integrity, truthfulness, or mental competence;
- 1944 ~~[(b) been enjoined by a court, or is the subject of an administrative order issued in this or another state, if the injunction or order includes a finding or admission of fraud, breach of fiduciary duty, material misrepresentation, or if the injunction or order was based on a finding of lack of integrity, truthfulness, or mental competence of the applicant;]~~
- 1949 ~~[(e)]~~ (iv) ~~[been]~~ is convicted of a crime involving fraud, dishonesty, a false statement, forgery, or theft;
- 1951 ~~[(d)]~~ (v) ~~[obtained]~~ obtains or ~~[attempted]~~ attempts to obtain a registration by misrepresentation;
- 1953 (vi) fails to provide information the division requests;
- 1954 (vii) fails to pay an administrative fine that the division or an administrative order imposes; or
- 1956 (viii) fails to pay the fee to file a registration application or a renewal application.
- 1957 ~~[(e) materially misrepresented or caused to be misrepresented the purpose and manner in which contributed funds and property will be used in connection with a solicitation;]~~
- 1959 ~~[(f) caused or allowed a paid solicitor to violate a rule made or order issued under this chapter by the division;]~~
- 1961 ~~[(g) failed to take corrective action with a solicitor that has violated this chapter or committed an act or practice prohibited by this chapter;]~~

## SB0038S01 compared with SB0038S02

- 1963 [~~(h) used, or attempted to use a name that is deceptive or is reasonably likely to cause confusion;~~]
- 1965 [~~(i) failed to timely file with the division a report or information required in this chapter or by rules made under this chapter; or]~~
- 1967 [~~(j) failed to pay a fine imposed by the division in accordance with Section 13-22-3.]~~
- 1968 Section 39. Section **13-22-108** is renumbered and amended to read:
- 1970 ~~[13-22-13]~~ **13-22-108. Prohibited practices.**
- In connection with a charitable solicitation, each of the following acts and practices is prohibited:
- 1973 (1) stating or implying that registration constitutes endorsement or approval by the division or a governmental entity;
- 1975 (2) violating a requirement of this chapter or a rule made under this chapter;
- 1976 (3) making a false statement of a material fact or failing to state a material fact necessary to make statements made, in the context of the circumstances under which they are made, not misleading, whether in connection with a charitable solicitation or a filing with the division; and
- 1980 (4) violating an order issued by the division under Section ~~[13-22-3]~~ 13-22-102.
- 1981 Section 40. Section **13-22-109** is renumbered and amended to read:
- 1983 ~~[13-22-14]~~ **13-22-109. Accuracy not guaranteed.**
- 1984 (1)
- (a) By issuing a registration, the state does not guarantee the accuracy of any representation contained in the registration, nor does ~~[it]~~ the state warrant that ~~[any]~~ a statement made by the holder of the registration is truthful.
- 1987 (b) The state makes no certification as to the charitable worthiness of ~~[any organization]~~ a charitable organization on whose behalf a charitable solicitation is made nor as to the moral character of the holder of the registration.
- 1990 (2) The following statement shall appear on each registration: "THE STATE OF UTAH MAKES NO CERTIFICATION AS TO THE CHARITABLE WORTHINESS OF ANY ORGANIZATION ON WHOSE BEHALF A SOLICITATION IS MADE NOR AS TO THE MORAL CHARACTER OF THE HOLDER OF THE REGISTRATION."
- 1994 Section 41. Section **13-22-110** is renumbered and amended to read:
- 1996 ~~[13-22-15]~~ **13-22-110. Financial reports required -- Rulemaking.**
- 1998 (1)

## SB0038S01 compared with SB0038S02

- (a) ~~[Beginning January 1, 2025, and subject ]~~ Subject to Subsection (2), a charitable organization that is a nonprofit corporation, or that is a foreign nonprofit corporation, shall annually file with the Division of Corporations and Commercial Code an unredacted copy of the charitable organization's most ~~[recent]~~ recently filed IRS Form 990, 990-EZ, 990-N, or 990-PF.
- 2003 (b) Subsection (1)(a) does not apply to a nonprofit corporation or a foreign nonprofit corporation that is not required to file a Form 990, 990-EZ, 990-N, or 990-PF with the IRS.
- 2006 (c) An IRS Form 990, 990-EZ, or 990-PF for a tax year from more than three years before the day on which the charitable organization makes the filing with the Division of Corporations and Commercial Code does not satisfy the requirement of Subsection (1)(a).
- 2010 (2)  
(a)  
(i) The division may not require a charitable organization to file Schedule B of a form described in Subsection (1).  
(ii) An IRS Form 990-T is not required to be filed under this section.
- 2012
- 2013 (b) A charitable organization that has not yet filed an IRS Form 990, 990-EZ, 990-N, or 990-PF may file a tax exempt determination letter that the charitable organization receives from the IRS if the tax exempt determination letter is dated no more than two years before the day on which the charitable organization files the tax exempt determination letter with the Division of Corporations and Commercial Code.
- 2018 (c) If a charitable organization files a tax exempt determination letter in accordance with Subsection (2)(b), that filing satisfies the filing requirement described in Subsection (1).
- 2021 ~~[(b)]~~ (d) The division shall make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish:
- 2023 (i) the manner in which a charitable organization ~~[is required to]~~ shall file the forms described in Subsection (1); and
- 2025 (ii) the process by which a charitable organization ~~[is required to]~~ shall file the forms ~~[-]~~ described in Subsection (1).
- 2027 Section 42. Section **13-22-111** is renumbered and amended to read:
- 2029 ~~[13-22-16]~~ **13-22-111. Separate accounts and receipts required.**
- 2031 (1)

## SB0038S01 compared with SB0038S02

- (a) ~~[Each]~~ A professional [fund-raiser] fundraiser shall segregate and maintain all contributed funds in an account held separately from the professional ~~[fund-raiser's]~~ fundraiser's operating account.
- 2034 (b) ~~[Each]~~ A professional fundraiser shall deposit each contribution in the control or custody of the professional ~~[fund-raiser shall, no later than 10 days after the day on which the contribution is received, be deposited]~~ fundraiser into an account at a bank or other federally insured financial institution that is in the name of the charitable organization no later than 10 days after the day on which the professional fundraiser receives the contribution.
- 2040 (c) The charitable organization shall:
- 2041 (i) ~~[-]~~ maintain and administer the account described in Subsection (1)(b); and ~~[-shall]~~
- 2042 (ii) have sole control of all withdrawals.
- 2043 (2) ~~[Each]~~ A professional [fund-raiser] fundraiser shall:
- 2044 (a) maintain a record of each contribution of money, securities, or cash equivalent sufficient to allow the charitable organization or professional ~~[fund-raiser]~~ fundraiser to provide a receipt to the contributor upon request or as required by law; and
- 2047 (b) provide a contributor a receipt for each contribution upon request or as required by law.
- 2049 (3) A professional ~~[fund-raiser]~~ fundraiser shall develop and maintain adequate internal controls for receipt, management, and disbursement of money that are reasonable in light of the charitable organization's or professional ~~[fund-raiser's]~~ fundraiser's assets and organizational complexity.
- 2053 Section 43. Section **13-22-112** is renumbered and amended to read:
- 2055 ~~[13-22-17]~~ **13-22-112. Written agreement required.**
- 2056 (1) A professional ~~[fund-raiser]~~ fundraiser or professional fundraising consultant may only engage in activities on behalf of a charitable organization through written agreement with the charitable organization.
- 2059 ~~[(2) A professional fund-raising consultant may only engage in activities on behalf of a charitable organization through written agreement with the organization.]~~
- 2061 ~~[(3)]~~ (2) A charitable organization may only engage the services of a professional ~~[fund-raiser]~~ fundraiser or professional ~~[fund-raising]~~ fundraising consultant through written agreement.
- 2064 ~~[(4)]~~ (3) A professional ~~[fund-raiser]~~ fundraiser or professional ~~[fund-raising]~~ fundraising consultant shall file each agreement described in this section with ~~[its]~~ the professional fundraiser's or professional fundraising consultant's application for registration.
- 2067 Section 44. Section **13-22-113** is renumbered and amended to read:

## SB0038S01 compared with SB0038S02

2069 ~~[13-22-19]~~ **13-22-113. Reciprocal agreements.**

2070 (1) The division may convey or exchange information obtained under this chapter with ~~[other agencies having]~~ another agency that has regulatory authority over charitable organizations.

2073 (2) The division may accept information that a charitable organization, ~~[or]~~ professional ~~[fund raiser]~~ fundraiser, or fundraising consultant files in another state or with ~~[any]~~ a federal agency or other organization in place of substantially similar information that is required to be filed under this chapter.

2077 Section 45. Section **13-22-114** is renumbered and amended to read:

2079 ~~[13-22-22]~~ **13-22-114. (Effective 05/06/26) Charitable sales promotions.**

A commercial co-venturer shall disclose in each advertisement for a charitable sales promotion the dollar amount or percent per unit of goods or services purchased or used that will benefit the charitable organization or purpose.

2083 Section 46. Section **13-22-115** is renumbered and amended to read:

2085 ~~[13-22-23]~~ **13-22-115. Fiduciary capacity.**

~~[Every]~~ A person soliciting, collecting, or expending ~~[contributions]~~ a contribution for charitable purposes, and every officer, director, trustee, or employee of ~~[any]~~ a person concerned with the charitable solicitation, collection, or expenditure of ~~[those contributions]~~ the contribution for charitable purposes, ~~[shall be considered to be]~~ is a fiduciary and ~~[acting]~~ acts in a fiduciary capacity.

2091 Section 47. Section **13-22-116** is renumbered and amended to read:

2093 ~~[13-22-24]~~ **13-22-116. Fundraising campaign recordkeeping requirements.**

2095 (1) As used in this section, ~~["fund raising"]~~ "fundraising campaign" means a charitable solicitation activity that a professional ~~[fund raiser]~~ fundraiser engages in on behalf of a charitable organization where the professional ~~[fund raiser]~~ fundraiser receives a portion of the funds raised or other compensation in exchange for services.

2099 (2) ~~[Before commencing a fund raising campaign, a]~~ A professional ~~[fund raiser shall submit to the division]~~ fundraiser shall keep records of the following information:

2101 (a) ~~[projected]~~ actual expenses and revenue for the fundraising campaign;

2102 (b) bank account information for the bank account where the professional ~~[fund raiser will hold]~~ fundraiser holds contributions collected in connection with the ~~[fund raising]~~ fundraising campaign;

## SB0038S01 compared with SB0038S02

- 2105 (c) the charitable solicitation scripts that will be used for the [~~fund-raising~~] fundraising campaign;
- 2107 (d) an affirmation from the professional [~~fund-raiser~~] fundraiser that the charity [~~has~~  
approved] approves the charitable solicitation materials to be used in the fund raising campaign;[  
and]
- 2110 (e) [~~names-~~] the name and contact information for [~~the individuals~~] each individual overseeing the fund  
raising campaign[-] ;
- 2112 (f) contributions the professional fundraiser collects during the fundraising campaign;
- 2113 (g) contributions paid to the charitable organization as a result of the fundraising campaign; and
- 2115 (h) expenses the charitable organization pays to the professional fundraiser for the fundraising  
campaign.
- 2117 [(3) No later than 90 days after the day on which the fund raising campaign ends, the professional fund  
raiser shall submit a report to the division detailing:]
- 2119 [(a) all contributions collected during the fund raising campaign;]
- 2120 [(b) all contributions paid to the charitable organization as a result of the fund raising campaign; and]
- 2122 [(c) expenses paid by the charitable organization to the professional fund raiser for the fund raising  
campaign.]
- 2124 [(4)] (3) A professional [~~fund-raiser~~] fundraiser shall keep the records [~~related to the information~~  
]described in Subsection (2) for five years after the day on which the [~~fund-raising~~] fundraising  
campaign ends.

2127 Section 48. Section **13-23-101** is renumbered and amended to read:

2129 **CHAPTER 23. Fitness Center Services Protection Act**

2130 **Part 1. General Provisions**

2131 **[~~13-23-2~~]13-23-101. Definitions.**

As used in this chapter:

- 2133 (1) "Business enterprise" means a sole proprietorship, partnership, association, joint venture,  
corporation, limited liability company, or other entity used in carrying on a business.
- 2136 (2) "Consumer" means a purchaser of [~~health-spa~~] fitness center services for consideration.
- 2137 (3) "Division" means the Division of Consumer Protection established under Section 13-2-102.
- 2139 (4)
- (a) [~~"Health-spa~~] "Fitness center" means a business enterprise that provides access to a facility:

## SB0038S01 compared with SB0038S02

- 2141 (i) for a charge or a fee; and
- 2142 (ii) for the development or preservation of physical fitness or well-being, through exercise, weight control, or athletics.
- 2144 (b) [~~Health spa~~] "Fitness center" does not include:
- 2145 (i) a licensed physician who operates a facility at which the physician engages in the practice of medicine;
- 2147 (ii) a hospital, intermediate care facility, or skilled nursing care facility;
- 2148 (iii) a public or private school, college, or university;
- 2149 (iv) the state or a political subdivision of the state;
- 2150 (v) the United States or a political subdivision of the United States;
- 2151 (vi) a person offering instruction if the person does not:
- 2152 (A) utilize an employee or independent contractor; or
- 2153 (B) grant a consumer the use of a facility containing exercise equipment;
- 2154 (vii) a business enterprise, the primary operation of which is to teach self-defense or a martial art, including kickboxing, judo, or karate;
- 2156 (viii) a business enterprise, the primary operation of which is to teach or allow an individual to develop a specific skill rather than develop or preserve physical fitness, including gymnastics, tennis, rock climbing, or a winter sport;
- 2159 (ix) a business enterprise, the primary operation of which is to teach or allow an individual to practice yoga or Pilates;
- 2161 (x) a private employer who owns and operates a facility exclusively for the benefit of the employer's employees, retirees, or family members, if the operation of the facility:
- 2164 (A) is only incidental to the overall function and purpose of the employer's business; and
- 2166 (B) is offered on a nonprofit basis;
- 2167 (xi) an individual providing professional services within the scope of the individual's license with the Division of Professional Licensing;
- 2169 (xii) a country club;
- 2170 (xiii) a nonprofit religious, ethnic, or community organization;
- 2171 (xiv) a residential weight reduction center;
- 2172 (xv) a business enterprise that only offers virtual services;
- 2173

## SB0038S01 compared with SB0038S02

- (xvi) a business enterprise that only offers a credit for a service that a separate business enterprise offers;
- 2175 (xvii) the owner of a lodging establishment, as defined in Section 29-2-102, if the owner only provides  
access to the lodging establishment's facility to:
- 2177 (A) a guest, as defined in Section 29-2-102; or
- 2178 (B) an operator or employee of the lodging establishment;
- 2179 (xviii) an association, declarant, owner, lessor, or developer of a residential housing complex, planned  
community, or development, if at least 80% of the individuals accessing the facility reside in the  
housing complex, planned community, or development; or
- 2183 (xix) a person offering a personal training service exclusively as an employee or independent contractor  
of a ~~[health spa]~~ fitness center.
- 2185 (5) ~~["Health spa-]~~ "Fitness center facility" means a facility to which a business entity provides access:
- 2187 (a) for a charge or a fee; and
- 2188 (b) for the development or preservation of physical fitness or well-being, through exercise~~[-weight control,]~~ or athletics.
- 2190 (6)
- (a) ~~["Health spa-]~~ "Fitness center service" means instruction, a service, a privilege, or a right that a  
~~[health spa]~~ fitness center offers for sale.
- 2192 (b) ~~["Health spa-]~~ "Fitness center service" includes a personal training service.
- 2193 (7) "Personal training service" means the personalized instruction, training, supervision, or monitoring  
of an individual's physical fitness or well-being, through exercise~~[-weight control,]~~ or athletics.
- 2196 (8) "Primary location" means the ~~[health spa]~~ fitness center facility that a ~~[health spa]~~ fitness center  
designates in a contract for ~~[health spa]~~ fitness center services as the ~~[health spa]~~ fitness center  
facility the consumer in the contract will primarily use for ~~[health spa]~~ fitness center services.
- 2200 Section 49. Section **13-23-102** is renumbered and amended to read:
- 2202 ~~[13-23-3]~~**13-23-102. Contracts for fitness center services.**
- 2203 (1)
- (a) A contract for the purchase of a ~~[health spa]~~ fitness center service shall be in writing.
- 2205 (b) The written contract described in Subsection (1)(a) shall constitute the entire agreement between the  
consumer and the ~~[health spa]~~ fitness center.
- 2207 (2)

## SB0038S01 compared with SB0038S02

- (a) The ~~[health-spa]~~ fitness center shall provide the consumer with a fully completed copy of the contract required by Subsection (1):
- 2209 (i) at the time of the contract's execution; and  
2210 (ii) at any time, upon the consumer's request.
- 2211 (b) The copy described in Subsection (2)(a) shall show:
- 2212 (i) the date of the transaction;  
2213 (ii) the name and address of the ~~[health-spa]~~ fitness center;  
2214 (iii) the name, address, and telephone number of the consumer; and  
2215 (iv) the consumer's primary location.
- 2216 (3)
- (a) A contract described in Subsection (1):
- 2217 (i) may not have a term in excess of 36 months; and  
2218 (ii) subject to Subsection (3)(b), may include an automatic renewal provision.
- 2219 (b) An automatic renewal provision described in Subsection (3)(a) is effective if notice of the automatic renewal provision is provided to the consumer no sooner than 60 days before, and no later than 30 days before, the day on which the contract automatically renews.
- 2223 (c) Except for a lifetime membership sold before May 1, 1995, a ~~[health-spa]~~ fitness center may not offer a lifetime membership.
- 2225 (4) A contract described in Subsection (1) or an attachment to the contract shall clearly state each rule of the ~~[health-spa]~~ fitness center that applies to:
- 2227 (a) the consumer's use of the ~~[health-spa's]~~ fitness center's facilities and services; and  
2228 (b) cancellation and refund policies of the ~~[health-spa]~~ fitness center.
- 2229 (5) A contract described in Subsection (1) shall specify which equipment or facility of the ~~[health-spa]~~ fitness center:
- 2231 (a) is omitted from the contract's coverage; or  
2232 (b) may be changed at the ~~[health-spa's]~~ fitness center's discretion.
- 2233 (6) A contract described in Subsection (1) shall clearly:
- 2234 (a) state the consumer's rescission rights under Section ~~[13-23-4]~~ 13-23-103; and  
2235 (b) provide an email address and a mailing address where the consumer can send the ~~[health-spa]~~ fitness center a notice of intent to rescind the contract.
- 2237 (7)

## SB0038S01 compared with SB0038S02

- 2239 (a) If a consumer and a ~~[health-spa]~~ fitness center enter into a contract described in Subsection (1)  
before May 4, 2022, the ~~[health-spa]~~ fitness center may:
- 2243 (i) assign the contract to another ~~[health-spa]~~ fitness center that requires the consumer to obtain a  
contracted ~~[health-spa]~~ fitness center service at a ~~[health-spa]~~ fitness center facility within five  
driving miles from the consumer's initial primary location; or
- 2245 (ii) change the consumer's primary location to a ~~[health-spa]~~ fitness center facility within five  
driving miles from the consumer's initial primary location.
- 2247 (b) If a consumer and a ~~[health-spa]~~ fitness center enter into a contract described in Subsection (1) on or  
after May 4, 2022, the ~~[health-spa]~~ fitness center may not:
- 2252 (i) assign the contract to another ~~[health-spa]~~ fitness center that requires the consumer to obtain a  
contracted ~~[health-spa]~~ fitness center service at a ~~[health-spa]~~ fitness center facility within five  
driving miles from the consumer's initial primary location, unless the ~~[health-spa]~~ fitness center that  
enters into the contract includes in the contract a disclaimer that:
- 2253 (A) is in at least 12-point, bold ~~[type]~~ font on the first page of the contract; and
- 2257 (B) states that the ~~[health-spa]~~ fitness center may assign the contract to another ~~[health-spa]~~ fitness  
center requiring the consumer to obtain a contracted ~~[health-spa]~~ fitness center service at another  
facility within five driving miles from the consumer's initial primary location; or
- 2260 (ii) change the consumer's primary location to a ~~[health-spa]~~ fitness center facility within five driving  
miles from the consumer's initial primary location, unless the ~~[health-spa]~~ fitness center includes in  
the contract a disclaimer that:
- 2261 (A) is in at least 12-point, bold ~~[type]~~ font on the first page of the contract; and
- 2264 (B) states that the ~~[health-spa]~~ fitness center may change the consumer's primary location to a ~~[health  
spa]~~ fitness center facility within five driving miles from the consumer's initial primary location.
- 2264 (8)
- (a) Except as permitted under Subsection (8)(b), a ~~[health-spa]~~ fitness center may not assign a contract  
for a ~~[health-spa]~~ fitness center service to a ~~[health-spa]~~ fitness center that requires the consumer to  
obtain a contracted ~~[health-spa]~~ fitness center service at a ~~[health-spa]~~ fitness center facility farther  
than five driving miles from the consumer's initial primary location, unless the ~~[health-spa]~~ fitness  
center:
- 2269 (i) provides the consumer the option to cancel the contract; and
- 2270 (ii) receives approval from the consumer to assign the contract.

## SB0038S01 compared with SB0038S02

- 2271 (b) A ~~[health-spa]~~ fitness center may assign a consumer's contract for a ~~[health-spa]~~ fitness center  
service without complying with Subsection (8)(a), if:
- 2273 (i) during the 60-day period immediately before the day on which the ~~[health-spa]~~ fitness center assigns  
the consumer's contract, the consumer uses a ~~[health-spa]~~ fitness center facility operated by the  
assignee more frequently than the consumer's primary location;
- 2277 (ii) the assignee changes the consumer's primary location to the ~~[health-spa]~~ fitness center facility  
described in Subsection (8)(b)(i); and
- 2279 (iii) the ~~[health-spa]~~ fitness center has a reciprocity agreement with the assignee.
- 2280 (9)
- (a) Except as permitted under Subsection (9)(b), before a ~~[health-spa]~~ fitness center changes a  
consumer's primary location to a ~~[health-spa]~~ fitness center facility farther than five driving miles  
from the consumer's initial primary location, the ~~[health-spa]~~ fitness center shall provide the  
consumer the option to:
- 2284 (i) cancel the contract for a ~~[health-spa]~~ fitness center service; or
- 2285 (ii)
- (A) continue the contract at the new ~~[health-spa]~~ fitness center facility; and
- 2286 (B) designate the new ~~[health-spa]~~ fitness center facility as the consumer's primary location.
- 2288 (b) A ~~[health-spa]~~ fitness center may change a consumer's primary location without providing the  
consumer the option described in Subsection (9)(a), if:
- 2290 (i) during the 60-day period immediately before the day on which the ~~[health-spa]~~ fitness center changes  
the consumer's primary location, the consumer uses a ~~[health-spa]~~ fitness center facility other than  
the consumer's primary location more frequently than the consumer's primary location; and
- 2294 (ii) the ~~[health-spa]~~ fitness center changes the consumer's primary location to the ~~[health-spa]~~ fitness  
center facility described in Subsection (9)(b)(i).
- 2296 (10) The provisions of this section apply regardless of when the execution of a contract described in  
Subsection (1)(a) occurs.
- 2298 Section 50. Section **13-23-103** is renumbered and amended to read:
- 2300 ~~[13-23-4]~~ **13-23-103. Rescission.**
- 2301 (1) A consumer may rescind a contract for the purchase of a ~~[health-spa]~~ fitness center service by  
emailing or mailing written notice of the consumer's intent to rescind:
- 2303

## SB0038S01 compared with SB0038S02

- 2306 (a) to the email address or mailing address the ~~[health spa provided]~~ fitness center provides in the contract, ~~[as described in]~~ in accordance with Subsection ~~[13-23-3(6)(b)]~~ 13-23-102(6)(b); and
- (b)
- 2309 (i) before midnight of the third business day after the day on which the consumer and ~~[health spa]~~ fitness center execute the contract, as recorded by timestamp or postmark; or
- (ii) if a consumer and ~~[health spa]~~ fitness center execute the contract when the consumer's primary location is not fully operational and available for use, before midnight of the third business day after the day on which the consumer's primary location becomes fully operational and available for use, as recorded by timestamp or postmark.
- 2314 (2)
- ~~[(a)]~~ A consumer who rescinds a contract under this section is entitled to a refund of every payment the consumer made, less the reasonable value of any ~~[health spa]~~ fitness center service the consumer actually received.
- 2317 ~~[(b)]~~ (3) The preparation and processing of the contract or ~~[another]~~ other document is not a ~~[health spa]~~ fitness center service ~~[that is deductible]~~ that the fitness center may deduct under Subsection ~~[(2)(a)]~~ (2) from any refundable amount.
- 2320 ~~[(c)]~~ (4) In an enforcement action that the division initiates, a ~~[health spa]~~ fitness center has the burden of proving that any value the ~~[health spa]~~ fitness center retains under Subsection ~~[(2)(a)]~~ (2) is reasonable.
- 2323 ~~[(3)]~~ (5) The rescission of a contract under this section is effective upon the ~~[health spa's]~~ fitness center's receipt of written notice of the consumer's intent to rescind the contract.
- 2325 Section 51. Section **13-23-104** is renumbered and amended to read:
- 2327 ~~[13-23-5]~~**13-23-104. Registration -- Bond or certificate of deposit required -- Penalties.**
- 2329 (1)
- ~~[(a)]~~
- (i) A ~~[health spa]~~ fitness center may not operate a ~~[health spa]~~ fitness center facility in this state unless the ~~[health spa]~~ fitness center registers the ~~[health spa]~~ fitness center facility with the division in accordance with this section.
- 2332 ~~[(ii) Registration of a health spa facility under this chapter is effective for one year.]~~
- 2333 (2) To register or renew a registration for a fitness center facility, a person shall submit to the division a registration application:

## SB0038S01 compared with SB0038S02

- 2335 (a) in a manner the division determines; and
- 2336 (b) that includes:
- 2337 (i) a registration fee in an amount the division determines in accordance with Section 63J-1-504;
- 2339 (ii) a designated registered agent for service of process in the state and the registered agent's:
- 2341 (A) name;
- 2342 (B) street address;
- 2343 (C) mailing address; and
- 2344 (D) telephone number;
- 2345 (iii) a copy of the fitness center's liability policy of insurance that:
- 2346 (A) covers the fitness center; and
- 2347 (B) is in effect at the time of the registration or registration renewal; and
- 2348 (iv) any other information that the division requires by rule that the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 2350 [(iii)] (3)
- (a) A fitness center facility's registration is effective for one year after the day on which the division approves the fitness center's registration application.
- 2352 (b) To renew a [health-spa] fitness center facility registration under this section, the [health-spa] fitness center shall submit a registration renewal application [~~to the division~~] in accordance with Subsection (2) at least 30 days before the day on which the [health-spa] fitness center facility's registration expires.
- 2354 [(iv)] (4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may establish:
- 2356 [(A)] (a) the initial [health-spa] fitness center facility registration process, including the content of any forms;
- 2358 [(B)] (b) the [health-spa] fitness center facility registration renewal process, including the content of any forms; and
- 2360 [(C)] (c) a surety exemption process, including the content of any forms.
- 2361 [(b) Each health-spa registering a health-spa facility in this state shall designate a registered agent for receiving service of process.]
- 2363 [(e) A health-spa's registered agent shall be reasonably available from 8 a.m. until 5 p.m. during normal working days.]

## SB0038S01 compared with SB0038S02

- 2365 [~~(d) The division shall charge and collect a fee for registration and registration renewal under guidelines provided in Section 63J-1-504.~~]
- 2367 [~~(e) If a health spa fails to submit a complete registration renewal application before the day on which a health spa facility's registration expires, the health spa shall pay a fee of \$25 for each month or part of a month that passes:~~]
- 2370 [~~(i) after the day on which the registration expires; and]~~
- 2371 [~~(ii) before the day on which the health spa submits a complete registration renewal application.~~]
- 2373 [~~(f) The fee described in Subsection (1)(e) is in addition to the registration renewal fee described in Subsection (1)(d).~~]
- 2375 [~~(g) A health spa registering or renewing a registration shall provide the division a copy of the liability insurance policy that:~~]
- 2377 [~~(i) covers the health spa; and]~~
- 2378 [~~(ii) is in effect at the time of the registration or registration renewal.~~]
- 2379 [~~(h) If information in an application to register or renew the registration of a health spa facility materially changes or becomes incorrect or incomplete, the applicant shall, within 30 days after the day on which the information changes or becomes incorrect or incomplete, correct the application or submit the correct information to the division in a manner that the division establishes by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.~~]
- 2385 (5) If a fitness center fails to submit a complete registration renewal application before the day on which a fitness center facility's registration expires, the fitness center shall pay a fee of \$25 for each month or part of a month that passes:
- 2388 (a) after the day on which the registration expires; and
- 2389 (b) before the day on which the fitness center submits a complete registration renewal application.
- 2391 (6) The fee described in Subsection (5) is in addition to the registration renewal fee described in Subsection (2)(b)(i).
- 2393 [~~(2)~~] (7)
- (a) Except as provided in Section [~~13-23-6~~] 13-23-105, for each [~~health spa~~] fitness center facility a [~~health spa~~] fitness center operates, the [~~health spa~~] fitness center shall obtain and maintain:
- 2396 (i) a [~~performancee~~] surety bond issued by a surety authorized to transact surety business in this state; or
- 2398

## SB0038S01 compared with SB0038S02

- 2400 [(ii) an irrevocable letter of credit issued by a financial institution authorized to do business in this state; or]  
2400 [(iii)] (ii) a certificate of deposit in a financial institution authorized under the laws of this state or the United States to accept deposits from the public.
- 2402 (b) The fitness center shall make the bond[~~letter of credit,~~] or certificate of deposit described in Subsection [(2)(a)] (7)(a) [~~shall be-~~]payable to the division for the benefit of a consumer who incurs damages as the result of the [~~health spa~~] fitness center:
- 2405 (i) violating this chapter; or
- 2406 (ii) going out of business.
- 2407 (c)
- [(i)] After each consumer [~~has fully recovered~~] recovers actual damages, the division may recover from the surety bond[~~letter of credit,~~] or certificate of deposit described in Subsection [(2)(a)] [~~the costs of collecting and distributing funds under this section, in an amount up to 10% of the face value of the bond, letter of credit, or certificate of deposit]~~ (7)(a) any administrative fine, civil penalty, investigative cost, attorney fees, or other cost of collecting and distributing funds in accordance with this chapter.
- 2414 [(ii) The total liability of the issuer of the bond, letter of credit, or certificate of deposit described in this Subsection (2) may not exceed the amount of the bond, letter of credit, or certificate of deposit.]
- 2417 [(iii) A health spa shall maintain a bond, letter of credit, or certificate of deposit described in this Subsection (2) in force for one year after the day on which the health spa notifies the division in writing that the health spa has ceased all activities regulated under this chapter at the health spa facility.]
- 2421 (d)
- [(i) The division may impose a fine against a health spa that fails to comply with the requirements of this Subsection (2) of up to \$100 per day that the health spa remains out of compliance.]
- 2424 [(ii) The division shall deposit each fine the division collects under this Subsection (2)(d) into the Consumer Protection Education and Training Fund created in Section 13-2-8.]
- 2427 [(3)] (8)
- (a) In accordance with the schedule established in Subsection [(3)(b)] (8)(b), a [~~health spa~~] fitness center shall base the minimum principal amount of the bond[~~letter of credit,~~] or certificate of deposit required under Subsection [(2)] (7) on:

## SB0038S01 compared with SB0038S02

- 2430 (i) the number of unexpired contracts for a ~~[health-spa]~~ fitness center service, at the time the ~~[health-spa]~~ fitness center submits the ~~[health-spa]~~ fitness center facility registration or registration renewal application, that designate the ~~[health-spa]~~ fitness center facility as the consumer's primary location; or
- 2434 (ii) if at the time the ~~[health-spa]~~ fitness center submits the ~~[health-spa]~~ fitness center facility registration application the ~~[health-spa]~~ fitness center has not executed a contract for a ~~[health-spa]~~ fitness center service that designates the ~~[health-spa]~~ fitness center facility as a consumer's primary location, the number of contracts for a ~~[health-spa]~~ fitness center service designating the ~~[health-spa]~~ fitness center facility as a consumer's primary location that the ~~[health-spa]~~ fitness center reasonably expects to execute during the ~~[health-spa]~~ fitness center facility's first year of registration.

2442 (b)

2443	Principal Amount of <u>Surety Bond</u> <del>[, Letter of Credit,]</del> or Certificate of Deposit	Number of Contracts
2444	\$5,000	100 or fewer
2445	\$10,000	101 to 250
2446	\$15,000	251 to 500
2447	35,000	501 to 1,500
2448	50,000	1,501 to 3,000
2449	75,000	3,001 or more

2450 (c) A ~~[health-spa]~~ fitness center shall comply with Subsections ~~[(3)(a)]~~ (8)(a) and (b) with respect to all of the ~~[health-spa's]~~ fitness center's unexpired contracts for a ~~[health-spa]~~ fitness center service that do not satisfy the criteria in Section ~~[13-23-6]~~ 13-23-105.

2453 ~~[(4)]~~ (9) A ~~[health-spa]~~ fitness center shall furnish a copy of the current surety bond~~[, letter of credit,]~~ or certificate of deposit to the division before selling, offering or attempting to sell, soliciting the sale of, or becoming a party to any contract to provide a ~~[health-spa]~~ fitness center service.

2457 ~~[(5)]~~ (10) A ~~[health-spa]~~ fitness center shall:

2458 (a) maintain accurate records of:

2459 (i) the surety bond~~[, letter of credit,]~~ or certificate of deposit; and

2460 (ii) of each payment made, due, or to become due to the issuer; and

## SB0038S01 compared with SB0038S02

- 2461 (b) open the records described in Subsection [~~(5)~~(a)] (10)(a) to inspection by the division at any time  
during normal business hours.
- 2463 [~~(6)~~] (11)
- (a) A [~~health-spa~~] fitness center with a [~~health-spa~~] fitness center facility registered under this section shall submit a new initial registration for the [~~health-spa~~] fitness center facility, if the [~~health-spa~~] fitness center:
- 2466 (i) changes ownership;
- 2467 (ii) permanently ceases and then again commences operation at the [~~health-spa~~] fitness center facility; or
- 2469 (iii) relocates the [~~health-spa~~] fitness center facility.
- 2470 (b) The former owner of a [~~health-spa~~] fitness center may not release, cancel, or terminate the owner's liability under any surety bond[~~, letter of credit,~~] or certificate of deposit previously filed with the division, unless:
- 2473 (i) the new owner [~~has filed~~] files a new bond[~~, letter of credit,~~] or certificate of deposit for the benefit of consumers covered under the previous owner's surety bond[~~, letter of credit,~~] or certificate of deposit; or
- 2476 (ii) the former owner [~~has refunded~~] refunds all unearned payments to consumers.
- 2477 [~~(7)~~] (12) If a [~~health-spa~~] fitness center permanently ceases operation or relocates a [~~health-spa~~] fitness center facility, the [~~health-spa~~] fitness center shall provide the division notice at least 45 days before the day on which [~~health-spa~~] fitness center permanently ceases operation or relocates the [~~health-spa~~] fitness center facility.
- 2481 (13) A fitness center may not:
- 2482 (a) represent that the division or the state endorses or approves the fitness center;
- 2483 (b) omit from a filing with the division a material statement of fact required by this chapter or rule the division makes in accordance with this chapter; or
- 2485 (c) include in a filing with the division a material statement of fact that the fitness center or the fitness center's principal knew or should have known to be false, deceptive, inaccurate, or misleading.
- 2488 (14) A fitness center commits a separate violation of this chapter for each day that the fitness center operates a fitness center facility without registering the fitness center facility with the division in accordance with Subsection (2).
- 2493 Section 52. Section **13-23-105** is renumbered and amended to read:

## SB0038S01 compared with SB0038S02

- 2495 ~~[13-23-6]~~ **13-23-105. Exemptions from surety bond or certificate of deposit requirement.**
- 2495 (1) A ~~[health-spa]~~ fitness center is exempt from Subsections ~~[13-23-5(2)]~~ 13-23-104(7) through
- 2499 ~~[(5)]~~ (10) for a ~~[health-spa]~~ fitness center facility, if the ~~[health-spa]~~ fitness center only offers access
- 2500 to a ~~[health-spa]~~ fitness center service at the ~~[health-spa]~~ fitness center facility through:
- 2501 (a) the purchase of an individual class or session;
- 2502 (b) the purchase of a package:
- 2504 (i) with a defined number of classes or sessions; and
- 2506 (ii) for which the health spa may not hold more than \$150 worth of a consumer's unused credit;
- 2507 (c) the purchase of a monthly membership or pass, payment for which the ~~[health-spa]~~ fitness center
- 2511 does not collect from a consumer more than two months in advance;
- 2516 (d) an installment contract that:
- 2518 (i) provides for the consumer to make all payments due under the contract, including a down payment,
- 2523 an enrollment fee, a membership fee, or any other payment to the ~~[health-spa]~~ fitness center, in equal
- 2530 monthly installments spread over the entire term of the contract; and
- 2532 (ii) contains the following clause: "If this ~~[health-spa]~~ fitness center ceases operations at or changes the
- 2535 consumer's primary location in violation of Utah Code Subsection ~~[13-23-3(7)]~~ 13-23-102(7), (8),
- 2538 or (9), no further payments under this contract shall be due to anyone, including any assignee of the
- 2541 contract or purchaser of any note associated with or contained in this contract."; or
- 2544 (e) a combination of ~~[health-spa]~~ fitness center services described in Subsections (1)(a) through (d).
- 2547 (2) For purposes of finding the principal amount for the surety bond~~[-letter-of-credit,]~~ or certificate of
- 2550 deposit required under Section ~~[13-23-5]~~ 13-23-104, a ~~[health-spa]~~ fitness center is not required to
- 2553 include in the calculation described in Subsection ~~[13-23-5(3)]~~ 13-23-104(8) a contract that offers
- 2556 access to a ~~[health-spa]~~ fitness center service as described in Subsection (1).
- 2559 (3) A ~~[health-spa]~~ fitness center that claims exemption from Subsections ~~[13-23-5(2)]~~ 13-23-104(7)
- 2562 through ~~[(5)]~~ (10) or that a contract should be excluded from the calculation described in Subsection
- 2565 ~~[13-23-5(3)]~~ 13-23-104(8) bears the burden of proving to the division that the health spa or contract
- 2568 meets the relevant criteria described in Subsection (1) or (2).
- 2571 Section 53. Section **13-23-106** is renumbered and amended to read:
- 2574 ~~[13-23-7]~~ **13-23-106. Enforcement -- Costs and attorney fees -- Penalties.**
- 2577 ~~[(1)]~~

## SB0038S01 compared with SB0038S02

- (a) The division may, on behalf of a consumer or on the division's own behalf, file an action for injunctive relief, damages, or both to enforce this chapter.]
- 2534 [(b) In addition to any relief granted, the division is entitled to an award for reasonable attorney's fees, court costs, and reasonable investigative expenses.]
- 2536 (1) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection, the division may:
- 2538 (a) impose an administrative fine of up to \$2,500 for a violation of this chapter; and
- 2539 (b) bring an action in a court with jurisdiction to enforce a provision of this chapter.
- 2540 (2) In an action described in Subsection (1)(b), the court may:
- 2541 (a) declare that an act or practice violates a provision of this chapter;
- 2542 (b) issue an injunction for a violation of this chapter;
- 2543 (c) order disgorgement of any money received in violation of this chapter;
- 2544 (d) order payment of disgorged money to an injured purchaser or consumer;
- 2545 (e) impose a fine of up to \$2,500 for a violation of this chapter; and
- 2546 (f) award any other relief that the court deems reasonable and necessary.
- 2547 [~~(2)~~] (3)
- (a) A person who willfully violates a provision of this chapter, either by failing to comply with any requirement or by doing any act prohibited in this chapter, is guilty of a class B misdemeanor.
- 2550 (b) Each day a person commits or permits to continue a violation described in Subsection [~~(2)~~](a) is committed or permitted to continue] (3)(a) constitutes a separate punishable offense.
- 2553 (c) In the case of a second offense, the person is guilty of a class A misdemeanor.
- 2554 (d) In the case of a third or subsequent offense, the person is guilty of a third degree felony.
- 2556 [~~(3)~~]
- (a) ~~In addition to any other penalty available under this chapter, a person who violates this chapter is subject to:~~
- 2558 [(i) a cease and desist order; and]
- 2559 [(ii) an administrative fine of up to \$2,500 for each separate violation that is not a violation described in Subsection 13-23-5(2)(d) up to \$10,000 for any series of violations arising out of the same operative facts.]
- 2562 [(b) The division shall deposit all administrative fines collected under this chapter into the Consumer Protection Education and Training Fund created in Section 13-2-8.]

## SB0038S01 compared with SB0038S02

- 2566 Section 54. Section **13-23-107** is renumbered and amended to read:
- 2568 ~~[13-23-8]~~**13-23-107. Grounds for denial, suspension, or revocation.**  
[The director may, in-] In accordance with Title 63G, Chapter 4, Administrative  
Procedures Act, [issue an order] the director may initiate adjudicative proceedings to deny,  
suspend, or revoke an application or registration [upon a finding that the order is in the public  
interest and that] if:
- 2572 (1) the division finds that the denial, suspension, or revocation is in the public interest;
- 2573 [(+)] (2)
- (a) the application for registration or renewal is incomplete or misleading in a material respect; or
- 2575 [(2)] (b) the applicant or [person registered under this chapter or an officer, director, agent, or employee  
of the applicant or registrant has] the applicant's principal:
- 2577 [(a)] (i) [violated this chapter] violates, causes a violation, allows a violation, or fails to satisfy the  
requirements of a provision of:
- 2579 (A) this chapter; or
- 2580 (B) a rule the division makes in accordance with this chapter;
- 2581 [(b)] (ii) [violated-] violates Chapter 11, Utah Consumer Sales Practices Act;
- 2582 [(c)] (iii) [been-] is enjoined by a court, or is the subject of an administrative order issued in this or  
another state, if the injunction or order:
- 2584 [(i)] (A) includes a finding or admission of fraud, breach of fiduciary duty, or material  
misrepresentation; or
- 2586 [(ii)] (B) is based on a finding of lack of integrity, truthfulness, or mental competence of the applicant;
- 2588 [(d)] (iv) [obtained-] obtains or [attempted] attempts to obtain a registration by  
[misrepresentation] misrepresenting a material fact;
- 2590 [(e)] (v) [failed-] fails to [timely-] provide information the division [with any information required by  
this chapter] requests; or
- 2592 [(f)] (vi) [failed-] fails to pay a fine imposed by the division or a court;
- 2593 (vii) fails to pay the fee described in Subsection 13-23-104(2)(b)(i); or
- 2594 (viii) is convicted of a crime involving theft, fraud, or dishonesty.
- 2595 (3) the applicant's or registrant's surety bond[, letter of credit,] or certificate of deposit ceases to be in  
effect;
- 2597

## SB0038S01 compared with SB0038S02

(4) the applicant or registrant requested an exemption from maintaining a surety bond~~[, letter of credit,]~~ or certificate of deposit under Section ~~[13-23-6]~~ 13-23-105, but does not meet the requirements for exemption;

2600 (5) the applicant or registrant excluded from the principal amount calculation described in Subsection ~~[13-23-5(3)]~~ 13-23-104(8) for a surety bond~~[, letter of credit,]~~ or certificate of deposit, a contract that did not meet the requirements for exclusion described in Section ~~[13-23-6]~~ 13-23-105; or

2604 (6) the applicant or registrant ceases to provide ~~[health-spa]~~ fitness center services.

2607 Section 55. Section **13-25a-105** is amended to read:

2608 **13-25a-105. Penalties -- Administrative and criminal.**

2607 (1) Any person who violates this chapter is subject to:

2608 (a) a cease and desist order; and

2609 (b) an administrative fine of not less than \$100 or more than \$2,500 for each separate violation.

2611 (2) Any person who violates this chapter by soliciting an on-call emergency provider while the on-call emergency provider is on call is subject to:

2613 (a) a cease and desist order; and

2614 (b) an administrative fine of not less than \$1,000 or more than \$2,500 for each separate violation.

2616 (3) All administrative fines collected under this chapter shall be deposited in the Consumer Protection Education and Training Fund created in Section ~~[13-2-8]~~ 13-2-109.

2618 (4) Any person who intentionally violates this chapter is guilty of a class A misdemeanor and may be fined up to \$2,500.

2620 (5) A person intentionally violates this chapter if the violation occurs after the division, attorney general, or a district or county attorney notifies the person by certified mail that the person is in violation of this chapter.

2625 Section 56. Section **13-26-101** is renumbered and amended to read:

2625 **Part 1. General Provisions**

2628 ~~[13-26-2]~~ **13-26-101. Definitions.**

As used in this chapter~~[, unless the context otherwise requires]~~:

2628 (1) "Affiliated person" means a seller or a seller's contractor, director, employee, officer, owner, or partner.

2630

## SB0038S01 compared with SB0038S02

- (2) "Continuity plan" means a shipment, with the prior express consent of the buyer, at regular intervals of similar special-interest products, in which there is no binding commitment period or purchase amount.
- 2633 (3) "Director" means the director of the division appointed under Section 13-2-103.
- 2634 [~~(3)~~] (4) "Division" means the Division of Consumer Protection created in Section 13-2-102.
- 2635 [~~(4)~~] (5) "Fictitious personal name" means a name other than an individual's legal name.
- 2636 (6) "Material fact" means information that a person of ordinary intelligence or prudence would consider important in deciding whether to accept an offer extended through a telephone solicitation.
- 2639 [~~(5)~~] (7) "Material statement" [~~or "material fact"~~] means [~~information~~] a statement a seller or a solicitor makes that a person of ordinary intelligence or prudence would consider important in deciding whether to accept an offer extended through a telephone solicitation.
- 2643 [~~(6)~~] (8) "Participant" means a person seeking to register or renew a registration as a seller including:
- 2645 (a) a seller;
- 2646 (b) an owner;
- 2647 (c) an officer;
- 2648 (d) a director;
- 2649 (e) a member or manager of a limited liability company;
- 2650 (f) a principal;
- 2651 (g) a trustee;
- 2652 (h) a general or limited partner;
- 2653 (i) a sole proprietor; or
- 2654 (j) an individual with a controlling interest in an entity.
- 2655 [~~(7)~~] (9) "Premium" means a gift, bonus, prize, award, certificate, or other document by which a prospective purchaser is given a right, chance, or privilege to purchase or receive goods or services with a stated or represented value of \$25 or more as an inducement to a prospective purchaser to purchase other goods or services.
- 2659 [~~(8)~~] (10) "Seller" means a person, or a group of persons engaged in a common effort to conduct a telephone solicitation, that:
- 2661 (a) on behalf of the person, or the group of persons engaged in a common effort to conduct a telephone solicitation:
- 2663 (i) makes a telephone solicitation; or

## SB0038S01 compared with SB0038S02

- 2664 (ii) causes a telephone solicitation to be made; or
- 2665 (b) through a [~~telephone-~~]solicitor:
- 2666 (i) makes a telephone solicitation; or
- 2667 (ii) causes a telephone solicitation to be made.
- 2668 (11) "Solicitor" means an individual who engages in a telephone solicitation on behalf of a seller.
- 2670 [~~(9)~~] (12) [~~"Subscription arrangements," "standing-~~] "Standing order arrangements," [~~"supplements,"~~  
and ~~"series arrangements" mean products or services provided~~] means a product or service that a  
person provides, with the prior express request or consent of the buyer, for a specified period of time  
at a price dependent on the duration of service and to complement an initial purchase.
- 2675 [~~(10)~~] (13)
- (a) "Telephone solicitation[-,]" [~~"sale," "selling," or "solicitation of sale"~~] means:
- 2677 (i) a sale or solicitation of goods or services in which:
- 2678 (A)
- (I) the seller solicits the sale over the telephone;
- 2679 (II) the purchaser's agreement to purchase is made over the telephone; and
- 2680 (III) the purchaser, over the telephone, pays for or agrees to commit to payment for goods or services  
prior to or upon receipt by the purchaser of the goods or services;
- 2683 (B) the seller, not exempt under Section [~~13-26-4~~] 13-26-104, induces a prospective purchaser over  
the telephone, to make and keep an appointment that directly results in the purchase of goods or  
services by the purchaser that would not have occurred without the telephone solicitation and  
inducement by the seller;
- 2688 (C) the seller offers or promises a premium to a prospective purchaser if:
- 2689 (I) the seller induces the prospective purchaser to initiate a telephone contact with the seller; and
- 2691 (II) the resulting solicitation meets the requirements of this Subsection [~~(10)(a)~~] (13)(a); or
- 2693 (D) the seller solicits a charitable donation involving the exchange of any premium, prize, gift, ticket,  
subscription, or other benefit in connection with an appeal made for a charitable purpose by an  
organization that is not otherwise exempt under Subsection [~~13-26-4(2)(b)(iv)~~] 13-26-104(2)(b)(iv);  
or
- 2697 (ii) a [~~telephone solicitation as defined in Section 13-25a-102~~] person making or causing to be made  
an unsolicited telephone call, including calls made by use of an automated telephone dialing  
system.

## SB0038S01 compared with SB0038S02

- 2700 (b) "Telephone solicitation[;]" ["sale," "selling," or "solicitation of sale"] does not include a sale or  
solicitation that occurs solely through ~~[an Internet]~~ a website without the use of a telephone call.
- 2703 ~~[(e) A solicitation of sale or telephone solicitation is considered complete when made, whether or not  
the person receiving the solicitation agrees to the sale or to make a charitable donation.]~~
- 2706 ~~[(11) "Telephone solicitor" or "solicitor" means an individual who engages in a telephone solicitation  
on behalf of a seller.]~~
- 2710 Section 57. Section **13-26-102** is renumbered and amended to read:
- 2712 ~~[13-26-3]~~ **13-26-102. Registration and surety bond or certificate of deposit required.**
- 2712 (1)
- (a) Unless exempt under Section ~~[13-26-4]~~ 13-26-104, [each] a seller shall register annually with the  
division before engaging in telephone solicitations if:
- 2714 (i) the seller engages in telephone solicitations that:
- 2715 (A) originate in Utah; or
- 2716 (B) are received in Utah; or
- 2717 (ii) the seller, or a solicitor on behalf of the seller, conducts ~~[any business operations]~~ a business  
operation in Utah.
- 2719 ~~[(b) The registration form shall designate an agent residing in this state who is authorized by the seller  
to receive service of process in any action brought by this state or a resident of this state.]~~
- 2722 ~~[(c) If a seller fails to designate an agent to receive service or fails to appoint a successor to the agent,  
the division shall:]~~
- 2724 ~~[(i) deny the seller's application for an initial or renewal registration; and]~~
- 2725 ~~[(ii) if the application is for a renewal registration, suspend the seller's current registration until the  
seller designates an agent.]~~
- 2727 ~~[(d) For purposes of this section only, the registered agent of a seller shall provide the division the  
registered agent's proof of residency in the state in the form of:]~~
- 2729 ~~[(i) a valid Utah driver license;]~~
- 2730 ~~[(ii) a valid governmental photo identification issued to a resident of this state; or]~~
- 2731 ~~[(iii) other verifiable identification indicating residency in this state.]~~
- 2732 (2) To register as a seller, a person shall submit to the division a registration application:
- 2733 (a) in the manner the division determines; and
- 2734 (b) that includes:

## SB0038S01 compared with SB0038S02

- 2735 (i) a registration application fee in an amount the division determines in accordance with Section  
63J-1-504;
- 2737 (ii) any information the division requires by rule the division makes in accordance with Title 63G,  
Chapter 3, Utah Administrative Rulemaking Act; and
- 2739 (iii) a designated registered agent for service of process in this state and the registered agent's:
- 2741 (A) name;
- 2742 (B) street address;
- 2743 (C) mailing address; and
- 2744 (D) telephone number.
- 2745 (3) A seller that is subject to this chapter shall obtain and maintain the following:
- 2746 (a) a surety bond issued by a surety authorized to transact security business in this state; or
- 2748 (b) a certificate of deposit held in this state in a financial institution authorized under the laws of this  
state or the laws of the United States to accept deposits from the public.
- 2750 [~~(2) The division may impose an annual registration fee set in accordance with Section 63J-1-504 that~~  
may include the cost of the criminal background check described in Subsection (4).]
- 2753 [~~(3)~~
- (a) ~~Each seller subject to this chapter engaging in telephone solicitation or sales in this state shall obtain~~  
and maintain the following security:]
- 2755 [(i) ~~a performance bond issued by a surety authorized to transact surety business in this state;]~~
- 2757 [(ii) ~~an irrevocable letter of credit issued by a financial institution authorized under the laws of this~~  
state or the United States doing business in this state; or]
- 2759 [(iii) ~~a certificate of deposit held in this state in a financial institution authorized under the laws of~~  
this state or the United States to accept deposits from the public.]
- 2761 [(b) ~~A seller's bond, letter of credit, or certificate of deposit shall be payable to the division for the~~  
benefit of any consumer who incurs damages as the result of the seller's violation of this chapter.]
- 2764 [(c) ~~If the consumer has first recovered full damages, the division may recover from the bond, letter of~~  
credit, or certificate of deposit administrative fines, civil penalties, investigative costs, attorney fees,  
and other costs of collecting and distributing funds under this section.]
- 2768 [(d) ~~A seller shall keep a bond, certificate of deposit, or letter of credit in force for one year after the day~~  
on which the seller notifies the division in writing that the seller has ceased all activities regulated  
by this chapter.]

## SB0038S01 compared with SB0038S02

- 2771 [(e)] (4) [The seller shall post a bond, irrevocable letter of credit, or certificate of deposit in the amount  
of] The surety bond or certificate of deposit described in Subsection (3) shall be:
- 2774 (a) in the amount of:
- 2775 (i) \$25,000 if:
- 2776 (A) [~~neither~~]the seller [~~nor any~~] or an affiliated person has not violated this chapter in the three-year  
period immediately before the day on which the seller files the application; and
- 2779 (B) the seller has fewer than 10 employees;
- 2780 (ii) \$50,000 if:
- 2781 (A) [~~neither~~]the seller [~~nor any~~] or an affiliated person has not violated this chapter in the three-year  
period immediately before the day on which the seller files the application; and
- 2784 (B) the seller has 10 or more employees; or
- 2785 (iii) \$75,000 if the seller or [~~any~~] an affiliated person has violated this chapter in the three-year period  
immediately before the day on which the seller files the application[-] ; and
- 2788 (b) payable to the division for the benefit of a consumer who incurs damages as the result of the seller's  
violation of this chapter.
- 2790 [(4) To register or renew a registration as a seller, a participant:]
- 2791 [(a) may not have been convicted of a felony in the 10-year period immediately before the day on which  
the participant files the application;]
- 2793 [(b) may not have been convicted of a misdemeanor involving moral turpitude, including theft, fraud,  
or dishonesty, in the 10-year period immediately before the day on which the participant files the  
application; and]
- 2796 [(e) shall submit to the division:]
- 2797 [(i) the participant's fingerprints, in a form acceptable to the division, for purposes of a criminal  
background check; and]
- 2799 [(ii) consent to a criminal background check by the Bureau of Criminal Identification created in Section  
53-10-201.]
- 2801 (5) If the consumer recovers actual damages from an action resulting from the seller's violation of this  
chapter before the division distributes the funds in the surety bond or certificate of deposit described  
in Subsection (3) to the consumer in accordance with Subsection (4)(b), the division may recover  
from the surety bond or certificate of deposit:
- 2805 (a) administrative fines;

## SB0038S01 compared with SB0038S02

- 2806 (b) civil penalties;
- 2807 (c) investigative costs;
- 2808 (d) attorney fees; and
- 2809 (e) other costs of collecting and distributing funds under this chapter.
- 2810 (6) A seller shall submit to the division, as part of the seller's registration application:
- 2811 (a) a fingerprint card in a form the division approves;
- 2812 (b) consent to a criminal background check conducted by:
- 2813 (i) the Bureau of Criminal Identification created in Section 53-10-201; or
- 2814 (ii) another state or federal agency that performs criminal background checks; and
- 2815 (c) provide a disclosure that states whether a seller or an affiliated person has been convicted of a felony or misdemeanor involving theft, fraud, or dishonesty, in the 10-year period immediately preceding the day on which the seller files the application.
- 2819 (7) A seller shall pay the cost of:
- 2820 (a) the fingerprint card described in Subsection (6)(a); and
- 2821 (b) the criminal background check described in Subsection (6)(b).
- 2822 (8) A seller registration is effective for one year after the day on which the division approves a seller's registration application.
- 2824 (9) To renew a seller registration, a seller shall submit a registration renewal application to the division at least 30 days before the day on which the seller's registration expires.
- 2826 (10) Registration under this section does not constitute an approval or endorsement of the seller by the division or the state.
- 2828 [~~(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may establish by rule the registration requirements for a seller.~~]
- 2830 [~~(6) If information in an application for registration or for renewal of registration as a seller materially changes or becomes incorrect or incomplete, the applicant shall, within 30 days after the day on which information changes or becomes incorrect or incomplete, submit the correct information to the division in a manner that the division establishes by rule.~~]
- 2835 [~~(7) The division director may deny or revoke a registration under this section for any violation of this chapter.~~]
- 2839 Section 58. Section **58** is enacted to read:
- 2840 **13-26-103. Denial, suspension, or revocation of an application or registration.**

## SB0038S01 compared with SB0038S02

In accordance with Chapter 2, Division of Consumer Protection, and Title 63G, Chapter 4, Administrative Procedures Act, the division may initiate adjudicative proceedings to deny, suspend, or revoke an application or registration if:

- 2843 (1) the division finds that the denial, suspension, or revocation is in the public interest; and  
2844 (2)  
(a) the registration is incomplete, false, or misleading; or  
2845 (b) the applicant or the applicant's principal:  
2846 (i) violates, causes a violation, allows a violation, or fails to satisfy the requirements of a provision of:  
2848 (A) this chapter; or  
2849 (B) a rule the division makes in accordance with this chapter;  
2850 (ii) violates Chapter 11, Utah Consumer Sales Practices Act;  
2851 (iii) is enjoined by a court, or is the subject of an administrative or judicial order issued in Utah or  
another state, if the order:  
2853 (A) includes a finding or admission of fraud, breach of fiduciary duty, or material misrepresentation; or  
2855 (B) is based on a finding of a lack of integrity, truthfulness, or mental competence;  
2856 (iv) is convicted of a crime involving theft, fraud, or dishonesty;  
2857 (v) obtains or attempts to obtain a registration by misrepresenting a material fact;  
2858 (vi) fails to provide information the division requests;  
2859 (vii) fails to pay an administrative fine the division or an administrative or judicial order imposes; or  
2861 (viii) fails to pay the fee to file a registration application or a renewal application.

2864 Section 59. Section **13-26-104** is renumbered and amended to read:

2866 **[13-26-4] 13-26-104. Exemptions from registration.**

- 2865 (1) In an enforcement action initiated by the division, a person claiming an exemption has the burden of proving that the person is entitled to the exemption.
- 2867 (2) The following are exempt from this chapter except for the requirements described in Sections [13-26-8] 13-26-106 and [13-26-11] 13-26-108:
- 2869 (a) a broker, agent, dealer, or sales professional licensed in this state, when soliciting sales within the scope of the broker's, agent's, dealer's, or sales professional's license;
- 2871 (b) the solicitation of sales by:
- 2872 (i) a public utility that is regulated under Title 54, Public Utilities, or by an affiliate of the public utility;
- 2874 (ii) a newspaper of general circulation;

## SB0038S01 compared with SB0038S02

- 2875 (iii) a solicitation of sale made by a broadcaster licensed by a state or federal authority;
- 2877 (iv) a nonprofit organization if no part of the net earnings from the sale inures to the benefit of:
- 2879 (A) a member, officer, trustee, or serving board member of the organization; or
- 2880 (B) an individual, or a family member of an individual, holding a position of authority or trust in the organization; and
- 2882 (v) a person who periodically publishes and delivers a catalog of the seller's merchandise to prospective purchasers, if the catalog:
- 2884 (A) contains the price and a written description or illustration of each item offered for sale;
- 2886 (B) includes the seller's business address;
- 2887 (C) includes at least 24 pages of written material and illustrations;
- 2888 (D) is distributed in more than one state; and
- 2889 (E) has an annual circulation by mailing of not less than 250,000;
- 2890 (c) a publicly traded corporation registered with the Securities and Exchange Commission, or a subsidiary of the publicly traded corporation;
- 2892 (d) the solicitation of a depository institution as defined in Section 7-1-103, a subsidiary of a depository institution, personal property broker, securities broker, investment adviser, consumer finance lender, or insurer subject to regulation by an official agency of this state or the United States;
- 2896 (e) the solicitation by a person soliciting only the sale of telephone services to be provided by the person or the person's employer;
- 2898 (f) the solicitation of a person relating to a transaction regulated by the Commodities Futures Trading Commission, if:
- 2900 (i) the person is registered with or temporarily licensed by the commission to conduct the activity under the Commodity Exchange Act; and
- 2902 (ii) the registration or license has not expired or been suspended or revoked;
- 2903 (g) the solicitation of a contract for the maintenance or repair of goods previously purchased from the person:
- 2905 (i) who is making the solicitation; or
- 2906 (ii) on whose behalf the solicitation is made;
- 2907 (h) the solicitation of previous customers of the person on whose behalf the call is made if the person making the call:
- 2909 (i) does not offer any premium in conjunction with a sale or offer;

## SB0038S01 compared with SB0038S02

- 2910 (ii) is not selling an investment or an opportunity for an investment that is not registered with a state or federal authority; and
- 2912 (iii) is not regularly engaged in telephone sales;
- 2913 (i) the solicitation of a sale that is an isolated transaction and not done in the course of a pattern of repeated transactions of a similar nature;
- 2915 (j) the solicitation of a person by a retail business that has been in operation for at least five years in Utah under the same name as that used in connection with telemarketing if the following occur on a continuing basis:
- 2918 (i) at the retail business's place of business, the retail business:
- 2919 (A) displays and offers products for sale; or
- 2920 (B) offers services for sale and provides the services at the place of business; and
- 2921 (ii) a majority of the retail business's business involves the activities described in Subsection (2)(j)(i);
- 2923 (k) a person primarily soliciting the sale of a magazine or periodical sold by the publisher or the publisher's agent through a written agreement, or printed or recorded material through a contractual plan, such as a book or record club, continuity plan, [~~subscription,~~] or standing order arrangement, [~~or supplement or series arrangement~~]-if:
- 2928 (i) the person provides the consumer with a form that the consumer may use to instruct the person not to ship the offered merchandise, and the arrangement is regulated by the Federal Trade Commission trade regulation concerning use of negative option plans by a person making a sale in commerce; or
- 2932 (ii)
- (A) the person periodically ships merchandise to a consumer who has consented in advance to receive the merchandise on a periodic basis; and
- 2934 (B) the consumer retains the right to cancel at any time and receive a full refund for the unused portion;
- 2936 (l) a telephone marketing service company that provides telemarketing sales services under contract to a person making a sale if:
- 2938 (i) the telephone marketing service company has been doing business regularly with customers in Utah for at least five years under the same business name and with the telephone marketing service company's principal office in the same location;
- 2941 (ii) at least 75% of the telephone marketing service company's contracts are performed on behalf of persons exempt from registration under this chapter; and
- 2943

## SB0038S01 compared with SB0038S02

- (iii) neither the telephone marketing service company nor the telephone marketing service company's principals have been enjoined from doing business or subjected to criminal actions for the telephone marketing service company's or the telephone marketing company's principal's business activities in this or any other state;
- 2947 (m) a credit services organization that holds a current registration with the division under Chapter 21, Credit Services Organizations Act, if the credit services organization's telephone solicitations are limited to the solicitation of services regulated under Chapter 21, Credit Services Organizations Act; and
- 2951 (n) a provider that holds a current registration with the division under Chapter 42, Uniform Debt-Management Services Act, if the provider's telephone solicitations are limited to the solicitation of services regulated under Chapter 42, Uniform Debt-Management Services Act.
- 2957 Section 60. Section **13-26-105** is renumbered and amended to read:
- 2959 **[13-26-5]13-26-105. Right of rescission -- Cancellation.**
- 2958 (1) As used in this section, "business day" means a day other than Saturday, Sunday or a federal or state holiday.
- 2960 (2) Before engaging in a solicitation with a consumer, a seller or a seller's solicitor shall orally advise the consumer of the seller or the seller's solicitor's:
- 2962 (a) legal name;
- 2963 (b) telephone number;
- 2964 (c) complete mailing address; and
- 2965 (d) email address.
- 2966 [~~(2)~~] (3)
- (a) Except as provided in Subsections [~~(2)(b)~~] (3)(b) and (c), in addition to any right to otherwise revoke an offer, a person who makes a purchase from a seller may cancel the sale at or before [midnight of] 11:59 p.m. on the third business day after the day on which the person receives the merchandise or premium, whichever is later, provided that the seller or the seller's solicitor advises the purchaser of the purchaser's cancellation rights under this chapter at the time the seller or seller's solicitor makes the solicitation[is made].
- 2973 (b) If the seller or the seller's solicitor fails to orally advise a purchaser of the right to cancel under this section at the time of a solicitation, the purchaser's right to cancel is extended to 90 days after the day on which the person receives the merchandise or premium.

## SB0038S01 compared with SB0038S02

- 2977 (c) If the seller or the seller's solicitor fails to orally advise a purchaser of the seller's or the seller's solicitor's legal name, telephone number, and complete address at the time of a solicitation, the purchaser may cancel the sale at any time.
- 2980 (d) Except as provided in Subsection ~~[(5)]~~ (6), a seller shall provide a full refund to a purchaser who cancels a sale in accordance with this section.
- 2982 ~~[(3)]~~ (4) A purchaser may cancel a sale by:
- 2983 (a) mailing a notice of cancellation to the seller or seller's solicitor's ~~[correct]~~ address, ~~[postage prepaid]~~ or email address the seller or seller's solicitor provides in accordance with Subsection (2);  
or
- 2986 (b) if the seller or the seller's solicitor fails to provide the purchaser with the seller's or the seller's solicitor's ~~[correct]~~ address or email address in accordance with Subsection (2), sending a written notice of cancellation to the division's office~~[- postage prepaid]~~.
- 2990 ~~[(4)]~~ (5)
- (a) If a purchaser cancels a sale and the seller or the seller's solicitor ~~[provides the purchaser with the seller's correct address]~~ complies with Subsection (2), the purchaser shall, within seven business days after the day on which the purchaser exercises the right to cancel, make a reasonable attempt to:
- 2994 (i) if the canceled sale involves durable goods, return the goods to the seller; or
- 2995 (ii) if the canceled sale involves expendable goods, return any unused portion of the goods to the seller.
- 2997 (b) If the seller or the seller's solicitor fails to ~~[provide to a purchaser the seller's correct address]~~ provide the information required by Subsection (2), a purchaser who cancels a sale is not required to return any canceled goods to the seller.
- 3000 ~~[(5)]~~ (6)
- (a) If the purchaser who cancels a sale has used any portion of the services or goods purchased, the purchaser shall provide the seller a reasonable allowance for the value given.
- 3003 (b) A seller may deduct the reasonable allowance described in Subsection ~~[(5)(a)]~~ (6)(a) from any refund due the purchaser.
- 3007 Section 61. Section **13-26-106** is renumbered and amended to read:
- 3009 ~~[13-26-8]~~ **13-26-106. Penalties and enforcement.**
- 3008

## SB0038S01 compared with SB0038S02

(1) In addition to the division's enforcement powers described in Chapter 2, Division of Consumer Protection:

3010 (a) the director may impose an administrative fine of up to \$2,500 for each violation of this chapter; and

3012 (b) the division may bring an action in a court with jurisdiction to enforce a provision of this chapter.

3014 (2) If the division brings an action in accordance with Subsection (1)(b):

3015 (a) the court may:

3016 (i) declare that an act or practice violates a provision of this chapter;

3017 (ii) issue an injunction for a violation of this chapter;

3018 (iii) order disgorgement of any money received in violation of this chapter;

3019 (iv) order payment of disgorged money to an injured purchaser or consumer;

3020 (v) impose a fine of up to \$2,500 for each violation of this chapter; or

3021 (vi) award any other relief that the court deems reasonable and necessary; and

3022 (b) if the court grants judgment or injunctive relief to the division, the court shall award the division:

3024 (i) reasonable attorney fees;

3025 (ii) court costs; and

3026 (iii) investigative fees.

3027 (3)

(a) A person that violates an administrative or court order issued for a violation of this chapter is subject to a civil penalty of no more than \$5,000 for each violation.

3029 (b) A court may impose a civil penalty authorized under this section in a civil action brought by the division.

3031 [~~4~~] (4)

(a) A seller or solicitor who violates a provision of this chapter is guilty of:

3032 (i) a class B misdemeanor for a first violation;

3033 (ii) if the seller or solicitor has one prior violation of this chapter, a class A misdemeanor; and

3035 (iii) if the seller or solicitor has two prior violations of this chapter, a third-degree felony.

3037 (b) For the purposes of Subsection [~~4~~](a) (5)(a), a prior violation includes:

3038 (i) a final prior conviction;

3039 (ii) a final determination by a court of competent jurisdiction; or

3040 (iii) a final determination in an administrative adjudicative proceeding.

3041

## SB0038S01 compared with SB0038S02

~~[(2) A person who violates a provision of this chapter is subject to a civil penalty in a court of competent jurisdiction of up to \$2,500 for each violation of this chapter.]~~

3043 ~~[(3)]~~ (5)

~~[(a) The division may:]~~

3044 ~~[(i) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, conduct an administrative proceeding to enforce the provisions of this chapter;]~~

3046 ~~[(ii) bring a court action to enforce the provisions of this chapter; and]~~

3047 ~~[(iii) in addition to other penalties described in this chapter, issue a cease and desist order and impose an administrative fine of up to \$2,500 for each violation of this chapter.]~~

3050 ~~[(b)]~~ For purposes of this section, each telephone solicitation ~~[made]~~ a person makes in violation of this chapter is a separate violation.

3052 ~~[(4) The division shall deposit all administrative fines and civil penalties collected under this chapter into the Consumer Protection Education and Training Fund created in Section 13-2-8.]~~

3057 Section 62. Section **13-26-107** is renumbered and amended to read:

3059 ~~[13-26-10]~~ **13-26-107. Provisions of chapter not exclusive.**

The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties provided by law.

3062 Section 63. Section **13-26-108** is renumbered and amended to read:

3064 ~~[13-26-11]~~ **13-26-108. Prohibited practices.**

3063 (1) It is unlawful for a seller to:

3064 (a) solicit a prospective purchaser if the seller is not registered with the division or is exempt from registration under this chapter;

3066 (b) in connection with a telephone solicitation~~[or a filing with the division]~~, make or cause to be made a false ~~[material]~~ statement or fail to disclose a material fact necessary to make the seller's statement not misleading;

3069 (c) make or authorize the making of a misrepresentation to a purchaser or prospective purchaser about the seller's compliance with this chapter;

3071 (d) fail to refund within 30 days any amount due a purchaser who exercises the right to cancel under Section ~~[13-26-5]~~ 13-26-105;

3073 (e) unless the seller is exempt under Section ~~[13-26-4]~~ 13-26-104, fail to orally advise a purchaser of the purchaser's right to cancel under Section ~~[13-26-5]~~ 13-26-105;

## SB0038S01 compared with SB0038S02

- 3075 (f) employ an inmate in a correctional facility for telephone soliciting operations when the employment would give the inmate access to an individual's personal data, including the individual's name, address, telephone number, Social Security number, credit card information, or physical description; or
- 3079 (g) cause or permit a solicitor to violate a provision of this chapter.
- 3080 (2) It is unlawful for a solicitor to:
- 3081 (a) use a fictitious personal name in connection with a telephone solicitation;
- 3082 (b) in connection with a telephone solicitation, make or cause to be made a false material statement or fail to disclose a material fact necessary to make the solicitor's statement not misleading;
- 3085 (c) make a misrepresentation to a purchaser or prospective purchaser about the solicitor's compliance with this chapter; or
- 3087 (d) unless the solicitor is exempt under Section [~~13-26-4~~] 13-26-104, fail to orally advise a purchaser of the purchaser's right to cancel under Section [~~13-26-5~~] 13-26-105.
- 3089 (3) If a person knows or has reason to know that a seller or solicitor [~~is engaged~~] engages in an act or practice that violates this chapter, it is unlawful for the person to:
- 3091 (a) benefit from the seller's or solicitor's services; or
- 3092 (b) provide substantial assistance or support to the seller or solicitor.
- 3093 (4) A seller or a seller's solicitor may not:
- 3094 (a) represent that the division or the state approves or endorses the seller;
- 3095 (b) omit from a filing with the division a material statement of fact required by:
- 3096 (i) this chapter; or
- 3097 (ii) a rule made by the division in accordance with this chapter; or
- 3098 (c) include in a filing with the division a material statement of fact that the seller or seller's principal knew or should have known to be false, deceptive, inaccurate, or misleading.
- 3101 (5) A solicitation of sale or telephone solicitation is considered complete when made, regardless of whether the person receiving the solicitation agrees to the sale or to make a charitable donation.
- 3106 Section 64. Section **13-28-7** is amended to read:
- 3107 **13-28-7. Penalties -- Administrative and criminal.**
- 3106 (1) Any person who violates this chapter shall be subject to:
- 3107 (a) a cease and desist order; and
- 3108 (b) an administrative fine of not less than \$100 or more than \$5,000 for each separate violation.

## SB0038S01 compared with SB0038S02

- 3110 (2) All administrative fines shall be deposited in the Consumer Protection Education and Training Fund created in Section ~~[13-2-8]~~ 13-2-109.
- 3112 (3) Any person who intentionally violates this part is guilty of a class A misdemeanor and may be fined up to \$10,000. A person intentionally violates this part if the violation occurs after the division, attorney general, or a district or county attorney notifies the person by certified mail that the person is in violation of this chapter.
- 3118 Section 65. Section **13-32a-102.5** is amended to read:
- 3119 **13-32a-102.5. Administration and enforcement.**
- 3118 (1) The division shall administer and enforce this chapter in accordance with the authority under Title 13, Chapter 2, Division of Consumer Protection.
- 3120 ~~[(2) The attorney general, upon request, shall give legal advice to, and act as counsel for, the division in the exercise of its responsibilities under this chapter.]~~
- 3122 ~~[(3)]~~ (2) Reasonable attorney fees, costs, and interest shall be awarded to the division in any action brought to enforce the provisions of this chapter.
- 3124 ~~[(4)]~~ (3) Municipal and county law enforcement agencies, prosecutorial agencies, and governmental agencies may enforce the criminal and civil provisions of this chapter.
- 3128 Section 66. Section **13-32a-106.5** is amended to read:
- 3129 **13-32a-106.5. Confidentiality of pawn and purchase transactions.**
- 3129 (1) A ticket, copy of a ticket, information from a ticket, or information required under Section 13-32a-104.7 delivered to a local law enforcement agency or transmitted to the central database under Section 13-32a-106 is a protected record under Section 63G-2-305.
- 3132 (2) In addition to use by the issuing pawn or secondhand business or catalytic converter purchaser, the ticket, copy of a ticket, information from a ticket, or information required under Section 13-32a-104.7 may be used only by a law enforcement agency and the division and only for the law enforcement and administrative enforcement purposes of:
- 3136 (a) investigating possible criminal conduct involving the property delivered:
- 3137 (i) to the pawn or secondhand business in a pawn transaction or secondhand merchandise transaction; or
- 3139 (ii) to a catalytic converter purchaser in a catalytic converter purchase;
- 3140 (b) investigating a possible violation of the record keeping or reporting requirements of this chapter when the local law enforcement agency or the division, based on a review of the records and information received, has reason to believe that a violation has occurred;

## SB0038S01 compared with SB0038S02

- 3144 (c) responding to an inquiry from an insurance company investigating a claim for physical loss  
of described property by searching the central database to determine if property matching the  
description has been delivered to a pawn or secondhand business or catalytic converter purchaser  
by another person in a pawn transaction, secondhand merchandise purchase transaction, or catalytic  
converter purchase and if so, obtaining from the central database:
- 3150 (i) a description of the property;
- 3151 (ii) the name and address of the pawn or secondhand business or catalytic converter purchaser that  
received the property; and
- 3153 (iii) the name, address, and date of birth of the conveying individual; and
- 3154 (d) taking enforcement action under Section [~~13-2-5~~] 13-2-106 against a pawn or secondhand business  
or catalytic converter purchaser.
- 3156 (3) An insurance company making a request under Subsection (2)(c) shall provide the police report case  
number concerning the described property.
- 3158 (4)
- (a) A person may not knowingly and intentionally use, release, publish, or otherwise make available  
to any person any information obtained from the central database for any purpose other than those  
specified in Subsection (2).
- 3161 (b) Each separate violation of Subsection (4)(a) is a class B misdemeanor.
- 3162 (c) Each separate violation of Subsection (4)(a) is subject to a civil penalty not to exceed \$250.
- 3166 Section 67. Section **13-34-102** is amended to read:
- 3167 **13-34-102. Division responsibilities.**
- 3166 (1) The division shall:
- 3167 (a) exercise [its] the division's enforcement powers in accordance with Chapter 2, Division of  
Consumer Protection, and this chapter;
- 3169 (b) make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
- 3171 (i) establish the content of a registration statement required under this chapter;
- 3172 (ii) establish a process for reviewing and responding to complaints the division receives in accordance  
with this chapter; and
- 3174 (iii) establish a [~~graduated~~]fee [~~structure~~]in accordance with Section 63J-1-504 for filing a registration  
statement;

3176

## SB0038S01 compared with SB0038S02

- (c) issue a registration certificate or state authorization certificate to a postsecondary school upon the division's receipt and approval of a qualifying registration statement;
- 3178 (d) maintain and publish a list of postsecondary schools to which the division has issued a:
- 3180 (i) registration certificate; or
- 3181 (ii) state authorization certificate; and
- 3182 (e) deposit fees established in accordance with Subsection (1)(b)(iii), and collected in accordance with this chapter into the Commerce Service Account created in Section 13-1-2.
- 3185 (2) The division may:
- 3186 (a) accept a copy of an educational credential from a postsecondary school that ceases operation;
- 3188 (b) charge a reasonable fee for providing a copy of an educational credential;
- 3189 (c) upon request, provide a letter confirming that a postsecondary school is exempt from registration in accordance with Section 13-34-111; and
- 3191 (d) negotiate and enter into an interstate reciprocity agreement with another state, if in the judgment of the division, the agreement is consistent with the purposes of this chapter.
- 3196 Section 68. Section **13-34-103** is amended to read:
- 3197 **13-34-103. Rulemaking authority.**
- In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules:
- 3198 (1) establishing the form and content of:
- 3199 (a) a registration statement; and
- 3200 (b) a surety bond, certificate of deposit, [~~irrevocable letter of credit,~~] or other proof of financial viability required under Section 13-34-202;
- 3202 (2) specifying the information a postsecondary school is required to provide with a registration statement, which may vary based upon factors including:
- 3204 (a) the certificate the postsecondary school seeks;
- 3205 (b) whether the postsecondary school is an accredited postsecondary school; and
- 3206 (c) whether the postsecondary school is a longstanding nonprofit accredited postsecondary school;
- 3208 (3) establishing the amount of a surety bond[;] or certificate of deposit[; ~~or irrevocable letter of credit~~] required under Section 13-34-202, not to exceed an amount equal to the tuition and fees a postsecondary school anticipates receiving during a school year;

3211

## SB0038S01 compared with SB0038S02

- (4) providing for the execution and cancellation of the surety bond[;] or certificate of deposit[; ~~or irrevocable letter of credit~~] a postsecondary school obtains in accordance with Section 13-34-202;
- 3214 (5) establishing the amount of money a school may charge a student in a 12 month period to qualify for  
an exemption in accordance with Subsection 13-34-111(3)(d)(i)(C);
- 3216 (6) specifying acts or practices that:
- 3217 (a) are prohibited in accordance with Section 13-34-108; and
- 3218 (b) a postsecondary school that intends to cease operating is required to carry out;
- 3219 (7) specifying student outcomes a postsecondary school is required to disclose under Section  
13-34-109;
- 3221 (8) specifying the electronic format in which a postsecondary school is required to maintain an  
educational credential in accordance with Section 13-34-203;
- 3223 (9) establishing the type and number of credits required to obtain a degree or diploma from a  
postsecondary school that is not an accredited postsecondary school; and
- 3225 (10) establishing:
- 3226 (a) standards for granting to a postsecondary school a state authorization certificate in accordance with a  
reciprocity agreement;
- 3228 (b) any filing, document, or fee required for a postsecondary school to obtain a state authorization  
certificate in accordance with a reciprocity agreement; and
- 3230 (c) penalties for a postsecondary school that fails to comply with rules the division makes under this  
Subsection (10).
- 3234 Section 69. Section **13-34-104** is amended to read:
- 3235 **13-34-104. Enforcement powers -- Action by division -- Referral.**
- 3235 (1)
- (a) In addition to the division's other enforcement powers under Chapter 2, Division of Consumer  
Protection, and elsewhere in this chapter, the division may, in response to a complaint or on the  
division's own initiative, investigate a postsecondary school to verify compliance with this chapter.
- 3239 (b) For the purpose of an investigation described in Subsection (1)(a), the division may:
- 3240 (i) administer an oath or affirmation;
- 3241 (ii) issue a subpoena for testimony or the production of evidence;
- 3242 (iii) visit a postsecondary school's physical location; and
- 3243 (iv) conduct an audit.

## SB0038S01 compared with SB0038S02

- 3244 (2)
- (a) The division may provide information concerning a potential violation of this chapter or rule made under this chapter to the attorney general, the county attorney, or district attorney of any county or prosecution district in which the violation or potential violation is occurring or has occurred.
- 3248 (b) The attorney described in Subsection (2)(a) shall investigate the information provided by the division and immediately prosecute or bring suit to enjoin an act determined to be a violation of the chapter or rule.
- 3251 (3) In addition to other penalties and remedies in this chapter, and in addition to the division's other enforcement powers under Section [~~13-2-6~~] 13-2-107, the division may:
- 3253 (a) issue a cease and desist order;
- 3254 (b) impose an administrative fine for a violation of this chapter as described in Section 13-34-105; or
- 3256 (c) bring an action in a court of competent jurisdiction to enforce a provision of this chapter.
- 3258 (4) In an action the division brings to enforce a provision of this chapter, the court may:
- 3259 (a) declare that an act or practice violates a provision of this chapter;
- 3260 (b) issue an injunction for a violation of this chapter;
- 3261 (c) order disgorgement of money received in violation of this chapter;
- 3262 (d) order payment of disgorged money to an injured person;
- 3263 (e) impose a fine;
- 3264 (f) order payment of a fine imposed under Section 13-34-105;
- 3265 (g) order production of educational records to the division; or
- 3266 (h) award any other relief the court deems reasonable and necessary.
- 3267 (5) If a court of competent jurisdiction grants judgment or injunctive relief in the division's favor, the court shall award the division:
- 3269 (a) reasonable attorney fees;
- 3270 (b) court costs; and
- 3271 (c) investigative fees.
- 3272 (6) The division shall deposit all money the division receives for the payment of a fine or civil penalty imposed under this section into the Consumer Protection Education and Training Fund created in Section [~~13-2-8~~] 13-2-109.
- 3277 Section 70. Section **13-34-105** is amended to read:
- 3278 **13-34-105. Penalties and remedies.**

## SB0038S01 compared with SB0038S02

- 3277 (1) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection,  
and elsewhere in this chapter, the division director may, for a violation of this chapter:
- 3280 (a) issue a cease and desist order; and
- 3281 (b) impose an administrative fine of up to:
- 3282 (i) \$250 per day that a postsecondary school operates without an effective registration certificate;
- 3284 (ii) \$1,000 for each violation of Section 13-34-203;
- 3285 (iii) \$2,500 for each violation of this chapter that is not:
- 3286 (A) described in Subsections (1)(b)(i) or (ii); or
- 3287 (B) an intentional violation; or
- 3288 (iv) \$5,000 for each intentional violation of this chapter.
- 3289 (2) A person intentionally violates this chapter if:
- 3290 (a)
- (i) the violation occurs after one of the following notifies the person that the person has violated or is  
violating this chapter:
- 3292 (A) the division;
- 3293 (B) the attorney general; or
- 3294 (C) a district attorney or county attorney; and
- 3295 (ii) the violation is the same as the violation of which the person was notified under Subsection (2)(a)  
(i); or
- 3297 (b) a person violates a cease and desist order the division issues under Subsection (1)(a).
- 3298 (3) An intentional violation of this chapter is a class B misdemeanor.
- 3299 (4) The division shall deposit all money the division receives as payment for administrative fines  
imposed under Subsection (1)(b) into the Consumer Protection Education and Training Fund created  
in Section [~~13-2-8~~] 13-2-109.
- 3304 Section 71. Section **13-34-106** is amended to read:
- 3305 **13-34-106. Denial, suspension, or revocation of registration statement, registration  
certificate, or state authorization certificate -- Limits on registration certificate and state  
authorization certificate.**
- 3306 (1) In accordance with Chapter 2, Division of Consumer Protection, and Title 63G, Chapter 4,  
Administrative Procedures Act, the division may initiate adjudicative proceedings to deny, suspend,  
or revoke a registration statement, registration certificate, or state authorization certificate if:

## SB0038S01 compared with SB0038S02

- 3310 (a) the division finds that the denial, suspension, or revocation is in the public interest; and  
3312 (b)
- (i) the registration statement is incomplete, false, or misleading;
- 3313 (ii) the division determines that a postsecondary school's educational credential represents undertaking  
or completing an educational achievement that has not been undertaken or completed; or
- 3316 (iii) a postsecondary school or a principal of the postsecondary school~~[-has]~~:
- 3317 (A) ~~[violated]~~ violates, ~~[caused]~~ causes a violation, or ~~[allowed]~~ allows a violation of a provision of:
- 3319 (I) this chapter;
- 3320 (II) a rule made by the division under this chapter; or
- 3321 (III) a commitment made in a registration statement;
- 3322 (B) ~~[violated]~~ violates Chapter 11, Utah Consumer Sales Practices Act;
- 3323 (C) ~~[been]~~ is enjoined by a court, or is the subject of an administrative or judicial order issued in Utah  
or another state, if the injunction or order:
- 3325 (I) includes a finding or admission of fraud, breach of fiduciary duty, or material misrepresentation; or
- 3327 (II) ~~[was]~~ is based on a finding of lack of integrity, truthfulness, or mental competence;
- 3329 (D) ~~[been]~~ is convicted of a crime involving theft, fraud, or dishonesty;
- 3330 (E) ~~[obtained]~~ obtains or ~~[attempted]~~ attempts to obtain a registration certificate by misrepresenting any  
material fact;
- 3332 (F) ~~[failed]~~ fails to timely file with the division a report required by:
- 3333 (I) this chapter; or
- 3334 (II) a rule ~~[made by]~~ the division makes under this chapter;
- 3335 (G) ~~[failed]~~ fails to ~~[furnish]~~ provide information ~~[requested by]~~ the division requests;
- 3337 (H) ~~[failed]~~ fails to pay an administrative fine ~~[imposed by]~~ the division imposes under this chapter, or  
a fine ~~[imposed by]~~ an administrative or judicial order in Utah or another state imposes;
- 3340 (I) ~~[failed]~~ fails to demonstrate fiscal responsibility;
- 3341 (J) ~~[failed]~~ fails to pay the fee required to file a registration statement;
- 3342 (K) ~~[failed]~~ fails to satisfy the requirements of this chapter or rule made by the division under this  
chapter; or
- 3344 (L) ~~[failed]~~ fails to satisfy a reasonable restriction or condition the division imposes under Subsection  
(2).
- 3346

## SB0038S01 compared with SB0038S02

(2) The division may impose reasonable restrictions and conditions on a postsecondary school's registration certificate or state authorization certificate if:

- 3348 (a) the restriction or condition protects student interests; and  
3349 (b) a behavior or condition described in Subsection (1)(b) applies to the postsecondary school or the postsecondary school's principal, registration statement, or educational credential.

3354 Section 72. Section **13-34-108** is amended to read:

3355 **13-34-108. Prohibited acts.**

3354 (1) A person may not operate a postsecondary school in this state unless:

- 3355 (a)  
(i) the person files with the division a registration statement for the postsecondary school that complies with:  
3357 (A) the requirements of this chapter; and  
3358 (B) rules made by the division; and  
3359 (ii) the division issues a registration certificate to the postsecondary school; or  
3360 (b) the postsecondary school is exempt from the requirement to submit a registration statement under Section 13-34-111.

3362 (2) A person [~~who~~] that operates a postsecondary school, a postsecondary school, or a postsecondary school's agent or principal may not:

- 3364 (a) omit from a registration statement a material statement of fact required by this chapter or rule [~~made by~~]the division makes under this chapter;  
3366 (b) include in a registration statement any material statement of fact that the person, postsecondary school, or the postsecondary school's principal or agent knew or should have known to be false, deceptive, inaccurate, or misleading;  
3369 (c) in connection with any investigation or request for information made by the division in accordance with this chapter, make any material statement of fact that the person, postsecondary school, or agent knew or should have known to be false, deceptive, inaccurate, or misleading;  
3373 (d) fail to provide a refund to a student within 30 days of receiving a valid request for a refund;  
3375 (e) engage in a deceptive act or practice in connection with offering or providing postsecondary education;

3377

## SB0038S01 compared with SB0038S02

- (f) make or cause to be made an oral, written, or visual statement or representation that the person who operates a postsecondary school, a postsecondary school, or a postsecondary school's principal or agent knows or should know is false, deceptive, substantially inaccurate, or misleading;~~[-or]~~
- 3381 (g) fail to comply with the requirements of this chapter or rule made under this chapter~~[-]~~ ; or
- 3383 (h) fail to satisfy a reasonable restriction or condition the division imposes in accordance with Subsection 13-34-106(2).
- 3385 (3)
- (a) A postsecondary school may not offer, sell, or award an educational credential unless the recipient of the educational credential [~~has received~~] receives instruction and successfully [~~completed~~] completes requirements for the educational credential that are commensurate with reasonable standards applicable to the educational credential.
- 3390 (b) Subsection (3)(a) does not apply to:
- 3391 (i) an educational credential that is clearly and conspicuously designated as an honorary educational credential; or
- 3393 (ii) a certificate or other award that does not designate enrollment in or successful completion of instruction or requirements to obtain a credential.
- 3395 (4) A postsecondary school's name [~~shall~~] may not contain [~~any~~] a reference that is misleading to a student or the public with respect to the type or nature of the postsecondary school's services, affiliation, or structure.
- 3398 (5) A postsecondary school's principal or agent may not misrepresent the principal's or agent's level of educational attainment or other qualification in connection with the postsecondary school's operation.
- 3401 (6) A postsecondary school may not represent that [~~it is endorsed or approved by~~] the division or the state endorses or approves the postsecondary school.
- 3403 (7) After a postsecondary school provides notice to the division that the postsecondary school will cease operations as described in Section 13-34-205, the postsecondary school may not:
- 3406 (a) advertise, recruit, enroll, or offer services to a new student;
- 3407 (b) charge an existing student for services beyond [~~those~~] the services for which the student has already paid or is obligated to pay;
- 3409 (c) fail to notify a student that the postsecondary school intends to cease operations; or
- 3410 (d) fail to comply with the requirements of Section 13-34-205.

## SB0038S01 compared with SB0038S02

- 3411 (8) A violation of this chapter is also a violation of Subsection 13-11-4(1).  
3414 Section 73. Section **13-34-109** is amended to read:  
3415 **13-34-109. Required disclosures.**  
3414 (1) As used in this section, "cooling off period" means a three-business day period during which a  
student may rescind an enrollment agreement and receive a refund of all money paid, except:  
3417 (a) a reasonable application fee; and  
3418 (b) a deposit that does not exceed 10% of the total cost of tuition for the first term.  
3419 (2) Before a postsecondary school may enroll or accept payment from a student, the postsecondary  
school shall clearly and conspicuously disclose in writing to the student:  
3421 (a) the postsecondary school's name, address, and location;  
3422 (b) the requirements or qualifications a student is required to satisfy to enroll in the postsecondary  
school;  
3424 (c) a complete description of the services for which the student will pay, including:  
3425 (i) facilities, faculty, resources, or equipment that the student may use in connection with the services,  
or to access the services;  
3427 (ii) the duration of services provided; and  
3428 (iii) completion or graduation requirements;  
3429 (d) information regarding how the postsecondary school's services relate to state licensing requirements  
if the services are intended to prepare a student for licensure;  
3431 (e) tuition, fees, and any other charge or expense to be paid by the student;  
3432 (f) a financial assistance policy, if any;  
3433 (g) the complete terms of any financing agreement, including an income sharing or other agreement,  
offered to the student;  
3435 (h) the postsecondary school's cancellation and tuition refund policy which shall include, at a minimum:  
3437 (i) a cooling off period that may not end before midnight on the third business day after the latest of:  
3439 (A) the day on which the student signs the enrollment agreement;  
3440 (B) the day on which the student pays the postsecondary school for services, other than an application  
fee;  
3442 (C) the day on which the student first attends the postsecondary school; or  
3443 (D) the day on which the student first gains access to the postsecondary school's services; and  
3445

## SB0038S01 compared with SB0038S02

(ii) a written description of the postsecondary school's refund policy following the cooling off period described in Subsection (2)(h)(i);

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(i)

(i) whether the postsecondary school is accredited by an accrediting agency; and

3448

(ii) whether the program in which a student intends to enroll is accredited by an accrediting agency, if applicable;

3450

(j) the existence and amount of the postsecondary school's surety bond~~[-]~~ or certificate of deposit~~[-or irrevocable letter of credit]~~;

3452

(k) information regarding how to file a complaint against the postsecondary school with the division, the postsecondary school's accrediting agency, and the postsecondary school's approval or licensing entity; and

3455

(l) student outcomes specified in rules made by the division under Section 13-34-103.

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(3) A postsecondary school may comply with Subsection (2)(k) by placing a conspicuous link on the postsecondary school's website that connects to:

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(a) the contact information for each entity described in Subsection (2)(k) with which a person may file a complaint; or

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(b) a third party's website that states the contact information for each entity described in Subsection (2)(k) with which a person may file a complaint.

3464

Section 74. Section **13-34-111** is amended to read:

3465

### **13-34-111. Exemptions.**

3464

(1) As used in this section, "State Authorization Reciprocity Agreement" or "SARA" means an agreement among member states, districts, and territories establishing comparable national standards for offering interstate postsecondary distance education courses and programs.

3468

(2)

(a) Except as provided in Subsection (2)(b), this chapter does not apply to a public postsecondary school.

3470

(b) Notwithstanding Subsection (2)(a), the division may issue a state authorization certificate to a public postsecondary school in accordance with Section 13-34-302.

3472

(3) A postsecondary school is exempt from Sections 13-34-201 through 13-34-205 if~~[-the postsecondary school]~~:

3474

(a)

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[(†)] the postsecondary school:

- 3475 (i) is an active participant institution in SARA that provides distance education to ~~[a person]~~ an individual in Utah in accordance with SARA; and
- 3477 (ii) does not maintain a physical presence in the state;
- 3478 (b) ~~[is owned, controlled, operated, or maintained by]~~ a bona fide church or religious organization that is exempt from property taxation by this state owns, controls, operates, or maintains the postsecondary school;
- 3481 (c) is a business organization, trade or professional association, fraternal society, or labor organization that:
- 3483 (i) sponsors or conducts postsecondary education primarily for its employees, independent contractors, or members; and
- 3485 (ii) does not advertise as a school; or
- 3486 (d) exclusively offers one or more of the following:
- 3487 (i) postsecondary education:
- 3488 (A)
- 3489 (I) that is avocational, nonvocational, or recreational;
- 3489 (II) for which the postsecondary school does not represent vocational objectives; and
- 3491 (III) for which the postsecondary school does not grant a degree, diploma, or other educational credential commensurate with a degree or diploma;
- 3493 (B)
- 3495 (I) that is a prerequisite to obtain or maintain a license or certification issued by a government agency; and
- 3495 (II) through a postsecondary school that ~~[is regulated and licensed, registered, or otherwise approved by]~~ a Utah or federal government agency regulates and licenses, registers, or otherwise approves to provide the education; or
- 3498 (C)
- 3500 (I) for which the postsecondary school charges a student less than an amount established by division rule in any 12-month period; and
- 3500 (II) for which the postsecondary school does not grant a degree, diploma, or other educational credential commensurate with a degree or diploma;
- 3502 (ii) preparation for an individual to teach courses or instruction described in Subsection (3)(d)(i)(A);

## SB0038S01 compared with SB0038S02

- 3504 (iii) courses in English as a second language or other language courses;
- 3505 (iv) instruction to advance personal development or a general professional skill:
- 3506 (A) that is not independently sufficient to prepare ~~a person~~ an individual for specific employment; and
- 3508 (B) for which the postsecondary school does not grant a degree, diploma, or other educational credential commensurate with a degree or diploma;
- 3510 (v) instruction designed to prepare an individual to run for political office, for which the postsecondary school does not grant a degree, diploma, or other educational credential commensurate with a degree or diploma;
- 3513 (vi) professional review programs, including certified public accountant or bar examination review and preparation courses; or
- 3515 (vii) instruction to an apprentice:
- 3516 (A) as part of an apprenticeship; and
- 3517 (B) provided by a person who voluntarily conforms to Title 35A, Chapter 6, Apprenticeship Act, in accordance with Section 35A-6-104.
- 3519 (4) A postsecondary school that is exempt under this section shall file a registration statement with the division within 30 days of the date on which the postsecondary school no longer qualifies for exemption.
- 3522 (5)
- 3524 (a) A postsecondary school that is exempt in accordance with this section may voluntarily submit a registration statement.
- 3524 (b) A postsecondary school that voluntarily submits a registration statement as described in Subsection (5)(a), and obtains a registration certificate, is not exempt from Sections 13-34-201 through 13-34-205.
- 3527 (6) A postsecondary school bears the burden of proving it is exempt under this section.
- 3530 Section 75. Section **13-34-201** is amended to read:
- 3531 **13-34-201. Registration statement -- Registration certificate -- Renewal.**
- 3531 (1) Unless exempt under Section 13-34-111, a person shall file a registration statement and obtain a registration certificate before operating a postsecondary school in this state.
- 3533 (2) Before the division issues a registration certificate for a postsecondary school, the postsecondary school shall file with the division a registration statement that complies with:
- 3536 (a) the requirements of this chapter; and

## SB0038S01 compared with SB0038S02

- 3537 (b) rules made by the division in accordance with this chapter and Title 63G, Chapter 3, Utah  
Administrative Rulemaking Act.
- 3539 (3) A registration statement shall:
- 3540 (a) be submitted on a form approved by the division;
- 3541 (b) designate the certificate that the postsecondary school seeks;
- 3542 (c) state whether the postsecondary school is:
- 3543 (i) not accredited by an accrediting agency;
- 3544 (ii) an accredited postsecondary school; or
- 3545 (iii) a longstanding nonprofit accredited postsecondary school;
- 3546 (d) designate a person who is authorized to respond to an inquiry from the division; and
- 3547 (e) include all information required by rules made by the division in accordance with Title 63G, Chapter  
3, Utah Administrative Rulemaking Act.
- 3549 (4) A registration statement shall be:
- 3550 (a) signed by the postsecondary school's owner or responsible officer; and
- 3551 (b) verified by an unsworn declaration in accordance with Title 78B, Chapter 18a, Uniform Unsworn  
Declarations Act.
- 3553 (5) A postsecondary school that submits a registration statement shall pay a non-refundable fee the  
division establishes in accordance with Sections 13-34-102 and 63J-1-504.
- 3555 (6)
- 3556 (a) The division may require a postsecondary school's principal to:
- 3557 (i) submit a fingerprint card in a form acceptable to the division; and
- 3558 (ii) consent to a criminal background check by:
- 3559 [~~(A)~~] ~~the Federal Bureau of Investigation;~~
- 3560 [~~(B)~~] ~~(A)~~ the Utah Bureau of Criminal Identification; or
- 3562 [~~(C)~~] ~~(B)~~ another state or federal agency~~[-of any state]~~ that performs criminal background checks.
- 3562 (b) The postsecondary school or the postsecondary school's principal who is the subject of the  
background check shall pay the cost of:
- 3564 (i) the fingerprint card described in Subsection (6)(a)(i); and
- 3565 (ii) the criminal background check described in Subsection (6)(a)(ii).
- 3566 (7)

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- (a) A person shall submit a separate registration statement for each postsecondary school the person operates.
- 3568 (b) Notwithstanding Subsection (7)(a), a longstanding nonprofit accredited postsecondary school that  
[has obtained] obtains and holds an active registration certificate is not required to submit a separate  
registration statement for a postsecondary school that:
- 3572 (i) is wholly owned and operated by the longstanding nonprofit accredited postsecondary school;
- 3574 (ii) is disclosed on the longstanding nonprofit accredited postsecondary school's registration statement;  
and
- 3576 (iii) operates as a nonprofit organization.
- 3577 (8) A registration certificate expires:
- 3578 (a) one year after it is issued to a postsecondary school that is not an accredited postsecondary school;  
or
- 3580 (b) two years after it is issued to an accredited postsecondary school.
- 3581 (9) A registration statement, and any certificate issued in accordance with this chapter, are not  
transferable.
- 3583 (10) Notwithstanding Subsection (8), the division may extend the period for which a registration  
certificate is effective so that expiration dates are staggered throughout the year.
- 3586 (11) To renew a registration certificate under this section, a postsecondary school shall submit a  
registration renewal application to the division at least 30 days before the day on which the  
postsecondary school's registration expires.
- 3591 Section 76. Section **13-34-202** is amended to read:
- 3592 **13-34-202. Surety requirements.**
- 3591 (1) A postsecondary school required to obtain a registration certificate in accordance with this chapter  
shall maintain, in a form and amount approved by the division:
- 3593 (a) a surety bond issued by a surety authorized to transact surety business in the state;
- 3594 (b) a certificate of deposit in a financial institution authorized under the laws of this state or the laws of  
the United States to accept deposits from the public; or
- 3596 [~~e~~] an irrevocable letter of credit; or
- 3597 [~~d~~] (c) other proof of financial viability specified in rules the division makes under Section 13-34-103.
- 3599 (2) [~~The~~] The division shall use the surety bond[,] or certificate of deposit[, or irrevocable letter of  
credit shall be used] as protection against loss of unearned tuition, tuition paid for credits that a

## SB0038S01 compared with SB0038S02

student earned but that are not transferrable to a comparable postsecondary school, book fees, supply fees, or equipment fees:

- 3603 (a) collected by the postsecondary school from a student or another person on a student's behalf; or  
3605 (b) that the student is obligated to pay.  
3606 (3) A surety bond[;] or certificate of deposit[; ~~or irrevocable letter of credit~~] obtained in accordance  
with this section may not expire:  
3608 (a) earlier than 60 days after the first day on which no student is enrolled in the postsecondary school;  
and  
3610 (b) while students are enrolled in the postsecondary school.

3613 Section 77. Section **13-34-302** is amended to read:

3614 **13-34-302. Registration statement for state authorization certificate -- Expiration --  
Renewal.**

- 3614 (1) A postsecondary school may submit a registration statement to obtain a state authorization  
certificate if the postsecondary school is accredited by an accrediting agency recognized by the  
United States Department of Education.  
3617 (2) To obtain a state authorization certificate, a postsecondary school shall submit a registration  
statement on a form approved by the division that includes:  
3619 (a) proof of current accreditation from the postsecondary school's accrediting agency; and  
3621 (b) all information required by division rule made in accordance with Title 63G, Chapter 3, Utah  
Administrative Rulemaking Act.  
3623 (3)  
(a) Except as provided in Subsection (3)(b), a state authorization certificate expires two years after the  
division issues the state authorization certificate to an accredited postsecondary school.  
3626 (b) Notwithstanding Subsection (3)(a), the division may extend the period for which a state  
authorization certificate is effective so that expiration dates are staggered throughout the year.  
3629 (4) A state authorization certificate that the division issues to a longstanding nonprofit accredited  
postsecondary school:  
3631 (a) expires two years after the division issues the state authorization certificate;  
3632 (b) establishes the postsecondary school by name as an educational institution in accordance with 34  
C.F.R. Sec. 600.9(a)(1)(i);  
3634 (c) makes the postsecondary school independent of the state system of higher education; and

## SB0038S01 compared with SB0038S02

- 3636 (d) authorizes the postsecondary school to operate educational programs in the state that are beyond  
secondary education, including programs that lead to a degree or certificate.
- 3639 (5) A state authorization certificate that the division issues to a public postsecondary school does not  
expire.
- 3641 (6) A postsecondary school may satisfy Subsection (2)(a) by demonstrating to the division that the  
postsecondary school is:
- 3643 (a) within a grace period provided by the United States Department of Education for obtaining new  
accreditation; or
- 3645 (b) otherwise considered by the United States Department of Education to have recognized  
accreditation.
- 3647 (7) To renew a state authorization certificate under this section, a postsecondary school shall submit  
a registration statement to the division at least 30 days before the day on which the postsecondary  
school's state authorization expires.
- 3652 Section 78. Section **13-41-202** is amended to read:
- 3653 **13-41-202. Enforcement -- Penalty.**
- 3652 (1) The division shall enforce this chapter.
- 3653 (2) In determining whether to investigate, contact, or request information from a person in the  
enforcement of this chapter, the division shall consider:
- 3655 (a) whether a complaint, information, or evidence reasonably justifies further division inquiry;
- 3657 (b) the burden contact, investigation, or providing information places on the person;
- 3658 (c) the result of a previous investigation of the person, including whether the previous investigation  
suggests that the person did not violate this chapter;
- 3660 (d) whether the person may benefit from receiving information about requirements under this chapter;  
and
- 3662 (e) the potential gravity of harm to consumers, considering price, availability, and volume of a good or  
service.
- 3664 (3) In enforcing this chapter, the division may not publicly disclose the identity of a person the division  
investigates unless:
- 3666 (a) the person's identity is a matter of public record in an enforcement proceeding; or
- 3667 (b) the person consents to public disclosure.

3668

## SB0038S01 compared with SB0038S02

- (4) In determining whether to impose penalties against a person who violates this chapter, the division shall consider:
- 3670 (a) the person's cost of doing business not accounted for in the total cost to the person for the good or service, including costs associated with a decrease in the supply available to a person who relies on a high volume of sales;
- 3673 (b) the person's efforts to comply with this chapter;
- 3674 (c) whether the average price charged by the person during the 30-day period immediately preceding the day on which the state of emergency is declared is artificially deflated because the good or service was on sale for a lower price than the person customarily charges for the good or service; and
- 3678 (d) any other factor that the division considers appropriate.
- 3679 (5)
- (a) If the division finds that a person has violated, or is violating, this chapter, the division may:
- 3681 (i) issue a cease and desist order; and
- 3682 (ii) subject to Subsection (5)(b), impose an administrative fine for each violation of this chapter.
- 3684 (b) Each instance of charging an excessive price under Section 13-41-201 constitutes a separate violation, but in no case shall the administrative fine imposed under Subsection (5)(a) exceed double the excessive portion of the price the person charged.
- 3687 (6) The division may sue in a court of competent jurisdiction to enforce an order under Subsection (5).
- 3689 (7) In a suit brought under Subsection [~~(5)~~] (6), if the division prevails, the court may award the division:
- 3691 (a) court costs;
- 3692 (b) attorney fees; and
- 3693 (c) the division's costs incurred in the investigation of the violation of this chapter.
- 3694 (8) All money received through an administrative fine imposed, or judgment obtained, under this section shall be deposited in the Consumer Protection Education and Training Fund created by Section [~~13-2-8~~] 13-2-109.
- 3699 Section 79. Section **13-42-102** is amended to read:
- 3700 **13-42-102. Definitions.**
- [~~It~~] As used in this chapter:
- 3700 [(1) "Administrator" means the Division of Consumer Protection.]

## SB0038S01 compared with SB0038S02

- 3701 [(2)] (1) "Affiliate":
- 3702 (a) with respect to an individual, means:
- 3703 (i) the spouse of the individual;
- 3704 (ii) a sibling of the individual or the spouse of a sibling;
- 3705 (iii) an individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual's spouse;
- 3707 (iv) an aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any of them; or
- 3710 (v) any other individual occupying the residence of the individual; and
- 3711 (b) with respect to an entity, means:
- 3712 (i) a person that directly or indirectly controls, is controlled by, or is under common control with the entity;
- 3714 (ii) an officer of, or an individual performing similar functions with respect to, the entity;
- 3716 (iii) a director of, or an individual performing similar functions with respect to, the entity;
- 3718 (iv) [subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6),] a person that receives or received more than \$25,000 from the entity for debt management services in either the current year or the preceding year;[-or]
- 3721 (v) [-]a person that owns more than 10% of, or an individual who is employed by or is a director of, a person that receives or received more than \$25,000 from the entity for debt management services in either the current year or the preceding year;
- 3725 [(v)] (vi) an officer or director of, or an individual performing similar functions with respect to, a person described in Subsection [(2)(b)(i)] (1)(b)(i);
- 3727 [(vi)] (vii) the spouse of, or an individual occupying the residence of, an individual described in Subsections [(2)(b)(i)] (1)(b)(i) through [(v)] (vi); or
- 3729 [(vii)] (viii) an individual who has the relationship specified in Subsection [(2)(a)(iv)] (1)(a)(iv) or (v) to an individual or the spouse of an individual described in Subsections [(2)(b)(i)] (1)(b)(i) through [(v)] (vi).
- 3732 [(3)] (2) "Agreement" means an agreement between a provider and an individual for the performance of debt-management services.
- 3734

## SB0038S01 compared with SB0038S02

- 3738 [(4)] (3) "Bank" means a financial institution, including a commercial bank, savings bank, savings and loan association, credit union, and trust company, engaged in the business of banking, chartered under federal or state law, and regulated by a federal or state banking regulatory authority.
- 3740 [(5)] (4) "Business address" means the physical location of a business, including the name and number of a street.
- 3744 [(6)] (5) "Certified counselor" means an individual certified by a training program or certifying organization, ~~[approved by]~~the ~~[administrator]~~ division approves, that authenticates the competence of ~~[individuals]~~ each individual providing education and assistance to other individuals in connection with debt-management services.
- 3746 [(7)] (6) "Concessions" means assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor.
- 3747 [(8)] (7) "Day" means a calendar day.
- 3750 [(9)] (8) "Debt-management services" means services as an intermediary between an individual and one or more creditors of the individual for the purpose of obtaining concessions, but does not include:
- 3751 (a) legal services ~~[provided]~~ an attorney provides in an attorney-client relationship if:
- 3753 (i) ~~[the services are provided by an attorney who]~~ the attorney who provides the legal services:
- 3754 (A) is licensed or otherwise authorized to practice law in this state; and
- 3756 (B) provides legal services in representing the individual in the individual's relationship with a creditor; and
- 3758 (ii) there is no intermediary between the individual and the creditor other than the attorney or an individual under the direct supervision of the attorney;
- 3760 (b) accounting services ~~[provided]~~ a certified public accountant provides in an accountant-client relationship if:
- 3762 (i) the ~~[services are provided by a certified public accountant who]~~ certified public accountant who provides the accounting services:
- 3763 (A) is licensed to provide accounting services in this state; and
- 3765 (B) provides accounting services in representing the individual in the individual's relationship with a creditor; and
- 3767 (ii) there is no intermediary between the individual and the creditor other than the accountant or an individual under the direct supervision of the accountant; or

## SB0038S01 compared with SB0038S02

- (c) financial-planning services [~~provided~~] a member of a financial-planning profession provides in a financial planner-client relationship [~~by a member of a financial-planning profession~~]if:
- 3770 (i) the [~~administrator~~] division, by rule, determines that [~~members are~~] a member of that financial-  
3772 planning profession is:  
3773 (A) licensed by this state;  
3774 (B) subject to a disciplinary mechanism;  
3775 (C) subject to a code of professional responsibility; and  
3776 (D) subject to a continuing education requirement; and  
(ii) there is no intermediary between the individual and the creditor other than the [~~financial~~  
~~planner~~] member of a financial-planning profession or an individual under the direct supervision of  
the [~~financial planner~~] member of a financial-planning profession.
- 3780 (9) "Division" means the Division of Consumer Protection established in Section 13-2-102.
- 3781 (10) "Entity" means a person other than an individual.
- 3782 (11) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.
- 3784 (12) "Lead generator" means a person [~~who~~] that, in the regular course of business[;] ;  
3785 (a) [-]supplies a provider with the name of a potential customer[;] ;  
3786 (b) [-]directs a communication of an individual to a provider[;] ; or  
3787 (c) [-]otherwise refers a customer to a provider.
- 3788 (13)
- (a) "Person" means:
- 3789 (i) [-]an individual[;] ;  
3790 (ii) a corporation[;] ;  
3791 (iii) a business trust[;] ;  
3792 (iv) an estate[;] ;  
3793 (v) a trust[;] ;  
3794 (vi) a partnership[;] ;  
3795 (vii) a limited liability company[;] ;  
3796 (viii) an association[;] ;  
3797 (ix) a joint venture[;] ; or  
3798 (x) [-]any other legal or commercial entity.
- 3799 (b) [~~The term~~] "Person" does not include:

## SB0038S01 compared with SB0038S02

- 3800 (i) [-]a public corporation;[;]
- 3801 (ii) a government;[;] or
- 3802 (iii) a governmental subdivision, agency, or instrumentality.
- 3803 (14) "Plan" means a program or strategy in which a provider furnishes debt-management services to an individual and which includes a schedule of payments to be made by or on behalf of the individual and used to pay debts owed by the individual.
- 3806 (15) "Principal amount of the debt" means the amount of a debt at the time of an agreement.
- 3807 (16) "Provider" means a person that provides, offers to provide, or agrees to provide debt-management services directly or through others.
- 3809 (17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- 3811 (18) "Settlement fee" means a charge imposed on or paid by an individual in connection with a creditor's assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt.
- 3814 (19) "Sign" means, with present intent to authenticate or adopt a record:
- 3815 (a) to execute or adopt a tangible symbol; or
- 3816 (b) to attach to or logically associate with the record an electronic sound, symbol, or process.
- 3818 (20) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.
- 3821 (21) "Trust account" means an account held by a provider that is:
- 3822 (a) established in a bank in which deposit accounts are insured;
- 3823 (b) separate from other accounts of the provider or its designee;
- 3824 (c) designated as a trust account or other account designated to indicate that the money in the account is not the money of the provider or its designee; and
- 3826 (d) used to hold money of one or more individuals for disbursement to creditors of the individuals.
- 3830 Section 80. Section **13-42-103** is amended to read:
- 3831 **13-42-103. Exempt agreements and persons.**
- 3830 [~~(1) This chapter does not apply to an agreement with an individual who the provider has no reason to know resides in this state at the time of the agreement.]~~
- 3832 [(~~2~~)] (1) This chapter does not apply to a provider to the extent that the provider:
- 3833

## SB0038S01 compared with SB0038S02

(a) provides or agrees to provide debt-management, educational, or counseling services to an individual who the provider has no reason to know resides in this state at the time the provider agrees to provide the services; or

3836 (b) receives no compensation for debt-management services from or on behalf of the individuals to whom [it] the provider provides the services or from their creditors.

3838 [(3)] (2) This chapter does not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:

3841 (a) a judicial officer, a person acting under an order of a court or an administrative agency, or an assignee for the benefit of creditors;

3843 (b) a bank;

3844 (c) an affiliate, as defined in Subsection [~~13-42-102(2)(b)(i)~~] 13-42-102(1)(b)(i), of a bank if the affiliate is regulated by a federal or state banking regulatory authority; or

3846 (d) a title insurer, escrow company, or other person that provides bill-paying services if the provision of debt-management services is incidental to the bill-paying services.

3850 Section 81. Section **13-42-104** is amended to read:

3851 **13-42-104. Registration required.**

3850 (1) Except as otherwise provided in Subsection (2), a provider may not provide debt-management services to an individual who [it] the provider reasonably should know resides in this state at the time [it] the provider agrees to provide the services, unless the provider is registered under this chapter.

3854 (2) If a provider is registered under this chapter, Subsection (1) does not apply to an employee or agent of the provider.

3856 (3) The [~~administrator~~] division shall maintain and publicize a list of the names of all registered providers.

3860 Section 82. Section **13-42-105** is amended to read:

3861 **13-42-105. Application for registration -- Form, fee, and accompanying documents.**

3861 (1) An application for registration as a provider shall be in a form [~~prescribed by the administrator~~] the division approves.

3863 (2) Subject to adjustment of dollar amounts [~~pursuant to~~] in accordance with Subsection 13-42-132(6), an application for registration as a provider shall be accompanied by:

3865

## SB0038S01 compared with SB0038S02

- (a) the fee [~~established by the administrator~~] the division establishes in accordance with Section 63J-1-504;
- 3867 (b) the bond required by Section 13-42-113;
- 3868 (c) identification of all trust accounts subject to Section 13-42-122 and an irrevocable consent authorizing the [~~administrator~~] division to review and examine the trust accounts;
- 3871 (d) evidence of insurance in the amount of \$250,000:
- 3872 (i) against the risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant;
- 3874 (ii) issued by an insurance company authorized to do business in this state and rated at least A or equivalent by a nationally recognized rating organization [~~approved by the administrator~~] the division approves;
- 3877 (iii) with a deductible not exceeding \$5,000;
- 3878 (iv) payable to the applicant and this state for the benefit of the residents of this state, as [~~their~~] the applicant's interests may appear; and
- 3880 (v) not subject to cancellation by the applicant or the insurer until 60 days after written notice has been given to the [~~administrator~~] division;
- 3882 (e) a record consenting to the jurisdiction of this state containing:
- 3883 (i) the name, business address, and other contact information of [~~its~~] the applicant's registered agent in this state for purposes of service of process; or
- 3885 (ii) the appointment of the [~~administrator~~] division as agent of the provider for purposes of service of process; and
- 3887 (f) if the applicant is organized as a not-for-profit entity or has obtained tax exempt status under the Internal Revenue Code, 26 U.S.C. Sec. 501, evidence of not-for-profit or tax-exempt status, or both.
- 3890 (3)
- (a) The [~~administrator~~] division may waive or reduce the insurance requirement in Subsection (2)(d) if the provider does not:
- 3892 (i) maintain control of a trust account or receive money paid by an individual [~~pursuant to~~] in accordance with a plan for distribution to creditors;
- 3894 (ii) make payments to creditors on behalf of individuals;
- 3895 (iii) collect fees by means of automatic payment from individuals; and
- 3896

## SB0038S01 compared with SB0038S02

(iv) execute any powers of attorney that may be utilized by the provider to collect fees from or expend funds on behalf of an individual.

3898 (b) A waiver or reduction in insurance requirements [~~allowed by~~]the [~~administrator~~] division allows  
under Subsection (3)(a) shall balance the reduction in risk [~~posed by~~]a provider poses by meeting  
the [~~stated~~]requirements of Subsection (2)(d) against any continued need for insurance against  
employee and director dishonesty.

3904 Section 83. Section **13-42-106** is amended to read:

3905 **13-42-106. Application for registration -- Required information.**

An applicant shall sign an application for registration as a provider [~~shall be signed~~]  
under penalty of perjury and include in the application:

3907 (1) the applicant's name, principal business address and telephone number, and all other business  
addresses in this state, [~~electronic-mail~~] email addresses, and [~~Internet~~]website addresses;

3910 (2) [~~all names~~] each name under which the applicant conducts business;

3911 (3)

(a) the address of each location in this state at which the applicant will provide debt-management  
services; or

3913 (b) [~~a~~]a statement that the applicant will [~~have no such location~~] not have a location where the applicant  
will provide debt-management services;

3915 (4) the name and home address of each officer and director of the applicant and each person that owns  
at least 10% of the applicant;

3917 (5) identification of [~~every~~] each jurisdiction in which, during the five years immediately preceding the  
application:

3919 (a) the applicant or any of [~~its~~] the applicant's officers or directors [~~has been~~] was licensed or registered  
to provide debt-management services; or

3921 (b) [~~individuals have resided~~] an individual resided when [~~they~~] the individual received debt-  
management services from the applicant;

3923 (6) a statement describing, to the extent [~~it is known or should be known by the applicant~~] the applicant  
knows or should know, any material civil or criminal judgment or litigation and any material  
administrative or enforcement action by a governmental agency in any jurisdiction against: [-]

3927 (a) the applicant[-] ;

3928 (b) [-]any of [~~its~~] the applicant's officers, directors, owners, or agents[-] ; or

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- 3929 (c) ~~[-]any person [who]~~ that is authorized to have access to the trust account required by Section  
13-42-122;
- 3931 (7) the applicant's financial statements, audited by an accountant licensed to conduct audits, for each of  
the two years immediately preceding the application or, if ~~[it]~~ the applicant has not been in operation  
for the two years preceding the application, for the period of ~~[its]~~ the applicant's existence;
- 3935 (8) evidence of accreditation by an independent accrediting organization ~~[approved by]~~the  
~~[administrator]~~ division approves;
- 3937 (9) evidence that, no later than 12 months after initial employment, each of the applicant's counselors  
becomes certified as a certified counselor;
- 3939 (10) a description of the three most commonly used educational programs that the applicant provides  
or intends to provide to individuals who reside in this state and a copy of any materials ~~[used]~~ the  
applicant uses or ~~[to be used]~~ will use in ~~[those programs]~~ the educational programs;
- 3943 (11) a description of the applicant's financial analysis and initial budget plan, including any form or  
electronic model, ~~[used]~~ the applicant uses to evaluate the financial condition of individuals;
- 3946 (12) a copy of each form of agreement that the applicant will use with individuals who reside in this  
state;
- 3948 (13) the schedule of fees and charges that the applicant will use with individuals who reside in this  
state;
- 3950 (14) at the applicant's expense, the results of a criminal records check, including fingerprints, conducted  
within the immediately preceding 12 months, covering every officer of the applicant and every  
employee or agent of the applicant who is authorized to have access to the trust account required by  
Section 13-42-122;
- 3954 (15) the names and addresses of ~~[all employers]~~ each employer of each director during the 10 years  
immediately preceding the day on which the applicant submits the application;
- 3956 (16) a description of any ownership interest of at least 10% by a director, owner, or employee of the  
applicant in:
- 3958 (a) ~~[any]~~ an affiliate of the applicant; or
- 3959 (b) ~~[any]~~ an entity that provides products or services to the applicant or ~~[any]~~ an individual relating to  
the applicant's debt-management services;
- 3961 (17) a statement of the amount of compensation of the applicant's five most highly compensated  
employees for each of the three years immediately preceding the application or, if ~~[it]~~ the applicant

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has not been in operation for the three years preceding the application, for the period of [its] the applicant's existence;

- 3965 (18) the identity of each director who is an affiliate, as defined in Subsection [~~13-42-102(2)~~  
3968 (~~a~~)] 13-42-102(1)(a) or [~~(2)(b)(i)~~] (1)(b)(i), (ii), (iv), (v), (vi), [~~or~~](vii), or (viii) of the applicant; and  
3972 (19) any other information that the [~~administrator~~] division reasonably requires to perform the  
3973 [~~administrator's~~] division's duties under Section 13-42-109.

3972 Section 84. Section **13-42-107** is amended to read:

3973 **13-42-107. Application for registration -- Obligation to update information.**

An applicant or registered provider shall notify the [~~administrator~~] division no later than 10 days after [a] the day on which the change in the information specified in Subsection 13-42-105(2)(d) or (f) or Subsection 13-42-106(1), (3), (6), (12), or (13) occurs.

3978 Section 85. Section **13-42-108** is amended to read:

3979 **13-42-108. Application for registration -- Public information.**

Except for the information required by Subsections 13-42-106(7), (14), and (17) and the addresses required by Subsection 13-42-106(4), the [~~administrator~~] division shall make the information in an application for registration as a provider available to the public.

3983 Section 86. Section **13-42-109** is amended to read:

3984 **13-42-109. Certification of registration -- Issuance or denial.**

- 3983 (1) Except as otherwise provided in Subsections (2) and (3), the [~~administrator~~] division shall issue a certificate of registration as a provider to a person that complies with Sections 13-42-105 and 13-42-106.
- 3986 (2) The [~~administrator~~] division may deny registration if:
- 3987 (a) the application contains information that is materially erroneous or incomplete;
- 3988 (b) an officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws;
- 3991 (c) the applicant or any of [its] the applicant's officers, directors, or owners has defaulted in the payment of money collected for others; or
- 3993 (d) the [~~administrator~~] division finds that the financial responsibility, experience, character, or general fitness of the applicant or [its] the applicant's owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this chapter.
- 3997 (3) The [~~administrator~~] division shall deny registration if:

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- 3998 (a) the application is not accompanied by the fee ~~[established by the administrator]~~ the division  
establishes in accordance with Section 63J-1-504; or
- 4000 (b) with respect to an applicant that is organized as a not-for-profit entity or has obtained tax-exempt  
status under the Internal Revenue Code, 26 U.S.C. ~~[Section]~~ Sec. 501, the applicant's board of  
directors is not independent of the applicant's employees and agents.
- 4004 (4) Subject to adjustment of the dollar amount ~~[pursuant to]~~ in accordance with Subsection  
13-42-132(6), a board of directors is not independent for purposes of Subsection (3) if more than  
one-fourth of ~~[its]~~ the applicant's members:
- 4007 (a) are affiliates of the applicant, as defined in Subsection ~~[13-42-102(2)(a)]~~ 13-42-102(1)(a) or  
~~[13-42-102(2)(b)(i)]~~ 13-42-102(1)(b)(i), (ii), (iv), (v), (vi), ~~[or]~~ (vii), or (viii); or
- 4010 (b) ~~[after the date 10 years]~~ within 10 years before the day on which the applicant's member first  
~~[becoming a director]~~ became a director of the applicant, ~~[were]~~ the applicant's member was  
employed by or ~~[directors]~~ a director of a person that received from the applicant more than \$25,000  
in either the current year or the preceding year.
- 4017 Section 87. Section **13-42-110** is amended to read:
- 4018 **13-42-110. Certificate of registration -- Timing.**
- 4017 (1) The ~~[administrator]~~ division shall approve or deny an initial registration as a provider no later  
than 120 days after ~~[an application is filed]~~ the day on which the applicant files the applicant's  
application.
- 4020 (2) ~~[–]~~In connection with a request ~~[pursuant to]~~ in accordance with Subsection 13-42-106(19) for  
additional information, the ~~[administrator]~~ division may extend the 120-day period for not more than  
60 days.
- 4023 (3) ~~[–]~~Within seven days after ~~[denying]~~ the day on which the division denies an application, the  
~~[administrator]~~ division, in ~~[a record]~~ writing, shall inform the applicant of the reasons for the  
denial.
- 4026 ~~[(2)]~~ (4) If the ~~[administrator]~~ division denies an application for registration as a provider or does not  
act on an application within the time ~~[prescribed in Subsection (1)]~~ described in this section, the  
applicant may appeal and request a hearing ~~[pursuant to]~~ in accordance with Title 63G, Chapter 4,  
Administrative Procedures Act.
- 4030 ~~[(3)]~~ (5) Subject to Subsection 13-42-111(4) and Section 13-42-134, a registration as a provider is valid  
for one year after the day on which the division issues a certificate of registration.

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4035 Section 88. Section **13-42-111** is amended to read:

4036 **13-42-111. Renewal of registration.**

4035 (1) A provider shall obtain a renewal of ~~[its]~~ the provider's registration annually.

4036 (2) ~~[An]~~ To obtain a renewal of the provider's registration a provider shall:

4037 ~~(a) submit an~~ application for renewal of registration as a provider ~~[shall be] in a form [prescribed by the~~  
4038 ~~administrator, signed under penalty of perjury, and:]~~ the division approves;

4040 ~~(b)~~ sign the application for renewal under penalty of perjury;

4041 ~~[(a)] (c)~~ ~~[be filed]~~ file the application for renewal no fewer than 30 days and no more than 60 days  
4042 before the day on which the provider's current registration expires;

4043 ~~[(b)] (d)~~ ~~[be accompanied by]~~ accompany the application for renewal with:

4044 ~~(i)~~ ~~[-]the fee [established by the administrator]~~ the division establishes in accordance with Section  
4045 63J-1-504; and

4046 ~~(ii)~~ ~~[-]the bond required by Section 13-42-113;~~

4047 ~~[(e)] (e)~~ ~~[contain the matter]~~ include in the application for renewal of registration:

4048 ~~(i)~~ the information required for initial registration as a provider by Subsections 13-42-106(8) and (9);  
4049 and

4050 ~~(ii)~~ ~~[-]a financial statement, audited by an accountant licensed to conduct audits, for the applicant's~~  
4051 ~~fiscal year immediately preceding the day on which the applicant submits the application for~~  
4052 ~~renewal;~~

4053 ~~[(d)] (f)~~ disclose in the application for renewal any [changes] change in the information contained in the  
4054 applicant's application for registration or [its] the applicant's immediately previous application for  
4055 renewal, [as] if applicable; and

4056 ~~[(e)] (g)~~ in the application for renewal:

4057 ~~(i)~~ supply evidence of insurance in an amount equal to the larger of \$250,000 or the highest daily  
4058 balance in the trust account required by Section 13-42-122 during the six-month period immediately  
4059 [preceeding] before the day on which the provider submits the application for renewal:

4061 ~~[(i)] (A)~~ against risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a  
4062 director, employee, or agent of the applicant;

4063 ~~[(ii)] (B)~~ issued by an insurance company authorized to do business in this state and rated at least A- or  
4064 equivalent by a nationally recognized rating organization approved by the [administrator] division;

4066 ~~[(iii)] (C)~~ with a deductible not exceeding \$5,000;

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- 4067 [~~(iv)~~] (D) payable to the applicant and this state for the benefit of the residents of this state, as their  
interests may appear; and
- 4069 [~~(v)~~] (E) not subject to cancellation by the applicant or the insurer until 60 days after the day on which  
written notice has been given to the [~~administrator~~] division;
- 4072 [~~(f)~~] (ii) disclose the total amount of money received by the applicant [~~pursuant to~~] in accordance with  
plans during the preceding 12 months from or on behalf of individuals who reside in this state and  
the total amount of money distributed to creditors of those individuals during that period;
- 4076 [~~(g)~~] (iii) disclose, to the best of the applicant's knowledge, the gross amount of money accumulated  
during the preceding 12 months [~~pursuant to~~] in accordance with plans by or on behalf of  
individuals who reside in this state and with whom the applicant has agreements; and
- 4080 [~~(h)~~] (iv) provide any other information that the [~~administrator~~] division reasonably requires to perform  
the [~~administrator's~~] division's duties under this section.
- 4082 (3) Except for the information required by Subsections 13-42-106(7), (14), and (17) and the addresses  
required by Subsection 13-42-106(4), the [~~administrator~~] division shall make the information in an  
application for renewal of registration as a provider available to the public.
- 4086 (4) If a registered provider files a timely and complete application for renewal of registration, the  
registration remains effective until the [~~administrator~~] division, in a record, notifies the applicant of  
a denial and states the reasons for the denial.
- 4089 (5)
- (a) If the [~~administrator~~] division denies an application for renewal of registration as a provider, the  
applicant, no later than 30 days after receiving notice of the denial, may appeal and request a  
hearing [~~pursuant to~~] in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
- 4093 (b) [-]Subject to Section 13-42-134, while the appeal is pending the applicant shall continue to provide  
debt-management services to individuals with whom [~~it~~] the applicant has agreements.
- 4096 (c) [-]If the denial is affirmed, subject to the [~~administrator's~~] division's order and Section 13-42-134,  
the applicant shall continue to provide debt-management services to individuals with whom [~~it~~] the  
applicant has agreements until, with the approval of the [~~administrator~~] division, [~~it~~] the applicant  
transfers the agreements to another registered provider or returns to the individuals all unexpended  
money that is under the applicant's control.
- 4102 (6)

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(a) The ~~[administrator]~~ division may waive or reduce the insurance requirement in Subsection [(2)(e)] (2)(g) if the provider does not:

- 4104 (i) maintain control of a trust account or receive money paid by an individual ~~[pursuant to]~~ in  
accordance with a plan for distribution to creditors;
- 4106 (ii) make payments to creditors on behalf of individuals;
- 4107 (iii) collect fees by means of automatic payment from individuals; and
- 4108 (iv) execute any powers of attorney that ~~[may be utilized by the provider]~~ the provider may utilize  
to collect fees from or expend funds on behalf of an individual.

4110 (b) A waiver or reduction in insurance requirements ~~[allowed by the administrator]~~ the division allows  
under Subsection (6)(a) shall balance the reduction in risk posed by a provider ~~[meeting the]~~ that  
meets the stated requirements against any continued need for insurance against employee and  
director dishonesty.

4116 Section 89. Section **13-42-112** is amended to read:

4117 **13-42-112. Registration in another state -- Rulemaking.**

4116 (1)

(a) Subject to rules made by the ~~[administrator]~~ division, if a provider holds a license or certificate  
of registration in another state authorizing [it] the provider to provide debt-management services,  
the provider may submit a copy of that license or certificate and the application for [it] that  
license or certificate instead of an application in the form ~~[prescribed by]~~ described in Subsection  
13-42-105(1), Section 13-42-106, or Subsection 13-42-111(2).

4122 (b) The ~~[administrator]~~ division shall accept the application and the license or certificate from the other  
state as an application for registration as a provider or for renewal of registration as a provider, as  
appropriate, in this state if:

- 4125 (i) the application in the other state contains information substantially similar to or more comprehensive  
than that required in an application submitted in this state;
- 4127 (ii) the applicant provides the information required by Subsections 13-42-105(2)(d) and 13-42-106(1),  
(3), (7), (10), (12), and (13);
- 4129 (iii) the applicant, under penalty of perjury, certifies that the information contained in the application  
is current or, to the extent it is not current, supplements the application to make the information  
current; and

4132

## SB0038S01 compared with SB0038S02

(iv) the applicant files a surety bond or substitute in accordance with Section 13-42-113 or 13-42-114 that is solely payable or available to this state and to individuals who reside in this state.

4135 (2) The ~~[administrator]~~ division, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, shall make rules designating the states in which a provider may have a license or certificate that ~~[may be submitted]~~ an applicant may submit to the ~~[administrator]~~ division in compliance with this section.

4141 Section 90. Section **13-42-113** is amended to read:

4142 **13-42-113. Surety bond required.**

4141 (1) Except as otherwise provided in Section 13-42-114, a provider that is required to be registered under this chapter shall file a surety bond with the ~~[administrator]~~ division, which shall:

4144 (a) be in effect during the period of registration and for two years after the day on which the provider ceases providing debt-management services to individuals in this state; and

4147 (b) run to this state for the benefit of this state and of individuals who reside in this state when ~~[they]~~ the individuals agree to receive debt-management services from the provider, as ~~[their]~~ the individuals' interests may appear.

4150 (2) Subject to adjustment of the dollar amount ~~[pursuant to]~~ in accordance with Subsection 13-42-132(6), a surety bond filed ~~[pursuant to]~~ in accordance with Subsection (1) shall:

4152 (a) be in the amount of \$100,000;

4153 (b) be issued by a ~~[bonding,] surety[, or insurance company]~~ company authorized to do business in this state and rated at least A- by a nationally recognized rating organization; and

4156 (c) have payment conditioned on noncompliance of the provider or its agent with this chapter.

4158 (3)

(a) If the principal amount of a surety bond is reduced by payment of a claim or a judgment, the provider shall immediately notify the ~~[administrator]~~ division and, no later than 30 days after ~~[notice by the administrator]~~ the day on which the division gives notice to the provider, file a new or additional surety bond in an amount to comply with the \$100,000 requirement.

4163 (b) ~~[–]~~If for any reason a surety terminates a bond, the provider shall immediately file a new surety bond in the amount of \$100,000.

4165 (4) The ~~[administrator]~~ division or an individual may obtain satisfaction out of the surety bond procured ~~[pursuant to]~~ in accordance with this section if:

4167

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- (a) the ~~[administrator]~~ division assesses expenses under Subsection 13-42-132(2)(a), issues a final order under Subsection 13-42-133(1)(b), or recovers a final judgment under Subsection 13-42-133(1)(d) or (e) or Subsection 13-42-133(4); or
- 4170 (b) an individual recovers a final judgment ~~[pursuant to]~~ in accordance with Subsection 13-42-135(1), Subsection 13-42-135(2), or Subsection 13-42-135(3)(a), (b), or (d).
- 4172 (5) If claims against a surety bond exceed or are reasonably expected to exceed the amount of the bond, the ~~[administrator]~~ division, on the initiative of the ~~[administrator]~~ division or on petition of the surety, shall, unless the proceeds are adequate to pay all costs, judgments, and claims, distribute the proceeds in the following order:
- 4176 (a) to satisfaction of a final order or judgment under Subsection 13-42-133(1)(a), (d), or (e) or Subsection 13-42-133(4);
- 4178 (b) to final judgments recovered by individuals ~~[pursuant to]~~ in accordance with Subsection 13-42-135(1), Subsection 13-42-135(2), or Subsection 13-42-135(3)(a), (b) or (d), pro rata;
- 4181 (c) to claims of individuals established to the satisfaction of the ~~[administrator]~~ division, pro rata; and
- 4183 (d) if a final order or judgment is issued under Subsection 13-42-133(1), to the expenses charged ~~[pursuant to]~~ in accordance with Subsection 13-42-132(2)(a).
- 4187 Section 91. Section **13-42-114** is amended to read:
- 4188 **13-42-114. Bond required -- Substitute.**
- 4187 (1) Instead of the surety bond required by Section 13-42-113, a provider, with the approval of the ~~[administrator]~~ division and in the amount required by Subsection (2), may deliver to the ~~[administrator]~~ division:
- 4190 (a) an irrevocable letter of credit, issued or confirmed by a bank ~~[approved by the administrator]~~ the division approves, payable on presentation of a certificate by the ~~[administrator]~~ division stating that the provider or ~~[its]~~ the provider's agent has not complied with this chapter; or
- 4194 (b) bonds or other obligations of the United States or guaranteed by the United States or bonds or other obligations of this state or a political subdivision of this state, to be:
- 4196 (i) deposited and maintained with a bank ~~[approved by the administrator]~~ the division approves for this purpose; and
- 4198 (ii) delivered by the bank to the ~~[administrator]~~ division on presentation of a certificate by the ~~[administrator]~~ division stating that the provider or ~~[its]~~ provider's agent has not complied with this chapter.

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- 4201 (2) If a provider furnishes a substitute [~~pursuant to~~] in accordance with Subsection (1), Subsections  
13-42-113(1), (3), (4), and (5) apply to the substitute.
- 4205 Section 92. Section **13-42-118** is amended to read:
- 4206 **13-42-118. Communication by electronic or other means.**
- 4205 (1) [~~In~~] As used in this section:
- 4206 (a) "Consumer" means an individual who seeks or obtains goods or services that are used primarily for  
personal, family, or household purposes.
- 4208 (b) "Federal act" means the Electronic Signatures in Global and National Commerce Act, 15 U.S.C.  
[~~Section~~] Sec. 7001 et seq.
- 4210 (2) A provider may satisfy the requirements of Section 13-42-117, 13-42-119, or 13-42-127 by means  
of the [~~Internet~~] internet or other electronic means if the provider obtains a consumer's consent in  
the manner provided by Section 101(c)(1) of the federal act.
- 4213 (3) [~~The~~] A provider shall present the disclosures and materials required by Sections 13-42-117,  
13-42-119, and 13-42-127 [~~shall be presented~~] in a form that is capable of being accurately  
reproduced for later reference.
- 4216 (4) With respect to disclosure by means of [~~an Internet~~] a website, the disclosure of the information  
required by Subsection 13-42-117(4) shall appear on one or more screens that:
- 4219 (a) contain no other information; and
- 4220 (b) [~~the~~] an individual is able to see before proceeding to assent to formation of an agreement.
- 4222 (5) At the time of providing the materials and agreement required by Subsections 13-42-117(3) and (4),  
Section 13-42-119, and Section 13-42-127, a provider shall inform the individual that on electronic,  
telephonic, or written request, [~~it~~] the provider:
- 4225 (a) [-]will send the individual a written copy of the materials[-] ; and
- 4226 (b) [-]shall comply with a request as provided in Subsection (6).
- 4227 (6)
- (a) If [~~a~~] an individual requests that a provider [~~is requested~~], before the expiration of 90 days after the  
day on which an agreement is completed or terminated, [~~to~~] send the individual a written copy of the  
materials required by Subsections 13-42-117(3) and (4), Section 13-42-119, or Section 13-42-127,  
the provider shall send [~~them~~] the materials at no charge no later than three business days after the  
day on which the provider receives the request[-] .

4233

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- (b) ~~[but the]~~ Notwithstanding Subsection (6)(a), a provider ~~[need not]~~ is not required to comply with a request more than once per calendar month or if ~~[it]~~ the provider reasonably believes the individual makes the request ~~[is made]~~ for purposes of harassment.
- 4237 (c) ~~[–]~~ If an individual makes a request ~~[is made]~~ more than 90 days after the day on which an agreement is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.
- 4240 (7) A provider that maintains ~~[an Internet]~~ a website shall disclose on the home page of ~~[its]~~ the provider's website or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals ~~[its]~~ the website's contents:
- 4243 (a) ~~[its–]~~ the provider's name and all names under which ~~[it]~~ the provider does business;
- 4244 (b) ~~[its–]~~ the provider's principal business address, telephone number, and electronic-mail address, if any; and
- 4246 (c) the names of ~~[its]~~ the provider's principal officers.
- 4247 (8) Subject to Subsection (9), if a consumer who ~~[has consented]~~ consents to electronic communication in the manner provided by Section 101 of the federal act withdraws consent as provided in the federal act, a provider may terminate ~~[its]~~ the provider's agreement with the consumer.
- 4251 (9)
- (a) If a provider wishes to terminate an agreement with a consumer ~~[pursuant to]~~ in accordance with Subsection (8), ~~[it]~~ the provider shall notify the consumer that ~~[it]~~ the provider will terminate the agreement unless the consumer, no later than 30 days after ~~[receiving]~~ the day on which the consumer receives the notification, consents to electronic communication in the manner provided in Section 101(c) of the federal act.~~[–]~~
- 4256 (b) If the consumer consents to electronic communication as described in Subsection (9)(a), the provider may terminate the agreement only as permitted by Subsection 13-42-119(1)(f)(iv)(D).
- 4261 Section 93. Section **13-42-119** is amended to read:
- 4262 **13-42-119. Form and contents of agreement.**
- 4261 (1) An agreement shall:
- 4262 (a) be in a record;
- 4263 (b) be dated and signed by the provider and the individual;
- 4264 (c) include the name of the individual and the address where the individual resides;
- 4265 (d) include the name, business address, and telephone number of the provider;

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- 4266 (e) be delivered to the individual immediately upon formation of the agreement; and
- 4267 (f) disclose:
- 4268 (i) the services [~~to be provided~~] the provider will provide;
- 4269 (ii) the amount, or method of determining the amount, of all fees, individually itemized, [~~to be paid by~~  
~~the individual~~] the individual will pay;
- 4271 (iii) the schedule of payments to be made by or on behalf of the individual, including the amount of  
each payment, the date on which each payment is due, and an estimate of the date of the final  
payment;
- 4274 (iv) if a plan provides for regular periodic payments to creditors:
- 4275 (A) each creditor of the individual to which the provider will make payment[~~will be made~~], the amount  
owed to each creditor, and any concessions the provider reasonably believes each creditor will offer;
- 4278 (B) the schedule of expected payments to each creditor, including the amount of each payment and the  
date on which [~~it will be made~~] the provider will make the payment;
- 4281 (C) each creditor that the provider believes will not participate in the plan and to which the provider  
will not direct payment; and
- 4283 (D) that the provider may terminate the agreement for good cause, upon return of unexpended money of  
the individual;
- 4285 (v) if a plan contemplates the settlement of the individual's debt for less than the principal amount of the  
debt, an estimate of:
- 4287 (A) the duration of the plan based on all enrolled debts;
- 4288 (B) the length of time before the individual may reasonably expect a settlement offer; and
- 4290 (C) the amount of savings needed to accrue before the individual may reasonably expect a settlement  
offer, expressed as either a dollar amount or a percentage, for each enrolled debt;
- 4293 (vi) how the provider will comply with [~~its~~] the provider's obligations under Subsection 13-42-127(1);
- 4295 (vii) that the individual may terminate the agreement at any time by giving written or electronic notice,  
and that, if notice of termination is given, the individual will receive all unexpended money that the  
provider or [~~its~~] the provider's designee [~~has received~~] receives from or on behalf of the individual  
for payment of a credit and, except to the extent they have been earned, the provider's fees;
- 4300 (viii) that the individual may contact the [~~administrator~~] division with any questions or complaints  
regarding the provider; and
- 4302

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- (ix) the address, telephone number, and [~~Internet~~] email address or website of the  
[~~administrator~~] division.
- 4304 (2) For purposes of Subsection (1)(e), delivery of an electronic record occurs when:
- 4305 (a) [~~it is made~~] the provider makes the electronic record available in a format in which the individual  
may retrieve, save, and print [~~it~~] the electronic record; and
- 4307 (b) [~~-~~] the provider notifies the individual [~~is notified-~~]that [~~it~~] the electronic record is available.
- 4309 (3) If the [~~administrator~~] division supplies the provider with any information required under Subsection  
(1)(f)(ix), the provider may comply with that requirement only by disclosing the information  
[~~supplied by-~~]the [~~administrator~~] division supplies.
- 4312 (4) An agreement shall provide that:
- 4313 (a) the individual authorizes any bank in which the provider or [~~its~~] the provider's agent has established  
a trust account to disclose to the [~~administrator~~] division any financial records relating to the trust  
account; and
- 4316 (b) the provider will [~~notify~~] provide a notice to the individual no later than five business days after  
[~~learning~~] the day on which a creditor learns of a creditor's final decision to reject or withdraw from  
a plan and that [~~this~~] the notice will include:
- 4319 (i) the identity of the creditor; and
- 4320 (ii) the right of the individual to modify or terminate the agreement.
- 4321 (5) An agreement may not:
- 4322 (a) provide for application of the law of [~~any~~] a jurisdiction other than the United States and this state;
- 4324 (b) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. [~~Section~~] Sec. 2, or  
Title 78B, Chapter 11, Utah Uniform Arbitration Act, contain a provision that modifies or limits  
otherwise available forums or procedural rights, including the right to trial by jury, that are generally  
available to the individual under law other than this chapter;
- 4329 (c) contain a provision that restricts the individual's remedies under this chapter or law other than this  
chapter; or
- 4331 (d) contain a provision that:
- 4332 (i) limits or releases the liability of [~~any~~] a person for not performing the agreement or for violating this  
chapter; or
- 4334 (ii) indemnifies [~~any~~] a person for liability arising under the agreement or this chapter.
- 4335 (6) A provision in an agreement which violates Subsection (4) or (5) is void.

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4338 Section 94. Section **13-42-121** is amended to read:

4339 **13-42-121. Required language.**

- 4338 (1) Unless the [~~administrator~~] division, by rule, provides otherwise, the disclosures and documents  
required by this chapter shall be in English.
- 4340 (2) [-]If a provider communicates with an individual primarily in a language other than English, the  
provider shall furnish a translation in the other language of the disclosures and documents required  
by this chapter.

4345 Section 95. Section **13-42-122** is amended to read:

4346 **13-42-122. Trust account.**

- 4345 (1)
- (a) [~~All~~] A provider shall hold all money paid to [a] the provider by or on behalf of an individual for  
distribution to creditors [pursuant to] in accordance with a plan [is held] in a trust account.
- 4348 (b) [-]No later than two business days after [~~receipt~~] the day on which the provider receives the money,  
the provider shall deposit the money in a trust account established for the benefit of individuals to  
whom the provider [~~is furnishing~~] furnishes debt-management services.
- 4352 (2) A provider whose agreement contemplates the settlement of an individual's debt for less than the  
principal amount of the debt may request or require the individual to place money in an account [~~to  
be used~~] the provider uses to pay a creditor or the provider's fees, or both, if:
- 4356 (a) the provider holds the money [is held] in an insured account at a bank;
- 4357 (b) the individual owns the money held in the account;
- 4358 (c) [~~and is paid~~] the provider pays the individual any interest accrued on the account;
- 4359 [(e)] (d) the entity administering the account is not the provider or an affiliate of the provider, unless the  
affiliate is described in Subsection [13-42-102(2)(b)(iv)] 13-42-102(1)(b)(iv);
- 4362 [(d)] (e) the entity administering the account does not give or accept any money or other compensation  
in exchange for a referral of business involving debt-management services; and
- 4365 [(e)] (f) the individual may terminate the agreement at any time without penalty and on termination  
[must] shall receive all money in the account, other than money earned by the provider in  
[compliance] accordance with this section.
- 4368 (3) If an agreement contemplates the reduction of finance charges or fees for late payment, default, or  
delinquency, and the provider complies with Subsection (1), the provider may request or require

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the individual to make payment to be used for both distribution to creditors and payment of the provider's fees.

- 4372 (4)
- (a) Money [~~held in~~] a provider holds in trust [~~by a provider~~] is not property of the provider or [its] the provider's designee.
- 4374 (b) [~~–~~]The money is not available to creditors of the provider or designee, except an individual from whom or on whose behalf the provider received money, to the extent that the provider has not disbursed the money [~~has not been disbursed~~]to creditors of the individual.
- 4378 (5) A provider shall:
- 4379 (a) maintain separate records of account for each individual to whom the provider [is ~~furnishing~~] furnishes debt-management services;
- 4381 (b) disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the agreement, except that:
- 4383 (i) the provider may delay payment to the extent that a payment by the individual is not final; and
- 4385 (ii) if a plan provides for regular periodic payments to creditors, the disbursement shall comply with the due dates established by each creditor; and
- 4387 (c) promptly correct [~~any payments~~] a payment that [~~are not made~~] the provider does not make or that [~~are misdirected~~] the provider misdirects as a result of an error by the provider or other person in control of the trust account and reimburse the individual for any costs or fees imposed by a creditor as a result of the failure to pay or misdirection.
- 4392 (6) A provider may not commingle money in a trust account established for the benefit of individuals to whom the provider [~~is furnishing~~] furnishes debt-management services with money of [~~other persons~~] another person.
- 4395 (7) A trust account shall at all times have a cash balance equal to the sum of the balances of each individual's account.
- 4397 (8)
- (a) If a provider has established a trust account [~~pursuant to~~] in accordance with Subsection (1), the provider shall reconcile the trust account at least once a month.[~~–~~]
- 4399 (b) The reconciliation shall compare the cash balance in the trust account with the sum of the balances in each individual's account.

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(c) ~~[-]~~If the provider or ~~[its]~~ the provider's designee has more than one trust account, each trust account shall be individually reconciled.

4403 (9)

(a) If a provider discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the provider immediately shall notify the ~~[administrator]~~ division by a method ~~[approved by the administrator]~~ the division approves.

4407 (b) ~~[-]~~Unless the ~~[administrator]~~ division by rule provides otherwise, no later than five days ~~[thereafter]~~ after the provider notifies the division in accordance with Subsection (9)(a), the provider shall give notice to the ~~[administrator]~~ division describing the remedial action ~~[taken or to be taken]~~ the provider takes or will take.

4411 (10) If an individual terminates an agreement or ~~[it becomes reasonably apparent to]~~ a provider determines that a plan has failed, the provider shall promptly refund to the individual all money paid by or on behalf of the individual ~~[which has not been]~~ that the provider has not paid to creditors, less fees that are payable to the provider under Section 13-42-123.

4416 (11)

(a) Before relocating a trust account from one bank to another, a provider shall inform the ~~[administrator]~~ division of the name, business address, and telephone number of the new bank.

4419 (b) ~~[-]~~As soon as practicable, the provider shall inform the ~~[administrator]~~ division of the account number of the trust account at the new bank.

4423 Section 96. Section **13-42-123** is amended to read:

4424 **13-42-123. Fees and other charges.**

4423 (1) A provider may not impose directly or indirectly a fee or other charge on an individual or receive money from or on behalf of an individual for debt-management services except as permitted by this section.

4426 (2) A provider may not impose charges or receive payment for debt-management services until the provider and the individual ~~[have signed]~~ sign an agreement that complies with Sections 13-42-119 and 13-42-128.

4429 (3)

(a) If an individual assents to an agreement, a provider may not impose a fee or other charge for educational, counseling, or similar services, except as otherwise provided in this section and Subsection 13-42-128(4).

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- 4432 (b) ~~[-]The [administrator] division~~ may authorize a provider to charge a fee based on the nature and  
extent of the services ~~[furnished by]the provider~~ furnishes.
- 4434 (4)
- (a) Subsections (4)(b) through (d) are subject to adjustment of dollar amounts ~~[pursuant to]~~ in  
accordance with Subsection 13-42-132(6).
- 4436 (b) If an individual assents to a plan that contemplates that ~~[creditors]~~ a creditor will reduce finance  
charges or fees for late payment, default, or delinquency, the provider may charge:
- 4439 (i) a fee not exceeding \$50 for consultation, obtaining a credit report, setting up an account, and ~~[the  
like]~~ other similar services; and
- 4441 (ii) a monthly service fee, not to exceed \$10 times the number of accounts remaining in a plan at the  
time the fee is assessed, but not more than \$50 in any month.
- 4443 (c) If an individual assents to an agreement that contemplates that creditors will settle debts for less than  
the principal amount of the debt, a provider may not request or receive payment of ~~[any]~~ a fee or  
consideration for the provider's service unless:
- 4446 (i) the provider ~~[has renegotiated, settled, reduced, or otherwise altered]~~ renegotiates, settles, reduces,  
or otherwise alters the terms of at least one debt under an agreement ~~[executed by]~~ the individual  
executes;
- 4449 (ii) the individual ~~[has made]~~ makes at least one payment ~~[pursuant to that]~~ in accordance with the  
agreement between the individual and the creditor or debt collector; and
- 4452 (iii) the fee or consideration for ~~[any]~~ an individual debt that [is renegotiated, settled, reduced, or  
otherwise altered] an individual renegotiates, settles, reduces, or otherwise alters:
- 4455 (A) bears the same proportion to the total fee for renegotiating, settling, reducing, or altering the terms  
of the entire debt as the individual debt amount at the time the debt was enrolled in the service bears  
to the entire debt amount at the time the debt was enrolled in the service; or
- 4459 (B) is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or  
alteration, as calculated under Subsection (4)(e), ~~[which percentage]~~ that may not change from one  
individual debt to another.
- 4462 (d)
- (i) Except as otherwise provided in Subsection 13-42-128(4), if an individual does not assent to an  
agreement, a provider may receive for educational and counseling services ~~[it]~~ the provider provides

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to the individual a fee not exceeding \$100 or, with the approval of the ~~[administrator]~~ division, a larger fee.

- 4466 (ii) ~~[-]~~The ~~[administrator]~~ division may approve a fee larger than \$100 if the nature and extent of the educational and counseling services warrant the larger fee.
- 4468 (e) For purposes of Subsection (4)(c)(iii)(B), the amount saved is calculated as the difference between the amount owed at the time the debt is enrolled in the service and the amount actually paid to satisfy the debt.
- 4471 (5) If, before the expiration of 90 days after the completion or termination of educational or counseling services, an individual assents to an agreement, the provider shall refund to the individual ~~[any]~~ a fee ~~[paid pursuant to]~~ an individual pays in accordance with Subsection (4)(d).
- 4475 (6) Except as otherwise provided in Subsections (3) and (4), if an agreement contemplates that creditors will settle an individual's debts for less than the principal amount of the debt:
- 4478 (a) compensation for services in connection with settling a debt shall be reasonable and clearly disclosed in the agreement; and
- 4480 (b) a fee for settling a debt may be collected only as the debt is settled.
- 4481 (7) Subject to adjustment of the dollar amount ~~[pursuant to]~~ in accordance with Subsection 13-42-132(6), if a payment to a provider by an individual under this chapter is dishonored, a provider may impose a reasonable charge on the individual, not to exceed the lesser of \$25 and the amount permitted by law other than this chapter.
- 4487 Section 97. Section **13-42-128** is amended to read:
- 4488 **13-42-128. Prohibited acts and practices.**
- 4487 (1) A provider may not, directly or indirectly:
- 4488 (a) include a secured debt in a plan, except as authorized by law other than this chapter;
- 4489 (b) misappropriate or misapply money ~~[held]~~ the provider holds in trust;
- 4490 (c) settle a debt on behalf of an individual, unless the individual assents to the settlement after the creditor ~~[has assented]~~ assents to the settlement;
- 4492 (d) take a power of attorney that authorizes ~~[it]~~ the provider to settle a debt;
- 4493 (e) exercise or attempt to exercise a power of attorney after an individual ~~[has terminated]~~ terminates an agreement;
- 4495 (f) initiate a transfer from an individual's account at a bank or with another person unless the transfer is:
- 4497 (i) a return of money to the individual; or

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- 4498 (ii) before termination of an agreement, properly authorized by the agreement and this chapter, and for:
- 4500 (A) payment to one or more creditors [~~pursuant to~~] in accordance with an agreement; or
- 4502 (B) payment of a fee;
- 4503 (g) offer a gift or bonus, premium, reward, or other compensation to an individual for executing an agreement;
- 4505 (h) offer, pay, or give a gift or bonus, premium, reward, or other compensation to a lead generator or other person for referring a prospective customer, if the person making the referral:
- 4508 (i) has a financial interest in the outcome of debt-management services provided to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral; or
- 4512 (ii) compensates its employees on the basis of a formula that incorporates the number of individuals the employee refers to the provider;
- 4514 (i) receive a bonus, commission, or other benefit for referring an individual to a person;
- 4515 (j) structure a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge on payment of the principal amount of the debt;
- 4518 (k) compensate [~~its~~] the provider's employees on the basis of a formula that incorporates the number of individuals the employee induces to enter into agreements;
- 4520 (l) settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment:
- 4523 (i) is in full settlement of the debt; or
- 4524 (ii) is part of a settlement plan, the terms of which are included in the certification, that, if completed according to its terms, will satisfy the debt;
- 4526 (m) make a representation that:
- 4527 (i) the provider will furnish money to pay bills or prevent attachments;
- 4528 (ii) payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or
- 4530 (iii) participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment;
- 4532 (n) misrepresent that it is authorized or competent to furnish legal advice or perform legal services;

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- 4534 (o) represent in [its] the provider's agreements, disclosures required by this chapter, advertisements, or  
[Internet-]website that [it] the provider is:
- 4536 (i) a not-for-profit entity unless [it] the provider is organized and properly operating as a not-for-profit  
entity under the law of the state in which [it] the provider was formed; or
- 4539 (ii) a tax-exempt entity unless [~~it has received~~] the provider receives certification of tax-exempt status  
from the Internal Revenue Service and [~~is properly operating~~] properly operates as a not-for-profit  
entity under the law of the state in which [it] the provider was formed;
- 4543 (p) take a confession of judgment or power of attorney to confess judgment against an individual;
- 4545 (q) employ an unfair, unconscionable, or deceptive act or practice;
- 4546 (r) knowingly omit any material information or material aspect of any provider's service, including:
- 4548 (i) the amount of money or the percentage of the debt amount that an individual may save by using the  
provider's service;
- 4550 (ii) the amount of time necessary to achieve the results that the provider represents as achievable;
- 4552 (iii) the amount of money or the percentage of each outstanding debt that the individual is required to  
accumulate before the provider will:
- 4554 (A) initiate an attempt with the individual's creditors or debt collectors to negotiate, settle, or modify the  
terms of the individual's debt; or
- 4556 (B) make a bona fide offer to negotiate, settle, or modify the terms of the individual's debt;
- 4558 (iv) the effect of the service on:
- 4559 (A) an individual's creditworthiness; or
- 4560 (B) collection efforts of the individual's creditors or debt collectors;
- 4561 (v) the percentage or number of individuals who achieve the results that the provider represents are  
achievable; and
- 4563 (vi) whether a nonprofit entity offers or provides a provider's service[~~is offered or provided by a  
nonprofit entity~~]; or
- 4565 (s) make or use [~~any~~] an untrue or a misleading statement:
- 4566 (i) to the [~~administrator~~] division; or
- 4567 (ii) in the provision of services subject to this chapter.
- 4568 (2) If a provider furnishes debt-management services to an individual, the provider may not, directly or  
indirectly:
- 4570 (a) purchase a debt or obligation of the individual;

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- 4571 (b) receive from or on behalf of the individual:
- 4572 (i) a promissory note or other negotiable instrument other than a check or a demand draft; or
- 4574 (ii) a post-dated check or demand draft;
- 4575 (c) lend money or provide credit to the individual, unless the loan or credit is:
- 4576 (i) a deferral of a settlement fee at no additional expense to the individual; or
- 4577 (ii) through an affiliate that is licensed separately from the provider;
- 4578 (d) obtain a mortgage or other security interest from any person in connection with the services provided to the individual;
- 4580 (e) except as permitted by federal law, disclose the identity or identifying information of the individual or the identity of the individual's creditors, except to:
- 4582 (i) the [~~administrator~~] division, on proper demand;
- 4583 (ii) a creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a plan; or
- 4585 (iii) the extent necessary to administer the plan;
- 4586 (f) except as otherwise provided in Subsection 13-42-123(4)(c), provide the individual less than the full benefit of a compromise of a debt arranged by the provider;
- 4588 (g) charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt-management services or educational services concerning personal finance, except to the extent such services are expressly authorized by the [~~administrator~~] division; or
- 4593 (h) furnish legal advice or perform legal services, unless the person furnishing that advice to or performing those services for the individual is licensed to practice law.
- 4595 (3) This chapter does not authorize any person to engage in the practice of law.
- 4596 (4) A provider may not receive a gift or bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting an individual in connection with obtaining, an extension of credit or other service from a lender or service provider, except:
- 4600 (a) for educational or counseling services required in connection with a government-sponsored program; or
- 4602 (b) as authorized in Subsection 13-42-123(4)(d).
- 4603 (5) Unless a person supplies goods, services, or facilities generally and supplies [~~them~~] the goods, services, or facilities to the provider at a cost no greater than the cost the person generally charges to

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others, a provider may not purchase goods, services, or facilities from the person if an employee or a person that the provider should reasonably know is an affiliate of the provider:

- 4608 (a) owns more than 10% of the person; or  
4609 (b) is an employee or affiliate of the person.  
4610 (6) A provider may not:  
4611 (a) represent that the division or the state endorses the provider;  
4612 (b) omit from a filing with the division a material statement of fact required by this chapter or rule the  
division makes in accordance with this chapter; or  
4614 (c) include in a filing with the division a material statement of fact that the provider or the provider's  
principal knows or should know is false, deceptive, inaccurate, or misleading.

4619 Section 98. Section **13-42-129** is amended to read:

4620 **13-42-129. Notice of litigation.**

No later than 30 days after the day on which a provider ~~[has been]~~ is served with notice of a civil action for a violation of this chapter by or on behalf of an individual who resides in this state at either the time of an agreement or the time the notice is served, the provider shall notify the ~~[administrator]~~ division in a record that ~~[it]~~ the provider has been sued.

4625 Section 99. Section **13-42-132** is amended to read:

4626 **13-42-132. Powers of the division.**

- 4625 (1) The ~~[administrator]~~ division may:  
4626 (a) ~~[-]act on [its] the division's own initiative or in response to complaints;[-]{f} and may]~~  
4627 (b) receive complaints~~[-]~~ ;  
4628 (c) take action to obtain voluntary compliance with this chapter~~[-]~~ ;  
4629 (d) ~~[-]refer cases to the attorney general[-]~~ ; and  
4630 (e) ~~[-]seek or provide remedies as provided in this chapter.~~  
4631 (2)  
(a) The ~~[administrator]~~ division may investigate and examine, in this state or elsewhere, by subpoena or otherwise, the activities, books, accounts, and records of:  
4633 (i) ~~[-]a person that provides or offers to provide debt-management services[-]~~ ; or  
4634 (ii) ~~[-]a person to which a provider[ has delegated its]~~ delegates the provider's obligations under an agreement or this chapter, to determine compliance with this chapter.

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- (b) ~~[Information]~~ The division may not disclose information that identifies ~~[individuals who have agreements]~~ an individual who has an agreement with the provider ~~[may not be disclosed]~~ to the public.
- 4640 (c) ~~[In connection with [the investigation]]~~ an investigation described under this Subsection (2), the ~~[administrator]~~ division may:
- 4642 ~~[(a)]~~ (i) charge the person ~~[the reasonable expenses necessarily incurred]~~ any reasonable expense the division incurs to conduct the examination;
- 4644 ~~[(b)]~~ (ii) require or permit a person to file a statement under oath as to ~~[all the facts and circumstances]~~ each fact and circumstances of a matter ~~[to be investigated]~~ the division investigates; and
- 4647 ~~[(c)]~~ (iii) seek a court order authorizing seizure from a bank at which the person maintains ~~[an account contemplated by]~~ a trust account described in Section 13-42-122, any or all money, books, records, accounts, and other property of the provider that ~~[is in the control of]~~ the bank controls and relates to ~~[individuals who reside]~~ an individual who resides in this state.
- 4652 (3) The ~~[administrator]~~ division may adopt rules to implement the provisions of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 4654 (4) The ~~[administrator]~~ division may:
- 4655 (a) ~~[enter into [cooperative arrangements]]~~ a cooperative arrangement with ~~[any other]~~ a federal or state agency ~~[having]~~ that has authority over providers; and
- 4657 (b) ~~[may]~~ exchange with ~~[any of those agencies]~~ a federal or state agency information about a provider, including information ~~[obtained]~~ the division obtains during an examination of the provider.
- 4660 (5) The ~~[administrator]~~ division shall establish fees in accordance with Section 63J-1-504 ~~[to be paid by providers]~~ that a provider shall pay for the expense of administering this chapter.
- 4663 (6)
- (a) The ~~[administrator]~~ division, by rule, shall adopt dollar amounts instead of those specified in Sections 13-42-102, 13-42-105, 13-42-109, 13-42-113, 13-42-123, 13-42-133, and 13-42-135 to reflect inflation, as measured by:
- 4666 (i) ~~[the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers;~~  
or~~[-]~~
- 4668

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(ii) if ~~[that index]~~ the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers is not available, another index ~~[adopted by rule by the administrator]~~ the division adopts by rule.

4671 (b) ~~[-]~~The ~~[administrator]~~ division shall adopt a base year and adjust the dollar amounts, effective  
on July 1 of each year, if the change in the index from the base year, as of December 31 of the  
preceding year, is at least 10%.

4674 (c) ~~[-]~~The division shall round the dollar amount ~~[shall be rounded]~~to the nearest \$100, except that the  
division shall round the amounts in Section 13-42-123 ~~[shall be rounded]~~to the nearest dollar.

4677 (7) The ~~[administrator]~~ division shall notify registered providers of any change in dollar amounts made  
~~[pursuant to]~~ in accordance with Subsection (6) and make that information available to the public.

4682 Section 100. Section **13-42-133** is amended to read:

4683 **13-42-133. Administrative remedies.**

4682 (1) The ~~[administrator]~~ division may enforce this chapter and rules ~~[adopted]~~ the division adopts under  
this chapter by taking one or more of the following actions:

4684 (a) ordering a provider, lead generator, person administering an account ~~[pursuant to]~~ in accordance  
with Subsection 13-42-122(2), or director, employee, or other agent of a provider to cease and desist  
from ~~[any violations]~~ a violation;

4687 (b) ordering a provider, lead generator, person administering an account ~~[pursuant to]~~ in accordance  
with Subsection 13-42-122(2), or person that ~~[has caused]~~ causes a violation to correct the violation,  
including making restitution of money or property to a person aggrieved by a violation;

4691 (c) subject to adjustment of the dollar amount ~~[pursuant to]~~ in accordance with Subsection  
13-42-132(6), imposing on a provider, lead generator, person administering an account ~~[pursuant~~  
~~to]~~ in accordance with Subsection 13-42-122(2), or other person that violates or causes a violation  
an administrative fine not exceeding \$10,000 for each violation;

4696 (d) prosecuting a civil action to:

4697 (i) enforce an order; or

4698 (ii) obtain restitution or equitable relief, or both; or

4699 (e) intervening in an action brought under Section 13-42-135.

4700 (2) Subject to adjustment of the dollar amount ~~[pursuant to]~~ in accordance with Subsection  
13-42-132(6), if a person violates or knowingly authorizes, directs, or aids in the violation of a final

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order ~~[issued]~~ the division issues under Subsection (1)(a) or (b), the ~~[administrator]~~ division may impose an administrative fine not exceeding \$20,000 for each violation.

4705 (3) The ~~[administrator]~~ division may maintain an action to enforce this chapter in any county.

4707 (4) The ~~[administrator]~~ division may recover the reasonable costs of enforcing the chapter under Subsections (1) through (3), including attorney fees based on the hours ~~[reasonably expended]~~ the division reasonably expends and the hourly rates for attorneys of comparable experience in the community.

4711 (5) In determining the amount of an administrative fine ~~[to impose]~~ the division imposes under Subsection (1) or (2), the ~~[administrator]~~ division director shall consider:

4713 (a) ~~[-]~~the seriousness of the violation~~[-]~~ ;

4714 (b) ~~[-]~~the good faith of the violator~~[-]~~ ;

4715 (c) ~~[-any]~~ a previous ~~[violations]~~ violation by the violator~~[-]~~ ;

4716 (d) ~~[-]~~the deleterious effect of the violation on the public~~[-]~~ ;

4717 (e) ~~[-]~~the net worth of the violator~~[-]~~ ; and

4718 (f) ~~[-]~~any other factor the ~~[administrator]~~ division director considers relevant to the determination of the administrative fine.

4720 ~~[(6) All money received through administrative fines imposed under this chapter shall be deposited in the Consumer Protection Education and Training Fund created by Section 13-2-8.]~~

4725 Section 101. Section **13-42-134** is amended to read:

4726 **13-42-134. Suspension, revocation, or nonrenewal of registration.**

4726 (1) In this section, "insolvent" means a provider:

4727 (a) ~~[having generally ceased-]~~ ceases to pay debts in the ordinary course of business other than as a result of good-faith dispute;

4729 (b) ~~[being-]~~ is unable to pay debts as ~~[they]~~ the debts become due; or

4730 (c) ~~[being-]~~ is insolvent within the meaning of the federal bankruptcy law, 11 U.S.C. Sec. 101 et seq.

4732 (2) The ~~[administrator]~~ division may suspend, revoke, or deny renewal of a provider's registration if:

4734 (a) a fact or condition exists that, if ~~[it]~~ the fact or condition had existed when the registrant applied for registration as a provider, would have been a reason for the division denying the registration;

4737 (b) the provider ~~[has committed]~~ commits a material violation of this chapter or a rule or order of the ~~[administrator]~~ division under this chapter;

4739 (c) the provider is insolvent;

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- 4740 (d) the provider, an employee or affiliate of the provider, a lead generator for the provider, a person  
administering an account for the provider [~~pursuant to~~] in accordance with Subsection 13-42-122(2),  
or a person to [~~whom~~] which the provider [~~has delegated its~~] delegates the provider's obligations  
under an agreement or this chapter;
- 4745 (i) [~~has refused~~] refuses to permit the [~~administrator~~] division to make an examination authorized by  
this chapter[;] ;
- 4747 (ii) [~~failed~~] fails to comply with Subsection 13-42-132(2)(b) no later than 15 days after the day on  
which the division makes a request in accordance with Section 13-42-132[;] ; or
- 4750 (iii) [~~made~~] makes a material misrepresentation or omission in complying with Subsection  
13-42-132(2)(b); or
- 4752 (e) the provider [~~has not responded~~] fails to respond within a reasonable time and in an appropriate  
manner to [~~communications~~] a communication from the [~~administrator~~] division.
- 4755 (3) If a provider becomes insolvent, the provider shall continue to provide debt-management services to  
an individual with whom the provider has an agreement until:
- 4758 (a) with the [~~administrator's~~] division's approval, the provider transfers the agreement to another  
registered provider; or
- 4760 (b) the provider returns to the individual all unexpended money that is under the provider's control.
- 4762 (4) If a provider [~~does not~~] fails to comply with Subsection 13-42-122(8) or if the  
[~~administrator~~] division otherwise finds that the public health or safety or general welfare requires  
emergency action, the [~~administrator~~] division may order a summary suspension of the provider's  
registration, effective on the date [~~specified~~] the division specifies in the order.
- 4767 (5) If the [~~administrator~~] division suspends, revokes, or denies renewal of the registration of a provider,  
the [~~administrator~~] division may seek a court order authorizing seizure of any or all of the money in  
a trust account required by Section 13-42-122, books, records, accounts, and other property of the  
provider which are located in this state.
- 4771 (6) If the [~~administrator~~] division suspends or revokes a provider's registration, the provider may  
appeal and request a hearing [~~pursuant to~~] in accordance with Title 63G, Chapter 4, Administrative  
Procedures Act.

4776 Section 102. Section **13-42-135** is amended to read:

4777 **13-42-135. Private enforcement.**

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- (1) If an individual voids an agreement [~~pursuant to~~] in accordance with Subsection 13-42-125(2), the individual may recover in a civil action all money paid or deposited by or on behalf of the individual [~~pursuant to~~] in accordance with the agreement, except amounts paid to [~~creditors~~] a creditor, in addition to the recovery under Subsections (3)(c) and (d).
- 4781 (2) If an individual voids an agreement [~~pursuant to~~] in accordance with Subsection 13-42-125(1), the individual may recover in a civil action three times the total amount of the fees, charges, money, and payments [~~made by the individual~~] the individual makes to the provider, in addition to the recovery under Subsection (3)(d).
- 4785 (3) Subject to Subsection (4), an individual with respect to whom a provider or other person violates this chapter may recover in a civil action from the provider, the person, and any person that [~~caused~~] causes the violation:
- 4788 (a) compensatory damages for injury, including noneconomic injury, caused by the violation;
- 4790 (b) except as otherwise provided in Subsection (4) and subject to adjustment of the dollar amount [~~pursuant to~~] in accordance with Subsection 13-42-132(6), with respect to a violation of Section 13-42-117, 13-42-119, 13-42-120, 13-42-121, 13-42-122, 13-42-123, 13-42-124, 13-42-126, or 13-42-127, or Subsection 13-42-128(1), (2), or (4), the greater of the amount recoverable under Subsection (3)(a) or \$5,000;
- 4795 (c) punitive damages; and
- 4796 (d) reasonable attorney fees and costs.
- 4797 (4) In a class action, except for a violation of Subsection 13-42-128(1)(f), the minimum damages provided in Subsection (3)(b) do not apply.
- 4799 (5)
- (a) A provider is not liable under this section for a violation of this chapter if the provider proves that the violation was not intentional and resulted from a good-faith error notwithstanding the maintenance of procedures [~~reasonably adapted~~] the provider reasonably adopts to avoid the error.
- 4803 (b) [-]An error of legal judgment with respect to a provider's obligations under this chapter is not a good-faith error as described in this Subsection (5).
- 4805 (c) [-]If, in connection with a violation, the provider [~~has received~~] receives more money than authorized by an agreement or this chapter, the defense provided by this Subsection (5) is not available unless the provider refunds the excess no later than two business days [~~of learning~~] after the day on which the provider learns of the violation.

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- 4810 (6) The ~~[administrator]~~ division shall assist an individual in enforcing a judgment against the surety  
bond or other security provided under Section 13-42-113 or 13-42-114.
- 4814 Section 103. Section **13-49-102** is amended to read:
- 4815 **13-49-102. Definitions.**
- As used in this chapter:
- 4815 (1) "Client" means a person who receives services from or enters into an agreement to receive services  
from an immigration consultant.
- 4817 (2) "Compensation" means anything of economic value that ~~[is paid, loaned, granted, given, donated, or  
transferred]~~ a person pays, loans, grants, gives, donates, or transfers to [a] another person, directly or  
indirectly, for or in consideration of:
- 4820 (a) services;
- 4821 (b) personal or real property; or
- 4822 (c) another thing of value.
- 4823 ~~[(3) "Department" means the Department of Commerce.]~~
- 4824 ~~[(4)]~~ (3) "Division" means the Division of Consumer Protection ~~[in the department]~~ established in  
Section 13-2-102.
- 4826 ~~[(5)]~~ (4) "Immigration consultant" means an individual who provides nonlegal assistance or advice on  
an immigration matter including:
- 4828 (a) completing a document ~~[provided by]~~ a federal or state agency provides, but not advising a person  
as to the person's answers on the document;
- 4830 (b) translating a person's answer to a question posed in a document ~~[provided by]~~ a federal or state  
agency provides;
- 4832 (c) securing for a person supporting documents, such as a birth certificate, that may be necessary to  
complete a document ~~[provided by]~~ a federal or state agency provides;
- 4834 (d) submitting a completed document on a person's behalf and at the person's request to the United  
States Citizenship and Immigration Services; or
- 4836 (e) for ~~[valuable consideration]~~ compensation, referring a person to ~~[a]~~ another person who could  
undertake legal representation activities in an immigration matter.
- 4838 ~~[(6)]~~ (5) "Immigration matter" means a proceeding, filing, or action affecting the immigration or  
citizenship status of a person that arises under:
- 4840 (a) immigration and naturalization law;

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- 4841 (b) executive order or presidential proclamation; or  
4842 (c) action of the United States Citizenship and Immigration Services, the United States Department of  
State, or the United States Department of Labor.

4846 Section 104. Section **13-49-201** is amended to read:

4847 **13-49-201. Requirement to be registered as an immigration consultant -- Exemptions.**

4847 (1)

[(a)] Except as provided in Subsection [(1)(b)] (2), an individual may not engage [in an activity of an  
immigration consultant] in an activity described in Subsection 13-49-102(4) for compensation  
unless the individual is registered under this chapter.

4850 [(b)] (2) Except for Subsections [13-49-303(3)] 13-49-303(3), (4), and [(4)] (5), this chapter does not  
apply to an individual authorized:

4852 [(i)] (a) to practice law in this state; or

4853 [(ii)] (b) by federal law to represent an individual before the Board of Immigration Appeals or the  
United States Citizenship and Immigration Services.

4855 [(2)] (3) An immigration consultant may only offer nonlegal assistance or advice in an immigration  
matter.

4859 Section 105. Section **13-49-202** is amended to read:

4860 **13-49-202. Application for registration -- Renewal.**

4859 (1) To register as an immigration consultant an individual shall submit to the division a registration  
application:

4861 (a) [~~submit an annual application in a form prescribed by~~] in the manner the division determines; and

4863 (b) [~~pay an annual~~] that includes:

4864 (i) a registration application fee [determined by the department] in an amount the division determines in  
accordance with Section 63J-1-504; [which includes]

4866 (ii) [~~the costs of the criminal background check required under~~] by Subsection [(1)(e)] (2)(c); and

4868 (iii) any information that the division requires by rule the division makes in accordance with Title 63G,  
Chapter 3, Utah Administrative Rulemaking Act.

4870 (2) An applicant for registration as an immigration consultant shall:

4871 [(e)] (a) [~~have good moral character in that the individual has~~] not have been convicted of:

4872 (i) a felony; or

4873

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(ii) a misdemeanor involving theft, fraud, or dishonesty within the [last] 10 years immediately preceding the day on which the applicant submits the applicant's application or renewal application[-; a misdemeanor involving theft, fraud, or dishonesty];

4877 [~~(d)~~] (b) submit fingerprint cards in a form acceptable to the division at the time the [application is filed] applicant files the application;[-and]

4879 [~~(e)~~] (c) consent to a fingerprint background check of the individual by:

4880 (i) [-]the Utah Bureau of Criminal Identification[-regarding the application.]; or

4881 (ii) another state agency or federal agency that performs criminal background checks; and

4883 (d) not have violated Chapter 11, Utah Consumer Sales Practices Act.

4884 [~~(2)~~] (3) The division shall register an individual who qualifies under this chapter as an immigration consultant.

4886 (4) An immigration consultant shall update registration information no later than 30 days after the day on which information the immigration consultant provides on the immigration consultant's application becomes incorrect or incomplete.

4889 (5) Registration of an immigration consultant under this chapter is effective for one year after the day on which the division registers an individual as an immigration consultant.

4891 (6) To renew an immigration consultant registration under this section, an immigration consultant shall submit a registration renewal application to the division at least 30 days before the day on which the immigration consultation's registration expires.

4894 (7) Registration with the division does not constitute an approval or endorsement of an immigration consultant by the division or the state.

4898 Section 106. Section **13-49-204** is amended to read:

4899 **13-49-204. Bonds -- Exemption -- Statements dependent on posting bond.**

4899 (1) An immigration consultant shall [~~post a cash bond or surety bond~~] maintain the following in a form the division approves, and in the amount of \$50,000:

4901 (a) [~~in the amount of \$50,000; and~~] a surety bond issued by a surety authorized to transact security business in this state; or

4903 (b) a certificate of deposit in a financial institution authorized under the laws of this state or the United States to accept deposits from the public.

4905 [~~(b)~~] (2) A surety bond or certificate of deposit described in Subsection (1) shall be payable to the division for the benefit of any person damaged by a fraud, misstatement, misrepresentation,

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unlawful act, omission, or failure to provide services of an immigration consultant, or an agent, representative, or employee of an immigration consultant.

4910 [~~(2)~~ A bond required under this section shall be:]

4911 [(a) in a form approved by the division; and]

4912 [(b) conditioned upon the faithful compliance of an immigration consultant with this chapter and division rules.]

4914 [(3) An immigration consultant shall keep the bond required under this section in force for one year after the immigration consultant's registration expires or the immigration consultant notifies the division in writing that the immigration consultant has ceased all activities regulated under this chapter.]

4918 [~~(4)~~ (3)

(a) If a surety bond [~~posted by~~] or certificate of deposit an immigration consultant posts under this section is canceled due to the immigration consultant's negligence, the division may assess a \$300 reinstatement fee.

4921 (b) [~~No~~] A person may not withdraw a part of a surety bond [~~posted by~~] or certificate of deposit an immigration consultant [~~under~~] posts in accordance with this section [~~may be withdrawn~~]:

4924 (i) during the one-year period the registration under this chapter is in effect; or

4925 (ii) while a revocation proceeding is pending against the immigration consultant.

4926 [~~(5)~~ (4)

(a) A surety bond [~~posted under this section by~~] or certificate of deposit an immigration consultant posts in accordance with this section may be forfeited if the immigration consultant's registration under this chapter is revoked.

4929 (b) Notwithstanding Subsection [~~(5)(a)~~] (4)(a), the division may make a claim against a surety bond or certificate of deposit posted by an immigration consultant for money owed the division under this chapter without the division first revoking the immigration consultant's registration.

4933 [~~(6)~~ (5) An individual may not disseminate by any means a statement indicating that the individual is an immigration consultant, engages in the business of an immigration consultant, or proposes to engage in the business of an immigration consultant, unless the individual [~~has posted~~] posts a surety bond or certificate of deposit under this section that [~~is maintained~~] the individual maintains throughout the period covered by the statement.

4939

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~~[(7)]~~ (6) An immigration consultant may not make or authorize the making of an oral or written reference to the immigration consultant's compliance with the bonding requirements of this section except as provided in this chapter.

4942 (7) The division may claim an immigration consultant's surety bond or certificate of deposit for the benefit of any client who incurs damages as the result of the immigration consultant's failure to comply with this chapter.

4945 (8) After the client recovers full damages, the division may recover from the surety bond or certificate of deposit any administrative fines, civil penalties, investigative costs, attorney fees, and other costs of collecting and distributing funds in accordance with this section.

4951 Section 107. Section **13-49-301** is amended to read:

4952 **13-49-301. Requirements for written contract -- Prohibited statements.**

4952 (1)

(a) Before an immigration consultant may provide services to a client, the immigration consultant shall provide the client with a written contract.

4954 (b) ~~[-]~~The contents of ~~[the]~~ a written contract described in this Subsection (1) shall comply with this section and rules ~~[made by]~~the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

4957 ~~[(b)]~~ (c) A client may cancel a written contract on or before midnight of the third business day after ~~[execution of]~~ the day on which the immigration consultant and client execute the written contract, excluding weekends and state and federal holidays.

4960 (2) A written contract under this section shall be stated in both English and in the client's native language.

4962 (3) A written contract under this section shall:

4963 (a) state the purpose for which the client has hired the immigration consultant~~[ has been hired]~~;

4965 (b) state the one or more services ~~[to be performed]~~ the immigration consultant will perform;

4967 (c) state the price for a service ~~[to be performed]~~ the immigration consultant will perform;

4968 (d) include a statement printed in ~~[10-point]~~ 12-point boldface ~~[type]~~ font that the immigration consultant is not an attorney and may not perform the legal services that an attorney performs;

4971 (e) with regard to a document ~~[to be prepared by]~~the immigration consultant prepares:

4972 (i) list the document ~~[to be prepared]~~ the immigration consultant will prepare;

4973 (ii) explain the purpose of the document;

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- 4974 (iii) explain the process [~~to be followed~~] the immigration consultant will follow in preparing of the document;
- 4976 (iv) explain the action [~~to be taken by~~]the immigration consultant will take;
- 4977 (v) state the agency or office where the immigration consultant will file each document[~~-will be filed~~]; and
- 4979 (vi) state the approximate processing times according to current published agency guidelines;
- 4981 (f) include a provision stating that the person may report complaints relating to an immigration consultant to the:
- 4983 (i) division, including a [~~toll-free~~]telephone number and [~~Internet web site~~] website; and
- 4985 (ii) Office of Immigrant Assistance of the United States Department of Justice, including a [~~toll-free~~]telephone number and [~~Internet~~]website;
- 4987 (g) include a provision stating that a person may report complaints concerning the unauthorized practice of law [~~may be reported~~]to the Utah State Bar, including a [~~toll-free~~]telephone number and [~~Internet~~]website; and
- 4990 (h) in accordance with Subsection [~~(1)(b)~~] (1)(c), include a provision stating in [~~bold~~] 12-point boldface font on the first page of the written contract in both English and in the client's native language in accordance with Subsection (2): "You may cancel this contract on or before midnight of the third business day after execution of the written contract."
- 4995 (4) A written contract may not contain a provision relating to the following:
- 4996 (a) a guarantee or promise, unless the immigration consultant has some basis in fact for making the guarantee or promise; or
- 4998 (b) a statement that the immigration consultant can or will obtain a special favor from or has special influence with the United States Citizenship and Immigration Services, or any other governmental agency, employee, or official, that may have a bearing on a client's immigration matter.
- 5002 (5) An immigration consultant may not make a statement described in Subsection (4) orally to a client.
- 5004 (6) A written contract is void if not written in accordance with this section.
- 5007 Section 108. Section **13-49-302** is amended to read:
- 5008 **13-49-302. Accounting for services -- Receipts.**
- 5007 (1)
- (a) An immigration consultant shall provide a signed receipt to a client for each payment [~~made by that~~] that the client, or a person acting on the client's behalf, makes.

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- 5009 (b) ~~[-]~~The receipt described in Subsection (1)(a) shall be typed or computer generated on the  
immigration consultant's letterhead.
- 5011 (2) An immigration consultant shall make a statement of accounting for the services rendered and  
payments made:
- 5013 (a) in the client's native language;
- 5014 (b) to the client every two months;
- 5015 (c) that is typed or computer generated on the immigration consultant's letterhead;
- 5016 (d) that lists the individual charges and total charges for services; and
- 5017 (e) that lists the payments ~~[made by-]~~the client makes.
- 5020 Section 109. Section **13-49-303** is amended to read:
- 5021 **13-49-303. Notice to be displayed -- Disclosure to be provided in writing.**
- 5021 ~~[(1) An immigration consultant shall conspicuously display in the immigration consultant's office a  
notice that shall be at least 12 by 20 inches with boldface type or print with each character at least  
one inch in height and width in English and in the native language of the immigration consultant's  
clientele, that contains the following information:]~~
- 5025 ~~[(a) the full name, address, and evidence of compliance with any applicable bonding requirement  
including the bond number;]~~
- 5027 ~~[(b) a statement that the immigration consultant is not an attorney; and]~~
- 5028 ~~[(c) the name of each immigration consultant employed at each location.]~~
- 5029 ~~[(2)]~~ (1)
- ~~[(a)]~~ Before providing ~~[any services]~~ a service, an immigration consultant shall provide a client with a  
written disclosure in the native language of the client that includes the following:
- 5032 ~~[(i)]~~ (a) the immigration consultant's name, address, and telephone number;
- 5033 ~~[(ii)]~~ (b) the immigration consultant's agent for service of process;
- 5034 ~~[(iii)]~~ (c) evidence of ~~the immigration consultant's~~ compliance with any applicable ~~[bonding]~~ surety  
bond or certificate of deposit requirement, including the bond number or certificate of deposit  
number; ~~[-and]~~
- 5037 ~~[(iv)]~~ (d) a list of the services that the immigration consultant provides and the current and total fee  
for each service[-] ; and
- 5039 (e) a statement that the immigration consultant:
- 5040 (i) is not an attorney; and

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- 5041 (ii) may not charge a client a fee for the referral of the client to another person for a service that the  
immigration consultant cannot or will not provide to the client.
- 5043 [(b)] (2) An immigration consultant shall obtain the signature of the client verifying that the client  
received the written disclosures described in Subsection [(2)(a)] (1) before [a] the immigration  
consultant provides a service[ is provided].
- 5046 (3)  
[(a)] Except as provided in [Subsections (3)(b) and (3)(c)] Subsection (4), an immigration consultant  
who prints, displays, publishes, distributes, or broadcasts, or who causes to be printed, displayed,  
published, distributed, or broadcasted, [any] an advertisement for services as an immigration  
consultant, shall include in [that] the advertisement a clear and conspicuous statement that the  
immigration consultant is not an attorney.
- 5052 [(b)] (4)  
(a) Subsection [(3)(a)] (3) does not apply to an immigration consultant who is not licensed as an  
attorney in [any] a state or territory of the United States, but is authorized by federal law to represent  
[persons] a person before the Board of Immigration Appeals or the United States Citizenship and  
Immigration Services.
- 5056 (b) [-]A person described in this Subsection [(3)(b)] (4) shall include in an advertisement for services  
as an immigration consultant a clear and conspicuous statement that the immigration consultant is  
not an attorney, but is authorized by federal law to represent [persons] a person before the Board of  
Immigration Appeals or the United States Citizenship and Immigration Services.
- 5061 [(c)] ~~Subsection (3)(a) does not apply to a person who is not an active member of the Utah State Bar,  
but is an attorney licensed in another state or territory of the United States and is admitted to  
practice before the Board of Immigration Appeals or the United States Citizenship and Immigration  
Services. A person described in this Subsection (3)(c) shall include in any advertisement for  
immigration services a clear and conspicuous statement that the person is not an attorney licensed to  
practice law in this state, but is an attorney licensed in another state or territory of the United States,  
and is authorized by federal law to represent persons before the Board of Immigration Appeals or  
the United States Citizenship and Immigration Services.]~~
- 5070 [(4)] (5) If an advertisement subject to this section is in a language other than English, the statement  
required by Subsection (3) shall be in the same language as the advertisement.
- 5074 Section 110. Section **13-49-305** is amended to read:

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5075 **13-49-305. Documents -- Treatment of original documents.**

5074 (1)

(a) An immigration consultant shall deliver to a client a copy of a document [~~completed~~] the immigration consultant completes on behalf of the client.

5076 (b) [~~-~~]An immigration consultant shall include on a document [~~delivered~~] the immigration consultant delivers to a client the name and address of the immigration consultant.

5079 (2) An immigration consultant shall retain a copy of a document of a client for not less than three years from the [~~date of~~] day on which the immigration consultant makes the last service to the client.

5082 (3)

(a) An immigration consultant shall return to a client [~~all original documents~~] each original document that the client [~~has provided~~] provides to the immigration consultant in support of the client's application including:

5085 (a) an original birth certificate[;] ;

5086 (b) [~~-~~] a rental agreement[;] ;

5087 (c) [~~-~~] a utility bill[;] ;

5088 (d) [~~-~~] an employment document[;] ;

5089 (e) [~~-~~]a registration document issued by the Division of Motor Vehicles[;] ; or

5090 (f) [~~-~~]a passport.

5091 [(b)] (4) [~~An~~] An immigration consultant shall return to the client an original document that [~~does not need~~] is not required to be submitted to immigration authorities as an original document [~~shall be returned by the immigration consultant~~] immediately after [making] the immigration consultant makes a copy.

5097 Section 111. Section **111** is enacted to read:

5098 **13-49-306. Denial, suspension, or revocation of an application or registration.**

In accordance with Chapter 2, Division of Consumer Protection, and Title 63G, Chapter 4, Administrative Procedures Act, the division may initiate adjudicative proceedings to deny, suspend, or revoke an application or registration if:

5101 (1) the division finds that the denial, suspension, or revocation is in the public interest; and

5102 (2)

(a) the registration is incomplete, false, or misleading; or

5103 (b) the applicant:

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- 5104 (i) violates, causes a violation, allows a violation, or fails to satisfy the requirements of a provision of:  
5106 (A) this chapter; or  
5107 (B) a rule the division makes in accordance with this chapter;  
5108 (ii) violates Chapter 11, Utah Consumer Sales Practices Act;  
5109 (iii) is enjoined by a court, or is the subject of an administrative order or judicial order issued in Utah or  
another state, if the order:  
5111 (A) includes a finding or admission of fraud, breach of fiduciary duty, or material misrepresentation; or  
5113 (B) is based on a finding of lack of integrity, truthfulness, or mental competence;  
5114 (iv) is convicted of a crime involving theft, fraud, or dishonesty;  
5115 (v) obtains or attempts to obtain a registration by misrepresenting a material fact;  
5116 (vi) fails to provide information the division requests;  
5117 (vii) fails to pay an administrative fine that the division or an administrative or judicial order imposes;  
or  
5119 (viii) fails to pay the fee to file a registration application or a renewal application.  
5122 Section 112. Section **13-49-401** is amended to read:  
5123 **13-49-401. Unlawful acts.**  
5122 (1) It is unlawful for an immigration consultant to:  
5123 (a) make a false or misleading statement to a client while providing [~~services~~] a service to [~~that~~] the  
client;  
5125 (b) make a guarantee or promise to a client, unless the guarantee or promise is in writing and the  
immigration consultant has some basis in fact for making the guarantee or promise;  
5128 (c) make a statement that the immigration consultant can or will obtain a special favor from or has  
special influence with the United States Citizenship and Immigration Services, or any other  
governmental agency, employee, or official, that may have a bearing on a client's immigration  
matter;[~~or~~]  
5132 (d) charge a client a fee for the referral of the client to another person for services that the immigration  
consultant cannot or will not provide to the client[~~;~~] ;  
5134 (e) represent that the division or the state endorses the immigration consultant;  
5135 (f) omit from a filing with the division a material statement of fact this chapter or a rule the division  
makes in accordance with this chapter requires; or

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(g) include in a filing with the division a material statement of fact that the immigration consultant or immigration consultant's principal knows or should know is false, deceptive, inaccurate, or misleading.

5140 (2) An immigration consultant may not translate a document or other information in a way that falsely represents or implies that the immigration consultant is an attorney.

5142 [~~(2) A sign describing the prohibition described in Subsection (1)(d) shall be conspicuously displayed in the office of an immigration consultant.~~]

5146 Section 113. Section **13-49-402** is amended to read:

5147 **13-49-402. Violations -- Actions by division.**

5146 [~~(1) The division may make an investigation the division considers necessary to determine whether a person is violating, has violated, or is about to violate this chapter or any rule made or order issued under this chapter. As part of the investigation, the division may:]~~

5149 [~~(a) require a person to file a statement in writing;~~]

5150 [~~(b) administer oaths, subpoena witnesses and compel their attendance, take evidence, and examine under oath any person in connection with an investigation; and]~~

5152 [~~(c) require the production of any books, papers, documents, merchandise, or other material relevant to the investigation.]~~

5154 [~~(2) A person who violates this chapter is subject to:]~~

5155 [~~(a) a cease and desist order; and]~~

5156 [~~(b) an administrative fine of not less than \$1,000 or more than \$5,000 for each separate violation.]~~

5158 [~~(3) An administrative fine shall be deposited in the Consumer Protection Education and Training Fund created in Section 13-2-8.]~~

5160 (1) In addition to the division's enforcement powers described in Chapter 2, Division of Consumer Protection:

5162 (a) the division director may impose an administrative fine of up to \$2,500 for a violation of this chapter; and

5164 (b) the division may bring an action in a court with jurisdiction to enforce a provision of this chapter.

5166 (2) In a court action the division brings to enforce a provision of this chapter, the court may:

5167 (a) declare that an act or practice violates a provision of this chapter;

5168 (b) issue an injunction for a violation of this chapter;

5169 (c) order disgorgement of any money received in violation of this chapter;

## SB0038S01 compared with SB0038S02

5170 (d) order payment of disgorged money to an injured purchaser or consumer;

5171 (e) impose a fine of up to \$2,500 for each violation of this chapter; or

5172 (f) award any other relief that the court deems reasonable and necessary.

5173 [(4)] (3)

(a) A person [who] that intentionally violates this chapter:

5174 (i) is guilty of a class A misdemeanor; and

5175 (ii) may be fined up to \$10,000.

5176 (b) A person intentionally violates this part if the violation occurs after the division, attorney general, or a district or county attorney notifies the person by certified mail that the person is in violation of this chapter.

5181 Section 114. Section **13-49-403** is amended to read:

5182 **13-49-403. Action by attorney general or district or county attorney.**

5182 [(1)] Upon referral from the division, the attorney general or [any] a district or county attorney may:

5184 [(a)] (1) bring an action for temporary or permanent injunctive or other relief in [~~any court of competent jurisdiction~~] a court with jurisdiction for [any] a violation of this part;

5186 [(b)] (2) bring an action in [~~any court of competent~~] a court with jurisdiction for the collection of penalties authorized under Subsection [~~13-49-402(2)~~] 13-49-402(2); or

5188 [(c)] (3) bring an action under Subsection [~~13-49-402(4)~~] 13-49-402(3).

5189 [(2) A court may, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of a violation of this part if proof of loss is submitted to the satisfaction of the court.]

5194 Section 115. Section **13-49-404** is amended to read:

5195 **13-49-404. Recovery of losses.**

In addition to any other remedies, a person [suffering] that suffers pecuniary loss because of a violation by another person of this chapter may bring an action in [~~any court of competent~~] a court with jurisdiction and may recover:

5197 (1) the greater of \$500 or twice the amount of the pecuniary loss; and

5198 (2) court costs and reasonable attorney fees as [~~determined by the court~~] the court determines.

5201 Section 116. Section **13-51-102** is amended to read:

5202 **13-51-102. Definitions.**

5201

## SB0038S01 compared with SB0038S02

- (1) "Division" means the Division of Consumer Protection [~~within the Department of Commerce~~] established in Section 13-2-102.
- 5203 (2) "Prearranged ride" means a period of time that:
- 5204 (a) begins when the transportation network driver [~~has accepted~~] accepts a passenger's request for a ride through the transportation network company's software application; and
- 5207 (b) ends when the passenger exits the transportation network driver's vehicle.
- 5208 (3) "Software application" means an [~~Internet-connected~~] internet-connected software platform, including a mobile application, that a transportation network company uses to:
- 5210 (a) connect a transportation network driver to a passenger; and
- 5211 (b) process passenger requests.
- 5212 (4) "Transportation network company" means an entity that:
- 5213 (a) uses a software application to connect a passenger to a transportation network driver providing transportation network services;
- 5215 (b) is not:
- 5216 (i) a taxicab, as that term is defined in Section 53-3-102; or
- 5217 (ii) a motor carrier, as that term is defined in Section 72-9-102; and
- 5218 (c) except in certain cases involving a motor vehicle with a level four or five automated driving system, as defined in Section 41-26-102.1, does not own, control, operate, or manage the vehicle used to provide the transportation network services.
- 5221 (5) "Transportation network driver" means:
- 5222 (a) an individual who:
- 5223 (i) pays a fee to a transportation network company, and, in exchange, receives a connection to a potential passenger from the transportation network company;
- 5225 (ii) operates a motor vehicle that:
- 5226 (A) the individual owns, leases, or is authorized to use; and
- 5227 (B) the individual uses to provide transportation network services; and
- 5228 (iii) receives, in exchange for providing a passenger a ride, compensation that exceeds the individual's cost to provide the ride; or
- 5230 (b) a level four or five automated driving system, as that term is defined in Section 41-26-102.1, when the automated driving system [~~is operating~~] operates the vehicle and is used to provide a passenger a ride in exchange for compensation.

## SB0038S01 compared with SB0038S02

- 5233 (6) "Transportation network services" means, for a transportation network driver providing services through a transportation network company:
- 5235 (a) providing a prearranged ride; or
- 5236 (b) being engaged in a waiting period.
- 5237 (7) "Waiting period" means a period of time when:
- 5238 (a) a transportation network driver is logged into a transportation network company's software application; and
- 5240 (b) the transportation network driver is not engaged in a prearranged ride.
- 5243 Section 117. Section **13-51-104** is amended to read:
- 5244 **13-51-104. Registration -- Division audits -- Fines.**
- 5243 (1) A person may not operate a transportation network company without registering with the division [under] in accordance with Subsection (2).
- 5245 (2) To register as a transportation network company, a person shall submit to the division a registration application:
- 5247 (a) in a form the division approves; and
- 5248 (b) that includes:
- 5249 (i) a registration application fee in an amount the division determines in accordance with Section 63J-1-504;
- 5251 (ii) a designated registered agent for service of process in the state and the registered agent's:
- 5253 (A) name;
- 5254 (B) street address;
- 5255 (C) mailing address; and
- 5256 (D) telephone number; and
- 5257 (iii) a copy of the transportation network company's:
- 5258 (A) policy of insurance, including each amendment and endorsement to the policy in accordance with Section 13-51-108;
- 5260 (B) drug and alcohol use policy required under Section 13-51-106;
- 5261 (C) discrimination policy required under Subsection 13-51-105(6); and
- 5262 (D) any information that the division requires by rule that the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 5264 [~~2~~] (3) The division shall register a person to operate a transportation network company if:

## SB0038S01 compared with SB0038S02

- 5265 (a) the person:
- 5266 (i) demonstrates to the division that the person meets the definition of a transportation network  
company under Section 13-51-102; and
- 5268 (ii) pays a registration fee in an amount determined by the division in accordance with Section  
63J-1-504; and
- 5270 (b) the division determines that the person complies with the operating requirements for a transportation  
network company described in this chapter.
- 5272 (4) To renew a transportation network company registration under this section, a transportation network  
company shall submit a registration renewal application to the division at least 30 days before  
the day on which the transportation network company's registration expires in accordance with  
Subsection (8).
- 5276 (5) A transportation network company shall update registration information within 30 days after the  
day on which information the transportation network company provides on the application becomes  
incorrect or incomplete.
- 5279 (6) Registration with the division does not constitute an approval or endorsement of the provider by the  
division or the state.
- 5281 (7) A transportation network company may not:
- 5282 (a) represent that the division or the state endorses or approves the transportation network company;
- 5284 (b) omit from a filing with the division a material statement of fact that this chapter or a rule the  
division makes in accordance with this chapter requires; or
- 5286 (c) include in a filing with the division a material statement that the transportation network company or  
transportation network company's principal knows or should know is false, deceptive, inaccurate, or  
misleading.
- 5289 (8) Registration of a transportation network company under this chapter is effective for one year after  
the day on which the division issues the registration in accordance with Subsection (3).
- 5292 [~~(3) A transportation network company's registration under Subsection (2) is:]~~
- 5293 [~~(a) valid until one year after the day on which the transportation network company registers with the  
division; and]~~
- 5295 [~~(b) renewable if the transportation network company meets the requirements of Subsection (2).]~~
- 5297 [~~(4) The division may audit the records of a transportation network company, including a random  
sample of the transportation network company's records related to transportation network drivers:]~~

## SB0038S01 compared with SB0038S02

- 5300 [~~(a) no more than twice per year;~~]  
5301 [~~(b) at a location agreed to by the division and the transportation network company; and]~~  
5302 [~~(c) notwithstanding Subsection (4)(a), at any time to investigate a complaint.]~~  
5303 [~~(5) The division may fine a transportation network company up to \$500 for each violation of this chapter.]~~

5307 Section 118. Section **118** is enacted to read:

5308 **13-51-104.1. Denial, suspension, or revocation of an application or registration.**

In accordance with Chapter 2, Division of Consumer Protection, and Title 63G, Chapter 4, Administrative Procedures Act, the division may initiate adjudicative proceedings to deny, suspend, or revoke an application or registration if:

- 5311 (1) the division finds that the denial, suspension, or revocation is in the public interest; and  
5312 (2)  
(a) the registration is incomplete, false, or misleading; or  
5313 (b) the applicant or the applicant's principal:  
5314 (i) violates, causes a violation, allows a violation, or fails to satisfy the requirements of a provision of:  
5316 (A) this chapter; or  
5317 (B) a rule the division makes in accordance with this chapter;  
5318 (ii) violates Chapter 11, Utah Consumer Sales Practices Act;  
5319 (iii) is enjoined by a court, or is the subject of an administrative or judicial order issued in Utah or another state, if the order:  
5321 (A) includes a finding or admission of fraud, breach of fiduciary duty, or material misrepresentation; or  
5323 (B) is based on a finding of a lack of integrity, truthfulness, or mental competence;  
5324 (iv) is convicted of a crime involving theft, fraud, or dishonesty;  
5325 (v) obtains or attempts to obtain a registration by misrepresenting a material fact;  
5326 (vi) fails to provide information the division requests;  
5327 (vii) fails to pay an administrative fine the division or an administrative or judicial order imposes; or  
5329 (viii) fails to pay the fee to file a registration application or a renewal application.

5332 Section 119. Section **13-51-105** is amended to read:

5333 **13-51-105. Operating requirements.**

5332

## SB0038S01 compared with SB0038S02

- (1) A transportation network company shall maintain an agent for service of process in the state [~~and shall notify the division of the name and address of the agent~~] in accordance with Subsection 13-51-104(2).
- 5335 (2) A transportation network company may collect, on behalf of a transportation network driver, a fare for a prearranged ride if the transportation network company:
- 5337 (a) posts the method for calculating the fare on the transportation network company's software application;
- 5339 (b) provides a passenger the rate [~~used~~] the transportation network company uses to calculate the fare for a prearranged ride; and
- 5341 (c) allows a passenger the option to obtain an estimated fare for a prearranged ride before the passenger enters a transportation network driver's vehicle.
- 5343 (3) For [~~each~~] a prearranged ride, a transportation network company shall:
- 5344 (a) before a passenger enters a transportation network driver's vehicle, display on the transportation network company's software application a picture of the transportation network driver;
- 5347 (b) shortly after the prearranged ride is complete, transmit an electronic receipt to the passenger that lists:
- 5349 (i) the prearranged ride's origin and destination;
- 5350 (ii) the prearranged ride's total time and distance; and
- 5351 (iii) an itemization of the total fare the passenger [~~paid~~] pays, if any; and
- 5352 (c) allow a passenger to notify a transportation network driver if a passenger has skis, a snowboard, other oversize luggage, or child restraint device.
- 5354 (4) A transportation network driver may not, while providing transportation network services:
- 5356 (a) provide a ride to an individual who requests the ride by a means other than a transportation network company's software application;
- 5358 (b) solicit or accept cash payments from a passenger; or
- 5359 (c) accept [~~any~~] a means of payment other than payment through a transportation network company's software application.
- 5361 (5) A transportation network company shall maintain a record of:
- 5362 (a) all trips, for a minimum of five years after the day on which the trip [~~occurred~~] occurs; and
- 5364 (b) all information in a transportation network company's possession regarding a transportation network driver, for a minimum of five years after the day on which the transportation network driver last

## SB0038S01 compared with SB0038S02

provided transportation network services using the transportation network company's software application.

- 5368 (6) A transportation network company shall adopt a policy that prohibits unlawful discrimination with respect to a passenger and shall:
- 5370 (a) provide a copy of the policy to each transportation network driver; or
- 5371 (b) post the policy on the transportation network company's website.
- 5372 (7)
- (a) A transportation network driver shall accommodate:
- 5373 (i) a service animal; or
- 5374 (ii) an individual with a physical disability.
- 5375 (b) A transportation network driver or transportation network company may not impose an additional charge to provide the accommodations described in Subsections (7)(a) and (8).
- 5378 (8) A transportation network company shall:
- 5379 (a) allow a passenger to request a prearranged ride in a wheelchair-accessible vehicle; and
- 5381 (b) if a wheelchair-accessible vehicle is not available to a passenger who requests a wheelchair-accessible vehicle under Subsection (8)(a), direct the passenger to a transportation service that provides wheelchair-accessible service, if available.
- 5384 (9) A transportation network company shall disclose to a transportation network driver:
- 5385 (a) a description of the insurance coverage the transportation network company provides the transportation network driver while the transportation network driver is providing transportation network services, including the insurance coverage's liability limit;
- 5388 (b) that the transportation network company's [~~personal~~]automobile insurance policy may not provide coverage to the transportation network driver during a waiting period or a prearranged ride;
- 5391 (c) that if the vehicle the transportation network driver uses to provide transportation network services has a lien against the vehicle, the transportation network driver is required to notify the lienholder that the transportation network driver is using the vehicle to provide transportation network services; and
- 5395 (d) that using a vehicle with a lien against the vehicle to provide transportation network services may violate the transportation network driver's contract with the lienholder.

5397

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(10) A transportation network company and the transportation network company's insurer shall, for an incident that occurs while a transportation network driver is providing transportation network services:

- 5400 (a) cooperate with a liability insurer that insures the vehicle the transportation network driver uses to provide the transportation network services;
- 5402 (b) provide, to the liability insurer, the precise date and time that an incident occurred, including the precise time when a driver logged in or out of the transportation network company's software application; and
- 5405 (c) provide the information described in Subsection (10)(b) to a liability insurer no later than 10 business days after the day on which the liability insurer requests the information from the transportation network company.

5408 (11) If a transportation network company's insurer insures a vehicle with a lien against the vehicle, and the transportation network company's insurer covers a claim regarding the vehicle under comprehensive or collision coverage, the transportation network company shall direct the transportation network company's insurer to issue the payment for the claim:

- 5413 (a) directly to the person that [~~is repairing~~] conducts the repair on the vehicle; or
- 5414 (b) jointly to the owner of the vehicle and the primary lienholder.

5417 Section 120. Section **120** is enacted to read:

5418 **13-51-110. Enforcement powers of the division.**

- 5417 (1) In addition to the division's enforcement powers described in Chapter 2, Division of Consumer Protection:
- 5419 (a) the division director may impose an administrative fine of up to \$2,500 for each violation of this chapter; and
- 5421 (b) the division may bring an action in a court with jurisdiction to enforce a provision of this chapter.
- 5423 (2) If the division brings an action in accordance with Subsection (1)(b):
- 5424 (a) the court may:
- 5425 (i) declare that an act or practice violates a provision of this chapter;
- 5426 (ii) issue an injunction for a violation of this chapter;
- 5427 (iii) order disgorgement of any money received in violation of this chapter;
- 5428 (iv) order payment of disgorged money to an injured purchaser or consumer;
- 5429 (v) impose a fine of up to \$2,500 for each violation of this chapter; or

## SB0038S01 compared with SB0038S02

- 5430 (vi) award any other relief that the court deems reasonable and necessary; and  
5431 (b) if the court grants judgment or injunctive relief to the division, the court shall award the division:  
5433 (i) reasonable attorney fees;  
5434 (ii) court costs; and  
5435 (iii) investigative fees.

5438 Section 121. Section **13-52-102** is amended to read:

5437 **CHAPTER 52. Residential Solar Energy Consumer Protection Act**

5440 **13-52-102. Definitions.**

As used in this chapter:

- 5440 (1) "Actual energy production" means the average kilowatt-hours produced and measured by the residential solar energy system during the 12 consecutive months immediately following the residential solar energy system's activation.
- 5443 (2) "Customer" means a person [~~who~~] that, for primarily personal, family, or household purposes:
- 5445 (a) purchases, or is solicited to purchase, a residential solar energy system under a system purchase agreement;
- 5447 (b) leases, or is solicited to lease, a residential solar energy system under a system lease agreement; or
- 5449 (c) purchases, or is solicited to purchase, electricity under a power purchase agreement.
- 5450 (3) "Division" means the Division of Consumer Protection, established in [~~Section 13-2-1~~] Section 13-2-102.
- 5452 (4)
- (a) "Employee" means an individual whose compensation for federal income tax purposes is reported, or is required to be reported, on a W-2 form the employer issues.
- 5454 (b) "Employee" does not include an independent contractor whose manner and means of work performance are not subject to direction, supervision, or instruction from the person who [~~employed~~] employs the independent contractor.
- 5457 (5) "Estimated energy production" means the solar retailer's estimate, measured by kilowatt-hour, of how much energy the residential solar energy system will produce.
- 5459 (6) "Nameplate capacity" means the sum of the maximum rated outputs of all electrical generating equipment under specific conditions [~~designated by~~]the manufacturer designates, as indicated on the nameplate physically attached to the equipment.

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(7) "Participant" means an owner, officer, director, member or manager of a limited liability company, principal, trustee, general or limited partner, sole proprietor, or an individual, with a controlling interest in an entity.

5465 (8) "Power purchase agreement" means an agreement:

5466 (a) between a customer and a solar retailer;

5467 (b) for the customer's purchase of electricity [~~generated by~~] that a residential solar energy system owned by the solar retailer generates; and

5469 (c) that provides for the customer to make payments over a term of at least five years.

5470 (9)

(a) "Residential solar energy system" means a solar energy system that:

5471 (i) is installed in the state;

5472 (ii) generates electricity primarily for on-site consumption for personal, family, or household purposes;

5474 (iii) is situated on no more than four units of residential real property; and

5475 (iv) has an electricity delivery capacity that exceeds one kilowatt.

5476 (b) "Residential solar energy system" does not include a generator that:

5477 (i) produces electricity; and

5478 (ii) is intended for occasional use.

5479 (10) "Sales representative" means an individual who:

5480 (a)

(i) enters into a business relationship with a solar retailer to sell or attempt to sell a residential solar energy system through direct contact with customers and potential customers; and

5483 (ii) as part of the business relationship described in Subsection (10)(a), is compensated, in whole or in part, by commission; or

5485 (b) sets appointments or discusses the benefits of solar energy with a potential customer on behalf of a solar retailer.

5487 (11) "Solar agreement" means a system purchase agreement, a system lease agreement, or a power purchase agreement.

5489 (12) "Solar energy system" means a system or configuration of solar energy devices that collects and uses solar energy to generate electricity.

5491 (13) "Solar retailer" means a person who:

## SB0038S01 compared with SB0038S02

- 5492 (a) sells or proposes to sell a residential solar energy system to a customer under a system purchase agreement;
- 5494 (b) owns the residential solar energy system that is the subject of a system lease agreement or proposed system lease agreement; or
- 5496 (c) sells or proposes to sell electricity to a customer under a power purchase agreement.
- 5497 (14) "System lease agreement" means an agreement:
- 5498 (a) under which a customer leases a residential solar energy system from a solar retailer; and
- 5500 (b) that provides for the customer to make payments over a term of at least five years for the lease of the residential solar energy system.
- 5502 (15) "System purchase agreement" means an agreement under which a customer purchases a residential solar energy system from a solar retailer.
- 5506 Section 122. Section **13-52-202** is amended to read:
- 5507 **13-52-202. Contents of disclosure statement for any solar agreement.**
- If a solar retailer is proposing to enter any solar agreement with a potential customer, the disclosure statement required in Subsection 13-52-201(1) shall include:
- 5509 (1) a statement indicating that operations or maintenance services are not included as part of the solar agreement, if those services are not included as part of the solar agreement;
- 5511 (2) if the solar retailer provides any written estimate of the savings the potential customer is projected to realize from the residential solar energy system:
- 5513 (a)
- 5514 (i) the estimated projected savings over the life of the solar agreement; and
- 5517 (ii) at the discretion of the solar retailer, the estimated projected savings over any longer period not to exceed the anticipated 20-year useful life of the residential solar energy system;
- 5519 (b) any material assumptions used to calculate estimated projected savings and the source of those assumptions, including:
- 5522 (i) if an annual electricity rate increase is assumed, the rate of the assumed increase, which may not be greater than 3%, and the solar retailer's basis for the assumption of the rate increase;
- 5524 (ii) the potential customer's eligibility for or receipt of tax credits or other governmental or utility incentives;
- 5526 (iii) residential solar energy system production data, including production degradation;

## SB0038S01 compared with SB0038S02

- (iv) the residential solar energy system's eligibility for interconnection under any net metering or similar program;
- 5528 (v) electrical usage and the residential solar energy system's designed offset of the electrical usage;
- 5530 (vi) historical utility costs paid by the potential customer;
- 5531 (vii) any rate escalation affecting a payment between the potential customer and the solar retailer; and
- 5533 (viii) the costs associated with replacing equipment making up part of the residential solar energy system or, if those costs are not assumed, a statement indicating that those costs are not assumed; and
- 5536 (c) three separate statements in capital letters in close proximity to any written estimate of projected savings, with substantially the following form and content:
- 5538 (i) "THIS IS AN ESTIMATE. UTILITY RATES MAY GO UP OR DOWN AND ACTUAL SAVINGS, IF ANY, MAY VARY. HISTORICAL DATA ARE NOT NECESSARILY REPRESENTATIVE OF FUTURE RESULTS. FOR FURTHER INFORMATION REGARDING RATES, CONTACT YOUR LOCAL UTILITY OR THE STATE PUBLIC SERVICE COMMISSION.";
- 5543 (ii) "ESTIMATES OF ENERGY PRODUCTION GENERATED BY A RESIDENTIAL SOLAR ENERGY SYSTEM MAY VARY. THE RESIDENTIAL SOLAR ENERGY SYSTEM MAY PRODUCE MORE OR LESS THAN THE ESTIMATED ENERGY PRODUCTION."; and
- 5547 (iii) "TAX AND OTHER FEDERAL, STATE, AND LOCAL INCENTIVES VARY AS TO REFUNDABILITY AND ARE SUBJECT TO CHANGE OR TERMINATION BY LEGISLATIVE OR REGULATORY ACTION, WHICH MAY IMPACT SAVINGS ESTIMATES. CONSULT A TAX PROFESSIONAL FOR MORE INFORMATION.";
- 5552 (3) a notice stating: "Legislative or regulatory action may affect or eliminate your ability to sell or get credit for any excess power generated by the solar energy system, and may affect the price or value of that power.";
- 5555 (4) the notice described in Subsection 13-11-4(2)(m) or Subsection [~~13-26-5(2)(a)~~] 13-26-105(3)(a), if applicable;
- 5557 (5) a statement describing the solar energy system and indicating the solar energy system design assumptions, including the make and model of the solar panels and inverters, solar energy system size, positioning of the panels on the customer's property, estimated first-year energy production, and estimated annual energy production degradation, including the overall percentage degradation

## SB0038S01 compared with SB0038S02

over the term of the solar agreement or, at the solar retailer's option, over the estimated useful life of the solar energy system;

- 5563 (6) a description of any warranty, representation, or guarantee of energy production of the solar energy system;
- 5565 (7) the approximate start and completion dates for the installation of the solar energy system;
- 5567 (8) the statement: "The solar retailer may not begin installation of the system until at least four business days after the day on which the solar retailer and customer enter into a contract.";
- 5570 (9)
- (a) a statement indicating whether the solar retailer may transfer any warranty or maintenance obligations related to the solar energy system to a third party; and
- 5572 (b) if the solar retailer may transfer any warranty or maintenance obligations related to the solar energy system, the statement: "The maintenance and repair obligations under your contract may be assigned or transferred without your consent to a third party who will be bound to all the terms of the contract. If a transfer occurs, you will be notified of any change to the address, email address, or phone number to use for questions or payments or to request solar energy system maintenance or repair.";
- 5578 (10) if the solar retailer will not obtain customer approval to connect the solar energy system to the customer's utility, a statement to that effect and a description of what the customer must do to interconnect the solar energy system to the utility;
- 5581 (11) a description of any roof penetration warranty or other warranty that the solar retailer provides the customer or a statement, in bold capital letters, that the solar retailer does not provide any warranty;
- 5584 (12) a statement indicating whether the solar retailer will make a fixture filing or other notice in the county real property records covering the solar energy system, including a Notice of Independently Owned Solar Energy System, and any fees or other costs associated with the filing that the solar retailer may charge the customer;
- 5588 (13) a statement in capital letters with the following form and content: "NO EMPLOYEE OR REPRESENTATIVE OF [name of solar retailer] IS AUTHORIZED TO MAKE ANY PROMISE TO YOU THAT IS NOT CONTAINED IN THIS DISCLOSURE STATEMENT CONCERNING COST SAVINGS, TAX BENEFITS, OR GOVERNMENT OR UTILITY INCENTIVES. YOU SHOULD NOT RELY UPON ANY PROMISE OR ESTIMATE THAT IS NOT INCLUDED IN THIS DISCLOSURE STATEMENT.";

## SB0038S01 compared with SB0038S02

- 5595 (14) a statement in capital letters with substantially the following form and content: "[name of solar  
retailer] IS NOT AFFILIATED WITH ANY UTILITY COMPANY OR GOVERNMENT  
AGENCY. NO EMPLOYEE OR REPRESENTATIVE OF [name of solar retailer] IS  
AUTHORIZED TO CLAIM AFFILIATION WITH A UTILITY COMPANY OR GOVERNMENT  
AGENCY.";
- 5600 (15) a statement with the name and contact information of the person that will perform the installation;
- 5602 (16) a notice that the solar retailer may not sell the contract to another solar company without express  
customer approval;
- 5604 (17) a conspicuous list of:
- 5605 (a) finance fees, including those not charged directly to the customer; and
- 5606 (b) solar energy system operation and maintenance that the customer is obligated to perform to comply  
with the terms of the guarantee of the minimum energy production; and
- 5609 (18) any additional information, statement, or disclosure the solar retailer considers appropriate, as  
long as the additional information, statement, or disclosure does not have the purpose or effect of  
obscuring the disclosures required under this part.
- 5614 Section 123. Section **13-52-207** is amended to read:
- 5615 **13-52-207. Customer ability to cancel solar agreement.**
- 5614 (1) A solar retailer shall provide to the customer a copy of the signed solar agreement, including any  
disclosures required under this chapter:
- 5616 (a) in electronic and in paper form, unless the customer declines the paper copy in writing; and
- 5618 (b) if the solar retailer marketed services for residential solar energy systems to the customer in a  
language other than English, in that language.
- 5620 (2) A solar agreement is not enforceable against the customer unless the requirements in Subsection (1)  
are met.
- 5622 (3) A solar retailer may not begin installation of any solar equipment until four business days after the  
day on which the solar retailer provides the customer the solar agreement described in Subsection  
(1).
- 5625 (4) If a customer cancels a solar agreement under Subsection 13-11-4(2)(m) or Subsection [~~13-26-5(2)~~  
(a)] 13-26-105(3)(a), the solar retailer shall within 10 days:
- 5627 (a) return any check signed by the customer as payment under the terms of the solar agreement; and
- 5629 (b) refund any money provided by the customer under the terms of the solar agreement.

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- 5630 (5) A solar agreement described in Subsection (1) shall clearly:
- 5631 (a) state the customer's right to cancel the solar agreement under this section; and
- 5632 (b) provide an email address and a mailing address where the customer can send the solar retailer a notice of cancellation of the solar agreement.
- 5634 (6) Subsection (1)(a) only applies to sales where the customer has a right to cancel the purchase as described in Subsection 13-11-4(2)(m) or Subsection [~~13-26-5(2)(a)~~] 13-2-105(3)(a).
- 5639 Section 124. Section **13-52-301** is amended to read:
- 5640 **13-52-301. Division enforcement authority -- Administrative fine.**
- 5640 (1) Subject to Subsection (2), the division may enforce the provisions of this chapter by:
- 5641 (a) conducting an investigation into an alleged violation of this chapter;
- 5642 (b) issuing a cease and desist order against a further violation of this chapter;
- 5643 (c) imposing an administrative fine of up to \$2,500 for each violation of this chapter; and
- 5644 (d) the division may bring an action in a court of competent jurisdiction to enforce a provision of this chapter.
- 5646 (2) In a court action by the division to enforce a provision of this chapter, the court may:
- 5647 (a) declare that an act or practice violates a provision of this chapter;
- 5648 (b) issue an injunction for a violation of this chapter;
- 5649 (c) order disgorgement of any money received in violation of this chapter;
- 5650 (d) order payment of disgorged money to an injured purchaser or consumer;
- 5651 (e) impose a fine of up to \$2,500 for each violation of this chapter; or
- 5652 (f) award any other relief that the court deems reasonable and necessary.
- 5653 (3) The division shall, in its discretion:
- 5654 (a) deposit an administrative fine collected under Subsection (1)(c) in the Consumer Protection Education and Training Fund created in Section [~~13-2-8~~] 13-2-109; or
- 5656 (b) distribute an administrative fine collected under Subsection (1)(c) to a customer adversely affected by the solar retailer's failure or violation resulting in a fine under Subsection (1)(c), if the division has conducted an administrative proceeding resulting in a determination of the appropriateness and amount of any distribution to a customer.
- 5661 (4) Nothing in this chapter may be construed to affect:
- 5662 (a) a remedy a customer has independent of this chapter; or
- 5663 (b) the division's ability or authority to enforce any other law or regulation.

## SB0038S01 compared with SB0038S02

5666 Section 125. Section **13-52-302** is amended to read:

5667 **13-52-302. Registration and security required.**

5666 (1)

(a) On or after July 1, 2026, a solar retailer may not operate in this state without being registered with the division.

5668 (b) ~~[The] Except as provided in Subsection (1)(c), a registration under this section is valid for one year [except as provided in Subsection (1)(e):] after the day on which the solar retailer registers with the division.~~

5671 (c) The division may extend the period for which a solar retailer's registration is effective by up to six months so that expiration dates are staggered throughout the year.

5674 (2)

(a) A solar retailer shall submit an application for registration to the division in a manner the division establishes by rule in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, if:

5677 (i) the solar retailer's sales representative communicates with customers or potential customers in the state; or

5679 (ii) the solar retailer, or the solar retailer's sales representative, conducts any business operations in the state.

5681 (b) ~~[The-] An application for registration shall designate [an] a registered agent [residing] for service of process in this state [who is authorized by the solar retailer to receive service of process in any action this state or a resident of this state brings to the court:] and include the registered agent's:~~

5685 (i) name;

5686 (ii) street address;

5687 (iii) mailing address; and

5688 (iv) telephone number.

5689 (c) If a solar retailer fails to designate an agent to receive service or fails to appoint a successor to the agent, the division shall deny the solar retailer's application for registration.

5692 ~~[(d) For purposes of this section only, the registered agent of a solar retailer shall provide the division the registered agent's proof of residency in the state in the form of:]~~

5695 ~~[(i) a valid Utah driver license;]~~

5696 ~~[(ii) a valid governmental photo identification issued to a resident of this state; or]~~

## SB0038S01 compared with SB0038S02

- 5697 [~~(iii) other verifiable identification indicating residency in this state.~~]
- 5698 [~~(e)~~] (d) As a part of the registration, each solar retailer shall submit proof of obtaining and maintaining the following security in a form approved by the division:
- 5700 (i) a performance bond issued by a surety authorized to transact surety business in this state; or
- 5702 (ii) a certificate of deposit in a financial institution authorized under the laws of this state or the United States to accept deposits from the public.
- 5704 (3)
- [~~(a)~~] The division shall impose an annual registration fee set in accordance with Section 63J-1-504 that [~~shall include~~] includes the cost of the criminal background check described in this Subsection (3).
- 5707 [~~(b)~~] (4) To register as a solar retailer, [~~the~~] a solar retailer and the solar retailer's participants:
- 5708 [~~(i)~~] (a) may not have been convicted of a felony or misdemeanor involving theft, fraud, or dishonesty, in the 10-year period immediately before the day on which the solar retailer files the application; and
- 5711 [~~(ii)~~] (b) shall submit to the division:
- 5712 [~~(A)~~] (i) [~~the~~] each participant's fingerprints, in a form acceptable to the division, for purposes of a criminal background check;
- 5714 [~~(B)~~] (ii) consent to a criminal background check by:
- 5715 (A) [-]the Bureau of Criminal Identification created in Section 53-10-201; or
- 5716 (B) another state or federal agency that performs criminal background checks in this state or the United States; and
- 5718 [~~(C)~~] (iii) payment for the cost of the fingerprint card and criminal background check described [~~by~~] in Subsections [~~(3)(b)(i)(A)~~] (4)(b)(i) and [~~(B)~~] (ii).
- 5720 [~~(e)~~] (5) A solar retailer shall update registration information within 30 days after the day on which information provided on the application becomes incorrect or incomplete.
- 5722 [~~(d)~~] (6) A solar retailer that is a publicly traded corporation registered with the Securities and Exchange Commission is exempt from the requirements described in Subsection [~~(3)(b)~~] (4).
- 5725 [~~(4)~~]  
[~~(a)~~]
- 5726 [~~(i)~~] (7) The division may claim a solar retailer's surety bond or certificate of deposit for the benefit of [~~any~~] a customer who incurs damages as the result of the solar retailer's failure to comply with this chapter.

## SB0038S01 compared with SB0038S02

- 5729 [(ii)] (8)
- (a) For purposes of this section, damages incurred by a customer include:
- 5730 [(A)] (i) labor and materials necessary to complete the installation of a residential solar energy system that is partially installed; and
- 5732 [(B)] (ii) damage to a customer's home caused during installation or repair of the residential solar energy system.
- 5734 (b) After [the] a customer recovers full damages, the division may recover from the bond or certificate of deposit any administrative fines, civil penalties, investigative costs, attorney fees, and other costs of collecting and distributing funds under this section.
- 5737 [(e)] (9) [The] A solar retailer shall [~~post a bond or certificate of deposit in the amount of~~] submit proof of obtaining and maintaining the following in a form the division approves:
- 5739 (a) a surety bond issued by a surety authorized to transact business in this state; or
- 5740 (b) a certificate of deposit in a financial institution authorized under the laws of this state or the laws of the United States to accept deposits from the public.
- 5742 (10) The surety bond or certificate of deposit described in Subsection (9) shall be in the amount of:
- 5744 [(i)] (a) \$100,000 if:
- 5745 [(A)] (i) the solar retailer or [any] an affiliated person has not violated a chapter [~~enforced by the division~~] the division enforces, as described in Section [~~13-2-1~~] 13-2-102, in the three-year period immediately before the day on which the solar retailer files the application;
- 5749 [(B)] (ii) the solar retailer has fewer than ten employees; and
- 5750 [(C)] (iii) the solar retailer sells fewer than 500 kilowatts nameplate capacity annually;
- 5751 [(ii)] (b) \$200,000 if:
- 5752 [(A)] (i) the solar retailer or [any] an affiliated person has not violated a chapter [~~enforced by the division~~] the division enforces, as described in Section [~~13-2-1~~] 13-2-102, in the three-year period immediately before the day on which the solar retailer files the application;
- 5756 [(B)] (ii) the solar retailer has ten or more employees; or
- 5757 [(C)] (iii) the solar retailer sells more than 500 kilowatts nameplate capacity annually; or
- 5759 [(iii)] (c) \$300,000 if the solar retailer or [any] an affiliated person has violated a chapter [~~enforced by the division~~] enforces, as described in Section [~~13-2-1~~] 13-2-102, the three-year period immediately before the day on which the solar retailer files the application.
- 5763

## SB0038S01 compared with SB0038S02

~~[(d)]~~ (11) Beginning July 1, 2026, a solar retailer that operates in this state violates this chapter each time the solar retailer sells a residential solar energy system without first registering with the division.

5766 ~~[(5)]~~ (12) The division director may deny, suspend, or revoke a solar retailer's registration if:

5767 (a) a solar retailer or a solar retailer's participant:

5768 (i) ~~[violated-]~~ violates a statute ~~[enforced by the division]~~ the division enforces within the preceding five years; or

5770 (ii) fails to pay a fine or comply with a term of settlement with the division;

5771 (b) the division claims the solar retailer's bond or certificate of deposit; or

5772 (c) the division receives ten or more complaints from consumers about the solar retailer related to the solar energy system's energy production and finds substantial evidence that the solar retailer has provided good faith estimates for residential solar energy systems that do not produce 80% or more of the solar retailer's estimated energy production.

5777 (13) A solar retailer may not:

5778 (a) represent that the division or the state endorses or approves the solar retailer;

5779 (b) omit from a filing with the division a material statement of fact that this chapter or rule the division makes in accordance with this chapter requires; or

5781 (c) include in a filing with the division a material statement of fact that the solar retailer or the solar retailer's principal knows or should know is false, deceptive, inaccurate, or misleading.

5786 Section 126. Section **13-53-103** is amended to read:

5785 **CHAPTER 53. Residential Vocational or Life Skills Program Act**

5788 **13-53-103. Registration of a residential vocational or life skills program.**

5788 (1) An owner or a manager of a residential vocational or life skills program shall annually register the residential vocational or life skills program with the division.

5790 (2) An application for registration shall:

5791 (a) ~~[-]~~ be on a form ~~[approved by]~~ the division approves; and

5792 (b) ~~[-shall require]~~ include:

5793 ~~[(a)]~~ (i) the name, address, telephone number, email address, and website~~[-and facsimile number, if any,]~~ of the nonprofit corporation operating the residential vocational or life skills program;

5796

## SB0038S01 compared with SB0038S02

~~[(b)]~~ (ii) ~~[the name and address of the registered agent of the corporation operating the residential vocational or life skills program]~~ a designated registered agent for service of process in the state, and the registered agent's:

5799 (A) name;

5800 (B) street address;

5801 (C) mailing address; and

5802 (D) telephone number;

5803 ~~[(e)]~~ (iii) the name, address, telephone number, email address, and website~~[-, and facsimile number, if any,]~~ of the residential vocational or life skills program;

5805 ~~[(d)]~~ (iv) the name and address of ~~[any]~~ each entity that controls, is controlled by, or is affiliated with the residential vocational or life skills program;

5807 ~~[(e)]~~ (v) the name and residential address of ~~[any]~~ each officer, director, manager, or administrator of the residential vocational or life skills program;

5809 ~~[(f)]~~ (vi) the name, address, telephone number, email address, and website~~[-, and facsimile number, if any,]~~ of ~~[any]~~ each vocational training entity affiliated with the residential vocational or life skills program;

5812 ~~[(g)]~~ (vii) a disclosure indicating whether ~~[any]~~ an officer, a director, or an administrator of the residential vocational or life skills program has been the subject of an administrative action by the division;

5815 ~~[(h)]~~ (viii) a disclosure indicating whether any officer, director, or administrator of the residential vocational or life skills program has been convicted of a felony or a ~~[crime of moral turpitude within the previous 10 years]~~ misdemeanor involving theft, fraud, or dishonesty, in the 10-year period preceding the day on which the residential vocational or life skills program files the application;

5820 ~~[(i)]~~ (ix) financial information described in Subsection 13-53-108(1);

5821 ~~[(j)]~~ (x) proof of a commercial general liability and umbrella insurance policy providing at least a \$1,000,000 per occurrence limit of liability;

5823 ~~[(k)]~~ (xi) a copy of the disclosure required under Section 13-53-106;

5824 ~~[(l)]~~ (xii) evidence that the applicant meets the description of a residential vocational or life skills program under Subsection 13-53-102(5); and

5826 ~~[(m)]~~ (xiii) additional information that the division requires, as provided in administrative rule.

5828

## SB0038S01 compared with SB0038S02

- (3) A residential vocational or life skills program is registered on the day that the division issues the registration.
- 5830 (4) The division's issuance of a registration for a residential vocational or life skills program does not constitute the state's or the division's endorsement or approval of the residential vocational or life skills program.
- 5833 (5) An applicant for the registration of a residential vocational or life skills program shall file a separate application and pay a separate application fee for each residential vocational or life skills program location.
- 5836 (6) The division may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the registration application process and administer this chapter.
- 5839 (7) The division may set fees in accordance with Section 63J-1-504 for a residential vocational or life skills program registration application.
- 5841 (8) An applicant for the registration of a residential vocational or life skills program shall update registration information within 30 days after the day on which information the applicant provides in the application becomes incorrect or incomplete.
- 5844 (9) Registration of a residential vocational or life skills program is effective for one year after the day on which the division issues the registration.
- 5846 (10) To renew a residential vocational or life skills program registration under this section, a residential vocation or life skills program shall submit a registration renewal application to the division at least 30 days before the day on which the residential vocational or life skills program's registration expires.
- 5852 Section 127. Section **13-53-104** is amended to read:
- 5853 **13-53-104. Registration denial, suspension, or revocation.**
- 5852 (1) In accordance with Chapter 2, Division of Consumer Protection, and Title 63G, Chapter 4, Administrative Procedures Act, the division may initiate proceedings to deny, suspend, or revoke the registration of a residential vocational or life skills program, if the division finds that the denial, suspension, or revocation is in the public interest and:
- 5856 (a)
- (i) the entity holding the registration fails to meet the description of a residential vocational or life skills program under Subsection 13-53-102(5); and
- 5858

## SB0038S01 compared with SB0038S02

- [~~(b)~~] (ii) the operation of the residential vocational or life skills program creates a serious risk to public safety or welfare;
- 5860 (b) the residential vocational or life skills program does not have adequate controls to minimize associated risks to:
- 5862 (i) the participants of the residential vocational or life skills program; and
- 5863 (ii) the public;
- 5864 (c) the registration application or any supplemental information [~~required by~~]the division requires is incomplete, false, misleading, or filed in an untimely manner; or
- 5866 (d) the applicant or the applicant's principal:
- 5867 (i) violates, causes a violation, allows a violation, or fails to satisfy the requirements of a provision of:
- 5869 (A) this chapter; or
- 5870 (B) a rule the division makes in accordance with this chapter;
- 5871 (ii) violates Chapter 11, Utah Consumer Sales Practices Act;
- 5872 (iii) is enjoined by a court, or is the subject of an administrative or judicial order issued in Utah or another state, if the order:
- 5874 (A) includes a finding or admission of fraud, breach of fiduciary duty, or material misrepresentation; or
- 5876 (B) is based on a finding of a lack of integrity, truthfulness, or mental competence;
- 5877 (iv) is convicted of a crime involving theft, fraud, or dishonesty;
- 5878 (v) obtains or attempts to obtain a registration by misrepresenting a material fact;
- 5879 (vi) fails to provide information the division requests;
- 5880 (vii) fails to pay an administrative fine the division or an administrative or judicial order imposes; or
- 5882 (viii) fails to pay the fee to file a registration application or a renewal application.
- 5883 [~~(d) the residential vocational or life skills program or an individual described in Subsection 13-53-103(2)(e) causes or allows to occur a violation of any provision of municipal, state, or federal law, including an administrative rule made under this chapter;~~]
- 5887 [(e)
- (i) ~~an individual described in Subsection 13-53-103(2)(e) is convicted of a felony or a crime of moral turpitude within the previous 10 years; and]~~
- 5889 [(ii) ~~the residential vocational or life skills program does not have adequate controls to minimize associated risks to the participants of the residential vocational or life skills program and to the public; or]~~

## SB0038S01 compared with SB0038S02

- 5892 ~~[(f) the residential vocational or life skills program fails to pay an administrative fine that the division~~  
~~lawfully imposes on the residential vocational or life skills program.]~~
- 5894 (2) The division may place reasonable limits upon a residential vocational or life skills program's  
operations, if:
- 5896 (a) the division has reasonable concerns about the residential vocational or life skills program's ability  
to comply with this chapter; and
- 5898 (b) the limitation is reasonably calculated to protect the interests of the public or the participants of the  
residential vocational or life skills program.
- 5900 (3) When the demands of public safety permit, the division shall allow a residential vocational or life  
skills program a reasonable amount of time to remedy a violation under this chapter before the  
division suspends or revokes a registration.
- 5903 (4) The division may require an individual described in Subsection ~~[13-53-103(2)(e)]~~ 13-53-103(2)  
(b)(v) to submit to a criminal background check, at the individual's expense or the expense of the  
residential vocational or life skills program.

5908 Section 128. Section **13-53-105** is amended to read:

5909 **13-53-105. Prohibited acts.**

A residential vocational or life skills program may not:

- 5909 (1) operate without a registration ~~[issued]~~ that the division issues under Section 13-53-103;
- 5910 (2) utilize ~~[any]~~ a behavioral intervention that is not peer-led or that uses the services of ~~[any]~~ a  
professional or ~~[any]~~ a person purporting to be a professional;
- 5912 (3) accept a participant before providing to the participant the disclosure described in Section  
13-53-106;~~[-or]~~
- 5914 (4) use physical force or permit the use of physical force~~[-]~~ ;
- 5915 (5) ~~represent that the division or the state endorses the residential vocational or life skills program;~~
- 5917 (6) ~~omit from a filing with the division a material statement of fact that this chapter or a rule the~~  
~~division makes in accordance with this chapter requires; or~~
- 5919 (7) ~~include in a filing with the division a material statement that the residential vocational or life skills~~  
~~program or the residential vocational or life skills program's principal knows or should know is~~  
~~false, deceptive, inaccurate, or misleading.~~

5924 Section 129. Section **13-53-108** is amended to read:

5925 **13-53-108. Financial requirements.**

## SB0038S01 compared with SB0038S02

- 5924 (1) When applying for registration under Subsection 13-53-103(2), an applicant shall demonstrate  
[fiscall] financial responsibility by providing evidence to the division that the residential vocational  
or life skills program:
- 5927 (a) is financially sound; and
- 5928 (b) reasonably has the [fiscall] financial ability to fulfill commitments and obligations to the participants  
of the residential vocational or life skills program.
- 5930 (2) Evidence acceptable to satisfy the requirement described in Subsection (1) includes:
- 5931 (a) for a residential vocational or life skills program that has been in operation less than one fiscal year:
- 5933 (i) pro forma financial statements until further information described in Subsection (2)(b) is available;[  
and]
- 5935 (ii) a commercial credit report for the residential vocational or life skills program; [~~or~~] and
- 5937 (iii) a personal credit report for:
- 5938 (A) each owner of the residential vocational or life skills program who controls at least 10% of the  
ownership interests in the residential vocational or life skills program; or
- 5941 (B) each individual that exercises substantial control over the residential or life skills program; or
- 5943 (b) for a residential vocational or life skills program that has completed a fiscal year, and as soon as the  
residential vocational or life skills program completes [its] the residential vocational or life skills  
program's first fiscal year:
- 5946 (i) a current financial statement, with all applicable footnotes, for the most recent fiscal year, including  
a balance sheet, a statement of income, a statement of retained earnings, and a statement of cash  
flow; and
- 5949 (ii) a certified [fiscall] financial audit of the residential vocational or life skills program's financial  
statement, [~~performed by~~] that a certified [~~or licensed~~] public accountant performs.
- 5952 (3) In evaluating a residential vocational or life skills program's [fiscall] financial responsibility, the  
division may consider:
- 5954 (a) [~~any~~] a judgment, tax lien, collection action, bankruptcy schedule, or history of late payments to  
creditors;
- 5956 (b) documentation showing the resolution of a matter described in Subsection (3)(a);
- 5957 (c) the residential vocational or life skills program's explanation for a matter described in Subsection (3)  
(a);
- 5959 (d) a guarantee agreement provided for the residential vocational or life skills program; and

## SB0038S01 compared with SB0038S02

- 5961 (e) history of a prior entity that:
- 5962 (i) is owned or operated by any individual who is an officer, a director, or an administrator of the residential vocational or life skills program; and
- 5964 (ii) has failed to maintain ~~[fiscat]~~ financial responsibility.
- 5965 (4) The division may require evidence of financial status at other times when ~~[it]~~ requiring evidence of financial status is in the best interest of the program participants to require the information.
- 5968 (5) The division may perform a fiscal audit of a residential vocational or life skills program.
- 5969 (6) A residential vocational or life skills program shall develop and maintain adequate internal controls for receipt, management, and disbursement of money that are reasonable in light of the residential vocational or life skills program's organizational complexity.

5975 Section 130. Section **13-53-110** is amended to read:

5976 **13-53-110. Enforcement.**

- 5975 (1) The division may investigate facilities and enforce this chapter under the authority described in Chapter 2, Division of Consumer Protection.
- 5977 (2) To monitor the welfare of participants and transitional graduates, if any, and to monitor the safe operation of a residential vocational or life skills program, the division shall:
- 5979 (a) annually perform an on-site inspection of a registered residential vocational or life skills program;
- 5981 (b) refer each concern that the division identifies during the on-site inspection to the state or municipal entity responsible for the area of concern; and
- 5983 (c) coordinate with each relevant state and municipal entity to monitor the residential vocational or life skills program's compliance with the entity's relevant health and safety regulations.
- 5986 (3) In addition to penalties established by this chapter and in addition to the enforcement authority described in Chapter 2, Division of Consumer Protection, the division may:
- 5988 ~~[(a) issue a cease and desist order;]~~
- 5989 ~~[(b) impose an administrative fine of up to \$2,500 for each violation of this chapter; and]~~
- 5990 ~~[(c) seek injunctive relief in a court of competent jurisdiction.]~~
- 5991 (a) impose an administrative fine of up to \$2,500 for a violation of this chapter; and
- 5992 (b) the division may bring an action in a court with jurisdiction to enforce a provision of this chapter.
- 5994 (4) In a court action the division brings to enforce a provision of this chapter, the court may:
- 5995 (a) declare that an act or practice violates a provision of this chapter;
- 5996 (b) issue an injunction for a violation of this chapter;

## SB0038S01 compared with SB0038S02

- 5997 (c) order disgorgement of any money received in violation of this chapter;
- 5998 (d) order payment of disgorged money to an injured purchaser or consumer;
- 5999 (e) impose a fine of up to \$2,500 for each violation of this chapter; or
- 6000 (f) award any other relief that the court deems reasonable and necessary.
- 6001 [~~(4) All money received from fines imposed under this section shall be deposited into the Consumer~~  
Protection Education and Training Fund, created in Section 13-2-8.]
- 6005 Section 131. Section **13-57-102** is amended to read:
- 6006 **13-57-102. Definitions.**
- As used in this chapter:
- 6006 [(1) "Business entity" means a sole proprietorship, partnership, limited partnership, limited liability  
company, corporation, or other entity or association used to carry on a business for profit.]
- 6009 [(2)] (1) "Director" means the director of the [~~Division of Consumer Protection~~] division.
- 6010 [(3)] (2) "Division" means the Division of Consumer Protection [~~of the Department of Commerce~~  
~~established in Section 13-2-1~~] established in Section 13-2-102.
- 6012 [(4)] (3) "Health care provider" means the same as that term is defined in Section 78B-3-403.
- 6013 [(5)] (4) "Individual" means a person who:
- 6014 (a) resides in this state; and
- 6015 (b) has or may have a pending legal action[~~in this state~~].
- 6016 [(6)] (5) "Legal funding" means a payment of \$500,000 or less to an individual in exchange for the right  
to receive an amount out of the potential proceeds of any realized settlement, judgment, award, or  
verdict the individual may receive in a civil legal action.
- 6019 [(7)] (6) "Maintenance funding agreement" means an agreement between an individual and a  
maintenance funding provider under which the maintenance funding provider provides legal funding  
to the individual.
- 6022 [(8)] (7)
- (a) "Maintenance funding provider" means a [~~business entity~~] person that engages in the business of  
legal funding.
- 6024 (b) "Maintenance funding provider" does not include:
- 6025 (i) an immediate family member of an individual;
- 6026 (ii) an accountant providing accounting services to an individual; or
- 6027 (iii) an attorney providing legal services to an individual.

## SB0038S01 compared with SB0038S02

6030 Section 132. Section **13-57-201** is amended to read:

6031 **13-57-201. Maintenance funding provider registration and registration renewal.**

6031 (1) [~~Except as provided in Subsection (4), a business entity-~~] A person may not act as a maintenance funding provider in this state without registering with the division.

6033 (2) To register as a maintenance funding provider, a [~~business entity-~~] person shall submit to the division an application for registration:

6035 (a) in the manner the division determines; and

6036 (b) that includes:

6037 (i) an application fee in an amount [~~determined by-~~]the division determines in accordance with Sections 13-1-2 and 63J-1-504; and

6039 (ii) anything else the division requires as established in rule [~~made-~~] the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

6041 (3) A registration of a maintenance funding provider under this chapter is effective for one year after the day on which the division issues the registration.

6043 [~~(3)~~] (4) Each year a maintenance funding provider shall renew the maintenance funding provider's registration by submitting to the division an application for registration renewal:

6046 (a) in the manner the division determines; and

6047 (b) that includes:

6048 (i) an application fee in an amount determined by the division in accordance with Sections 13-1-2 and 63J-1-504; and

6050 (ii) anything else the division requires as established in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

6052 (5) To renew a maintenance funding provider registration in accordance with this section, a maintenance funding provider shall submit a registration renewal application to the division at least 30 days before the day on which the maintenance funding provider's registration expires.

6056 (6) A maintenance funding provider shall update registration information within 30 days after the day on which information the maintenance funding provider provides on the application becomes incorrect or incomplete.

6059 [~~(4) A business entity who acts as a maintenance funding provider in the state between May 12, 2019, and May 12, 2020, is permitted to continue to act as a maintenance funding provider:-]~~

6062 [~~(a) if the person:-]~~

## SB0038S01 compared with SB0038S02

- 6063 [~~(i) applies for registration in accordance with this section; and]~~  
6064 [~~(ii) complies with the requirements of this chapter; and]~~  
6065 [~~(b) until the division makes a determination regarding the person's application for registration under  
this section.]~~

6069 Section 133. Section **133** is enacted to read:

6070 **13-57-201.1. Denial, suspension, or revocation of a registration or application.**

In accordance with Chapter 2, Division of Consumer Protection, and Title 63G, Chapter 4, Administrative Procedures Act, the division may initiate adjudicative proceedings to deny, suspend, or revoke an application or registration if:

- 6073 (1) the division finds that the denial, suspension, or revocation is in the public interest; and  
6074 (2)  
(a) the registration is incomplete, false, or misleading; or  
6075 (b) the applicant or the applicant's principal:  
6076 (i) violates, causes a violation, allows a violation, or fails to satisfy the requirements of a provision of:  
6078 (A) this chapter; or  
6079 (B) a rule the division makes in accordance with this chapter;  
6080 (ii) violates Chapter 11, Utah Consumer Sales Practices Act; or  
6081 (iii) is enjoined by a court, or is the subject of an administrative or judicial order issued in Utah or  
another state, if the order:  
6083 (A) includes a finding or admission of fraud, breach of fiduciary duty, or material misrepresentation; or  
6085 (B) is based on a finding of a lack of integrity, truthfulness, or mental competence;  
6086 (iv) is convicted of a crime involving theft, fraud, or dishonesty;  
6087 (v) obtains or attempts to obtain a registration by misrepresenting a material fact;  
6088 (vi) fails to provide information the division requests;  
6089 (vii) fails to pay an administrative fine the division or an administrative or judicial order imposes; or  
6091 (viii) fails to pay the fee to file a registration application or a renewal application.

6094 Section 134. Section **13-57-202** is amended to read:

6095 **13-57-202. Maintenance funding provider operations -- Prohibited acts.**

- 6095 (1) A maintenance funding provider may only provide legal funding to an individual if the maintenance funding provider and the individual enter into a maintenance funding agreement that meets the requirements of Section 13-57-301.

## SB0038S01 compared with SB0038S02

- 6098 (2) Before executing a maintenance funding agreement, a maintenance funding provider shall file with  
the division a template of the maintenance funding agreement.
- 6100 (3) A maintenance funding provider may not:
- 6101 (a) pay or offer to pay a commission, referral fee, or any other form of consideration to the following  
for referring an individual to the maintenance funding provider:
- 6103 (i) an attorney authorized to practice law;
- 6104 (ii) a health care provider; or
- 6105 (iii) an employee, independent contractor, or other person affiliated with a person described in  
Subsection (3)(a)(i) or (ii);
- 6107 (b) accept a commission, referral fee, or any other form of consideration from a person described in  
Subsection (3)(a) for referring an individual to the person;
- 6109 (c) refer an individual or potential individual to a person described in Subsection (3)(a), unless the  
referral is to a local or state bar association referral service;
- 6111 (d) intentionally advertise materially false or misleading information about the maintenance funding  
provider's services;
- 6113 (e) make or attempt to influence a decision relating to the conduct, settlement, or resolution of a legal  
action for which the maintenance funding provider provides legal funding;~~[-or]~~
- 6116 (f) knowingly pay or offer to pay court costs, filing fees, or attorney fees using legal funding[-] ;
- 6118 (g) represent that the division or the state endorses the maintenance funding provider;
- 6119 (h) omit from a filing with the division a material statement of fact that this chapter or a rule the  
division makes in accordance with this chapter requires; or
- 6121 (i) include in a filing with the division a material statement of fact that the maintenance funding  
provider or maintenance funding provider's principal knows or should know is false, deceptive,  
inaccurate, or misleading.
- 6124 (4) A maintenance funding provider shall provide an individual who enters a maintenance funding  
agreement a copy of the executed maintenance funding agreement.
- 6128 Section 135. Section **13-57-203** is amended to read:
- 6129 **13-57-203. Annual reports.**
- 6128 (1) On or before April 1 of each year, a maintenance funding provider registered in accordance with  
Section 13-57-201 shall file a report:

6130

## SB0038S01 compared with SB0038S02

(a) ~~[under oath]~~ that includes an unsworn declaration that the maintenance funding provider's chief financial officer or the maintenance funding provider's principal makes in accordance with Title 78B, Chapter 18a, Uniform Unsworn Declarations Act, confirming the report's accuracy;

6134 (b) with the ~~[director]~~ division; and

6135 (c) in a form the ~~[director prescribes]~~ division approves.

6136 (2) The report described in Subsection (1) shall include, for the preceding calendar year:

6137 (a) the number of maintenance funding agreements entered into by the maintenance funding provider;

6139 (b) the total dollar amount of legal funding the maintenance funding provider provided;

6140 (c) the total dollar amount of charges under each maintenance funding agreement, itemized and including the annual rate of return;

6142 (d) the total dollar amount and number of maintenance funding transactions in which the realized profit to the company was as contracted in the maintenance funding agreement;

6145 (e) the total dollar amount and number of maintenance funding transactions in which the realized profit to the company was less than contracted; and

6147 (f) any other information the director requires concerning the maintenance funding provider's business or operations in the state.

6151 Section 136. Section **13-57-302** is amended to read:

6152 **13-57-302. Required disclosures.**

A maintenance funding provider shall disclose in a maintenance funding agreement:

6152 (1) that the maintenance funding provider may not participate in deciding whether, when, or the amount for which a legal action is settled;

6154 (2) that the maintenance funding provider may not interfere with the independent professional judgment of the attorney handling the legal action or any settlement of the legal action;

6157 (3) the following statement in substantially the following form, in all capital letters and at least a 12-point ~~[type]~~ font: "THE FUNDED AMOUNT AND AGREED-TO CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM, AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE (INSERT NAME OF THE MAINTENANCE FUNDING PROVIDER HERE) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED A MATERIAL TERM OF THIS AGREEMENT OR YOU HAVE COMMITTED FRAUD AGAINST THE MAINTENANCE FUNDING PROVIDER.";

## SB0038S01 compared with SB0038S02

- 6166 (4) in accordance with Section 13-57-301, the following statement in substantially the following form and at least a 12-point [type] font: "CONSUMER'S RIGHT TO CANCELLATION: You may cancel this agreement without penalty or further obligation within five business days after the day on which you enter into this agreement with the maintenance funding provider if you either: 1. return to the maintenance funding provider the full amount of the disbursed funds by delivering the maintenance funding provider's uncashed check to the maintenance funding provider's office in person; or 2. send, by insured, certified, or registered United States mail, to the maintenance funding provider at the address specified in this agreement, a notice of cancellation and include in the mailing a return of the full amount of disbursed funds in the form of the maintenance funding provider's uncashed check or a registered or certified check or money order"; and
- 6178 (5) immediately above the line for the individual's signature, the following statement in at least a 12-point [type] font: "Do not sign this agreement before you read it completely or if it contains any blank spaces. You are entitled to a completed copy of the agreement. Before you sign this agreement, you should obtain the advice of an attorney. Depending on your circumstances, you may want to consult a tax, benefits planning, or financial professional."
- 6186 Section 137. Section **13-57-401** is amended to read:
- 6187 **13-57-401. Rulemaking.**
- The division shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:
- 6188 (1) establish an application process for a [~~business entity~~] person to register with the division as a maintenance funding provider, in accordance with Section 13-57-201;
- 6190 (2) establish a filing process for a maintenance funding provider to file a maintenance funding agreement with the division;
- 6192 (3) establish a filing process for annual reports required under Section 13-57-203; and
- 6193 (4) carry out the provisions of this chapter.
- 6196 Section 138. Section **13-57-402** is amended to read:
- 6197 **13-57-402. Public education regarding legal funding -- Reporting to Legislature.**
- 6197 [(+) ] The director shall help educate the general public regarding legal funding in the state by:
- 6199 [(a) ] (1) analyzing and summarizing data maintenance funding providers submit under Section 13-57-203; and
- 6201

## SB0038S01 compared with SB0038S02

~~[(b)]~~ (2) publishing the analysis and summary described in Subsection ~~[(1)(a)]~~ (1) on the division's web page on January 1, of each odd-numbered year.

6203 ~~[(2) Before October 1, 2022, the director shall report to the Business and Labor Interim Committee on the status of legal funding in the state and make any recommendation the director decides is necessary to improve the regulatory framework of legal funding, including a recommendation on whether to limit charges a maintenance funding provider may impose under a maintenance funding agreement.]~~

6210 Section 139. Section **13-57-502** is amended to read:

6211 **13-57-502. Penalties -- Enforcement.**

6210 ~~[(1) After notice and an opportunity for an administrative hearing in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the division may, in addition to exercising the division's enforcement powers under Section 13-2-6, enforce the provisions of this chapter by:]~~

6214 ~~[(a) revoking or suspending a maintenance funding provider's registration;]~~

6215 ~~[(b) ordering a maintenance funding provider to cease and desist from further legal funding;]~~

6217 ~~[(c) imposing a penalty of up to:]~~

6218 ~~[(i) \$1,000 per violation; or]~~

6219 ~~[(ii) \$10,000 per violation that the division finds willful; or]~~

6220 ~~[(d) ordering the maintenance funding provider to make restitution to an individual.]~~

6221 (1) The division shall administer and enforce the provisions of this chapter in accordance with Chapter 2, Division of Consumer Protection.

6223 (2) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:

6225 (a) the division director may impose an administrative fine of up to \$2,500 for a violation of this chapter; and

6227 (b) the division may bring an action in a court with jurisdiction to enforce a provision of this chapter.

6229 (3) In an action the division brings in accordance with Subsection (2)(b), a court may:

6230 (a) declare that an act or practice violates a provision of this chapter;

6231 (b) issue an injunction for a violation of this chapter;

6232 (c) order disgorgement of any money received in violation of this chapter;

6233 (d) order payment of disgorged money to an injured purchaser or consumer;

6234 (e) impose a fine of up to \$2,500 for a violation of this chapter; or

6235 (f) award any other relief that the court deems reasonable and necessary.

## SB0038S01 compared with SB0038S02

- 6236 [(2)] (4) The division's enforcement powers under this section and Section [~~13-2-6~~] 13-2-107 do not  
affect an individual's legal claim against a maintenance funding provider.
- 6240 Section 140. Section **13-61-101** is amended to read:
- 6241 **13-61-101. Definitions.**
- As used in this chapter:
- 6241 (1) "Account" means the Consumer Privacy Restricted Account established in Section 13-61-403.
- 6243 (2) "Affiliate" means an entity that:
- 6244 (a) controls, is controlled by, or is under common control with another entity; or
- 6245 (b) shares common branding with another entity.
- 6246 (3) "Aggregated data" means information that relates to a group or category of consumers:
- 6247 (a) from which individual consumer identities have been removed; and
- 6248 (b) that is not linked or reasonably linkable to any consumer.
- 6249 (4) "Air carrier" means the same as that term is defined in 49 U.S.C. Sec. 40102.
- 6250 (5) "Authenticate" means to use reasonable means to determine that a consumer's request to exercise  
the rights described in Section 13-61-201 is made by the consumer who is entitled to exercise those  
rights.
- 6253 (6)
- (a) "Biometric data" means data generated by automatic measurements of an individual's unique  
biological characteristics.
- 6255 (b) "Biometric data" includes data described in Subsection (6)(a) that are generated by automatic  
measurements of an individual's fingerprint, voiceprint, eye retinas, irises, or any other unique  
biological pattern or characteristic that is used to identify a specific individual.
- 6259 (c) "Biometric data" does not include:
- 6260 (i) a physical or digital photograph;
- 6261 (ii) a video or audio recording;
- 6262 (iii) data generated from an item described in Subsection (6)(c)(i) or (ii);
- 6263 (iv) information captured from a patient in a health care setting; or
- 6264 (v) information collected, used, or stored for treatment, payment, or health care operations as those  
terms are defined in 45 C.F.R. Parts 160, 162, and 164.
- 6266 (7) "Business associate" means the same as that term is defined in 45 C.F.R. Sec. 160.103.
- 6267 (8) "Child" means an individual younger than 13 years old.

## SB0038S01 compared with SB0038S02

- 6268 (9) "Consent" means an affirmative act by a consumer that unambiguously indicates the consumer's voluntary and informed agreement to allow a person to process personal data related to the consumer.
- 6271 (10)
- (a) "Consumer" means an individual who is a resident of the state acting in an individual or household context.
- 6273 (b) "Consumer" does not include an individual acting in an employment or commercial context.
- 6275 (11) "Control" or "controlled" as used in Subsection (2) means:
- 6276 (a) ownership of, or the power to vote, more than 50% of the outstanding shares of any class of voting securities of an entity;
- 6278 (b) control in any manner over the election of a majority of the directors or of the individuals exercising similar functions; or
- 6280 (c) the power to exercise controlling influence of the management of an entity.
- 6281 (12) "Controller" means a person doing business in the state who determines the purposes for which and the means by which personal data are processed, regardless of whether the person makes the determination alone or with others.
- 6284 (13) "Covered entity" means the same as that term is defined in 45 C.F.R. Sec. 160.103.
- 6285 (14)
- (a) "Deidentified data" means data that:
- 6286 (i) cannot reasonably be linked to an identified individual or an identifiable individual; and
- 6288 (ii) are possessed by a controller who:
- 6289 (A) takes reasonable measures to ensure that a person cannot associate the data with an individual;
- 6291 (B) publicly commits to maintain and use the data only in deidentified form and not attempt to reidentify the data; and
- 6293 (C) contractually obligates any recipients of the data to comply with the requirements described in Subsections [~~(14)(b)(i)~~] ~~(14)(a)(i)~~ and (ii) (14)(a)(ii)(A) and (B).
- 6295 (b) "Deidentified data" includes synthetic data.
- 6296 (15) "Director" means the director of the Division of Consumer Protection.
- 6297 (16) "Division" means the Division of Consumer Protection created in Section [~~13-2-1~~] 13-2-102.
- 6299 (17) "Governmental entity" means the same as that term is defined in Section 63G-2-103.
- 6300 (18) "Health care facility" means the same as that term is defined in Section 26B-2-201.

## SB0038S01 compared with SB0038S02

- 6301 (19) "Health care provider" means the same as that term is defined in Section 78B-3-403.
- 6302 (20) "Identifiable individual" means an individual who can be readily identified, directly or indirectly.
- 6304 (21) "Institution of higher education" means a public or private institution of higher education.
- 6306 (22) "Local political subdivision" means the same as that term is defined in Section 11-14-102.
- 6308 (23) "Nonprofit corporation" means:
- 6309 (a) the same as that term is defined in Section 16-6a-102; or
- 6310 (b) a foreign nonprofit corporation as defined in Section 16-6a-102.
- 6311 (24)
- (a) "Personal data" means information that is linked or reasonably linkable to an identified individual or an identifiable individual.
- 6313 (b) "Personal data" does not include deidentified data, aggregated data, or publicly available information.
- 6315 (25) "Process" means an operation or set of operations performed on personal data, including collection, use, storage, disclosure, analysis, deletion, or modification of personal data.
- 6318 (26) "Processor" means a person who processes personal data on behalf of a controller.
- 6319 (27) "Protected health information" means the same as that term is defined in 45 C.F.R. Sec. 160.103.
- 6321 (28) "Pseudonymous data" means personal data that cannot be attributed to a specific individual without the use of additional information, if the additional information is:
- 6323 (a) kept separate from the consumer's personal data; and
- 6324 (b) subject to appropriate technical and organizational measures to ensure that the personal data are not attributable to an identified individual or an identifiable individual.
- 6327 (29) "Publicly available information" means information that a person:
- 6328 (a) lawfully obtains from a record of a governmental entity;
- 6329 (b) reasonably believes a consumer or widely distributed media has lawfully made available to the general public; or
- 6331 (c) if the consumer has not restricted the information to a specific audience, obtains from a person to whom the consumer disclosed the information.
- 6333 (30) "Right" means a consumer right described in Section 13-61-201.
- 6334 (31)
- (a) "Sale," "sell," or "sold" means the exchange of personal data for monetary consideration by a controller to a third party.

## SB0038S01 compared with SB0038S02

- 6336 (b) "Sale," "sell," or "sold" does not include:
- 6337 (i) a controller's disclosure of personal data to a processor who processes the personal data on behalf of the controller;
- 6339 (ii) a controller's disclosure of personal data to an affiliate of the controller;
- 6340 (iii) considering the context in which the consumer provided the personal data to the controller, a controller's disclosure of personal data to a third party if the purpose is consistent with a consumer's reasonable expectations;
- 6343 (iv) the disclosure or transfer of personal data when a consumer directs a controller to:
- 6344 (A) disclose the personal data; or
- 6345 (B) interact with one or more third parties;
- 6346 (v) a consumer's disclosure of personal data to a third party for the purpose of providing a product or service requested by the consumer or a parent or legal guardian of a child;
- 6349 (vi) the disclosure of information that the consumer:
- 6350 (A) intentionally makes available to the general public via a channel of mass media; and
- 6352 (B) does not restrict to a specific audience; or
- 6353 (vii) a controller's transfer of personal data to a third party as an asset that is part of a proposed or actual merger, an acquisition, or a bankruptcy in which the third party assumes control of all or part of the controller's assets.
- 6356 (32)
- (a) "Sensitive data" means:
- 6357 (i) personal data that reveals:
- 6358 (A) an individual's racial or ethnic origin;
- 6359 (B) an individual's religious beliefs;
- 6360 (C) an individual's sexual orientation;
- 6361 (D) an individual's citizenship or immigration status; or
- 6362 (E) information regarding an individual's medical history, mental or physical health condition, or medical treatment or diagnosis by a health care professional;
- 6365 (ii) the processing of genetic personal data or biometric data, if the processing is for the purpose of identifying a specific individual; or
- 6367 (iii) specific geolocation data.
- 6368 (b) "Sensitive data" does not include personal data that reveals an individual's:

## SB0038S01 compared with SB0038S02

- 6369 (i) racial or ethnic origin, if the personal data are processed by a video communication service; or  
6371 (ii) if the personal data are processed by a person licensed to provide health care under Title 26B, Chapter 2, Part 2, Health Care Facility Licensing and Inspection, or Title 58, Occupations and Professions, information regarding an individual's medical history, mental or physical health condition, or medical treatment or diagnosis by a health care professional.
- 6376 (33)
- (a) "Specific geolocation data" means information derived from technology, including global position system level latitude and longitude coordinates, that directly identifies an individual's specific location, accurate within a radius of 1,750 feet or less.
- 6380 (b) "Specific geolocation data" does not include:
- 6381 (i) the content of a communication; or  
6382 (ii) any data generated by or connected to advanced utility metering infrastructure systems or equipment for use by a utility.
- 6384 (34) "Synthetic data" means data that has been generated by computer algorithms or statistical models and does not contain personal data.
- 6386 (35)
- (a) "Targeted advertising" means displaying an advertisement to a consumer where the advertisement is selected based on personal data obtained from the consumer's activities over time and across nonaffiliated websites or online applications to predict the consumer's preferences or interests.
- 6390 (b) "Targeted advertising" does not include advertising:
- 6391 (i) based on a consumer's activities within a controller's website or online application or any affiliated website or online application;  
6393 (ii) based on the context of a consumer's current search query or visit to a website or online application;  
6395 (iii) directed to a consumer in response to the consumer's request for information, product, a service, or feedback; or  
6397 (iv) processing personal data solely to measure or report advertising:
- 6398 (A) performance;  
6399 (B) reach; or  
6400 (C) frequency.
- 6401 (36) "Third party" means a person other than:
- 6402 (a) the consumer, controller, or processor; or

## SB0038S01 compared with SB0038S02

- 6403 (b) an affiliate or contractor of the controller or the processor.
- 6404 (37) "Trade secret" means information, including a formula, pattern, compilation, program, device,  
method, technique, or process, that:
- 6406 (a) derives independent economic value, actual or potential, from not being generally known to, and not  
being readily ascertainable by proper means by, other persons who can obtain economic value from  
the information's disclosure or use; and
- 6409 (b) is the subject of efforts that are reasonable under the circumstances to maintain the information's  
secrecy.
- 6413 Section 141. Section **13-64-101** is amended to read:
- 6414 **13-64-101. Definitions.**
- As used in this chapter:
- 6414 (1) "Administrative functions" means the same as that term is defined in Section 31A-6b-102.
- 6416 (2) "Agreement administrator" means a person who provides administrative functions related to a  
vehicle value protection agreement.
- 6418 (3) "Covered vehicle" means a vehicle that is covered under a vehicle value protection agreement.
- 6420 (4) "Division" means the Division of Consumer Protection established in Section [~~13-2-1~~] 13-2-102.
- 6422 (5) "Finance agreement" means the same as that term is defined in Section 31A-6b-102.
- 6423 (6) "Insurer" means the same as that term is defined in Section 31A-1-301.
- 6424 (7) "Preliminary period" means a time period that:
- 6425 (a) begins the day on which the vehicle value protection agreement becomes effective; and
- 6427 (b) ends the last day on which the purchaser may cancel the vehicle value protection agreement with a  
full refund.
- 6429 (8) "Provider" means a person who is obligated to provide a benefit to another person under a vehicle  
value protection agreement.
- 6431 (9) "Purchaser" means a person who purchases a benefit from another person under a vehicle value  
protection agreement.
- 6433 (10) "Security" means the same as that term is defined in Section 31A-1-301.
- 6434 (11) "Vehicle" means the same as that term is defined in Section 31A-6b-102.
- 6435 (12)

## SB0038S01 compared with SB0038S02

(a) "Vehicle value protection agreement" means an agreement for a separate charge between a provider and purchaser under which the provider agrees to, upon damage, total loss, or unrecovered theft of the purchaser's covered vehicle, provide a benefit to the purchaser that may be applied to:

- 6439 (i) the cash value of the covered vehicle when traded in for a replacement vehicle;
- 6440 (ii) the finance agreement for a replacement vehicle; or
- 6441 (iii) the purchase or lease price of a replacement vehicle.

6442 (b) "Vehicle value protection agreement" includes:

- 6443 (i) a vehicle trade-in agreement;
- 6444 (ii) a vehicle diminished value agreement;
- 6445 (iii) a vehicle cash down payment protection agreement; and
- 6446 (iv) a vehicle depreciation benefit agreement.

6447 (c) "Vehicle value protection agreement" does not include:

- 6448 (i) insurance or an insurance contract regulated under Title 31A, Insurance Code;
- 6449 (ii) a guaranteed asset protection waiver, as defined in Section 31A-6b-102;
- 6450 (iii) a debt cancellation agreement, as defined in Section 31A-21-109; or
- 6451 (iv) a debt suspension contract, as defined in Section 31A-21-109.

6454 Section 142. Section **13-64-301** is amended to read:

6455 **13-64-301. Administration and enforcement -- Division powers -- Fees -- Rulemaking.**

6455 (1) The division shall administer and enforce this chapter in accordance with Chapter 2, Division of Consumer Protection.

6457 (2) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:

6459 (a) the division director may impose an administrative fine of up to \$2,500 for each act that is in violation of this chapter, including failure to insure or consider a vehicle value protection agreement as required under Subsection 13-64-202(1); and

6462 (b) the division may bring a civil action to enforce this chapter.

6463 (3) In a civil action by the division to enforce this chapter, the court may:

- 6464 (a) declare that an act or practice violates this chapter;
- 6465 (b) issue an injunction for a violation of this chapter;
- 6466 (c) order disgorgement of any money received after a violation of this chapter;
- 6467 (d) order payment of disgorged money to an injured individual;
- 6468 (e) impose a civil penalty of up to \$2,500 for each violation of this chapter; or

## SB0038S01 compared with SB0038S02

- 6469 (f) award any other relief that the court deems reasonable and necessary.
- 6470 (4) If a court grants judgment or injunctive relief to the division, the court shall award the division:
- 6472 (a) reasonable attorney fees;
- 6473 (b) court costs; and
- 6474 (c) investigative fees.
- 6475 (5)
- (a) A person who violates an administrative or court order issued for a violation of this chapter is subject to a civil penalty of no more than \$5,000 for each violation.
- 6477 (b) A civil penalty authorized under this section may be imposed in any civil action brought by the division.
- 6479 (c) The division shall deposit money received for the payment of a fine or civil penalty under this section into the Consumer Protection Education and Training Fund created in Section [13-2-8] 13-2-109.
- 6482 (6) The division may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer and enforce this chapter.
- 6486 Section 143. Section **13-65-203** is amended to read:
- 6487 **13-65-203. Enforcement.**
- 6486 (1) The division shall administer and enforce the provisions of this chapter in accordance with Chapter 2, Division of Consumer Protection.
- 6488 [~~(2) The attorney general, upon request, shall give legal advice to, and act as counsel for, the division in the exercise of the division's responsibilities under this chapter.~~]
- 6490 [~~(3)~~] (2)
- (a) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:
- 6492 (i) the division director may impose an administrative fine of up to \$2,500 for each violation of this chapter; and
- 6494 (ii) the division may bring an action in a court of competent jurisdiction to enforce a provision of this chapter.
- 6496 (b) In a court action by the division to enforce a provision of this chapter, the court may:
- 6497 (i) declare that an act or practice violates a provision of this chapter;
- 6498 (ii) issue an injunction for a violation of this chapter;
- 6499 (iii) order disgorgement of any money received in violation of this chapter;

## SB0038S01 compared with SB0038S02

- 6500 (iv) order payment of disgorged money to an injured purchaser or consumer;
- 6501 (v) impose a fine of up to \$2,500 for each violation of this chapter; or
- 6502 (vi) award any other relief that the court deems reasonable and necessary.
- 6503 ~~[(4)]~~ (3) If a court of competent jurisdiction grants judgment or injunctive relief to the division, the court shall award the division:
- 6505 (a) reasonable attorney fees;
- 6506 (b) court costs; and
- 6507 (c) investigative fees.
- 6508 ~~[(5)]~~ (4)
- (a) A person who violates an administrative or court order issued for a violation of this chapter is subject to a civil penalty of no more than \$5,000 for each violation.
- 6510 (b) A civil penalty authorized under this section may be imposed in any civil action brought by ~~[the attorney general on behalf of ]~~the division.
- 6512 ~~[(6)]~~ (5) All money received for the payment of a fine or civil penalty imposed under this section shall be deposited into the Consumer Protection Education and Training Fund created in Section ~~[13-2-8]~~ 13-2-109.
- 6517 Section 144. Section **13-68-101** is amended to read:
- 6518 **13-68-101. Definitions.**
- As used in this chapter:
- 6518 (1) "Attorney" means an individual who is authorized to provide legal services in any state or territory of the United States.
- 6520 (2) "Client" means a person:
- 6521 (a) ~~[that is provided]~~ to whom a lawyer referral consultant provides lawyer referral services~~[by a lawyer referral consultant]~~ ; or
- 6523 (b) that enters into an agreement to receive services from a lawyer referral consultant.
- 6524 (3) "Compensation" means anything of economic value that ~~[is paid, loaned, granted, given, donated, or transferred]~~ a person pays, loans, grants, gives, donates, or transfers to a person, directly or indirectly, for or in consideration of:
- 6527 (a) services;
- 6528 (b) personal or real property; or
- 6529 (c) another thing of value.

## SB0038S01 compared with SB0038S02

- 6530 (4) "Digital marketing service" means an [~~Internet-based~~] internet-based company that:
- 6531 (a) advertises legal services on behalf of a law firm; and
- 6532 (b) does not contact prospective clients individually.
- 6533 (5) "Division" means the Division of Consumer Protection [~~in the Department of~~  
Commeree] established in Section 13-2-102.
- 6535 (6) "Law firm" means an entity consisting of one or more licensed lawyers lawfully engaged in the practice of law.
- 6537 (7) "Lawyer referral consultant" means an individual that engages in lawyer referral service.
- 6538 (8)
- (a) "Lawyer referral service" means assisting a person to find an attorney or law firm that provides legal services in the legal field appropriate for the person's legal matter.
- 6540 (b) "Lawyer referral service" does not include a digital marketing service.
- 6541 (9) "Legal services" means any form of legal advice or legal representation that is subject to the laws of this state.

6545 Section 145. Section **13-68-201** is amended to read:

6546 **13-68-201. Requirement to be registered as a lawyer referral consultant.**

6546 (1)

~~[(a)]~~ Except as provided in Subsection ~~[(1)(b)]~~ (2), an individual may not engage in an activity of a lawyer referral consultant for compensation unless the individual ~~[is registered]~~ registers as a lawyer referral consultant under this chapter.

6549 ~~[(b)]~~ (2) Except as provided in Subsections 13-68-303(3), (4), and ~~[(4)]~~ (5), this chapter does not apply to an attorney.

6551 ~~[(2)]~~ (3) A lawyer referral consultant may only offer nonlegal assistance or advice in providing lawyer referral services.

6555 Section 146. Section **13-68-202** is amended to read:

6556 **13-68-202. Application for registration.**

6555 (1) To register as a lawyer referral consultant an individual shall:

6556 (a) submit an annual application in a form~~[prescribed by the division]~~ :

6557 (i) in the manner the division determines; and

6558 (ii) including any information that the division requires by rule the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

## SB0038S01 compared with SB0038S02

- 6560 (b) pay an annual registration fee determined by the division in accordance with Section 63J-1-504[  
which shall include the costs of the criminal background check required under Subsection (1)(e)];
- 6563 (c) not have [good moral character in that the individual has not ]been convicted of:
- 6564 (i) a felony; or
- 6565 (ii) within the [prior 10 years] 10 years before the day on which the applicant submits the application or  
renewal application, a misdemeanor involving theft, fraud, or dishonesty;
- 6568 (d) not have violated Chapter 11, Utah Consumer Sales Practices Act;
- 6569 [~~(d)~~] (e) submit fingerprint cards in a form acceptable to the division at the time the application is filed;[  
and]
- 6571 (f) pay the cost of:
- 6572 (i) the fingerprint card described in Subsection (1)(e); and
- 6573 (ii) the criminal background check described in Subsection (1)(g);
- 6574 [~~(e)~~] (g) consent to a fingerprint background check of the individual by:
- 6575 (i) [ ]the Bureau of Criminal Identification[ regarding the application] ; or
- 6576 (ii) another state or federal agency that performs criminal background checks; and
- 6577 (h) designate a registered agent for service of process in the state, and state the registered agent's:
- 6579 (i) name;
- 6580 (ii) street address;
- 6581 (iii) mailing address; and
- 6582 (iv) telephone number.
- 6583 (2) The division shall register an individual who qualifies under this chapter as a lawyer referral  
consultant.
- 6585 (3) A lawyer referral consultant shall update registration information within 30 days after the day on  
which information the lawyer referral consultant provides to the division on the application becomes  
incorrect or incomplete.
- 6588 (4) Registration of a lawyer referral consultant in accordance with this chapter is effective for one year  
after the day on which the division registers an individual as a lawyer referral consultant.
- 6591 (5) To renew a lawyer referral consultant registration in accordance with this section, a lawyer referral  
consultant shall submit a registration renewal application to the division at least 30 days before the  
day on which the lawyer referral consultant's registration expires.

6595

## SB0038S01 compared with SB0038S02

(6) Registration with the division does not constitute an approval or endorsement of the lawyer referral consultant by the division or the state.

6599 Section 147. Section **13-68-204** is amended to read:

6600 **13-68-204. Bonds -- Exemption -- Statements dependent on posting bond.**

6600 (1) A lawyer referral consultant shall ~~[post a cash bond or surety bond]~~ submit proof of obtaining and  
6600 maintaining the following in a form the division approves and in the amount of \$50,000:

6603 (a) a surety bond that a surety authorized to transact business in this state issues; or

6604 (b) a certificate of deposit in a financial institution authorized under the laws of this state or the United  
6604 States to accept deposits from the public.

6606 [~~(a) in the amount of \$50,000; and]~~

6607 [~~(b) payable to the division for the benefit of any person damaged by any of the following acts that~~  
6607 ~~a lawyer referral consultant or the lawyer referral consultant's agent, representative, or employee~~  
6607 ~~commits:]~~

6610 [~~(i) fraud;]~~

6611 [~~(ii) misstatement;]~~

6612 [~~(iii) misrepresentation;]~~

6613 [~~(iv) unlawful act;]~~

6614 [~~(v) omission; or]~~

6615 [~~(vi) failure to provide lawyer referral services.]~~

6616 (2) The division may claim a lawyer referral consultant's surety bond or certificate of deposit for the  
6616 benefit of a consumer who incurs actual damages as a result of the lawyer referral consultant's  
6616 failure to comply with this chapter.

6619 [~~(2) A bond under this section shall be:]~~

6620 [~~(a) in a form approved by the division;]~~

6621 [~~(b) conditioned upon the faithful compliance of a lawyer referral consultant with this chapter and~~  
6621 ~~division rules; and]~~

6623 [~~(c) maintained at all times while the lawyer referral consultant provides lawyer referral services.]~~

6625 (3) After a consumer recovers actual damages, the division may recover from the surety bond or  
6625 certificate of deposit any administrative fine, civil penalty, investigative cost, attorney fees, and  
6625 other costs of collecting and distributing funds under this section.

6628

## SB0038S01 compared with SB0038S02

~~[(3) A lawyer referral consultant shall keep the bond required under this section in force for one year after.]~~

6630 ~~[(a) the lawyer referral consultant's registration expires; or]~~

6631 ~~[(b) the lawyer referral consultant notifies the division in writing that the lawyer referral consultant has ceased all activities regulated under this chapter.]~~

6633 (4)

(a) If a surety bond ~~[posted by]~~ or certificate of deposit that a lawyer referral consultant posts under this section is canceled due to the lawyer referral consultant's negligence, the division may assess a \$300 reinstatement fee.

6636 (b) No part of a surety bond ~~[posted by]~~ or certificate of deposit a lawyer referral consultant posts under this section may be withdrawn:

6638 (i) during the one-year period the registration under this chapter is in effect; or

6639 (ii) while a revocation proceeding is pending against the lawyer referral consultant.

6640 (5)

(a) A surety bond ~~[posted under this section by]~~ or certificate of deposit that a lawyer referral consultant posts under this section may be forfeited if the division revokes the lawyer referral consultant's registration under this chapter~~[is revoked]~~.

6643 (b) Notwithstanding Subsection (5)(a), the division may make a claim against a surety bond ~~[posted by]~~ or certificate of deposit that a lawyer referral consultant posts for money ~~[owed]~~ the lawyer referral consultant owes to the division under this chapter without the division first revoking the lawyer referral consultant's registration.

6647 (6) An individual may not disseminate by any means a statement indicating that the individual is a lawyer referral consultant, or proposes to engage in the business of a lawyer referral consultant, unless the individual ~~[has posted a bond under this section that is maintained throughout the period covered by the statement]~~ complies with Subsection (1).

6652 (7) A lawyer referral consultant may not make or authorize the making of an oral or written reference to the lawyer referral consultant's compliance with ~~[the bonding requirements of this section except as provided in this section]~~ Subsection (1).

6657 Section 148. Section **148** is enacted to read:

6658 **13-68-205. Denial, suspension, or revocation of an application or registration.**

In accordance with Chapter 2, Division of Consumer Protection, and Title 63G, Chapter

## SB0038S01 compared with SB0038S02

4, Administrative Procedures Act, the division may initiate adjudicative proceedings to deny, suspend, or revoke an application or registration if:

- 6661 (1) the division finds that the denial, suspension, or revocation is in the public interest; and  
6662 (2)  
6663 (a) the registration is incomplete, false, or misleading; or  
6664 (b) the applicant or the applicant's principal:  
6665 (i) violates, causes a violation, allows a violation, or fails to satisfy the requirements of a provision of:  
6666 (A) this chapter; or  
6667 (B) a rule the division makes in accordance with this chapter;  
6668 (ii) violates Chapter 11, Utah Consumer Sales Practices Act;  
6669 (iii) is enjoined by a court, or is the subject of an administrative or judicial order issued in Utah or another state, if the order:  
6671 (A) includes a finding or admission of fraud, breach of fiduciary duty, or material misrepresentation; or  
6673 (B) is based on a finding of a lack of integrity, truthfulness, or mental competence;  
6674 (iv) is convicted of a crime involving theft, fraud, or dishonesty;  
6675 (v) obtains or attempts to obtain a registration by misrepresenting a material fact;  
6676 (vi) fails to provide information the division requests;  
6677 (vii) fails to pay an administrative fine the division or an administrative or judicial order imposes; or  
6679 (viii) fails to pay the fee to file a registration application or a renewal application.

6682 Section 149. Section **13-68-301** is amended to read:

### 6683 **13-68-301. Requirements for written contract -- Prohibited statements.**

- 6683 (1)  
6686 [(a) Before a] A lawyer referral consultant [may provide lawyer referral services to a client, the lawyer referral consultant] shall provide [the] a client with a written contract before providing a lawyer referral consulting service to the client.  
6689 [(b)] (2) The contents of the written contract described in Subsection [(1)(a)] (1) shall comply with this section and rules [made by]the division makes in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.  
6692 [(e)] (3) A prospective client may cancel a written contract on or before midnight of the third business day after execution of the written contract, excluding weekends and state and federal holidays.

## SB0038S01 compared with SB0038S02

~~[(2)]~~ (4) A written contract under this section shall be stated in both English and in the client's native language.

6694 ~~[(3)]~~ (5) A written contract under this section shall:

6695 (a) state the purpose for which the client hires the lawyer referral consultant~~[has been hired]~~;

6697 (b) state the one or more lawyer referral services ~~[to be performed]~~ the lawyer referral consultant will perform;

6699 (c) state the price for a lawyer referral service ~~[to be performed]~~ the lawyer referral consultant will perform;

6701 (d) include a statement printed in ~~[10-point]~~ 12-point boldface ~~[type]~~ font that the lawyer referral consultant:

6703 (i) ~~[-]~~is not an attorney; and

6704 (ii) ~~[-]~~may not perform the legal services that an attorney performs;

6705 (e) include a provision stating that the client may report complaints relating to a lawyer referral consultant to the division, including a ~~[toll-free-]~~telephone number and ~~[Internet-]~~website;

6708 (f) include a provision stating that complaints concerning the unauthorized practice of law may be reported to the Utah State Bar, including a ~~[toll-free-]~~telephone number and ~~[Internet-]~~website; and

6711 (g) ~~[in accordance with Subsection (1)(b),]~~include a provision stating in boldface on the first page of the written contract~~[in both English and in the client's native language in accordance with Subsection (2)]~~: "You may cancel this contract on or before midnight of the third business day after execution of the written contract."

6715 ~~[(4) A written contract may not contain a provision relating to a guarantee or promise unless the lawyer referral consultant has some basis in fact for making the guarantee or promise.]~~

6718 ~~[(5)]~~ (6) A lawyer referral consultant may not~~[make a guarantee or promise described in Subsection (4) orally to a client]~~ , without some basis in fact:

6720 (a) include in a written contract a guarantee or promise; or

6721 (b) orally represent that the lawyer referral service includes a guarantee or promise.

6722 ~~[(6)]~~ (7) A written contract is void if not written in accordance with this section.

6725 Section 150. Section **13-68-302** is amended to read:

6726 **13-68-302. Accounting for services -- Receipts.**

6725 (1)

## SB0038S01 compared with SB0038S02

(a) A lawyer referral consultant shall provide a signed receipt to a client for each payment [~~made by that~~  
] the client makes.

6727 (b) A receipt described in Subsection (1)(a) shall be typed or computer generated on the lawyer referral  
consultant's letterhead.

6729 (2) A lawyer referral consultant shall [~~make~~] provide a statement of accounting for the lawyer referral  
services rendered and payments made:

6731 (a) in the client's native language;

6732 (b) that is typed or computer generated on the lawyer referral consultant's letterhead;

6733 (c) that lists the individual and total charges for services; and

6734 (d) that lists the payments made by or on behalf of the client.

6737 Section 151. Section **13-68-303** is amended to read:

6738 **13-68-303. Notice to be displayed -- Disclosure to be provided in writing.**

6738 [~~(1) A lawyer referral consultant shall conspicuously display in the lawyer referral consultant's office a  
notice that shall be at least 12 by 20 inches with boldface type or print with each character at least  
one inch in height and width, that contains the following information:]~~

6742 [~~(a) the full name, address, and evidence of compliance with any applicable bonding requirement  
including the bond number;]~~

6744 [~~(b) a statement that the lawyer referral consultant is not an attorney; and]~~

6745 [~~(c) the name of each lawyer referral consultant employed at each location.]~~

6746 [~~(2)~~] (1)

(a) Before providing any services, a lawyer referral consultant shall provide a client with a written  
disclosure in the native language of the client that includes the following:

6749 (i) the lawyer referral consultant's name, address, and telephone number;

6750 (ii) the lawyer referral consultant's agent for service of process in this state, including the agent's[:;]

6752 (A) name;

6753 (B) street address;

6754 (C) mailing address; and

6755 (D) telephone number;

6756 (iii) evidence of compliance with any applicable [~~bonding~~] surety bond or certificate of deposit  
requirement, including the surety bond or certificate of deposit number; and

6759

## SB0038S01 compared with SB0038S02

(iv) a list of the services that the lawyer referral consultant provides and the current and total fee for each service.

6761 ~~[(b)]~~ (2) A lawyer referral consultant shall obtain the signature of the client verifying that the client  
[received] receives the written disclosure described in Subsection ~~[(2)(a)]~~ (1) before a lawyer  
referral consultant provides a service~~[is provided]~~.

6764 (3)

~~[(a)]~~ Except as provided in Subsection ~~[(3)(b)]~~ (4), a lawyer referral consultant who prints, displays, publishes, distributes, or broadcasts, or who causes to be printed, displayed, published, distributed, or broadcasted, any advertisement for services as a lawyer referral consultant, shall include in that advertisement a clear and conspicuous statement that the lawyer referral consultant is not an attorney.

6769 ~~[(b)]~~

6770 ~~[(i)]~~ (4) Subsection ~~[(3)(a)]~~ (3) does not apply to a person who is not an active member of the Utah State Bar, but is an attorney licensed in another state or territory of the United States.

6773 ~~[(ii)]~~ (5) A person described in Subsection ~~[(3)(b)(i)]~~ (4) shall include in ~~[any]~~ an advertisement for lawyer referral services a clear and conspicuous statement that the person is not an attorney licensed to practice law in this state, but is an attorney licensed in another state or territory of the United States.

6777 ~~[(4)]~~ (6) If an advertisement subject to this section is in a language other than English, the statement required by Subsection (3) shall be in the same language as the advertisement.

6781 Section 152. Section **13-68-401** is amended to read:

6782 **13-68-401. Unlawful acts.**

6781 (1) It is unlawful for a lawyer referral consultant or ~~[any other]~~ another person to:

6782 (a) ~~[make-]~~ make, cause, or allow to be made a false or misleading statement to a client or prospective client while providing or soliciting services to that client or prospective client;

6785 (b) ~~[make-]~~ make, cause, or allow to be made a guarantee or promise to a client or prospective client, unless the guarantee or promise is in writing and there is basis in fact for making the guarantee or promise;

6788 (c) charge a client a fee for referral of the client to another person for services that the lawyer referral consultant cannot or will not provide to the client;~~[-or]~~

6790

## SB0038S01 compared with SB0038S02

(d) communicate with a prospective client for the purpose of obtaining or referring business if the communication concerns a disaster, or an action for personal injury or wrongful death, unless:

- 6793 (i) the disaster, injury, or death occurred more than 30 days before the communication;
- 6795 (ii) the prospective client is a person who has a prior familial, prior personal, or prior professional relationship with the lawyer to be referred, the lawyer referral consultant, or the person communicating with the prospective client;
- 6798 (iii) the prospective client initiates the communication~~[is initiated by the prospective client]~~; or
- 6800 (iv) ~~[the communication is requested by]~~ a third party who has a prior familial or prior close personal relationship with the prospective client requests the communication~~[.]~~ ;
- 6803 (e) represent that the division or the state endorses or approves the lawyer referral consultant;
- 6805 (f) omit from a filing with the division a material statement of fact that this chapter or a rule the division makes in accordance with this section requires; or
- 6807 (g) include in a filing with the division a material statement of fact that the lawyer referral consultant or the lawyer referral consultant's principal knows or should know is false, deceptive, inaccurate, or misleading.

6810 (2) A lawyer referral consultant may not translate a document or other information in a way that falsely represents or implies that the lawyer referral consultant is an attorney.

6812 ~~[(2) A sign describing the prohibition described in Subsection (1)(c) shall be conspicuously displayed in the office of a lawyer referral consultant.]~~

6816 Section 153. Section **13-68-402** is amended to read:

6817 **13-68-402. Violations -- Actions by division.**

6816 (1) The division shall administer and enforce the provisions of this chapter in accordance with Chapter 2, Division of Consumer Protection.

6818 ~~[(2) The attorney general, upon request, shall give legal advice to, and act as counsel for, the division in the exercise of the division's responsibilities under this chapter.]~~

6820 ~~[(3)]~~ (2)

~~[(a)]~~ In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:

6822 ~~[(i)]~~ (a) the division director may impose an administrative fine of up to \$2,500 for each violation of this chapter; and

6824

## SB0038S01 compared with SB0038S02

~~[(ii)]~~ (b) the division may bring an action in a court ~~[of competent]~~ with jurisdiction to enforce a provision of this chapter.

6826 ~~[(b)]~~ (3) In ~~[a court action by the division to enforce a provision of this chapter]~~ an action the division  
brings in accordance with Subsection (2)(b), the court may:

6828 ~~[(i)]~~ (a) declare that an act or practice violates a provision of this chapter;

6829 ~~[(ii)]~~ (b) issue an injunction for a violation of this chapter;

6830 ~~[(iii)]~~ (c) order disgorgement of any money received in violation of this chapter;

6831 ~~[(iv)]~~ (d) order payment of disgorged money to an injured purchaser or consumer;

6832 ~~[(v)]~~ (e) impose a fine of up to \$2,500 for each violation of this chapter; or

6833 ~~[(vi)]~~ (f) award any other relief that the court deems reasonable and necessary.

6834 (4) If a court ~~[of competent]~~ with jurisdiction grants judgment or injunctive relief to the division, the court shall award the division:

6836 (a) reasonable attorney fees;

6837 (b) court costs; and

6838 (c) investigative fees.

6839 (5)

(a) A person who violates an administrative or court order issued for a violation of this chapter is subject to a civil penalty of no more than \$5,000 for each violation.

6841 (b) A civil penalty authorized under this section may be imposed in any civil action brought by the ~~[attorney general on behalf of the]~~ division.

6843 ~~[(e) All money received for the payment of a fine or civil penalty imposed under this section shall be deposited into the Consumer Protection Education and Training Fund created in Section 13-2-8.]~~

6846 (6)

(a) A person who intentionally violates this chapter:

6847 (i) is guilty of a class A misdemeanor; and

6848 (ii) may be fined up to \$10,000.

6849 (b) A person intentionally violates this part if the violation occurs after the division, attorney general, or a district or county attorney notifies the person by certified mail that the person is in violation of this chapter.

6854 Section 154. Section **13-68-403** is amended to read:

6855 **13-68-403. Action by attorney general or district or county attorney.**

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- 6855 (1) Upon referral from the division, the attorney general or any district or county attorney may:
- 6857 (a) bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this part;
- 6859 (b) bring an action in any court of competent jurisdiction for the collection of penalties authorized under Subsection 13-68-402(2); or
- 6861 (c) bring an action under Subsection [~~13-68-402(4)~~] 13-68-402(5).
- 6862 (2) A court may, upon entry of final judgment, award restitution when appropriate to any person suffering loss because of a violation of this part if proof of loss is submitted to the satisfaction of the court.

6867 Section 155. Section **13-68-404** is amended to read:

6868 **13-68-404. Recovery of losses.**

In addition to any other remedies, a person [~~suffering~~] that suffers pecuniary loss because of a violation by another person of this chapter may bring an action in any court [~~of competent~~] with jurisdiction and may recover:

- 6870 (1) the greater of:
- 6871 (a) \$500; or
- 6872 (b) twice the amount of the pecuniary loss; and
- 6873 (2) court costs and reasonable attorney fees as [~~determined by~~]the court determines.

6876 Section 156. Section **13-70-101** is amended to read:

6877 **13-70-101. Definitions.**

As used in this chapter:

- 6877 (1) "Automatic renewal provision" means a provision under a contract that is automatically renewed at the end of a definite, paid term for a subsequent, paid term that is longer than 45 days.
- 6880 (2) "Clearly and conspicuously disclose" means to disclose:
- 6881 (a) in print:
- 6882 (i) in larger [~~type~~] font than the surrounding text;
- 6883 (ii) in contrasting type, font, or color to the surrounding text of the same size; or
- 6884 (iii) in a manner set off from the surrounding text of the same size by symbols or other marks that clearly call attention to the language; or
- 6886 (b) through audio, in a volume and cadence sufficient to be readily audible and understandable.
- 6888 (3) "Division" means the Division of Consumer Protection established in Section [~~13-2-1~~] 13-2-102.

## SB0038S01 compared with SB0038S02

- 6890 (4) "Rental agreement" means any agreement, written or oral, which establishes or modifies the terms, conditions, rules, or any other provisions regarding the use or occupancy of real property for residential or commercial purposes.
- 6893 (5) "Trial period offer" means an offer to provide a period of time to sample or use a product or service without payment.
- 6897 Section 157. Section **13-70-301** is amended to read:
- 6898 **13-70-301. Administration and enforcement -- Division powers -- Fees -- Rulemaking.**
- 6898 (1) The division shall administer and enforce this chapter in accordance with Chapter 2, Division of Consumer Protection.
- 6900 (2) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:
- 6902 (a) the division director may impose an administrative fine of up to \$2,500 for each violation of this chapter; and
- 6904 (b) the division may bring a civil action to enforce this chapter.
- 6905 (3) In a civil action by the division to enforce this chapter, the court may:
- 6906 (a) declare that an act or practice violates this chapter;
- 6907 (b) issue an injunction for a violation of this chapter;
- 6908 (c) order disgorgement of any money received after a violation of this chapter;
- 6909 (d) order payment of disgorged money to an injured individual;
- 6910 (e) impose a civil penalty of up to \$2,500 for each violation of this chapter; or
- 6911 (f) award any other relief that the court deems reasonable and necessary.
- 6912 (4) If a court grants judgment or [-]injunctive relief to the division, the court shall award the division:
- 6914 (a) reasonable attorney fees;
- 6915 (b) court costs; and
- 6916 (c) investigative fees.
- 6917 (5)
- (a) A person [~~who~~] that violates an administrative or court order issued for a violation of this chapter is subject to a civil penalty of no more than \$5,000 for each violation.
- 6919 (b) A civil penalty authorized under this section may be imposed in [~~any~~] a civil action brought by the division.
- 6921 [~~(e) The division shall deposit money received for the payment of a fine or civil penalty under this section into the General Fund.~~]

## SB0038S01 compared with SB0038S02

- 6923 (6) The division may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to enforce this chapter.
- 6927 Section 158. Section **13-71-101** is amended to read:
- 6928 **13-71-101. Definitions.**
- 6927 (1) "Account holder" means a person who has, creates, or opens an account or profile to use a social media service.
- 6929 (2) "Age assurance system" means measures reasonably calculated to enable a social media company to identify whether a current or prospective Utah account holder is a minor with an accuracy rate of at least 95%.
- 6932 (3) "Connected account" means an account on the social media service that is directly connected to:
- 6934 (a) the minor account holder's account; or
- 6935 (b) an account that is directly connected to an account directly connected to the minor account holder's account.
- 6937 (4) "Content" means any information, visual depictions, tools, features, links, software, or other materials that appear on or are available or enabled through a social media service.
- 6939 (5) "Directly connected" means an account on the social media service that is connected to another account by:
- 6941 (a) sending a request to connect to another account holder and having the request to connect accepted by the other account holder; or
- 6943 (b) receiving a request to connect from another account holder and accepting the request to connect.
- 6945 (6) "Director" means the director of the division.
- 6946 (7) "Division" means the Division of Consumer Protection created in Section [~~13-2-1~~] 13-2-102.
- 6948 (8) "Minor" means an individual under 18 years old that:
- 6949 (a) has not been emancipated as that term is defined in Section 80-7-102; or
- 6950 (b) has not been married.
- 6951 (9) "Parent" includes a legal guardian.
- 6952 (10)
- (a) "Personal information" means information that is linked or can be reasonably linked to an identified individual or an identifiable individual.
- 6954 (b) "Personal information" includes a person's:
- 6955 (i) first and last name;

## SB0038S01 compared with SB0038S02

- 6956 (ii) date of birth;
- 6957 (iii) home or physical address, including street name and city;
- 6958 (iv) screen or user name that reveals an individual's email address, first name, or last name;
- 6960 (v) telephone number;
- 6961 (vi) [~~Social Security~~] social security number;
- 6962 (vii) photograph, video, or audio file containing a person's image or voice;
- 6963 (viii) geolocation information sufficient to identify street name and city; and
- 6964 (ix) any other identifier that a person may use to contact a specific individual.
- 6965 (11) "Push notification" means an automatic electronic message displayed on an account holder's device, when the user interface for the social media service is not actively open or visible on the device, that prompts the account holder to repeatedly check and engage with the social media service.
- 6969 (12) "Resident" means the same as that term is defined in Section 53-3-102.
- 6970 (13) "Social media company" means an entity that owns or operates a social media service.
- 6971 (14)
- (a) "Social media service" means a public website or application that:
- 6972 (i) displays content that is primarily generated by account holders and not by the social media company;
- 6974 (ii) permits an individual to register as an account holder and create a profile that is made visible to the general public or a set of other users defined by the account holder;
- 6977 (iii) connects account holders to allow users to interact socially with each other within the website or application;
- 6979 (iv) makes available to each account holder a list or lists of other account holders with whom the account holder shares a connection within the system; and
- 6981 (v) allows account holders to post content viewable by other users.
- 6982 (b) "Social media service" does not include:
- 6983 (i) email;
- 6984 (ii) cloud storage; or
- 6985 (iii) document viewing, sharing, or collaboration services.
- 6986 (15) "User" means an individual who accesses or uses a social media service.
- 6987 (16)

## SB0038S01 compared with SB0038S02

(a) "Utah account holder" means a person who is a Utah resident and an account holder.

6989 (b) "Utah account holder" includes a Utah minor account holder.

6990 (17) "Utah minor account holder" means a Utah account holder who is a minor.

6991 (18) "Verifiable parental consent" means authorization from a parent for a social media service to collect, use, and disclose personal information of a Utah minor account holder, that complies with the following verifiability requirements:

6994 (a) the social media service shall provide advance notice to the parent describing information practices related to the minor account holder's personal information; and

6996 (b) the social media service shall receive confirmation that the parent received the notice described in Subsection (18)(a).

7000 Section 159. Section **13-71-301** is amended to read:

7001 **13-71-301. Enforcement powers.**

7000 (1) The division shall administer and enforce the provisions of Part 2, General Requirements, in accordance with Chapter 2, Division of Consumer Protection.

7002 (2) The attorney general, upon request, shall give legal advice to, and act as counsel for, the division in the exercise of the division's responsibilities under this part.

7004 (3)

(a) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:

7006 (i) the division director may impose an administrative fine of up to \$2,500 for each violation of this chapter; and

7008 (ii) the division may bring an action in court to enforce a provision of this chapter.

7009 (b) In a court action by the division to enforce a provision of this chapter, the court may:

7010 (i) declare that the act or practice violates a provision of this chapter;

7011 (ii) enjoin actions that violate this chapter;

7012 (iii) order disgorgement of any money received in violation of this chapter;

7013 (iv) order payment of disgorged money to an injured purchaser or consumer;

7014 (v) impose a civil penalty of up to \$2,500 for each violation of this chapter;

7015 (vi) award actual damages to an injured purchaser or consumer; and

7016 (vii) award any other relief that the court deems reasonable and necessary.

7017 (c) If a court grants judgment or injunctive relief to the division, the court shall award the division:

7019 (i) reasonable attorney fees;

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- 7020 (ii) court costs; and
- 7021 (iii) investigative fees.
- 7022 (4)
- (a) A person who violates an administrative or court order issued for a violation of this chapter is subject to a civil penalty of no more than \$5,000 for each violation.
- 7024 (b) A civil penalty authorized under this section may be imposed in any civil action brought by the division, or by the attorney general on behalf of the division.
- 7026 (5) All money received for the payment of a fine or civil penalty imposed under this section shall be deposited into the Consumer Protection Education and Training Fund established in Section [~~13-2-8~~] 13-2-109.
- 7031 Section 160. Section **13-72a-101** is amended to read:
- 7032 **13-72a-101. Definitions.**
- As used in this chapter:
- 7032 (1) "Artificial intelligence" means the same as that term is defined in Section 13-72-101.
- 7033 (2) "Artificial intelligence technology" means the same as that term is defined in Section 13-72-101.
- 7035 (3) "Confidential communications" means the same as that term is defined in Section 58-60-102.
- 7037 (4) "Covered entity" means the same as that term is defined in 45 C.F.R. Sec. 160.103.
- 7038 (5) "Division" means the Division of Consumer Protection created in Section [~~13-2-1~~] 13-2-102.
- 7040 (6) "Generative artificial intelligence" means an artificial intelligence technology system that:
- 7042 (a) is trained on data;
- 7043 (b) is designed to simulate human conversation with a consumer through one or more of the following:
- 7045 (i) text;
- 7046 (ii) audio; or
- 7047 (iii) visual communication; and
- 7048 (c) generates non-scripted outputs similar to outputs created by a human, with limited or no human oversight.
- 7050 (7) "Health care provider" means the same as that term is defined in 45 C.F.R. Sec. 160.103.
- 7051 (8) "Health plan" means the same as that term is defined in 45 C.F.R. Sec. 160.103.
- 7052 (9) "Individually identifiable health information" means any information, whether oral or recorded in any form or medium, that relates to the physical or mental health or condition of an individual.
- 7055 (10)

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(a) "Mental health chatbot" means an artificial intelligence technology that:

- 7056 (i) uses generative artificial intelligence to engage in interactive conversations with a user of the  
mental health chatbot similar to the confidential communications that an individual would have  
with a licensed mental health therapist; and
- 7059 (ii) a supplier represents, or a reasonable person would believe, can or will provide mental health  
therapy or help a user manage or treat mental health conditions.

(b) "Mental health chatbot" does not include artificial intelligence technology that only:

- 7062 (i) provides scripted output, such as guided meditations or mindfulness exercises; or
- 7063 (ii) analyzes an individual's input for the purpose of connecting the individual with a human mental  
health therapist.

(11) "Mental health therapist" means the same as that term is defined in Section 58-60-102.

(12) "Personal data" means the same as that term is defined in Section 63A-19-101.

(13) "Scientific research development" means research:

(a) conducted by a researcher affiliated with:

(i) an institution of higher education;

(ii) a research organization; or

(iii) a healthcare facility; and

(b) that is:

(i) approved by an institutional review board; and

(ii) conducted in accordance with applicable ethics requirements for human subject research.

(14) "Supplier" means the same as that term is defined in Section 13-11-3.

7077 [~~(15) "Utah user" means an individual located in the state at the time the individual accesses or uses a  
mental health chatbot.~~]

7079 [(~~16~~) (15) "User input" means content provided to a mental health chatbot by a Utah user.

7080 (16) "Utah user" means an individual located in the state at the time the individual accesses or uses a  
mental health chatbot.

7084 Section 161. Section **13-72a-204** is amended to read:

### **13-72a-204. Violations -- Enforcement authority.**

7084 (1) The division shall administer and enforce the provisions of this chapter in accordance with Chapter  
2, Division of Consumer Protection.

7086 [~~(2) The attorney general shall:~~]

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- 7087 [(a) upon request, give legal advice to the division; and]
- 7088 [(b) act as counsel for the division in the exercise of the division's responsibilities under this chapter.]
- 7090 [~~(3)~~] (2) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:
- 7092 (a) the division director may impose an administrative fine of up to \$2,500 for each violation of this chapter; and
- 7094 (b) the division may bring an action in a court of competent jurisdiction to enforce a provision of this chapter.
- 7096 [~~(4)~~] (3) In a court action by the division to enforce a provision of this chapter, the court may:
- 7098 (a) declare that an act or practice violates a provision of this chapter;
- 7099 (b) issue an injunction for a violation of this part;
- 7100 (c) order disgorgement of money received in violation of this chapter;
- 7101 (d) order payment of disgorged money to an injured purchaser or consumer;
- 7102 (e) impose a fine of up to \$2,500 for each violation of this chapter; or
- 7103 (f) award other relief that the court determines reasonable and necessary.
- 7104 [~~(5)~~] (4) If a court awards judgment or injunctive relief to the division, the court shall award the division:
- 7106 (a) reasonable attorney fees;
- 7107 (b) court costs; and
- 7108 (c) investigative fees.
- 7109 [~~(6)~~] (5) A court may impose a civil penalty of no more than \$5,000 for each violation of an administrative or court order issued for a violation of this chapter.
- 7111 [~~(7) The attorney general may bring a civil action on behalf of the division to collect a civil penalty imposed under this section.~~]
- 7113 (6) A court may impose a civil penalty authorized under this section in a civil action brought by the division.
- 7115 [~~(8)~~] (7) The division shall deposit all fines and civil penalties collected under this section into the Consumer Protection Education and Training Fund created in Section [~~13-2-8~~] 13-2-109.
- 7120 Section 162. Section **13-76-101** is amended to read:
- 7121 **13-76-101. Definitions.**  
As used in this chapter:

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- 7121 (1) "Age category" means one of the following categories of individuals based on age:
- 7122 (a) "child" which means an individual who is under 13 years old;
- 7123 (b) "younger teenager" which means an individual who is at least 13 years old and under 16 years old;
- 7125 (c) "older teenager" which means an individual who is at least 16 years old and under 18 years old; or
- 7127 (d) "adult" which means an individual who is at least 18 years old.
- 7128 (2) "Age category data" means information about a user's age category that is:
- 7129 (a) collected by an app store provider; and
- 7130 (b) shared with a developer.
- 7131 (3) "Age rating" means a classification that provides an assessment of the suitability of an app's content for different age groups.
- 7133 (4) "App" means a software application or electronic service that a user may run or direct on a mobile device.
- 7135 (5) "App store" means a publicly available website, software application, or electronic service that allows users to download apps from third-party developers onto a mobile device.
- 7138 (6) "App store provider" means a person that owns, operates, or controls an app store that allows users in the state to download apps onto a mobile device.
- 7140 (7) "Content description" means a description of the specific content elements that informed an app's age rating.
- 7142 (8) "Developer" means a person that owns or controls an app made available through an app store in the state.
- 7144 (9) "Division" means the Division of Consumer Protection, established in Section [~~13-2-1~~] 13-2-101.
- 7146 (10) "Knowingly" means to act with actual knowledge or to act with knowledge fairly inferred based on objective circumstances.
- 7148 (11) "Minor" means an individual under 18 years old.
- 7149 (12) "Minor account" means an account with an app store provider that:
- 7150 (a) is established by an individual who the app store provider has determined is under 18 years old through the app store provider's age verification methods; and
- 7152 (b) requires affiliation with a parent account.
- 7153 (13) "Mobile device" means a phone or general purpose tablet that:
- 7154 (a) provides cellular or wireless connectivity;
- 7155 (b) is capable of connecting to the [~~Internet~~] internet;

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- 7156 (c) runs a mobile operating system; and
- 7157 (d) is capable of running apps through the mobile operating system.
- 7158 (14) "Mobile operating system" means software that:
- 7159 (a) manages mobile device hardware resources;
- 7160 (b) provides common services for mobile device programs;
- 7161 (c) controls memory allocation; and
- 7162 (d) provides interfaces for applications to access device functionality.
- 7163 (15) "Parent" means, with respect to a minor, any of the following individuals who have legal authority to make decisions on behalf of the minor:
- 7165 (a) an individual with a parent-child relationship under Section 78B-15-201;
- 7166 (b) a legal guardian; or
- 7167 (c) an individual with legal custody.
- 7168 (16) "Parent account" means an account with an app store provider that:
- 7169 (a) is verified to be established by an individual who the app store provider has determined is at least 18 years old through the app store provider's age verification methods; and
- 7172 (b) may be affiliated with one or more minor accounts.
- 7173 (17) "Parental consent disclosure" means the following information that an app store provider is required to provide to a parent before obtaining parental consent:
- 7175 (a) if the app store provider has an age rating for the app or in-app purchase, the app's or in-app purchase's age rating;
- 7177 (b) if the app store provider has a content description for the app or in-app purchase, the app's or in-app purchase's content description;
- 7179 (c) a description of:
- 7180 (i) the personal data collected by the app from a user; and
- 7181 (ii) the personal data shared by the app with a third party; and
- 7182 (d) if personal data is collected by the app, the methods implemented by the developer to protect the personal data.
- 7184 (18) "Significant change" means a material modification to an app's terms of service or privacy policy that:
- 7186 (a) changes the categories of data collected, stored, or shared;
- 7187 (b) alters the app's age rating or content descriptions;

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- 7188 (c) adds new monetization features, including:
- 7189 (i) in-app purchases; or
- 7190 (ii) advertisements; or
- 7191 (d) materially changes the app's:
- 7192 (i) functionality; or
- 7193 (ii) user experience.
- 7194 (19) "Verifiable parental consent" means authorization that:
- 7195 (a) is provided by an individual who the app store provider has verified is an adult;
- 7196 (b) is given after the app store provider has clearly and conspicuously provided the parental consent disclosure to the individual; and
- 7198 (c) requires the parent to make an affirmative choice to:
- 7199 (i) grant consent; or
- 7200 (ii) decline consent.
- 7203 Section 163. Section **13-77-101** is amended to read:
- 7204 **13-77-101. Definitions.**
- As used in this chapter:
- 7204 (1) "Artificial intelligence technology" means the same as that term is defined in Section 13-72-101.
- 7206 (2) "Consumer transaction" means the same as that term is defined in Section 13-11-3.
- 7207 (3) "Division" means the Division of Consumer Protection created in Section [~~13-2-1~~] 13-2-102.
- 7209 (4) "Generative artificial intelligence" means an artificial intelligence technology system that:
- 7211 (a) is trained on data;
- 7212 (b) is designed to simulate human conversation with a consumer through one or more of the following:
- 7214 (i) text;
- 7215 (ii) audio; or
- 7216 (iii) visual communication; and
- 7217 (c) generates non-scripted outputs similar to outputs created by a human, with limited or no human oversight.
- 7219 (5) "High-risk artificial intelligence interaction" means an interaction with generative artificial intelligence that involves:
- 7221 (a) the collection of sensitive personal information, including:
- 7222 (i) health data;

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- 7223 (ii) financial data; or
- 7224 (iii) biometric data;
- 7225 (b) the provision of personalized recommendations, advice, or information that could reasonably be relied upon to make significant personal decisions, including the provision of:
- 7228 (i) financial advice or services;
- 7229 (ii) legal advice or services;
- 7230 (iii) medical advice or services; or
- 7231 (iv) mental health advice or services; or
- 7232 (c) other applications as defined by division rule.
- 7233 (6) "License" means a state-granted authorization for an individual to engage in a specified occupation:
- 7235 (a) based on the individual meeting personal qualifications established under state law; and
- 7237 (b) that is required before the individual may lawfully engage in the occupation for compensation.
- 7239 (7) "Office" means the Office of Artificial Intelligence Policy created in Section ~~[13-74-201]~~ 13-72-201.
- 7241 (8) "Regulated occupation" means an occupation that:
- 7242 (a) is regulated by the Department of Commerce; and
- 7243 (b) requires an individual to obtain a license or state certification to practice the occupation.
- 7245 (9) "State certification" means a state-granted authorization that:
- 7246 (a) permits an individual to use the term "state certified" as part of a designated title related to a specified occupation:
- 7248 (i) based on the individual meeting personal qualifications established under state law; and
- 7250 (ii) where state law prohibits a noncertified individual from using the term "state certified" as part of a designated title; and
- 7252 (b) does not prohibit a noncertified individual from engaging in the occupation for compensation.
- 7254 (10) "Supplier" means the same as that term is defined in Section 13-11-3.
- 7257 Section 164. Section **13-77-102** is amended to read:
- 7258 **13-77-102. Liability for violation of consumer protection law.**  
It is not a defense to the violation of any statute administered and enforced by the division  
under Section ~~[13-2-1]~~ 13-2-102 that generative artificial intelligence:
- 7259 (1) made the violative statement;

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- 7260 (2) undertook the violative act; or
- 7261 (3) was used in furtherance of the violation.
- 7264 Section 165. Section **13-78-101** is amended to read:
- 7265 **13-78-101. Definitions.**
- As used in this chapter:
- 7265 (1) "Consumer" means an individual who resides in the state.
- 7266 (2) "Division" means the Division of Consumer Protection established in Section 13-2-102.
- 7267 [~~2~~] (3) "Earned but unpaid income" means compensation, including salary, wages, or other income,  
that ~~is~~:
- 7269 (a) [~~earned or accrued by~~] a consumer earns or accrues through services [~~provided~~] the consumer  
provides to an employer or as an independent contractor; and
- 7271 (b) [~~not paid yet to the consumer by~~] the employer or hiring party has not yet paid to the consumer.
- 7273 [~~3~~] (4) "Earned wage access services" means the payment of funds to a consumer determined by:
- 7275 (a)
- (i) a consumer's representation; and
- 7276 (ii) the provider's reasonable determination of earned but unpaid income; or
- 7277 (b) employment, income, and attendance data obtained directly or indirectly by a provider from an  
employer or an employer's payroll service provider.
- 7279 [~~4~~] (5)
- (a) "Fee" means a charge the provider imposes on a consumer for earned wage access services,  
expedited delivery of funds, or a subscription or membership that includes earned wage access  
services.
- 7282 (b) "Fee" does not include a voluntary tip, gratuity, or donation.
- 7283 [~~5~~] (6)
- (a) "Provider" means a person [~~engaged~~] that engages in the business of offering earned wage access  
services.
- 7285 (b) "Provider" does not include:
- 7286 (i) a service provider, such as a payroll service provider, that verifies, but does not fund, earned wages;
- 7288 (ii) an employer that advances a portion of earned wages directly to employees or independent  
contractors; or
- 7290 (iii) a person regulated under Title 7, Financial Institutions Act.

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- 7293 Section 166. Section **13-78-102** is amended to read:
- 7294 **13-78-102. Provider registration and registration renewal.**
- 7293 (1) ~~[Except as provided in Subsection (4), a]~~ A person may not act as a provider without registering with the division.
- 7295 (2) To register as a provider, a person shall submit to the division a registration application:
- 7296 (a) in the manner the division determines; and
- 7297 (b) that includes:
- 7298 (i) a registration application fee in an amount the division determines in accordance with ~~[Sections 13-1-2 and]~~ Section 63J-1-504;
- 7300 (ii) a copy of the agreement for earned wage access services the provider uses with a consumer; and
- 7302 (iii) any information that the division requires by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 7304 (3) Each year a provider shall renew the provider's registration by submitting to the division an application for registration renewal:
- 7306 (a) in a manner the division determines; and
- 7307 (b) that includes:
- 7308 (i) a registration renewal application fee in an amount the division determines in accordance with ~~[Sections 13-1-2 and]~~ Section 63J-1-504;~~[-and]~~
- 7310 (ii) any information the division requires by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act~~[-]~~ ; and
- 7312 (iii) a designated registered agent for service of process in the state and the registered agent's:
- 7314 (A) name;
- 7315 (B) street address;
- 7316 (C) mailing address; and
- 7317 (D) telephone number.
- 7318 ~~[(4) A person that acts as a provider on May 7, 2025, may continue to act as a provider:]~~
- 7319 ~~[(a) if the person:]~~
- 7320 ~~[(i) applies for registration in accordance with this section on or before October 6, 2025; and]~~
- 7322 ~~[(ii) complies with the requirements of this chapter; and]~~
- 7323 ~~[(b) until the day on which the division issues a decision on the registration application after which:]~~
- 7325 ~~[(i) a person for which a registration application is denied may no longer operate; and]~~

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- 7326 [~~(ii) a person for which a registration application is granted may operate as provider.~~]  
7327 [~~(5)~~] (4)
- (a) The division shall require a provider's principal to:
- 7328 (i) submit a fingerprint card in a form acceptable to the division; and  
7329 (ii) consent to a criminal background check by:
- 7330 [~~(A) the Federal Bureau of Investigation;~~]  
7331 [~~(B)~~] (A) the [~~Utah~~]Bureau of Criminal Identification; or  
7332 [~~(C)~~] (B) another state or federal agency [~~of any state~~]that performs criminal background checks.
- 7334 (b) The provider shall pay the cost of:
- 7335 (i) the fingerprint card described in Subsection [~~(5)(a)(i)~~] (4)(a)(i); and  
7336 (ii) the criminal background check described in Subsection [~~(5)(a)(ii)~~] (4)(a)(ii).
- 7337 [~~(6)~~] (5) The division may grant or deny the registration application or the renewal application in accordance with Section 13-78-105.
- 7339 (6) A provider shall update registration information within 30 days after the day on which information the provider provides on the application becomes incorrect or incomplete.
- 7341 (7) Registration with the division does not constitute an approval or endorsement of the provider by the division or the state.
- 7345 Section 167. Section **13-78-103** is amended to read:
- 7346 **13-78-103. Regulation of earned wage access services.**
- 7345 (1) A provider is exempt from Title 7, Financial Institutions Act, and Title 12, Collection Agencies.
- 7347 (2) A provider shall:
- 7348 (a) develop and implement procedures to address consumer questions and complaints;  
7349 (b) before entering into an agreement for earned wage access services with a consumer, clearly and conspicuously disclose:
- 7351 (i) the consumer's rights under the agreement;  
7352 (ii) all fees; and  
7353 (iii) any voluntary tip, gratuity, or donation opportunities;  
7354 (c)
- (i) obtain customer consent to changes to terms and conditions of the earned wage access services; or  
7356 (ii) clearly and conspicuously disclose any material changes to terms and conditions of the earned wage access services at least 30 days before the effective date of the material changes;

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- 7359 (d) allow a consumer to cancel the use of earned wage access services at any time without incurring a penalty;
- 7361 (e) offer at least one no-fee option to receive funds and clearly and conspicuously disclose how to select the no-fee option to receive funds;
- 7363 (f) comply with all applicable local, state, and federal privacy and information security laws;
- 7365 (g) deliver funds through any method agreed upon by the consumer and provider;
- 7366 (h) reimburse overdraft or non-sufficient fund fees the consumer incurs as a result of the provider's error in disclosed or actual payment amount or payment date unless the funds were acquired by a consumer through fraudulent means;
- 7369 (i) clearly and conspicuously disclose the voluntary nature of tips, gratuities, or donations and ensure the availability or terms of the earned wage access services are not contingent upon the payment of tips, gratuities, or donations;
- 7372 (j) provide information to a consumer on how to file a complaint with the division;
- 7373 (k) provide the following disclosures to a consumer at the time the consumer makes a request for funds:
- 7375 (i) the anticipated timeline the consumer will receive the requested funds;
- 7376 (ii) the amount of funds the consumer has requested;
- 7377 (iii) the amount of the fee charged;
- 7378 (iv) the amount of funds the consumer will receive;
- 7379 (v) the account that will receive the funds; and
- 7380 (vi) the date the provider is authorized to withdraw funds from the consumer's account, including fees and voluntary payments; and
- 7382 (l) before initiating an advance, require the customer to acknowledge receiving the opportunity to view all disclosures listed in Subsection (2)(k) and any costs and fees.
- 7384 (3) A provider may not:
- 7385 (a) compel a consumer to repay funds by:
- 7386 (i) using or threatening to use civil lawsuits, outbound calls, third-party collections, or debt sales;
- 7388 (ii) reporting or threatening to report nonpayment to consumer reporting agencies; or
- 7389 (iii) charging or threatening to charge interest, finance charges, late fees, or other penalties for nonpayment;
- 7391 (b) use a consumer's credit report or credit score as defined by 15 U.S.C. Sec. 1681 et seq., to determine eligibility for earned wage access services;

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- 7393 (c) accept payment with a credit card or charge card;
- 7394 (d) condition receipt of funds based on fees, tips, gratuities, or donations;
- 7395 (e) mislead a consumer about the voluntary nature of tips, gratuities, or donations;
- 7396 (f) charge a consumer a fee, interest, or any other penalty for failure to repay outstanding proceeds, fees, tips, or gratuities;~~[-or]~~
- 7398 (g) provide earned wage access services in this state without first registering with the division~~[-]~~ ;
- 7400 (h) represent that the division or the state endorses the provider;
- 7401 (i) omit from a filing with the division a material statement of fact that this chapter or a rule the division makes in accordance with this chapter requires; or
- 7403 (j) include in a filing with the division a material statement of fact that the provider or the provider's principal knows or should know is false, deceptive, inaccurate, or misleading.
- 7406 (4) Each act performed in violation of Subsection (3) is a separate violation of this chapter.
- 7407 (5) The provider may prohibit a consumer from requesting a transaction if the consumer has outstanding unpaid proceeds from a previous transaction with the provider.
- 7409 (6) A provider is not entitled to the exemption described by Subsection 13-11-22(1)(d).
- 7412 Section 168. Section **13-78-104** is amended to read:
- 7413 **13-78-104. Penalties and enforcement -- Powers -- Legal counsel -- Fees.**
- 7413 [~~(1) The attorney general, upon request, shall give legal advice to, and act as counsel for, the division in the exercise of the division's responsibilities under this chapter.~~]
- 7415 [~~(2)~~] (1)
- (a) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:
- 7417 (i) the division director may impose an administrative fine of up to \$2,500 for each violation of this chapter; and
- 7419 (ii) the division may bring an action in a court with jurisdiction to enforce a provision of this chapter.
- 7421 (b) In a court action by the division to enforce a provision of this chapter, the court may:
- 7422 (i) declare that an act or practice violates a provision of this chapter;
- 7423 (ii) issue an injunction for a violation of this chapter;
- 7424 (iii) order disgorgement of any money received in violation of this chapter;
- 7425 (iv) order payment of disgorged money to an injured purchaser or consumer;
- 7426 (v) impose a fine of up to \$2,500 for each violation of this chapter; or

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- 7427 (vi) award any other relief that the court deems reasonable and necessary.
- 7428 [~~(3)~~] (2) If a court grants judgment or injunctive relief to the division, the court shall award the division:
- 7430 (a) reasonable attorney fees;
- 7431 (b) court costs; and
- 7432 (c) investigative fees.
- 7433 [~~(4)~~] (3)
- (a) A person that violates an administrative or court order issued for a violation of this chapter is subject to a civil penalty of no more than \$5,000 for each violation.
- 7435 (b) The court may impose a civil penalty authorized under this section in any civil action brought by the ~~[attorney general on behalf of the]~~ division.
- 7437 [~~(5) The division shall deposit money received for the payment of a fine or civil penalty imposed under this section into the Consumer Protection Education and Training Fund created in Section 13-2-8.]~~
- 7442 Section 169. Section **16-6a-102** is amended to read:
- 7443 **16-6a-102. Definitions.**
- As used in this chapter:
- 7443 (1)
- (a) "Address" means a location where mail can be delivered by the United States Postal Service.
- 7445 (b) "Address" includes:
- 7446 (i) a post office box number;
- 7447 (ii) a rural free delivery route number; and
- 7448 (iii) a street name and number.
- 7449 (2) "Affiliate" means a person that directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, the person specified.
- 7451 (3) "Articles of incorporation" include:
- 7452 (a) amended articles of incorporation;
- 7453 (b) restated articles of incorporation;
- 7454 (c) articles of merger; and
- 7455 (d) a document of a similar import to the documents described in Subsections (3)(a) through (c).
- 7457 (4) "Assumed corporate name" means a name assumed for use in this state:
- 7458 (a) by a:
- 7459 (i) foreign corporation as described in Section 16-10a-1506; or

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- 7460 (ii) a foreign nonprofit corporation as described in Section 16-6a-1506; and
- 7461 (b) because the corporate name of the foreign corporation described in Subsection (4)(a) is not available  
for use in this state.
- 7463 (5)
- (a) Except as provided in Subsection (5)(b), "board of directors" means the body authorized to manage  
the affairs of a domestic or foreign nonprofit corporation.
- 7465 (b) Notwithstanding Subsection (5)(a), a person may not be considered a member of the board of  
directors because of a power delegated to that person under Subsection 16-6a-801(2).
- 7468 (6)
- (a) "Bylaws" means the one or more codes of rules, other than the articles of incorporation, adopted  
under this chapter for the regulation or management of the affairs of a domestic or foreign nonprofit  
corporation irrespective of the one or more names by which the codes of rules are designated.
- 7472 (b) "Bylaws" includes:
- 7473 (i) amended bylaws; and
- 7474 (ii) restated bylaws.
- 7475 (7)
- (a) "Cash" or "money" means:
- 7476 (i) legal tender;
- 7477 (ii) a negotiable instrument; or
- 7478 (iii) other cash equivalent readily convertible into legal tender.
- 7479 (b) "Cash" and "money" are used interchangeably in this chapter.
- 7480 (8) "Charitable organization" means the same as that term is defined in Section [~~13-22-2~~] 13-22-101.
- 7482 (9)
- (a) "Class" means a group of memberships that has the same right with respect to voting, dissolution,  
redemption, transfer, or other characteristics.
- 7484 (b) For purposes of Subsection (9)(a), a right is considered the same if it is determined by a formula  
applied uniformly to a group of memberships.
- 7486 (10)
- (a) "Conspicuous" means so written that a reasonable person against whom the writing is to operate  
should have noticed the writing.
- 7488 (b) "Conspicuous" includes printing or typing in:

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- 7489 (i) italics;
- 7490 (ii) boldface;
- 7491 (iii) contrasting color;
- 7492 (iv) capitals; or
- 7493 (v) underlining.
- 7494 (11) "Control" or a "controlling interest" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of an entity by:
- 7496 (a) the ownership of voting shares;
- 7497 (b) contract; or
- 7498 (c) a means other than those specified in Subsection (11)(a) or (b).
- 7499 (12) Subject to Section 16-6a-207, "cooperative nonprofit corporation" or "cooperative" means a nonprofit corporation organized or existing under this chapter.
- 7501 (13) "Corporate name" means:
- 7502 (a) the name of a domestic corporation as stated in the domestic corporation's articles of incorporation;
- 7504 (b) the name of a domestic nonprofit corporation as stated in the domestic nonprofit corporation's articles of incorporation;
- 7506 (c) the name of a foreign corporation as stated in the foreign corporation's:
- 7507 (i) articles of incorporation; or
- 7508 (ii) document of similar import to articles of incorporation; or
- 7509 (d) the name of a foreign nonprofit corporation as stated in the foreign nonprofit corporation's:
- 7511 (i) articles of incorporation; or
- 7512 (ii) document of similar import to articles of incorporation.
- 7513 (14)
- (a) "Corporate records" means the records described in Section 16-6a-1601.
- 7514 (b) "Corporate records" does not include correspondence, communications, notes, or other similar information, regardless of format or method of storage, that are not an official decision, published document, or record of the corporation.
- 7517 (15) "Corporation" or "domestic corporation" means a corporation for profit that:
- 7518 (a) is not a foreign corporation; and
- 7519 (b) is incorporated under or subject to Chapter 10a, Utah Revised Business Corporation Act.
- 7521 (16) "Delegate" means a person elected or appointed to vote in a representative assembly:

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- 7522 (a) for the election of a director; or
- 7523 (b) on matters other than the election of a director.
- 7524 (17) "Deliver" includes delivery by mail or another means of transmission authorized by Section 16-6a-103, except that delivery to the division means actual receipt by the division.
- 7527 (18) "Director" means a member of the board of directors.
- 7528 (19)
- (a) "Distribution" means the payment of a dividend or any part of the income or profit of a nonprofit corporation to the nonprofit corporation's:
- 7530 (i) members;
- 7531 (ii) directors; or
- 7532 (iii) officers.
- 7533 (b) "Distribution" does not include a fair-value payment for:
- 7534 (i) a good sold; or
- 7535 (ii) a service received.
- 7536 (20) "Division" means the Division of Corporations and Commercial Code.
- 7537 (21) "Effective date," when referring to a document filed by the division, means the time and date determined in accordance with Section 16-6a-108.
- 7539 (22) "Effective date of notice" means the date notice is effective as provided in Section 16-6a-103.
- 7541 (23) "Electronic transmission" or "electronically transmitted" means a process of communication not directly involving the physical transfer of paper that is suitable for the receipt, retention, retrieval, and reproduction of information by the recipient, whether by email, texting, facsimile, or otherwise.
- 7545 (24)
- (a) "Employee" includes an officer of a nonprofit corporation.
- 7546 (b)
- (i) Except as provided in Subsection (24)(b)(ii), "employee" does not include a director of a nonprofit corporation.
- 7548 (ii) Notwithstanding Subsection (24)(b)(i), a director may accept one or more duties that make that director an employee of a nonprofit corporation.
- 7550 (25) "Entity" includes:
- 7551 (a) a domestic or foreign corporation;
- 7552 (b) a domestic or foreign nonprofit corporation;

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- 7553 (c) a limited liability company;
- 7554 (d) a profit or nonprofit unincorporated association;
- 7555 (e) a business trust;
- 7556 (f) an estate;
- 7557 (g) a partnership;
- 7558 (h) a trust;
- 7559 (i) two or more persons having a joint or common economic interest;
- 7560 (j) a state;
- 7561 (k) the United States; or
- 7562 (l) a foreign government.
- 7563 (26) "Executive director" means the executive director of the Department of Commerce.
- 7564 (27) "Foreign corporation" means a corporation for profit incorporated under a law other than the laws of this state.
- 7566 (28) "Foreign nonprofit corporation" means an entity:
- 7567 (a) incorporated under a law other than the laws of this state; and
- 7568 (b) that would be a nonprofit corporation if formed under the laws of this state.
- 7569 (29) "Governmental entity" means:
- 7570 (a)
- 7571 (i) the executive branch of the state;
- 7572 (ii) the judicial branch of the state;
- 7573 (iii) the legislative branch of the state;
- 7574 (iv) an independent entity, as defined in Section 63E-1-102;
- 7575 (v) a political subdivision of the state;
- 7576 (vi) an institution of higher education, as defined in Section 53H-1-101;
- 7577 (vii) an entity within the state system of public education; or
- 7578 (viii) the National Guard; or
- 7578 (b) any of the following that is established or controlled by a governmental entity listed in Subsection (29)(a) to carry out the public's business:
- 7580 (i) an office;
- 7581 (ii) a division;
- 7582 (iii) an agency;

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- 7583 (iv) a board;
- 7584 (v) a bureau;
- 7585 (vi) a committee;
- 7586 (vii) a department;
- 7587 (viii) an advisory board;
- 7588 (ix) an administrative unit; or
- 7589 (x) a commission.
- 7590 (30) "Governmental subdivision" means:
- 7591 (a) a county;
- 7592 (b) a city;
- 7593 (c) a town; or
- 7594 (d) another type of governmental subdivision authorized by the laws of this state.
- 7595 (31) "Individual" means:
- 7596 (a) a natural person;
- 7597 (b) the estate of an incompetent individual; or
- 7598 (c) the estate of a deceased individual.
- 7599 (32) "Internal Revenue Code" means the federal "Internal Revenue Code of 1986," as amended from time to time, or to corresponding provisions of subsequent internal revenue laws of the United States of America.
- 7602 (33)
- (a) "Mail," "mailed," or "mailing" means deposit, deposited, or depositing in the United States mail, properly addressed, first-class postage prepaid.
- 7604 (b) "Mail," "mailed," or "mailing" includes registered or certified mail for which the proper fee is paid.
- 7606 (34)
- (a) "Member" means one or more persons identified or otherwise appointed as a member of a domestic or foreign nonprofit corporation as provided:
- 7608 (i) in the articles of incorporation;
- 7609 (ii) in the bylaws;
- 7610 (iii) by a resolution of the board of directors; or
- 7611 (iv) by a resolution of the members of the nonprofit corporation.
- 7612 (b) "Member" includes:

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- 7613 (i) "voting member"; and  
7614 (ii) a shareholder in a water company.
- 7615 (35) "Membership" refers to the rights and obligations of a member or members.
- 7616 (36) "Mutual benefit corporation" means a nonprofit corporation:  
7617 (a) that issues shares of stock to its members evidencing a right to receive distribution of water or  
otherwise representing property rights; or  
7619 (b) all of whose assets are contributed or acquired by or for the members of the nonprofit corporation or  
the members' predecessors in interest to serve the mutual purposes of the members.
- 7622 (37) "Nonprofit corporation" or "domestic nonprofit corporation" means an entity that:  
7623 (a) is not a foreign nonprofit corporation; and  
7624 (b) is incorporated under or subject to this chapter.
- 7625 (38) "Notice" means the same as that term is defined in Section 16-6a-103.
- 7626 (39) "Party related to a director" means:  
7627 (a) the spouse of the director;  
7628 (b) a child of the director;  
7629 (c) a grandchild of the director;  
7630 (d) a sibling of the director;  
7631 (e) a parent of the director;  
7632 (f) the spouse of an individual described in Subsections (39)(b) through (e);  
7633 (g) an individual having the same home as the director;  
7634 (h) a trust or estate of which the director or another individual specified in this Subsection (39) is a  
substantial beneficiary; or  
7636 (i) any of the following of which the director is a fiduciary:  
7637 (i) a trust;  
7638 (ii) an estate;  
7639 (iii) an incompetent;  
7640 (iv) a conservatee; or  
7641 (v) a minor.
- 7642 (40) "Person" means an:  
7643 (a) individual; or  
7644 (b) entity.

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- 7645 (41) "Principal office" means:
- 7646 (a) the office, in or out of this state, designated by a domestic or foreign nonprofit corporation as its  
principal office in the most recent document on file with the division providing that information,  
including:
- 7649 (i) an annual report;
- 7650 (ii) an application for a certificate of authority; or
- 7651 (iii) a notice of change of principal office; or
- 7652 (b) if no principal office can be determined, a domestic or foreign nonprofit corporation's registered  
office.
- 7654 (42) "Proceeding" includes:
- 7655 (a) a civil suit;
- 7656 (b) arbitration;
- 7657 (c) mediation;
- 7658 (d) a criminal action;
- 7659 (e) an administrative action; or
- 7660 (f) an investigatory action.
- 7661 (43) "Receive," when used in reference to receipt of a writing or other document by a domestic or  
foreign nonprofit corporation, means the writing or other document is actually received:
- 7664 (a) by the domestic or foreign nonprofit corporation at:
- 7665 (i) its registered office in this state; or
- 7666 (ii) its principal office;
- 7667 (b) by the secretary of the domestic or foreign nonprofit corporation, wherever the secretary is found; or
- 7669 (c) by another person authorized by the bylaws or the board of directors to receive the writing or other  
document, wherever that person is found.
- 7671 (44)
- (a) "Record date" means the date established under Part 6, Members, or Part 7, Member Meetings and  
Voting, on which a nonprofit corporation determines the identity of the nonprofit corporation's  
members.
- 7674 (b) The determination described in Subsection (44)(a) shall be made as of the close of business on the  
record date unless another time for doing so is specified when the record date is fixed.
- 7677 (45) "Registered agent" means the registered agent of:

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- 7678 (a) a domestic nonprofit corporation; or  
7679 (b) a foreign nonprofit corporation.
- 7680 (46) "Registered office" means the office within this state designated by a domestic or foreign nonprofit corporation as its registered office in the most recent document on file with the division providing that information, including:
- 7683 (a) articles of incorporation;  
7684 (b) an application for a certificate of authority; or  
7685 (c) a notice of change of registered office.
- 7686 (47) "Secretary" means the corporate officer to whom the bylaws or the board of directors delegates responsibility under Subsection 16-6a-818(3) for:
- 7688 (a) the preparation and maintenance of:  
7689 (i) minutes of the meetings of:  
7690 (A) the board of directors; or  
7691 (B) the members; and  
7692 (ii) the other records and information required to be kept by the nonprofit corporation as described in Section 16-6a-1601; and  
7694 (b) authenticating records of the nonprofit corporation.
- 7695 (48) "Share" means a unit of interest in a nonprofit corporation.
- 7696 (49) "Shareholder" means a person in whose name a share is registered in the records of a nonprofit corporation.
- 7698 (50) "State," when referring to a part of the United States, includes:  
7699 (a) a state;  
7700 (b) a commonwealth;  
7701 (c) the District of Columbia;  
7702 (d) an agency or governmental and political subdivision of a state, commonwealth, or District of Columbia;  
7704 (e) territory or insular possession of the United States; or  
7705 (f) an agency or governmental and political subdivision of a territory or insular possession of the United States.
- 7707 (51) "Street address" means:  
7708 (a)

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- 7709 (i) street name and number;
- 7710 (ii) city or town; and
- 7711 (iii) United States post office zip code designation; or
- (b) if, by reason of rural location or otherwise, a street name, number, city, or town does not exist, an appropriate description other than that described in Subsection (51)(a) fixing as nearly as possible the actual physical location, but only if the information includes:
  - 7715 (i) the rural free delivery route;
  - 7716 (ii) the county; and
  - 7717 (iii) the United States post office zip code designation.
- 7718 (52) "Tribal nonprofit corporation" means a nonprofit corporation:
  - 7719 (a) incorporated under the law of a tribe; and
  - 7720 (b) that is at least 51% owned or controlled by the tribe.
- 7721 (53) "Tribe" means a tribe, band, nation, pueblo, or other organized group or community of Indians, including an Alaska Native village, that is legally recognized as eligible for and is consistent with a special program, service, or entitlement provided by the United States to Indians because of the tribe's status as Indians.
- 7725 (54) "United States" includes a district, authority, office, bureau, commission, department, and another agency of the United States of America.
- 7727 (55) "Vote" includes authorization by:
  - 7728 (a) written ballot; and
  - 7729 (b) written consent.
- 7730 (56)
  - (a) "Voting group" means all the members of one or more classes of members or directors that, under this chapter, the articles of incorporation, or the bylaws, are entitled to vote and be counted together collectively on a matter.
  - 7733 (b) All members or directors entitled by this chapter, the articles of incorporation, or the bylaws to vote generally on a matter are for that purpose a single voting group.
- 7735 (57)
  - (a) "Voting member" means a person entitled to vote for all matters required or permitted under this chapter to be submitted to a vote of the members, except as otherwise provided in the articles of incorporation or bylaws.

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- 7738 (b) A person is not a voting member solely because of:
- 7739 (i) a right the person has as a delegate;
- 7740 (ii) a right the person has to designate a director; or
- 7741 (iii) a right the person has as a director.
- 7742 (c) Except as the bylaws may otherwise provide, "voting member" includes a "shareholder" if the nonprofit corporation has shareholders.
- 7744 (58) "Water company" means:
- 7745 (a) the same as that term is defined in Subsection 16-4-102(5); or
- 7746 (b) a mutual benefit corporation, when the stock in the mutual benefit corporation represents a right to receive a distribution of water for beneficial use.
- 7750 Section 170. Section **16-6a-203** is amended to read:
- 7751 **16-6a-203. Incorporation -- Required filings.**
- 7750 (1) A nonprofit corporation is incorporated, and its corporate existence begins:
- 7751 (a) when the articles of incorporation are filed by the division; or
- 7752 (b) if a delayed effective date is specified as described in Subsection 16-6a-108(2), on the delayed effective date, unless a certificate of withdrawal is filed prior to the delayed effective date.
- 7755 (2) Notwithstanding Subsection 16-6a-110(4), the filing of the articles of incorporation by the division is conclusive proof that all conditions precedent to incorporation have been satisfied, except in a proceeding by the state to:
- 7758 (a) cancel or revoke the incorporation; or
- 7759 (b) involuntarily dissolve the nonprofit corporation.
- 7760 (3) Beginning January 1, 2025, a nonprofit corporation that is a charitable organization, unless exempted by Section [~~13-22-15~~] 13-22-110, shall file with the division the information described by Section [~~13-22-15~~] 13-22-110 in the form described in Section [~~13-22-15~~] 13-22-110.
- 7766 Section 171. Section **16-6a-1503** is amended to read:
- 7767 **16-6a-1503. Application for authority to conduct affairs.**
- 7766 (1) A foreign nonprofit corporation may apply for authority to conduct affairs in this state by delivering to the division for filing an application for authority to conduct affairs setting forth:
- 7769 (a) its corporate name and its assumed corporate name, if any;
- 7770 (b) the name of the state or country under whose law it is incorporated;
- 7771 (c) its date of incorporation;

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- 7772 (d) its period of duration;
- 7773 (e) the street address of its principal office;
- 7774 (f) the information required by Subsection 16-17-203(1);
- 7775 (g) the names and usual business addresses of its current directors and officers;
- 7776 (h) the date it commenced or expects to commence conducting affairs in this state; and
- 7777 (i) the additional information the division determines is necessary or appropriate to determine whether the application for authority to conduct affairs should be filed.
- 7779 (2) With the completed application required by Subsection (1) the foreign nonprofit corporation shall deliver to the division for a certificate of existence, or a document of similar import that is:
- 7782 (a) authenticated by the division or other official having custody of corporate records in the state or country under whose law it is incorporated; and
- 7784 (b) dated within 90 days before the day on which the application for authority to conduct affairs is filed.
- 7786 (3) The foreign nonprofit corporation shall include in the application for authority to conduct affairs, or in an accompanying document, written consent to appointment by its designated registered agent.
- 7789 (4) Beginning January 1, 2025, a foreign nonprofit corporation that is a charitable organization, unless exempted by Section [~~13-22-15~~] 13-22-110, shall file the information described in Section [~~13-22-15~~] 13-22-110 in the form described in Section [~~13-22-15~~] 13-22-110.
- 7793 (5)
- (a) The division may permit a tribal nonprofit corporation to apply for authority to conduct affairs in this state in the same manner as a nonprofit corporation incorporated in another state.
- 7796 (b) If a tribal nonprofit corporation elects to apply for authority to conduct affairs in this state, for purposes of this chapter, the tribal nonprofit corporation shall be treated in the same manner as a foreign nonprofit corporation incorporated under the laws of another state.
- 7802 Section 172. Section **17-70-401** is amended to read:
- 7803 **17-70-401. Definitions.**
- As used in this part:
- 7803 (1)
- (a) "Contribution" means any of the following when done for a political purpose:
- 7804 (i) a gift, subscription, donation, loan, advance, deposit of money, or anything of value given to the filing entity;
- 7806

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- (ii) an express, legally enforceable contract, promise, or agreement to make a gift, subscription, donation, unpaid or partially unpaid loan, advance, deposit of money, or anything of value to the filing entity;
- 7809 (iii) any transfer of funds from another reporting entity to the filing entity;
- 7810 (iv) compensation paid by any person or reporting entity other than the filing entity for personal services provided without charge to the filing entity;
- 7812 (v) a loan made by a county office candidate or local school board candidate deposited into the county office candidate's or local school board candidate's own campaign account; or
- 7815 (vi) an in-kind contribution.
- 7816 (b) "Contribution" does not include:
- 7817 (i) services provided by an individual volunteering a portion or all of the individual's time on behalf of the filing entity if the services are provided without compensation by the filing entity or any other person;
- 7820 (ii) money lent to the filing entity by a financial institution in the ordinary course of business; or
- 7822 (iii) goods or services provided for the benefit of a county office candidate or local school board candidate at less than fair market value that are not authorized by or coordinated with the county office candidate or the local school board candidate.
- 7825 (2) "County office" means an office described in Section 17-66-102 that is required to be filled by an election.
- 7827 (3) "County office candidate" means an individual who:
- 7828 (a) files a declaration of candidacy for a county office; or
- 7829 (b) receives a contribution, makes an expenditure, or gives consent for any other person to receive a contribution or make an expenditure to bring about the individual's nomination or election to a county office.
- 7832 (4) "County officer" means an individual who holds a county office.
- 7833 (5)
- (a) Except as provided in Subsection (5)(b), "expenditure" means any of the following made by a reporting entity or an agent of a reporting entity on behalf of the reporting entity:
- 7836 (i) any disbursement from contributions, receipts, or the separate bank account required under Section 17-70-403;
- 7838

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- (ii) a purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value made for a political purpose;
- 7840 (iii) an express, legally enforceable contract, promise, or agreement to make any purchase, payment, donation, distribution, loan, advance, deposit, gift of money, or anything of value for a political purpose;
- 7843 (iv) compensation paid by a filing entity for personal services rendered by a person without charge to a reporting entity;
- 7845 (v) a transfer of funds between the filing entity and a county office candidate's, or a local school board candidate's, personal campaign committee; or
- 7847 (vi) goods or services provided by the filing entity to or for the benefit of another reporting entity for a political purpose at less than fair market value.
- 7849 (b) "Expenditure" does not include:
- 7850 (i) services provided without compensation by an individual volunteering a portion or all of the individual's time on behalf of a reporting entity;
- 7852 (ii) money lent to a reporting entity by a financial institution in the ordinary course of business; or
- 7854 (iii) anything described in Subsection (5)(a) that is given by a reporting entity to a candidate or officer in another state.
- 7856 (6) "Filing entity" means:
- 7857 (a) a county office candidate;
- 7858 (b) a county officer;
- 7859 (c) a local school board candidate;
- 7860 (d) a local school board member; or
- 7861 (e) a reporting entity that is required to meet a campaign finance disclosure requirement adopted by a county in accordance with Section 17-70-403.
- 7863 (7) "In-kind contribution" means anything of value, other than money, that is accepted by or coordinated with a filing entity.
- 7865 (8) "Local school board candidate" means an individual who:
- 7866 (a) files a declaration of candidacy for local school board; or
- 7867 (b) receives a contribution, makes an expenditure, or gives consent for any other person to receive a contribution or make an expenditure to bring about the individual's nomination or election to a local school board.

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- 7870 (9)
- (a) "Personal use expenditure" means an expenditure that:
- 7871 (i)
- (A) is not excluded from the definition of personal use expenditure by Subsection (9)(c); and
- 7873 (B) primarily furthers a personal interest of a county office candidate, county officer, local school board candidate, or a local school board member, or a member of a county office candidate's, county officer's, local school board candidate's, or local school board member's family; or
- 7877 (ii) would cause the county office candidate, county officer, local school board candidate, or local school board member to recognize the expenditure as taxable income under federal law.
- 7880 (b) "Personal use expenditure" includes:
- 7881 (i) a mortgage, rent, utility, or vehicle payment;
- 7882 (ii) a household food item or supply;
- 7883 (iii) a clothing expense, except:
- 7884 (A) clothing bearing the county office candidate's or local school board candidate's name or campaign slogan or logo that is used in the county office candidate's or local school board candidate's campaign;
- 7887 (B) clothing bearing the logo or name of a jurisdiction, district, government organization, government entity, caucus, or political party that the county officer or local school board member represents or of which the county officer or local school board member is a member;
- 7891 (C) repair or replacement of clothing that is damaged while the county office candidate or county officer is engaged in an activity of a county office candidate or county officer; or
- 7894 (D) repair or replacement of clothing that is damaged while the local school board candidate or local school board member is engaged in an activity of a local school board candidate or local school board member;
- 7897 (iv) admission to a sporting, artistic, or recreational event or other form of entertainment;
- 7899 (v) dues, fees, or gratuities at a country club, health club, or recreational facility;
- 7900 (vi) a salary payment made to:
- 7901 (A) a county office candidate, county officer, local school board candidate, or local school board member; or
- 7903 (B) a person who has not provided a bona fide service to a county candidate, county officer, local school board candidate, or local school board member;

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- 7905 (vii) a vacation;
- 7906 (viii) a vehicle expense;
- 7907 (ix) a meal expense;
- 7908 (x) a travel expense;
- 7909 (xi) payment of an administrative, civil, or criminal penalty;
- 7910 (xii) satisfaction of a personal debt;
- 7911 (xiii) a personal service, including the service of an attorney, accountant, physician, or other professional person;
- 7913 (xiv) a membership fee for a professional or service organization; and
- 7914 (xv) a payment in excess of the fair market value of the item or service purchased.
- 7915 (c) "Personal use expenditure" does not include an expenditure made:
- 7916 (i) for a political purpose;
- 7917 (ii) for candidacy for county office or local school board;
- 7918 (iii) to fulfill a duty or activity of a county officer or local school board member;
- 7919 (iv) for a donation to a registered political party;
- 7920 (v) for a contribution to another candidate's campaign account, including sponsorship of or attendance at an event, the primary purpose of which is to solicit a contribution for another candidate's campaign account;
- 7923 (vi) to return all or a portion of a contribution to a contributor;
- 7924 (vii) for the following items, if made in connection with the candidacy for county office or local school board, or an activity or duty of a county officer or local school board member:
- 7927 (A) a mileage allowance at the rate established by the political subdivision that provides the mileage allowance;
- 7929 (B) for motor fuel or special fuel, as defined in Section 59-13-102;
- 7930 (C) a meal expense;
- 7931 (D) a travel expense, including an expense incurred for airfare or a rental vehicle;
- 7932 (E) a payment for a service provided by an attorney or accountant;
- 7933 (F) a tuition payment or registration fee for participation in a meeting or conference;
- 7935 (G) a gift;
- 7936 (H) a payment for rent, utilities, a supply, or furnishings, in connection with an office space;
- 7938 (I) a booth at a meeting or event; or

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- 7939 (J) educational material;
- 7940 (viii) to purchase or mail informational material, a survey, or a greeting card;
- 7941 (ix) for a donation to a charitable organization, as defined in Section [~~13-22-2~~] 13-22-101, including admission to or sponsorship of an event, the primary purpose of which is charitable solicitation, as defined in Section [~~13-22-2~~] 13-22-101;
- 7945 (x) to repay a loan a county office candidate or local school board candidate makes from the candidate's personal account to the candidate's campaign account;
- 7947 (xi) to pay membership dues to a national organization whose primary purpose is to address general public policy;
- 7949 (xii) for admission to or sponsorship of an event, the primary purpose of which is to promote the social, educational, or economic well-being of the state or the county candidate's, county officer's, local school board candidate's, or local school board member's community;
- 7953 (xiii) for one or more guests of a county office candidate, county officer, local school board candidate, or local school board member to attend an event, meeting, or conference described in this Subsection (9)(c);
- 7956 (xiv) that is connected with the performance of an activity as a county office candidate or local school board member, or an activity or duty of a county officer or local school board member; or
- 7959 (xv) to pay childcare expenses of:
- 7960 (A) a candidate while the candidate is engaging in campaign activity; or
- 7961 (B) an officeholder while the officeholder is engaging in the duties of an officeholder.
- 7963 (10) "Political purpose" means an act done with the intent or in a way to influence or tend to influence, directly or indirectly, any person to refrain from voting or to vote for or against any candidate or a person seeking an office at any caucus, political convention, or election.
- 7967 (11) "Reporting entity":
- 7968 (a) means the same as that term is defined in Section 20A-11-101; and
- 7969 (b) includes a county office candidate, a county office candidate's personal campaign committee, a county officer, a local school board candidate, a local school board candidate's personal campaign committee, and a local school board member.
- 7974 Section 173. Section **20A-11-104** is amended to read:
- 7975 **20A-11-104. Personal use expenditure -- Authorized and prohibited uses of campaign funds -- Enforcement -- Penalties.**

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- 7975 (1)
- (a) As used in this chapter, "personal use expenditure" means an expenditure that:
- 7976 (i)
- (A) is not excluded from the definition of personal use expenditure by Subsection (2); and
- 7978 (B) primarily furthers a personal interest of a candidate or officeholder or a candidate's or officeholder's family, which interest is not connected with the performance of an activity as a candidate or an activity or duty of an officeholder; or
- 7982 (ii) would likely cause the candidate or officeholder to recognize the expenditure as taxable income under federal or state law.
- 7984 (b) "Personal use expenditure" includes:
- 7985 (i) a mortgage, rent, utility, or vehicle payment;
- 7986 (ii) a household food item or supply;
- 7987 (iii) a clothing expense, except:
- 7988 (A) clothing bearing the candidate's name or campaign slogan or logo that is used in the candidate's campaign;
- 7990 (B) clothing bearing the logo or name of a jurisdiction, district, government organization, government entity, caucus, or political party that the officeholder represents or of which the officeholder is a member; or
- 7993 (C) repair or replacement of clothing that is damaged while the candidate or officeholder is engaged in an activity of a candidate or officeholder;
- 7995 (iv) an admission to a sporting, artistic, or recreational event or other form of entertainment;
- 7997 (v) dues, fees, or gratuities at a country club, health club, or recreational facility;
- 7998 (vi) a salary payment made to:
- 7999 (A) a candidate or officeholder; or
- 8000 (B) a person who has not provided a bona fide service to a candidate or officeholder;
- 8002 (vii) a vacation;
- 8003 (viii) a vehicle expense;
- 8004 (ix) a meal expense;
- 8005 (x) a travel expense;
- 8006 (xi) a payment of an administrative, civil, or criminal penalty;
- 8007 (xii) a satisfaction of a personal debt;

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- 8008 (xiii) a personal service, including the service of an attorney, accountant, physician, or other professional person;
- 8010 (xiv) a membership fee for a professional or service organization; and
- 8011 (xv) a payment in excess of the fair market value of the item or service purchased.
- 8012 (2) As used in this chapter, "personal use expenditure" does not include an expenditure made:
- 8014 (a) for a political purpose;
- 8015 (b) for candidacy for public office;
- 8016 (c) to fulfill a duty or activity of an officeholder;
- 8017 (d) for a donation to a registered political party;
- 8018 (e) for a contribution to another candidate's campaign account, including sponsorship of or attendance at an event, the primary purpose of which is to solicit a contribution for another candidate's campaign account;
- 8021 (f) to return all or a portion of a contribution to a contributor;
- 8022 (g) for the following items, if made in connection with the candidacy for public office or an activity or duty of an officeholder:
- 8024 (i)
- 8026 (A) a mileage allowance at the rate established by the Division of Finance under Section 63A-3-107; or
- 8027 (B) for motor fuel or special fuel, as defined in Section 59-13-102;
- 8028 (ii) a food expense, including food or beverages:
- 8029 (A) served at a campaign event;
- 8030 (B) served at a charitable event;
- 8032 (C) consumed, or provided to others, by a candidate while the candidate is engaged in campaigning;
- 8034 (D) consumed, or provided to others, by an officeholder while the officeholder is acting in the capacity of an officeholder; or
- 8036 (E) provided as a gift to an individual who works on a candidate's campaign or who assists an officeholder in the officeholder's capacity as an officeholder;
- 8039 (iii) a travel expense of a candidate, if the primary purpose of the travel is related to the candidate's campaign, including airfare, car rental, other transportation, hotel, or other expenses incidental to the travel;

## SB0038S01 compared with SB0038S02

- (iv) a travel expense of an individual assisting a candidate, if the primary purpose of the travel by the individual is to assist the candidate with the candidate's campaign, including an expense described in Subsection (2)(g)(iii);
- 8042 (v) a travel expense of an officeholder, if the primary purpose of the travel is related to an activity or duty of the officeholder, including an expense described in Subsection (2)(g)(iii);
- 8045 (vi) a travel expense of an individual assisting an officeholder, if the primary purpose of the travel by the individual is to assist the officeholder in an activity or duty of an officeholder, including an expense described in Subsection (2)(g)(iii);
- 8048 (vii) a payment for a service provided by an attorney or accountant;
- 8049 (viii) a tuition payment or registration fee for participation in a meeting or conference;
- 8050 (ix) a gift;
- 8051 (x) a payment for the following items in connection with an office space:
- 8052 (A) rent;
- 8053 (B) utilities;
- 8054 (C) a supply; or
- 8055 (D) furnishing;
- 8056 (xi) a booth at a meeting or event;
- 8057 (xii) educational material; or
- 8058 (xiii) an item purchased for a purpose related to a campaign or to an activity or duty of an officeholder;
- 8060 (h) to purchase or mail informational material, a survey, or a greeting card;
- 8061 (i) for a donation to a charitable organization, as defined by Section [~~13-22-2~~] 13-22-101, including admission to or sponsorship of an event, the primary purpose of which is charitable solicitation, as defined in Section [~~13-22-2~~] 13-22-101;
- 8064 (j) to repay a loan a candidate makes from the candidate's personal account to the candidate's campaign account;
- 8066 (k) to pay membership dues to a national organization whose primary purpose is to address general public policy;
- 8068 (l) for admission to or sponsorship of an event, the primary purpose of which is to promote the social, educational, or economic well-being of the state or the candidate's or officeholder's community;
- 8071

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(m) for one or more guests of an officeholder or candidate to attend an event, meeting, or conference described in this Subsection (2), including related travel expenses and other expenses, if attendance by the guest is for a primary purpose described in Subsection (2)(g)(iv) or (vi); or

8075 (n) to pay childcare expenses of:

8076 (i) a candidate while the candidate is engaging in campaign activity; or

8077 (ii) an officeholder while the officeholder is engaging in the duties of an officeholder.

8078 (3)

(a) The lieutenant governor shall enforce this chapter prohibiting a personal use expenditure by:

8080 (i) evaluating a financial statement to identify a personal use expenditure; and

8081 (ii) commencing an informal adjudicative proceeding in accordance with Title 63G, Chapter 4, Administrative Procedures Act, if the lieutenant governor has probable cause to believe a candidate or officeholder has made a personal use expenditure.

8084 (b) Following the proceeding, the lieutenant governor may issue a signed order requiring a candidate or officeholder who has made a personal use expenditure to:

8086 (i) remit an administrative penalty of an amount equal to 50% of the personal use expenditure to the lieutenant governor; and

8088 (ii) deposit the amount of the personal use expenditure in the campaign account from which the personal use expenditure was disbursed.

8090 (c) The lieutenant governor shall deposit money received under Subsection (3)(b)(i) [~~in~~] into the General Fund.

8094 Section 174. Section **36-11-102** is amended to read:

8095 **36-11-102. Definitions.**

As used in this chapter:

8095 (1) "Aggregate daily expenditures" means:

8096 (a) for a single lobbyist, principal, or government officer, the total of all expenditures made within a calendar day by the lobbyist, principal, or government officer for the benefit of an individual public official;

8099 (b) for an expenditure made by a member of a lobbyist group, the total of all expenditures made within a calendar day by every member of the lobbyist group for the benefit of an individual public official;  
or

8102

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(c) for a multiclient lobbyist, the total of all expenditures made by the multiclient lobbyist within a calendar day for the benefit of an individual public official, regardless of whether the expenditures were attributed to different clients.

8105 (2) "Approved activity" means an event, a tour, or a meeting:

8106 (a)

(i) to which a legislator or another nonexecutive branch public official is invited; and

8108 (ii) attendance at which is approved by:

8109 (A) the speaker of the House of Representatives, if the public official is a member of the House of Representatives or another nonexecutive branch public official; or

8112 (B) the president of the Senate, if the public official is a member of the Senate or another nonexecutive branch public official; or

8114 (b)

(i) to which a public official who holds a position in the executive branch of state government is invited; and

8116 (ii) attendance at which is approved by the governor or the lieutenant governor.

8117 (3) "Board of education" means:

8118 (a) a local school board described in Title 53G, Chapter 4, School Districts;

8119 (b) the State Board of Education;

8120 (c) the State Charter School Board created under Section 53G-5-201; or

8121 (d) a charter school governing board described in Title 53G, Chapter 5, Charter Schools.

8122 (4) "Capitol hill complex" means capitol hill, as defined in Section 63O-1-101.

8123 (5)

(a) "Compensation" means anything of economic value, however designated, that is paid, loaned, granted, given, donated, or transferred to an individual for the provision of services or ownership before any withholding required by federal or state law.

8126 (b) "Compensation" includes:

8127 (i) a salary or commission;

8128 (ii) a bonus;

8129 (iii) a benefit;

8130 (iv) a contribution to a retirement program or account;

8131

## SB0038S01 compared with SB0038S02

- (v) a payment includable in gross income, as defined in Section 62, Internal Revenue Code, and subject to social security deductions, including a payment in excess of the maximum amount subject to deduction under social security law;
- 8134 (vi) an amount that the individual authorizes to be deducted or reduced for salary deferral or other benefits authorized by federal law; or
- 8136 (vii) income based on an individual's ownership interest.
- 8137 (6) "Compensation payor" means a person who pays compensation to a public official in the ordinary course of business:
- 8139 (a) because of the public official's ownership interest in the compensation payor; or
- 8140 (b) for services rendered by the public official on behalf of the compensation payor.
- 8141 (7) "Education action" means:
- 8142 (a) a resolution, policy, or other official action for consideration by a board of education;
- 8143 (b) a nomination or appointment by an education official or a board of education;
- 8144 (c) a vote on an administrative action taken by a vote of a board of education;
- 8145 (d) an adjudicative proceeding over which an education official has direct or indirect control;
- 8147 (e) a purchasing or contracting decision;
- 8148 (f) drafting or making a policy, resolution, or rule;
- 8149 (g) determining a rate or fee; or
- 8150 (h) making an adjudicative decision.
- 8151 (8) "Education official" means:
- 8152 (a) a member of a board of education;
- 8153 (b) an individual appointed to or employed in a position under a board of education, if that individual:
- 8155 (i) occupies a policymaking position or makes purchasing or contracting decisions;
- 8156 (ii) drafts resolutions or policies or drafts or makes rules;
- 8157 (iii) determines rates or fees;
- 8158 (iv) makes decisions relating to an education budget or the expenditure of public money; or
- 8160 (v) makes adjudicative decisions; or
- 8161 (c) an immediate family member of an individual described in Subsection (8)(a) or (b).
- 8162 (9) "Event" means entertainment, a performance, a contest, or a recreational activity that an individual participates in or is a spectator at, including a sporting event, an artistic event, a play, a movie, dancing, or singing.

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- 8165 (10) "Executive action" means:
- 8166 (a) a nomination or appointment by the governor;
- 8167 (b) the proposal, drafting, amendment, enactment, or defeat by a state agency of a rule made in  
accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 8169 (c) agency ratemaking proceedings; or
- 8170 (d) an adjudicative proceeding of a state agency.
- 8171 (11)
- (a) "Expenditure" means any of the items listed in this Subsection (11)(a) when given to or for the  
benefit of a public official unless consideration of equal or greater value is received:
- 8174 (i) a purchase, payment, or distribution;
- 8175 (ii) a loan, gift, or advance;
- 8176 (iii) a deposit, subscription, or forbearance;
- 8177 (iv) services or goods;
- 8178 (v) money;
- 8179 (vi) real property;
- 8180 (vii) a ticket or admission to an event; or
- 8181 (viii) a contract, promise, or agreement, whether or not legally enforceable, to provide any item  
listed in Subsections (11)(a)(i) through (vii).
- 8183 (b) "Expenditure" does not mean:
- 8184 (i) a commercially reasonable loan made in the ordinary course of business;
- 8185 (ii) a campaign contribution:
- 8186 (A) reported in accordance with Title 20A, Chapter 11, Campaign and Financial Reporting  
Requirements, Section 10-3-208, Section 17-70-403, or any applicable ordinance adopted under  
Subsection 10-3-208(7) or 17-70-403(1); or
- 8189 (B) lawfully given to a person that is not required to report the contribution under a law or ordinance  
described in Subsection (11)(b)(ii)(A);
- 8191 (iii) printed informational material that is related to the performance of the recipient's official duties;
- 8193 (iv) a devise or inheritance;
- 8194 (v) any item listed in Subsection (11)(a) if:
- 8195 (A) given by a relative;
- 8196

## SB0038S01 compared with SB0038S02

- (B) given by a compensation payor for a purpose solely unrelated to the public official's position as a public official;
- 8198 (C) the item is food or beverage with a value that does not exceed the food reimbursement rate, and the aggregate daily expenditures for food and beverage do not exceed the food reimbursement rate; or
- 8201 (D) the item is not food or beverage, has a value of less than \$10, and the aggregate daily expenditures do not exceed \$10;
- 8203 (vi) food or beverage that is provided at an event, a tour, or a meeting to which the following are invited:
- 8205 (A) all members of the Legislature;
- 8206 (B) all members of a standing or interim committee;
- 8207 (C) all members of an official legislative task force;
- 8208 (D) all members of a party caucus; or
- 8209 (E) all members of a group described in Subsections (11)(b)(vi)(A) through (D) who are attending a meeting of a national organization whose primary purpose is addressing general legislative policy;
- 8212 (vii) food or beverage that is provided at an event, a tour, or a meeting to a public official who is:
- 8214 (A) giving a speech at the event, tour, or meeting;
- 8215 (B) participating in a panel discussion at the event, tour, or meeting; or
- 8216 (C) presenting or receiving an award at the event, tour, or meeting;
- 8217 (viii) a plaque, commendation, or award that:
- 8218 (A) is presented in public; and
- 8219 (B) has the name of the individual receiving the plaque, commendation, or award inscribed, etched, printed, or otherwise permanently marked on the plaque, commendation, or award;
- 8222 (ix) a gift that:
- 8223 (A) is an item that is not consumable and not perishable;
- 8224 (B) a public official, other than a local official or an education official, accepts on behalf of the state;
- 8226 (C) the public official promptly remits to the state;
- 8227 (D) a property administrator does not reject under Section 63G-23-103;
- 8228 (E) does not constitute a direct benefit to the public official before or after the public official remits the gift to the state; and
- 8230

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- (F) after being remitted to the state, is not transferred, divided, distributed, or used to distribute a gift or benefit to one or more public officials in a manner that would otherwise qualify the gift as an expenditure if the gift were given directly to a public official;
- 8234 (x) any of the following with a cash value not exceeding \$30:
- 8235 (A) a publication; or
- 8236 (B) a commemorative item;
- 8237 (xi) admission to or attendance at an event, a tour, or a meeting, the primary purpose of which is:
- 8239 (A) to solicit a contribution that is reportable under Title 20A, Chapter 11, Campaign and Financial Reporting Requirements, 2 U.S.C. Sec. 434, Section 10-3-208, Section 17-70-403, or an applicable ordinance adopted under Subsection 10-3-208(7) or 17-70-403(1);
- 8243 (B) to solicit a campaign contribution that a person is not required to report under a law or ordinance described in Subsection (11)(b)(xi)(A); or
- 8245 (C) charitable solicitation, as defined in Section [~~13-22-2~~] 13-22-101;
- 8246 (xii) travel to, lodging at, food or beverage served at, and admission to an approved activity;
- 8248 (xiii) sponsorship of an approved activity;
- 8249 (xiv) notwithstanding Subsection (11)(a)(vii), admission to, attendance at, or travel to or from an event, a tour, or a meeting:
- 8251 (A) that is sponsored by a governmental entity;
- 8252 (B) that is widely attended and related to a governmental duty of a public official;
- 8253 (C) for a local official, that is sponsored by an organization that represents only local governments, including the Utah Association of Counties, the Utah League of Cities and Towns, or the Utah Association of Special Districts; or
- 8256 (D) for an education official, that is sponsored by a public school, a charter school, or an organization that represents only public schools or charter schools, including the Utah Association of Public Charter Schools, the Utah School Boards Association, or the Utah School Superintendents Association; or
- 8260 (xv) travel to a widely attended tour or meeting related to a governmental duty of a public official if that travel results in a financial savings to:
- 8262 (A) for a public official who is not a local official or an education official, the state; or
- 8264 (B) for a public official who is a local official or an education official, the local government or board of education to which the public official belongs.

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- 8266 (12) "Food reimbursement rate" means the total amount set by the director of the Division of Finance, by rule, under Section 63A-3-107, for in-state meal reimbursement, for an employee of the executive branch, for an entire day.
- 8269 (13)
- (a) "Foreign agent" means an individual who engages in lobbying under contract with a foreign government.
- 8271 (b) "Foreign agent" does not include an individual who is recognized by the United States Department of State as a duly accredited diplomatic or consular officer of a foreign government, including a duly accredited honorary consul.
- 8274 (14) "Foreign government" means a government other than the government of:
- 8275 (a) the United States;
- 8276 (b) a state within the United States;
- 8277 (c) a territory or possession of the United States; or
- 8278 (d) a political subdivision of the United States.
- 8279 (15)
- (a) "Government officer" means:
- 8280 (i) an individual elected to a position in state or local government, when acting in the capacity of the state or local government position;
- 8282 (ii) an individual elected to a board of education, when acting in the capacity of a member of a board of education;
- 8284 (iii) an individual appointed to fill a vacancy in a position described in Subsection (15)(a)(i) or (ii), when acting in the capacity of the position; or
- 8286 (iv) an individual appointed to or employed in a full-time position by state government, local government, or a board of education, when acting in the capacity of the individual's appointment or employment.
- 8289 (b) "Government officer" does not mean a member of the legislative branch of state government.
- 8291 (16) "Immediate family" means:
- 8292 (a) a spouse;
- 8293 (b) a child residing in the household; or
- 8294 (c) an individual claimed as a dependent for tax purposes.
- 8295 (17) "Legislative action" means:

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- 8296 (a) a bill, resolution, amendment, nomination, veto override, or other matter pending or proposed in  
either house of the Legislature or its committees or requested by a legislator; and
- 8299 (b) the action of the governor in approving or vetoing legislation.
- 8300 (18) "Lobbying" means communicating with a public official for the purpose of influencing a  
legislative action, executive action, local action, or education action.
- 8302 (19)
- (a) "Lobbyist" means:
- 8303 (i) an individual who is employed by a principal; or
- 8304 (ii) an individual who contracts for economic consideration, other than reimbursement for  
reasonable travel expenses, with a principal to lobby a public official.
- 8307 (b) "Lobbyist" does not include:
- 8308 (i) a government officer;
- 8309 (ii) a member or employee of the legislative branch of state government;
- 8310 (iii) a person, including a principal, while appearing at, or providing written comments to, a hearing  
conducted in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, or Title  
63G, Chapter 4, Administrative Procedures Act;
- 8314 (iv) a person participating on or appearing before an advisory or study task force, commission, board,  
or committee, constituted by the Legislature, a local government, a board of education, or any  
agency or department of state government, except legislative standing, appropriation, or interim  
committees;
- 8318 (v) a representative of a political party;
- 8319 (vi) an individual representing a bona fide church solely for the purpose of protecting the right to  
practice the religious doctrines of the church, unless the individual or church makes an expenditure  
that confers a benefit on a public official;
- 8322 (vii) a newspaper, television station or network, radio station or network, periodical of general  
circulation, or book publisher for the purpose of publishing news items, editorials, other comments,  
or paid advertisements that directly or indirectly urge legislative action, executive action, local  
action, or education action;
- 8326 (viii) an individual who appears on the individual's own behalf before a committee of the Legislature,  
an agency of the executive branch of state government, a board of education, the governing body  
of a local government, a committee of a local government, or a committee of a board of education,

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solely for the purpose of testifying in support of or in opposition to legislative action, executive action, local action, or education action; or

- 8332 (ix) an individual representing a business, entity, or industry, who:
- 8333 (A) interacts with a public official, in the public official's capacity as a public official, while accompanied by a registered lobbyist who is lobbying in relation to the subject of the interaction or while presenting at a legislative committee meeting at the same time that the registered lobbyist is attending another legislative committee meeting; and
- 8338 (B) does not make an expenditure for, or on behalf of, a public official in relation to the interaction or during the period of interaction.
- 8340 (20) "Lobbyist group" means two or more lobbyists, principals, government officers, or any combination of lobbyists, principals, and government officers, who each contribute a portion of an expenditure made to benefit a public official or member of the public official's immediate family.
- 8344 (21) "Local action" means:
- 8345 (a) an ordinance or resolution for consideration by a local government;
- 8346 (b) a nomination or appointment by a local official or a local government;
- 8347 (c) a vote on an administrative action taken by a vote of a local government's legislative body;
- 8349 (d) an adjudicative proceeding over which a local official has direct or indirect control;
- 8350 (e) a purchasing or contracting decision;
- 8351 (f) drafting or making a policy, resolution, or rule;
- 8352 (g) determining a rate or fee; or
- 8353 (h) making an adjudicative decision.
- 8354 (22) "Local government" means:
- 8355 (a) a county, city, or town;
- 8356 (b) a special district governed by Title 17B, Limited Purpose Local Government Entities - Special Districts;
- 8358 (c) a special service district governed by Title 17D, Chapter 1, Special Service District Act;
- 8360 (d) a community reinvestment agency governed by Title 17C, Limited Purpose Local Government Entities - Community Reinvestment Agency Act;
- 8362 (e) a conservation district governed by Title 17D, Chapter 3, Conservation District Act;
- 8363 (f) a redevelopment agency; or
- 8364

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(g) an interlocal entity or a joint cooperative undertaking governed by Title 11, Chapter 13, Interlocal Cooperation Act.

8366 (23) "Local official" means:

8367 (a) an elected member of a local government;

8368 (b) an individual appointed to or employed in a position in a local government if that individual:

8370 (i) occupies a policymaking position or makes purchasing or contracting decisions;

8371 (ii) drafts ordinances or resolutions or drafts or makes rules;

8372 (iii) determines rates or fees; or

8373 (iv) makes adjudicative decisions; or

8374 (c) an immediate family member of an individual described in Subsection (23)(a) or (b).

8375 (24) "Meeting" means a gathering of people to discuss an issue, receive instruction, or make a decision, including a conference, seminar, or summit.

8377 (25) "Multiclient lobbyist" means a single lobbyist, principal, or government officer who represents two or more clients and divides the aggregate daily expenditure made to benefit a public official or member of the public official's immediate family between two or more of those clients.

8381 (26) "Principal" means a person that employs an individual to perform lobbying, either as an employee or as an independent contractor.

8383 (27) "Public official" means:

8384 (a)

(i) a member of the Legislature;

8385 (ii) an individual elected to a position in the executive branch of state government; or

8386 (iii) an individual appointed to or employed in a position in the executive or legislative branch of state government if that individual:

8388 (A) occupies a policymaking position or makes purchasing or contracting decisions;

8390 (B) drafts legislation or makes rules;

8391 (C) determines rates or fees; or

8392 (D) makes adjudicative decisions;

8393 (b) an immediate family member of a person described in Subsection (27)(a);

8394 (c) a local official; or

8395 (d) an education official.

8396 (28) "Public official type" means a notation to identify whether a public official is:

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- 8397 (a)
- (i) a member of the Legislature;
- 8398 (ii) an individual elected to a position in the executive branch of state government;
- 8399 (iii) an individual appointed to or employed in a position in the legislative branch of state government who meets the definition of public official under Subsection (27)(a)(iii);
- 8402 (iv) an individual appointed to or employed in a position in the executive branch of state government who meets the definition of public official under Subsection (27)(a)(iii);
- 8405 (v) a local official, including a description of the type of local government for which the individual is a local official; or
- 8407 (vi) an education official, including a description of the type of board of education for which the individual is an education official; or
- 8409 (b) an immediate family member of an individual described in Subsection (27)(a), (c), or (d).
- 8411 (29) "Quarterly reporting period" means the three-month period covered by each financial report required under Subsection 36-11-201(2)(a).
- 8413 (30) "Related person" means a person, agent, or employee who knowingly and intentionally assists a lobbyist, principal, or government officer in lobbying.
- 8415 (31) "Relative" means:
- 8416 (a) a spouse;
- 8417 (b) a child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, or first cousin; or
- 8419 (c) a spouse of an individual described in Subsection (31)(b).
- 8420 (32) "Tour" means visiting a location, for a purpose relating to the duties of a public official, and not primarily for entertainment, including:
- 8422 (a) viewing a facility;
- 8423 (b) viewing the sight of a natural disaster; or
- 8424 (c) assessing a circumstance in relation to which a public official may need to take action within the scope of the public official's duties.
- 8428 Section 175. Section **51-9-801** is amended to read:
- 8429 **51-9-801. Opioid Litigation Proceeds Fund.**
- 8428 (1) As used in this section:
- 8429 (a) "Fund" means the Opioid Litigation Proceeds Fund created in this section.

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- 8430 (b)
- (i) "Principal" means money deposited into the fund in accordance with this section.
- 8432 (ii) "Principal" does not include:
- 8433 (A) earnings credited to the fund, including interest and dividends; or
- 8434 (B) up to \$21 million of money described in Subsection (4) that the Legislature allocated through July 1, 2026, to be spent for various purposes through June 30, 2027.
- 8437 (2) There is created the Opioid Litigation Proceeds Fund.
- 8438 (3) The fund consists of:
- 8439 (a) any money deposited into the fund in accordance with Subsection (4);
- 8440 (b) interest and dividends earned on money in the fund; and
- 8441 (c) money appropriated to the fund by the Legislature.
- 8442 (4) Notwithstanding Sections [~~13-2-8~~] 13-2-109 and 67-5-40, after reimbursement to the attorney general and the Department of Commerce for expenses related to the matters described in Subsection (4)(a) or (b), the following shall be deposited into the fund:
- 8445 (a) all money received by the attorney general or the Department of Commerce as a result of any judgment, settlement, or compromise of claims pertaining to alleged violations of law related to the manufacture, marketing, distribution, or sale of opioids from a case designated as an opioid case by the attorney general in a legal services contract; and
- 8450 (b) all money received by the attorney general or the Department of Commerce as a result of any multistate judgment, settlement, or compromise of claims pertaining to alleged violations of law related to the manufacture, marketing, distribution, or sale of opioids.
- 8454 (5) The state treasurer shall:
- 8455 (a) invest the money in the fund:
- 8456 (i) for the benefit of the people of the state in perpetuity; and
- 8457 (ii) with the following goals, in order of priority:
- 8458 (A) providing for growth of the principal; and
- 8459 (B) fund stability; and
- 8460 (b) invest and manage fund money as a prudent investor would by:
- 8461 (i) considering the purpose, terms, distribution requirements, and other circumstances of the fund; and
- 8463 (ii) exercising reasonable care, skill, and caution in order to meet the standard of care of a prudent investor.

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- 8465 (6) The state treasurer may deduct any administrative costs incurred by managing the fund from earnings generated by investments in the fund.
- 8467 (7)
- 8468 (a) The Legislature may not appropriate principal from the fund.
- 8470 (b) Subject to appropriation by the Legislature, money in the account other than principal shall be used:
- 8472 (i) to address the effects of alleged violations of law related to the manufacture, marketing, distribution, or sale of opioids; or
- 8472 (ii) if applicable, in accordance with the terms of a settlement agreement described in Subsection (4)(a) or (b) entered into by the state.
- 8476 Section 176. Section **54-8b-18** is amended to read:
- 8477 **54-8b-18. Definitions -- Unauthorized change of telecommunications provider --**
- Unauthorized charges -- Procedures for verification -- Penalties -- Authority of commission.**
- 8478 (1) For purposes of this section:
- 8479 (a) "Agents" includes any person, firm, or corporation representing a telecommunications corporation for purposes of requesting a change in a subscriber's telecommunications provider, but does not include a local service provider when executing a request submitted by another service provider or [its] another service provider's agents.
- 8484 (b) "Freeze" means a directive from a subscriber to retain the provider of public telecommunications services selected by the subscriber until the subscriber provides authorization for a change to another provider of public telecommunications services through any means by which a freeze is implemented.
- 8488 (c) "Small commercial subscriber" is a person or entity conducting a business, agriculture, or other enterprise in the state having less than five telecommunications lines.
- 8491 (d) "Subscriber" means a corporation, person, or government, or a person acting legally on behalf of a corporation, person, or government who has purchased public telecommunications services from a telecommunications corporation.
- 8494 (2) No telecommunications corporation or [its] the telecommunications corporation's agents shall make any change or authorize a different telecommunications corporation to make any change in the provider of any public telecommunications service to a subscriber unless it complies, at a minimum, with Subsections (2)(a) through (e).[-] This Subsection (2) does not apply to a telecommunications

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corporation that effectuates a change in service provider [~~pursuant to~~] in accordance with a change authorization submitted or requested by another telecommunications corporation.

- 8501 (a) The telecommunications corporation or [~~its~~] the telecommunications corporation's agents shall, at a minimum, inform the subscriber of the nature, extent, and rates of the service being offered and any charges associated with the change.
- 8504 (b) Notwithstanding Section [~~13-26-4~~] 13-26-104, changes in provider of telecommunication service accomplished through telephone solicitation shall comply with the Telephone Fraud Prevention Act, Sections [~~13-26-2~~] 13-26-101, [~~13-26-8~~] 13-26-106, [~~13-26-10~~] 13-26-107, and [~~13-26-11~~] 13-26-108.
- 8508 (c) For sales of residential service or small commercial subscriber service, the telecommunications corporation or [~~its~~] the telecommunications corporation's agents shall confirm that the subscriber is aware of any charges that the subscriber must pay associated with the change and that the subscriber authorizes the change of provider. The subscriber's authorization to change the provider shall be confirmed by any one of the following methods:
- 8514 (i) obtaining the subscriber's written authorization;
- 8515 (ii) having the subscriber's oral authorization verified by an independent third party; or
- 8517 (iii) any means provided by rule of the Federal Communications Commission or the commission.
- 8519 (d) If the subscriber is not an individual, an authorization shall be valid only if given by an authorized representative of the subscriber.
- 8521 (e)
- (i) The written authorization to change the provider shall be signed by the subscriber and shall contain a clear, conspicuous, and unequivocal request by the subscriber for a change of telecommunications provider.
- 8524 (ii) A written authorization is not valid if it is presented to the subscriber for signature in connection with a sweepstakes, game of chance, or any other means prohibited by commission rule.
- 8527 (iii) Nothing in this section shall be construed to prohibit any person from offering a premium, incentive, or a thing of value to another as consideration for authorizing a change of telecommunications service provider, provided that no element of chance or skill is associated with the offer of the premium, incentive, or thing of value or its receipt.
- 8532 (3) The confirmation by a third-party verifier shall, at a minimum:
- 8533

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- (a) confirm the subscriber's identity with information unique to the customer, unless the customer refuses to provide identifying information, then that fact shall be noted;
- 8535 (b) confirm that the subscriber agrees to the requested change in telecommunications service providers;  
and
- 8537 (c) confirm that the subscriber has the authority to select the provider as the provider of that service.
- 8539 (4) A third-party verifier shall meet each of the following criteria:
- 8540 (a) any criteria for third-party verifiers set by the Federal Communications Commission;
- 8541 (b) not be directly or indirectly managed, controlled, directed, or owned wholly or in part:
- 8543 (i) by the telecommunications corporation or [its] the telecommunications corporation's agents that seek to provide the telecommunications service or by any corporation, firm, or person who directly or indirectly manages, controls, directs, or owns more than 5% of the telecommunications corporation;  
or
- 8547 (ii) by the marketing entity that seeks to market the telecommunications service or by any corporation, firm, or person who directly or indirectly manages, controls, directs, or owns more than 5% of the marketing entity;
- 8550 (c) operate from facilities physically separated from:
- 8551 (i) those of the telecommunications corporation or its agents that seek to provide the subscriber's telecommunications service; or
- 8553 (ii) those of the marketing entity that seeks to market a telecommunications service to the subscriber;  
and
- 8555 (d) not derive commissions or compensation based upon the number of change authorizations verified.
- 8557 (5) A telecommunications corporation or its agents seeking to verify the change authorization shall connect the subscriber to the third-party verifier or arrange for the third-party verifier to call the subscriber to verify the change authorization.
- 8560 (6) A third-party verifier that obtains the subscriber's oral verification regarding the change shall record that verification by obtaining appropriate verification data.
- 8562 (7)
- (a) The record verifying a subscriber's change of provider shall be available to the subscriber upon request.
- 8564 (b) Information obtained from the subscriber through verification may not be used for any other purpose.

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- 8566 (c) Any intentional unauthorized release of the information in Subsection (7)(b) is grounds for penalties or other action by the commission or remedies provided by law to the aggrieved subscriber against the telecommunications corporation, third-party verifier, their agents, or their employees who are responsible for the violation.
- 8570 (8) The third-party verification shall occur in the same language as that in which the change was solicited.
- 8572 (9) The verification requirements described in this section shall apply to all changes in the provider of any public telecommunications service.
- 8574 (10) The commission may promulgate rules:
- 8575 (a) necessary to implement this section;
- 8576 (b) consistent with any rules promulgated by the Federal Communications Commission; and
- 8578 (c) in a nondiscriminatory and competitively neutral manner.
- 8579 (11)
- (a) Each subscriber may elect to require the telecommunications corporation providing the subscriber's local exchange service to implement a freeze until the subscriber provides authorization for a change to another provider of public telecommunications services.
- 8583 (b) Once a subscriber has elected the freeze option under Subsection (11)(a), the telecommunications corporation providing the subscriber's local exchange service may not process a request to change the subscriber to another provider of telecommunications services without prior authorization directly from the subscriber.
- 8587 (12)
- (a) Whenever the subscriber's provider of a telecommunications service changes, the new provider shall:
- 8589 (i) retain a record of the verified change authorization consistent with requirements of the Federal Communications Commission or rules issued by the commission; and
- 8591 (ii) be responsible for providing a conspicuous notice of the change within 30 days of the effective date of the change of service.
- 8593 (b) At a minimum, the notice in Subsection (12)(a)(ii) shall identify the new provider, contain a general description of the service and price, and provide information necessary for the subscriber to have questions answered or to rescind the change.
- 8596

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(13) Any bill shall identify each telecommunications service provider of telecommunication service for which billing is rendered.

8598 (14)

(a) Any person or provider of telecommunications service inadvertently or knowingly designating or changing the subscriber's telecommunications service provider in violation of this section shall refund to the subscriber any amounts required by the rules of the Federal Communications Commission and the commission.

8603 (b) The unauthorized provider in Subsection (14)(a) additionally shall:

8604 (i) bear all costs of restoring the customer to the service of the subscriber's original service provider; and

8606 (ii) pay to any other telecommunications provider any fees set by the commission for the designation or change.

8608 (15) Proceedings for violations of this section may be commenced by request for agency action filed with the commission by a subscriber, a telecommunications corporation, the Division of Public Utilities, or by the commission on its own motion.

8611 (16) Any telecommunications corporation, its agents, or a third-party verifier who violates this section or rules adopted to implement this section shall be subject to the provisions of Sections 54-7-23 through 54-7-29.

8614 (17) The commission is granted authority to enforce provisions relating to an unauthorized telecommunication service provider change in interstate and intrastate telecommunication service involving telecommunications corporations operating in the state.

8620 Section 177. Section **58-16a-305** is amended to read:

8621 **58-16a-305. License -- Exemptions.**

In addition to the exemptions from licensure in Section 58-1-307, the following persons may engage in acts included in the definition of the practice of optometry subject to the stated circumstances and limitations without being licensed under this chapter:

8623 (1) a person who sells contact lenses on prescription provided by a person authorized under state law to practice either optometry or medicine and surgery if the person complies with Section 58-16a-801;

8626 (2) a person who sells eyeglasses or spectacles as articles of merchandise or who fabricates ~~{them}~~ [eyeglasses or spectacles](#) } from a prescription if the person complies with Subsection 58-16a-801(2), and if the person:

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- 8629 (a) does so in the ordinary course of trade from a permanently located and established place of business;
- 8631 (b) does not traffic or attempt to traffic upon assumed skill in testing the eye and adapting lenses according to the test;
- 8633 (c) does not duplicate, replace, or accept for replacement any ophthalmic lens, except in the case of an emergency;
- 8635 (d) does not use in the testing of the eyes any lenses or instruments other than the lenses actually sold; and
- 8637 (e) does not give or offer eyeglasses or spectacles as premiums as defined in Section ~~[13-26-2]~~ 13-26-101; and
- 8639 (3) {~~the {}~~ an individual} who fits contact lenses under the following conditions:
- 8640 (a) {~~he {}~~ the individual} has a current certification from both the American Board of Opticianry and the National Contact Lens Examiners;
- 8642 (b) {~~he {}~~ the individual} does not give or offer contact lenses as premiums;
- 8643 (c) {~~he {}~~ the individual} does not perform a refraction, over-refraction, or attempt to traffic upon assumed skill in testing the eye;
- 8645 (d) {~~he {}~~ the individual} operates in the ordinary course of trade from a permanently located and established place of business;
- 8647 (e) {~~he {}~~ the individual} performs the work involved in fitting contact lenses {~~himself {}~~} and does not delegate the contact lens fitting to any other individual who is not qualified under this Subsection (3);
- 8650 (f) {~~he {}~~ the individual} does not use in the testing of the eye any lenses or instruments other than the lenses he actually will sell;
- 8652 (g) {~~he {}~~ the individual} provides services only to a patient who:
- 8653 (i) presents an unexpired contact lens prescription; or
- 8654 (ii) has had an eye examination within the prior six months by an optometrist or ophthalmologist meeting the requirements under Section 58-16a-306;
- 8656 (h) {~~he {}~~ the individual} maintains a copy of the patient's contact lens prescription for not less than seven years;
- 8658 (i) {~~he {}~~ the individual} enters into a written agreement with an optometrist or an ophthalmologist before July 1, 2000, to fit contact lenses prescribed by that optometrist or ophthalmologist;
- 8661

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(j) ~~{he {}}~~ ~~the individual~~ fits contact lenses for at least two years under the direct supervision of the optometrist or ophthalmologist identified in Subsection (3)(i) before July 1, 2000, as documented in the written agreement; and

8664 (k) the optometrist or ophthalmologist described in Subsection (3)(i):

8665 (i) ensures that the final contact lens is accurate;

8666 (ii) presents a written copy of the prescription to the person fitting the contact lens; and

8668 (iii) ensures that a copy of the prescription is provided to the patient, except as provided in Section 58-16a-306.

8671 Section 178. Section **63G-2-305** is amended to read:

8672 **63G-2-305. Protected records.**

The following records are protected if properly classified by a governmental entity:

8673 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret has provided the governmental entity with the information specified in Section 63G-2-309;

8675 (2) commercial information or nonindividual financial information obtained from a person if:

8677 (a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;

8680 (b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and

8682 (c) the person submitting the information has provided the governmental entity with the information specified in Section 63G-2-309;

8684 (3) commercial or financial information acquired or prepared by a governmental entity to the extent that disclosure would lead to financial speculations in currencies, securities, or commodities that will interfere with a planned transaction by the governmental entity or cause substantial financial injury to the governmental entity or state economy;

8688 (4) records, the disclosure of which could cause commercial injury to, or confer a competitive advantage upon a potential or actual competitor of, a commercial project entity as defined in Subsection 11-13-103(4);

8691 (5) test questions and answers to be used in future license, certification, registration, employment, or academic examinations;

8693

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- (6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties:
- 8698 (a) a bid, proposal, application, or other information submitted to or by a governmental entity in response to:
- 8700 (i) an invitation for bids;
- 8701 (ii) a request for proposals;
- 8702 (iii) a request for quotes;
- 8703 (iv) a grant; or
- 8704 (v) other similar document; or
- 8705 (b) an unsolicited proposal, as defined in Section 63G-6a-712;
- 8706 (7) information submitted to or by a governmental entity in response to a request for information, except, subject to Subsections (1) and (2), that this Subsection (7) does not restrict the right of a person to have access to the information, after:
- 8709 (a) a contract directly relating to the subject of the request for information has been awarded and signed by all parties; or
- 8711 (b)
- (i) a final determination is made not to enter into a contract that relates to the subject of the request for information; and
- 8713 (ii) at least two years have passed after the day on which the request for information is issued;
- 8715 (8) records that would identify real property or the appraisal or estimated value of real or personal property, including intellectual property, under consideration for public acquisition before any rights to the property are acquired unless:
- 8718 (a) public interest in obtaining access to the information is greater than or equal to the governmental entity's need to acquire the property on the best terms possible;
- 8720 (b) the information has already been disclosed to persons not employed by or under a duty of confidentiality to the entity;
- 8722 (c) in the case of records that would identify property, potential sellers of the described property have already learned of the governmental entity's plans to acquire the property;
- 8725

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- 8728 (d) in the case of records that would identify the appraisal or estimated value of property, the potential sellers have already learned of the governmental entity's estimated value of the property; or
- 8731 (e) the property under consideration for public acquisition is a single family residence and the governmental entity seeking to acquire the property has initiated negotiations to acquire the property as required under Section 78B-6-505;
- 8735 (9) records prepared in contemplation of sale, exchange, lease, rental, or other compensated transaction of real or personal property including intellectual property, which, if disclosed prior to completion of the transaction, would reveal the appraisal or estimated value of the subject property, unless:
- 8738 (a) the public interest in access is greater than or equal to the interests in restricting access, including the governmental entity's interest in maximizing the financial benefit of the transaction; or
- 8741 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of the value of the subject property have already been disclosed to persons not employed by or under a duty of confidentiality to the entity;
- 8744 (10) records created or maintained for civil, criminal, or administrative enforcement purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if release of the records:
- 8746 (a) reasonably could be expected to interfere with investigations undertaken for enforcement, discipline, licensing, certification, or registration purposes;
- 8748 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement proceedings;
- 8750 (c) would create a danger of depriving a person of a right to a fair trial or impartial hearing;
- 8754 (d) reasonably could be expected to disclose the identity of a source who is not generally known outside of government and, in the case of a record compiled in the course of an investigation, disclose information furnished by a source not generally known outside of government if disclosure would compromise the source; or
- 8757 (e) reasonably could be expected to disclose investigative or audit techniques, procedures, policies, or orders not generally known outside of government if disclosure would interfere with enforcement or audit efforts;
- 8758 (11) records the disclosure of which would jeopardize the life or safety of an individual;
- 8761 (12) records the disclosure of which would jeopardize the security of governmental property, governmental programs, or governmental recordkeeping systems from damage, theft, or other appropriation or use contrary to law or public policy;

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- (13) records that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender's incarceration, treatment, probation, or parole;
- 8765 (14) records that, if disclosed, would reveal recommendations made to the Board of Pardons and Parole by an employee of or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Health and Human Services that are based on the employee's or contractor's supervision, diagnosis, or treatment of any person within the board's jurisdiction;
- 8770 (15) records and audit workpapers that identify audit, collection, and operational procedures and methods used by the State Tax Commission, if disclosure would interfere with audits or collections;
- 8773 (16) records of a governmental audit agency relating to an ongoing or planned audit until the final audit is released;
- 8775 (17) records that are subject to the attorney client privilege;
- 8776 (18) records prepared for or by an attorney, consultant, surety, indemnitor, insurer, employee, or agent of a governmental entity for, or in anticipation of, litigation or a judicial, quasi-judicial, or administrative proceeding;
- 8779 (19)
- (a)
- (i) personal files of a state legislator, including personal correspondence to or from a member of the Legislature; and
- 8781 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of legislative action or policy may not be classified as protected under this section; and
- 8784 (b)
- (i) an internal communication that is part of the deliberative process in connection with the preparation of legislation between:
- 8786 (A) members of a legislative body;
- 8787 (B) a member of a legislative body and a member of the legislative body's staff; or
- 8788 (C) members of a legislative body's staff; and
- 8789 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of legislative action or policy may not be classified as protected under this section;
- 8791 (20)

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- (a) records in the custody or control of the Office of Legislative Research and General Counsel, that, if disclosed, would reveal a particular legislator's contemplated legislation or contemplated course of action before the legislator has elected to support the legislation or course of action, or made the legislation or course of action public; and
- 8796 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the Office of Legislative Research and General Counsel is a public document unless a legislator asks that the records requesting the legislation be maintained as protected records until such time as the legislator elects to make the legislation or course of action public;
- 8801 (21) a research request from a legislator to a legislative staff member and research findings prepared in response to the request;
- 8803 (22) drafts, unless otherwise classified as public;
- 8804 (23) records concerning a governmental entity's strategy about:
- 8805 (a) collective bargaining; or
- 8806 (b) imminent or pending litigation;
- 8807 (24) records of investigations of loss occurrences and analyses of loss occurrences that may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the Uninsured Employers' Fund, or similar divisions in other governmental entities;
- 8810 (25) records, other than personnel evaluations, that contain a personal recommendation concerning an individual if disclosure would constitute a clearly unwarranted invasion of personal privacy, or disclosure is not in the public interest;
- 8813 (26) records that reveal the location of historic, prehistoric, paleontological, or biological resources that if known would jeopardize the security of those resources or of valuable historic, scientific, educational, or cultural information;
- 8816 (27) records of independent state agencies if the disclosure of the records would conflict with the fiduciary obligations of the agency;
- 8818 (28) records of an institution of higher education defined in Section 53H-1-101 regarding tenure evaluations, appointments, applications for admissions, retention decisions, and promotions, which could be properly discussed in a meeting closed in accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of the final decisions about tenure, appointments, retention, promotions, or those students admitted, may not be classified as protected under this section;

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- 8824 (29) records of the governor's office, including budget recommendations, legislative proposals, and policy statements, that if disclosed would reveal the governor's contemplated policies or contemplated courses of action before the governor has implemented or rejected those policies or courses of action or made them public;
- 8828 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis, revenue estimates, and fiscal notes of proposed legislation before issuance of the final recommendations in these areas;
- 8831 (31) records provided by the United States or by a government entity outside the state that are given to the governmental entity with a requirement that they be managed as protected records if the providing entity certifies that the record would not be subject to public disclosure if retained by it;
- 8835 (32) transcripts, minutes, recordings, or reports of the closed portion of a meeting of a public body except as provided in Section 52-4-206;
- 8837 (33) records that would reveal the contents of settlement negotiations but not including final settlements or empirical data to the extent that they are not otherwise exempt from disclosure;
- 8840 (34) memoranda prepared by staff and used in the decision-making process by an administrative law judge, a member of the Board of Pardons and Parole, or a member of any other body charged by law with performing a quasi-judicial function;
- 8843 (35) records that would reveal negotiations regarding assistance or incentives offered by or requested from a governmental entity for the purpose of encouraging a person to expand or locate a business in Utah, but only if disclosure would result in actual economic harm to the person or place the governmental entity at a competitive disadvantage, but this section may not be used to restrict access to a record evidencing a final contract;
- 8848 (36) materials to which access must be limited for purposes of securing or maintaining the governmental entity's proprietary protection of intellectual property rights including patents, copyrights, and trade secrets;
- 8851 (37) the name of a donor or a prospective donor to a governmental entity, including an institution of higher education defined in Section 53H-1-101, and other information concerning the donation that could reasonably be expected to reveal the identity of the donor, provided that:
- 8855 (a) the donor requests anonymity in writing;
- 8856 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be classified protected by the governmental entity under this Subsection (37); and

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- 8858 (c) except for an institution of higher education defined in Section 53H-1-101, the governmental unit  
to which the donation is made is primarily engaged in educational, charitable, or artistic endeavors,  
and has no regulatory or legislative authority over the donor, a member of the donor's immediate  
family, or any entity owned or controlled by the donor or the donor's immediate family;
- 8863 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and 73-18-13;
- 8864 (39) a notification of workers' compensation insurance coverage described in Section 34A-2-205;
- 8866 (40) subject to Subsections (40)(g) and (h), the following records of an institution of higher education  
defined in Section 53H-1-101, which have been developed, discovered, disclosed to, or received by  
or on behalf of faculty, staff, employees, or students of the institution:
- 8870 (a) unpublished lecture notes;
- 8871 (b) unpublished notes, data, and information:
- 8872 (i) relating to research; and
- 8873 (ii) of:
- 8874 (A) the institution of higher education defined in Section 53H-1-101; or
- 8875 (B) a sponsor of sponsored research;
- 8876 (c) unpublished manuscripts;
- 8877 (d) creative works in process;
- 8878 (e) scholarly correspondence; ~~and~~
- 8879 (f) confidential information contained in research proposals;
- 8880 (g) this Subsection (40) may not be construed to prohibit disclosure of public information required  
[pursuant to] in accordance with Subsection 53H-14-202(2)(a) or (b); and
- 8883 (h) this Subsection (40) may not be construed to affect the ownership of a record;
- 8884 (41)
- (a) records in the custody or control of the Office of the Legislative Auditor General that would reveal  
the name of a particular legislator who requests a legislative audit prior to the date that audit is  
completed and made public; and
- 8887 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the Office of the  
Legislative Auditor General is a public document unless the legislator asks that the records in the  
custody or control of the Office of the Legislative Auditor General that would reveal the name of  
a particular legislator who requests a legislative audit be maintained as protected records until the  
audit is completed and made public;

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- 8893 (42) records that provide detail as to the location of an explosive, including a map or other document that indicates the location of:
- 8895 (a) a production facility; or
- 8896 (b) a magazine;
- 8897 (43) information contained in the statewide database of the Division of Aging and Adult Services created by Section 26B-6-210;
- 8899 (44) information contained in the Licensing Information System described in Title 80, Chapter 2, Child Welfare Services;
- 8901 (45) information regarding National Guard operations or activities in support of the National Guard's federal mission;
- 8903 (46) records provided by any pawn or secondhand business to a law enforcement agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter Transaction Information Act;
- 8906 (47) information regarding food security, risk, and vulnerability assessments performed by the Department of Agriculture and Food;
- 8908 (48) except to the extent that the record is exempt from this chapter [~~pursuant to~~] in accordance with Section 63G-2-106, records related to an emergency plan or program, a copy of which is provided to or prepared or maintained by the Division of Emergency Management, and the disclosure of which would jeopardize:
- 8912 (a) the safety of the general public; or
- 8913 (b) the security of:
- 8914 (i) governmental property;
- 8915 (ii) governmental programs; or
- 8916 (iii) the property of a private person who provides the Division of Emergency Management information;
- 8918 (49) records of the Department of Agriculture and Food that provides for the identification, tracing, or control of livestock diseases, including any program established under Title 4, Chapter 24, Utah Livestock Brand and Anti-Theft Act, or Title 4, Chapter 31, Control of Animal Disease;
- 8922 (50) as provided in Section 26B-2-709:
- 8923 (a) information or records held by the Department of Health and Human Services related to a complaint regarding a provider, program, or facility which the department is unable to substantiate; and

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- 8926 (b) information or records related to a complaint received by the Department of Health and Human  
Services from an anonymous complainant regarding a provider, program, or facility;
- 8929 (51) unless otherwise classified as public under Section 63G-2-301 and except as provided under  
Section 41-1a-116, an individual's home address, home telephone number, or personal mobile phone  
number, if:
- 8932 (a) the individual is required to provide the information in order to comply with a law, ordinance, rule,  
or order of a government entity; and
- 8934 (b) the subject of the record has a reasonable expectation that this information will be kept confidential  
due to:
- 8936 (i) the nature of the law, ordinance, rule, or order; and
- 8937 (ii) the individual complying with the law, ordinance, rule, or order;
- 8938 (52) the portion of the following documents that contains a candidate's residential or mailing address,  
if the candidate provides to the filing officer another address or phone number where the candidate  
may be contacted:
- 8941 (a) a declaration of candidacy, a nomination petition, or a certificate of nomination, described in Section  
20A-9-201, 20A-9-202, 20A-9-203, 20A-9-404, 20A-9-405, 20A-9-408, 20A-9-408.5, 20A-9-502,  
or 20A-9-601;
- 8944 (b) an affidavit of impecuniosity, described in Section 20A-9-201; or
- 8945 (c) a notice of intent to gather signatures for candidacy, described in Section 20A-9-408;
- 8946 (53) the name, home address, work addresses, and telephone numbers of an individual that is engaged  
in, or that provides goods or services for, medical or scientific research that is:
- 8948 (a) conducted within the state system of higher education, as described in Section 53H-1-102; and
- 8950 (b) conducted using animals;
- 8951 (54) in accordance with Section 78A-12-203, any record of the Judicial Performance Evaluation  
Commission concerning an individual commissioner's vote, in relation to whether a judge meets  
or exceeds minimum performance standards under Subsection 78A-12-203(4), and information  
disclosed under Subsection 78A-12-203(5)(e);
- 8955 (55) information collected and a report prepared by the Judicial Performance Evaluation Commission  
concerning a judge, unless Section 20A-7-702 or Title 78A, Chapter 12, Judicial Performance  
Evaluation Commission Act, requires disclosure of, or makes public, the information or report;
- 8959

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- (56) records provided or received by the Public Lands Policy Coordinating Office in furtherance of any contract or other agreement made in accordance with Section 63L-11-202;
- 8962 (57) information requested by and provided to the 911 Division under Section 63H-7a-302;
- 8963 (58) in accordance with Section 73-10-33:
- 8964 (a) a management plan for a water conveyance facility in the possession of the Division of Water Resources or the Board of Water Resources; or
- 8966 (b) an outline of an emergency response plan in possession of the state or a county or municipality;
- 8968 (59) the following records in the custody or control of the Office of Inspector General of Medicaid Services, created in Section 63A-13-201:
- 8970 (a) records that would disclose information relating to allegations of personal misconduct, gross mismanagement, or illegal activity of a person if the information or allegation cannot be corroborated by the Office of Inspector General of Medicaid Services through other documents or evidence, and the records relating to the allegation are not relied upon by the Office of Inspector General of Medicaid Services in preparing a final investigation report or final audit report;
- 8976 (b) records and audit workpapers to the extent they would disclose the identity of a person who, during the course of an investigation or audit, communicated the existence of any Medicaid fraud, waste, or abuse, or a violation or suspected violation of a law, rule, or regulation adopted under the laws of this state, a political subdivision of the state, or any recognized entity of the United States, if the information was disclosed on the condition that the identity of the person be protected;
- 8983 (c) before the time that an investigation or audit is completed and the final investigation or final audit report is released, records or drafts circulated to a person who is not an employee or head of a governmental entity for the person's response or information;
- 8986 (d) records that would disclose an outline or part of any investigation, audit survey plan, or audit program; or
- 8988 (e) requests for an investigation or audit, if disclosure would risk circumvention of an investigation or audit;
- 8990 (60) records that reveal methods used by the Office of Inspector General of Medicaid Services, the fraud unit, or the Department of Health and Human Services, to discover Medicaid fraud, waste, or abuse;
- 8993

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- (61) information provided to the Department of Health and Human Services or the Division of Professional Licensing under Subsections 58-67-304(3) and (4) and Subsections 58-68-304(3) and (4);
- 8996 (62) a record described in Section 63G-12-210;
- 8997 (63) captured plate data that is obtained through an automatic license plate reader system used by a governmental entity as authorized in Section 41-6a-2003;
- 8999 (64) an audio or video recording created by a body-worn camera, as that term is defined in Section 77-7a-103, that records sound or images inside a hospital or health care facility as those terms are defined in Section 78B-3-403, inside a clinic of a health care provider, as that term is defined in Section 78B-3-403, or inside a human service program as that term is defined in Section 26B-2-101, except for recordings that:
- 9004 (a) depict the commission of an alleged crime;
- 9005 (b) record any encounter between a law enforcement officer and a person that results in death or bodily injury, or includes an instance when an officer fires a weapon;
- 9007 (c) record any encounter that is the subject of a complaint or a legal proceeding against a law enforcement officer or law enforcement agency;
- 9009 (d) contain an officer involved critical incident as defined in Subsection 76-2-408(1)(f); or
- 9011 (e) have been requested for reclassification as a public record by a subject or authorized agent of a subject featured in the recording;
- 9013 (65) a record pertaining to the search process for a president of an institution of higher education described in Section 53H-3-302;
- 9015 (66) an audio recording that is:
- 9016 (a) produced by an audio recording device that is used in conjunction with a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition;
- 9019 (b) produced during an emergency event when an individual employed to provide law enforcement, fire protection, paramedic, emergency medical, or other first responder service:
- 9022 (i) is responding to an individual needing resuscitation or with a life-threatening condition; and
- 9024 (ii) uses a device or piece of equipment designed or intended for resuscitating an individual or for treating an individual with a life-threatening condition; and
- 9026

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- (c) intended and used for purposes of training emergency responders how to improve their response to an emergency situation;
- 9028 (67) records submitted by or prepared in relation to an applicant seeking a recommendation by the Research and General Counsel Subcommittee, the Budget Subcommittee, or the Legislative Audit Subcommittee, established under Section 36-12-8, for an employment position with the Legislature;
- 9032 (68) work papers as defined in Section 31A-2-204;
- 9033 (69) a record made available to Adult Protective Services or a law enforcement agency under Section 61-1-206;
- 9035 (70) a record submitted to the Insurance Department in accordance with Section 31A-37-201;
- 9037 (71) a record described in Section 31A-37-503;
- 9038 (72) any record created by the Division of Professional Licensing as a result of Subsection 58-37f-304(5) or 58-37f-702(2)(a)(ii);
- 9040 (73) a record described in Section 72-16-306 that relates to the reporting of an injury involving an amusement ride;
- 9042 (74) except as provided in Subsection 63G-2-305.5(1), the signature of an individual on a political petition, or on a request to withdraw a signature from a political petition, including a petition or request described in the following titles:
- 9045 (a) Title 10, Utah Municipal Code;
- 9046 (b) Title 17, Counties;
- 9047 (c) Title 17B, Limited Purpose Local Government Entities - Special Districts;
- 9048 (d) Title 17D, Limited Purpose Local Government Entities - Other Entities; and
- 9049 (e) Title 20A, Election Code;
- 9050 (75) except as provided in Subsection 63G-2-305.5(2), the signature of an individual in a voter registration record;
- 9052 (76) except as provided in Subsection 63G-2-305.5(3), any signature, other than a signature described in Subsection (74) or (75), in the custody of the lieutenant governor or a local political subdivision collected or held under, or in relation to, Title 20A, Election Code;
- 9055 (77) a Form I-918 Supplement B certification as described in Title 77, Chapter 38, Part 5, Victims Guidelines for Prosecutors Act;
- 9057 (78) a record submitted to the Insurance Department under Section 31A-48-103;
- 9058

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- (79) personal information, as defined in Section 63G-26-102, to the extent disclosure is prohibited under Section 63G-26-103;
- 9060 (80) an image taken of an individual during the process of booking the individual into jail, unless:
- 9062 (a) the individual is convicted of a criminal offense based upon the conduct for which the individual was incarcerated at the time the image was taken;
- 9064 (b) a law enforcement agency releases or disseminates the image:
- 9065 (i) after determining that the individual is a fugitive or an imminent threat to an individual or to public safety and releasing or disseminating the image will assist in apprehending the individual or reducing or eliminating the threat; or
- 9068 (ii) to a potential witness or other individual with direct knowledge of events relevant to a criminal investigation or criminal proceeding for the purpose of identifying or locating an individual in connection with the criminal investigation or criminal proceeding;
- 9072 (c) a judge orders the release or dissemination of the image based on a finding that the release or dissemination is in furtherance of a legitimate law enforcement interest; or
- 9074 (d) the image is displayed to a person who is permitted to view the image under Section 17-72-802;
- 9076 (81) a record:
- 9077 (a) concerning an interstate claim to the use of waters in the Colorado River system;
- 9078 (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a representative from another state or the federal government as provided in Section 63M-14-205; and
- 9081 (c) the disclosure of which would:
- 9082 (i) reveal a legal strategy relating to the state's claim to the use of the water in the Colorado River system;
- 9084 (ii) harm the ability of the Colorado River Authority of Utah or river commissioner to negotiate the best terms and conditions regarding the use of water in the Colorado River system; or
- 9087 (iii) give an advantage to another state or to the federal government in negotiations regarding the use of water in the Colorado River system;
- 9089 (82) any part of an application described in Section 63N-16-201 that the Governor's Office of Economic Opportunity determines is nonpublic, confidential information that if disclosed would result in actual economic harm to the applicant, but this Subsection (82) may not be used to restrict access to a record evidencing a final contract or approval decision;
- 9094 (83) the following records of a drinking water or wastewater facility:

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- 9095 (a) an engineering or architectural drawing of the drinking water or wastewater facility; and
- 9097 (b) except as provided in Section 63G-2-106, a record detailing tools or processes the drinking water or  
wastewater facility uses to secure, or prohibit access to, the records described in Subsection (83)(a);
- 9100 (84) a statement that an employee of a governmental entity provides to the governmental entity as part  
of the governmental entity's personnel or administrative investigation into potential misconduct  
involving the employee if the governmental entity:
- 9103 (a) requires the statement under threat of employment disciplinary action, including possible  
termination of employment, for the employee's refusal to provide the statement; and
- 9106 (b) provides the employee assurance that the statement cannot be used against the employee in any  
criminal proceeding;
- 9108 (85) any part of an application for a Utah Fits All Scholarship account described in Section 53F-6-402  
or other information identifying a scholarship student as defined in Section 53F-6-401;
- 9111 (86) a record:
- 9112 (a) concerning a claim to the use of waters in the Great Salt Lake;
- 9113 (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a person concerning  
the claim, including a representative from another state or the federal government; and
- 9116 (c) the disclosure of which would:
- 9117 (i) reveal a legal strategy relating to the state's claim to the use of the water in the Great Salt Lake;
- 9119 (ii) harm the ability of the Great Salt Lake commissioner to negotiate the best terms and conditions  
regarding the use of water in the Great Salt Lake; or
- 9121 (iii) give an advantage to another person including another state or to the federal government in  
negotiations regarding the use of water in the Great Salt Lake;
- 9123 (87) a consumer complaint described in Section [~~13-2-11~~] 13-2-112, unless the consumer complaint is  
reclassified as public as described in Subsection [~~13-2-11(4)~~] ~~{13-2-112(4)}~~ 13-2-112(3);
- 9125 (88) a record of the Utah water agent, appointed under Section 73-10g-702:
- 9126 (a) concerning a claim to the use of waters;
- 9127 (b) relating to a judicial proceeding, administrative proceeding, or negotiation with a representative  
from another state, a tribe, the federal government, or other government entity as provided in Title  
73, Chapter 10g, Part 7, Utah Water Agent; and
- 9131 (c) the disclosure of which would:
- 9132 (i) reveal a legal strategy relating to the state's claim to the use of the water;

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- 9133 (ii) harm the ability of the Utah water agent to negotiate the best terms and conditions regarding the use of water; or
- 9135 (iii) give an advantage to another state, a tribe, the federal government, or other government entity in negotiations regarding the use of water; and
- 9137 (89) a record created or maintained for an investigation of the Prosecutor Conduct Commission, created in Section 63M-7-1102, that contains any personal identifying information of a prosecuting attorney, including:
- 9140 (a) a complaint, or a document that is submitted or created for a complaint, received by the Prosecutor Conduct Commission; or
- 9142 (b) a finding by the Prosecutor Conduct Commission.
- 9144 Section 179. Section **63G-26-103** is amended to read:
- 9145 **63G-26-103. Protection of personal information.**
- 9145 (1) Except as provided in Subsections (2), (3), and (4), a public agency may not:
- 9146 (a) require an individual who is a donor to a nonprofit entity to provide the public agency with personal information or otherwise compel the release of personal information;
- 9149 (b) require a nonprofit entity to provide the public agency with personal information or compel the nonprofit entity to release personal information;
- 9151 (c) release, publicize, or otherwise publicly disclose personal information in possession of a public agency; or
- 9153 (d) request or require a current or prospective contractor or grantee of the public agency to provide the public agency with a list of nonprofit entities to which the current or prospective contractor or grantee has provided financial or nonfinancial support.
- 9156 (2) Subsection (1) does not apply to:
- 9157 (a) a disclosure of personal information required under Title 20A, Election Code, or Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act;
- 9159 (b) the release of personal information by a public agency if the information is voluntarily released to the public by the individual or nonprofit entity to which the personal information relates, including:
- 9162 (i) as part of public comment or in a public meeting; or
- 9163 (ii) in another manner that is publicly accessible;
- 9164 (c) a disclosure of personal information [~~pursuant to~~] in accordance with a lawful warrant or court order issued by a court with jurisdiction;

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- 9166 (d) a lawful request for discovery of personal information in litigation or a criminal proceeding if the court with jurisdiction:
- 9168 (i) finds that the requestor demonstrates a compelling need for the personal information by clear and convincing evidence; and
- 9170 (ii) issues a protective order barring disclosure of personal information to a person not named in the litigation;
- 9172 (e) admission of personal information as relevant evidence before a court with jurisdiction, except that a court may not publicly reveal personal information absent a specific finding of good cause;
- 9175 (f) a nonprofit created under Title 11, Chapter 13a, Governmental Nonprofit Corporations Act;
- 9177 (g) disclosure of personal information to the Department of Financial Institutions to conduct regulatory oversight of federally insured depositories to comply with the requirements of statute, rule, or regulation;
- 9180 (h) disclosure of personal information to the Insurance Department to conduct regulatory oversight of persons licensed under Title 31A, Insurance Code, to comply with the requirements of statute, rule, or regulation; or
- 9183 (i) disclosure of personal information that is required, requested, or released by the following divisions of the Department of Commerce, provided that each division may only use personal information in connection with the specific request to which the personal information relates and for a related proceeding:
- 9187 (i) by the Division of Consumer Protection in accordance with the Division of Consumer Protection's administration and enforcement of a chapter described in Section [~~13-2-1~~] 13-2-102;
- 9190 (ii) by the Division of Corporations and Commercial Code in accordance with the Division of Corporations and Commercial Code's authority under Title 13, Chapter 1a, Division of Corporations and Commercial Code, and in the course of the Division of Corporations and Commercial Code's administration of:
- 9194 (A) Title 3, Uniform Agricultural Cooperative Association Act;
- 9195 (B) Title 16, Corporations;
- 9196 (C) Title 42, Chapter 2, Conducting Business Under Assumed Name;
- 9197 (D) Title 48, Unincorporated Business Entity Act;
- 9198 (E) Title 70, Chapter 3a, Registration and Protection of Trademarks and Service Marks Act; and
- 9200 (F) Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions; and

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- 9201 (iii) by the Division of Securities to conduct regulatory oversight of persons regulated under Title  
61, Chapter 1, Utah Uniform Securities Act, to comply with the requirements of statute, rule, or  
regulation.
- 9204 (3) Subsections (1)(a), (b), and (d) do not apply to:
- 9205 (a) the request or use of personal information necessary to the State Tax Commission's administration  
of tax or motor vehicle laws, except that the State Tax Commission may only use personal  
information in connection with the administration of tax or motor vehicle laws or for a related  
proceeding; or
- 9209 (b) access to personal information by the Office of the Legislative Auditor General to conduct an  
audit authorized under Utah Constitution, Article VI, Section 33, and Section 36-12-15, or the  
state auditor's office to conduct an audit authorized under Title 67, Chapter 3, Auditor, except the  
legislative auditor general or state auditor may only use the personal information in connection with  
the specific audit to which the request relates.
- 9215 (4) Subsection (1) does not apply to disclosure of a contributor to a sponsoring organization, as those  
terms are defined in Section 41-1a-1601.
- 9218 Section 180. Section **71A-4-101** is amended to read:
- 9219 **71A-4-101. Definitions.**
- 9219 (1) As used in this chapter:
- 9220 (a) "Accredited" means a veterans service organization, representative, agent, or attorney to whom  
authority has been granted by the VA to provide assistance to claimants in the preparation,  
presentation, and prosecution of claims for VA benefits.
- 9223 (b) "Assistance" means an act performed by a person on behalf of a claimant to:
- 9224 (i) provide claimant-specific recommendations for VA benefits; or
- 9225 (ii) prepare or submit an application for VA benefits on behalf of a claimant.
- 9226 (c) "Certify" means to submit in writing to a veteran or the veteran's dependents certain disclosure  
forms provided by the department.
- 9228 (d) "Claimant" means an individual who has filed or has expressed to an accredited person an intention  
to file a written application for determination of entitlement to benefits provided under United States  
Code, Title 38, and implementing directives.
- 9231 (e) "Compensation" means payment of money, a thing of financial value, or a financial benefit.
- 9233

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- (f) "Division" means the Division of Consumer Protection [~~created within the Department of Commerce~~] established in Section [13-2-1] 13-2-102.
- 9235 (g) "Non-compliant referral" means referring a veteran's or a veteran's dependent's original claim for  
veteran benefits for assistance to a person who is in violation of the provisions of this chapter.
- 9238 (h) "VA benefits" means any payment, service, commodity, function, or status entitlement that is  
determined under laws administered by the VA pertaining to veterans, dependents, and survivors, as  
well as other potential beneficiaries under United States Code Title 38.
- 9242 (i) "Veteran" includes all eligible dependents.
- 9243 (2) Terms defined in Section 71A-1-101 apply to this chapter.
- 9245 Section 181. Section **76-5c-401** is amended to read:
- 9246 **76-5c-401. Definitions.**  
As used in this part:
- 9247 (1) "Consumer" means an individual residing in this state who subscribes to a service provided by a  
service provider for personal or residential use.
- 9249 (2) "Content provider" means a person domiciled in Utah or that generates or hosts content in Utah, and  
that creates, collects, acquires, or organizes electronic data for electronic delivery to a consumer  
with the intent of making a profit.
- 9252 (3) "Division" means the Division of Consumer Protection established in Section 13-2-102.
- 9253 [~~(3)~~] (4)
- (a) "Hosting company" means a person that provides services or facilities for storing or distributing  
content over the Internet without editorial or creative alteration of the content.
- 9256 (b) A hosting company may have policies concerning acceptable use without becoming a content  
provider under Subsection (2).
- 9258 [~~(4)~~] (5) "Internet service provider" means a person engaged in the business of providing broadband  
[~~Internet~~] internet access service, with the intent of making a profit, to consumers in Utah.
- 9261 [~~(5)~~] (6) "Properly rated" means content using a labeling system to label material harmful to minors  
provided by the content provider in a way that:
- 9263 (a) accurately appraises a consumer of the presence of material harmful to minors; and
- 9264 (b) allows the consumer the ability to control access to material harmful to minors based on the  
material's rating by use of reasonably priced commercially available software, including software in  
the public domain.

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- 9267 [(6)] (7) "Restrict" means to limit access to material harmful to minors by:
- 9268 (a) properly rating content; or
- 9269 (b) any other reasonable measures feasible under available technology.
- 9270 [(7)] (8)
- (a) "Service provider" means an [~~Internet~~] internet service provider.
- 9271 (b) "Service provider" does not include a person who does not terminate a service in this state, but merely transmits data through:
- 9273 (i) a wire;
- 9274 (ii) a cable; or
- 9275 (iii) an antenna.
- 9276 (c) "Service provider," notwithstanding Subsection [(7)(b)] (8)(b), includes a person who leases or rents a wire or cable for the transmission of data.
- 9279 Section 182. Section **76-5c-402** is amended to read:
- 9280 **76-5c-402. Data service providers -- Internet content harmful to minors.**
- 9281 (1)
- (a) Upon request by a consumer, a service provider shall filter content to prevent the transmission of material harmful to minors to the consumer.
- 9283 (b) A service provider complies with Subsection (1)(a) if the service provider makes a good faith effort to apply a generally accepted and commercially reasonable method of filtering.
- 9286 (c) At the time of a consumer's subscription to a service provider's service, the service provider shall notify the consumer in a conspicuous manner that the consumer may request to have material harmful to minors blocked under Subsection (1)(a).
- 9289 (2) [~~The Division of Consumer Protection within the Department of Commerce~~] A service provider shall,[:]
- 9291 [(a) every other year request from each service provider information on] no later than July 1 of each even-numbered year, provide information to the division that describes how the service provider complies with Subsection (1)(a)[;] .
- 9294 [(b)] (3) The division shall:
- 9295 (a) publish on the division's website a compilation of the information the division receives under Subsection [(2)(a)] (2); and
- 9297 (b) update the compilation described in Subsection (3)(a) by July 1 of each odd-numbered year.

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- 9299 [~~(e)~~ update the compilation described in Subsection (2)(b) every other year.]
- 9300 [~~(3)~~] (4)
- (a) A service provider may comply with Subsection (1)(a) by providing in-network filtering to prevent the receipt of material harmful to minors, provided that the filtering does not affect or interfere with access to [~~Internet~~] internet content for consumers who do not request filtering under Subsection (1)(a).
- 9304 (b) A service provider may comply with Subsection (1)(a) by engaging a third party to provide or referring a consumer to a third party that provides a commercially reasonable method of filtering to block the receipt of material harmful to minors.
- 9307 (c) A service provider may charge a consumer a commercially reasonable fee for providing filtering under this Subsection [~~(3)~~] (4).
- 9309 [~~(4)~~] (5) If the attorney general determines that a service provider violates Subsection (1), the attorney general shall:
- 9311 (a) notify the service provider that the service provider is in violation of Subsection (1); and
- 9313 (b) notify the service provider that the service provider has 90 days to comply with the provision being violated or be subject to the civil penalties described in Subsection [~~(5)~~] (6).
- 9316 [~~(5)~~] (6)
- (a) A service provider that intentionally or knowingly violates Subsection (1)(a) is subject to a civil fine of \$2,500 for each separate violation of Subsection (1)(a), up to \$15,000 per day.
- 9319 (b) A service provider that intentionally or knowingly violates Subsection (1)(c) is subject to a civil fine up to \$10,000.
- 9321 [~~(6)~~] (7) [~~A proceeding~~] Only the attorney general may bring an action to impose a civil fine under Subsection [~~(5)~~] may only be brought by the attorney general] (6).
- 9324 Section 183. Section **78B-3-112** is amended to read:
- 9325 **78B-3-112. Action for mistaken or fraudulent transaction on a reversible blockchain.**
- 9326 (1) As used in this section:
- 9327 (a) "Blockchain" means a digital ledger of transactions:
- 9328 (i) that is distributed across multiple nodes;
- 9329 (ii) that is mathematically verified; and
- 9330 (iii) where the validity of transactions is maintained by consensus of nodes.
- 9331

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- (b) "Blockchain administrator" means a person that is responsible for maintaining and overseeing a blockchain.
- 9333 (c) "Division" means the Division of Consumer Protection created in Section [~~13-2-1~~] 13-2-102.
- 9335 (d) "Fraudulent transaction" means a transaction that a person undertakes with the intent to deceive another person, including a transaction that involves:
- 9337 (i) false representation;
- 9338 (ii) omissions of material fact; or
- 9339 (iii) the use of a false or stolen identity.
- 9340 (e) "Node" means a computer connected to a blockchain.
- 9341 (f) "Proof of identity" means government-issued identification that contains the following information:
- 9343 (i) a person's name;
- 9344 (ii) an individual's date of birth;
- 9345 (iii) a person's address, which is:
- 9346 (A) for an individual, a residential or business street address;
- 9347 (B) for an individual who does not have a residential or business street address, a Post Office box number or the residential or business street address of next of kin or of another contact individual; or
- 9350 (C) for a person other than an individual, the principal place of business; and
- 9351 (iv) an identification number, which is:
- 9352 (A) for a United States person, a taxpayer identification number; or
- 9353 (B) for a non-United States person, a taxpayer identification number, passport number and country of issuance, alien identification card number, or the number and country of issuance of any other government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.
- 9358 (g) "Reversible blockchain" means a blockchain that:
- 9359 (i) requires the blockchain's users to:
- 9360 (A) provide proof of identity to the blockchain administrator;
- 9361 (B) acknowledge and agree that all transactions occurring on the blockchain are subject to reversal by a sheriff node; and
- 9363 (C) agree to be subject to jurisdiction of a court in Utah; and
- 9364 (ii) requires the blockchain administrator to:
- 9365

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- (A) verify a user's identity by checking the user's proof of identity against government-issued identification databases; and
- 9367 (B) maintain records of a user's proof of identity for a minimum of five years.
- 9368 (h) "Sheriff node" means the same as that term is defined in Section 67-5-39.
- 9369 (i) "Transaction" means the transfer of digital assets, rights, privileges, or obligations from one person to another that occurs on a blockchain.
- 9371 (j)
- (i) "User" means a person that interacts with a blockchain.
- 9372 (ii) "User" includes a person that is:
- 9373 (A) sending or receiving transactions;
- 9374 (B) accessing data stored on the blockchain;
- 9375 (C) participating in consensus or governance mechanisms;
- 9376 (D) running a node on the blockchain;
- 9377 (E) interacting with smart contracts or decentralized applications; or
- 9378 (F) holding or managing digital assets.
- 9379 (2) A plaintiff may bring a cause of action against a person to reverse:
- 9380 (a) a fraudulent transaction if:
- 9381 (i) the transaction occurred on a reversible blockchain;
- 9382 (ii) the plaintiff entered into the transaction with reasonable reliance on the person's:
- 9383 (A) fraudulent representation;
- 9384 (B) omission of material fact; or
- 9385 (C) use of a false or stolen identity; and
- 9386 (iii) the plaintiff was injured as a result of that reasonable reliance; or
- 9387 (b) a mistaken transaction if:
- 9388 (i) the transaction occurs on a reversible blockchain;
- 9389 (ii) the transaction resulted in a transfer of assets:
- 9390 (A) to the wrong recipient; or
- 9391 (B) in the wrong amount; and
- 9392 (iii) the recipient's refusal to return the assets resulted in the unjust enrichment of the recipient.
- 9394 (3) Upon a finding of a mistaken or fraudulent transaction, the court shall issue an order to the Office of the Attorney General to reverse the transaction in accordance with Section 67-5-39.

## SB0038S01 compared with SB0038S02

9398 Section 184. **Repealer.**

This Bill Repeals:

9399 This bill repeals:

9400 Section **13-15-101, Title.**

9401 Section **13-21-1, Short title.**

9402 Section **13-22-1, Short title.**

9403 Section **13-23-1, Short title.**

9404 Section **13-25a-101, Title.**

9405 Section **13-26-1, Short title.**

9406 Section **13-32a-101, Title.**

9407 Section **13-32a-112.1, Annual training.**

9408 Section **13-42-101, Title.**

9409 Section **13-42-140, Transitional provisions -- Application to existing transactions.**

9410 Section **13-49-101, Title.**

9411 Section **13-49-203, Requirement to submit to criminal background check.**

9412 Section **13-49-304, Translations -- Prohibited acts.**

9413 Section **13-51-101, Title.**

9414 Section **13-51-201, Transportation Network Vehicle Recovery Fund -- Creation -- Report**  
9415 **to the Legislature.**

9416 Section **13-51-203, Payment of a claim from the fund.**

9417 Section **13-51-204, State not liable.**

9418 Section **13-52-101, Title.**

9419 Section **13-53-101, Title.**

9420 Section **13-57-101, Title.**

9421 Section **13-68-203, Requirement to submit to criminal background check.**

9422 Section **13-68-304, Translations -- Prohibited acts.**

9423 Section **13-68-305, Documents -- Treatment of original documents.**

9424 Section 185. **Effective date.**

Effective Date.

9424 (1) Except as provided in Subsection (2), this bill takes effect May 6, 2026.

9425 (2) The actions affecting Section 13-2-102 (Effective 07/01/26) take effect on July 1, 2026.

## **SB0038S01 compared with SB0038S02**

2-14-26 10:03 PM