Title 13. Commerce and Trade

Chapter 1
Department of Commerce

13-1-1 Legislative findings and declarations.

The Legislature finds that many businesses and occupations in the state have a pronounced physical and economic impact on the health, safety, and welfare of the citizens of the state. The Legislature further finds that while the overall impact is generally beneficial to the public, the potential for harm and injury frequently warrants intervention by state government.

The Legislature declares that it is appropriate and necessary for state government to protect its citizens from harmful and injurious acts by persons offering or providing essential or necessary goods and services to the general public. The Legislature further declares that business regulation should not be unfairly discriminatory. However, the general public interest shall be recognized and regarded as the primary purpose of all regulation by state government.

Amended by Chapter 378, 2010 General Session

13-1-2 Creation and functions of department -- Divisions created -- Fees -- Commerce Service Account.

(1)
(a) There is created the Department of Commerce.
(b) The department shall:
(i) execute and administer state laws regulating business activities and occupations affecting the public interest; and
(ii) ensure that any training or certification required of a public official or public employee, as those terms are defined in Section 63G-22-102, complies with Title 63G, Chapter 22, State Training and Certification Requirements, if the training or certification is required:
(A) under this title;
(B) by the department; or
(C) by an agency or division within the department.
(2) Within the department the following divisions are created:
(a) the Division of Professional Licensing;
(b) the Division of Real Estate;
(c) the Division of Securities;
(d) the Division of Public Utilities;
(e) the Division of Consumer Protection; and
(f) the Division of Corporations and Commercial Code.
(3)
(a) Unless otherwise provided by statute, the department may adopt a schedule of fees assessed for services provided by the department by following the procedures and requirements of Section 63J-1-504.
(b) The department shall submit each fee established in this manner to the Legislature for the Legislature's approval as part of the department's annual appropriations request.
(c)
(i) There is created a restricted account within the General Fund known as the "Commerce Service Account."

(ii) The restricted account created in Subsection (3)(c)(i) consists of fees collected by each division and by the department.
(iii) The undesignated account balance may not exceed $1,000,000 at the end of each fiscal year.
(iv) At the end of each fiscal year, the director of the Division of Finance shall transfer into the General Fund any undesignated funds in the account that exceed the amount necessary to maintain the undesignated account balance at $1,000,000.
(d) The department may not charge or collect a fee or expend money from the restricted account without approval by the Legislature.
(4)
(a) As used in this Subsection (4):
(i) "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.
(ii) "Fund" means the Single Sign-On Expendable Special Revenue Fund, created in Subsection (4)(c).
(iii) "Renewal fee" means a fee that the Division of Corporations and Commercial Code, established in Section 13-1a-1, is authorized or required to charge a business entity in connection with the business entity's periodic renewal of the business entity's status with the Division of Corporations and Commercial Code.
(iv) "Single sign-on fee" means a fee described in Subsection (4)(b) to pay for the establishment and maintenance of the single sign-on business portal.
(v) "Single sign-on business portal" means the same as that term is defined in Section 63A-16-802.
(b)
(i) The schedule of fees adopted by the department under Subsection (3) shall include a single sign-on fee, not to exceed $5, as part of a renewal fee.
(ii) The department shall deposit all single sign-on fee revenue into the fund.
(c)
(i) There is created the Single Sign-On Expendable Special Revenue Fund.
(ii) The fund consists of:
(A) money that the department collects from the single sign-on fee; and
(B) money that the Legislature appropriates to the fund.
(d) The department shall use the money in the fund to pay for costs:
(i) to design, create, operate, and maintain the single sign-on business portal; and
(ii) incurred by:
(A) the Department of Technology Services, created in Section 63A-16-103; or
(B) a third-party vendor working under a contract with the Department of Technology Services.
(e) The department shall report on fund revenues and expenditures to the Public Utilities, Energy, and Technology Interim Committee of the Legislature annually and at any other time requested by the committee.

Amended by Chapter 415, 2022 General Session

13-1-3 Executive director.

(1) The department shall be under the supervision, direction, and control of the executive director of commerce. The executive director shall be appointed by the governor with the advice and consent of the Senate. The executive director shall hold office at the pleasure of the governor.

The governor shall establish the executive director's salary within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.
(2) The executive director shall employ personnel necessary to carry out the duties and responsibilities of the department.

Amended by Chapter 352, 2020 General Session

13-1-4 Centralization of duties.

The department shall centralize the duties and responsibilities of its divisions and agencies in order to:
(1) reduce and avoid duplication;
(2) provide efficient planning and management services; and
(3) maximize utilization of resources.

Enacted by Chapter 322, 1983 General Session

13-1-5 Executive director's authority over division directors.

The executive director has policymaking and management jurisdiction over directors of the divisions and agencies within the department. He shall appoint the division directors, subject to approval by the governor, unless otherwise provided by law and shall determine their compensation.

Enacted by Chapter 322, 1983 General Session

13-1-6 Rules and regulations.

(1) The executive director shall prescribe rules and procedures for the management and operation of the department, the conduct of its employees, and the custody, use, and preservation of its records, papers, books, documents, and property.
(2) The department and its divisions, in contemplation, formulation, and passage of rules pursuant to Subsection (1), shall acknowledge and consider the facilitation of commerce in all its forms, including reliable electronic commerce, for the benefit of both consumers and businesses.

Amended by Chapter 86, 2000 General Session

13-1-7 Budgets.

The department shall prepare and submit to the governor a proposed budget for each division or agency within the department to be included in the budget submitted by the governor to the Legislature for the fiscal year following the convening of the Legislature in an annual general session.

Amended by Chapter 21, 1985 General Session

13-1-8 Annual report.

The department shall prepare and submit to the governor and the Legislature by October 1 of each year an annual report of the operation, activities and goals of the department, its divisions, and agencies for the preceding fiscal year.

Enacted by Chapter 322, 1983 General Session

13-1-8.5 Procedures -- Adjudicative proceedings.

(1) The Department of Commerce and its divisions shall comply with the procedures and requirements of Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

(2) The department may contract with other state agencies or departments to conduct hearings in its name or in the name of its divisions or agencies.

Amended by Chapter 382, 2008 General Session

13-1-11 Employment of administrative law judges.

The department may employ administrative law judges to conduct hearings for the department, its divisions, and agencies, and to advise the executive director, division directors, and agency boards on hearing and rulemaking procedures.

Enacted by Chapter 322, 1983 General Session

13-1-15 Exemptions from licensure.

Except as otherwise provided by statute or rule, the following individuals may engage in the practice of an occupation or profession regulated by this title, subject to the stated circumstances and limitations, without being licensed under this title:

(1) an individual licensed under the laws of this state, other than under this title, to practice or engage in an occupation or profession, while engaged in the lawful, professional, and competent practice of that occupation or profession;

(2) an individual serving in the armed forces of the United States, the United States Public Health Service, the United States Department of Veterans Affairs, or any other federal agency while engaged in activities regulated under this title as a part of employment with that federal agency if the individual holds a valid license to practice the regulated occupation or profession issued by any other state or jurisdiction recognized by the department; and

(3) the spouse of an individual serving in the armed forces of the United States while the individual is stationed within this state, if:

  (a) the spouse holds a valid license to practice the regulated occupation or profession issued by any other state or jurisdiction recognized by the department; and

  (b) the license is current and the spouse is in good standing in the state or jurisdiction of licensure.

Enacted by Chapter 462, 2018 General Session

13-1-16 Latino Community Support Restricted Account.

(1) There is created in the General Fund a restricted account known as the "Latino Community Support Restricted Account."

(2) The account shall be funded by:

  (a) contributions deposited into the account in accordance with Section 41-1a-422;

  (b) private contributions; and

  (c) donations or grants from public or private entities.

(3)

  (a) The state treasurer shall invest money in the account according to Title 51, Chapter 7, State Money Management Act.

(b) The Division of Finance shall deposit interest or other earnings derived from investment of account money into the General Fund.
(4) Subject to appropriation, the department shall distribute the money in the account to one or more charitable organizations that:
(a) are tax exempt under Section 501(c)(3), Internal Revenue Code; and
(b) have as a primary part of the organization's mission to strengthen the state's Latino community by:
(i) creating strong leaders through education and mentoring;
(ii) providing scholarships and educational financial support; and
(iii) recognizing academic and vocational achievement, and school and community leadership.
(5) The department may also expend funds in the account to pay the costs of issuing or reordering Latino Community support special group license plate decals.
(6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make rules providing procedures for an organization to apply to receive money under this section.

Enacted by Chapter 405, 2020 General Session

Chapter 1a
Division of Corporations and Commercial Code

13-1a-1 Creation of division -- Responsibilities.

There is established within the Department of Commerce the Division of Corporations and Commercial Code which is responsible for corporation and commercial code filings in this state.

Amended by Chapter 225, 1989 General Session

13-1a-2 Director to supervise division -- Appointment.

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

Amended by Chapter 225, 1989 General Session

13-1a-3 Employment and compensation of personnel -- Compensation of director.

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

Amended by Chapter 344, 2021 General Session

13-1a-4 Annual budget.

On or before the 1st day of October each year, the director shall prepare and submit to the executive director an annual budget of the administrative expenses of the division.

Amended by Chapter 135, 1997 General Session

13-1a-5 Authority of director.

The director has authority:

(1) to make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer the responsibilities of the division;

(2) to investigate, upon complaint, the corporation and commercial code filings and compliance governed by the laws administered and enforced by the division; and

(3) under the provisions of Title 63G, Chapter 4, Administrative Procedures Act, to take administrative action against persons in violation of the division rules and the laws administered by it, including the issuance of cease and desist orders.

Amended by Chapter 189, 2014 General Session

13-1a-6 Powers of Division of Corporations and Commercial Code -- Document retention.

(1) The Division of Corporations and Commercial Code shall have the power and authority reasonably necessary to enable it to efficiently administer the laws and rules for which it is responsible and to perform the duties imposed upon it by law.

(2) The division has authority under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to make rules and procedures for the processing, retention, and disposal of filed documents to efficiently utilize electronic and computerized document image storage and retrieval.

(3) Notwithstanding the provisions of Section 63A-12-105, original documents filed in the division offices may not be considered property of the state if electronic image reproductions thereof which comply with the provisions of Title 63G, Chapter 2, Government Records Access and Management Act, are retained by the division.

Amended by Chapter 378, 2010 General Session

13-1a-7 Hearing powers.

(1) The director, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, may hold or cause to be held administrative hearings regarding any matter affecting the division or the incorporation or registration activities of any business governed by the laws administered by the division.

(2) The director or the director's designee, for the purposes outlined in this chapter or any chapter administered by the division, may administer oaths, issue subpoenas, compel the attendance of witnesses, and compel the production of papers, books, accounts, documents, and evidence.

Amended by Chapter 382, 2008 General Session

13-1a-8 Violation of restraining or injunctive order -- Civil penalty.

If any restraining order or injunction issued under this chapter is violated, the division may submit a motion for, or the court on its own motion may impose, a civil penalty of not more than $100 for each day a restraining order, preliminary injunction, or permanent injunction issued under this chapter is violated, if the party has received notice of the restraining order or injunction.

Enacted by Chapter 9, 1990 General Session

13-1a-9 Fees of Division of Corporations and Commercial Code.

In addition to the fees prescribed by Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, the Division of Corporations and Commercial Code shall receive and determine fees pursuant to Section 63J-1-504 for filing articles of incorporation or amendments of insurance corporations, of canal or irrigation corporations organized for furnishing water to lands owned by the members thereof exclusively, or of water users' associations organized in conformity with the requirements of the United States under the Reclamation Act of June 17, 1902, and which are authorized to furnish water only to their stockholders. No license fee may be imposed on insurance corporations, canal or irrigation corporations organized for furnishing water to lands owned by the members thereof exclusively, or water users' associations organized in conformity with the requirements of the United States under the Reclamation Act of June 17, 1902, and which are authorized to furnish water only to the stockholders at the time any such corporation files its articles of incorporation, articles of amendment increasing the number of authorized shares, or articles of merger or consolidation, any provision of Title 16, Chapter 10a, Utah Revised Business Corporation Act, to the contrary notwithstanding.

Amended by Chapter 183, 2009 General Session

Chapter 1b
Office of Professional Licensure Review

Part 1
General Provisions

13-1b-101 Definitions.

As used in this chapter:

(1) "Department" means the Department of Commerce.

(2) "Director" means the director of the office.

(3) "Executive director" means the executive director of the Department of Commerce.

(4) "Government requestor" means:

(a) the governor;

(b) an executive branch officer other than the governor;

(c) an executive branch agency;

(d) a legislator; or

(e) a legislative committee.

(5) "Health, safety, or financial welfare of the public" includes protecting against physical injury, property damage, or financial harm of the public.

(6) "License" or "licensing" means a state-granted authorization for a person to engage in a specified occupation:

(a) based on the person meeting personal qualifications established under state law; and

(b) where state law requires the authorization before the person may lawfully engage in the occupation for compensation.

(7) "Newly regulate" means to create by statute or administrative rule a new license, certification, registration, or exemption classification regarding an occupation.

(8) "Occupation" means a course of conduct, pursuit, or profession that includes the sale of goods or services that are not illegal to sell, irrespective of whether the individual selling the goods or services is subject to an occupational regulation.
(9) "Office" means the Office of Professional Licensure Review created in this chapter.
(10) "Periodic review" means a review described in Subsection 13-1b-203(2).
(11)
(a) "Personal qualifications" means criteria established in state law related to an individual's background.
(b) "Personal qualifications" includes:
(i) completion of an approved education program;
(ii) satisfactory performance on an examination;
(iii) work experience; and
(iv) completion of continuing education.
(12) "Regulated occupation" means an occupation that:
(a) requires a person to obtain a license to practice the occupation; or
(b) provides for state certification or state registration.
(13) "State certification" means a state-granted authorization given to a person to use the term "state certified" as part of a designated title related to engaging in a specified occupation:
(a) based on the person meeting personal qualifications established under state law; and
(b) where state law prohibits a noncertified person from using the term "state certified" as part of a designated title but does not otherwise prohibit a noncertified person from engaging in the occupation for compensation.
(14) "State registration" means a state-granted authorization given to a person to use the term "state registered" as part of a designated title related to engaging in a specified occupation:
(a) based on the person meeting requirements established under state law, which may include the person's name and address, the person's agent for service of process, the location of the activity to be performed, and bond or insurance requirements;
(b) where state law does not require the person to meet any personal qualifications; and
(c) where state law prohibits a nonregistered person from using the term "state registered" as part of a designated title.
(15) "Sunrise review" means a review under this chapter of an application to establish a new regulated occupation.

Enacted by Chapter 413, 2022 General Session

13-1b-102 Applicability.

This chapter applies to any regulation of an occupation that is administered by a state executive branch agency.

Enacted by Chapter 413, 2022 General Session

Part 2
Organization

13-1b-201 Creation of office -- Director appointed -- Personnel.

(1) There is created within the department the Office of Professional Licensure Review to perform the functions and duties described in this chapter.
(2) The office is under the direction and control of a director appointed by the executive director with approval of the governor.
(3) The executive director shall establish the salary of the director in accordance with standards established by the Division of Human Resource Management.

Enacted by Chapter 413, 2022 General Session

13-1b-202 Powers of the director and the office.
(1) The director may employ personnel necessary to carry out the duties and responsibilities of the office at salaries determined by the executive director in accordance with standards established by the Division of Human Resource Management.
(2) The office may:
  (a) make rules, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer the responsibilities of the office described in this chapter, including rules creating criteria for conducting a sunrise review or a periodic review;
  (b) make recommendations to other state executive branch agencies regarding regulated occupations; and
  (c) survey stakeholders regarding appropriate criteria for conducting a sunrise review or a periodic review.
(3) A state executive branch agency may adopt or reject a recommendation described in Subsection (2)(b).

Enacted by Chapter 413, 2022 General Session

13-1b-203 Duties.
The office shall:
(1) for each application submitted in accordance with Section 13-1b-301, conduct a sunrise review in accordance with Section 13-1b-302 before November 1:
  (a) of the year in which the application is submitted, if the application is submitted on or before July 1; or
  (b) of the subsequent year, if the application is submitted after July 1;
(2) beginning in 2023 and in accordance with Section 13-1b-303, conduct a review of each regulated occupation at least once every 10 years;
(3) review and respond to any legislator inquiry regarding a proposed or existing regulated occupation; and
(4) report to the Business and Labor Interim Committee in accordance with Section 13-1b-304.

Enacted by Chapter 413, 2022 General Session

Part 3
Office Review and Reporting

13-1b-301 Application for sunrise review -- Fees.

(1) If a government requestor or a representative of an occupation that is not a regulated occupation proposes that the state make the occupation a regulated occupation, the government requestor or representative shall, before the introduction of any proposed legislation, submit to the office an application for sunrise review in a form the office prescribes.
(2) The application described in Subsection (1) shall describe:
(a) why making the occupation a regulated occupation is necessary to protect against present, recognizable, and significant harm to the health, safety, or financial welfare of the public; and
(b) the least restrictive regulation of the occupation that would protect against present, recognizable, and significant harm to the health, safety, or financial welfare of the public.
(3) If a representative of an occupation submits an application in accordance with this section, the application shall include a nonrefundable fee of $500.
(4) All application fees collected under this section shall be deposited into the General Fund.

Enacted by Chapter 413, 2022 General Session

13-1b-302 Review criteria.

In conducting a sunrise review or a periodic review, unless otherwise directed in accordance with Subsection 13-1b-203(3), the office shall consider the following criteria:
(1) whether the regulation of the occupation is necessary to address a present, recognizable, and significant harm to the health, safety, or financial welfare of the public;
(2) for any harm to the health, safety, or financial welfare of the public, the harm's:
(a) severity;
(b) probability; and
(c) permanence;
(3) the extent to which the proposed or existing regulation of the occupation protects against or diminishes the harm described in Subsection (1);
(4) whether the proposed or existing regulation of the occupation:
(a) affects the supply of qualified practitioners;
(b) creates barriers to:
(i) service that are not in the public financial welfare or interest; or
(ii) entry into the occupation or related occupations;
(c) imposes new costs on existing practitioners;
(d) affects:
(i) license reciprocity with other jurisdictions; or
(ii) mobility of practitioners; or
(e) if the occupation involves a health care provider, impacts the health care provider's ability to obtain payment of benefits for the health care provider's treatment of an illness, injury, or health care condition under an insurance contract subject to Section 31A-22-618;
(5) if the review involves licensing, the potential alternative pathways for a person to obtain a license;
(6) the costs to the state of regulating the occupation;
(7) whether the proposed or existing administering agency has sufficient expertise and resources;
(8) the regulation of the occupation in other jurisdictions;
(9) the scope of the proposed or existing regulation, including:
(a) whether the occupation is clearly distinguishable from an already regulated occupation; and
(b) potential for regulating only certain occupational activities;
(10) the potentially less burdensome alternatives to the proposed or existing regulation and the effect of implementing an alternative method of regulation on:

(a) the health, safety, or financial welfare of the public;
(b) the occupation; and
(c) practitioners of the occupation; and
(11) any other criteria the office adopts, including criteria suggested in a stakeholder survey.

Enacted by Chapter 413, 2022 General Session

13-1b-303 Legislative prioritization of reviews.
(1) Before October 1 of each year, the office shall prepare and submit to the Business and Labor Interim Committee a list of each periodic review that the office proposes to conduct during the upcoming year, including the scope of each periodic review.
(2) Before December 1 of the calendar year in which the office submits a list under Subsection (1), the Business and Labor Interim Committee shall:
(a) approve the list, with or without modification; and
(b) submit a copy of the approved list to the Legislative Management Committee for approval, with or without modification.

Enacted by Chapter 413, 2022 General Session

13-1b-304 Reporting.
(1) Beginning in 2024, before October 1, the office shall annually prepare and submit a written report to the Business and Labor Interim Committee that describes the office's work during the prior year.
(2) In a written report described in Subsection (1), the office shall include:
(a) a summary of each periodic review, each sunrise review, and each response to a legislator inquiry; and
(b) each recommendation the office made to another state executive branch agency regarding a regulated occupation.

Enacted by Chapter 413, 2022 General Session

Chapter 2
Division of Consumer Protection

Superseded 12/31/2023
13-2-1 Consumer protection division established -- Functions.
(1) There is established within the Department of Commerce the Division of Consumer Protection.
(2) The division shall administer and enforce the following:
(a)Chapter 5, Unfair Practices Act;
(b)Chapter 10a, Music Licensing Practices Act;
(c)Chapter 11, Utah Consumer Sales Practices Act;
(d)Chapter 15, Business Opportunity Disclosure Act;
(e)Chapter 20, New Motor Vehicle Warranties Act;
(f)Chapter 21, Credit Services Organizations Act;
(g)Chapter 22, Charitable Solicitations Act;

(h)Chapter 23, Health Spa Services Protection Act;
(i)Chapter 25a, Telephone and Facsimile Solicitation Act;
(j)Chapter 26, Telephone Fraud Prevention Act;
(k)Chapter 28, Prize Notices Regulation Act;
(l)Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter Transaction Information Act;
(m)Chapter 34, Utah Postsecondary Proprietary School Act;
(n)Chapter 34a, Utah Postsecondary School State Authorization Act;
(o)Chapter 41, Price Controls During Emergencies Act;
(p)Chapter 42, Uniform Debt-Management Services Act;
(q)Chapter 49, Immigration Consultants Registration Act;
(r)Chapter 51, Transportation Network Company Registration Act;
(s)Chapter 52, Residential Solar Energy Disclosure Act;
(t)Chapter 53, Residential, Vocational and Life Skills Program Act;
(u)Chapter 54, Ticket Website Sales Act;
(v)Chapter 56, Ticket Transferability Act; and
(w)Chapter 57, Maintenance Funding Practices Act.

Amended by Chapter 201, 2022 General Session

Effective 12/31/2023

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

(1) There is established within the Department of Commerce the Division of Consumer Protection.
(2) The division shall administer and enforce the following:
(a)Chapter 5, Unfair Practices Act;
(b)Chapter 10a, Music Licensing Practices Act;
(c)Chapter 11, Utah Consumer Sales Practices Act;
(d)Chapter 15, Business Opportunity Disclosure Act;
(e)Chapter 20, New Motor Vehicle Warranties Act;
(f)Chapter 21, Credit Services Organizations Act;
(g)Chapter 22, Charitable Solicitations Act;
(h)Chapter 23, Health Spa Services Protection Act;
(i)Chapter 25a, Telephone and Facsimile Solicitation Act;
(j)Chapter 26, Telephone Fraud Prevention Act;
(k)Chapter 28, Prize Notices Regulation Act;
(l)Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter Transaction Information Act;
(m)Chapter 34, Utah Postsecondary Proprietary School Act;
(n)Chapter 34a, Utah Postsecondary School State Authorization Act;
(o)Chapter 41, Price Controls During Emergencies Act;
(p)Chapter 42, Uniform Debt-Management Services Act;
(q)Chapter 49, Immigration Consultants Registration Act;
(r)Chapter 51, Transportation Network Company Registration Act;
(s)Chapter 52, Residential Solar Energy Disclosure Act;
(t)Chapter 53, Residential, Vocational and Life Skills Program Act;
(u)Chapter 54, Ticket Website Sales Act;
(v)Chapter 56, Ticket Transferability Act;
(w)Chapter 57, Maintenance Funding Practices Act; and

(x)Chapter 61, Utah Consumer Privacy Act.

Amended by Chapter 201, 2022 General Session
Amended by Chapter 462, 2022 General Session

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

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

Amended by Chapter 93, 1990 General Session

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

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

Amended by Chapter 344, 2021 General Session

13-2-4 Annual report -- Budget.

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

Enacted by Chapter 57, 1983 General Session

13-2-5 Powers of director.

The director has authority to:

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

(6) coordinate with, assist, and utilize the assistance of federal, state, and local agencies in the performance of the director's duties and the protection of the public.

Amended by Chapter 382, 2008 General Session

13-2-6 Enforcement powers.

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

(2) Any person who intentionally violates a final cease and desist order entered by the division of which the person has notice is guilty of a third degree felony.

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

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

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

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

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

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

(b) In computing any time period prescribed by this section, the following days may not be included:

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

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

(c)

(i) Except as provided in Subsection (3)(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:

(A) the citation may not become final; and

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

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

(A) the citation shall become final; and

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

(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:

(A) the citation may not become final; and

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

(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:

(A) the citation shall become final; and

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

(d)

(i) A citation issued under this chapter may be personally served upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure.
(ii) A citation also may be served by first-class mail, postage prepaid.
(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.
(ii) The period to contest the citation may be extended by the director for good cause shown.
(f) If the chapter violated allows for an administrative fine, after a citation becomes final, the director may impose the administrative fine.
(4)
(a) A person who has violated, is violating, or has attempted to violate a chapter identified in Section 13-2-1 is subject to the division's jurisdiction if:
(i) the violation or attempted violation is committed wholly or partly within the state;
(ii) conduct committed outside the state constitutes an attempt to commit a violation within the state; or
(iii) transactional resources located within the state are used by the offender to directly or indirectly facilitate a violation or attempted violation.
(b) As used in this section, "transactional resources" means:
(i) any mail drop or mail box, regardless of whether the mail drop or mail box is located on the premises of a United States Post Office;
(ii) any telephone or facsimile transmission device;
(iii) any Internet connection by a resident or inhabitant of this state with a resident- or nonresident-maintained Internet site;
(iv) any business office or private residence used for a business-related purpose;
(v) any account with or services of a financial institution;
(vi) the services of a common or private carrier; or
(vii) the use of any city, county, or state asset or facility, including any road or highway.
(5) The director or the director's designee, for the purposes outlined in any chapter administered by the division, may administer oaths, issue subpoenas, compel the attendance of witnesses, or compel the production of papers, books, accounts, documents, or evidence.
(6)
(a) An administrative action filed under this chapter or a chapter listed in Section 13-2-1 shall be commenced no later than 10 years after the day on which the alleged violation occurs.
(b) A civil action filed under this chapter or a chapter listed in Section 13-2-1 shall be commenced no later than five years after the day on which the alleged violation occurs.
(c) The provisions of this Subsection (6) control over the provisions of Title 78B, Chapter 2, Statutes of Limitations.

Amended by Chapter 226, 2021 General Session

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

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

Amended by Chapter 177, 1994 General Session

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

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

(2)

(a) Unless otherwise provided by a chapter listed in Section 13-2-1, all money not distributed as consumer restitution that is received by the division from administrative fines and settlements, from criminal restitution, or from civil damages, forfeitures, penalties, and settlements when the division receives the money on its own behalf and not in a representative capacity, shall be deposited into the fund.

(b) Any portion of the fund may be maintained in an interest-bearing account.

(c) All interest earned on fund money shall be deposited into the fund.

(3) Notwithstanding Title 63J, Chapter 1, Budgetary Procedures Act, the division may use the fund with the approval of the executive director of the Department of Commerce in a manner consistent with the duties of the division under this chapter for:

(a) consumer protection education for members of the public;

(b) equipment for and training of division personnel;

(c) publication of consumer protection brochures, laws, policy statements, or other material relevant to the division's enforcement efforts; and

(d) investigation and litigation undertaken by the division.

(4) If the balance in the fund exceeds $500,000 at the close of any fiscal year, the excess shall be transferred to the General Fund.

Amended by Chapter 124, 2013 General Session
Amended by Chapter 400, 2013 General Session

13-2-9 Internet -- Consumer education.

(1) The Division of Consumer Protection shall, subject to appropriation, contract with a person to make public service announcements advising consumers about the dangers of using the Internet, especially:

(a) material harmful to minors;

(b) steps a consumer may take to learn more about the dangers of using the Internet;

(c) information about how a service provider can help a consumer learn more about the dangers of using the Internet, including the service provider's duties created by this bill; and

(d) how a consumer can monitor the Internet usage of family members.

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

(a) the person is a nonprofit organization; and

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

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

Amended by Chapter 347, 2012 General Session

Chapter 5
Unfair Practices Act

13-5-1 Short title.

This act shall be known and may be cited as the "Unfair Practices Act."

No Change Since 1953

13-5-2 "Person" defined.

When used in this act, unless the context otherwise requires, the term "person" means an individual, a corporation, a partnership, an association, a joint stock company, a business trust or any unincorporated organization.

No Change Since 1953

13-5-2.5 Procedure to prevent unfair competition.

Unless otherwise provided in this chapter:

(1) Unfair methods of competition in commerce or trade are unlawful and shall be enjoined as provided by this section.

(2) The division may prevent persons, except banks, common carriers, and other public utilities subject to regulation, from using unfair methods of competition in commerce or trade.

(3) If the division has reason to believe that any person has been or is using unfair methods of competition in commerce or trade, and it appears to the division that it would be in the interest of the public to stop the unfair methods of competition, the division may begin adjudicative proceedings and may issue an order directing the person to cease and desist from using those methods of competition.

(4) The division may file suit to enjoin and restrain a person from conducting the unfair competition if:

(a) after the adjudicative proceedings, the executive director believes that the method of competition in question is prohibited by this section; or

(b) no hearing is requested; and

(i) the person accused of unfair competition does not cease the unfair competition; or

(ii) the person accused of unfair competition begins the unfair competition again after discontinuing it.

(5) The attorney general, or the county attorneys in their respective counties, shall conduct unfair competition proceedings upon request by the division.

(6) No order of the division or judgment of the court to enforce the order may waive the liability of any person under the antitrust laws or other laws of this state.

(7)

(a) Complaints, orders, notices, and the processes of the division may be served by anyone authorized by the division by:

(i) delivering a copy to the person to be served, to a member of the partnership to be served, or to the president, secretary, other executive officer, or a director of the corporation to be served;

(ii) leaving a copy at the principal office or place of business of the person; or

(iii) sending by registered mail a copy addressed to the person at his principal place of business or office.

(b) The verified return by the person serving the complaint, order, notice, or other process setting forth the manner of service or the return post-office receipt for the complaint, order, notice, or other process sent by registered mail is proof of service.

Amended by Chapter 161, 1987 General Session

13-5-3 Unlawful discriminations -- Burden of proof -- Taking or offering commissions -- Payments for benefit of customers -- Discrimination among purchasers -- Inducing discriminations.

(1)

(a) It is unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchasers involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the state and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them.

(b) Nothing in this chapter prevents:

(i) differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the different methods or quantities in which such commodities are to such purchasers sold or delivered;

(ii) persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade; and

(iii) price changes from time to time in response to changing conditions affecting the market for or the marketability of the goods concerned, including actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned.

(2) Upon proof being made, at any suit on a complaint under this section, that there has been discrimination in price or services or facilities furnished or in payment for services or facilities to be rendered, the burden of rebutting the prima-facie case thus made by showing justification shall be upon the person charged with a violation of this section. However nothing in this chapter shall prevent a seller rebutting the prima-facie case thus made by showing that his lower price or the furnishing of services or facilities to any purchaser or purchasers was made in good faith to meet an equally low price of a competitor, or the services or facilities furnished by a competitor.

(3) It is unlawful for any person engaged in commerce in the course of such commerce, to pay or grant, or to receive or accept, anything of value as a commission, brokerage, or other compensation, or any allowance or discount in lieu thereof, except for and not exceeding the actual cost of such services rendered in connection with the sale or purchase of goods, wares, or merchandise.

(4) It is unlawful for any person engaged in commerce to pay or contract for the payment of anything of value to or for the benefit of a customer of such person in the course of such commerce as compensation or in consideration for any services or facilities furnished by or through such customer in connection with the processing, handling, sale, or offering for sale of any products, or commodities manufactured, sold, or offered for sale by such person, unless such payment or consideration is available on proportionally equal terms to all other customers competing in the distribution of such products or commodities.

(5) It is unlawful for any person to discriminate in favor of one purchaser against another purchaser or purchasers of a commodity bought for resale with or without processing, by contracting to furnish or furnishing, or by contributing to the furnishing of, any services or facilities connected with the processing, handling, sale, or offering for sale of such commodity so purchased upon terms not accorded to all purchasers on proportionally equal terms.
(6) It is unlawful for any person engaged in commerce, in the course of such commerce, knowingly to induce or receive a discrimination in price which is prohibited by this section.

Amended by Chapter 378, 2010 General Session

13-5-4 Return of net earnings or surplus by cooperatives to members.

Nothing in this act shall prevent a cooperative association from returning to its members, producers or consumers the whole, or any part of, the net earnings or surplus resulting from its trading operations, in proportion to their purchases or sales from, to or through the association.

No Change Since 1953

13-5-5 "Commerce" defined.

Definition of "commerce" as used in this bill shall be construed to mean intrastate commerce in the state of Utah.

No Change Since 1953

13-5-6 Liability of agents.

Any person who, either as director, officer or agent of any firm or corporation or as agent of any person, violating the provisions of this act, assists or aids directly or indirectly, in such violation shall be responsible therefor equally with the person, firm or corporation for whom or for which he acts.

No Change Since 1953

13-5-8 Advertising goods not prepared to supply.

It shall be unlawful for any person engaged in business within the state to advertise goods, wares, or merchandise that person is not prepared to supply.

Amended by Chapter 4, 1993 General Session

13-5-9 Limitation on quantity of article or product sold or offered for sale to any one customer.

A person may not circumvent the provisions of this chapter relating to the quantity of articles or products any one customer may purchase by requiring presentation of coupons, certificates, special purchase authorizations, or any other procedures designed in any way to limit quantity of purchases as provided herein.

Amended by Chapter 351, 2008 General Session

13-5-10 Cost -- Purchase price at forced sales.

In establishing the cost of a given article, product or commodity to the distributor and vendor, the invoice cost of said article, product or commodity purchased at a forced, bankrupt, closeout sale or other sale outside of the ordinary channels of trade may not be used as a basis for justifying a price lower than one based upon the replacement cost as of the date of said sale of said article, product or commodity replaced through the ordinary channels of trade, unless said articles, product or commodity is kept separate from goods purchased in the ordinary channels of trade and unless said article, product or commodity is advertised and sold as merchandise purchased at a forced, bankrupt, closeout sale, or by means other than through the ordinary channels of trade, and said advertising shall state the conditions under which said goods were so purchased, and the quantity of such merchandise to be sold or offered for sale.

No Change Since 1953

13-5-11 Proceedings -- Local cost surveys as evidence.

In any injunction proceedings or in the prosecution of any person as officer, director or agent, it shall be sufficient to allege and prove the unlawful intent of the person, firm or corporation for whom or for which he acts. Where a particular trade or industry of which the person, firm or corporation complained against is a member, has an established cost survey for the locality and vicinity in which the offense is committed, the said cost survey shall be deemed prima-facie evidence in proving the costs of the person, firm or corporation complained against within the provisions of this act, unless the person, firm or corporation shall have kept a continuous, accurate and comprehensive record of the cost of business of the person, firm or corporation, in which event said record may be introduced to rebut the cost survey.

No Change Since 1953

13-5-12 Sales exempt from chapter.

(1) The provisions of this chapter do not apply to any sale made:
  (a) in closing out in good faith the owner's stock or any part thereof for the purpose of discontinuing his trade in any such stock or commodity, and in the case of the sale of seasonal goods, or to the bona fide sale of perishable goods to prevent loss to the vendor by spoilage or depreciation; provided, prior notice is given to the public thereof;
  (b) when the goods are damaged or deteriorated in quality, and prior notice is given to the public thereof;
  (c) by an officer acting under the orders of any court;
  (d) in an endeavor made in good faith to meet the legal prices of a competitor as herein defined selling the same article, product or commodity in the same locality or trade area;
  (e) by manufacturers, producers, brokers or wholesale distributors meeting in good faith prices established by interstate competition regardless of cost; provided, such prices are available to all persons buying on like terms and conditions in the same locality and vicinity.
(2) Any person, who performs work upon, renovates, alters or improves any personal property belonging to another person, except necessary repairs due to damage in transit, shall be construed to be a vendor within the meaning of this chapter.

Amended by Chapter 378, 2010 General Session

13-5-13 Contracts in violation declared illegal.

Any contract expressed or implied, made by any person, in violation of any of the provisions of this act is declared to be an illegal contract and no recovery thereon shall be had.

No Change Since 1953

13-5-14 Injunctive relief -- Damages -- Immunity.

Any person or the state of Utah may maintain an action to enjoin a continuance of any act in violation of this chapter, and, if injured by the act, for the recovery of damages. If, in such action, the court finds that the defendant is violating or has violated any of the provisions of this chapter, it shall enjoin the defendant from a continuance of the violation. It is not necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff is entitled to recover from the defendant three times the amount of the actual damages sustained or $2,000, whichever is greater, plus court costs.

Any defendant in an action brought under this section may be required to testify. The books and records of such defendant may be brought into court and introduced, by reference, into evidence. No information so obtained may be used against the defendant as a basis for a misdemeanor prosecution under this chapter.

Amended by Chapter 58, 1983 General Session

13-5-15 Penalty for violation of chapter.

Any person, whether as principal, agent, officer or director, for himself or for another person, who knowingly violates this chapter, is guilty of a misdemeanor for each violation. Upon conviction he shall be punished by a fine not to exceed $5,000, or by imprisonment not to exceed 12 months or by both.

Amended by Chapter 58, 1983 General Session

13-5-16 Severability clause.

If any section, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision does not affect the validity of the remaining portions of the act. The Legislature hereby declares that it would have passed this act, and each section, sentence, clause or phrase thereof, irrespective of the fact that any one or more other sections, sentences, clauses or phrases be declared unconstitutional.

Amended by Chapter 378, 2010 General Session

13-5-17 Policy of act.

The Legislature declared that the purpose of this act is to safeguard the public against the creation or perpetuation of monopolies and to foster and encourage competition, by prohibiting unfair and discriminatory practices by which fair and honest competition is destroyed or prevented. This act shall be liberally construed that its beneficial purposes may be subserved.

No Change Since 1953

13-5-18 Cost -- Separate entities of business.

For the purposes of this act, manufacturing, jobbing, wholesaling and retailing activities of a person shall be considered separate and distinct entities of business in establishing and determining cost of any article, product or commodity.

No Change Since 1953

Chapter 5a
Unfair Competition Act

13-5a-101 Title.

This chapter is known as the "Unfair Competition Act."

Enacted by Chapter 372, 2004 General Session

13-5a-102 Definitions.

As used in this chapter:

(1) "Control" means:
- (a) ownership of more than 5% of the voting shares or ownership interests of an entity;
- (b) the power to vote more than 5% of the voting shares of an entity; or
- (c) the ability to influence the management of an entity.

(2) "Depository institution" is as defined in Section 7-1-103.

(3) "Malicious cyber activity" means:
- (a) the unlawful use of computing resources to intimidate or coerce others;
- (b) accessing a computer without authorization or exceeding authorized access;
- (c) willfully communicating, delivering, or causing the transmission of a program, information, code, or command without authorization or exceeding authorized access; and
- (d) intentionally or recklessly:
  - (i) intends to defraud or materially cause damage or disruption to any computing resources or to the owner of any computing resources; or
  - (ii) intends to materially cause damage or disruption to any computing resources indirectly through another party's computing resources.

(4)
- (a) Except as provided in Subsection (4)(b), "unfair competition" means an intentional business act or practice that:
  - (i)
    - (A) is unlawful, unfair, or fraudulent; and
    - (B) leads to a material diminution in value of intellectual property; and
  - (ii) is one of the following:
    - (A) malicious cyber activity;
    - (B) infringement of a patent, trademark, or trade name;
    - (C) a software license violation; or
    - (D) predatory hiring practices.
- (b) Notwithstanding Subsection (4)(a), "unfair competition" does not include the departure and hiring of an employee by a competitor.

Amended by Chapter 340, 2011 General Session

13-5a-103 Private action for unfair competition.

(1)
(a) Except as provided in Subsection (2), a person injured by unfair competition may bring a private cause of action against a person who engages in unfair competition.
(b) In an action under this Subsection (1), a person injured by unfair competition may recover:
(i) actual damages;
(ii) costs and attorney fees; and
(iii) if the court determines that the circumstances are appropriate, punitive damages.

(2) A person may not bring an action described in Subsection (1) against:
(a) a depository institution; or
(b) an entity that:
(i) controls a depository institution;
(ii) is controlled by an entity that controls a depository institution; or
(iii) is controlled by a depository institution.

Enacted by Chapter 372, 2004 General Session

Chapter 5b
Integrated Health System Fair Practices Act

13-5b-101 Title.

This chapter is known as the "Integrated Health System Fair Practices Act."

Enacted by Chapter 172, 2007 General Session

13-5b-102 Definitions.

For purposes of this chapter:

(1) "Affiliate" means an organization that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with another organization.

(2) "Integrated health system" means an organization that directly, or through an affiliate or subsidiary:
(a) owns and operates one or more hospitals in the state; and
(b) offers health insurance to residents of the state.

(3) "Subsidiary" means an affiliate controlled:
(a) by a specified person;
(b) directly or indirectly; and
(c) through one or more intermediaries.

Enacted by Chapter 172, 2007 General Session

13-5b-103 Contract negotiation standards.

(1) An integrated health system shall prohibit any employee or independent contractor of any division, subsidiary, or affiliate engaged in the business of health insurance from negotiating contracts on behalf of the integrated health care system's health care facilities, subject to

licensing under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, with any other licensed health insurer in the state.

(2) An integrated health system shall prohibit the disclosure of contract pricing terms between the integrated health care system's health care facilities and other health insurers with the integrated health care system's divisions, subsidiaries, or affiliates which are engaged in the business of health insurance.

Enacted by Chapter 172, 2007 General Session

Chapter 7
Civil Rights

13-7-1 Policy and purposes of act.

It is hereby declared that the practice of discrimination on the basis of race, color, sex, pregnancy, religion, ancestry, or national origin in business establishments or places of public accommodation or in enterprises regulated by the state endangers the health, safety, and general welfare of this state and its inhabitants; and that such discrimination in business establishments or places of public accommodation or in enterprises regulated by the state, violates the public policy of this state. It is the purpose of this act to assure all citizens full and equal availability of all goods, services and facilities offered by business establishments and places of public accommodation and enterprises regulated by the state without discrimination because of race, color, sex, pregnancy, religion, ancestry, or national origin. The rules of common law that statutes in derogation thereof shall be strictly construed has no application to this act. This act shall be liberally construed with a view to promote the policy and purposes of the act and to promote justice. The remedies provided herein are not exclusive but are in addition to any other remedies available at law or equity.

Amended by Chapter 130, 2018 General Session

13-7-2 Definitions.

As used in this chapter:

(1) "Enterprise regulated by the state" means:

(a) an institution subject to regulation under Title 70C, Utah Consumer Credit Code;

(b) a place of business that sells an alcoholic product at retail as provided in Title 32B, Alcoholic Beverage Control Act;

(c) an insurer regulated by Title 31A, Insurance Code; and

(d) a public utility subject to regulation under Title 54, Public Utilities.

(2) "Person" includes an individual, partnership, association, organization, corporation, labor union, legal representative, trustee, trustee in bankruptcy, receiver, and other organized groups of persons.

(3)

(a) "Place of public accommodation" includes:

(i) every place, establishment, or facility of whatever kind, nature, or class that caters or offers services, facilities, or goods to the general public for a fee or charge, except, an establishment that is:

(A) located within a building that contains not more than five rooms for rent or hire; and

(B) actually occupied by the proprietor of the establishment as the proprietor's residence; and

(ii) a place, establishment, or facility that caters or offers services, facilities, or goods to the general public gratuitously if the place, establishment, or facility receives any substantial governmental subsidy or support.

(b) "Place of public accommodation" does not include an institution, church, apartment house, club, or place of accommodation that is in nature distinctly private except to the extent that the institution, church, apartment house, club, or place of accommodation is open to the public.

(4) "Pregnancy" includes pregnancy or a pregnancy-related condition.

(5) "Pregnancy-related condition" includes breastfeeding, lactation, or a medical condition related to breastfeeding.

Amended by Chapter 130, 2018 General Session

13-7-3 Equal right in business establishments, places of public accommodation, and enterprises regulated by the state.

All persons within the jurisdiction of this state are free and equal and are entitled to full and equal accommodations, advantages, facilities, privileges, goods and services in all business establishments and in all places of public accommodation, and by all enterprises regulated by the state of every kind whatsoever, without discrimination on the basis of race, color, sex, pregnancy, religion, ancestry or national origin. Nothing in this act shall be construed to deny any person the right to regulate the operation of a business establishment or place of public accommodation or an enterprise regulated by the state in a manner which applies uniformly to all persons without regard to race, color, sex, pregnancy, religion, ancestry, or national origin; or to deny any religious organization the right to regulate the operation and procedures of its establishments.

Amended by Chapter 130, 2018 General Session

13-7-4 Business establishment, place of public accommodation, or enterprise regulated by the state denying rights deemed public nuisance -- Investigation and conciliation -- Action to enjoin -- Civil action for damages -- Expenses of defending action.

Any business establishment or place of public accommodation or enterprise regulated by the state in which a violation of the rights provided in Section 13-7-3 of this chapter occurs is a public nuisance. The operator of any such business establishment or place of public accommodation or enterprise regulated by the state is guilty of maintaining a public nuisance and may be enjoined as hereinafter provided.

(1) Upon application to the attorney general by any person denied the rights guaranteed by Section 13-7-3, the attorney general shall investigate and seek to conciliate the matter.

(2) An action to enjoin any nuisance defined in this section may be brought in the name of the state of Utah by the attorney general. Upon the trial of the cause, on finding that the material allegations of the complaint are true, the court shall order such nuisance to be abated, and enjoin all persons from maintaining or permitting such nuisance. When any injunction as herein provided has been granted it shall be binding upon the defendant and shall act as an injunction in personam against the defendant throughout the state.

(3) Any person who is denied the rights provided for in Section 13-7-3 shall have a civil action for damages and any other remedy available in law or equity against any person who denies him the rights provided for in Section 13-7-3 or who aids, incites or conspires to bring about such denial.

(4) Any business establishment or place of public accommodation or enterprises regulated by the state charged with maintaining a public nuisance in violation of this chapter, which is determined or found not to be in violation of this chapter, may be awarded all actual and necessary expenses incurred in defending such action, as determined and approved by the court having jurisdiction of the matter.

Amended by Chapter 10, 1997 General Session

Chapter 7a
Breastfeeding Protection Act

13-7a-101 Title.

This chapter is known as "Breastfeeding Protection Act."

Enacted by Chapter 130, 2018 General Session

13-7a-102 Definitions.

As used in this chapter:

(1) "Breastfeeding" means the act of a woman breastfeeding a child.

(2) "Breastfeeding" includes lactation.

Enacted by Chapter 130, 2018 General Session

13-7a-103 Breastfeeding location and conduct.

A woman may breastfeed in any place of public accommodation, as defined in Section 13-7-2.

Enacted by Chapter 130, 2018 General Session

Chapter 8
Unenforceable Agreements

13-8-1 Construction industry -- Agreements to indemnify.

(1) For purposes of this section:

(a) "Construction contract" means a contract or agreement relative to the design, construction, alteration, repair, or maintenance of a building, structure, highway, appurtenance, appliance, or other improvement to real property, including moving, demolition, or excavating, connected to the construction contract between:

(i) a construction manager;

(ii) a general contractor;

(iii) a subcontractor;

(iv) a sub-subcontractor;

(v) a supplier; or

(vi) any combination of persons listed in Subsections (1)(a)(i) through (v).

(b) "Indemnification provision" means a covenant, promise, agreement or understanding in, in connection with, or collateral to a construction contract requiring the promisor to insure, hold harmless, indemnify, or defend the promisee or others against liability if:
(i) the damages arise out of:
(A) bodily injury to a person;
(B) damage to property; or
(C) economic loss; and
(ii) the damages are caused by or resulting from the fault of the promisee, indemnitee, others, or their agents or employees.
(2) Except as provided in Subsection (3), an indemnification provision in a construction contract is against public policy and is void and unenforceable.
(3) When an indemnification provision is included in a contract related to a construction project between an owner and party listed in Subsection (1)(a), in any action for damages described in Subsection (1)(b)(i), the fault of the owner shall be apportioned among the parties listed in Subsection (1)(a) pro rata based on the proportional share of fault of each of the parties listed in Subsection (1)(a), if:
(a) the damages are caused in part by the owner; and
(b) the cause of the damages defined in Subsection (1)(b)(i) did not arise at the time and during the phase of the project when the owner was operating as a party defined in Subsection (1)(a).
(4) This section may not be construed to affect or impair the obligations of contracts or agreements, that are in existence at the time this section or any amendment to this section becomes effective.

Amended by Chapter 113, 1997 General Session

13-8-2 Contractual limitations of liability arising from services of design professionals prohibited.

(1) As used in this section:
(a) "Agreement" means a contract, promise, covenant, or understanding.
(b) "Contractor" means any person engaged by an owner to develop or assist in the development of the owner's land.
(c) "Design professional" means an architect, engineer, or land surveyor. It includes any other person who, for a fee or other compensation, performs services similar to the services of an architect, engineer, or land surveyor in connection with the development of land.
(d) "Development" means the construction, alteration, repair, maintenance, or improvement of land, including any related moving, demolition, or excavation.
(e) "Land" means any real property, including any building, fixture, improvement, appurtenance, structure, road, highway, or other development.
(f) "Liability" includes liability arising by contract, indemnity, contribution, tort, or otherwise.
(g) "Owner" means the holder of any legal or equitable title or interest in property.
(h) "Subcontractor" means any person engaged by a contractor to develop or assist in the development of land.
(2) An agreement between an owner and a contractor may not limit the owner's or a design professional's liability to the contractor for any claim arising from services performed by the design professional in connection with the development of land. This subsection does not apply if the owner and the contractor are the same person or entity or are controlled by the same person or entity.

(3) An agreement between a contractor and a subcontractor may not limit the owner's or a design professional's liability to the subcontractor for any claim arising from services performed by the design professional in connection with the development of land.
(4) This section does not apply if the design professional is retained under a single contract to perform both the design and the construction of the project, such as in a design-build or turn-key project.
(5) This section may not be construed to affect any limitation of a design professional's liability to an owner or other design professional that may exist in an agreement between the owner and the design professional or between design professionals.
(6) This section does not affect or impair the obligations of agreements in existence as of May 1, 1988.

Enacted by Chapter 129, 1988 General Session

13-8-3 Construction contracts and purchase orders -- Venue.
(1) As used in this section, "construction agreement" means a construction contract, subcontract, or purchase order for the design, construction, installation, or repair of an improvement to real property between a:
  (a) construction manager;
  (b) general contractor;
  (c) subcontractor;
  (d) sub-subcontractor;
  (e) supplier; or
  (f) any combination of the persons described under Subsections (1)(a) through (e).
(2) A provision in a construction agreement requiring a dispute arising under the agreement to be resolved in a forum outside of this state is void and unenforceable as against the public policy of this state if:
  (a) one of the parties to the agreement is domiciled in this state; and
  (b) work to be done and the equipment and materials to be supplied under the agreement involves a construction project in this state.
(3) This section applies to a construction agreement executed, renewed, or materially modified on or after May 5, 1997.

Enacted by Chapter 60, 1997 General Session

13-8-4 Obligation to pay under construction contracts -- Rights of parties under contingent payment provisions.
(1) For purposes of this section:
  (a) "Construction contract" means a contract or agreement to provide services, labor, or materials for the design, construction, installation, or repair of an improvement to real property located in Utah.
  (b) "Contingent payment contract" means a construction contract between a contractor and a subcontractor that makes a payment from the contractor to the subcontractor contingent on the contractor receiving a corresponding payment from any other public or private party, including a private owner.
  (c) "Contractor" means a person who is or may be awarded a contract for the construction, alteration, or repair of any building, structure, or improvement to real property.

(d) "Subcontractor" means any person engaged by a contractor to provide services, labor, or materials for the design, construction, installation, or repair of an improvement to real property and includes a trade contractor or specialty contractor.

(2) A party to a construction contract shall make all scheduled payments under the terms of the construction contract.

(3)

(a) The existence of a contingent payment contract is not a defense to a claim to enforce a preconstruction or construction lien under Title 38, Chapter 1a, Preconstruction and Construction Liens.

(b) Subsection (3) does not apply to contracts for private construction work for the building, improvement, repair, or remodeling of residential property consisting of four units or less.

(4) If a construction contract is a contingent payment contract:

(a) the subcontractor may request from the contractor the financial information that the contractor has received from the public or private party regarding:

(i) the project financing; and

(ii) the public or private party; and

(b) if information is requested by the subcontractor under Subsection (4)(a), the contractor shall provide the information prior to the subcontractor signing the construction contract between the contractor and the subcontractor.

(5) This section applies to a contract executed on or after May 5, 1997.

Amended by Chapter 278, 2012 General Session

13-8-5 Definitions -- Limitation on retention proceeds withheld -- Deposit in interest-bearing escrow account -- Release of proceeds -- Payment to subcontractors -- Penalty -- No waiver.

(1) As used in this section:

(a)

(i) "Construction contract" means a written agreement between the parties relative to the design, construction, alteration, repair, or maintenance of a building, structure, highway, appurtenance, appliance, or other improvements to real property, including moving, demolition, and excavating for nonresidential commercial or industrial construction projects.

(ii) If the construction contract is for construction of a project that is part residential and part nonresidential, this section applies only to that portion of the construction project that is nonresidential as determined pro rata based on the percentage of the total square footage of the project that is nonresidential.

(b) "Construction lender" means any person, including a bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, or any other financial institution that advances money to a borrower for the purpose of making alterations or improvements to real property. A construction lender does not include a person or entity who is acting in the capacity of contractor, original contractor, or subcontractor.

(c) "Construction project" means an improvement to real property that is the subject of a construction contract.

(d) "Contractor" means a person who, for compensation other than wages as an employee, undertakes any work in a construction trade, as defined in Section 58-55-102 and includes:

(i) any person engaged as a maintenance person who regularly engages in activities set forth in Section 58-55-102 as a construction trade; or

(ii) a construction manager who performs management and counseling services on a construction project for a fee.

(e) "Original contractor" means the same as that term is defined in Section 38-1a-102.

(f) "Owner" means the person who holds any legal or equitable title or interest in property. Owner does not include a construction lender unless the construction lender has an ownership interest in the property other than solely as a construction lender.

(g) "Public agency" means any state agency or a county, city, town, school district, local district, special service district, or other political subdivision of the state that enters into a construction contract for an improvement of public property.

(h) "Retention payment" means release of retention proceeds as defined in Subsection (1)(i).

(i) "Retention proceeds" means money earned by a contractor or subcontractor but retained by the owner or public agency pursuant to the terms of a construction contract to guarantee payment or performance by the contractor or subcontractor of the construction contract.

(j) "Subcontractor" means the same as that term is defined in Section 38-1a-102.

(2)

(a) This section is applicable to all construction contracts relating to construction work or improvements entered into on or after July 1, 1999, between:

(i) an owner or public agency and an original contractor;

(ii) an original contractor and a subcontractor; and

(iii) subcontractors under a contract described in Subsection (2)(a)(i) or (ii).

(b) This section does not apply to a construction lender.

(3)

(a) Notwithstanding Section 58-55-603, the retention proceeds withheld and retained from any payment due under the terms of the construction contract may not exceed 5% of the payment:

(i) by the owner or public agency to the original contractor;

(ii) by the original contractor to any subcontractor; or

(iii) by a subcontractor.

(b) The total retention proceeds withheld may not exceed 5% of the total construction price.

(c) The percentage of the retention proceeds withheld and retained pursuant to a construction contract between the original contractor and a subcontractor or between subcontractors shall be the same retention percentage as between the owner and the original contractor if:

(i) the retention percentage in the original construction contract between an owner and the original contractor is less than 5%; or

(ii) after the original construction contract is executed but before completion of the construction contract the retention percentage is reduced to less than 5%.

(4)

(a) If any payment on a contract with a private contractor, firm, or corporation to do work for an owner or public agency is retained or withheld by the owner or the public agency, as retention proceeds, it shall be placed in an interest-bearing account and accounted for separately from other amounts paid under the contract.

(b) The interest accrued under Subsection (4)(a) shall be:

(i) for the benefit of the contractor and subcontractors; and

(ii) paid after the project is completed and accepted by the owner or the public agency.

(c) The contractor shall ensure that any interest accrued on the retainage is distributed by the contractor to subcontractors on a pro rata basis.

(d) Retention proceeds and accrued interest retained by an owner or public agency:

(i) are considered to be in a constructive trust for the benefit of the contractor and subcontractors who have earned the proceeds; and

(ii) are not subject to assignment, encumbrance, attachment, garnishment, or execution levy for the debt of any person holding the retention proceeds and accrued interest.

(5) Any retention proceeds retained or withheld pursuant to this section and any accrued interest shall be released pursuant to a billing statement from the contractor within 45 days from the later of:

(a) the date the owner or public agency receives the billing statement from the contractor;

(b) the date that a certificate of occupancy or final acceptance notice is issued to:

(i) the original contractor who obtained the building permit from the building inspector or public agency;

(ii) the owner or architect; or

(iii) the public agency;

(c) the date that a public agency or building inspector that has the authority to issue a certificate of occupancy does not issue the certificate but permits partial or complete occupancy or use of a construction project; or

(d) the date the contractor accepts the final pay quantities.

(6) If only partial occupancy of a construction project is permitted, any retention proceeds withheld and retained pursuant to this section and any accrued interest shall be partially released within 45 days under the same conditions as provided in Subsection (5) in direct proportion to the value of the part of the construction project occupied or used.

(7) The billing statement from the contractor as provided in Subsection (5)(a) shall include documentation of lien releases or waivers.

(8)

(a) Notwithstanding Subsection (3):

(i) if a contractor or subcontractor is in default or breach of the terms and conditions of the construction contract documents, plans, or specifications governing construction of the project, the owner or public agency may withhold from payment for as long as reasonably necessary an amount necessary to cure the breach or default of the contractor or subcontractor; or

(ii) if a project or a portion of the project has been substantially completed, the owner or public agency may retain until completion up to twice the fair market value of the work of the original contractor or of any subcontractor that has not been completed:

(A) in accordance with the construction contract documents, plans, and specifications; or

(B) in the absence of plans and specifications, to generally accepted craft standards.

(b) An owner or public agency that refuses payment under Subsection (8)(a) shall describe in writing within 45 days of withholding such amounts what portion of the work was not completed according to the standards specified in Subsection (8)(a).

(9)

(a) Except as provided in Subsection (9)(b), an original contractor or subcontractor who receives retention proceeds shall pay each of its subcontractors from whom retention has been withheld each subcontractor's share of the retention received within 10 days from the day that all or any portion of the retention proceeds is received:

(i) by the original contractor from the owner or public agency; or

(ii) by the subcontractor from:

(A) the original contractor; or

(B) a subcontractor.

(b) Notwithstanding Subsection (9)(a), if a retention payment received by the original contractor is specifically designated for a particular subcontractor, payment of the retention shall be made to the designated subcontractor.

(10)

(a) In any action for the collection of the retained proceeds withheld and retained in violation of this section, the successful party is entitled to:

(i) attorney fees; and

(ii) other allowable costs.

(b)

(i) Any owner, public agency, original contractor, or subcontractor who knowingly and wrongfully withholds a retention shall be subject to a charge of 2% per month on the improperly withheld amount, in addition to any interest otherwise due.

(ii) The charge described in Subsection (10)(b)(i) shall be paid to the contractor or subcontractor from whom the retention proceeds have been wrongfully withheld.

(11) A party to a construction contract may not require any other party to waive any provision of this section.

Amended by Chapter 373, 2017 General Session

13-8-6 Definitions -- Motor carrier indemnity agreements void.

(1) As used in this section, "motor carrier transportation contract" means any written agreement for:

(a) the transportation of personal property for compensation or hire;

(b) entry on real property for the purpose of packing, loading, unloading, or transporting personal property for compensation or hire; or

(c) a service incidental to an activity described in Subsection (1)(a) or (b) including storage of personal property for compensation or hire.

(2) Except as provided in Subsection (3), any provision in a motor carrier transportation contract that requires either party or either party's surety or insurer to indemnify or hold harmless the other party against liability for death, personal injury, or property damage caused in whole or in part by the negligence or intentional acts or omissions of the other party is void.

(3) This section does not affect any provision in a motor carrier transportation contract that requires either party or either party's surety or insurer to indemnify another person against liability for death, personal injury, or property damage that arises out of the fault of:

(a) the indemnitor; or

(b) the indemnitor's agents or representatives.

Enacted by Chapter 287, 2011 General Session

13-8-7 Contract for design professional services -- Agreements to indemnify.

(1) As used in this section:

(a) "Design professional" means:

(i) an individual licensed under:

(A)Title 58, Chapter 3a, Architects Licensing Act;

(B)Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act; or

(C)Title 58, Chapter 53, Landscape Architects Licensing Act; or

(ii) a nongovernmental entity engaged in the business of providing services that require a license described in Subsection (1)(a)(i).

(b) "Design professional services" means:
(i) professional services within the scope of the practice of architecture as defined in Section 58-3a-102;
(ii) professional engineering or professional land surveying as defined in Section 58-22-102; or
(iii) professional services within the scope of the practice of landscape architecture as defined in Section 58-53-102.
(c)
(i) "Design professional services contract" means a contract under which a design professional agrees to provide design professional services:
(A) to a governmental entity; or
(B) for an improvement owned or to be owned by a governmental entity.
(ii) "Design professional services contract" does not include a construction contract, as defined in Section 13-8-1.
(d) "Indemnification provision" means a covenant, promise, agreement, or understanding in, in connection with, or collateral to, a design professional services contract that requires the design professional to:
(i) indemnify or hold harmless any person from or against liability for damages other than liability for damages to the extent caused by or resulting from:
(A) the design professional's breach of contract, negligence, recklessness, or intentional misconduct; or
(B) the design professional's subconsultant's negligence;
(ii) defend any person from or against a claim alleging liability for damages, including a claim alleging:
(A) the design professional's breach of contract, negligence, recklessness, or intentional misconduct; or
(B) the design professional's subconsultant's negligence; or
(iii) reimburse any person for attorney fees or other costs incurred by the person in defending against a claim alleging liability for damages, except to the extent the attorney fees or costs were incurred due to:
(A) the design professional's breach of contract, negligence, recklessness, or intentional misconduct; or
(B) the design professional's subconsultant's negligence.
(e) "Governmental entity" means the same as that term is defined in Section 63G-7-102.
(f) "Improvement" means the same as that term is defined in Section 78B-2-225.
(g) "Subconsultant" means a person with whom a design professional contracts to provide a service related to or part of the design professional services that the design professional agrees to perform under a design professional services contract.
(2) An indemnification provision is void.
(3)
(a) A design professional shall perform design professional services under a design professional services contract consistent with the professional skill and care ordinarily provided by other design professionals:
(i) with the same or similar professional license; and
(ii) providing the same or similar design professional service:
(A) in the same or similar locality;
(B) at the same or similar time; and
(C) under the same or similar circumstances.
(b)

(i) Except as provided in Subsection (3)(b)(ii), a design professional services contract may not establish a standard of care different from the standard of care described in Subsection (3)(a).

(ii) A design professional services contract may require a design professional to perform design professional services consistent with a specialized design expertise if the nature of the project that is the subject of the design professional services contract reasonably requires the specialized design expertise.

(c) A provision in a design professional services contract that purports to waive or conflicts with a provision of Subsection (3)(b) is void.

(4) The provisions of this section apply to a design professional services contract executed on or after May 8, 2018.

Enacted by Chapter 222, 2018 General Session

Chapter 9
Foreign Trade

13-9-1 "Foreign-Trade Zones Act" defined.

As used in this act:

Foreign-Trade Zones Act means the act passed by the United States Congress identified as the Foreign-Trade Zones Act of June 18, 1934 (48 Stat. 998-1003; 19 U.S.C. 81a-81u), as amended by Public Law 566, 81st Congress, approved June 17, 1950, together with any subsequent amendments to that act and any rules and regulations promulgated pursuant to the authority granted by the act.

Amended by Chapter 4, 1993 General Session

13-9-2 Authority of state, county or municipality or public or private corporation to apply to establish foreign-trade zone.

The state of Utah or any county or municipality within the state of Utah, or a public or private corporation, or any combination thereof, may apply to the Foreign-Trade Zones Board, United States Department of Commerce, for the right to establish, operate, and maintain a foreign-trade zone as defined in the Foreign-Trade Zones Act.

Enacted by Chapter 19, 1973 General Session

Chapter 10
Unauthorized Recording Practices Act

13-10-1 Title of chapter.

This chapter is known as the "Unauthorized Recording Practices Act."

Amended by Chapter 325, 1995 General Session

13-10-2 Purpose of chapter.

In enacting this chapter, it is the purpose of the Legislature to prevent the piracy of recorded materials by making it mandatory that certain copying of recorded materials be made only with the express consent of the owner.

Amended by Chapter 325, 1995 General Session

13-10-3 Definitions.

As used in this chapter:

(1) "Fixed" means embodied in a recording or other tangible medium of expression, by or under the authority of the author, so that the matter embodied in the recording or other tangible medium of expression is sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration.

(2) "Owner" means the person, corporation, partnership, or business association who owns the sounds fixed in a master phonograph record, master disc, master wire, master tape, master film, or other device used for reproducing recorded sounds on phonograph records, discs, wires, tapes, films, or other articles or materials in which sound is recorded and from which the transferred recorded sounds are directly or indirectly derived.

Amended by Chapter 325, 1995 General Session

13-10-4 Prohibited practices.

It is unlawful for any individual, partnership, corporation, or association:

(1) to knowingly transfer or cause to be transferred, directly or indirectly, for sale or profit within this state, without the express consent of the owner, by any means, any sounds recorded on a phonographic record, disc, wire, tape, film, or other article or material on which sounds are recorded onto any other phonograph record, disc, wire, tape, film, article, or material;

(2) to sell, distribute, circulate, or offer for sale, distribution or circulation, or cause to be sold, distributed, circulated, or possess for the purpose of sale, distribution, or circulation, within the state, for a consideration, any phonograph record, disc, wire, tape, film, or other article or material onto which such sounds have been transferred, with the knowledge that the sounds thereon have been transferred without the express consent of the owner; or

(3) to knowingly rent, make available, or permit the use of, or offer to rent, make available, or permit the use of, for a fee, rental, or any other form of compensation, any equipment or machinery for the purpose of enabling, aiding, or causing another to transfer without the consent of the owner any sounds recorded on a phonograph record, disc, wire, tape, film, or other article or material onto any other phonograph record, disc, wire, tape, film, article, or material.

Amended by Chapter 325, 1995 General Session

13-10-5 Exemptions.

(1) This chapter does not apply to:

(a) any person engaged in radio or television broadcasting or cable television who transfers, or causes to be transferred, any of the sounds referred to in Sections 13-10-3 and 13-10-4 (other than from the sound track of a motion picture) intended for, or in connection with, broadcast transmission or for archival purposes; or

(b) any person transferring any such sounds without any compensation being derived by this person or any other person from the transfer.

(2) This chapter shall neither enlarge nor diminish the rights of parties in civil litigation.

Amended by Chapter 325, 1995 General Session

13-10-6 Violation a misdemeanor.

Each violation of Section 13-10-4 is a class B misdemeanor.

Amended by Chapter 148, 2018 General Session

13-10-7 Application of provisions.

Sections 13-10-1 through 13-10-6 apply only to recorded sounds that were initially fixed before February 15, 1972.

Enacted by Chapter 325, 1995 General Session

13-10-8 Failure to disclose the origin of a recording -- Penalty.

(1) For purposes of this section "recording" means:
  (a) a tangible medium on which sounds or images are recorded or otherwise stored, including an original phonograph record, disc, tape, audio or video cassette, wire, film, or other similar medium; or
  (b) a copy or reproduction that duplicates the original in whole or in part.
(2) A person is guilty of failure to disclose the origin of a recording if:
  (a) the person commits any of the following acts for commercial advantage or private financial gain:
    (i) offers a recording for sale, resale, or rent;
    (ii) sells, resells, rents, leases, or lends a recording; or
    (iii) possesses a recording for any of the purposes described in Subsection (2)(a)(i) or (ii); and
  (b) the person knows that the recording does not contain the true name and address of the manufacturer in a prominent place on its cover, jacket, or label.
(3) A person who fails to disclose the origin of a recording under Subsection (2) is guilty of:
  (a) a felony of the third degree if the offense involves 100 or more recordings, or the commercial equivalent of 100 or more recordings, during a 180-day period or if the person has previously been convicted of a violation of this section;
  (b) a class A misdemeanor if the offense involves at least 10 recordings and fewer than 100 recordings, or the commercial equivalent of at least 10 recordings and fewer than 100 recordings, during a 180-day period; or
  (c) a class B misdemeanor if the offense involves fewer than 10 recordings or fewer than the commercial equivalent of 10 recordings.
(4) In addition to the penalties provided in Subsection (3), a court may order a person who commits a violation of Subsection (2) to forfeit any recordings in the person's possession that served as the basis for the violation of Subsection (2).

Amended by Chapter 293, 2017 General Session

Chapter 10a
Music Licensing Practices Act

13-10a-1 Title.

This act is known as the "Music Licensing Practices Act."

Enacted by Chapter 324, 1998 General Session

13-10a-2 Definitions.

As used in this chapter:

(1) "Copyright laws of the United States" means those laws specified pursuant to Title 17, United States Code.

(2) "Copyright owner" does not include the owner of a copyright in a motion picture or audio-visual work or a part of a motion picture or audio-visual work.

(3) "Division" means the Division of Consumer Protection.

(4) "Performing rights society or organization" means an association, corporation, or other entity that licenses the nondramatic public performance of musical works on behalf of copyright owners, such as the American Society of Composers, Authors, and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc.

(5) "Proprietor" means the owner of a retail establishment, restaurant, inn, bar, tavern, sports or entertainment facility, not for profit organization, or any other place of business or professional office located in this state in which:

(a) the public may assemble; and

(b) musical works may be performed, broadcast, or otherwise transmitted for the enjoyment of the members of the public there assembled.

(6) "Royalty" or "royalties" means the fees payable by a proprietor to a performing rights society for the nondramatic public performance of musical or other similar works.

Enacted by Chapter 324, 1998 General Session

13-10a-3 Access to repertoire.

(1) Each performing rights society or organization licensing music in the state shall:

(a) maintain a current electronic list of the titles and names of the authors and publishers of all performed copyrighted musical works for which the performing rights society collects royalties on behalf of copyright owners;

(b) update the list at least quarterly; and

(c) provide to the division the electronic address at which the list may be viewed.

(2) Upon request, any person may review the list, in electronic form, of copyrighted works through the division.

(3) Each performing rights society or organization shall provide an electronic or printed copy of its most current lists of copyrighted musical works and members at cost, not including the cost of maintaining the database or any other overhead, to any person upon request.

(4) Each performing rights society or organization licensing music in this state shall establish and maintain a toll free telephone number which can be used to answer inquiries regarding specific musical works licensed by that performing rights society and the copyright owners represented by the performing rights society or organization.

Enacted by Chapter 324, 1998 General Session

13-10a-4 Notification of rights.

No performing rights society or organization may enter into, or offer to enter into, a contract for the payment of royalties by a proprietor unless at the time of the offer, or any time thereafter, but no later than 72 hours prior to the execution of the contract, it provides to the proprietor, in writing, a schedule of the rates and terms of royalties under the contract, including:

(1) any sliding scale, discounts, or reductions in fees on any basis for which the proprietor may be eligible; and

(2) any scheduled increases or decreases in fees during the term of the contract.

Enacted by Chapter 324, 1998 General Session

13-10a-5 Contract requirements.

(1) Beginning July 1, 1998, each contract for the payment of royalties between a proprietor and a performing rights society or organization executed, issued, or renewed in the state shall:

(a) be in writing;

(b) be signed by both parties to the contract; and

(c) include at least the following information:

(i) the proprietor's name and business address and the name and location of each place of business to which the contract applies;

(ii) the name and business address of the performing rights society or organization;

(iii) the duration of the contract; and

(iv) the schedule of rates and terms of royalties to be collected under the contract, including any sliding scale, discount, or schedule for any increase or decrease of those rates for the duration of the contract.

(2)

(a) Nothing in this act shall be construed to affect any contract signed before July 1, 1998.

(b) All contracts signed before July 1, 1998, that are renewed after that date are subject to the requirements of this act.

Enacted by Chapter 324, 1998 General Session

13-10a-6 Jurisdiction of court action.

An action may be brought or a counterclaim may be asserted in a court of competent jurisdiction against a performing rights society to enjoin a violation of this act and to recover actual damages sustained as a result of that violation.

Enacted by Chapter 324, 1998 General Session

13-10a-7 Provisions of chapter not exclusive.

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

Enacted by Chapter 324, 1998 General Session

13-10a-8 Exemptions.

(1) This act does not apply to contracts between performing rights societies or organizations and broadcasters licensed by the Federal Communications Commission, unless any such society is licensed by the Federal Communications Commission.

(2) This act does not apply to investigations by law enforcement agencies or other persons with respect to suspected violations of Subsection 13-10-8(2)(b).

Enacted by Chapter 324, 1998 General Session

Chapter 10b
Unlawful Recording of a Motion Picture

Part 1
General Provisions

13-10b-101 Title.

This chapter is known as "Unlawful Recording of a Motion Picture."

Enacted by Chapter 159, 2007 General Session

13-10b-102 Definitions.

As used in this chapter:

(1) "Audiovisual recording function" means the capability of a device to record or transmit a motion picture or any part of the motion picture by means of any technology.

(2) "Motion picture theater" means a movie theater, screening room, or other venue that is being utilized primarily for the exhibition of a motion picture at the time of the commission of an offense under Section 13-10b-201.

(3) "Owner or employee" means the owner or lessee of a motion picture theater, or the authorized agent or employee of the owner or lessee.

Enacted by Chapter 159, 2007 General Session

Part 2
Penalties

13-10b-201 Unlawful recording of a motion picture -- Penalties.

(1) It is unlawful for any individual to knowingly operate the audiovisual recording function of any camcorder or similar device in a motion picture theater:

(a) while a motion picture is being exhibited; and

(b) without the consent of the motion picture theater owner or operator.

(2)

(a) A violation of this section is a class A misdemeanor.

(b) A second or subsequent violation of this section is a third degree felony.

Enacted by Chapter 159, 2007 General Session

Part 3
Detention and Immunity

13-10b-301 Detention of suspect by owner or employee.

(1) Any owner or employee who has probable cause to believe that an individual has unlawfully recorded a motion picture under Section 13-10b-201 may detain the individual, on or off the premises of the motion picture theater, in a reasonable manner and for a reasonable length of time to:

(a) make reasonable inquiry as to whether the individual has in his possession a device that may reasonably be used in violation of Section 13-10b-201;

(b) request identification;

(c) verify the identification;

(d) make a reasonable request of the individual to place or keep in full view any device that the employer or employee has reason to believe the individual may have used in violation of Section 13-10b-201; and

(e)

(i) inform a peace officer of the detention of the individual and surrender that individual to the custody of a peace officer; or

(ii) in the case of a minor, inform a peace officer, the parents, or the legal guardian of this detention and to surrender custody of the minor to the responding individual.

(2) An employer or employee may make a detention under Subsection (1) off the premises of the motion picture theater only if the detention is pursuant to the immediate pursuit of the individual that the employer or employee has reason to believe has violated Section 13-10b-201.

Enacted by Chapter 159, 2007 General Session

13-10b-302 Immunity of owner or employee who contacts law enforcement.

The owner or employee of a motion picture theater who advises a law enforcement agency of an alleged violation of this section is not liable in any civil action that arises out of detaining an individual under Section 13-10b-301 whom the owner or employee reasonably believes to have violated Section 13-10b-201, unless the plaintiff shows by clear and convincing evidence that the measures were manifestly unreasonable or the period of detention was unreasonably long.

Enacted by Chapter 159, 2007 General Session

Part 4
Law Enforcement Actions

13-10b-401 Law enforcement functions exempt.

This part does not prohibit any lawful investigation or collection of evidence by a federal, state, or local law enforcement or investigative agency by means of any audiovisual recording device used in a motion picture theater as part of investigative, protective, or law enforcement functions.

Enacted by Chapter 159, 2007 General Session

Chapter 11

Utah Consumer Sales Practices Act

13-11-1 Citation of act.

This act shall be known and may be cited as the "Utah Consumer Sales Practices Act."

Enacted by Chapter 188, 1973 General Session

13-11-2 Construction and purposes of act.

This act shall be construed liberally to promote the following policies:

(1) to simplify, clarify, and modernize the law governing consumer sales practices;

(2) to protect consumers from suppliers who commit deceptive and unconscionable sales practices;

(3) to encourage the development of fair consumer sales practices;

(4) to make state regulation of consumer sales practices not inconsistent with the policies of the Federal Trade Commission Act relating to consumer protection;

(5) to make uniform the law, including the administrative rules, with respect to the subject of this act among those states which enact similar laws; and

(6) to recognize and protect suppliers who in good faith comply with the provisions of this act.

Enacted by Chapter 188, 1973 General Session

13-11-3 Definitions.

As used in this chapter:

(1) "Charitable solicitation" means any request directly or indirectly for money, credit, property, financial assistance, or any other thing of value on the plea or representation that it will be used for a charitable purpose. A charitable solicitation may be made in any manner, including:

(a) any oral or written request, including a telephone request;

(b) the distribution, circulation, or posting of any handbill, written advertisement, or publication; or

(c) the sale of, offer or attempt to sell, or request of donations for any book, card, chance, coupon, device, magazine, membership, merchandise, subscription, ticket, flower, flag, button, sticker, ribbon, token, trinket, tag, souvenir, candy, or any other article in connection with which any appeal is made for any charitable purpose, or where the name of any charitable organization or movement is used or referred to as an inducement or reason for making any purchase donation, or where, in connection with any sale or donation, any statement is made that the whole or any part of the proceeds of any sale or donation will go to or be donated to any charitable purpose. A charitable solicitation is considered complete when made, whether or not the organization or person making the solicitation receives any contribution or makes any sale.

(2)

(a) "Consumer transaction" means a sale, lease, assignment, award by chance, or other written or oral transfer or disposition of goods, services, or other property, both tangible and intangible (except securities and insurance) to, or apparently to, a person for:

(i) primarily personal, family, or household purposes; or

(ii) purposes that relate to a business opportunity that requires:

(A) expenditure of money or property by the person described in Subsection (2)(a); and

(B) the person described in Subsection (2)(a) to perform personal services on a continuing basis and in which the person described in Subsection (2)(a) has not been previously engaged.

(b) "Consumer transaction" includes:

(i) any of the following with respect to a transfer or disposition described in Subsection (2)(a):

(A) an offer;

(B) a solicitation;

(C) an agreement; or

(D) performance of an agreement; or

(ii) a charitable solicitation.

(3) "Enforcing authority" means the Division of Consumer Protection.

(4) "Final judgment" means a judgment, including any supporting opinion, that determines the rights of the parties and concerning which appellate remedies have been exhausted or the time for appeal has expired.

(5) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

(6) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person who regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly with the consumer.

Amended by Chapter 55, 2004 General Session

13-11-4 Deceptive act or practice by supplier.

(1) A deceptive act or practice by a supplier in connection with a consumer transaction violates this chapter whether it occurs before, during, or after the transaction.

(2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or practice if the supplier knowingly or intentionally:

(a) indicates that the subject of a consumer transaction has sponsorship, approval, performance characteristics, accessories, uses, or benefits, if it has not;

(b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not;

(c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or has been used to an extent that is materially different from the fact;

(d) indicates that the subject of a consumer transaction is available to the consumer for a reason that does not exist, including any of the following reasons falsely used in an advertisement:

(i) "going out of business";

(ii) "bankruptcy sale";

(iii) "lost our lease";

(iv) "building coming down";

(v) "forced out of business";

(vi) "final days";

(vii) "liquidation sale";

(viii) "fire sale";

(ix) "quitting business"; or

(x) an expression similar to any of the expressions in Subsections (2)(d)(i) through (ix);

(e) indicates that the subject of a consumer transaction has been supplied in accordance with a previous representation, if it has not;

(f) indicates that the subject of a consumer transaction will be supplied in greater quantity than the supplier intends;
(g) indicates that replacement or repair is needed, if it is not;
(h) indicates that a specific price advantage exists, if it does not;
(i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier does not have;
(j)
(i) indicates that a consumer transaction involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if the representation is false; or
(ii) fails to honor a warranty or a particular warranty term;
(k) indicates that the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if receipt of the benefit is contingent on an event occurring after the consumer enters into the transaction;
(l) after receipt of payment for goods or services, fails to ship the goods or furnish the services within the time advertised or otherwise represented or, if no specific time is advertised or represented, fails to ship the goods or furnish the services within 30 days, unless within the applicable time period the supplier provides the buyer with the option to:
(i) cancel the sales agreement and receive a refund of all previous payments to the supplier if the refund is mailed or delivered to the buyer within 10 business days after the day on which the seller receives written notification from the buyer of the buyer's intent to cancel the sales agreement and receive the refund; or
(ii) extend the shipping date to a specific date proposed by the supplier;
(m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the requirements of Subsection (3)(a) of the purchaser's right to cancel a direct solicitation sale within three business days of the time of purchase if:
(i) the sale is made other than at the supplier's established place of business pursuant to the supplier's personal contact, whether through mail, electronic mail, facsimile transmission, telephone, or any other form of direct solicitation; and
(ii) the sale price exceeds $25;
(n) promotes, offers, or grants participation in a pyramid scheme as defined under Title 76, Chapter 6a, Pyramid Scheme Act;
(o) represents that the funds or property conveyed in response to a charitable solicitation will be donated or used for a particular purpose or will be donated to or used by a particular organization, if the representation is false;
(p) if a consumer indicates the consumer's intention of making a claim for a motor vehicle repair against the consumer's motor vehicle insurance policy:
(i) commences the repair without first giving the consumer oral and written notice of:
(A) the total estimated cost of the repair; and
(B) the total dollar amount the consumer is responsible to pay for the repair, which dollar amount may not exceed the applicable deductible or other copay arrangement in the consumer's insurance policy; or
(ii) requests or collects from a consumer an amount that exceeds the dollar amount a consumer was initially told the consumer was responsible to pay as an insurance deductible or other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that amount

is less than the full amount the motor vehicle insurance policy requires the insured to pay as a deductible or other copay arrangement, unless:

(A) the consumer's insurance company denies that coverage exists for the repair, in which case, the full amount of the repair may be charged and collected from the consumer; or

(B) the consumer misstates, before the repair is commenced, the amount of money the insurance policy requires the consumer to pay as a deductible or other copay arrangement, in which case, the supplier may charge and collect from the consumer an amount that does not exceed the amount the insurance policy requires the consumer to pay as a deductible or other copay arrangement;

(q) includes in any contract, receipt, or other written documentation of a consumer transaction, or any addendum to any contract, receipt, or other written documentation of a consumer transaction, any confession of judgment or any waiver of any of the rights to which a consumer is entitled under this chapter;

(r) charges a consumer for a consumer transaction or a portion of a consumer transaction that has not previously been agreed to by the consumer;

(s) solicits or enters into a consumer transaction with a person who lacks the mental ability to comprehend the nature and consequences of:

(i) the consumer transaction; or

(ii) the person's ability to benefit from the consumer transaction;

(t) solicits for the sale of a product or service by providing a consumer with an unsolicited check or negotiable instrument the presentment or negotiation of which obligates the consumer to purchase a product or service, unless the supplier is:

(i) a depository institution under Section 7-1-103;

(ii) an affiliate of a depository institution; or

(iii) an entity regulated under Title 7, Financial Institutions Act;

(u) sends an unsolicited mailing to a person that appears to be a billing, statement, or request for payment for a product or service the person has not ordered or used, or that implies that the mailing requests payment for an ongoing product or service the person has not received or requested;

(v) issues a gift certificate, instrument, or other record in exchange for payment to provide the bearer, upon presentation, goods or services in a specified amount without printing in a readable manner on the gift certificate, instrument, packaging, or record any expiration date or information concerning a fee to be charged and deducted from the balance of the gift certificate, instrument, or other record;

(w) misrepresents the geographical origin or location of the supplier's business;

(x) fails to comply with the restrictions of Section 15-10-201 on automatic renewal provisions;

(y) violates Section 13-59-201; or

(z) fails to comply with the restrictions of Subsection 13-54-202(2).

(3)

(a) The notice required by Subsection (2)(m) shall:

(i) be a conspicuous statement written in dark bold with at least 12-point type on the first page of the purchase documentation; and

(ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period reflecting the supplier's cancellation policy but not less than three business days) AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS LATER."

(b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's cancellation policy:

(i) is communicated to the buyer; and
(ii) offers greater rights to the buyer than Subsection (2)(m).
(4)
(a) A gift certificate, instrument, or other record that does not print an expiration date in accordance with Subsection (2)(v) does not expire.
(b) A gift certificate, instrument, or other record that does not include printed information concerning a fee to be charged and deducted from the balance of the gift certificate, instrument, or other record is not subject to the charging and deduction of the fee.
(c) Subsections (2)(v) and (4)(b) do not apply to a gift certificate, instrument, or other record useable at multiple, unaffiliated sellers of goods or services if an expiration date is printed on the gift certificate, instrument, or other record.

Amended by Chapter 138, 2021 General Session
Amended by Chapter 154, 2021 General Session

13-11-4.1 Targeted solicitations involving financial information -- Restrictions.
(1) As used in this section:
(a) "Account holder" means a person for whom a personal account is held by a financial institution.
(b) "Financial institution" means:
(i) a state or federally chartered:
(A) bank;
(B) savings and loan association;
(C) savings bank;
(D) industrial bank; or
(E) credit union;
(ii) any other institution under the jurisdiction of the commissioner of Financial Institutions as described in Title 7, Financial Institutions Act; or
(iii) a person who:
(A) is subject to Title 61, Chapter 2c, Utah Residential Mortgage Practices and Licensing Act; and
(B) engages in the business of residential mortgage loans as defined in Section 61-2c-102.
(c)
(i) "Specific account information" means information that is:
(A) relative to the account of an account holder, in addition to the name of the account holder; and
(B) not provided by the financial institution that holds the account holder's account to the person offering a targeted solicitation.
(ii) "Specific account information" includes:
(A) a loan number;
(B) a loan amount; or
(C) any other specific account or loan information.
(d) "Targeted solicitation" means any written or oral advertisement or solicitation for products or services that:
(i) is addressed to an account holder;
(ii) contains specific account information;
(iii) is offered by a supplier that is not sponsored by or affiliated with the financial institution that holds the account holder's account; and

(iv) is not authorized by the financial institution that holds the account holder's account.

(2)

(a) A supplier who is not the financial institution of an account holder may not represent, directly or indirectly, that the supplier is the financial institution of the account holder.

(b) If a presiding officer or court determines appropriate after considering other relevant factors, the following actions by a supplier who is not the financial institution of an account holder establish a presumption that the supplier is representing that the supplier is the financial institution of the account holder in violation of Subsection (2)(a):

(i) the use or reference to the name, trade name, or trademark of the financial institution of the account holder, unless the supplier has written authorization from the financial institution;

(ii) the placement of specific account information on the outside of an envelope, visible through the envelope window, or on a postcard, when sending a target solicitation by direct mail; or

(iii) the placement of specific account information in the subject line, when sending a targeted solicitation by email.

(3)

(a) A targeted solicitation, if offered in writing, shall include a clear and conspicuous statement in bold type on the front page of the document containing:

(i) the name, address, and telephone number of the supplier offering the targeted solicitation; and

(ii) a statement indicating that the supplier offering the targeted solicitation is not sponsored by or affiliated with the financial institution that holds the account holder's account.

(b) If the targeted solicitation is offered orally, the supplier offering the targeted solicitation shall verbally communicate the statement described in Subsection (3)(a) at the time the oral solicitation is offered to the account holder.

(4) A supplier who violates this section commits a deceptive act or practice under Subsection 13-11-4(1).

Enacted by Chapter 173, 2020 General Session

13-11-5 Unconscionable act or practice by supplier.

(1) An unconscionable act or practice by a supplier in connection with a consumer transaction violates this act whether it occurs before, during, or after the transaction.

(2) The unconscionability of an act or practice is a question of law for the court. If it is claimed or appears to the court that an act or practice may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its setting, purpose, and effect to aid the court in making its determination.

(3) In determining whether an act or practice is unconscionable, the court shall consider circumstances which the supplier knew or had reason to know.

Enacted by Chapter 188, 1973 General Session

13-11-6 Service of process.

(1) In addition to any other method provided by rule or statute, personal jurisdiction over a supplier may be acquired in a civil action or proceeding instituted in the district court by the service of process as provided in Subsection (3).

(2)

(a) A supplier that engages in any act or practice in this state governed by this chapter, or engages in a consumer transaction subject to this chapter, may designate an agent upon whom service of process may be made in the state.
(b) A designation of an agent under Subsection (2)(a) shall be in writing and filed with the Division of Corporations and Commercial Code.
(c) An agent designated under this Subsection (2) shall be a resident of or a corporation authorized to do business in the state.
(3)
(a) Subject to Subsection (3)(b), process upon a supplier may be served as provided in Section 16-17-301 if:
(i) a designation is not made and filed under Subsection (2); or
(ii) process cannot be served in the state upon the designated agent.
(b) Service upon a supplier is not effective unless the plaintiff promptly mails a copy of the process and pleadings by registered or certified mail to the defendant at the defendant's last reasonably ascertainable address.
(c) The plaintiff shall file an affidavit of compliance with this section:
(i) with the clerk of the court; and
(ii) on or before the return day of the process, if any, or within any future time the court allows.

Amended by Chapter 152, 2012 General Session

13-11-7 Duties of enforcing authority -- Confidentiality of identity of persons investigated -- Civil penalty for violation of restraining or injunctive orders.

(1) The enforcing authority shall:
(a) enforce this chapter throughout the state;
(b) cooperate with state and local officials, officials of other states, and officials of the federal government in the administration of comparable statutes;
(c) inform consumers and suppliers on a continuing basis of the provisions of this chapter and of acts or practices that violate this chapter including mailing information concerning final judgments to persons who request it, for which he may charge a reasonable fee to cover the expense;
(d) receive and act on complaints; and
(e) maintain a public file of final judgments rendered under this chapter that have been either reported officially or made available for public dissemination under Subsection (1)(c), final consent judgments, and to the extent the enforcing authority considers appropriate, assurances of voluntary compliance.
(2) In carrying out his duties, the enforcing authority may not publicly disclose the identity of a person investigated unless his identity has become a matter of public record in an enforcement proceeding or he has consented to public disclosure.
(3) On motion of the enforcing authority, or on its own motion, the court may impose a civil penalty of not more than $5,000 for each day a temporary restraining order, preliminary injunction, or permanent injunction issued under this chapter is violated, if the supplier received notice of the restraining or injunctive order. Civil penalties imposed under this section shall be paid to the General Fund.

Amended by Chapter 92, 1987 General Session

13-11-8 Powers of enforcing authority.

(1) The enforcing authority may conduct research, hold public hearings, make inquiries, and publish studies relating to consumer sales acts or practices.
(2) The enforcing authority shall adopt substantive rules that prohibit with specificity acts or practices that violate Section 13-11-4 and appropriate procedural rules.

Enacted by Chapter 188, 1973 General Session

13-11-9 Rule-making requirements.
(1) In addition to complying with other rule-making requirements imposed by this act, the enforcing authority shall:
  (a) adopt as a rule a description of the organization of his office, stating the general course and method of operation of his office and method whereby the public may obtain information or make submissions or requests;
  (b) adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of the forms and instructions used by the enforcing authority of his office; and
  (c) make available for public inspection all rules, written statements of policy, and interpretations formulated, adopted, or used by the enforcing authority in discharging his functions.
(2) A rule of the enforcing authority is invalid, and may not be invoked by the enforcing authority for any purpose, until it has been made available for public inspection under Subsection (1). This provision does not apply to a person who has knowledge of a rule before engaging in an act or practice that violates this act.

Enacted by Chapter 188, 1973 General Session

13-11-16 Investigatory powers of enforcing authority.
(1) If, by his own inquiries or as a result of complaints, the enforcing authority 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 act, he may administer oaths and affirmations, subpoena witnesses or matter, and collect evidence.
(2) If matter that the enforcing authority subpoenas is located outside this state, the person subpoenaed may either make it available to the enforcing authority at a convenient location within the state or pay the reasonable and necessary expenses for the enforcing authority or his representative to examine the matter at the place where it is located. The enforcing authority may designate representatives, including officials of the state in which the matter is located, to inspect the matter on his behalf, and he may respond to similar requests from officials of other states.
(3) Upon failure of a person without lawful excuse to obey a subpoena and upon reasonable notice to all persons affected, the enforcing authority may apply to the court for an order compelling compliance.
(4) In the event a witness asserts a privilege against self-incrimination, testimony and evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of Immunity.

Amended by Chapter 296, 1997 General Session

13-11-17 Actions by enforcing authority.
(1) The enforcing authority may bring an action in a court of competent jurisdiction to:
  (a) obtain a declaratory judgment that an act or practice violates this chapter;

(b) enjoin, in accordance with the principles of equity, a supplier who has violated, is violating, or is otherwise likely to violate this chapter;
(c) recover, for each violation, actual damages, or obtain relief under Subsection (2)(b), on behalf of consumers who complained to the enforcing authority within a reasonable time after it instituted proceedings under this chapter; and
(d) obtain a fine in an amount determined after considering the factors in Subsection (6).
(2)
(a) The enforcing authority 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 enforcing authority under Subsection 13-11-8(2) 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 enforcing authority 10 days before the consumer transactions on which the action is based, or, with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent judgment that became final before the consumer transactions on which the action is based.
(b)
(i) On motion of the enforcing authority 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. An appropriate order may include an order to:
(A) reimburse consumers found to have been damaged;
(B) carry out a transaction in accordance with consumers' reasonable expectations;
(C) strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result;
(D) impose a fine in an amount determined after considering the factors listed in Subsection (6); or
(E) grant other appropriate relief.
(ii) The court may assess the expenses of a master or receiver against a supplier.
(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 pursuant to Title 67, Chapter 4a, Revised Uniform Unclaimed Property Act.
(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.
(3)
(a) The enforcing authority 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. Acceptance of an assurance may be conditioned on a commitment to reimburse consumers or take other appropriate corrective action.
(b) An assurance is not evidence of a prior violation of this chapter. 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.
(4)

(a) In addition to other penalties and remedies set out under this chapter, and in addition to its 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.
(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.
(5)
(a) Within 30 days after agency or 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.
(b) The unpaid amount of a fine is increased by 10%:
(i) if the fine has not been paid in full within 60 days after the final division order imposing the fine; and
(ii) unless the division waives the 10% increase in a stipulated payment plan.
(6) A fine imposed under Subsection (1)(d) or Subsection (2)(b)(i)(D) shall be determined after considering the following factors:
(a) the seriousness, nature, circumstances, extent, and persistence of the conduct constituting the violation;
(b) the harm to other persons resulting either directly or indirectly from the violation;
(c) cooperation by the supplier in an inquiry or investigation conducted by the enforcing authority concerning the violation;
(d) efforts by the supplier to prevent occurrences of the violation;
(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;
(f) the history of previous violations by the supplier;
(g) the need to deter the supplier or other suppliers from committing the violation in the future; and
(h) other matters as justice may require.

Amended by Chapter 276, 2018 General Session

13-11-17.5 Costs and attorney's fees.

Any judgment granted in favor of the enforcing authority in connection with the enforcement of this chapter shall include, in addition to any other monetary award or injunctive relief, an award of reasonable attorney's fees, court costs, and costs of investigation.

Enacted by Chapter 105, 1987 General Session

13-11-18 Noncompliance by supplier subject to other state supervision -- Cooperation of enforcing authority and other official or agency.

(1) If the enforcing authority receives a complaint or other information relating to noncompliance with this act by a supplier who is subject to other supervision in this state, the enforcing authority shall inform the official or agency having that supervision. The enforcing authority may request information about suppliers from the official or agency.
(2) The enforcing authority and any other official or agency in this state having supervisory authority over a supplier shall consult and assist each other in maintaining compliance with this act. Within the scope of their authority, they may jointly or separately make investigations, prosecute suits, and take other official action they consider appropriate.

Enacted by Chapter 188, 1973 General Session

13-11-19 Actions by consumer.

(1) Whether he seeks or is entitled to damages or otherwise has an adequate remedy at law, a consumer may bring an action to:
  (a) obtain a declaratory judgment that an act or practice violates this chapter; and
  (b) enjoin, in accordance with the principles of equity, a supplier who has violated, is violating, or is likely to violate this chapter.

(2) A consumer who suffers loss as a result of a violation of this chapter may recover, but not in a class action, actual damages or $2,000, whichever is greater, plus court costs.

(3) Whether a consumer seeks or is entitled to recover damages or has an adequate remedy at law, he may bring a class action for declaratory judgment, an injunction, and appropriate ancillary relief against an act or practice that violates this chapter.

(4)
  (a) A consumer who suffers loss as a result of a violation of this chapter may bring a class action for the actual damages caused by an act or practice specified as violating this chapter by a rule adopted by the enforcing authority under Subsection 13-11-8(2) before the consumer transactions on which the action is based, or declared to violate Section 13-11-4 or 13-11-5 by a final judgment of the appropriate court or courts of general jurisdiction and appellate courts of this state that was either officially reported or made available for public dissemination under Subsection 13-11-7(1)(c) by the enforcing authority 10 days before the consumer transactions on which the action is based, or with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent judgment which became final before the consumer transactions on which the action is based.
  (b) If an act or practice that violates this chapter unjustly enriches a supplier and the 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 pursuant to Title 67, Chapter 4a, Revised Uniform Unclaimed Property Act.
  (c) 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 section is limited to the amount, if any, in which the supplier was unjustly enriched by the violation.

(5) Except for services performed by the enforcing authority, the court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed if:
  (a) the consumer complaining of the act or practice that violates this chapter has brought or maintained an action he knew to be groundless; or a supplier has committed an act or practice that violates this chapter; and
  (b) an action under this section has been terminated by a judgment or required by the court to be settled under Subsection 13-11-21(1)(a).

(6) Except for consent judgment entered before testimony is taken, a final judgment in favor of the enforcing authority under Section 13-11-17 is admissible as prima facie evidence of the facts on which it is based in later proceedings under this section against the same person or a person in privity with him.

(7) When a judgment under this section becomes final, the prevailing party shall mail a copy to the enforcing authority for inclusion in the public file maintained under Subsection 13-11-7(1)(e).

Amended by Chapter 276, 2018 General Session

13-11-20 Class actions.

(1) An action may be maintained as a class action under this act only if:
(a) the class is so numerous that joinder of all members is impracticable;
(b) there are questions of law or fact common to the class;
(c) the claims or defenses of the representative parties are typical of the claims or defenses of the class;
(d) the representative parties will fairly and adequately protect the interests of the class; and
(e) either:
(i) the prosecution of separate actions by or against individual members of the class would create a risk of:
(A) inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class; or
(B) adjudications with respect to individual members of the class that would as a practical matter dispose of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests; or
(ii) the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; or
(iii) the court finds that the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.
(2) The matters pertinent to the findings under Subsection (1)(e)(iii) include:
(a) the interest of members of the class in individually controlling the prosecution or defense of separate actions;
(b) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class;
(c) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and
(d) the difficulties likely to be encountered in the management of a class action.
(3) As soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained. An order under this subsection may be conditional, and it may be amended before decision on the merits.
(4) In a class action maintained under Subsection (1)(e) the court may direct to the members of the class the best notice practicable under the circumstances, including individual notice to each member who can be identified through reasonable effort. The notice shall advise each member that:
(a) the court will exclude him from the class, unless he requests inclusion, by a specified date;
(b) the judgment, whether favorable or not, will include all members who request inclusion; and
(c) a member who requests inclusion may, if he desires, enter an appearance through his counsel.
(5) When appropriate, an action may be brought or maintained as a class action with respect to particular issues, or a class may be divided into subclasses and each subclass treated as a class.
(6) In the conduct of a class action the court may make appropriate orders:
(a) determining the course of proceedings or prescribing measures to prevent undue repetition or complication in the presentation of evidence or argument;
(b) requiring, for the protection of the members of the class or otherwise for the fair conduct of the action, that notice be given in the manner the court directs to some or all of the

members or to the enforcing authority of any step in the action, or of the proposed extent of the judgment, or of the opportunity of members to signify whether they consider the representation fair and adequate, to intervene and present claims or defenses, or otherwise to come into the action;

(c) imposing conditions on the representative parties or on intervenors;

(d) requiring that the pleadings be amended to eliminate allegations as to representation of absent persons, and that the action proceed accordingly; or

(e) dealing with similar procedural matters.

(7) A class action may not be dismissed or compromised without approval of the court. Notice of the proposed dismissal or compromise shall be given to all members of the class as the court directs.

(8) The judgment in an action maintained as a class action under Subsection (1)(e)(i) or (ii), whether or not favorable to the class, shall describe those whom the court finds to be members of the class. The judgment in a class action under Subsection (1)(e)(iii), whether or not favorable to the class, shall specify or describe those to whom the notice provided in Subsection (4) was directed, and who have requested inclusion, and whom the court finds to be members of the class.

Amended by Chapter 378, 2010 General Session

13-11-21 Settlement of class action -- Complaint in class action delivered to enforcing authority.

(1)

(a) A defendant in a class action may file a written offer of settlement. If it is not accepted within a reasonable time by a plaintiff class representative, the defendant may file an affidavit reciting the rejection. The court may determine that the offer has enough merit to present to the members of the class. If it so determines, it shall order a hearing to determine whether the offer should be approved. It shall give the best notice of the hearing that is practicable under the circumstances, including notice to each member who can be identified through reasonable effort. The notice shall specify the terms of the offer and a reasonable period within which members of the class who request it are entitled to be included in the class. The statute of limitations for those who are excluded pursuant to this Subsection (1) is tolled for the period the class action has been pending, plus an additional year.

(b) If a member who has previously lost an opportunity to be excluded from the class is excluded at his request in response to notice of the offer of settlement during the period specified under Subsection (1)(a), he may not thereafter participate in a class action for damages respecting the same consumer transaction, unless the court later disapproves the offer of settlement or approves a settlement materially different from that proposed in the original offer of settlement. After the expiration of the period of limitations, a member of the class is not entitled to be excluded from it.

(c) If the court later approves the offer of settlement, including changes, if any, required by the court in the interest of a just settlement of the action, it shall enter judgment, which is binding on all persons who are then members of the class. If the court disapproves the offer or approves a settlement materially different from that proposed in the original offer, notice shall be given to a person who was excluded from the action at his request in response to notice of the offer under Subsection (1)(a), and he is entitled to rejoin the class and, in the case of the approval, participate in the settlement.

(2) On the commencement of a class action under Section 13-11-19, the class representative shall mail by certified mail with return receipt requested or personally serve a copy of the complaint on the enforcing authority. Within 30 days after the receipt of a copy of the complaint, but not thereafter, the enforcing authority may intervene in the class action.

Amended by Chapter 324, 2010 General Session

13-11-22 Exemptions from application of act.

(1) This act does not apply to:
  (a) an act or practice required or specifically permitted by or under federal law, or by or under state law;
  (b) a publisher, broadcaster, printer, or other person engaged in the dissemination of information or the reproduction of printed or pictorial matter so far as the information or matter has been disseminated or reproduced on behalf of others without actual knowledge that it violated this act;
  (c) claim for personal injury or death or claim for damage to property other than the property that is the subject of the consumer transaction;
  (d) credit terms of a transaction otherwise subject to this act; or
  (e) any public utility subject to the regulating jurisdiction of the Public Service Commission of the state of Utah.
(2) A person alleged to have violated this act has the burden of showing the applicability of this section.

Enacted by Chapter 188, 1973 General Session

13-11-23 Other remedies available -- Class action only as prescribed by act.

The remedies of this act are in addition to remedies otherwise available for the same conduct under state or local law, except that a class action relating to a transaction governed by this act may be brought only as prescribed by this act.

Enacted by Chapter 188, 1973 General Session

Chapter 11a
Truth in Advertising

13-11a-1 Purpose.

The purpose of this chapter is to prevent deceptive, misleading, and false advertising practices and forms in Utah. This chapter is to be construed to accomplish that purpose and not to prohibit any particular form of advertising so long as it is truthful and not otherwise misleading or deceptive.

Enacted by Chapter 205, 1989 General Session

13-11a-2 Definitions.

As used in this chapter:
(1) "Advertisement" means any written, oral, or graphic statement or representation made by a supplier in connection with the solicitation of business. It includes, but is not limited to,

communication by noncable television systems, radio, printed brochures, newspapers, leaflets, flyers, circulars, billboards, banners, or signs. It does not include any oral, in person, representation made by a sales representative to a prospective purchaser.

(2) To "clearly and conspicuously disclose" means:

(a) in the print media:

(i) to state in typeface that is sufficiently bold to be obviously seen;

(ii) to state in type size of at least 10 point type for a 14" x 23" document, and, in larger documents, of a type size of proportionately the same size; and

(iii) to place in the text so as to be obviously seen;

(b) in radio advertising, to verbally state in the same volume as that used in the advertisement;

(c) in television advertising, the method for print media or radio advertising is acceptable unless contrary to other governing laws.

(3) "Generic good" means a product which is offered for sale under its common descriptive name rather than under a trademark, trade name, brand name, house brand, or other distinguishing appellation.

(4) "Goods and services" means all items which may be the subject of a sales transaction.

(5) "Nondiscounted price" means a price at which the goods or services are offered at the time of the price assessment without a temporary store reduction in price.

(6) "Performing group" means a vocal or instrumental group that performs live music for a paying audience.

(7) "Person" means an individual, including a consumer, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, unincorporated association, two or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity.

(8) "Price assessment" means the determination of the prices underlying a price comparison.

(9) "Price assessor" means a firm or individual that determines the prices, including the reference prices, underlying the price comparison, or who makes the price comparison.

(10) "Price comparison" means any express representation that a specific savings, reduction, or discount exists or will exist between the supplier's advertised price and another specific price. A representation which does not reasonably imply a comparison to identifiable prices or items does not express a price comparison. Language constituting mere sales "puffing" is not prohibited by this chapter.

(11) "Product area" means the geographical area in which the prospective purchasers to whom the advertisement is aimed could reasonably be expected to seek the goods or services in question.

(12) "Recording group" means a vocal or instrumental group at least one of the members of which has released a commercial sound recording under the group's name, if the member has a legal right to use of the group's name.

(13) "Reference price" means a higher price to which a supplier compares a lower price to indicate that a reduction in price exists or will exist.

(14) "Regular price" means the price at which a supplier has recently offered the goods or services for sale in good faith in the regular course of business. Every price represented in an advertisement is considered a regular price unless it is specifically represented as a price other than a regular price, such as a discount price or a manufacturer's suggested price. It is prima facie evidence that a price is other than a regular price when it was not offered as the nondiscount price of the goods or services for the 15 days immediately preceding an advertisement of the price, and the price change during the 15 day period was not due to price

changes inherent in the pricing of seasonal or perishable goods, due to changes in cost of the goods or services to the supplier, or due to pricing changes made to match a competitor's price.

(15) "Sales transaction" means a sale, lease, assignment, award by chance, or other written or oral transfer or disposition of goods, services, or other property, both tangible and intangible (except securities and insurance), to a person or business, or a solicitation or offer by a supplier with respect to any of these transfers or dispositions. It includes any offer or solicitation, any agreement, and any performance of an agreement with respect to any of these transfers or dispositions.

(16) "Sound recording" means a work resulting from the fixation on a material object, such as a disk, tape, or phono-record, of musical or instrumental sounds.

(17) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person who regularly solicits, engages in, or enforces sales transactions, whether or not he deals directly with the purchaser.

Amended by Chapter 133, 2009 General Session

13-11a-3 Deceptive trade practices enumerated -- Records to be kept -- Defenses.

(1) Deceptive trade practices occur when, in the course of a person's business, vocation, or occupation that person:

(a) passes off goods or services as those of another;

(b) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(c) causes likelihood of confusion or of misunderstanding as to affiliation, connection, association with, or certification by another;

(d) uses deceptive representations or designations of geographic origin in connection with goods or services;

(e) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or qualities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have;

(f) represents that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used, or second-hand;

(g) represents that goods or services are of a particular standard, quality, or grade, or that goods are of a particular style or model, if they are of another;

(h) disparages the goods, services, or business of another by false or misleading representation of fact;

(i) advertises goods or services or the price of goods and services with intent not to sell them as advertised;

(j) advertises goods or services with intent not to supply a reasonable expectable public demand, unless:

(i) the advertisement clearly and conspicuously discloses a limitation of quantity; or

(ii) the person issues rainchecks for the advertised goods or services;

(k) makes false or misleading statements of fact concerning the reasons for, existence of, or amounts of price reductions, including the false use of any of the following expressions in an advertisement:

(i) "going out of business";

(ii) "bankruptcy sale";

(iii) "lost our lease";

(iv) "building coming down";

(v) "forced out of business";
(vi) "final days";
(vii) "liquidation sale";
(viii) "fire sale";
(ix) "quitting business"; or
(x) an expression similar to any of the expressions in Subsections (1)(k)(i) through (ix);

(l) makes a comparison between the person's own sale or discount price and a competitor's nondiscounted price without clearly and conspicuously disclosing that fact;

(m) without clearly and conspicuously disclosing the date of the price assessment makes a price comparison with the goods of another based upon a price assessment performed more than seven days prior to the date of the advertisement or uses in an advertisement the results of a price assessment performed more than seven days prior to the date of the advertisement without disclosing, in a print ad, the date of the price assessment, or in a radio or television ad, the time frame of the price assessment;

(n) advertises or uses in a price assessment or comparison a price that is not that person's own unless this fact is:
(i) clearly and conspicuously disclosed; and
(ii) the representation of the price is accurate;

(o) represents as independent an audit, accounting, price assessment, or comparison of prices of goods or services, when the audit, accounting, price assessment, or comparison is not independent;

(p) represents, in an advertisement of a reduction from the supplier's own prices, that the reduction is from a regular price, when the former price is not a regular price as defined in Subsection 13-11a-2(14);

(q) advertises a price comparison or the result of a price assessment or comparison that uses, in any way, an identified competitor's price without clearly and conspicuously disclosing the identity of the price assessor and any relationship between the price assessor and the supplier;

(r) makes a price comparison between a category of the supplier's goods and the same category of the goods of another, without randomly selecting the individual goods or services upon whose prices the comparison is based;

(s) makes a comparison between similar but nonidentical goods or services unless the nonidentical goods or services are of essentially similar quality to the advertised goods or services or the dissimilar aspects are clearly and conspicuously disclosed in the advertisements; or

(t) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

(2)

(a) For purposes of Subsection (1)(i), if a specific advertised price will be in effect for less than one week from the advertisement date, the advertisement shall clearly and conspicuously disclose the specific time period during which the price will be in effect.

(b) For purposes of Subsection (1)(n), with respect to the price of a competitor, the price shall be one at which the competitor offered the goods or services for sale in the product area at the time of the price assessment, and may not be an isolated price.

(c) For purposes of Subsection (1)(o), an audit, accounting, price assessment, or comparison shall be independent if the price assessor randomly selects the goods to be compared, and the time and place of the comparison, and no agreement or understanding exists between the supplier and the price assessor that could cause the results of the assessment to be

fraudulent or deceptive. The independence of an audit, accounting, or price comparison is not invalidated merely because the advertiser pays a fee for the audit, accounting, or price comparison, but is invalidated if the audit, accounting, or price comparison is done by a full or part-time employee of the advertiser.

(d) Examples of a disclosure that complies with Subsection (1)(q) are:
(i) "Price assessment performed by Store Z";
(ii) "Price assessment performed by a certified public accounting firm"; or
(iii) "Price assessment performed by employee of Store Y".

(e) For the purposes of Subsection (1)(r), goods or services are randomly selected when the supplier has no advance knowledge of what goods and services will be surveyed by the price assessor, and when the supplier certifies its lack of advance knowledge by an affidavit to be retained in the supplier's records for one year.

(f)
(i) It is prima facie evidence of compliance with Subsection (1)(s) if:
(A) the goods compared are substantially the same size; and
(B) the goods compared are of substantially the same quality, which may include similar models of competing brands of goods, or goods made of substantially the same materials and made with substantially the same workmanship.
(ii) It is prima facie evidence of a deceptive comparison under this section when the prices of brand name goods and generic goods are compared.

(3) Any supplier who makes a comparison with a competitor's price in advertising shall maintain for a period of one year records that disclose the factual basis for such price comparisons and from which the validity of such claim can be established.

(4) It is a defense to any claim of false or deceptive price representations under this chapter that a person:
(a) has no knowledge that the represented price is not genuine; and
(b) has made reasonable efforts to determine whether the represented price is genuine.

(5) Subsections (1)(m) and (q) do not apply to price comparisons made in catalogs in which a supplier compares the price of a single item of its goods or services with those of another.

(6) To prevail in an action under this chapter, a complainant need not prove competition between the parties or actual confusion or misunderstanding.

(7) This chapter does not affect unfair trade practices otherwise actionable at common law or under other statutes of this state.

Amended by Chapter 54, 2010 General Session
Amended by Chapter 378, 2010 General Session

13-11a-4 Jurisdiction of district courts -- Injunctive relief -- Damages -- Attorneys' fees -- Corrective advertising -- Notification required.

(1) The district courts of this state have jurisdiction over any supplier as to any act or practice in this state governed by this chapter or as to any claim arising from a deceptive trade practice as defined in this chapter.

(2)
(a) Any person or the state may maintain an action to enjoin a continuance of any act in violation of this chapter and, if injured by the act, for the recovery of damages. If, in such action, the court finds that the defendant is violating or has violated any of the provisions of this chapter, it shall enjoin the defendant from continuance of the violation. It is not necessary that actual damages be proven.

(b) In addition to injunctive relief, the plaintiff is entitled to recover from the defendant the amount of actual damages sustained or $2,000, whichever is greater.
(c) Costs shall be allowed to the prevailing party unless the court otherwise directs. The court shall award attorneys' fees to the prevailing party.
(3) The court may order the defendant to promulgate corrective advertising by the same media and with the same distribution and frequency as the advertising found to violate this chapter.
(4) The remedies of this section are in addition to remedies otherwise available for the same conduct under state or local law.
(5) No action for injunctive relief may be brought for a violation of this chapter unless the complaining person first gives notice of the alleged violation to the prospective defendant and provides the prospective defendant an opportunity to promulgate a correction notice by the same media as the allegedly violating advertisement. If the prospective defendant does not promulgate a correction notice within 10 days of receipt of the notice, the complaining person may file a lawsuit under this chapter.

Enacted by Chapter 205, 1989 General Session

13-11a-5 Exemptions.

This chapter does not apply to:
(1) conduct in compliance with the orders or rules of, or a statute administered by, a federal, state, or local governmental agency;
(2) publishers, broadcasters, printers, or other persons engaged in the dissemination of information or reproduction of printed or pictorial matters who publish, broadcast, or reproduce material without knowledge of its deceptive character; or
(3) actions or appeals pending on the effective date of this chapter.

Enacted by Chapter 205, 1989 General Session

13-11a-6 Truth in music advertising -- Exemptions -- Penalties.

(1) A person may not advertise or conduct a live musical performance by a performing group by using a false, deceptive, or otherwise misleading affiliation between a performing group and a recording group of the same name.
(2) This section does not apply to:
(a) a performing group that is the registrant and owner of a registered federal service mark for the group name;
(b) a performance by a performing group that is clearly identified in all advertising and promotional materials as a salute or tribute;
(c) a performing group at least one member of which was a member of the recording group and has a legal right to use of the group name;
(d) the advertising does not relate to a live musical performance occurring in this state; or
(e) a performance authorized in writing by the recording group.
(3)
(a) This section may be enforced by bringing an action in the district court for any county in which the live musical performance is advertised or conducted.
(b) A party injured by a violation of this section may obtain an injunction and recover actual damages.
(c) The prevailing party in an action under Subsection (3)(a) may be awarded costs and attorney fees.

Enacted by Chapter 133, 2009 General Session

Chapter 12
Gasoline Products Marketing Act

13-12-1 Citation.

This act shall be known and may be cited as the "Gasoline Products Marketing Act."

Enacted by Chapter 6, 1975 Special Session 1
Enacted by Chapter 6, 1975 Special Session 1

13-12-2 Definitions.

As used in this act:

(1) "Distributor" means any person engaged in the refining of gasoline or motor fuels, who is engaged in the sale, consignment, or distribution of gasoline and oil products through retail outlets which it owns, leases, or otherwise controls, and who maintains an oral or written contractual relationship with a dealer for the sale of the products.

(2) "Dealer" means any person engaged in the retail sale of gasoline products under a marketing agreement entered into with a distributor, other than a person who is an employee of a distributor.

(3) "Refiner" means a person engaged in the refining of oil products.

(4) "Marketing agreement" means any agreement or contract between a refiner or a distributor or a distributor and or retailer or between a refiner and a distributor, under which such retailer or distributor is granted authority to use a trade mark, trade name, service mark, or other identifying symbol or name owned by such refiner or distributor, or any agreement or contract between such parties under which a retailer or distributor is granted authority to occupy premises owned, leased, or in any way controlled by a party to such agreement or contract, for the purpose of engaging in the distribution or sale of petroleum products for purposes other than resale.

(5) "Engaged in the retail sale of gasoline products" means that at least 30% of the dealer's gross revenue is derived from the retail sale of gasoline products.

(6) "Retail" means the sale of products for purposes other than resale.

Enacted by Chapter 6, 1975 Special Session 1
Enacted by Chapter 6, 1975 Special Session 1

13-12-3 Refiners or distributors -- Unlawful practices -- Marketing agreements with dealers.

No refiner or distributor, directly or indirectly or through any office, agent, or employee, shall engage in any of the following practices:

(1) requiring a dealer, at the time of entering into a marketing agreement, to agree to a release, assignment, novation, waiver or estoppel which would relieve any person from any provision of this act;

(2) prohibiting, directly or indirectly, the right of free association among dealers for any lawful purpose;

(3) requiring a dealer to keep his retail outlet open for business for any specified number of hours per day, or days per week, unless those requirements are set forth in writing at the time of entering into the marketing agreement;
(4) fixing or maintaining the price at which the dealer must sell products, or attempting to fix or maintain those prices, through any form of coercion whatsoever; provided, that nothing herein shall be construed to prohibit a distributor or refiner from suggesting prices or counseling with dealers concerning those prices;
(5) requiring a dealer to use or utilize any promotion, premium, coupon, give-away, sales promotion or rebate in the operation of the business; provided that nothing herein shall be construed to prohibit a dealer from participating financially in a promotion, premium, coupon, give-away, sales promotion or rebate sponsored by the distributor or refiner if agreed to voluntarily by the parties;
(6) terminating, canceling or failing to renew any marketing agreement without having first given written notice setting forth all the reasons for such termination, cancellation, or intent not to renew the dealer at least 90 days in advance of such termination, cancellation, or failure to renew, except:
(a) where the alleged grounds are voluntary abandonment by the dealer of the marketing agreement relationship in which event the aforementioned written notice shall be given five business days in advance of such termination, cancellation, or failure to renew; and
(b) where the alleged grounds are caused by the conviction of the dealer or distributor in a court of competent jurisdiction of a criminal offense directly related to the business conducted pursuant to the marketing agreement, or the bankruptcy of the dealer or distributor, in which event the aforementioned termination, cancellation, or failure to renew may be effective immediately following such conviction or bankruptcy;
(c) where the alleged grounds are:
(i) failure of the dealer to substantially comply with the requirements of the marketing agreement;
(ii) action of the dealer fraudulently advising members of the motoring public of the necessity for unneeded automotive repairs, parts or accessories;
(iii) action of the dealer fraudulently representing either expressly or impliedly the trade mark or brand of product being sold by the dealer;
(iv) failure of the dealer to maintain the premises in a sufficiently clean and healthful manner to avoid constituting a nuisance to members of the motoring public or adjoining property owners as determined by the local board of health authority;
in which event the distributor shall provide the dealer with written notice of his intent to terminate, cancel or fail to renew, following which the dealer shall be allowed 10 days in which to comply, correct or respond to said allegations before further action can be taken by the distributor.

Amended by Chapter 378, 2010 General Session

13-12-4 Cancellation provisions -- Dealer or distributor -- Time limit to exercise.
(1) Every dealer or distributor shall have the right, which may not be waived, to cancel his marketing agreement until midnight of the seventh business day after the day on which the buyer signs the marketing agreement or, if that agreement is oral, after the day on which the buyer agrees thereto.

(2) Notice of cancellation shall be deemed to have been given when it is addressed to the distributor's or refiner's last known address, postage prepaid, and certified with a return receipt requested.
(3) Unless within 10 days after delivery of that notice of cancellation the dealer returns to the distributor or refiner any money, equipment or merchandise loaned, sold or delivered to the dealer and delivers up full possession of the business location to the distributor or refiner, that notice of cancellation shall be null and void ab initio.
(4)
(a) Except as provided in this subsection, within 10 days after notice of cancellation is delivered to him, the distributor or refiner shall tender to the buyer any payments made by the buyer and any note or other evidence of indebtedness.
(b) If the down payment includes goods traded in, the goods shall be tendered in substantially as good condition as when received by the distributor or refiner. If the distributor or refiner fails to tender the goods as provided by this subsection, the dealer may elect to recover an amount equal to the allowance established by their agreement.
(c) Notwithstanding the provisions of Subsection (3) until the distributor or refiner has complied with the obligations imposed by this subsection, the dealer may retain possession of goods delivered to him by the distributor or refiner and has a lien on the goods in his possession or control for any recovery to which he is entitled.

Amended by Chapter 378, 2010 General Session

13-12-5 Death of dealer or lessee -- Distributor to cooperate with heirs -- Offer to purchase -- Reasonable access to premises.

Upon the death of a dealer or lessee who operates under a marketing agreement, the distributor shall cooperate with the heirs or successors. Such cooperation shall include, but not be limited to, an offer to repurchase salable merchandise and equipment owned by the dealer at the fair market value not to exceed original invoice price and to permit the heirs or successors reasonable access to the premises for a reasonable period of time.

Enacted by Chapter 6, 1975 Special Session 1
Enacted by Chapter 6, 1975 Special Session 1

13-12-6 Distributor electing not to continue doing business in state -- Repurchase merchandise.

If a distributor elects to discontinue doing business in the state of Utah during the term of a marketing agreement with the dealer, the distributor shall repurchase merchandise in salable condition at a fair wholesale market value not to exceed original invoice price which the dealer has purchased from the distributor.

Enacted by Chapter 6, 1975 Special Session 1
Enacted by Chapter 6, 1975 Special Session 1

13-12-7 District court's jurisdiction over violations -- Equitable relief -- Attorney's fees and costs -- Action for failure to renew -- Damages limited.

The district courts for the district wherein the dealer resides or wherein the dealership was to be established shall have jurisdiction over any action involving a violation of this act. In addition to such relief as may be available at common law, the courts may grant such equitable relief, both

interim and final, as may be necessary to remedy those violations including declaratory judgments, injunctive relief, and punitive damages as well as actual damages. The prevailing party may, in the court's sole discretion, be awarded attorney's fees and expert witness fees in addition to such other relief as the court may deem equitable. In any action for failure to renew an agreement, damages shall be limited to actual damages, including the value of the dealer's equity in the dealership, together with reasonable attorney's fees and costs.

Amended by Chapter 378, 2010 General Session

13-12-8 Marketing agreements applicable after effective date.

This act shall apply to all marketing agreements made, renewed, or amended after the effective date of this act.

Enacted by Chapter 6, 1975 Special Session 1
Enacted by Chapter 6, 1975 Special Session 1

Chapter 13
Motion Picture Fair Licensing Act

13-13-1 Title.

This chapter is known as the "Motion Picture Fair Licensing Act."

Amended by Chapter 291, 2015 General Session

13-13-2 Definitions.

As used in this chapter:

(1) "Distributor" means any person engaged in the business of renting, selling or licensing motion pictures to exhibitors.
(2) "Exhibitor" means any person engaged in the business of operating a theatre in this state.
(3) "License agreement" means any contract between a distributor and an exhibitor for the exhibition of a motion picture by the exhibitor in this state.
(4) "Theatre" means any establishment in which motion pictures are exhibited regularly to the public for a charge.

Amended by Chapter 291, 2015 General Session

13-13-4 Payment of percentage of receipts.

If an exhibitor is required by a license agreement to make any payment to the distributor that is based on a percentage of the theatre box office receipts the license agreement may not require a guarantee of a minimum payment to the distributor or require the exhibitor to charge any per capita amount for ticket sales.

Amended by Chapter 378, 2010 General Session

13-13-6 Provisions waiving or violating act void.

Any provision of a license agreement that fails to comply with this act is void and unenforceable.

Amended by Chapter 291, 2015 General Session

13-13-7 Violation an infraction.

It is unlawful for any person to willfully violate any provision of this chapter. A violation of this chapter is an infraction.

Amended by Chapter 433, 2018 General Session

Chapter 14
New Automobile Franchise Act

Part 1
General Administration

13-14-101 Title -- Legislative purpose.

(1) This chapter shall be cited as the "New Automobile Franchise Act."

(2) The Legislature finds that:

(a) The distribution and sales of new motor vehicles through franchise arrangements in the state vitally affects the general economy of the state, the public interest, and the public welfare. A substantial inequality of bargaining power between motor vehicle franchisors and motor vehicle franchisees enables a franchisor:

(i) to compel a franchisee to execute agreements that contain terms and conditions that a franchisee generally would not be agreed to absent the compulsion and duress that arise out of the inequality of bargaining power; and

(ii) in some cases to terminate a franchise without good cause, or to force a franchisee out of business by the use of unfair practices.

(b) Termination of franchises, without good cause or by unfair means:

(i) diminishes competition and, as a result, leads to higher retail prices and fewer purchase options;

(ii) adversely affects communities that depend on a franchisee to make available motor vehicles for sale or lease and to provide warranty work and other services related to vehicles; and

(iii) undercuts expectations of consumers concerning the availability of future services including warranty work from the franchisee.

(c) To promote the public welfare and in the exercise of the state's police powers, it is necessary to establish statutory guidelines regulating the relationship between franchisors and franchisees in the motor vehicle industry.

Enacted by Chapter 277, 1996 General Session

13-14-102 Definitions.

As used in this chapter:

(1) "Advisory board" or "board" means the Utah Motor Vehicle Franchise Advisory Board created in Section 13-14-103.

(2) "Affected municipality" means an incorporated city or town:

(a) that is located in the notice area; and

(b)
(i) within which a franchisor is proposing a new or relocated dealership that is within the relevant market area of an existing dealership of the same line-make owned by another franchisee; or
(ii) within which an existing dealership is located and a franchisor is proposing a new or relocated dealership within the relevant market area of that existing dealership of the same line-make.
(3) "Affiliate" has the meaning set forth in Section 16-10a-102.
(4) "Aftermarket product" means any product or service not included in the franchisor's suggested retail price of the new motor vehicle, as that price appears on the label required by 15 U.S.C. Sec. 1232(f).
(5) "Dealership" means a site or location in this state:
(a) at which a franchisee conducts the business of a new motor vehicle dealer; and
(b) that is identified as a new motor vehicle dealer's principal place of business for licensing purposes under Section 41-3-204.
(6) "Department" means the Department of Commerce.
(7) "Do-not-drive order" means an order issued by a franchisor that instructs an individual not to operate a motor vehicle of the franchisor's line-make due to a recall.
(8) "Executive director" means the executive director of the Department of Commerce.
(9)
(a) "Franchise" or "franchise agreement" means a written agreement, or in the absence of a written agreement, then a course of dealing or a practice for a definite or indefinite period, in which:
(i) a person grants to another person a license to use a trade name, trademark, service mark, or related characteristic; and
(ii) a community of interest exists in the marketing of new motor vehicles, new motor vehicle parts, and services related to the sale or lease of new motor vehicles at wholesale or retail.
(b) "Franchise" or "franchise agreement" includes a sales and service agreement.
(10) "Franchisee" means a person with whom a franchisor has agreed or permitted, in writing or in practice, to purchase, sell, or offer for sale new motor vehicles manufactured, produced, represented, or distributed by the franchisor.
(11) "Franchisor" means a person who has, in writing or in practice, agreed with or permits a franchisee to purchase, sell, or offer for sale new motor vehicles manufactured, produced, assembled, represented, or distributed by the franchisor, and includes:
(a) the manufacturer, producer, assembler, or distributor of the new motor vehicles;
(b) an intermediate distributor; and
(c) an agent, officer, or field or area representative of the franchisor.
(12) "Lead" means the referral by a franchisor to a franchisee of a potential customer whose contact information was obtained from a franchisor's program, process, or system designed to generate referrals for the purchase or lease of a new motor vehicle, or for service work related to the franchisor's vehicles.
(13) "Line-make" means:
(a) for other than a recreational vehicle, the motor vehicles that are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the franchisor; or
(b) for a recreational vehicle, a specific series of recreational vehicle product that:
(i) is identified by a common series trade name or trademark;

(ii) is targeted to a particular market segment, as determined by decor, features, equipment, size, weight, and price range;
(iii) has a length and floor plan that distinguish the recreational vehicle from other recreational vehicles with substantially the same decor, features, equipment, size, weight, and price;
(iv) belongs to a single, distinct classification of recreational vehicle product type having a substantial degree of commonality in the construction of the chassis, frame, and body; and
(v) a franchise agreement authorizes a dealer to sell.

(14) "Mile" means 5,280 feet.

(15) "Motor home" means a self-propelled vehicle, primarily designed as a temporary dwelling for travel, recreational, or vacation use.

(16)
(a) "Motor vehicle" means:
(i) except as provided in Subsection (16)(b), a trailer;
(ii) a travel trailer;
(iii) except as provided in Subsection (16)(b), a motor vehicle as defined in Section 41-3-102;
(iv) a semitrailer as defined in Section 41-1a-102; and
(v) a recreational vehicle.
(b) "Motor vehicle" does not include:
(i) a motorcycle as defined in Section 41-1a-102;
(ii) an off-highway vehicle as defined in Section 41-3-102;
(iii) a small trailer;
(iv) a trailer that:
(A) is not designed for human habitation; and
(B) has a gross vehicle weight rating of less than 26,000 pounds;
(v) a mobile home as defined in Section 41-1a-102;
(vi) a trailer of 750 pounds or less unladen weight; and
(vii) a farm tractor or other machine or tool used in the production, harvesting, or care of a farm product.

(17) "New motor vehicle" means a motor vehicle that:
(a) has never been titled or registered; and
(b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven less than 7,500 miles.

(18) "New motor vehicle dealer" is a person who is licensed under Subsection 41-3-202(1) to sell new motor vehicles.

(19) "Notice" or "notify" includes both traditional written communications and all reliable forms of electronic communication unless expressly prohibited by statute or rule.

(20) "Notice area" means the geographic area that is:
(a) within a radius of at least six miles and no more than 10 miles from the site of an existing dealership; and
(b) located within a county with a population of at least 225,000.

(21) "Primary market area" means:
(a) for an existing dealership, the geographic area established by the franchisor that the existing dealership is intended to serve; or
(b) for a new or relocated dealership, the geographic area proposed by the franchisor that the new or relocated dealership is intended to serve.

(22) "Recall" means a determination by a franchisor or the National Highway Traffic Safety Administration that a motor vehicle has a safety-related defect or fails to meet a federal safety or emissions standard.

(23) "Recall repair" means any diagnostic work, labor, or part necessary to resolve an issue that is the basis of a recall.

(24)

(a) "Recreational vehicle" means a vehicular unit other than a mobile home, primarily designed as a temporary dwelling for travel, recreational, or vacation use, that is either self-propelled or pulled by another vehicle.

(b) "Recreational vehicle" includes:

(i) a travel trailer;

(ii) a camping trailer;

(iii) a motor home;

(iv) a fifth wheel trailer; and

(v) a van.

(25)

(a) "Relevant market area," except with respect to recreational vehicles, means:

(i) as applied to an existing dealership that is located in a county with a population of less than 225,000:

(A) the county in which the existing dealership is located; and

(B) the area within a 15-mile radius of the existing dealership; or

(ii) as applied to an existing dealership that is located in a county with a population of 225,000 or more, the area within a 10-mile radius of the existing dealership.

(b) "Relevant market area," with respect to recreational vehicles, means:

(i) the county in which the dealership is to be established or relocated; and

(ii) the area within a 35-mile radius from the site of the existing dealership.

(26) "Sale, transfer, or assignment" means any disposition of a franchise or an interest in a franchise, with or without consideration, including a bequest, inheritance, gift, exchange, lease, or license.

(27) "Serve" or "served," unless expressly indicated otherwise by statute or rule, includes any reliable form of communication.

(28) "Site-control agreement" means an agreement, however denominated and regardless of the agreement's form or of the parties to the agreement, that has the effect of:

(a) controlling in any way the use and development of the premises upon which a franchisee's business operations are located;

(b) requiring a franchisee to establish or maintain an exclusive dealership facility on the premises upon which the franchisee's business operations are located; or

(c) restricting the ability of the franchisee or, if the franchisee leases the dealership premises, the franchisee's lessor to transfer, sell, lease, develop, redevelop, or change the use of some or all of the dealership premises, whether by sublease, lease, collateral pledge of lease, right of first refusal to purchase or lease, option to purchase or lease, or any similar arrangement.

(29) "Small trailer" means the same as that term is defined in Section 41-3-102.

(30) "Stop-sale order" means an order issued by a franchisor that prohibits a franchisee from selling or leasing a certain used motor vehicle of the franchisor's line-make, which then or thereafter is in the franchisee's inventory, due to a recall.

(31) "Trailer" means the same as that term is defined in Section 41-3-102.

(32) "Travel trailer," "camping trailer," or "fifth wheel trailer" means a portable vehicle without motive power, designed as a temporary dwelling for travel, recreational, or vacation use that does not require a special highway movement permit when drawn by a self-propelled motor vehicle.

(33) "Used motor vehicle" means a motor vehicle that:

(a) has been titled and registered to a purchaser other than a franchisee; or
(b) for a motor vehicle that is not a trailer, travel trailer, or semitrailer, has been driven 7,500 or more miles.
(34) "Value of a used motor vehicle" means the average trade-in value for a used motor vehicle of the same year, make, and model as reported in a recognized, independent third-party used motor vehicle guide.
(35) "Written," "write," "in writing," or other variations of those terms shall include all reliable forms of electronic communication.

Amended by Chapter 367, 2020 General Session

13-14-103 Utah Motor Vehicle Franchise Advisory Board -- Creation -- Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.
(1) There is created within the department the Utah Motor Vehicle Franchise Advisory Board that consists of:
(a) the executive director or the executive director's designee; and
(b) 11 members appointed by the executive director, with the concurrence of the governor as follows:
(i) one recreational motor vehicle franchisee;
(ii) three new motor vehicle franchisees from different congressional districts in the state;
(iii) three members representing motor vehicle franchisors registered by the department pursuant to Section 13-14-105;
(iv) three members of the general public, none of whom shall be related to any franchisee; and
(v) one representative of the Utah League of Cities and Towns.
(2)
(a) The executive director shall appoint, with the concurrence of the governor, five alternate members, with one alternate from each of the designations described in Subsections (1)(b)(i) through (v), except that the new motor vehicle franchisee alternate for the designation under Subsection (1)(b)(ii) may be from any congressional district.
(b) An alternate shall take the place of a regular advisory board member from the same designation at a meeting of the advisory board where that regular advisory board member is absent or otherwise disqualified from participating in the advisory board meeting.
(3)
(a)
(i) Members of the advisory board appointed under Subsections (1)(b) and (2) are appointed for a term of four years.
(ii) No specific term applies to the executive director or the executive director's designee.
(b) The executive director may adjust the term of members who were appointed to the advisory board prior to July 1, 2001, by extending the unexpired term of a member for up to two additional years in order to insure that approximately half of the members are appointed every two years.
(c) In the event of a vacancy on the advisory board of a member appointed under Subsection (1)(b) or (2), the executive director with the concurrence of the governor, shall appoint an individual to complete the unexpired term of the member whose office is vacant.
(d) A member may not be appointed to more than two consecutive terms.
(4)
(a) The executive director or the executive director's designee is the chair of the advisory board.

(b) The department shall keep a record of all hearings, proceedings, transactions, communications, and recommendations of the advisory board.

(5)

(a) Four or more members of the advisory board constitute a quorum for the transaction of business.

(b) The action of a majority of a quorum present is considered the action of the advisory board.

(6)

(a) A member of the advisory board may not participate as a board member in a proceeding or hearing:

(i) involving the member's licensed business or employer; or

(ii) when a member, a member's business or family, or employer has a pecuniary interest in the outcome or other conflict of interest concerning an issue before the advisory board.

(b) If a member of the advisory board is disqualified under Subsection (6)(a), the executive director shall select the appropriate alternate member to act on the issue before the advisory board as provided in Subsection (2).

(7) Except for the executive director or the executive director's designee, an individual may not be appointed or serve on the advisory board while holding any other elective or appointive state or federal office.

(8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(9) The department shall provide necessary staff support to the advisory board.

Amended by Chapter 268, 2015 General Session

13-14-104 Powers and duties of the advisory board and the executive director.

(1)

(a) Except as provided in Subsection 13-14-106(3), the advisory board shall make recommendations to the executive director on the administration and enforcement of this chapter, including adjudicative and rulemaking proceedings.

(b) The executive director shall:

(i) consider the advisory board's recommendations; and

(ii) issue any rules or final decisions by the department.

(2) The executive director, in consultation with the advisory board, shall make rules for the administration of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3)

(a) An adjudicative proceeding under this chapter shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(b) In an adjudicative proceeding under this chapter, any order issued by the executive director:

(i) shall comply with Section 63G-4-208, whether the proceeding is a formal or an informal adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act; and

(ii) if the order modifies or rejects a finding of fact in a recommendation from the advisory board, shall be made on the basis of information learned from the executive director's:

(A) personal attendance at the hearing; or

(B) review of the record developed at the hearing.

(4) The executive director's decision under this section shall be made available to the public.

Amended by Chapter 268, 2015 General Session

13-14-105 Registration -- Fees.

(1) A franchisee or franchisor doing business in this state shall:
  (a) annually register or renew its registration with the department in a manner established by the department; and
  (b) pay an annual registration fee in an amount determined by the department in accordance with Sections 13-1-2 and 63J-1-504.
(2) The department shall register or renew the registration of a franchisee or franchisor if the franchisee or franchisor complies with this chapter and rules made by the department under this chapter.
(3) A franchisee or franchisor registered under this section shall comply with this chapter and any rules made by the department under this chapter including any amendments to this chapter or the rules made after a franchisee or franchisor enter into a franchise agreement.
(4) The fee imposed under Subsection (1)(b) shall be collected by the department and deposited into the Commerce Service Account created by Section 13-1-2.
(5) Notwithstanding Subsection (1), an agent, officer, or field or area representative of a franchisor does not need to be registered under this section if the franchisor is registered under this section.

Amended by Chapter 278, 2010 General Session

13-14-106 Administrative proceedings commenced by the agency.

(1) Except as provided in Subsection (3), after a hearing and after receipt of the advisory board's recommendation, if the executive director finds that a person has violated this chapter or any rule made under this chapter, the executive director may:
  (a) issue a cease and desist order; and
  (b) assess an administrative fine.
(2)
  (a) In determining the amount and appropriateness of an administrative fine under Subsection (1), the executive director shall consider:
    (i) the gravity of the violation;
    (ii) any history of previous violations; and
    (iii) any attempt made by the person to retaliate against another person for seeking relief under this chapter or other federal or state law relating to the motor vehicle industry.
  (b) In addition to any other action permitted under Subsection (1), the department may file an action with a court seeking to enforce the executive director's order and pursue the executive director's assessment of a fine in an amount not to exceed $5,000 for each day a person violates an order of the executive director.
(3)
  (a) In addition to the grounds for issuing an order on an emergency basis listed in Subsection 63G-4-502(1), the executive director may issue an order on an emergency basis if the executive director determines that irreparable damage is likely to occur if immediate action is not taken.
  (b) In issuing an emergency order under Subsection (3)(a) the executive director shall comply with the requirements of Subsections 63G-4-502(2) and (3).

Amended by Chapter 382, 2008 General Session

13-14-107 Administrative proceedings -- Request for agency action.

(1)

(a) A person may commence an adjudicative proceeding in accordance with this chapter and Title 63G, Chapter 4, Administrative Procedures Act to:

(i) remedy a violation of this chapter;

(ii) obtain approval of an act regulated by this chapter; or

(iii) obtain any determination that this chapter specifically authorizes that person to request.

(b) A person shall commence an adjudicative proceeding by filing a request for agency action in accordance with Section 63G-4-201.

(2) After receipt of the advisory board's recommendation, the executive director shall apportion in a fair and equitable manner between the parties any costs of the adjudicative proceeding, including reasonable attorney fees.

Amended by Chapter 382, 2008 General Session

13-14-108 Applicability.

The provisions of this chapter do not apply to a person licensed as a direct-sale manufacturer under Title 41, Chapter 3, Motor Vehicle Business Regulation Act.

Enacted by Chapter 387, 2018 General Session

Part 2
Franchises in General

13-14-201 Prohibited acts by franchisors -- Affiliates -- Disclosures.

(1) A franchisor may not in this state:

(a) except as provided in Subsection (3), require a franchisee to order or accept delivery of any new motor vehicle, part, accessory, equipment, or other item not otherwise required by law that is not voluntarily ordered by the franchisee;

(b) require a franchisee to:

(i) participate monetarily in any advertising campaign; or

(ii) contest, or purchase any promotional materials, display devices, or display decorations or materials;

(c) require a franchisee to change the capital structure of the franchisee's dealership or the means by or through which the franchisee finances the operation of the franchisee's dealership, if the dealership at all times meets reasonable capital standards determined by and applied in a nondiscriminatory manner by the franchisor;

(d) require a franchisee to refrain from participating in the management of, investment in, or acquisition of any other line of new motor vehicles or related products, if the franchisee:

(i) maintains a reasonable line of credit for each make or line of vehicles; and

(ii) complies with reasonable capital and facilities requirements of the franchisor;

(e) require a franchisee to prospectively agree to a release, assignment, novation, waiver, or estoppel that would:

(i) relieve a franchisor from any liability, including notice and hearing rights imposed on the franchisor by this chapter; or

(ii) require any controversy between the franchisee and a franchisor to be referred to a third party if the decision by the third party would be binding;

(f) require a franchisee to change the location of the principal place of business of the franchisee's dealership or make any substantial alterations to the dealership premises, if the change or alterations would be unreasonable or cause the franchisee to lose control of the premises or impose any other unreasonable requirement related to the facilities or premises;

(g) coerce or attempt to coerce a franchisee to join, contribute to, or affiliate with an advertising association;

(h) require, coerce, or attempt to coerce a franchisee to enter into an agreement with the franchisor or do any other act that is unfair or prejudicial to the franchisee, by threatening to cancel a franchise agreement or other contractual agreement or understanding existing between the franchisor and franchisee;

(i) adopt, change, establish, enforce, modify, or implement a plan or system for the allocation, scheduling, or delivery of new motor vehicles, parts, or accessories to the franchisor's franchisees so that the plan or system is not fair, reasonable, and equitable, including a plan or system that imposes a vehicle sales objective, goal, or quota on a franchisee, or that evaluates a franchisee's sales effectiveness or overall sales performance, without providing a reasonable opportunity for the franchisee to acquire the necessary vehicles in a timely manner from the franchisor on commercially reasonable terms;

(j) increase the price of any new motor vehicle that the franchisee has ordered from the franchisor and for which there exists at the time of the order a bona fide sale to a retail purchaser if the order was made prior to the franchisee's receipt of an official written price increase notification;

(k) fail to indemnify and hold harmless the franchisor's franchisee against any judgment for damages or settlement approved in writing by the franchisor:

(i) including court costs and attorney fees arising out of actions, claims, or proceedings including those based on:

(A) strict liability;

(B) negligence;

(C) misrepresentation;

(D) express or implied warranty;

(E) revocation as described in Section 70A-2-608; or

(F) rejection as described in Section 70A-2-602; and

(ii) to the extent the judgment or settlement relates to alleged defective or negligent actions by the franchisor;

(l) threaten or coerce a franchisee to waive or forbear the franchisee's right to protest the establishment or relocation of a same line-make franchisee in the relevant market area of the affected franchisee;

(m) fail to ship monthly to a franchisee, if ordered by the franchisee, the number of new motor vehicles of each make, series, and model needed by the franchisee to achieve a percentage of total new vehicle sales of each make, series, and model equitably related to the total new vehicle production or importation being achieved nationally at the time of the order by each make, series, and model covered under the franchise agreement;

(n) require or otherwise coerce a franchisee to under-utilize the franchisee's existing dealer facility or facilities, including by:

(i) requiring or otherwise coercing a franchisee to exclude or remove from the franchisee's facility operations the selling or servicing of a line-make of vehicles for which the franchisee has a franchise agreement to utilize the facilities; or

(ii) prohibiting the franchisee from locating, relocating, or occupying a franchise or line-make in an existing facility owned or occupied by the franchisee that includes the selling or servicing of another franchise or line-make at the facility provided that the franchisee gives the franchisor written notice of the franchise co-location;

(o) fail to include in any franchise agreement or other agreement governing a franchisee's ownership of a dealership or a franchisee's conduct of business under a franchise the following language or language to the effect that: "If any provision in this agreement contravenes the laws or regulations of any state or other jurisdiction where this agreement is to be performed, or provided for by such laws or regulations, the provision is considered to be modified to conform to such laws or regulations, and all other terms and provisions shall remain in full force.";

(p) engage in the distribution, sale, offer for sale, or lease of a new motor vehicle to purchasers who acquire the vehicle in this state except through a franchisee with whom the franchisor has established a written franchise agreement, if the franchisor's trade name, trademark, service mark, or related characteristic is an integral element in the distribution, sale, offer for sale, or lease;

(q) engage in the distribution or sale of a recreational vehicle that is manufactured, rented, sold, or offered for sale in this state without being constructed in accordance with the standards set by the American National Standards Institute for recreational vehicles and evidenced by a seal or plate attached to the vehicle;

(r) except as provided in Subsection (2), authorize or permit a person to perform warranty service repairs on motor vehicles, except warranty service repairs:

(i) by a franchisee with whom the franchisor has entered into a franchise agreement for the sale and service of the franchisor's motor vehicles; or

(ii) on owned motor vehicles by a person or government entity who has purchased new motor vehicles pursuant to a franchisor's fleet discount program;

(s) fail to provide a franchisee with a written franchise agreement;

(t)

(i) except as provided in Subsection (1)(t)(ii) and notwithstanding any other provisions of this chapter:

(A) unreasonably fail or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make;

(B) unreasonably require a dealer to:

(I) pay any extra fee, remodel, renovate, recondition the dealer's existing facilities; or

(II) purchase unreasonable advertising displays or other materials as a prerequisite to receiving a model or series of vehicles;

(ii) notwithstanding Subsection (1)(t)(i), a recreational vehicle franchisor may split a line-make between motor home and travel trailer products;

(u) except as provided in Subsection (6), directly or indirectly:

(i) own an interest in a new motor vehicle dealer or dealership;

(ii) operate or control a new motor vehicle dealer or dealership;

(iii) act in the capacity of a new motor vehicle dealer, as defined in Section 13-14-102; or

(iv) operate a motor vehicle service facility;

(v) fail to timely pay for all reimbursements to a franchisee for incentives and other payments made by the franchisor;

(w) directly or indirectly influence or direct potential customers to franchisees in an inequitable manner, including:
(i) charging a franchisee a fee for a referral regarding a potential sale or lease of any of the franchisee's products or services in an amount exceeding the actual cost of the referral;
(ii) giving a customer referral to a franchisee on the condition that the franchisee agree to sell the vehicle at a price fixed by the franchisor; or
(iii) advising a potential customer as to the amount that the potential customer should pay for a particular product;
(x) fail to provide comparable delivery terms to each franchisee for a product of the franchisor, including the time of delivery after the placement of an order by the franchisee;
(y) if a franchisor provides personnel training to the franchisor's franchisees, unreasonably fail to make that training available to each franchisee on proportionally equal terms;
(z) condition a franchisee's eligibility to participate in a sales incentive program on the requirement that a franchisee use the financing services of the franchisor or a subsidiary or affiliate of the franchisor for inventory financing;
(aa) make available for public disclosure, except with the franchisee's permission or under subpoena or in any administrative or judicial proceeding in which the franchisee or the franchisor is a party, any confidential financial information regarding a franchisee, including:
(i) monthly financial statements provided by the franchisee;
(ii) the profitability of a franchisee; or
(iii) the status of a franchisee's inventory of products;
(bb) use any performance standard, incentive program, or similar method to measure the performance of franchisees unless the standard or program:
(i) is designed and administered in a fair, reasonable, and equitable manner;
(ii) if based upon a survey, utilizes an actuarially generally acceptable, valid sample; and
(iii) is, upon request by a franchisee, disclosed and explained in writing to the franchisee, including:
(A) how the standard or program is designed;
(B) how the standard or program will be administered; and
(C) the types of data that will be collected and used in the application of the standard or program;
(cc) other than sales to the federal government, directly or indirectly, sell, lease, offer to sell, or offer to lease, a new motor vehicle or any motor vehicle owned by the franchisor, except through a franchised new motor vehicle dealer;
(dd) compel a franchisee, through a finance subsidiary, to agree to unreasonable operating requirements, except that this Subsection (1)(dd) may not be construed to limit the right of a financing subsidiary to engage in business practices in accordance with the usage of trade in retail and wholesale motor vehicle financing;
(ee) condition the franchisor's participation in co-op advertising for a product category on the franchisee's participation in any program related to another product category or on the franchisee's achievement of any level of sales in a product category other than that which is the subject of the co-op advertising;
(ff) except as provided in Subsections (7) through (9), discriminate against a franchisee in the state in favor of another franchisee of the same line-make in the state:
(i) by selling or offering to sell a new motor vehicle to one franchisee at a higher actual price, including the price for vehicle transportation, than the actual price at which the same model similarly equipped is offered to or is made available by the franchisor to another franchisee in the state during a similar time period;

(ii) except as provided in Subsection (8), by using a promotional program or device or an incentive, payment, or other benefit, whether paid at the time of the sale of the new motor vehicle to the franchisee or later, that results in the sale of or offer to sell a new motor vehicle to one franchisee in the state at a higher price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or is made available by the franchisor to another franchisee in the state during a similar time period;

(iii) except as provided in Subsection (9), by failing to provide or direct a lead in a fair, equitable, and timely manner; or

(iv) if the franchisee complies with any reasonable requirement concerning the sale of new motor vehicles, by using or considering the performance of any of its franchisees located in this state relating to the sale of the franchisor's new motor vehicles in determining the:

(A) dealer's eligibility to purchase program, certified, or other used motor vehicles from the franchisor;

(B) volume, type, or model of program, certified, or other used motor vehicles the dealer is eligible to purchase from the franchisor;

(C) price of any program, certified, or other used motor vehicles that the dealer is eligible to purchase from the franchisor; or

(D) availability or amount of any discount, credit, rebate, or sales incentive the dealer is eligible to receive from the manufacturer for the purchase of any program, certified, or other motor vehicle offered for sale by the franchisor;

(gg)

(i) take control over funds owned or under the control of a franchisee based on the findings of a warranty audit, sales incentive audit, or recall repair audit, unless the following conditions are satisfied:

(A) the franchisor fully identifies in writing the basis for the franchisor's claim or charge back arising from the audit, including notifying the franchisee that the franchisee has 20 days from the day on which the franchisee receives the franchisor's claim or charge back to assert a protest in writing to the franchisor identifying the basis for the protest;

(B) the franchisee's protest shall inform the franchisor that the protest shall be submitted to a mediator in the state who is identified by name and address in the franchisee's notice to the franchisor;

(C) if mediation is requested under Subsection (1)(gg)(i)(B), mediation shall occur no later than 30 days after the day on which the franchisor receives the franchisee's protest of a claim or charge back;

(D) if mediation does not lead to a resolution of the protest, the protest shall be set for binding arbitration in the same venue in which the mediation occurred;

(E) binding arbitration under Subsection (1)(gg)(i)(D) shall be conducted:

(I) by an arbitrator mutually agreed upon by the franchisor and the franchisee; and

(II) on a date mutually agreed upon by the franchisor and the franchisee, but shall be held no later than 90 days after the franchisor's receipt of the franchisee's notice of protest;

(F) this Subsection (1)(gg)(i) applies exclusively to warranty audits, recall repair audits, and sales incentive audits;

(G) Subsections (1)(gg)(i)(A) through (E) do not apply if the franchisor reasonably believes that the amount of the claim or charge back is related to a fraudulent act by the franchisee; and

(H) the costs of the mediator or arbitrator instituted under this Subsection (1)(gg) shall be shared equally by the franchisor and the franchisee; or

(ii) require a franchisee to execute a written waiver of the requirements of Subsection (1)(gg)(i);

(hh) coerce, or attempt to coerce a franchisee to purchase or sell an aftermarket product manufactured by the franchisor, or obtained by the franchisor for resale from a third-party supplier and the franchisor or its affiliate derives a financial benefit from the franchisee's sale or purchase of the aftermarket product as a condition to obtaining preferential status from the franchisor;

(ii) through an affiliate, take any action that would otherwise be prohibited under this chapter;

(jj) impose any fee, surcharge, or other charge on a franchisee designed to recover the cost of a warranty repair for which the franchisor pays the franchisee;

(kk) except as provided by the audit provisions of this chapter, take an action designed to recover a cost related to a recall, including:

(i) imposing a fee, surcharge, or other charge on a franchisee;

(ii) reducing the compensation the franchisor owes to a franchisee;

(iii) removing the franchisee from an incentive program; or

(iv) reducing the amount the franchisor owes to a franchisee under an incentive program;

(ll) directly or indirectly condition any of the following actions on the willingness of a franchisee, prospective new franchisee, or owner of an interest in a dealership facility to enter into a site-control agreement:

(i) the awarding of a franchise to a prospective new franchisee;

(ii) the addition of a line-make or franchise to an existing franchisee;

(iii) the renewal of an existing franchisee's franchise;

(iv) the approval of the relocation of an existing franchisee's dealership facility, unless the franchisor pays, and the franchisee voluntarily accepts, additional specified cash consideration to facilitate the relocation; or

(v) the approval of the sale or transfer of a franchise's ownership, unless the franchisor pays, and the buyer voluntarily accepts, additional specified cash consideration to facilitate the sale or transfer;

(mm) subject to Subsection (11), deny a franchisee the right to return any or all parts or accessories that:

(i) were specified for and sold to the franchisee under an automated ordering system required by the franchisor; and

(ii)

(A) are in good, resalable condition; and

(B)

(I) the franchisee received within the previous 12 months; or

(II) are listed in the current parts catalog;

(nn) subject to Subsection (12), obtain from a franchisee a waiver of a franchisee's right, by threatening:

(i) to impose a detriment upon the franchisee's business; or

(ii) to withhold any entitlement, benefit, or service:

(A) to which the franchisee is entitled under a franchise agreement, contract, statute, rule, regulation, or law; or

(B) that has been granted to more than one other franchisee of the franchisor in the state;

(oo) coerce a franchisee to establish, or provide by agreement, program, or incentive provision that a franchisee must establish, a price at which the franchisee is required to sell a product or service that is:

(i) sold in connection with the franchisee's sale of a motor vehicle; and

(ii)

(A) in the case of a product, not manufactured, provided, or distributed by the franchisor or an affiliate; or

(B) in the case of a service, not provided by the franchisor or an affiliate;

(pp) except as necessary to comply with a health or safety law, or to comply with a technology requirement compliance with which is necessary to sell or service a motor vehicle that the franchisee is authorized or licensed by the franchisor to sell or service, coerce or require a franchisee, through a penalty or other detriment to the franchisee's business, to:

(i) construct a new dealer facility or materially alter or remodel an existing dealer facility before the date that is 10 years after the date the construction of the new dealer facility at that location was completed, if the construction substantially complied with the franchisor's brand image standards or plans that the franchisor provided or approved; or

(ii) materially alter or remodel an existing dealer facility before the date that is 10 years after the date the previous alteration or remodeling at that location was completed, if the previous alteration or remodeling substantially complied with the franchisor's brand image standards or plans that the franchisor provided or approved; or

(qq) notwithstanding the terms of a franchise agreement providing otherwise and subject to Subsection (14):

(i) coerce or require a franchisee, including by agreement, program, or incentive provision, to purchase a good or service, relating to a facility construction, alteration, or remodel, from a vendor that a franchisor or its affiliate selects, identifies, or designates, without allowing the franchisee, after consultation with the franchisor, to obtain a like good or service of substantially similar quality from a vendor that the franchisee chooses; or

(ii) coerce or require a franchisee, including by agreement, program, or incentive provision, to lease a sign or other franchisor image element from the franchisor or an affiliate without providing the franchisee the right to purchase a sign or other franchisor image element of like kind and quality from a vendor that the franchisee chooses.

(2) Notwithstanding Subsection (1)(r), a franchisor may authorize or permit a person to perform warranty service repairs on motor vehicles if the warranty services is for a franchisor of recreational vehicles.

(3) Subsection (1)(a) does not prevent the franchisor from requiring that a franchisee carry a reasonable inventory of:

(a) new motor vehicle models offered for sale by the franchisor; and

(b) parts to service the repair of the new motor vehicles.

(4) Subsection (1)(d) does not prevent a franchisor from requiring that a franchisee maintain separate sales personnel or display space.

(5) Upon the written request of any franchisee, a franchisor shall disclose in writing to the franchisee the basis on which new motor vehicles, parts, and accessories are allocated, scheduled, and delivered among the franchisor's dealers of the same line-make.

(6)

(a) A franchisor may engage in any of the activities listed in Subsection (1)(u), for a period not to exceed 12 months if:

(i)

(A) the person from whom the franchisor acquired the interest in or control of the new motor vehicle dealership was a franchised new motor vehicle dealer; and

(B) the franchisor's interest in the new motor vehicle dealership is for sale at a reasonable price and on reasonable terms and conditions; or

(ii) the franchisor is engaging in the activity listed in Subsection (1)(u) for the purpose of broadening the diversity of its dealer body and facilitating the ownership of a new motor vehicle dealership by a person who:

(A) is part of a group that has been historically underrepresented in the franchisor's dealer body;

(B) would not otherwise be able to purchase a new motor vehicle dealership;

(C) has made a significant investment in the new motor vehicle dealership which is subject to loss;

(D) has an ownership interest in the new motor vehicle dealership; and

(E) operates the new motor vehicle dealership under a plan to acquire full ownership of the dealership within a reasonable period of time and under reasonable terms and conditions.

(b) After receipt of the advisory board's recommendation, the executive director may, for good cause shown, extend the time limit set forth in Subsection (6)(a) for an additional period not to exceed 12 months.

(c) A franchisor who was engaged in any of the activities listed in Subsection (1)(u) in this state prior to May 1, 2000, may continue to engage in that activity, but may not expand that activity to acquire an interest in any other new motor vehicle dealerships or motor vehicle service facilities after May 1, 2000.

(d) Notwithstanding Subsection (1)(u), a franchisor may own, operate, or control a new motor vehicle dealership trading in a line-make of motor vehicle if:

(i) as to that line-make of motor vehicle, there are no more than four franchised new motor vehicle dealerships licensed and in operation within the state as of January 1, 2000;

(ii) the franchisor does not own directly or indirectly, more than a 45% interest in the dealership;

(iii) at the time the franchisor first acquires ownership or assumes operation or control of the dealership, the distance between the dealership thus owned, operated, or controlled and the nearest unaffiliated new motor vehicle dealership trading in the same line-make is not less than 150 miles;

(iv) all the franchisor's franchise agreements confer rights on the franchisee to develop and operate as many dealership facilities as the franchisee and franchisor shall agree are appropriate within a defined geographic territory or area; and

(v) as of January 1, 2000, no fewer than half of the franchisees of the line-make within the state own and operate two or more dealership facilities in the geographic area covered by the franchise agreement.

(7) Subsection (1)(ff) does not apply to recreational vehicles.

(8) Subsection (1)(ff)(ii) does not prohibit a promotional or incentive program that is functionally available to all competing franchisees of the same line-make in the state on substantially comparable terms.

(9) Subsection (1)(ff)(iii) may not be construed to:

(a) permit provision of or access to customer information that is otherwise protected from disclosure by law or by contract between a franchisor and a franchisee; or

(b) require a franchisor to disregard the preference volunteered by a potential customer in providing or directing a lead.

(10) Subsection (1)(ii) does not limit the right of an affiliate to engage in business practices in accordance with the usage of trade in which the affiliate is engaged.

(11)

(a) Subsection (1)(mm) does not apply to parts or accessories that the franchisee ordered and purchased outside of an automated parts ordering system required by the franchisor.

(b) In determining whether parts or accessories in a franchisee's inventory were specified and sold under an automated ordering system required by the franchisor, the parts and accessories in the franchisee's inventory are presumed to be the most recent parts and accessories that the franchisor sold to the franchisee.

(12)

(a) Subsection (1)(nn) does not apply to a good faith settlement of a dispute, including a dispute relating to contract negotiations, in which the franchisee gives a waiver in exchange for fair consideration in the form of a benefit conferred on the franchisee.

(b) Subsection (12)(a) may not be construed to defeat a franchisee's claim that a waiver has been obtained in violation of Subsection (1)(nn).

(13)

(a) As used in Subsection (1)(pp):

(i) "Materially alter":

(A) means to make a material architectural, structural, or aesthetic alteration; and

(B) does not include routine maintenance, such as interior painting, reasonably necessary to keep a dealership facility in attractive condition.

(ii) "Penalty or other detriment" does not include a payment under an agreement, incentive, or program that is offered to but declined or not accepted by a franchisee, even if a similar payment is made to another franchisee in the state that chooses to participate in the agreement, incentive, or program.

(b) Subsection (1)(pp) does not apply to:

(i) a program that provides a lump sum payment to assist a franchisee to make a facility improvement or to pay for a sign or a franchisor image element, if the payment is not dependent on the franchisee selling or purchasing a specific number of new vehicles;

(ii) a program that is in effect on May 8, 2012, with more than one franchisee in the state or to a renewal or modification of the program;

(iii) a program that provides reimbursement to a franchisee on reasonable, written terms for a substantial portion of the franchisee's cost of making a facility improvement or installing signage or a franchisor image element; or

(iv) a written agreement between a franchisor and franchisee, in effect before May 8, 2012, under which a franchisee agrees to construct a new dealer facility.

(14)

(a) Subsection (1)(qq)(i) does not apply to:

(i) signage purchased by a franchisee in which the franchisor has an intellectual property right; or

(ii) a good used in a facility construction, alteration, or remodel that is:

(A) a moveable interior display that contains material subject to a franchisor's intellectual property right; or

(B) specifically eligible for reimbursement of over one-half its cost pursuant to a franchisor or distributor program or incentive granted to the franchisee on reasonable, written terms.

(b) Subsection (1)(qq)(ii) may not be construed to allow a franchisee to:

(i) impair or eliminate a franchisor's intellectual property right; or

(ii) erect or maintain a sign that does not conform to the franchisor's reasonable fabrication specifications and intellectual property usage guidelines.

Amended by Chapter 245, 2018 General Session

13-14-202 Sale or transfer of ownership.

(1)
(a) The franchisor shall give effect to the change in a franchise agreement as a result of an event listed in Subsection (1)(b):
(i) subject to Subsection 13-14-305(2)(b); and
(ii) unless exempted under Subsection (2).
(b) The franchisor shall give effect to the change in a franchise agreement pursuant to Subsection (1)(a) for the:
(i) sale of a dealership;
(ii) contract for sale of a dealership;
(iii) transfer of ownership of a franchisee's dealership by:
(A) sale;
(B) transfer of the business; or
(C) stock transfer; or
(iv) change in the executive management of the franchisee's dealership.
(2) A franchisor is exempted from the requirements of Subsection (1) if:
(a) the transferee is denied, or would be denied, a new motor vehicle franchisee's license pursuant to Title 41, Chapter 3, Motor Vehicle Business Regulation Act; or
(b) the proposed sale or transfer of the business or change of executive management will be substantially detrimental to the distribution of franchisor's new motor vehicles or to competition in the relevant market area, provided that the franchisor has given written notice to the franchisee within 60 days following receipt by the franchisor of the following:
(i) a copy of the proposed contract of sale or transfer executed by the franchisee and the proposed transferee;
(ii) a completed copy of the franchisor's written application for approval of the change in ownership or executive management, if any, including the information customarily required by the franchisor; and
(iii)
(A) a written description of the business experience of the executive management of the transferee in the case of a proposed sale or transfer of the franchisee's business; or
(B) a written description of the business experience of the person involved in the proposed change of the franchisee's executive management in the case of a proposed change of executive management.
(3) For purposes of this section, the refusal by the franchisor to accept a proposed transferee is presumed to be unreasonable and undertaken without good cause if the proposed franchisee:
(a) is of good moral character; and
(b) otherwise meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the franchisor relating to the business experience of executive management and financial capacity to operate and maintain the dealership required by the franchisor of its franchisees.
(4)
(a) If after receipt of the written notice from the franchisor described in Subsection (1) the franchisee objects to the franchisor's refusal to accept the proposed sale or transfer of the business or change of executive management, the franchisee may file an application for a hearing before the advisory board up to 60 days from the date of receipt of the notice.
(b) After a hearing and the executive director's receipt of the advisory board's recommendation, the executive director shall determine, and enter an order providing that:
(i) the proposed transferee or change in executive management:
(A) shall be approved; or

(B) may not be approved for specified reasons; or
(ii) a proposed transferee or change in executive management is approved if specific conditions are timely satisfied.
(c)
(i) The franchisee shall have the burden of proof with respect to all issues raised by the franchisee's application for a hearing as provided in this section.
(ii) During the pendency of the hearing, the franchise agreement shall continue in effect in accordance with its terms.
(d) The advisory board and the executive director shall expedite, upon written request, any determination sought under this section.

Amended by Chapter 249, 2005 General Session

13-14-203 Succession to franchise.
(1)
(a) A successor, including a family member of a deceased or incapacitated franchisee, who is designated by the franchisee may succeed the franchisee in the ownership and operation of the dealership under the existing franchise agreement if:
(i) the designated successor gives the franchisor written notice of an intent to succeed to the rights of the deceased or incapacitated franchisee in the franchise agreement within 180 days after the franchisee's death or incapacity;
(ii) the designated successor agrees to be bound by all of the terms and conditions of the franchise agreement; and
(iii) the designated successor meets the criteria generally applied by the franchisor in qualifying franchisees.
(b) A franchisor may refuse to honor the existing franchise agreement with the designated successor only for good cause.
(2) The franchisor may request in writing from a designated successor the personal and financial data that is reasonably necessary to determine whether the existing franchise agreement should be honored. The designated successor shall supply the personal and financial data promptly upon the request.
(3)
(a) If a franchisor believes that good cause exists for refusing to honor the requested succession, the franchisor shall serve upon the designated successor notice of its refusal to approve the succession, within 60 days after the later of:
(i) receipt of the notice of the designated successor's intent to succeed the franchisee in the ownership and operation of the dealership; or
(ii) receipt of the requested personal and financial data.
(b) Failure to serve the notice pursuant to Subsection (3)(a) is considered approval of the designated successor and the franchise agreement is considered amended to reflect the approval of the succession the day following the last day the franchisor can serve notice under Subsection (3)(a).
(4) The notice of the franchisor provided in Subsection (3) shall:
(a) state the specific grounds for the refusal to approve the succession; and
(b) that discontinuance of the franchise agreement shall take effect not less than 180 days after the date the notice of refusal is served unless the proposed successor files an application for hearing under Subsection (6).
(5)

(a) This section does not prevent a franchisee from designating a person as the successor by written instrument filed with the franchisor.
(b) If a franchisee files an instrument under Subsection (5)(a), the instrument governs the succession rights to the management and operation of the dealership subject to the designated successor satisfying the franchisor's qualification requirements as described in this section.
(6)
(a) If a franchisor serves a notice of refusal to a designated successor pursuant to Subsection (3), the designated successor may, within the 180-day period provided in Subsection (4), file with the advisory board an application for a hearing and a determination by the executive director regarding whether good cause exists for the refusal.
(b) If application for a hearing is timely filed, the franchisor shall continue to honor the franchise agreement until after:
(i) the requested hearing has been concluded;
(ii) a decision is rendered by the executive director; and
(iii) the applicable appeal period has expired following a decision by the executive director.

Amended by Chapter 249, 2005 General Session

13-14-204 Franchisor's obligations related to service -- Franchisor audits -- Time limits.
(1) Each franchisor shall specify in writing to each of the franchisor's franchisees licensed as a new motor vehicle dealer in this state:
(a) the franchisee's obligations for new motor vehicle preparation, delivery, and warranty service on the franchisor's products;
(b) the schedule of compensation to be paid to the franchisee for parts, work, and service; and
(c) the time allowance for the performance of work and service.
(2)
(a) The schedule of compensation described in Subsection (1) shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor.
(b) Time allowances described in Subsection (1) for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed.
(3)
(a) In the determination of what constitutes reasonable compensation under this section, the principal factor to be considered is the prevailing wage rates being paid by franchisees in the relevant market area in which the franchisee is doing business.
(b)
(i) Compensation of the franchisee for warranty service or recall repair work may not be less than the amount charged by the franchisee for like parts and service to retail or fleet customers, if the amounts are reasonable.
(ii) In the case of a recreational vehicle franchisee, reimbursement for parts used in the performance of warranty repairs, including those parts separately warranted directly to the consumer by a recreational vehicle parts supplier, may not be less than the franchisee's cost plus 20%.
(iii) For purposes of Subsection (3)(b)(ii), the term "cost" shall be that same price paid by a franchisee to a franchisor or supplier for the part when the part is purchased for a nonwarranty repair.
(4) A franchisor may not fail to:
(a) perform any warranty obligation;

(b) include in written notices of franchisor's recalls to new motor vehicle owners and franchisees the expected date by which necessary parts and equipment will be available to franchisees for the correction of the defects; or

(c) in accordance with Subsections (2) and (3), compensate a franchisee for all diagnostic work, labor, and parts the franchisor requires to perform a recall repair.

(5) If a franchisor disallows a franchisee's claim for a defective part, alleging that the part is not defective, the franchisor at the franchisor's option shall:

(a) return the part to the franchisee at the franchisor's expense; or

(b) pay the franchisee the cost of the part.

(6)

(a) A claim made by a franchisee pursuant to this section for diagnostic work, labor, or parts shall be paid within 30 days after the claim's approval.

(b) The franchisor shall approve or disapprove a claim within 30 days after receipt of the claim on a form generally used by the franchisor and containing the generally required information. Any claim not specifically disapproved of in writing within 30 days after the receipt of the form is considered to be approved and payment shall be made within 30 days.

(7) A franchisor may conduct warranty service audits and recall repair audits of the franchisor's franchisee records on a reasonable basis.

(8) A franchisor may deny a franchisee's claim for warranty compensation or recall repair compensation only if:

(a) the franchisee's claim is based on a nonwarranty repair or a nonrecall repair;

(b) the franchisee lacks material documentation for the claim;

(c) the franchisee fails to comply materially with specific substantive terms and conditions of the franchisor's warranty compensation program or recall repair compensation program; or

(d) the franchisor has a bona fide belief based on competent evidence that the franchisee's claim is intentionally false, fraudulent, or misrepresented.

(9)

(a) Any charge back for a warranty part or service compensation, recall repair compensation, or service incentive is only enforceable for the six-month period immediately following the day on which the franchisor makes the payment compensating the franchisee for the warranty part or service, recall repair, or service incentive.

(b) Except as provided in Subsection (9)(e), all charge backs levied by a franchisor for sales compensation or sales incentives arising out of the sale or lease of a motor vehicle sold or leased by a franchisee shall be compensable only if written notice of the charge back is received by the franchisee within six months immediately following the sooner of:

(i) the day on which the franchisee reports the sale to the franchisor; or

(ii) the day on which the franchisor makes the payment for the sales compensation or sales incentive to the franchisee.

(c)

(i) Upon an audit, the franchisor shall provide the franchisee automated or written notice explaining the amount of and reason for a charge back.

(ii) A franchisee may respond in writing within 30 days after the notice under Subsection (9)(c)(i) to:

(A) explain a deficiency; or

(B) provide materials or information to correct and cure compliance with a provision that is a basis for a charge back.

(d) A charge back:

(i) may not be based on a nonmaterial error that is clerical in nature; and

(ii)
(A) shall be based on one or more specific instances of material noncompliance with the franchisor's warranty compensation program, sales incentive program, recall repair program, or recall compensation program; and
(B) may not be extrapolated from a sampling of warranty claims, recall repair claims, or sales incentive claims.
(e) The time limitations of this Subsection (9) do not preclude charge backs for any fraudulent claim that was previously paid.
(10)
(a) If within 30 days after the day on which a franchisor issues an initial notice of recall a part or remedy is not reasonably available to perform the recall repair on a used motor vehicle, each calendar month thereafter the franchisor shall pay the franchisee an amount equal to at least 1.35% of the value of the used motor vehicle, if:
(i) the franchisee holding the used motor vehicle for sale is authorized to sell and service a new vehicle of the same line-make;
(ii) after May 7, 2018, the franchisor issues a stop-sale or do-not-drive order on the used motor vehicle; and
(iii)
(A) the used motor vehicle is in the franchisee's inventory at the time the franchisor issued the order described in Subsection (10)(a)(ii); or
(B) after the franchisor issues the order described in Subsection (10)(a)(ii), the franchisee takes the used motor vehicle into the franchisee's inventory at the termination of the consumer lease for the vehicle, as a consumer trade-in accompanying the purchase of a new vehicle from the franchisee, or for any other reason in the ordinary course of business.
(b) A franchisor shall pay the compensation described in Subsection (10)(a):
(i) beginning:
(A) 30 days after the day on which the franchisee receives the stop-sale or do-not-drive order; or
(B) if a franchisee obtains the used motor vehicle more than 30 days after the day on which the franchisee receives the stop-sale or do-not-drive order, the day on which the franchisee obtains the used motor vehicle; and
(ii) ending the earlier of the day on which:
(A) the franchisor makes the recall part or remedy available for order and prompt shipment to the franchisee; or
(B) the franchisee sells, trades, or otherwise disposes of the used motor vehicle.
(c) A franchisor shall prorate the first and last payment for a used motor vehicle to a franchisee under this Subsection (10).
(d) A franchisor may direct the manner in which a franchisee demonstrates the inventory status of an affected used motor vehicle to determine eligibility under this Subsection (10), if the manner is not unduly burdensome.
(11)
(a) A franchisee that offsets recall repair compensation received from a franchisor under this section against recall repair compensation the franchisee receives under a state or federal recall repair compensation remedy may pursue any other available remedy against the franchisor.
(b) As an alternative to providing recall repair compensation under this section, a franchisor may compensate a franchisee for a recall repair:

(i) under a national recall repair compensation program, if the compensation is equal to or greater than the compensation provided under this section; or
(ii) as the franchisor and franchisee otherwise agree, if the compensation is equal to or greater than the compensation provided under this section.
(c) Nothing in this section requires a franchisor to provide compensation to a franchisee that exceeds the value of the used motor vehicle affected by a recall.
(12) During an audit under this section, a franchisor may not request a document from the franchisee that originated from the franchisor or a subsidiary of the franchisor, unless the document required additional information from the customer.

Amended by Chapter 455, 2022 General Session

13-14-205 Liability for damages to motor vehicles in transit -- Disclosure required.
(1)
(a) A franchisee is solely liable for damage to a new motor vehicle after delivery by and acceptance from the carrier.
(b) A delivery receipt or bill of lading, or similar document, signed by a franchisee is evidence of a franchisee's acceptance of a new motor vehicle.
(2) A franchisor is liable for all damage to a motor vehicle before delivery to and acceptance by the franchisee, including that time in which the vehicle is in the control of a carrier or transporter.
(3)
(a) A franchisor shall disclose to the franchisee any repairs made prior to delivery, except a recreational vehicle franchisor shall disclose to a recreational vehicle franchisee any repair made to the vehicle prior to delivery only if:
(i) the cost of the repair exceeds 3% of the manufacturer's wholesale price, as measured by retail repair costs; or
(ii) the repair is to the exterior sidewalls or roof of the vehicle, and repairs total over $500.
(b) Replacement of a recreational vehicle's glass, tires, wheels, audio equipment, in-dash components, instrument panels, appliances, furniture, and components other than built-in cabinetry contained in the vehicle's living quarters, is not considered a repair under this subsection if the component replaced has been replaced with original manufacturers parts and materials.
(4) Notwithstanding Subsections (1), (2), and (3), the franchisee is liable for damage to a new motor vehicle after delivery to the carrier or transporter if the franchisee selected:
(a) the method and mode of transportation; and
(b) the carrier or transporter.

Amended by Chapter 162, 1997 General Session

13-14-206 Site-control agreements.
(1) A site-control agreement entered into on or after May 11, 2010:
(a) may be voluntarily terminated by a franchisee, subject to Subsection (2)(a); and
(b) terminates immediately upon:
(i) a franchisor's sale, assignment, or other transfer of the right to manufacture or distribute the line-make of vehicles covered by the franchisee's franchise;
(ii) a franchisor's ceasing to manufacture or distribute the line-make of vehicles covered by the franchisee's franchise;

(iii) a franchisor's termination of a franchisee's franchise without cause and against the franchisee's will; or

(iv) the failure of the franchisor or its affiliate to exercise a right of first refusal to purchase the assets or ownership of the franchisee's business when given the opportunity to do so under the franchise or other agreement, subject to the repayment requirements of Subsection (2) if the right of first refusal arises because of the voluntary action of the franchisee.

(2)

(a) If a franchisee voluntarily terminates a site-control agreement after the franchisor has paid and the franchisee or other recipient has accepted additional specified cash consideration, the site-control agreement remains valid only until the franchisee or other recipient satisfies the repayment terms specified in Subsection (2)(b).

(b)

(i) If the franchisor's additional specified cash consideration was used for the construction of a building or improvement on the property that is the subject of the site-control agreement, the amount of the repayment under Subsection (2)(a):

(A) is based on any repayment terms specified in the site-control agreement, if the parties to the site-control agreement have willingly agreed to the terms; and

(B) may not exceed the market value of the portion of the building or improvement constructed with the additional specified cash consideration paid by the franchisor, after allowing for depreciation based on a market-based depreciation schedule, as determined by an independent appraiser at the request of the franchisee or other recipient.

(ii) If the franchisor's additional specified cash consideration was not used for construction of a building or improvement on the property that is the subject of the site-control agreement, the amount of the repayment under Subsection (2)(a) is an equitable portion of the cash consideration, as determined under any terms specified in the site-control agreement for the equitable repayment following a franchisee's voluntary termination of the agreement.

(c) Immediately upon the repayment under Subsection (2)(b):

(i) the site-control agreement is terminated; and

(ii) the franchisor or other party that is the beneficiary under the site-control agreement shall prepare and deliver to the franchisee a recordable notice of termination of:

(A) the site-control agreement; and

(B) any lien or encumbrance arising because of the site-control agreement and previously recorded against the property that is the subject of the site-control agreement.

Enacted by Chapter 33, 2010 General Session

Part 3
Restrictions on Termination, Relocation, and Establishment of Franchises

13-14-301 Termination or noncontinuance of franchise.

(1) Except as provided in Subsection (2), a franchisor may not terminate or refuse to continue a franchise agreement or the rights to sell and service a line-make pursuant to a franchise agreement, whether through termination or noncontinuance of the franchise, termination or noncontinuance of a line-make, or otherwise, unless:

(a) the franchisee has received written notice from the franchisor 60 days before the effective date of termination or noncontinuance setting forth the specific grounds for termination

or noncontinuance that are relied on by the franchisor as establishing good cause for the termination or noncontinuance;
(b) the franchisor has good cause for termination or noncontinuance; and
(c) the franchisor is willing and able to comply with Section 13-14-307.
(2) A franchisor may terminate a franchise, without complying with Subsection (1):
(a) if the franchisee's license as a new motor vehicle dealer is revoked under Title 41, Chapter 3, Motor Vehicle Business Regulation Act; or
(b) upon a mutual written agreement of the franchisor and franchisee.
(3)
(a) At any time before the effective date of termination or noncontinuance of the franchise, the franchisee may apply to the advisory board for a hearing on the merits, and following notice to all parties concerned, the hearing shall be promptly held as provided in Section 13-14-304.
(b) A termination or noncontinuance subject to a hearing under Subsection (3)(a) may not become effective until:
(i) final determination of the issue by the executive director; and
(ii) the applicable appeal period has lapsed.
(4) A franchisee may voluntarily terminate its franchise if the franchisee provides written notice to the franchisor at least 30 days prior to the termination.

Amended by Chapter 318, 2009 General Session

13-14-302 Issuance of additional franchises -- Relocation of existing franchisees.
(1) Except as provided in Subsection (6), a franchisor shall provide the notice and documentation required under Subsection (2) if the franchisor seeks to:
(a) enter into a franchise agreement establishing a motor vehicle dealership within a relevant market area where the same line-make is represented by another franchisee; or
(b) relocate an existing motor vehicle franchisee.
(2) In determining whether a new or relocated dealership is within a relevant market area where the same line-make is represented by an existing dealership, the relevant market area is measured from the closest property boundary line of the existing dealership to the closest property boundary line of the new or relocated dealership.
(3)
(a) If a franchisor seeks to take an action listed in Subsection (1), before taking the action, the franchisor shall, in writing, notify the advisory board, the clerk of each affected municipality, and each franchisee in that line-make in the relevant market area.
(b) The notice required by Subsection (3)(a) shall:
(i) specify the intended action described under Subsection (1);
(ii) specify the good cause on which it intends to rely for the action; and
(iii) be delivered by registered or certified mail or by any form of reliable delivery through which receipt is verifiable.
(4)
(a) Except as provided in Subsection (4)(c), the franchisor shall provide to the advisory board, each affected municipality, and each franchisee in that line-make in the relevant market area the following documents relating to the notice described under Subsection (3):
(i)
(A) any aggregate economic data and all existing reports, analyses, or opinions based on the aggregate economic data that were relied on by the franchisor in reaching the decision to proceed with the action described in the notice; and

(B) the aggregate economic data under Subsection (4)(a)(i)(A) includes:
(I) motor vehicle registration data;
(II) market penetration data; and
(III) demographic data;
(ii) written documentation that the franchisor has in the franchisor's possession that it intends to rely on in establishing good cause under Section 13-14-306 relating to the notice;
(iii) a statement that describes in reasonable detail how the establishment of a new franchisee or the relocation of an existing franchisee will affect the amount of business transacted by other franchisees of the same line-make in the relevant market area, as compared to business available to the franchisees; and
(iv) a statement that describes in reasonable detail how the establishment of a new franchisee or the relocation of an existing franchisee will be beneficial or injurious to the public welfare or public interest.
(b) The franchisor shall provide the documents described under Subsection (4)(a) with the notice required under Subsection (3).
(c) The franchisor is not required to disclose any documents under Subsection (4)(a) if:
(i) the documents would be privileged under the Utah Rules of Evidence;
(ii) the documents contain confidential proprietary information;
(iii) the documents are subject to federal or state privacy laws;
(iv) the documents are correspondence between the franchisor and existing franchisees in that line-make in the relevant market area; or
(v) the franchisor reasonably believes that disclosure of the documents would violate:
(A) the privacy of another franchisee; or
(B) Section 13-14-201.
(5)
(a) Within 30 days of receiving notice required by Subsection (3), any franchisee that is required to receive notice under Subsection (3) may protest to the advisory board the establishment or relocation of the dealership.
(b) No later than 10 days after the day on which a protest is filed, the department shall inform the franchisor that:
(i) a timely protest has been filed;
(ii) a hearing is required;
(iii) the franchisor may not establish or relocate the proposed dealership until the advisory board has held a hearing; and
(iv) the franchisor may not establish or relocate a proposed dealership if the executive director determines that there is not good cause for permitting the establishment or relocation of the dealership.
(6) If multiple protests are filed under Subsection (5), hearings may be consolidated to expedite the disposition of the issue.
(7) Subsections (1) through (6) do not apply to a relocation of an existing or successor dealer to a location that is:
(a) within the same county and less than two miles from the existing location of the existing or successor franchisee's dealership; or
(b) further away from a dealership of a franchisee of the same line-make.
(8) For purposes of this section:
(a) relocation of an existing franchisee's dealership in excess of two miles from the dealership's existing location is considered the establishment of an additional franchise in the line-make of the relocating franchise;

(b) the reopening in a relevant market area of a dealership that has not been in operation for one year or more is considered the establishment of an additional motor vehicle dealership; and

(c)

(i) except as provided in Subsection (8)(c)(ii), the establishment of a temporary additional place of business by a recreational vehicle franchisee is considered the establishment of an additional motor vehicle dealership; and

(ii) the establishment of a temporary additional place of business by a recreational vehicle franchisee is not considered the establishment of an additional motor vehicle dealership if the recreational vehicle franchisee is participating in a trade show where three or more recreational vehicle dealers are participating.

Amended by Chapter 268, 2015 General Session

13-14-302.5 Application of new franchise process with respect to certain terminated franchises.

(1) As used in this section:

(a) "Covered franchisee":

(i) means a person who was a franchisee under a pre-bankruptcy franchise; and

(ii) is a "covered dealership," as that term is defined in the federal franchise arbitration law.

(b) "Covered franchisor":

(i) means a person who was a franchisor under a pre-bankruptcy franchise; and

(ii) is a "covered manufacturer," as that term is defined in the federal franchise arbitration law.

(c) "Federal franchise arbitration law" means Section 747 of the Consolidated Appropriations Act of 2010, Pub. L. No. 111-117.

(d) "New franchisor":

(i) means a person who is a franchisor of the same line-make as the franchisor under a pre-bankruptcy franchise that has become a terminated franchise; and

(ii) is a "covered manufacturer," as that term is defined in the federal franchise arbitration law.

(e) "Pre-bankruptcy franchise" means a franchise in effect as of October 3, 2008.

(f) "Reinstated franchise" means:

(i) a terminated franchise that a reinstatement order determines should be reinstated, renewed, continued, assigned, or assumed; or

(ii) a franchise that a reinstatement order otherwise determines should be reestablished in or added to the dealer network of a new franchisor in the geographic area where the covered franchisee was located before October 3, 2008.

(g) "Reinstated franchisee" means a covered franchisee:

(i) whose franchise became a terminated franchise with less than 90 days' notice prior to termination; and

(ii) that becomes entitled to a reinstated franchise under a reinstatement order.

(h) "Reinstatement order" means an arbitrator's written determination:

(i) in an arbitration proceeding held under the federal franchise arbitration law; and

(ii)

(A) that a terminated franchise should be reinstated, renewed, continued, assigned, or assumed; or

(B) that a covered franchisee should otherwise be reestablished as a franchisee in or added to the dealer network of a new franchisor in the geographic area where the covered franchisee was located before October 3, 2008.

(i) "Terminated franchise" means a covered franchisee's pre-bankruptcy franchise that was terminated or not continued or renewed as a result of a bankruptcy proceeding involving a covered franchisor as the bankruptcy debtor.

(2) The process under Sections 13-14-302, 13-14-304, and 13-14-306 for the issuance of a franchise, including Subsections 13-14-302(5) and (6) and Section 13-14-304 relating to a protest by another franchisee in the line-make in the relevant market area against the establishment or relocation of a franchise, does not apply to a reinstated franchise or reinstated franchisee.

Amended by Chapter 268, 2015 General Session

13-14-303 Effect of terminating a franchise.

If under Section 13-14-301 the executive director permits a franchisor to terminate or not continue a franchise and prohibits the franchisor from entering into a franchise for the sale of new motor vehicles of a line-make in a relevant market area, the franchisor may not enter into a franchise for the sale of new motor vehicles of that line-make in the specified relevant market area unless the executive director determines, after a recommendation by the advisory board, that there has been a change of circumstances so that the relevant market area at the time of the establishment of the new franchise agreement can reasonably be expected to support the new franchisee.

Amended by Chapter 249, 2005 General Session

13-14-304 Hearing regarding termination, relocation, or establishment of franchises.

(1)

(a) Within 10 days after the day on which the advisory board receives an application from a franchisee under Subsection 13-14-301(3) challenging a franchisor's right to terminate or not continue a franchise, or an application under Section 13-14-302 challenging the establishment or relocation of a franchise, the executive director shall:

(i) enter an order designating the time and place for the hearing; and

(ii) send a copy of the order by certified or registered mail, with return receipt requested, or by any form of reliable delivery through which receipt is verifiable to:

(A) the applicant;

(B) the franchisor; and

(C) if the application involves the establishment of a new franchise or the relocation of an existing dealership, each affected municipality and to each franchisee in the relevant market area engaged in the business of offering to sell or lease the same line-make.

(b) A copy of an order mailed under Subsection (1)(a) shall be addressed to the franchisee at the place where the franchisee's business is conducted.

(2) An affected municipality and any other person who can establish an interest in the application may intervene as a party to the hearing, whether or not that person receives notice.

(3) Any person, including an affected municipality, may appear and testify on the question of the public interest in the termination or noncontinuation of a franchise or in the establishment of an additional franchise.

(4)

(a)

(i) Any hearing ordered under Subsection (1) shall be conducted no later than 90 days after the day on which the application for hearing is filed.

(ii) A final decision on the challenge shall be made by the executive director no later than 20 days after the day on which the hearing ends.

(b) Failure to comply with the time requirements of Subsection (4)(a) is considered a determination that the franchisor acted with good cause or, in the case of a protest of a proposed establishment or relocation of a dealer, that good cause exists for permitting the proposed additional or relocated new motor vehicle dealer, unless:

(i) the delay is caused by acts of the franchisor or the additional or relocating franchisee; or

(ii) the delay is waived by the parties.

(5) The franchisor has the burden of proof to establish by a preponderance of the evidence that under the provisions of this chapter it should be granted permission to:

(a) terminate or not continue the franchise;

(b) enter into a franchise agreement establishing an additional franchise; or

(c) relocate the dealership of an existing franchisee.

(6) Any party to the hearing may appeal the executive director's final decision in accordance with Title 63G, Chapter 4, Administrative Procedures Act, including the franchisor, an existing franchisee of the same line-make whose relevant market area includes the site of the proposed dealership, or an affected municipality.

Amended by Chapter 268, 2015 General Session

13-14-305 Evidence to be considered in determining cause to terminate or discontinue.

(1) In determining whether a franchisor has established good cause for terminating or not continuing a franchise agreement, the advisory board and the executive director shall consider:

(a) the amount of business transacted by the franchisee, as compared to business available to the franchisee;

(b) the investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise agreement;

(c) the permanency of the investment;

(d) whether it is injurious or beneficial to the public welfare or public interest for the business of the franchisee to be disrupted;

(e) whether the franchisee has adequate motor vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumer for the new motor vehicles handled by the franchisee and has been and is rendering adequate services to the public;

(f) whether the franchisee refuses to honor warranties of the franchisor under which the warranty service work is to be performed pursuant to the franchise agreement, if the franchisor reimburses the franchisee for the warranty service work;

(g) failure by the franchisee to substantially comply with those requirements of the franchise agreement that are determined by the advisory board or the executive director to be:

(i) reasonable;

(ii) material; and

(iii) not in violation of this chapter;

(h) evidence of bad faith by the franchisee in complying with those terms of the franchise agreement that are determined by the advisory board or the executive director to be:

(i) reasonable;

(ii) material; and

(iii) not in violation of this chapter;

(i) prior misrepresentation by the franchisee in applying for the franchise;

(j) transfer of any ownership or interest in the franchise without first obtaining approval from the franchisor or the executive director after receipt of the advisory board's recommendation; and
(k) any other factor the advisory board or the executive director consider relevant.
(2) Notwithstanding any franchise agreement, the following do not constitute good cause, as used in this chapter for the termination or noncontinuation of a franchise:
(a) the sole fact that the franchisor desires greater market penetration or more sales or leases of new motor vehicles;
(b) the change of ownership of the franchisee's dealership or the change of executive management of the franchisee's dealership unless the franchisor proves that the change of ownership or executive management will be substantially detrimental to the distribution of the franchisor's motor vehicles; or
(c) the fact that the franchisee has justifiably refused or declined to participate in any conduct covered by Section 13-14-201.
(3) For purposes of Subsection (2), "substantially detrimental" includes the failure of any proposed transferee to meet the objective criteria applied by the franchisor in qualifying franchisees at the time of application.

Amended by Chapter 249, 2005 General Session

13-14-306 Evidence to be considered in determining cause to relocate or establish a new franchised dealership.

In determining whether a franchisor has established good cause for relocating an existing franchisee or establishing a new franchised dealership for the same line-make in a given relevant market area, the advisory board and the executive director shall consider:
(1) the amount of business transacted by other franchisees of the same line-make in that relevant market area, as compared to business available to the franchisees;
(2) the investment necessarily made and obligations incurred by other franchisees of the same line-make in that relevant market area in the performance of their part of their franchisee agreements;
(3) the permanency of the existing and proposed investment;
(4) whether it is injurious or beneficial to the public welfare or public interest for an additional franchise to be established, including:
(a) the impact on any affected municipality;
(b) population growth trends in any affected municipality;
(c) the number of dealerships in the primary market area of the new or relocated dealership compared to the number of dealerships in each primary market area adjacent to the new or relocated dealership's primary market area; and
(d) how the new or relocated dealership would impact the distance and time that an individual in the new or relocated dealership's primary market area would have to travel to access a dealership in the same line-make as the new or relocated dealership.
(5) whether the franchisees of the same line-make in that relevant market area are providing adequate service to consumers for the motor vehicles of the line-make, which shall include the adequacy of:
(a) the motor vehicle sale and service facilities;
(b) equipment;
(c) supply of vehicle parts; and
(d) qualified service personnel; and

(6) whether the relocation or establishment would cause any material negative economic effect on a dealer of the same line-make in the relevant market area.

Amended by Chapter 268, 2015 General Session

13-14-307 Franchisor's obligations upon termination or noncontinuation of franchise or line-make.

(1) Upon the termination or noncontinuation of a franchise or a line-make, the franchisor shall pay the franchisee:

(a) an amount calculated by:

(i) including the franchisee's cost of unsold motor vehicles that:

(A) are in the franchisee's inventory;

(B) were acquired:

(I) from the franchisor; or

(II) in the ordinary course of business from another franchisee of the same line-make;

(C) are new, undamaged, and, except for franchisor accessories, unaltered; or

(D) represent the current model year at the time of termination or noncontinuation, or the two model years immediately before the time of termination or noncontinuation;

(ii) reducing the amount in Subsection (1)(a)(i) by a prorated 1% for each 1,000 miles over 500 miles registered on a new vehicle's odometer;

(iii) adding any charges made by the franchisor, for distribution, delivery, or taxes;

(iv) adding the franchisee's cost of any franchisor accessories added on the vehicle, except only those recreational vehicle accessories that are listed in the franchisor's wholesale product literature as options for that vehicle shall be repurchased; and

(v) subtracting all allowances paid or credited to the franchisee by the franchisor;

(b) the franchisee's cost of new and undamaged motor vehicles in the franchisee's inventory of demonstrator vehicles, reduced by a prorated 1% for each 1000 miles over 500 miles registered on the demonstrator vehicle's odometer, except recreational vehicles whose cost shall be reduced by 2% for each 1,000 miles registered on the odometer of demonstrator self-propelled recreational vehicles, exclusive of miles incurred in delivery of the vehicle, and the cost of demonstrator nonself-propelled recreational vehicles shall be reduced by 10% of the franchisee's vehicle cost:

(i) plus any charges made by the franchisor for distribution, delivery, or taxes;

(ii) plus the franchisee's cost of any accessories added on the vehicles, except only those recreational vehicle accessories that are listed in the franchisor's wholesale product literature as options for that vehicle shall be repurchased; and

(iii) less all allowances paid or credited to the franchisee by the franchisor;

(c) the cost of all new, undamaged, and unsold supplies, parts, and accessories as set forth in the franchisor's catalog at the time of termination or noncontinuation for the supplies, parts, and accessories, less all allowances paid or credited to the franchisee by the franchisor;

(d) the fair market value, but not less than the franchisee's depreciated acquisition cost of each undamaged sign owned by the franchisee that bears a common name, trade name, or trademark of the franchisor if acquisition of the sign was recommended or required by the franchisor. If a recreational vehicle franchisee has a sign with multiple manufacturers listed, the franchisor is only responsible for its pro rata portion of the sign;

(e) the fair market value, but not less than the franchisee's depreciated acquisition cost, of all special tools, equipment, and furnishings acquired from the franchisor or sources approved by the franchisor that were required by the franchisor and are in good and usable condition;

(f) the cost of transporting, handling, packing, and loading motor vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings;
(g) subject to Subsection (5), reasonable compensation to the franchisee for any cost incurred pertaining to the unexpired term of a lease agreement for the dealership's existing location;
(h) the negotiated fair market value of the dealership premises, based on the fair market value of the real property, if the dealer opts to sell the dealership premises; and
(i) compensate the franchisee for the blue sky or goodwill of the dealership, as determined in accordance with the applicable industry standards taking into consideration the effect that the timing of the manufacturer's announcement of discontinuance of a line make has or will have on future profitability of the dealership.

(2) Subsections (1)(g), (h), and (i) do not apply if a franchise is terminated:
(a) by the franchisor for cause as defined in Subsections 13-14-301(1)(b) and (2)(a);
(b) upon mutual written agreement of the franchisor and franchisee as provided in Subsection 13-14-301(2)(b); or
(c) upon voluntary termination by the franchisee as provided in Subsection 13-14-301(4).

(3) The franchisor shall pay the franchisee the amounts specified in Subsection (1) within 90 days after the tender of the property to the franchisor if the franchisee:
(a) has clear title to the property; and
(b) is in a position to convey title to the franchisor.

(4) If repurchased inventory, equipment, or demonstrator vehicles are subject to a security interest, the franchisor may make payment jointly to the franchisee and to the holder of the security interest.

(5) Subsection (1)(g) does not relieve the franchisee or its lessor from an obligation under their lease agreement to mitigate damages.

(6)
(a) This section does not apply to a franchisee's voluntary termination or noncontinuation of its franchise that occurs as a result of the franchisee's sale of its dealership business entity or substantially all of the assets of that entity to a third party if the franchisor contemporaneously grants a franchise to the third party on terms and conditions that are comparable to those of the terminating or noncontinuing franchise.
(b) Subsection (6)(a) may not be construed to impair a contractual right of a terminating or noncontinuing franchisee under a franchise or related agreement with a franchisor or its affiliate, including a right to return unsold parts.

(7) This section does not apply to a termination, cancellation, or nonrenewal of:
(a) a recreational vehicle franchise; or
(b) a line-make by a recreational vehicle franchisor.

Amended by Chapter 33, 2010 General Session

13-14-307.5 Termination, cancellation, or nonrenewal of a recreational vehicle franchise agreement.

(1) This section applies only to a recreational vehicle franchisee's termination, cancellation, or nonrenewal of:
(a) a recreational vehicle franchise; or
(b) a recreational vehicle line-make.

(2)

(a) A recreational vehicle franchisee may, at any time and with or without good cause, terminate, cancel, or not renew its recreational vehicle franchise agreement or a recreational vehicle line-make by giving 30 days' prior written notice to the recreational vehicle franchisor.
(b) A franchisee has the burden of showing that a termination, cancellation, or nonrenewal is for good cause.
(c) Good cause for a franchisee's termination, cancellation, or nonrenewal is considered to exist if:
(i) the franchisor is convicted of or enters a plea of nolo contendere to a felony;
(ii) the business operations of the franchisor are:
(A) abandoned; or
(B) closed for 10 consecutive business days, unless the closing is due to an act of God, a strike, a labor difficulty, or another cause over which the franchisor has no control;
(iii) the franchisor makes a misrepresentation that materially and adversely affects the business relationship with the recreational vehicle franchisee;
(iv) a material violation of this chapter is not cured within 30 days after the franchisee gives 30 days' written notice of the violation to the recreational vehicle franchisor; or
(v) the recreational vehicle franchisor:
(A) becomes insolvent;
(B) declares bankruptcy; or
(C) makes an assignment for the benefit of creditors.
(3) If the franchisee terminates, cancels, or does not renew the recreational vehicle franchise agreement or line-make for cause, the franchisor shall, at the franchisee's election and within 45 days after termination, cancellation, or nonrenewal, repurchase:
(a)
(i) all new, unaltered recreational vehicles, including demonstrators, that the franchisee acquired from the franchisor within 18 months before the date of the termination, cancellation, or nonrenewal; and
(ii) for a repurchase price equal to 100% of the original net invoice cost, including transportation, reduced by:
(A) any applicable rebates and discounts to the franchisee; and
(B) the cost to repair any damage to a repurchased recreational vehicle, if the vehicle is damaged after delivery to the franchisee but before repurchase occurs;
(b)
(i) all undamaged accessories and proprietary parts sold by the recreational vehicle franchisor to the franchisee within one year before termination, cancellation, or nonrenewal, if accompanied by the original invoice; and
(ii) for a repurchase price equal to 100% of the original net invoice cost, plus an additional 5% of the original net invoice cost to compensate the franchisee for packing and shipping the returned accessories and parts to the franchisor; and
(c)
(i) any properly functioning diagnostic equipment, special tools, current signage, and other equipment and machinery that:
(A) the franchisee purchased:
(I) from the franchisor within five years before termination, cancellation, or nonrenewal; and
(II) at the franchisor's request or because of the franchisor's requirement; and
(B) are no longer usable in the normal course of the franchisee's ongoing business, as the franchisee reasonably determines; and

(ii) for a repurchase price equal to 100% of the original net cost that the franchisee paid, plus any applicable shipping charges and sales taxes.

(4) A recreational vehicle franchisor shall pay the franchisee all money due under Subsection (3) within 30 days after the franchisor's receipt of the repurchased items.

Enacted by Chapter 33, 2010 General Session

13-14-308 Private right of action.

(1) A franchisee has a private right of action for actual damages and reasonable attorney fees against a franchisor for a violation of this chapter that results in damage to the franchisee.

(2)

(a) As used in this Subsection (2):

(i) "New franchisor" has the same meaning as defined in Section 13-14-302.5.

(ii) "Reinstated franchise" has the same meaning as defined in Section 13-14-302.5.

(iii) "Reinstated franchisee" has the same meaning as defined in Section 13-14-302.5.

(b) A reinstated franchisee has a private right of action for actual damages and reasonable attorney fees against a new franchisor if:

(i) the new franchisor:

(A) establishes a new franchisee of the same line-make as a line-make of the reinstated franchisee within the relevant market area of the reinstated franchisee; or

(B) adds a line-make to another franchisor's existing franchisee within the relevant market area of the reinstated franchisee that is the same line-make as a line-make of the reinstated franchisee; and

(ii) the franchisor's action under Subsection (2)(b)(i) causes a substantial diminution in value of the reinstated franchisee's reinstated franchise.

(c) A new franchisor may not be held liable under Subsection (2)(b) based on a franchisee's purchase of another existing franchise, both of which are within the relevant market area of a reinstated franchisee, for the purpose of combining the purchased franchise with the franchise of the purchasing franchisee.

Amended by Chapter 41, 2010 General Session

13-14-309 Change in distribution plan.

If there is a change in the plan of distribution of a line make that contemplates a continuation of that line make in the state, a manufacturer or distributor may not directly or indirectly, through the action of any parent of the manufacturer or distributor, subsidiary of the manufacturer or distributor, or common entity cause a termination, cancellation, or nonrenewal of a dealer franchise agreement by a present or previous manufacturer or distributor unless, by the effective date of the action the manufacturer or distributor offers the new motor vehicle dealer whose dealer franchise agreement is terminated, cancelled, or not renewed, a dealer franchise agreement that is substantially similar to the dealer franchise agreement that existed with the previous manufacturer or distributor allowing the dealer to represent the line make under the new plan of distribution.

Enacted by Chapter 362, 2008 General Session

13-14-310 Reporting requirement.

By September 1 of each year, the advisory board shall submit, in accordance with Section 68-3-14, an annual written report to the Business and Labor Interim Committee that, for the fiscal year immediately preceding the day on which the report is submitted, describes:
(1) the number of applications for a new or relocated dealership that the advisory board received; and
(2) for each application described in Subsection (1):
(a) the number of protests that the advisory board received;
(b) whether the advisory board conducted a hearing;
(c) if the advisory board conducted a hearing, the disposition of the hearing; and
(d) the basis for any disposition described in Subsection (2)(c).

Amended by Chapter 18, 2017 General Session

Chapter 14a
Equipment Repurchase from Retail Dealers

13-14a-1 Definitions.
(1)
(a) "Dealer" means any person, firm, or corporation engaged in the business of selling and retailing farm equipment, implements, utility and light industrial equipment, attachments, or repair parts, and includes retailers of yard and garden equipment not primarily engaged in the farm equipment business.
(b) "Dealer" does not include:
(i) a person who is engaged in the business of sales and service of heavy industrial or construction equipment; or
(ii) a person, firm, or corporation who serves as the dealer for a membership group purchasing program.
(2) "Independent wholesaler" means a person, firm, or corporation who stocks inventory for resale to retail dealers and who holds title to that inventory.
(3) "Manufacturer" means any person, firm, or corporation engaged in the business of manufacturing and distributing for retail sale farm implements, machinery, utility and light industrial equipment, attachments, or repair parts, and includes manufacturers of yard and garden equipment not primarily intended for farm use.
(4) "Parts inventory" means repair parts held for resale and used to service farm implements, machinery, attachments, utility and light industrial equipment, and yard and garden equipment.
(5) "Sales agreement" means a written, verbal, or implied on-going agreement between a dealer and a manufacturer or wholesaler under which the dealer agrees to sell at retail those items supplied by the manufacturer or wholesaler. "Sales agreement" can include an assignment of an exclusive sales area by the manufacturer or wholesaler or the filing of UCC security documents by the manufacturer or wholesaler.
(6) "Wholegoods" or "wholegoods inventory" means assembled or complete units of farm implements, machinery, utility and light industrial equipment, and yard and garden equipment and includes assembled or complete attachments.
(7) "Wholesaler" as an entity's business or as the context requires may mean:

(a) an independent wholesaler engaged in the business of distributing for retail sale the items listed in Subsection (4) or (6), that is obligated under Section 13-14a-2 to accept new and unsold wholegoods and parts from retailers on behalf of the manufacturer, but the obligation of the wholesaler may not exceed the obligation of the manufacturer; or

(b) a dealer, as defined in Subsection (1), who in addition to retailing distributes equipment at the wholesale level.

Amended by Chapter 317, 1995 General Session

13-14a-2 Right of return on termination of retailing agreement -- Credit on return.

(1) Upon termination of all sales agreements in which the dealer has agreed to offer the products of the manufacturer or wholesaler for retail sale and to stock wholegoods and parts inventories as may or may not be required by the manufacturer or wholesaler, the retailer is entitled to payment or credit from the manufacturer or wholesaler for all new and unsold wholegoods and parts inventories held by the dealer on the date the agreement was terminated.

(2)

(a) Except as otherwise provided in this section, the amount of payment or credit due for unsold and undamaged wholegoods is 100% of the original invoice price paid by or invoiced to the dealer, plus any freight charges paid by or billed to the dealer, less any volume, sales, or special discounts on the wholegoods previously paid to the dealer.

(b) The manufacturer shall bear the freight charges incurred by the dealer in shipping any wholegoods inventory to the manufacturer's choice of destination. The dealer is responsible for freight charges from the dealer's location to the wholesaler on inventory purchased from that wholesaler.

(3)

(a) Payment or credit due to the dealer on wholegoods inventory that has been in the dealer's inventory for more than 36 months from the date of invoice may be adjusted downward from the original invoice price to cover demonstration or rental use. The amount of adjustment shall be agreed upon by the dealer and the manufacturer or wholesaler, but in no case shall the adjustment cause the value of the wholegood to go below the wholesale value listed for that equipment in the edition of the trade-in guide customarily used by dealers or if the equipment is not listed in the trade-in guide, the local retail auction price will prevail at the dealer's choice.

(b) If an agreement cannot be made on adjustment, the adjustment shall be submitted to arbitration under procedures approved by both the manufacturer and the dealer. The manufacturer shall pay the cost of the arbitration.

(4)

(a) The amount of payment or credit due to the dealer for parts inventory is 100% of the current wholesale price of the parts listed in the manufacturer's or wholesaler's price book.

(b) The dealer is entitled to reimbursement for any handling or packaging incurred to return the parts inventory to the manufacturer or wholesaler in the amount of 5% of the currently listed wholesale price of the returned parts. The manufacturer or wholesaler shall bear the freight cost to return the inventory to their choice of destination.

(5)

(a) New, unsold parts that are listed and priced in the manufacturer's or wholesaler's price book at the time of the termination of the agreement are eligible for return.

(b) Parts with superseded part numbers are eligible for return at 85% of the price listed for the superseding part number, if they meet the criteria of being new and unsold.

(c) Parts that have been deleted from the price book within the previous 24 months prior to termination of the sales agreement shall be repurchased at 50% of the last published price.
(d) Parts that are not eligible for return are:
(i) parts that are normally sold at retail in packages of two or more due to precision machining, such as piston rings or connecting rod bearing liners, if one of the parts is missing; and
(ii) any parts that are improperly identified.
(e) Package quantity between the dealer and the manufacturer or wholesaler will not be cause for rejection of a returned part.
(f) Parts manuals, service manuals, and owners manuals that the dealer has purchased and held for resale at retail shall be repurchased at current wholesale cost.
(6) Upon the payment or credit due to the dealer's account of the amounts required by this section, title to the wholegoods, attachments, and parts inventories is vested in the manufacturer or wholesaler and the manufacturer or wholesaler is entitled to possession of those items.
(7) All credits due and the final payments to the dealer shall be made within 60 days of the date of shipment of the inventory back to the manufacturer or wholesaler.
(8) Special tools for repair of the manufacturer's equipment that the dealer maintains or tools that the manufacturer requires the dealer to maintain shall be repurchased by the manufacturer upon termination of the agreement. The repurchase price shall be the fair market value, but may not be less than 25% of the replacement cost for a usable tool.
(9) The manufacturer shall repurchase for fair market value:
(a) any sign that the dealer has purchased for the exclusive advertisement of the manufacturer's or wholesaler's product; and
(b) any computer or communication equipment the dealer has purchased for direct interface with the manufacturer or wholesaler.
(10) In calculating the fair market value of any item the manufacturer or wholesaler shall repurchase under Subsection (9), the depreciation of the item may not exceed 10% a year for the useful life of the item, but may not go below 25% of the replacement cost.
(11)
(a) A representative or agent of a manufacturer who does not stock inventory for resale or does not hold or anticipate holding title to any inventory is exempt from the repurchase obligations of this chapter.
(b) If a sales agreement is terminated, the manufacturer bears the responsibility to repurchase inventory sold by a manufacturer's representative or agent.

Amended by Chapter 317, 1995 General Session

13-14a-3 Right of return on death of dealer -- Continuation of business by heirs or survivors -- Right to sell business.
(1) Upon the death of a dealer, the death of a general partner in a partnership operating as a dealer, or the death of a majority shareholder in a corporation operating as a dealer, the manufacturer or wholesaler shall repurchase the inventory under Section 13-14a-2.
(2) Subsection (1) does not apply if the heirs of the decedent, the remaining partners, or the remaining shareholders elect to continue to operate the dealership and reaffirm an existing agreement or enter into a new agreement with the manufacturer or wholesaler within 180 days or any longer period as they may agree.
(3) A manufacturer may not unreasonably withhold approval of a new sales agreement from a third party if:
(a) the dealer elects to sell the dealer's business to the third party; or

(b) on the death of a dealer, the death of a general partner in a partnership operating as a dealer, or the death of a majority shareholder in a corporation operating as a dealer, the heirs of the decedent, the remaining partners, or the remaining shareholders elect to sell the business to the third party.

Amended by Chapter 317, 1995 General Session

13-14a-4 Termination of retailing agreement at will.

Any retailing agreement between a dealer and a manufacturer or wholesaler that is entered into or renewed after May 1, 1989, shall terminate at will, notwithstanding any agreement or law to the contrary, upon written notice of termination from the dealer. Any right arising from a prior breach of the contract survives a termination under this section.

Enacted by Chapter 63, 1989 General Session

13-14a-5 Notice or consent required before changing terms of retailing agreement -- Limitations on pledge of personal assets -- Cancellation of retailing agreement.

(1) Each manufacturer, wholesaler, financing subsidiary or division of the manufacturer, or any independent lender shall give the dealer prior written notice and obtain the dealer's consent before:
  (a) changing either the time or manner of payment;
  (b) making any changes in notes or security;
  (c) adding or releasing guarantors; or
  (d) granting extensions or renewals in payment schedules on any contract that is executed by the dealer in behalf of and in the name of any third purchaser of goods or services in which the dealer is obligated to assume contingent liability for the repurchase of that contract upon default by that third party.
(2) A person who signs a security agreement or guarantee agreement with a manufacturer or wholesaler may not be required to pledge or encumber his personal assets in a value in excess of the amount of the indebtedness secured.
(3) If any manufacturer or wholesaler fails to give notice or obtain consent under Subsection (1), or fails to comply with Subsection (2), the guarantee or security agreement affected is considered cancelled and terminated.

Enacted by Chapter 63, 1989 General Session

13-14a-6 Security interest of wholesaler or manufacturer not affected.

This chapter may not be construed to affect in any way any security interest that the wholesaler or manufacturer may have in the inventory of the dealer. The retailer, manufacturer, or wholesaler may furnish a representative to inspect all parts and certify their acceptability when packed for shipment.

Amended by Chapter 185, 2002 General Session

13-14a-7 Attorneys' fees and court costs -- Punitive damages.

The court, in any action to compel compliance with this chapter, shall award costs and reasonable attorneys' fees to the prevailing party. The court may award punitive damages.

Amended by Chapter 317, 1995 General Session

13-14a-8 Contractual right of return -- Election of penalties.

If the agreement between a dealer and a manufacturer or wholesaler confers rights and duties covering the return of wholegoods and parts inventories upon termination of the agreement, the dealer may elect to proceed under the agreement. The dealer is not considered to have made this election to the extent that the rights and duties conferred by this chapter exceed those conferred by the sales agreement.

Enacted by Chapter 63, 1989 General Session

13-14a-9 Continuing obligation of manufacturer or wholesaler.

(1) If a manufacturer or wholesaler is purchased by or merges with another company, the purchasing or surviving entity shall bear all of the responsibilities of the original or purchased manufacturer or wholesaler under this chapter.
(2) If a manufacturer sells a product line, the purchasing entity bears the responsibility of repurchase.
(3) In the case of a wholesaler who discontinues representing a line for any reason, the manufacturer of that line bears the responsibility to repurchase.

Amended by Chapter 317, 1995 General Session

Chapter 14b
Uniform Equipment Dealers Warranty Reimbursement Act

13-14b-101 Title.

This chapter is known as the "Uniform Equipment Dealers Warranty Reimbursement Act."

Enacted by Chapter 225, 2003 General Session

13-14b-102 Definitions.

As used in this chapter:

(1) "Audit" means a review by a supplier of a dealer's warranty claims records.
(2) "Current net price" means the price charged to a dealer for repair parts as listed in the printed price list or catalog or invoice of the supplier in effect at the time a warranty claim is submitted.
(3) "Dealer agreement" means an oral or written contract or an agreement of definite or indefinite duration, between a supplier and an equipment dealer that authorizes or requires the equipment dealer to perform services or supply parts under a warranty, or to do both.
(4) "Equipment dealer" or "dealer" means a person or any other entity having a dealer agreement for selling and retailing:
  (a) agricultural equipment;
  (b) dairy and farmstead mechanization equipment;
  (c) construction, utility, and industrial equipment;
  (d) outdoor power equipment;
  (e) lawn and garden equipment; or
  (f) attachments or repair parts for equipment listed in Subsections (4)(a) through (e).

(5)
(a) "Supplier" means a person or any other entity engaged in the manufacturing, assembly, or wholesale distribution of an item listed in Subsections (4)(a) through (f).
(b) "Supplier" includes:
(i) any successor in interest, including a purchaser of assets or stock; and
(ii) a surviving corporation resulting from a merger, liquidation, or reorganization of the original supplier that issued the warranty.
(6) "Warranty claim" means a claim for payment submitted by an equipment dealer to a supplier for service or parts, or both, provided to a customer under a:
(a) warranty issued by the supplier; or
(b) recall or modification order issued by the supplier.

Enacted by Chapter 225, 2003 General Session

13-14b-103 Warranty claims.
(1) An equipment dealer may submit a warranty claim to a supplier if a warranty defect is identified and documented prior to the expiration of a supplier's warranty:
(a) while a dealer agreement is in effect; or
(b) after the termination of a dealer agreement if the claim is for work performed while the dealer agreement was in effect.
(2)
(a) A supplier shall accept or reject a warranty claim submitted under Subsection (1) within 30 days of the date the supplier received the claim.
(b) A warranty claim not rejected within 30 days of the date the supplier received the claim is considered to be accepted by the supplier.
(3) No later than 30 days after the date a warranty claim is accepted or rejected under Subsection (2), the supplier shall:
(a) pay an accepted warranty claim; or
(b) send the dealer written notice of the reason the warranty claim was rejected.
(4)
(a)
(i) A supplier shall compensate the dealer for the warranty claim as follows:
(A) the dealer's established customer hourly retail labor rate multiplied by the reasonable and customary amount of time required to complete such work, including diagnostic time, expressed in hours and fractions of an hour;
(B) the dealer's current net price plus 20% for parts to reimburse the dealer for reasonable costs of doing business in performing the warranty service on the supplier's behalf; and
(C) extraordinary freight and handling costs.
(ii) For purposes of Subsection (4)(a)(i)(C), "extraordinary freight and handling costs" mean costs that are above and beyond the normal reimbursement policy of the supplier for warranty repair work.
(b)
(i) The supplier shall give due consideration to any extraordinary expenses incurred by the dealer in performing necessary warranty repairs.
(ii) If the repair work is for safety or mandatory modifications ordered by the supplier, the supplier shall reimburse the dealer for transportation costs incurred by the dealer.
(5) After payment of a warranty claim, a supplier may not charge back, off-set, or otherwise attempt to recover from the dealer all or part of the amount of the claim unless:

(a) the warranty claim was fraudulent;
(b) the services for which the warranty claim was made were not properly performed or were unnecessary to comply with the warranty; or
(c) the dealer did not substantiate the warranty claim according to the written requirements of the supplier that were in effect when the equipment was delivered to the dealer by the customer for warranty repairs.

(6) If a supplier denies a warranty claim due to a particular item or part of the claim, the denial shall only affect the items or parts in question and not the complete warranty claim.

(7) A supplier may not pass the cost of covering warranty claims under this chapter on to a dealer through any means including:
(a) surcharges;
(b) reduction of discounts; or
(c) certification standards.

(8)
(a) The provisions of this chapter do not apply to a supplier or dealer where a written dealer agreement provides for compensation to a dealer for warranty labor and parts costs either as part of the pricing of the equipment to the dealer or in the form of a lump-sum payment.
(b) The lump-sum payment under Subsection (8)(a) shall be at least 5% of the suggested retail price of the equipment.

Amended by Chapter 378, 2010 General Session

13-14b-104 Audits.

(1) A supplier may not audit a dealer's records concerning any paid warranty claim that was submitted to the supplier more than one year before the day on which the audit begins, except where an audit of records made within the one-year time period shows fraudulent claims, in which case this provision does not apply.

(2)
(a) After payment or rejection of a warranty claim under Subsection 13-14b-103(2), a supplier may not audit a warranty claim more than once.
(b) Subsection (2)(a) may not prevent a supplier from requiring additional information from a dealer if an initial audit finds potential errors, fraud, or inconsistencies.

Enacted by Chapter 225, 2003 General Session

13-14b-105 Relief.

(1) A dealer may bring an action in a court of competent jurisdiction to obtain payment of a warranty claim submitted under this chapter to a supplier if a supplier:
(a) fails to make payment in accordance with the provisions of this chapter;
(b) wrongfully rejects the dealer's warranty claim; or
(c) violates any other provision of this chapter.

(2) The court shall award the dealer costs and reasonable attorney's fees if it finds that the supplier has committed a violation under Subsection (1)(a), (b), or (c).

Enacted by Chapter 225, 2003 General Session

Chapter 15
Business Opportunity Disclosure Act

Part 1
General Provisions

13-15-101 Title.

This chapter is known as the "Business Opportunity Disclosure Act."

Renumbered and Amended by Chapter 243, 2022 General Session

13-15-102 Definitions.

As used in this chapter:

(1)
(a) "Business opportunity" means an arrangement under which a person:
(i) sells or leases a product, equipment, a supply, or a service:
(A) upon payment of initial required consideration of at least $500; and
(B) for the purpose of enabling the buyer or lessee to start a business; and
(ii) represents to the buyer or lessee that:
(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;
(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;
(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
(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.
(b) "Business opportunity" does not include:
(i) the sale of an ongoing business when the owner of that business sells and intends to sell only that one business; or
(ii) not-for-profit sale of sales demonstration equipment, materials, or samples for a total price of $500 or less.
(2) "Division" means the Division of Consumer Protection of the Department of Commerce.
(3) "Franchise" means the same as that term is defined by Federal Trade Commission rules governing franchise and business opportunity ventures.
(4) "Guarantee" means a written agreement that:
(a) a purchaser and seller sign; and
(b) discloses the complete details and each limitation or exception of the agreement.
(5)

(a) "Initial required consideration" means the total amount a purchaser is obligated to pay under the terms of a business opportunity:
(i) before the day on which the purchaser receives the product, equipment, supply, or service;
(ii) the day on which the purchaser receives the product, equipment, supply, or service; or
(iii) within six months after the day on which the purchaser and seller enter into the business opportunity.
(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.
(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.
(6) "Principal" means as the division determines by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(7) "Purchaser" means a person who buys or leases from another person a business opportunity.
(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.
(9)
(a) "Seller" means a person who offers to sell, offers to lease, sells, or leases to another person a business opportunity.
(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.

Renumbered and Amended by Chapter 243, 2022 General Session

Part 2
Seller Duties

13-15-201 Required filings -- Fees -- Rulemaking.
(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.
(b) To obtain a proof of disclosure receipt from the division, a person shall:
(i) file with the division a disclosure statement that complies with Section 13-15-202; and
(ii) pay a filing fee as determined by the division in accordance with Section 63J-1-504.
(c) A proof of disclosure receipt is valid for one year after the day on which the division issues the receipt.
(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.
(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.
(b) To obtain a proof of notice receipt from the division, a person shall:

(i) file with the division a notice that states:
(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;
(B) the name of the applicant;
(C) the name of the franchise;
(D) the name under which the applicant intends to transact or transacts business, if different than the name of the franchise;
(E) the address of the applicant's principal place of business; and
(F) the applicant's state-issued business entity number or other government-issued, publicly available identifying number; and
(ii) pay a filing fee determined by the division in accordance with Section 63J-1-504, not to exceed $100.
(c) A seller who does not qualify for a proof notice receipt under this Subsection (2) is subject to Subsection (1).
(d) A proof of notice receipt is valid for one year after the day on which the division issues the receipt.
(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.
(3) The division shall deposit all fees collected under this section into the Commerce Service Account created in Section 13-1-2.
(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.

Enacted by Chapter 243, 2022 General Session

13-15-202 Disclosure statements.
(1) An applicant for a proof of disclosure receipt under Subsection 13-15-201(1) shall include the following in a disclosure statement:
(a) the name, address, and principal place of business of:
(i) the applicant; and
(ii) each parent, affiliate, or holding company of the applicant that is responsible for a statement that the applicant makes;
(b) an individual statement from each of the following, detailing the person's business experience for the five-year period immediately before the day on which the applicant files the disclosure statement:
(i) the applicant;
(ii) each parent company of the applicant;
(iii) each current director of the applicant; and
(iv) each current executive officer of the applicant;
(c) for each type of business opportunity the applicant offers to enter into or enters into as a seller:
(i) an individual statement from each person described in Subsections (1)(b)(i) and (ii) detailing the length of time, during the five-year period immediately before the day on which the applicant files the disclosure statement, the person has:

(A) operated a business of the type the purchaser would operate under the business opportunity; and
(B) offered to sell or lease that type of business opportunity;
(ii) each trademark, trade name, service mark, advertisement, or other commercial symbol that identifies a product, equipment, a supply, or a service that the applicant sells or leases under the business opportunity;
(iii) a complete statement of:
(A) the total amount that a purchaser pays to obtain or commence the operation of the business under the business opportunity;
(B) if all or part of a fee or deposit described in Subsection (1)(c)(iii)(A) is refundable, the conditions under which the fee or deposit is refundable;
(C) the product, equipment, supply, or service the applicant provides or performs for a purchaser under the business opportunity; and
(D) each oral, written, visual, or other representation that the applicant makes to a prospective purchaser about specific levels of potential sales, income, or gross and net profits under the business opportunity;
(iv) a complete description of:
(A) the type and length of training the applicant promises to a prospective purchaser, if any;
(B) each service the applicant promises to perform in connection with the placement of equipment, a product, or a supply at a location from which the equipment, product, or supply will be sold or used; and
(C) each agreement the applicant makes with an owner or manager of a location where a purchaser's equipment, product, or supply is placed; and
(v) a complete copy of each contract to which a purchaser under the business opportunity would be party;
(d) the total number of business opportunities the applicant has entered into as a seller in each state;
(e) the total number of business opportunities that the applicant has canceled within the 12 months before the day on which the applicant files the disclosure statement;
(f) the total number of business opportunities, to which the applicant is a party, for which a purchaser has requested a refund or cancellation within the 12 months before the day on which the applicant files the disclosure statement;
(g) a statement that discloses each person identified in Subsection (1)(a) who:
(i) has been convicted of a felony or misdemeanor or pleaded no contest to a felony or misdemeanor charge, if the felony or misdemeanor involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;
(ii) has been held liable or consented to the entry of a stipulated judgment in an administrative or civil action based upon:
(A) fraud, embezzlement, fraudulent conversion, misappropriation of property;
(B) the use of untrue or misleading representations; or
(C) the use of any unfair, unlawful, or deceptive business practice; or
(iii) is subject to an injunction or restrictive order relating to business activity as the result of a government agency action;
(h) a financial statement from the applicant that is:
(i) less than 13 months old; and
(ii) signed by an officer, director, trustee, or general or limited partner of the applicant, under a declaration that certifies that to the signatory's knowledge and belief the information in the financial statement is true and accurate; and

(i) a cover sheet that:
(i) is attached to the front or appears at the beginning of the disclosure statement; and
(ii) conspicuously states in at least 12-point upper- and lower-case boldface type:
(A) the name of the applicant;
(B) the date on which the applicant files the disclosure;
(C) the following notice:

"INFORMATION FOR PURCHASE OF A BUSINESS OPPORTUNITY:

To protect you, the State of Utah has required your seller to give you this disclosure statement. The State of Utah has not verified the accuracy of the information in the disclosure statement."; and

(D) if the applicant makes a representation described in Subsection (1)(c)(iii)(D) or 13-15-102(1)(a)(ii)(D) the following notice:

"CAUTION

The number of purchasers who have earned through this business opportunity an amount in excess of the amount the purchaser pays for the business opportunity is at least _____ which represents at least _____% of the total number of purchasers of this business opportunity."

(2) The disclosure statement described in Subsection (1) may not include material or information other than the material and information required under Subsection (1).

Renumbered and Amended by Chapter 243, 2022 General Session

13-15-203 Disclosure statement furnished to purchaser -- Additional nondeceptive information permitted.

(1) A seller shall provide the disclosure statement described under Section 13-15-202 to a prospective purchaser at least 10 business days before the day on which the earlier of the following occurs:
(a) the prospective purchaser executes an agreement imposing a binding legal obligation on the prospective purchaser in connection with the seller's sale or proposed sale of a business opportunity; or
(b) the prospective purchaser makes a payment or provides consideration in connection with the seller's sale or proposed sale of a product or business opportunity.
(2) A seller may provide a prospective purchaser nondeceptive information apart from the disclosure statement described in Section 13-15-202, if the information does not contradict the information required in the disclosure statement.

Renumbered and Amended by Chapter 243, 2022 General Session

Part 3
Enforcement

13-15-301 Administration and enforcement -- Powers -- Legal counsel -- Fees.

(1) The division shall administer and enforce the provisions of this chapter in accordance with Chapter 2, Division of Consumer Protection.
(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.

(3)
(a) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:
(i) the division director may impose an administrative fine of up to $2,500 for each violation of this chapter; and
(ii) the division may bring an action in a court of competent jurisdiction to enforce a provision of this chapter.
(b) In a court action by the division to enforce a provision of this chapter, the court may:
(i) declare that an act or practice violates a provision of this chapter;
(ii) issue an injunction for a violation of this chapter;
(iii) order disgorgement of any money received in violation of this chapter;
(iv) order payment of disgorged money to an injured purchaser or consumer;
(v) impose a fine of up to $2,500 for each violation of this chapter; or
(vi) award any other relief that the court deems reasonable and necessary.
(4) If a court of competent jurisdiction grants judgment or injunctive relief to the division, the court shall award the division:
(a) reasonable attorney fees;
(b) court costs; and
(c) investigative fees.
(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.
(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.
(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.

Renumbered and Amended by Chapter 243, 2022 General Session

13-15-302 Private right of action.
(1) A purchaser may bring an action in a court of competent jurisdiction against a seller who does not comply with this chapter.
(2) If a court of competent jurisdiction finds that a seller violated this chapter, a purchaser who brings an action under Subsection (1) is entitled to:
(a) rescission of the contract;
(b) an award of reasonable attorney fees and costs of court in an action to enforce the right of rescission; and
(c) an amount equal to the greater of:
(i) actual damages; or
(ii) $2,000.

Renumbered and Amended by Chapter 243, 2022 General Session

Part 4
Miscellaneous

13-15-401 Consumer complaints.

(1) As used in this section, "consumer complaint" means a complaint that:
  (a) a consumer or business files with the division;
  (b) alleges facts relating to conduct that the division regulates under this chapter; and
  (c)
    (i) alleges a loss to the consumer or business described in Subsection (1)(a) of $3,500 or more; or
    (ii) is one of at least 50 complaints filed with the division:
      (A) against the same person; and
      (B) during the four-year period immediately before the day on which the consumer or business described in Subsection (1)(a) files the complaint.

(2) For purposes of determining the number of complaints against the same person under Subsection (1)(c)(ii)(A), the division may consider complaints filed against multiple corporations, limited liability companies, partnerships, or other business entities under common ownership to be complaints against the same person.

(3) Notwithstanding Subsection 13-11-7(2) and subject to Subsections (4) and (5), a consumer complaint:
  (a) is a public record; and
  (b) may not be classified as a private, controlled, or protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(4) Subsection (3) does not apply to a consumer complaint:
  (a) that is nonmeritorious, beginning the day on which:
    (i) the division determines through an administrative proceeding that the consumer complaint is nonmeritorious; or
    (ii) a court of competent jurisdiction finds the complaint nonmeritorious; or
  (b) that is on file with the division for more than four years after the day on which the person files the complaint.

(5) Before making a consumer complaint that is subject to Subsection (3) or a response described in Subsection (6) available to the public, the division:
  (a) shall redact from the consumer complaint and the seller's response any information that would disclose:
    (i) the consumer or seller's:
      (A) address;
      (B) social security number;
      (C) bank account information;
      (D) email address; or
      (E) telephone number; or
    (ii) information similar in nature to the information described in Subsection (5)(a)(i); and
  (b) may redact the name of the consumer or business and any other information that could, in the division's judgment, disclose the identity of the consumer or business filing the consumer complaint.

(6) A seller's initial, written response to a consumer complaint that is subject to Subsection (3) is a public record.

Enacted by Chapter 243, 2022 General Session

Chapter 19
Shopping Cart Retrieval Business

13-19-1 Definition.

As used in this section, "shopping cart retrieval business" means the business of searching for, gathering, and restoring possession to the merchant or owner, for compensation or in expectation of compensation, of shopping carts located outside the premises of a retail mercantile establishment.

Enacted by Chapter 22, 1983 General Session

13-19-2 Written authorization required.

Every person who engages in the shopping cart retrieval business shall retain records, showing written authorization from the merchant or owner to retrieve the carts and to be in possession of those carts retrieved, and shall maintain a copy of that authorization in any vehicle utilized for that retrieval.

Enacted by Chapter 22, 1983 General Session

13-19-3 Violation an infraction.

Notwithstanding the provisions of Section 76-6-606, a violation of this chapter is an infraction.

Amended by Chapter 433, 2018 General Session

13-19-4 Exemption.

Exempted under this act are nonprofit charitable organizations.

Enacted by Chapter 22, 1983 General Session

Chapter 20
New Motor Vehicle Warranties Act

13-20-1 Short title.

This chapter is known as the "New Motor Vehicles Warranties Act."

Enacted by Chapter 168, 1985 General Session

13-20-2 Definitions.

As used in this chapter:

(1) "Consumer" means an individual who enters into an agreement or contract for the transfer, lease, purchase of a new motor vehicle other than for purposes of resale, or sublease during the duration of the period defined under Section 13-20-5.

(2) "Manufacturer" means manufacturer, importer, distributor, or anyone who is named as the warrantor on an express written warranty on a motor vehicle.

(3) "Motor home" means a self-propelled vehicular unit, primarily designed as a temporary dwelling for travel, recreational, and vacation use.
(4)
(a) "Motor vehicle" includes:
(i) a motor home, as defined in this section, but only the self-propelled vehicle and chassis sold in this state;
(ii) a motor vehicle, as defined in Section 41-1a-102, sold in this state; and
(iii) a motorcycle, as defined in Section 41-1a-102, sold in this state if the motorcycle is designed primarily for use and operation on paved highways.
(b) "Motor vehicle" does not include:
(i) those portions of a motor home designated, used, or maintained primarily as a mobile dwelling, office, or commercial space;
(ii) a road tractor or truck tractor as defined in Section 41-1a-102;
(iii) a mobile home as defined in Section 41-1a-102;
(iv) any motor vehicle with a gross laden weight of over 12,000 pounds, except:
(A) a motor home as defined under Subsection (3); and
(B) a farm tractor as defined in Section 41-1a-102;
(v) a motorcycle, as defined in Section 41-1a-102, if the motorcycle is designed primarily for use or operation over unimproved terrain;
(vi) an electric assisted bicycle as defined in Section 41-6a-102;
(vii) a moped as defined in Section 41-6a-102;
(viii) a motor assisted scooter as defined in Section 41-6a-102; or
(ix) a motor-driven cycle as defined in Section 41-6a-102.
(5) "Recreational vehicle trailer" means a travel trailer, camping trailer, or fifth wheel trailer.

Amended by Chapter 124, 2013 General Session

13-20-3 Nonconforming motor vehicles -- Repairs.

If a new motor vehicle does not conform to all applicable express warranties, and the consumer reports the nonconformity to the manufacturer, its agent, or its authorized dealer during the term of the express warranties or during the one-year period following the date of original delivery of the motor vehicle to a consumer, whichever is earlier, the manufacturer, its agent, or its authorized dealer shall make repairs necessary to conform the vehicle to the express warranties, whether or not these repairs are made after the expiration of the warranty term or the one-year period.

Enacted by Chapter 168, 1985 General Session

13-20-4 Nonconforming motor vehicles -- Replacement -- Refund -- Criteria -- Defenses.

(1) If the manufacturer, its agent, or its authorized dealer is unable to conform the motor vehicle to any applicable express warranty by repairing or correcting any defect or condition that substantially impairs the use, market value, or safety of the motor vehicle after a reasonable number of attempts, the manufacturer shall replace the motor vehicle with a comparable new motor vehicle or accept return of the vehicle from the consumer and refund to the consumer the full purchase price including all collateral charges, less a reasonable allowance for the consumer's use of the vehicle. Refunds shall be made to the consumer, and any lienholders or lessors as their interests may appear.

(2) A reasonable allowance for use is that amount directly attributable to use by the consumer prior to his first report of the nonconformity to the manufacturer, its agent, or its authorized dealer, and during any subsequent period when the vehicle is not out of service because of repair.
(3) Upon receipt of any refund or replacement under Subsection (1), the consumer, lienholder, or lessor shall furnish to the manufacturer clear title to and possession of the motor vehicle.
(4) It is an affirmative defense to any claim under this chapter:
(a) that an alleged nonconformity does not substantially impair the consumer's use of the motor vehicle and does not substantially impair the market value or safety of the motor vehicle; or
(b) that an alleged nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of a motor vehicle by a consumer.

Amended by Chapter 249, 1990 General Session

13-20-5 Reasonable number of attempts to conform.
(1) It is presumed that a reasonable number of attempts have been undertaken to conform a motor vehicle to the applicable express warranties, if:
(a) the same nonconformity has been subject to repair four or more times by the manufacturer, its agent, or its authorized dealer within the express warranty term or during the one-year period following the date of original delivery of the motor vehicle to a consumer, whichever is earlier, but the nonconformity continues to exist; or
(b) the vehicle is out of service to the consumer because of repair for a cumulative total of 30 or more business days during the warranty term or during the one-year period, whichever is earlier.
(2) The term of an express warranty, the one-year period, and the 30-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike, fire, flood, or other natural disaster.

Enacted by Chapter 168, 1985 General Session

13-20-6 Enforcement -- Limited liability of dealer -- No limit on other rights or remedies.
(1) The Division of Consumer Protection shall, or a consumer may, enforce the rights created under this chapter. An action may be commenced by a consumer only after the claim has been investigated and evaluated by the division.
(2) This chapter may not be interpreted as imposing any liability on an authorized dealer or creating a cause of action by a consumer against a dealer under this chapter, except regarding any written express warranties made by the dealer apart from the manufacturer's own warranties.
(3) This chapter does not limit the rights or remedies which are otherwise available to a consumer under any other law.
(4) In an action initiated under this section by the consumer, the court may award attorneys' fees to the prevailing party.

Amended by Chapter 249, 1990 General Session

13-20-7 Use of dispute settlement procedure.
If a manufacturer has established an informal dispute settlement procedure which complies with Title 16, Code of Federal Regulations, Part 703, then Section 13-20-4 concerning refunds or replacement does not apply to any consumer who has not first resorted to this procedure.

Amended by Chapter 249, 1990 General Session

13-20-8 Mediation concerning nonconformity in recreational vehicle trailer.

(1) An owner who purchases a new recreational vehicle trailer and the manufacturer of the recreational vehicle trailer shall engage in mediation concerning resolution of a nonconformity in the recreational vehicle trailer, as provided in this section, if:
  (a) the owner notifies the manufacturer in writing of the nonconformity;
  (b) the nonconformity is manifest in the structural or functional integrity of the roof, subfloor, or wall of the recreational vehicle trailer;
  (c) following notification under Subsection (1)(a), the manufacturer makes at least four attempts to correct the nonconformity, but the nonconformity persists;
  (d) following at least four attempts by the manufacturer to correct the nonconformity, the owner submits to the manufacturer a written request for mediation;
  (e) the nonconformity substantially impairs the use, value, or safety of the recreational vehicle trailer; and
  (f) the nonconformity does not include a defect or condition that occurs as a result of:
    (i) the use of the recreational vehicle trailer for business or commercial purposes; or
    (ii) abuse, neglect, modification, or alteration of the recreational vehicle trailer by a person other than the manufacturer or the manufacturer's authorized service agent.
(2) Mediation under this section shall:
  (a) take place in the county in which the owner purchased the recreational vehicle trailer; and
  (b) be conducted by the Consumer Arbitration Program for Recreation Vehicles.
(3) The manufacturer of the recreational vehicle trailer shall pay the cost of mediation.
(4) The failure of mediation to resolve an owner's concerns about an alleged nonconformity in the owner's recreational vehicle trailer does not impair or affect any right or remedy the owner otherwise has under the law.

Amended by Chapter 124, 2013 General Session

Chapter 21
Credit Services Organizations Act

13-21-1 Short title.

This chapter is known as the "Credit Services Organizations Act."

Enacted by Chapter 29, 1985 General Session

13-21-2 Definitions -- Exemptions.

As used in this chapter:
(1) "Buyer" means an individual who is solicited to purchase or who purchases the services of a credit services organization.
(2) "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.

(3)
(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:
(i) improving a buyer's credit record, history, or rating;
(ii) providing advice, assistance, instruction, or instructional materials to a buyer with regard to Subsection (3)(a)(i); or
(iii) debt reduction or debt management plans.
(b) "Credit services organization" does not include:
(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;
(ii) a depository institution:
(A) as defined in Section 7-1-103; or
(B) that is regulated or supervised by the Federal Deposit Insurance Corporation or the National Credit Union Administration;
(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;
(iv) a person licensed to practice law in this state if:
(A) the person renders the services described in Subsection (3)(a) within the course and scope of the person's practice as an attorney; and
(B) the services described in Subsection (3)(a) are incidental to the person's practice as an attorney;
(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;
(vi) a credit reporting agency if the services described in Subsection (3)(a) are incidental to the credit reporting agency's services; or
(vii) a person who provides debt-management services and is required to be registered under Title 13, Chapter 42, Uniform Debt-Management Services Act.
(4) "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.

Amended by Chapter 289, 2011 General Session

13-21-3 Credit services organizations -- Prohibitions.
(1) A credit services organization, its 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:
(a) conduct any business regulated by this chapter without first:
(i) securing a certificate of registration from the division; and
(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;
(b) make a false statement, or fail to state a material fact, in connection with an application for registration with the division;

(c) 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;
(d) 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;
(e) 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;
(f) 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;
(g) 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
(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).

(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.
(b) A bond, letter of credit, or certificate of deposit shall remain in force:
(i) until replaced by a bond, letter of credit, or certificate of deposit of identical or superior coverage; or
(ii) for one year after the credit servicing organization notifies the division in writing that it has ceased all activities regulated by this chapter.

Amended by Chapter 183, 2009 General Session

13-21-3.5 Registration and suspension of registration.

(1) A credit services organization shall file an application for registration with the division before engaging in any activity regulated by this chapter. The application shall include:
(a) the name, complete address, and telephone number of the organization;
(b) the name of any person who owns or controls more than 5% of the organization, either directly or through another person or entity;
(c) the name of any individual who is responsible for the day-to-day operation of the organization;
(d)
(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) 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 Section 13-21-2(3)(a); or

(ii) a notarized statement of the credit services organization's chief executive officer or principal that neither the organization nor any person identified in Subsection (1)(b) or (c) is a party to any administrative, civil, or criminal action described in Subsection (1)(d)(i);

(e) a detailed outline of the organization's credit services program to be offered in this state, including two copies of any contract, form, sales literature, or other relevant document that will be used by the organization; and

(f) a reasonable registration fee to be determined by the division.

(2) The division may deny, suspend, or revoke a registration under this chapter if:

(a) a credit services organization has engaged, or is engaging in a violation of this chapter; or

(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).

Enacted by Chapter 186, 1994 General Session

13-21-4 Bond, letter of credit, or certificate of deposit -- Not required of agent if obtained by organization.

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

(2) As used in this section, a person is not a salesperson, agent, or representative of a credit services organization unless:

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

(b) the credit services organization and the issuer of the bond or letter of credit certify in writing that the bond or letter of credit covers the person.

Amended by Chapter 186, 1994 General Session

13-21-5 Written information statement required.

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. The credit services organization shall maintain on file for a period of two years an exact copy of the statement, personally signed by the buyer, acknowledging receipt of a copy of the statement.

Enacted by Chapter 29, 1985 General Session

13-21-6 Contents of statement.

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

(1) a complete and accurate statement of the buyer's right to review any file on the buyer maintained by any credit reporting agency, as provided under 15 U.S.C. Sec. 1681 et seq., as amended, the Fair Credit Reporting Act;

(2) a statement that 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 a notice of a denial of credit;
(3) the approximate price the buyer will be charged by a credit reporting agency for a copy of the file on the buyer;
(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;
(5) a complete and detailed description of the services to be performed by the credit services organization for the buyer and the total amount the buyer will have to pay, or become obligated to pay, for the services;
(6) a statement asserting the buyer's right to proceed against the bond or trust account required under Section 13-21-3; and
(7) the name and address of the surety company which issued the bond, or the name and address of the depository and the trustee and the account number of the trust account.

Amended by Chapter 96, 1988 General Session

13-21-7 Written contracts required -- Contents -- Notice of cancellation of contract.

(1) Each 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:
  (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.";
  (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;
  (c) a full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated date by which the services are to be performed, or estimated length of time for performing the services; and
  (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.
(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:

"Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within five days from the date the contract is signed.

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.

To cancel this contract, mail or deliver a signed dated copy of this cancellation notice, or any other written notice, to _____(name of seller)_____at _____(address of seller)_____ (place of business)_____ not later than midnight _____(date)_____.

I hereby cancel this transaction.

_____(date)

_____
(purchaser's signature)"

(3) The credit services organization shall give to the buyer a copy of the completed contract and all other documents the credit services organization requires the buyer to sign at the time they are signed.

Amended by Chapter 306, 2007 General Session

13-21-8 Burden of proving exception -- Penalties -- Court's criminal and equitable jurisdiction -- Prosecution.

(1)
(a) Any waiver by a buyer of any part of this chapter is void.
(b) Any attempt by a credit services organization to have a buyer waive rights given by this chapter is a violation of this chapter.

(2) In any proceeding involving this chapter, the burden of proving an exemption or an exception from a definition is upon the person claiming the exemption or exception.

(3)
(a) Any person who violates this chapter is guilty of a class A misdemeanor.
(b) Any district court of this state has jurisdiction to restrain and enjoin the violation of this chapter.

(4) The attorney general, any county attorney, any district attorney, or any city attorney may prosecute misdemeanor actions or institute injunctive or civil proceedings, or both, under this chapter.

(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.

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

Amended by Chapter 47, 2006 General Session

13-21-9 Damages -- Punitive damages -- Attorney's fees and costs -- Remedies.

(1) Any buyer injured by a violation of this chapter may bring any action for recovery of damages. Judgment shall be entered for actual damages, but in no case less than the amount paid by the buyer to the credit services organization, plus reasonable attorneys' fees and costs. An award may also be entered for punitive damages.

(2) The remedies provided under this chapter are in addition to any other procedures or remedies for any violation or conduct provided for in any other law.

(3) The Division of Consumer Protection may maintain an action for damages or injunctive relief on behalf of itself or any other person to enforce compliance with this chapter. Any judgment granted in favor of the division shall include, in addition to any other monetary award or injunctive relief, an award of reasonable attorneys' fees, court costs, and costs of investigation.

Amended by Chapter 96, 1988 General Session

Chapter 22
Charitable Solicitations Act

13-22-1 Short title.

This chapter is known as the "Charitable Solicitations Act."

Enacted by Chapter 122, 1987 General Session

13-22-2 Definitions.

As used in this chapter:

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

(2)

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

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

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

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

(C) established for any charitable purpose;

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

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

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

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

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

(5)

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

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

(i) any of the following done, or purporting to be done, for a charitable purpose:

(A) any oral or written request, including any request by telephone, radio, television, or other advertising or communications media;

(B) the distribution, circulation, or posting of any handbill, written advertisement, or publication; or

(C) an application or other request for a grant; or

(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 appeal is made for any charitable purpose, or the use of the name of any charitable organization or movement as an inducement or reason for making any purchase donation, or, in connection with any sale or donation, stating or implying that the whole or any part of the proceeds of any sale or donation will go to or be donated to any charitable purpose.

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

(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:

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

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

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

(b) "Contribution" does not include:

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

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

(8) "Contributor" means a donor, pledgor, purchaser, or other person who makes a contribution.

(9) "Director" means the director of the Division of Consumer Protection.

(10) "Division" means the Division of Consumer Protection of the Department of Commerce.

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

(12)

(a) "Professional fund raiser" means a person who:

(i) for compensation or any other consideration, for or on behalf of a charitable organization or any other person:

(A) solicits contributions; or

(B) promotes or sponsors the solicitation of contributions;

(ii)

(A) for compensation or any other consideration, plans, manages, counsels, consults, or prepares material for, or with respect to, the solicitation of contributions for a charitable organization or any other person; and

(B) at any time has custody of a contribution for the charitable organization;

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

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

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

(b) "Professional fund raiser" does not include:

(i) an individual acting in the individual's capacity as a bona fide officer, director, volunteer, or full-time employee of a charitable organization;

(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
(iii) a person who tangentially prepares materials, including a person who:
(A) makes copies;
(B) cuts or folds flyers; or
(C) creates a graphic design or other artwork without providing strategic or campaign-related input.

(13)
(a) "Professional fund raising counsel or consultant" means a person who:
(i) for compensation or any other consideration, plans, manages, counsels, consults, or prepares material for, or with respect to, the solicitation of contributions for a charitable organization or any other person;
(ii) does not solicit contributions;
(iii) does not at any time have custody of a contribution from solicitation; and
(iv) does not employ, procure, or engage any compensated person to solicit or receive contributions.
(b) "Professional fund raising counsel or consultant" does not include:
(i) an individual acting in the individual's capacity as a bona fide officer, director, volunteer, or full-time employee of a charitable organization;
(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
(iii) a person who tangentially prepares materials, including a person who:
(A) makes copies;
(B) cuts or folds flyers; or
(C) creates a graphic design or other artwork without providing strategic or campaign-related input.

(14)
(a) "Vending device" means a container used by a charitable organization or professional fund raiser, 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.
(b) "Vending device" includes machines, boxes, jars, wishing wells, barrels, or any other container.

(15) "Vending device decal" means any 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, 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.

Amended by Chapter 267, 2018 General Session

13-22-3 Investigative and enforcement powers -- Education.

(1) The division may make any investigation it considers necessary to determine whether any person is violating, has violated, or is about to violate any provision of this chapter or any rule made or order issued under this chapter. As part of the investigation, the division may:
(a) require a person to file a statement in writing;
(b) administer oaths, subpoena witnesses and compel their attendance, take evidence, and examine under oath any person in connection with an investigation; and
(c) require the production of any books, papers, documents, merchandise, or other material relevant to the investigation.

(2) Whenever it appears to the director that substantial evidence exists that any person has engaged in, is engaging in, or is about to engage in any act or practice prohibited in this chapter or constituting a violation of this chapter or any rule made or order issued under this chapter, the director may do any of the following in addition to other specific duties under this chapter:
  (a) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, the director may issue an order to cease and desist from engaging in the act or practice or from doing any act in furtherance of the activity; or
  (b) the director may bring an action in the appropriate district court of this state to enjoin the acts or practices constituting the violation or to enforce compliance with this chapter or any rule made or order issued under this chapter.
(3) Whenever it appears to the director by a preponderance of the evidence that a person has engaged in or is engaging in any act or practice prohibited in this chapter or constituting a violation of this chapter or any rule made or order issued under this chapter, the director may assess an administrative fine of up to $500 per violation up to $10,000 for any series of violations arising out of the same operative facts.
(4) Upon a proper showing, the court hearing an action brought under Subsection (2)(b) may:
  (a) issue an injunction;
  (b) enter a declaratory judgment;
  (c) appoint a receiver for the defendant or the defendant's assets;
  (d) order disgorgement of any money received in violation of this chapter;
  (e) order rescission of agreements violating this chapter;
  (f) impose a fine of not more than $2,000 for each violation of this chapter; and
  (g) impose a civil penalty, or any other relief the court considers just.
(5)
  (a) In assessing the amount of a fine or penalty under Subsection (3), (4)(f), or (4)(g), the director or court imposing the fine or penalty shall consider the gravity of the violation and the intent of the violator.
  (b) If it does not appear by a preponderance of the evidence that the violator acted in bad faith or with intent to harm the public, the director or court shall excuse payment of the fine or penalty.
(6) The division may provide or contract to provide public education and voluntary education for applicants and registrants under this chapter. The education may be in the form of publications, advertisements, seminars, courses, or other appropriate means. The scope of the education may include:
  (a) the requirements, prohibitions, and regulated practices under this chapter;
  (b) suggestions for effective financial and organizational practices for charitable organizations;
  (c) charitable giving and solicitation;
  (d) potential problems with solicitations and fraudulent or deceptive practices; and
  (e) any other matter relevant to the subject of this chapter.

Amended by Chapter 382, 2008 General Session

13-22-4 Violation a misdemeanor -- Damages.

(1) A person who willfully violates any provision of this chapter, either by failing to comply with any requirement or by doing any act prohibited in the chapter, is guilty of a class B misdemeanor. Each day the violation is committed or permitted to continue constitutes a separate punishable offense.

(2) Nothing in this section precludes any person damaged as a result of a charitable solicitation from maintaining a civil action for damages or injunctive relief.
(3) The division may maintain an action for damages or injunctive relief on behalf of itself or any other person to enforce compliance with this chapter.

Amended by Chapter 185, 1994 General Session

13-22-5 Registration or permit required.

(1)
(a) An organization may not engage in an activity described in Subsection (1)(b) unless the organization is:
(i) exempt under Section 13-22-8; or
(ii) registered with the division in accordance with this chapter.
(b) Unless an organization meets the requirements of Subsection (1)(a), the organization may not knowingly solicit, promote, or sponsor a charitable solicitation if the charitable solicitation:
(i) originates in Utah;
(ii) is received in Utah; or
(iii) is caused to be made through business operations in Utah.
(2) Subsection (1) does not prohibit an organization from receiving an unsolicited contribution.
(3)
(a) Unless a person acting as a professional fund raiser obtains a permit in accordance with Section 13-22-9, the person may not:
(i) make or facilitate a solicitation either directed toward the state or originating from the state; or
(ii) maintain a place of business in the state or employ an individual located in the state.
(b) Subsection (3)(a) applies regardless of whether a charitable organization receiving the services of a professional fund raiser is required to register under this chapter.
(4)
(a) Unless a person acting as a professional fund raising counsel or consultant obtains a permit in accordance with Section 13-22-9, the person may not:
(i) maintain a place of business in the state or employ an individual located in the state; or
(ii) provide any service of a professional fund raising counsel or consultant to or for a charitable organization, or any other person, over which the state has general jurisdiction.
(b) Subsection (4)(a) applies regardless of whether a charitable organization receiving the services of a professional fund raising counsel or consultant is required to register under this chapter.
(5) A person required to obtain a permit under Subsection (3) or (4) may not provide any service to or on behalf of an organization required to register under Subsection (1) if the organization is not registered in accordance with Section 13-22-6.

Amended by Chapter 267, 2018 General Session

13-22-6 Application for registration.

(1) An applicant for registration or renewal of registration as a charitable organization shall:
(a) pay an application fee as determined under Section 63J-1-504; and
(b) submit an application on a form approved by the division which shall include:

(i) the organization's name, address, telephone number, facsimile number, if any, and the names and addresses of any organizations or persons controlled by, controlling, or affiliated with the applicant;
(ii) the specific legal nature of the organization, that is, whether the organization is an individual, joint venture, partnership, limited liability company, corporation, association, or other entity;
(iii) the names and residence addresses of the officers and directors of the organization;
(iv) the name and address of the registered agent for service of process and a consent to service of process;
(v) the purpose of the solicitation and use of the contributions to be solicited;
(vi) the method by which the solicitation will be conducted and the projected length of time the solicitation is to be conducted;
(vii) the anticipated expenses of the solicitation, including all commissions, costs of collection, salaries, and any other items;
(viii) a statement of what percentage of the contributions collected as a result of the solicitation are projected to remain available for application to the charitable purposes declared in the application, including a satisfactory statement of the factual basis for the projected percentage;
(ix) a statement of total contributions collected or received by the organization within the calendar year immediately preceding the date of the application, including a description of the expenditures made from or the use made of the contributions;
(x) a copy of any written agreements with any professional fund raiser involved with the solicitation;
(xi) disclosure of any injunction, judgment, or administrative order or conviction of any crime involving moral turpitude with respect to any officer, director, manager, operator, or principal of the organization;
(xii) a copy of all agreements to which the applicant is, or proposes to be, a party regarding the use of proceeds for the solicitation or fundraising;
(xiii) a statement of whether the charitable organization, or the charitable organization's parent foundation, will be using the services of a professional fund raiser or of a professional fund raising counsel or consultant;
(xiv) if either the charitable organization or the charitable organization's parent foundation will be using the services of a professional fund raiser or a professional fund raising counsel or consultant:
(A) a copy of all agreements related to the services; and
(B) an acknowledgment that fund raising in the state will not commence until both the charitable organization, its parent foundation, if any, and the professional fund raiser or professional fund raising counsel or consultant are registered and in compliance with this chapter;
(xv) any documents required under Section 13-22-15; and
(xvi) any additional information the division may require by rule.

(2) If any 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.

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

Amended by Chapter 419, 2020 General Session

13-22-8 Exemptions.

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

(a) a bona fide religious, ecclesiastical, or denominational organization if:

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

(ii) the organization is either:

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

(B) a bona fide religious group:

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

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

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

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

(b) a solicitation by a broadcast media owned or operated by an educational institution or governmental entity, or any entity organized solely for the support of that broadcast media;

(c) subject to Subsection 13-22-21(1), an individual soliciting a contribution for the relief or benefit of another individual, who is specified by name at the time of the solicitation, if:

(i) all contributions are turned over to the named beneficiary after deducting actual expenses necessary for the cost of solicitation, if any; and

(ii) all individuals that carry out any fund-raising function for the benefit of the named individual are unpaid, directly or indirectly, for services rendered;

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

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

(f)

(i) a public school;

(ii) a public institution of higher learning;

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

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

(v) an organization within, and authorized by, an entity described in Subsections (1)(f)(i) through (iv); or

(vi) a parent organization, teacher organization, or student organization authorized by an entity described in Subsection (1)(f)(i) or (iii) if:

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

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

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

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

(g) a public or higher education foundation established under Title 53E, Public Education System -- State Administration, Title 53G, Public Education System -- Local Administration, or Title 53B, State System of Higher Education;

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

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

(j) any governmental unit of any state or the United States;

(k) any corporation:

(i) established by an act of the United States Congress; and

(ii) that is required by federal law to submit an annual report:

(A) on the activities of the corporation, including an itemized report of all receipts and expenditures of the corporation; and

(B) to the United States Secretary of Defense to be:

(I) audited; and

(II) submitted to the United States Congress;

(l) a solicitation by an applicant for a grant offered by a state agency if:

(i) the terms of the grant provide that the state agency monitors a grant recipient to ensure that grant funds are used in accordance with the grant's purpose; and

(ii) the sum of the amount available to the applicant under grants offered by a state agency that the applicant applies for in a calendar year is less than or equal to $1,500;

(m) a chapter of a charitable organization or a person who solicits contributions for a charitable organization, if the charitable organization is registered with the division pursuant to Section 13-22-5 or is exempt from registration under this section, and:

(i) all contributions solicited by the chapter or person are delivered directly to the control of the charitable organization; or

(ii)

(A) the charitable organization holds a United States Internal Revenue Service group tax exemption that covers the chapter;

(B) the charitable organization provides a list of its chapters to the division with its registration or renewal of registration;

(C) the chapter is on the list provided under Subsection (1)(m)(ii)(B);

(D) the chapter maintains the information required under Section 13-22-15 and provides the information to the division upon request; and

(E) solicitations by the chapter or the person are limited to the collection of membership-related fees, dues, or assessments from new and existing members;

(n) a solicitation in an obituary; or

(o) a solicitation made exclusively to a family member of the individual making the solicitation.

(2) An organization claiming an exemption under this section bears the burden of proving the organization's eligibility for, or the applicability of, the exemption claimed.

(3) An organization exempt from registration pursuant to this section that makes a material change in the organization's legal status, officers, address, or similar changes shall file a report

informing the division of the organization's current legal status, business address, business phone, officers, and primary contact person within 30 days of the change.

(4) The division may by rule:

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

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

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

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

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

Amended by Chapter 267, 2018 General Session
Amended by Chapter 415, 2018 General Session

13-22-9 Professional fund raiser's or fund raising counsel's or consultant's permit.

(1) A person applying for or renewing a permit as a professional fund raiser or a professional fund raising counsel or consultant shall:

(a) pay an application fee as determined under Section 63J-1-504; and

(b) submit a written application, verified under oath, on a form approved by the division that includes:

(i) the applicant's name, address, telephone number, facsimile number, if any;

(ii) the name and address of any organization or person controlled by, controlling, or affiliated with the applicant;

(iii) the applicant's business, occupation, or employment for the three-year period immediately preceding the date of the application;

(iv) whether it is an individual, joint venture, partnership, limited liability company, corporation, association, or other entity;

(v) the names and residence addresses of any officer or director of the applicant;

(vi) the name and address of the registered agent for service of process and a consent to service of process;

(vii) if a professional fund raiser:

(A) the purpose of the solicitation and use of the contributions to be solicited;

(B) the method by which the solicitation will be conducted and the projected length of time it is to be conducted;

(C) the anticipated expenses of the solicitation, including all commissions, costs of collection, salaries, and any other items;

(D) a statement of what percentage of the contributions collected as a result of the 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

(E) a statement of total contributions collected or received by the professional fund raiser within the calendar year immediately preceding the date of the application, including a description of the expenditures made from or the use made of the contributions;

(viii) if a professional fund raising counsel or consultant:

(A) the purpose of the plan, management, advice, counsel or preparation of materials for, or with respect to, the solicitation and use of the contributions solicited;

(B) the method by which the plan, management, advice, counsel, or preparation of materials for, or with respect to, the solicitation will be organized or coordinated and the projected length of time of the solicitation;
(C) the anticipated expenses of the plan, management, advice, counsel, or preparation of materials for, or with respect to, the solicitation, including all commissions, costs of collection, salaries, and any other items;
(D) a statement of total fees to be earned or received from the charitable organization declared in the application, and what percentage of the contributions collected as a result of the plan, management, advice, counsel, or preparation of materials for, or with respect to, the solicitation are projected after deducting the total fees to be earned or received 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
(E) a statement of total net fees earned or received within the calendar year immediately preceding the date of the application, including a description of the expenditures made from or the use of the net earned or received fees in the planning, management, advising, counseling, or preparation of materials for, or with respect to, the solicitation and use of the contributions solicited for the charitable organization;
(ix) disclosure of any injunction, judgment, or administrative order against the applicant or the applicant's conviction of any crime involving moral turpitude;
(x) a copy of any written agreements with any charitable organization;
(xi) the disclosure of any injunction, judgment, or administrative order or conviction of any crime involving moral turpitude with respect to any officer, director, manager, operator, or principal of the applicant;
(xii) a copy of all agreements to which the applicant is, or proposes to be, a party regarding the use of proceeds;
(xiii) an acknowledgment that fund raising in the state will not commence until both the professional fund raiser or professional fund raising counsel or consultant and the charity, and its parent foundation, if any, are registered and in compliance with this chapter; and
(xiv) any additional information the division may require by rule.
(2) If any information contained in the application for a permit 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.
(3) In addition to the permit fee, an applicant failing to file a permit application or renewal by the due date or filing an incomplete permit application or renewal shall pay an additional fee of $25 for each month or part of a month after the date on which the permit application or renewal were due to be filed.

Amended by Chapter 267, 2018 General Session

13-22-11 Expiration of registration and permits.
(1) Each charitable organization registration issued under this chapter expires annually on the earlier of January 1, April 1, July 1, or October 1 following the completion of 12 months after the date of initial issuance.
(2) Each professional fund raiser's permit issued under this chapter expires annually on the date of issuance.

(3) Each professional fund raising counsel's or consultant's permit issued under this chapter expires annually on the date of issuance.
(4) A registration or permit may be renewed only by complying with the requirements for obtaining the original registration or permit.

Amended by Chapter 377, 2016 General Session

13-22-12 Grounds for denial, suspension, or revocation.

(1) The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny, suspend, or revoke an application, registration, permit, or information card, upon a finding that the order is in the public interest and that:
  (a) the application for registration or renewal is incomplete or misleading in any material respect;
  (b) the applicant or registrant or any officer, director, agent, or employee of the applicant or registrant has:
    (i) violated this chapter or committed any of the prohibited acts and practices described in this chapter;
    (ii) been enjoined by any 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;
    (iii) been convicted of a crime involving moral turpitude;
    (iv) obtained or attempted to obtain a registration or a permit by misrepresentation;
    (v) materially misrepresented or caused to be misrepresented the purpose and manner in which contributed funds and property will be used in connection with any solicitation;
    (vi) caused or allowed any paid solicitor to violate any rule made or order issued under this chapter by the division;
    (vii) failed to take corrective action with its solicitors who have violated this chapter or committed any of the prohibited acts and practices of this chapter;
    (viii) used, or attempted to use a name that either is deceptively similar to a name used by an existing registered or exempt charitable organization, or appears reasonably likely to cause confusion of names;
    (ix) failed to timely file with the division any report required in this chapter or by rules made under this chapter; or
    (x) failed to pay a fine imposed by the division in accordance with Section 13-22-3; or
  (c) the applicant for registration or renewal has no charitable purpose.
(2) The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to revoke or suspend a claim of exemption filed under Subsection 13-22-8(4), upon a finding that the order is in the public interest and that:
  (a) the notice of claim of exemption is incomplete or false or misleading in any material respect; or
  (b) any provision of this chapter, or any rule made or order issued by the division under this chapter has been violated in connection with a charitable solicitation by any exempt organization.

Amended by Chapter 382, 2008 General Session

13-22-13 Prohibited practices.

In connection with any solicitation, each of the following acts and practices is prohibited:

(1) stating or implying that registration constitutes endorsement or approval by the division or any governmental entity;
(2) violating any of the requirements of this chapter or any rule made under this chapter;
(3) making any untrue 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
(4) violating an order issued by the division under Subsection 13-22-3(2) or (3).

Amended by Chapter 185, 1994 General Session

13-22-14 Accuracy not guaranteed.
(1) By issuing a permit, the state does not guarantee the accuracy of any representation contained in the permit, nor does it warrant that any statement made by the holder of the permit is truthful. The state 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 permit.
(2) The following statement shall appear on each permit: "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 PERMIT."
(3) No solicitation for charitable purposes shall use the fact or requirement of registration or of the filing of any report with the division pursuant to this chapter with the intent to cause or in a manner tending to cause any person to believe that the solicitation, the manner in which it is conducted, its purposes, any use to which the proceeds will be applied or the person or organization conducting it has been or will be in any way endorsed, sanctioned, or approved by the division or any governmental agency or office.

Amended by Chapter 210, 2001 General Session

13-22-15 Financial reports required.
(1)
  (a) Except as provided in Subsection (1)(c), as part of a charitable organization's application for registration or renewal of registration described in Section 13-22-6, each charitable organization shall file:
    (i) an annual financial report on a form prescribed by the division;
    (ii) an IRS Form 990, 990EZ, 990N, or 990PF; or
    (iii) both the documents described in Subsections (1)(a)(i) and (ii).
  (b) The division shall instruct each applicant for registration or renewal of registration as a charitable organization on which documents to file under Subsection (1)(a).
  (c) If a document required under Subsections (1)(a) and (b) is not available during the charitable organization's first year of registration, upon request from the division, the charitable organization shall provide a quarterly financial report to the division within 30 days after the day on which the division requests the quarterly financial report.
(2) Each annual or quarterly financial report shall disclose:
  (a) the gross amount of contributions received;
  (b) the amount of contributions disbursed or to be disbursed to each charitable organization or charitable purpose represented;
  (c) aggregate amounts paid to any professional fund raiser;
  (d) amounts spent for overhead, expenses, commissions, and similar purposes; and

(e) unless disclosed in another part of the charitable organization's application for registration or renewal of registration, the name and address of any professional fund raiser used by the charitable organization.

(3) Each report required under this section shall be signed under oath by an officer or principal of the charitable organization.

(4)

(a) If a charitable organization fails to timely file a quarterly financial report in accordance with Subsection (1)(c), the charitable organization's registration is immediately and automatically suspended pending a final order of the division under Section 13-22-12.

(b) The division may reinstate the charitable organization's registration after the division receives:

(i) the quarterly financial report requested in accordance with Subsection (1)(c); and

(ii) a penalty of $25 for each full or partial calendar month after the day on which the quarterly report was due.

Amended by Chapter 120, 2015 General Session

13-22-16 Separate accounts and receipts required.

(1)

(a) Each professional fund raiser shall segregate and maintain all contributed funds in an account held separately from the professional fund raiser's operating account.

(b) 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 into an account at a bank or other federally insured financial institution that is in the name of the charitable organization.

(c) The charitable organization shall maintain and administer the account and shall have sole control of all withdrawals.

(2) Each organization required to be registered under this chapter and each professional fund raiser shall:

(a) maintain a record of each contribution of money, securities, or cash equivalent sufficient to allow the organization or professional fund raiser to provide a receipt to the contributor upon request or as required by law; and

(b) provide a contributor a receipt for each contribution upon request or as required by law.

(3) An organization required to be registered under this chapter and each professional fund raiser shall develop and maintain adequate internal controls for receipt, management, and disbursement of money that are reasonable in light of the organization's or professional fund raiser's assets and organizational complexity.

Amended by Chapter 120, 2015 General Session

13-22-17 Written agreement required.

(1) A professional fund raiser may only engage in activities on behalf of a charitable organization through written agreement with the organization.

(2) A professional fund raising counsel or consultant may only engage in activities on behalf of a charitable organization through written agreement with the organization.

(3) A charitable organization may only engage the services of a professional fund raiser or professional fund raising counsel or consultant through written agreement.

(4) Copies of the agreement required by this section shall be attached to all applications for registration and or a permit.

Amended by Chapter 187, 1996 General Session

13-22-18 Local ordinance.

This chapter does not prohibit any political subdivision of the state from enacting any ordinance regulating the solicitation of contributions within the subdivision's boundaries so long as the ordinance only coordinates enforcement of this chapter with the division.

Enacted by Chapter 280, 1993 General Session

13-22-19 Reciprocal agreements.

(1) The division may convey or exchange information obtained under this chapter with other agencies having regulatory authority over charitable organizations.
(2) The division may accept information that a charitable organization or professional fund raiser files in another state or with any federal agency or other organization in place of substantially similar information that is required to be filed under this chapter.

Enacted by Chapter 280, 1993 General Session

13-22-21 Appeal on behalf of individual.

(1) If a charitable campaign consisting of exempt solicitations for the relief or benefit of a named individual, as described in Subsection 13-22-8(1)(c), collects proceeds in excess of $5,000, the organizer of the campaign shall give the division written notice of the following:
  (a) the organizer's name and address;
  (b) the name and whereabouts of the person for whose relief or benefit the contributions are solicited;
  (c) the date the charitable campaign commenced; and
  (d) the purpose to which the collected contributions are to be applied.
(2) Notice under Subsection (1) is due within 10 days after commencing the appeal or collecting in excess of $5,000, whichever is later.
(3) If the organizer fails to file timely notice, the division shall inform the organizer of the notice requirement and give the organizer 10 additional days as a grace period within which to file the notice. If the organizer fails to file the notice within the grace period, the division may issue a cease and desist order against the organizer.
(4) If, at any time, the division has reasonable cause to believe that the organizer is perpetrating a fraud against the public, or in any other way intends to profit from harming the public through the charitable campaign, it shall issue a cease and desist order against the organizer.

Amended by Chapter 267, 2018 General Session

13-22-22 Charitable sales promotions.

(1) Every charitable organization which agrees to permit a charitable sales promotion to be conducted by a commercial co-venturer on its behalf shall file with the division a notice of the promotion prior to its commencement within this state. The notice shall state:
  (a) the names of the charitable organization and commercial co-venturer;
  (b) that the charitable organization and the commercial co-venturer will conduct a charitable sales promotion; and
  (c) the date the charitable sales promotion is expected to commence.

(2) Prior to the commencement of a charitable sales promotion within this state, every charitable organization which agrees to permit a charitable sales promotion to be conducted in its behalf, shall obtain a written agreement, containing such terms as may be required by rule of the division, from the commercial co-venturer which shall be available to the division upon request.
(3) A commercial co-venturer shall keep the final accounting for each charitable sales promotion conducted in this state for three years after the final accounting date and make the accounting available to the division upon request.
(4) The 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.

Enacted by Chapter 210, 2001 General Session

13-22-23 Fiduciary capacity.

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

Enacted by Chapter 210, 2001 General Session

Chapter 23
Health Spa Services Protection Act

13-23-1 Short title.

This chapter is known as the "Health Spa Services Protection Act."

Enacted by Chapter 105, 1987 General Session

13-23-2 Definitions.

As used in this chapter:
(1) "Business enterprise" means a sole proprietorship, partnership, association, joint venture, corporation, limited liability company, or other entity used in carrying on a business.
(2) "Consumer" means a purchaser of health spa services for consideration.
(3) "Division" means the Division of Consumer Protection.
(4)
(a) "Health spa" means a business enterprise that provides access to a facility:
(i) for a charge or a fee; and
(ii) for the development or preservation of physical fitness or well-being, through exercise, weight control, or athletics.
(b) "Health spa" does not include:
(i) a licensed physician who operates a facility at which the physician engages in the practice of medicine;
(ii) a hospital, intermediate care facility, or skilled nursing care facility;
(iii) a public or private school, college, or university;
(iv) the state or a political subdivision of the state;

(v) the United States or a political subdivision of the United States;
(vi) a person offering instruction if the person does not:
(A) utilize an employee or independent contractor; or
(B) grant a consumer the use of a facility containing exercise equipment;
(vii) a business enterprise, the primary operation of which is to teach self-defense or a martial art, including kickboxing, judo, or karate;
(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;
(ix) a business enterprise, the primary operation of which is to teach or allow an individual to practice yoga or Pilates;
(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:
(A) is only incidental to the overall function and purpose of the employer's business; and
(B) is offered on a nonprofit basis;
(xi) an individual providing professional services within the scope of the individual's license with the Division of Professional Licensing;
(xii) a country club;
(xiii) a nonprofit religious, ethnic, or community organization;
(xiv) a residential weight reduction center;
(xv) a business enterprise that only offers virtual services;
(xvi) a business enterprise that only offers a credit for a service that a separate business enterprise offers;
(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:
(A) a guest, as defined in Section 29-2-102; or
(B) an operator or employee of the lodging establishment;
(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
(xix) a person offering a personal training service exclusively as an employee or independent contractor of a health spa.

(5) "Health spa facility" means a facility to which a business entity provides access:
(a) for a charge or a fee; and
(b) for the development or preservation of physical fitness or well-being, through exercise, weight control, or athletics.

(6)
(a) "Health spa service" means instruction, a service, a privilege, or a right that a health spa offers for sale.
(b) "Health spa service" includes a personal training service.

(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.

(8) "Primary location" means the health spa facility that a health spa designates in a contract for health spa services as the health spa facility the consumer in the contract will primarily use for health spa services.

Amended by Chapter 400, 2022 General Session

Amended by Chapter 415, 2022 General Session

13-23-3 Contracts for health spa services.

(1)
(a) A contract for the purchase of a health spa service shall be in writing.
(b) The written contract described in Subsection (1)(a) shall constitute the entire agreement between the consumer and the health spa.

(2)
(a) The health spa shall provide the consumer with a fully completed copy of the contract required by Subsection (1):
(i) at the time of the contract's execution; and
(ii) at any time, upon the consumer's request.
(b) The copy described in Subsection (2)(a) shall show:
(i) the date of the transaction;
(ii) the name and address of the health spa;
(iii) the name, address, and telephone number of the consumer; and
(iv) the consumer's primary location.

(3)
(a) A contract described in Subsection (1):
(i) may not have a term in excess of 36 months; and
(ii) subject to Subsection (3)(b), may include an automatic renewal provision.
(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.
(c) Except for a lifetime membership sold before May 1, 1995, a health spa may not offer a lifetime membership.

(4) A contract described in Subsection (1) or an attachment to the contract shall clearly state each rule of the health spa that applies to:
(a) the consumer's use of the health spa's facilities and services; and
(b) cancellation and refund policies of the health spa.

(5) A contract described in Subsection (1) shall specify which equipment or facility of the health spa:
(a) is omitted from the contract's coverage; or
(b) may be changed at the health spa's discretion.

(6) A contract described in Subsection (1) shall clearly:
(a) state the consumer's rescission rights under Section 13-23-4; and
(b) provide an email address and a mailing address where the consumer can send the health spa a notice of intent to rescind the contract.

(7)
(a) If a consumer and a health spa enter into a contract described in Subsection (1) before May 4, 2022, the health spa may:
(i) assign the contract to another health spa that requires the consumer to obtain a contracted health spa service at a health spa facility within five driving miles from the consumer's initial primary location; or
(ii) change the consumer's primary location to a health spa facility within five driving miles from the consumer's initial primary location.
(b) If a consumer and a health spa enter into a contract described in Subsection (1) on or after May 4, 2022, the health spa may not:

(i) assign the contract to another health spa that requires the consumer to obtain a contracted health spa service at a health spa facility within five driving miles from the consumer's initial primary location, unless the health spa that enters into the contract includes in the contract a disclaimer that:

(A) is in at least 12-point, bold type on the first page of the contract; and

(B) states that the health spa may assign the contract to another health spa requiring the consumer to obtain a contracted health spa service at another facility within five driving miles from the consumer's initial primary location; or

(ii) change the consumer's primary location to a health spa facility within five driving miles from the consumer's initial primary location, unless the health spa includes in the contract a disclaimer that:

(A) is in at least 12-point, bold type on the first page of the contract; and

(B) states that the health spa may change the consumer's primary location to a health spa facility within five driving miles from the consumer's initial primary location.

(8)

(a) Except as permitted under Subsection (8)(b), a health spa may not assign a contract for a health spa service to a health spa that requires the consumer to obtain a contracted health spa service at a health spa facility farther than five driving miles from the consumer's initial primary location, unless the health spa:

(i) provides the consumer the option to cancel the contract; and

(ii) receives approval from the consumer to assign the contract.

(b) A health spa may assign a consumer's contract for a health spa service without complying with Subsection (8)(a), if:

(i) during the 60-day period immediately before the day on which the health spa assigns the consumer's contract, the consumer uses a health spa facility operated by the assignee more frequently than the consumer's primary location;

(ii) the assignee changes the consumer's primary location to the health spa facility described in Subsection (8)(b)(i); and

(iii) the health spa has a reciprocity agreement with the assignee.

(9)

(a) Except as permitted under Subsection (9)(b), before a health spa changes a consumer's primary location to a health spa facility farther than five driving miles from the consumer's initial primary location, the health spa shall provide the consumer the option to:

(i) cancel the contract for a health spa service; or

(ii)

(A) continue the contract at the new health spa facility; and

(B) designate the new health spa facility as the consumer's primary location.

(b) A health spa may change a consumer's primary location without providing the consumer the option described in Subsection (9)(a), if:

(i) during the 60-day period immediately before the day on which the health spa changes the consumer's primary location, the consumer uses a health spa facility other than the consumer's primary location more frequently than the consumer's primary location; and

(ii) the health spa changes the consumer's primary location to the health spa facility described in Subsection (9)(b)(i).

(10) The provisions of this section apply regardless of when the execution of a contract described in Subsection (1)(a) occurs.

Amended by Chapter 400, 2022 General Session

13-23-4 Rescission.

(1) A consumer may rescind a contract for the purchase of a health spa service by emailing or mailing written notice of the consumer's intent to rescind:

(a) to the email address or mailing address the health spa provided in the contract, as described in Subsection 13-23-3(6)(b); and

(b)

(i) before midnight of the third business day after the day on which the consumer and health spa execute the contract, as recorded by timestamp or postmark; or

(ii) if a consumer and health spa 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.

(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 service the consumer actually received.

(b) The preparation and processing of the contract or another document is not a health spa service that is deductible under Subsection (2)(a) from any refundable amount.

(c) In an enforcement action that the division initiates, a health spa has the burden of proving that any value the health spa retains under Subsection (2)(a) is reasonable.

(3) The rescission of a contract under this section is effective upon the health spa's receipt of written notice of the consumer's intent to rescind the contract.

Amended by Chapter 274, 2022 General Session

13-23-5 Registration -- Bond, letter of credit, or certificate of deposit required -- Penalties.

(1)

(a)

(i) A health spa may not operate a health spa facility in this state unless the health spa registers the health spa facility with the division in accordance with this section.

(ii) Registration of a health spa facility under this chapter is effective for one year.

(iii) To renew a health spa facility registration under this section, the health spa shall submit a registration renewal application to the division at least 30 days before the day on which the health spa facility's registration expires.

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

(A) the initial health spa facility registration process, including the content of any forms;

(B) the health spa facility registration renewal process, including the content of any forms; and

(C) a surety exemption process, including the content of any forms.

(b) Each health spa registering a health spa facility in this state shall designate a registered agent for receiving service of process.

(c) A health spa's registered agent shall be reasonably available from 8 a.m. until 5 p.m. during normal working days.

(d) The division shall charge and collect a fee for registration and registration renewal under guidelines provided in Section 63J-1-504.

(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:
(i) after the day on which the registration expires; and
(ii) before the day on which the health spa submits a complete registration renewal application.
(f) The fee described in Subsection (1)(e) is in addition to the registration renewal fee described in Subsection (1)(d).
(g) A health spa registering or renewing a registration shall provide the division a copy of the liability insurance policy that:
(i) covers the health spa; and
(ii) is in effect at the time of the registration or registration renewal.
(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.

(2)
(a) Except as provided in Section 13-23-6, for each health spa facility a health spa operates, the health spa shall obtain and maintain:
(i) a performance bond issued by a surety authorized to transact surety business in this state;
(ii) an irrevocable letter of credit issued by a financial institution authorized to do business in this state; or
(iii) a certificate of deposit.
(b) The bond, letter of credit, or certificate of deposit described in Subsection (2)(a) shall be payable to the division for the benefit of a consumer who incurs damages as the result of the health spa:
(i) violating this chapter; or
(ii) going out of business.
(c)
(i) After each consumer has fully recovered damages, the division may recover from the 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.
(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.
(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.
(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.
(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.

(3)

(a) In accordance with the schedule established in Subsection (3)(b), a health spa shall base the minimum principal amount of the bond, letter of credit, or certificate of deposit required under Subsection (2) on:

(i) the number of unexpired contracts for a health spa service, at the time the health spa submits the health spa facility registration or registration renewal application, that designate the health spa facility as the consumer's primary location; or

(ii) if at the time the health spa submits the health spa facility registration application the health spa has not executed a contract for a health spa service that designates the health spa facility as a consumer's primary location, the number of contracts for a health spa service designating the health spa facility as a consumer's primary location that the health spa reasonably expects to execute during the health spa facility's first year of registration.

(b)

Principal Amount of Bond, Letter of Credit, or Certificate of Deposit	Number of Contracts
$5,000	100 or fewer
$10,000	101 to 250
$15,000	251 to 500
35,000	501 to 1,500
50,000	1,501 to 3,000
75,000	3,001 or more

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

(4) A health spa shall furnish a copy of the current 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 service.

(5) A health spa shall:

(a) maintain accurate records of:

(i) the bond, letter of credit, or certificate of deposit; and

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

(b) open the records described in Subsection (5)(a) to inspection by the division at any time during normal business hours.

(6)

(a) A health spa with a health spa facility registered under this section shall submit a new initial registration for the health spa facility, if the health spa:

(i) changes ownership;

(ii) permanently ceases and then again commences operation at the health spa facility; or

(iii) relocates the health spa facility.

(b) The former owner of a health spa may not release, cancel, or terminate the owner's liability under any bond, letter of credit, or certificate of deposit previously filed with the division, unless:

(i) the new owner has filed a new bond, letter of credit, or certificate of deposit for the benefit of consumers covered under the previous owner's bond, letter of credit, or certificate of deposit; or

(ii) the former owner has refunded all unearned payments to consumers.

(7) If a health spa permanently ceases operation or relocates a health spa facility, the health spa shall provide the division notice at least 45 days before the day on which health spa permanently ceases operation or relocates the health spa facility.

Amended by Chapter 400, 2022 General Session

13-23-6 Exemptions from bond, letter of credit, or certificate of deposit requirement.

(1) A health spa is exempt from Subsections 13-23-5(2) through (5) for a health spa facility, if the health spa only offers access to a health spa service at the health spa facility through:
  (a) the purchase of an individual class or session;
  (b) the purchase of a package:
    (i) with a defined number of classes or sessions; and
    (ii) for which the health spa may not hold more than $150 worth of a consumer's unused credit;
  (c) the purchase of a monthly membership or pass, payment for which the health spa does not collect from a consumer more than two months in advance;
  (d) an installment contract that:
    (i) provides for the consumer to make all payments due under the contract, including a down payment, an enrollment fee, a membership fee, or any other payment to the health spa, in equal monthly installments spread over the entire term of the contract; and
    (ii) contains the following clause: "If this health spa ceases operations at or changes the consumer's primary location in violation of Utah Code Subsection 13-23-3(7), (8), or (9), no further payments under this contract shall be due to anyone, including any assignee of the contract or purchaser of any note associated with or contained in this contract."; or
  (e) a combination of health spa services described in Subsections (1)(a) through (d).

(2) For purposes of finding the principal amount for the bond, letter of credit, or certificate of deposit required under Section 13-23-5, a health spa is not required to include in the calculation described in Subsection 13-23-5(3) a contract that offers access to a health spa service as described in Subsection (1).

(3) A health spa that claims exemption from Subsections 13-23-5(2) through (5) or that a contract should be excluded from the calculation described in Subsection 13-23-5(3) bears the burden of proving to the division that the health spa or contract meets the relevant criteria described in Subsection (1) or (2).

Amended by Chapter 400, 2022 General Session

13-23-7 Enforcement -- Costs and attorney's fees -- Penalties.

(1)
  (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.
  (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.

(2)
  (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.
  (b) Each day a violation described in Subsection (2)(a) is committed or permitted to continue constitutes a separate punishable offense.
  (c) In the case of a second offense, the person is guilty of a class A misdemeanor.

(d) In the case of a third or subsequent offense, the person is guilty of a third degree felony.

(3)

(a) In addition to any other penalty available under this chapter, a person who violates this chapter is subject to:

(i) a cease and desist order; and

(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.

(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.

Amended by Chapter 266, 2021 General Session

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

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

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

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

(a) violated this chapter;

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

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

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

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

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

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

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

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

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

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

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

Amended by Chapter 400, 2022 General Session

Chapter 24
Uniform Trade Secrets Act

13-24-1 Short title.

This chapter is known as the "Uniform Trade Secrets Act."

Enacted by Chapter 60, 1989 General Session

13-24-2 Definitions.

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

(1) "Improper means" includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

(2) "Misappropriation" means:

(a) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(b) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret; or

(ii) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

(A) derived from or through a person who had utilized improper means to acquire it;

(B) acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(4) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:

(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 its disclosure or use; and

(b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Enacted by Chapter 60, 1989 General Session

13-24-3 Injunctive relief.

(1) Actual or threatened misappropriation may be enjoined. Upon application to the court, an injunction shall be terminated when the trade secret has ceased to exist, but the injunction may be continued for an additional reasonable period of time in order to eliminate commercial advantage that otherwise would be derived from the misappropriation.

(2) In exceptional circumstances, an injunction may condition future use upon payment of a reasonable royalty for no longer than the period of time for which use could have been prohibited. Exceptional circumstances include, but are not limited to, a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation that renders a prohibitive injunction inequitable.

(3) In appropriate circumstances, affirmative acts to protect a trade secret may be compelled by court order.

Enacted by Chapter 60, 1989 General Session

13-24-4 Damages.

(1) Except to the extent that a material and prejudicial change of position prior to acquiring knowledge or reason to know of misappropriation renders a monetary recovery inequitable, a complainant is entitled to recover damages for misappropriation. Damages can include both the actual loss caused by misappropriation and the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(2) If willful and malicious misappropriation exists, the court may award exemplary damages in an amount not exceeding twice any award made under Subsection (1).

Enacted by Chapter 60, 1989 General Session

13-24-5 Attorneys' fees.

If a claim of misappropriation is made in bad faith, a motion to terminate an injunction is made or resisted in bad faith, or willful and malicious misappropriation exists, the court may award reasonable attorneys' fees to the prevailing party.

Enacted by Chapter 60, 1989 General Session

13-24-6 Preservation of secrecy.

In an action under this chapter, a court shall preserve the secrecy of an alleged trade secret by reasonable means, which may include granting protective orders in connection with discovery proceedings, holding in-camera hearings, sealing the records of the action, and ordering any person involved in the litigation not to disclose an alleged trade secret without prior court approval.

Enacted by Chapter 60, 1989 General Session

13-24-7 Statute of limitations.

An action for misappropriation shall be brought within three years after the misappropriation is discovered or, by the exercise of reasonable diligence, should have been discovered. For the purposes of this section, a continuing misappropriation constitutes a single claim.

Enacted by Chapter 60, 1989 General Session

13-24-8 Effect on other law.

(1) Except as provided in Subsection (2), this chapter displaces conflicting tort, restitutionary, and other law of this state providing civil remedies for misappropriation of a trade secret.

(2) This chapter does not affect:

(a) contractual remedies, whether or not based upon misappropriation of a trade secret;

(b) other civil remedies that are not based upon misappropriation of a trade secret; or

(c) criminal remedies, whether or not based upon misappropriation of a trade secret.

Enacted by Chapter 60, 1989 General Session

13-24-9 Uniformity of application and construction.

This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the chapter among states enacting it.

Enacted by Chapter 60, 1989 General Session

Chapter 25a
Telephone and Facsimile Solicitation Act

13-25a-101 Title.

This chapter is known as the "Telephone and Facsimile Solicitation Act."

Enacted by Chapter 26, 1996 General Session

13-25a-102 Definitions.

As used in this chapter:

(1) "Advertisement" means material offering for sale, or advertising the availability or quality of, any property, good, or service.

(2)

(a) "Automated telephone dialing system" means equipment used to:

(i) store or produce telephone numbers;

(ii) call a stored or produced number; and

(iii) connect the number called with a recorded message or artificial voice.

(b) "Automated telephone dialing system" does not include a system used in an emergency involving the immediate health or safety of a person, including a burglar alarm system, voice messaging system, fire alarm system, or other similar system.

(3) "Division" means the Division of Consumer Protection.

(4)

(a) "Established business relationship" means a relationship that:

(i) is based on inquiry, application, purchase, or transaction regarding products or services offered;

(ii) is formed by a voluntary two-way communication between a person making a telephone solicitation and a person to whom a telephone solicitation is made; and

(iii) has not been terminated by:

(A) an act by either person; or

(B) the passage of 18 months since the most recent inquiry, application, purchase, transaction, or voluntary two-way communication.

(b) "Established business relationship" includes a relationship with an affiliate as defined in Section 16-10a-102.

(5) "Facsimile machine" means equipment used for:

(a) scanning or encoding text or images for conversion into electronic signals for transmission; or

(b) receiving electronic signals and reproducing them as a duplicate of the original text or image.

(6) "Negative response" means a statement from a person stating the person does not wish to listen to the sales presentation or participate in the solicitation presented in the telephone call.

(7) "On-call emergency provider" means an individual who is required by an employer to be on call to respond to a medical emergency.

(8) "Telephone solicitation" means the initiation of a telephone call or message for a commercial purpose or to seek a financial donation, including calls:
(a) encouraging the purchase or rental of, or investment in, property, goods, or services, regardless of whether the transaction involves a nonprofit organization;
(b) soliciting a sale of or extension of credit for property or services to the person called;
(c) soliciting information that will be used for:
(i) the direct solicitation of a sale of property or services to the person called; or
(ii) an extension of credit to the person called for a sale of property or services;
(d) soliciting a charitable donation involving the exchange of any premium, prize, gift, ticket, subscription, or other benefit in connection with any appeal made for a charitable purpose; or
(e) encouraging the person called to sell real or personal property.
(9) "Telephone solicitor" means any individual, firm, organization, partnership, association, or corporation who makes or causes to be made an unsolicited telephone call, including calls made by use of an automated telephone dialing system.
(10) "Unsolicited telephone call" means a telephone call for a commercial purpose or to seek a financial donation other than a call made:
(a) in response to an express request of the person called;
(b) primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of the call;
(c) to a person with whom the telephone solicitor has an established business relationship; or
(d) as required by law for a medical purpose.

Amended by Chapter 324, 2022 General Session

13-25a-103 Prohibited conduct for telephone solicitations -- Exceptions.
(1) Except as provided in Subsection (2), a person may not operate or authorize the operation of an automated telephone dialing system to make a telephone solicitation.
(2) A person may operate an automated telephone dialing system if a call is made:
(a) with the prior express consent of the person who is called agreeing to receive a telephone solicitation from a specific solicitor; or
(b) to a person with whom the solicitor has an established business relationship.
(3) A person may not make a telephone solicitation to a residential telephone or cellular telephone without prior express consent during any of the following times:
(a) between the hours of 9 p.m. and 8 a.m. local time;
(b) on a Sunday; or
(c) on a legal holiday.
(4) A person may not make or authorize a telephone solicitation in violation of Title 47 U.S.C. 227.
(5) A telephone solicitor who makes an unsolicited telephone call to a telephone number shall:
(a) identify the telephone solicitor;
(b) identify the business on whose behalf the telephone solicitor is soliciting;
(c) promptly identify the purpose of the call upon making contact by telephone with the person who is the object of the telephone solicitation;
(d) discontinue the solicitation if the person being solicited gives a negative response at any time during the telephone call; and
(e) hang up the phone, or in the case of an automated telephone dialing system operator, disconnect the automated telephone dialing system from the telephone line within 25 seconds of the termination of the call by the person being called.

(6) If a telephone solicitor's service or equipment is capable of displaying the telephone solicitor's telephone number through a caller identification service, the telephone solicitor may not withhold the display of the telephone solicitor's telephone number from a caller identification service when that number is being used for telemarketing purposes.

Amended by Chapter 324, 2022 General Session

13-25a-104 Prohibited conduct for facsimiles -- Exceptions.

(1) Except as provided in Subsection (2), a person may not operate or authorize the operation of a facsimile machine to send an advertisement.
(2) A person may operate a facsimile machine if the advertisement is sent:
  (a) with the prior express written consent of the person who receives the facsimile agreeing to receive the facsimile from a specific solicitor; or
  (b) to a person with whom the solicitor has an established business relationship.
(3) A person may not make or authorize the sending of an advertisement by facsimile in violation of Title 47 U.S.C. 227.

Amended by Chapter 263, 2003 General Session

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

(1) Any person who violates this chapter is subject to:
  (a) a cease and desist order; and
  (b) an administrative fine of not less than $100 or more than $2,500 for each separate violation.
(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:
  (a) a cease and desist order; and
  (b) an administrative fine of not less than $1,000 or more than $2,500 for each separate violation.
(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.
(4) Any person who intentionally violates this chapter is guilty of a class A misdemeanor and may be fined up to $2,500.
(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.

Amended by Chapter 289, 2021 General Session

13-25a-106 Enforcement.

(1) The division shall investigate and assess administrative fines for violations of this chapter.
(2)
  (a) Upon referral from the division, the attorney general or any district or county attorney may:
    (i) bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this chapter;
    (ii) 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; or
    (iii) bring an action in any court of competent jurisdiction for the collection of penalties authorized under Subsection 13-25a-105(1).

(b) In an action under Subsection (2)(a), the attorney general or any district or county attorney may recover costs, including investigative costs and attorney fees, from any violator of this chapter.

Amended by Chapter 18, 2005 General Session

13-25a-107 Private action.

(1) In addition to any other remedies, a person may bring an action in any state court of competent jurisdiction if:
  (a)
    (i) the person has received two or more telephone solicitations or facsimile advertisements from the same individual or entity that:
      (A) violates this chapter; or
      (B) violates Title 47 U.S.C. 227; and
    (ii) the person, following the first telephone solicitation or facsimile advertisement, notified the sender of the person's objection to receiving the telephone solicitation or facsimile advertisement; or
  (b) the person has received one telephone solicitation or facsimile advertisement in violation of:
    (i) Subsection 13-25a-103(1);
    (ii) Subsection 13-25a-103(3);
    (iii) Subsection 13-25a-103(5);
    (iv) Subsection 13-25a-103(6); or
    (v) Subsection 13-25a-104(1).
(2) In a suit brought under Subsection (1):
  (a) a person may:
    (i) recover the greater of $500 or the amount of the pecuniary loss, if any;
    (ii) recover court costs and reasonable attorneys' fees as determined by the court; and
    (iii) seek to enjoin any conduct in violation of this chapter; and
  (b) if the court finds that a violation was knowing and willful:
    (i) the court may award an individual treble the amount of the individual's pecuniary loss; or
    (ii) the court may award an individual the greater of $1,000 or treble the amount of the individual's pecuniary loss if:
      (A) the individual who received the solicitation is an on-call emergency provider;
      (B) the individual was on call at the time the violation occurred; and
      (C) the individual had notified the sender that the individual is an on-call emergency provider.

Amended by Chapter 289, 2021 General Session

13-25a-107.2 Requests to a specific telephone solicitor.

(1) A telephone solicitor may not make or cause to be made a telephone solicitation to a person who has informed the telephone solicitor, either in writing or orally, that the person does not wish to receive a telephone call from the telephone solicitor.
(2) A telephone solicitor is not liable for a violation of this section if the telephone solicitor complies with 16 C.F.R. Part 310.4(b)(3) and (4).

Enacted by Chapter 18, 2005 General Session

13-25a-108 Prohibited telephone solicitations.

(1) A person may not make or cause to be made an unsolicited telephone call to a person:
(a) located in the state; and
(b)
(i) at a Utah telephone number contained in the national "do-not-call" registry established and maintained by the Federal Trade Commission under 16 C.F.R. 310.4(b)(1)(iii)(B); or
(ii) at a non-Utah telephone number contained in the national "do-not-call" registry established and maintained by the Federal Trade Commission under 16 C.F.R. 310.4(b)(1)(iii)(B), if the person making the call or causing the call to be made knows or reasonably should know that the person receiving the call is in Utah.
(2) Each unsolicited telephone call made in violation of this section is a separate violation.

Amended by Chapter 79, 2020 General Session

13-25a-111 Exemptions.

Notwithstanding any other provision of this chapter, Sections 13-25a-103 and 13-25a-108 do not apply to:
(1) a telephone call made for a charitable purpose as defined in Section 13-22-2;
(2) a charitable solicitation as defined in Section 13-22-2; or
(3) a person who holds a license or registration:
(a) under Title 31A, Insurance Code;
(b) issued by the Division of Real Estate established in Section 61-2-201; or
(c) issued by the National Association of Securities Dealers.

Amended by Chapter 379, 2010 General Session

Chapter 26
Telephone Fraud Prevention Act

13-26-1 Short title.

This chapter is known as the "Telephone Fraud Prevention Act."

Enacted by Chapter 154, 1990 General Session

13-26-2 Definitions.

As used in this chapter, unless the context otherwise requires:
(1) "Affiliated person" means a seller or a seller's contractor, director, employee, officer, owner, or partner.
(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.
(3) "Division" means the Division of Consumer Protection.
(4) "Fictitious personal name" means a name other than an individual's legal name.
(5) "Material statement" or "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.
(6) "Participant" means a person seeking to register or renew a registration as a seller including:

(a) a seller;
(b) an owner;
(c) an officer;
(d) a director;
(e) a member or manager of a limited liability company;
(f) a principal;
(g) a trustee;
(h) a general or limited partner;
(i) a sole proprietor; or
(j) an individual with a controlling interest in an entity.

(7) "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.

(8) "Seller" means a person, or a group of persons engaged in a common effort to conduct a telephone solicitation, that:
(a) on behalf of the person, or the group of persons engaged in a common effort to conduct a telephone solicitation:
(i) makes a telephone solicitation; or
(ii) causes a telephone solicitation to be made; or
(b) through a telephone solicitor:
(i) makes a telephone solicitation; or
(ii) causes a telephone solicitation to be made.

(9) "Subscription arrangements," "standing order arrangements," "supplements," and "series arrangements" mean products or services provided, 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.

(10)
(a) "Telephone solicitation," "sale," "selling," or "solicitation of sale" means:
(i) a sale or solicitation of goods or services in which:
(A)
(I) the seller solicits the sale over the telephone;
(II) the purchaser's agreement to purchase is made over the telephone; and
(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;
(B) the seller, not exempt under Section 13-26-4, 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;
(C) the seller offers or promises a premium to a prospective purchaser if:
(I) the seller induces the prospective purchaser to initiate a telephone contact with the seller; and
(II) the resulting solicitation meets the requirements of Subsection (10)(a); or
(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); or
(ii) a telephone solicitation as defined in Section 13-25a-102.

(b) "Telephone solicitation," "sale," "selling," or "solicitation of sale" does not include a sale or solicitation that occurs solely through an Internet website without the use of a telephone call.
(c) 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.
(11) "Telephone solicitor" or "solicitor" means an individual who engages in a telephone solicitation on behalf of a seller.

Amended by Chapter 324, 2022 General Session

13-26-3 Registration and bond required.
(1)
(a) Unless exempt under Section 13-26-4, each seller shall register annually with the division before engaging in telephone solicitations if:
(i) the seller engages in telephone solicitations that:
(A) originate in Utah; or
(B) are received in Utah; or
(ii) the seller, or a solicitor on behalf of the seller, conducts any business operations in Utah.
(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.
(c) If a seller fails to designate an agent to receive service or fails to appoint a successor to the agent, the division shall:
(i) deny the seller's application for an initial or renewal registration; and
(ii) if the application is for a renewal registration, suspend the seller's current registration until the seller designates an agent.
(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:
(i) a valid Utah driver license;
(ii) a valid governmental photo identification issued to a resident of this state; or
(iii) other verifiable identification indicating residency in this state.
(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).
(3)
(a) Each seller subject to this chapter engaging in telephone solicitation or sales in this state shall obtain and maintain the following security:
(i) a performance bond issued by a surety authorized to transact surety business in this state;
(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
(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.
(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.
(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.

(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.
(e) The seller shall post a bond, irrevocable letter of credit, or certificate of deposit in the amount of:
(i) $25,000 if:
(A) neither the seller nor any affiliated person has violated this chapter in the three-year period immediately before the day on which the seller files the application; and
(B) the seller has fewer than 10 employees;
(ii) $50,000 if:
(A) neither the seller nor any affiliated person has violated this chapter in the three-year period immediately before the day on which the seller files the application; and
(B) the seller has 10 or more employees; or
(iii) $75,000 if the seller or any affiliated person has violated this chapter in the three-year period immediately before the day on which the seller files the application.
(4) To register or renew a registration as a seller, a participant:
(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;
(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
(c) shall submit to the division:
(i) the participant's fingerprints, in a form acceptable to the division, for purposes of a criminal background check; and
(ii) consent to a criminal background check by the Bureau of Criminal Identification created in Section 53-10-201.
(5) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may establish by rule the registration requirements for a seller.
(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.
(7) The division director may deny or revoke a registration under this section for any violation of this chapter.

Amended by Chapter 324, 2022 General Session

13-26-4 Exemptions from registration.
(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.
(2) The following are exempt from this chapter except for the requirements described in Sections 13-26-8 and 13-26-11:
(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;
(b) the solicitation of sales by:
(i) a public utility that is regulated under Title 54, Public Utilities, or by an affiliate of the public utility;
(ii) a newspaper of general circulation;

(iii) a solicitation of sale made by a broadcaster licensed by a state or federal authority;
(iv) a nonprofit organization if no part of the net earnings from the sale inures to the benefit of:
(A) a member, officer, trustee, or serving board member of the organization; or
(B) an individual, or a family member of an individual, holding a position of authority or trust in the organization; and
(v) a person who periodically publishes and delivers a catalog of the seller's merchandise to prospective purchasers, if the catalog:
(A) contains the price and a written description or illustration of each item offered for sale;
(B) includes the seller's business address;
(C) includes at least 24 pages of written material and illustrations;
(D) is distributed in more than one state; and
(E) has an annual circulation by mailing of not less than 250,000;
(c) a publicly traded corporation registered with the Securities and Exchange Commission, or a subsidiary of the publicly traded corporation;
(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;
(e) the solicitation by a person soliciting only the sale of telephone services to be provided by the person or the person's employer;
(f) the solicitation of a person relating to a transaction regulated by the Commodities Futures Trading Commission, if:
(i) the person is registered with or temporarily licensed by the commission to conduct the activity under the Commodity Exchange Act; and
(ii) the registration or license has not expired or been suspended or revoked;
(g) the solicitation of a contract for the maintenance or repair of goods previously purchased from the person:
(i) who is making the solicitation; or
(ii) on whose behalf the solicitation is made;
(h) the solicitation of previous customers of the person on whose behalf the call is made if the person making the call:
(i) does not offer any premium in conjunction with a sale or offer;
(ii) is not selling an investment or an opportunity for an investment that is not registered with a state or federal authority; and
(iii) is not regularly engaged in telephone sales;
(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;
(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:
(i) at the retail business's place of business, the retail business:
(A) displays and offers products for sale; or
(B) offers services for sale and provides the services at the place of business; and
(ii) a majority of the retail business's business involves the activities described in Subsection (2)(j)(i);
(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, standing order arrangement, or supplement or series arrangement if:

(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

(ii)

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

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

(l) a telephone marketing service company that provides telemarketing sales services under contract to a person making a sale if:

(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;

(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

(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;

(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

(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.

Amended by Chapter 324, 2022 General Session

13-26-5 Right of rescission -- Cancellation.

(1) As used in this section, "business day" means a day other than Sunday or a federal or state holiday.

(2)

(a) Except as provided in Subsections (2)(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 before midnight of the third business day after the day on which the person receives the merchandise or premium, whichever is later, provided the seller or the seller's solicitor advises the purchaser of the purchaser's cancellation rights under this chapter at the time the solicitation is made.

(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.

(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.

(d) Except as provided in Subsection (5), a seller shall provide a full refund to a purchaser who cancels a sale in accordance with this section.

(3) A purchaser may cancel a sale by:
(a) mailing a notice of cancellation to the seller or seller's solicitor's correct address, postage prepaid; or
(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, sending a notice of cancellation to the division's office, postage prepaid.
(4)
(a) If a purchaser cancels a sale and the seller or the seller's solicitor provides the purchaser with the seller's correct address, the purchaser shall, within seven business days after the day on which the purchaser exercises the right to cancel, make a reasonable attempt to:
(i) if the canceled sale involves durable goods, return the goods to the seller; or
(ii) if the canceled sale involves expendable goods, return any unused portion of the goods to the seller.
(b) If the seller or the seller's solicitor fails to provide to a purchaser the seller's correct address, a purchaser who cancels a sale is not required to return any canceled goods to the seller.
(5)
(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.
(b) A seller may deduct the reasonable allowance described in Subsection (5)(a) from any refund due the purchaser.

Amended by Chapter 324, 2022 General Session

13-26-8 Penalties.
(1)
(a) A seller or solicitor who violates a provision of this chapter is guilty of:
(i) a class B misdemeanor for a first violation;
(ii) if the seller or solicitor has one prior violation of this chapter, a class A misdemeanor; and
(iii) if the seller or solicitor has two prior violations of this chapter, a third-degree felony.
(b) For the purposes of Subsection (1)(a), a prior violation includes:
(i) a final prior conviction;
(ii) a final determination by a court of competent jurisdiction; or
(iii) a final determination in an administrative adjudicative proceeding.
(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.
(3)
(a) The division may:
(i) in accordance with Title 63G, Chapter 4, Administrative Procedures Act, conduct an administrative proceeding to enforce the provisions of this chapter;
(ii) bring a court action to enforce the provisions of this chapter; and
(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.
(b) For purposes of this section, each telephone solicitation made in violation of this chapter is a separate violation.
(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.

Amended by Chapter 324, 2022 General Session

13-26-10 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.

Enacted by Chapter 184, 1991 General Session

13-26-11 Prohibited practices.

(1) It is unlawful for a seller to:
- (a) solicit a prospective purchaser if the seller is not registered with the division or exempt from registration under this chapter;
- (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;
- (c) make or authorize the making of a misrepresentation to a purchaser or prospective purchaser about the seller's compliance with this chapter;
- (d) fail to refund within 30 days any amount due a purchaser who exercises the right to cancel under Section 13-26-5;
- (e) unless the seller is exempt under Section 13-26-4, fail to orally advise a purchaser of the purchaser's right to cancel under Section 13-26-5;
- (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
- (g) cause or permit a solicitor to violate a provision of this chapter.

(2) It is unlawful for a solicitor to:
- (a) use a fictitious personal name in connection with a telephone solicitation;
- (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;
- (c) make a misrepresentation to a purchaser or prospective purchaser about the solicitor's compliance with this chapter; or
- (d) unless the solicitor is exempt under Section 13-26-4, fail to orally advise a purchaser of the purchaser's right to cancel under Section 13-26-5.

(3) If a person knows or has reason to know that a seller or solicitor is engaged in an act or practice that violates this chapter, it is unlawful for the person to:
- (a) benefit from the seller's or solicitor's services; or
- (b) provide substantial assistance or support to the seller or solicitor.

Amended by Chapter 324, 2022 General Session

13-26-12 Consumer complaints are public.

(1) As used in this section, "consumer complaint" means a complaint that:
- (a) a person files with the division;
- (b) alleges facts relating to conduct that the division regulates under this chapter; and
- (c)
  - (i) alleges a loss to the person described in Subsection (1)(a) of $3,500 or more; or
  - (ii) is one of at least 50 complaints filed with the division:

(A) against the same person; and
(B) during the four-year period immediately before the day on which the person described in Subsection (1)(a) files the complaint.

(2) For purposes of determining the number of complaints against the same person under Subsection (1)(c)(ii)(A), the division may consider complaints filed against multiple corporations, limited liability companies, partnerships, or other business entities under common ownership to be complaints against the same person.

(3) Notwithstanding Subsection 13-11-7(2) and subject to Subsections (4) and (5), a consumer complaint:
(a) is a public record; and
(b) may not be classified as a private, controlled, or protected record under Title 63G, Chapter 2, Government Records Access and Management Act.

(4) Subsection (3) does not apply to a consumer complaint:
(a) that is nonmeritorious, beginning the day on which:
(i) the division determines through an administrative proceeding that the consumer complaint is nonmeritorious; or
(ii) a court of competent jurisdiction finds the consumer complaint nonmeritorious; or
(b) that is on file with the division for more than four years after the day on which the person files the consumer complaint.

(5) Before making a consumer complaint that is subject to Subsection (3) or a response described in Subsection (6) available to the public, the division:
(a) shall redact from the consumer complaint or response any information that would disclose:
(i) the filer's:
(A) address;
(B) Social Security number;
(C) bank account information;
(D) email address; or
(E) telephone number; or
(ii) information similar in nature to the information described in Subsection (5)(a)(i); and
(b) may redact the name of the filer and any other information that could, in the division's judgment, disclose the identity of the filer filing the consumer complaint.

(6) A person's initial, written response to a consumer complaint that is subject to Subsection (3) is a public record.

Amended by Chapter 324, 2022 General Session

Chapter 28
Prize Notices Regulation Act

13-28-1 Title.

This chapter shall be known as the "Prize Notices Regulation Act."

Enacted by Chapter 196, 1995 General Session

13-28-2 Definitions.

For the purpose of this part:

(1) "Division" means the Division of Consumer Protection in the Department of Commerce.
(2) "Prize" means a gift, award, or other item or service of value.
(3)
(a) "Prize notice" means a notice given to an individual in this state that satisfies all of the following:
(i) is or contains a representation that the individual has been selected or may be eligible to receive a prize; and
(ii) conditions receipt of a prize on a payment or donation from the individual or requires or invites the individual to make a contact to learn how to receive the prize or to obtain other information related to the notice.
(b) "Prize notice" does not include:
(i) a notice given at the request of the individual; or
(ii) a notice informing the individual that he or she has been awarded a prize as a result of his actual prior entry in a game, drawing, sweepstakes, or other contest if the individual is awarded the prize stated in the notice.
(4) "Solicitor" means a person who represents to an individual that the individual has been selected or may be eligible to receive a prize.
(5) "Sponsor" means a person on whose behalf a solicitor gives a prize notice.
(6) "Verifiable retail value" of a prize means:
(a) a price at which the solicitor or sponsor can demonstrate that a substantial number of the prizes have been sold by a person other than the solicitor or sponsor in the trade area in which the prize notice is given; or
(b) if the solicitor or sponsor is unable to satisfy Subsection (6)(a), no more than 1.5 times the amount the solicitor or sponsor paid for the prize.

Amended by Chapter 324, 2010 General Session

13-28-3 Notice requirement.

If a solicitor represents to an individual that he has been selected or may be eligible to receive a prize, the solicitor may not request, and the solicitor or sponsor may not accept, a payment from the individual in any form before the individual receives a written prize notice that contains all of the information required under Subsection 13-28-4(1) presented in the manner required under Subsections 13-28-4(2) through (6).

Amended by Chapter 131, 2003 General Session

13-28-4 Contents of notices.

(1) A written prize notice shall contain all of the following information presented in the manner required under Subsections (2) through (6):
(a) the name and address of the solicitor and sponsor;
(b) the verifiable retail value of each prize the individual has been selected or may be eligible to receive;
(c) if the notice lists more than one prize that the individual has been selected or may be eligible to receive, a statement of the odds the individual has of receiving each prize;
(d) any requirement or invitation for the individual to view, hear, or attend a sales presentation in order to claim a prize, the approximate length of the sales presentation and a description of the property or service that is the subject of the sales presentation;

(e) any requirement that the individual pay shipping or handling fees or any other charges to obtain or use a prize;
(f) if receipt of the prize is subject to a restriction, a statement that a restriction applies, a description of the restriction, and a statement containing the location in the notice where the restriction is described; and
(g) any limitations on eligibility.

(2)
(a) The verifiable retail value and the statement of odds required in a written prize notice under Subsections (1)(b) and (c) shall be stated in immediate proximity to each listing of the prize in each place the prize appears on the written prize notice and shall be in the same size and boldness of type as the prize.
(b) The statement of odds shall include, for each prize, the total number of prizes to be given away and the total number of written prize notices to be delivered. The number of prizes and written prize notices shall be stated in Arabic numerals. The statement of odds shall be in the following form: "...(number of prizes) out of... written prize notices".
(c) The verifiable retail value shall be in the following form: "verifiable retail value: $...".

(3) If an individual is required to pay shipping or handling fees or any other charges to obtain or use a prize, the following statement shall appear in immediate proximity to each listing of the prize in each place the prize appears in the written prize notice and shall be in not less than 10-point boldface type: "YOU MUST PAY $.... IN ORDER TO RECEIVE OR USE THIS ITEM."

(4) The information required in a written prize notice under Subsection (1)(d) shall be on the first page of the written prize notice in not less than 10-point boldface type. The information required under Subsections (1)(f) and (g) shall be in not less than 10-point boldface type.

(5) If a written prize notice is given by a solicitor on behalf of a sponsor, the name of the sponsor shall be more prominently and conspicuously displayed than the name of the solicitor.

(6) A solicitor or sponsor may not do any of the following:
(a) place on an envelope containing a written prize notice any representation that the person to whom the envelope is addressed has been selected or may be eligible to receive a prize;
(b) deliver a written prize notice that contains language, or is designed in a manner that would lead a reasonable person to believe that it originates from a government agency, public utility, insurance company, consumer reporting agency, debt collector, accounting or law firm unless the written prize notice originates from that source; or
(c) represent directly or by implication that the number of individuals eligible for the prize is limited or that an individual has been separately selected to receive a particular prize unless the representation is true.

Enacted by Chapter 196, 1995 General Session

13-28-5 Sales presentations.

If a prize notice requires or invites an individual to view, hear, or attend a sales presentation in order to claim a prize, the sales presentation may not begin until the solicitor does all of the following:

(1) informs the individual of the prize, if any, that has been selected to be received by or awarded to the individual; and

(2) if the individual has been awarded a prize, delivers to the individual the prize or the item selected by the individual under Section 13-28-6 if the prize is not available.

Enacted by Chapter 196, 1995 General Session

13-28-6 Prize awards -- Options if unavailable.

(1) A solicitor who represents to an individual in a written prize notice that the individual has been awarded a prize shall provide the prize to the individual unless the prize is not available. If the prize is not available, the solicitor shall provide the individual with any one of the following items selected by the individual:
  (a) any other prize listed in the written prize notice that is available and that is of equal or greater value;
  (b) the verifiable retail value of the prize in the form of cash, a money order, or a certified check; or
  (c) a voucher, certificate, or other evidence of obligation stating that the prize will be shipped to the individual within 30 days at no cost to the individual.
(2) If a voucher, certificate, or other evidence of obligation delivered under Subsection (1)(c) is not honored within 30 days, the solicitor shall deliver to the individual the verifiable retail value of the prize in the form of cash, a money order, or a certified check. The sponsor shall make the payment to the individual if the solicitor fails to do so.

Enacted by Chapter 196, 1995 General Session

13-28-7 Penalties -- Administrative and criminal.

(1) Any person who violates this chapter shall be subject to:
  (a) a cease and desist order; and
  (b) an administrative fine of not less than $100 or more than $5,000 for each separate violation.
(2) All administrative fines shall be deposited in the Consumer Protection Education and Training Fund created in Section 13-2-8.
(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 he is in violation of this chapter.

Enacted by Chapter 196, 1995 General Session

13-28-8 Enforcement.

(1) The division shall investigate and assess administrative fines for violations of this chapter.
(2) Upon referral from the division, the attorney general or any district or county attorney may:
  (a) bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this part. The 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;
  (b) bring an action in any court of competent jurisdiction for the collection of penalties authorized under Subsection 13-28-7(1); or
  (c) bring an action under Subsection 13-28-7(3).

Enacted by Chapter 196, 1995 General Session

13-28-9 Private action.

In addition to any other remedies, a person suffering pecuniary loss because of a violation by another person of this chapter may bring an action in any court of competent jurisdiction and may recover:
(1) the greater of $500 or twice the amount of the pecuniary loss; and
(2) court costs and reasonable attorney's fees as determined by the court.

Enacted by Chapter 196, 1995 General Session

Chapter 31
Mold Retention and Lien Act

Part 1
General Provisions

13-31-101 Title.
This chapter shall be known as the "Mold Retention and Lien Act."

Enacted by Chapter 349, 1998 General Session

13-31-102 Definitions.
As used in this chapter:
(1) "All rights and title" does not include rights or title in patents or copyrights.
(2) "Customer" means a person that:
(a) causes a molder to fabricate, cast, or otherwise make a mold; or
(b) provides a molder with a mold to make a product for the customer.
(3) "Make" includes to manufacture, assemble, cast, or fabricate.
(4) "Mold" includes a die, form, or pattern.
(5)
(a) "Molder" means a person that makes or uses a mold for the purpose of making a product for a customer.
(b) "Molder" includes a tool or die maker.

Enacted by Chapter 349, 1998 General Session

13-31-103 Relationship to federal law.
This chapter does not affect any right of a customer under federal law related to patent, copyright, or unfair competition.

Enacted by Chapter 349, 1998 General Session

Part 2
Retention of Molds

13-31-201 Ownership rights to molds.

(1) Unless otherwise agreed to by the molder and the customer, the customer has all rights and title to a mold in the possession of the molder.
(2) If a customer does not claim possession from a molder of a mold within three years following the last prior use of the mold, all rights and title to the mold may be transferred to the molder in accordance with Section 13-31-202 for the purpose of destroying or otherwise disposing of the mold.

Enacted by Chapter 349, 1998 General Session

13-31-202 Transfer of ownership to molder.
(1) If a customer does not claim possession from a molder of a mold within three years following the last prior use of the mold, the molder may transfer all rights and title to the mold in accordance with this section.
(2)
  (a) Prior to obtaining all rights and title to the mold, the molder shall send written notice by registered mail to the last-known address of the customer notifying the customer that the molder is terminating the customer's rights and title to the mold.
  (b) The notice required under Subsection (2)(a) shall disclose the rights of the customer under Subsection (3).
(3) All rights and title of the customer to the mold are transferred to the molder 120 days from the date the notice required by Subsection (2)(a) is sent unless the customer:
  (a) responds in person or by mail to claim possession of the mold within the 120-day period; or
  (b) makes other contractual arrangements with the molder for the storage of the mold.
(4) After rights and title to a mold are transferred to the molder under Subsection (2), the molder may destroy or otherwise dispose of the mold without liability to the customer.

Enacted by Chapter 349, 1998 General Session

13-31-203 Scope of part.
In determining whether a customer has claimed possession of a mold within three years following the last prior use, a molder may include any period following the last prior use of a mold even if that period is prior to May 4, 1998.

Enacted by Chapter 349, 1998 General Session

Part 3
Mold Liens

13-31-301 Mold liens.
(1) If a molder has possession of a mold belonging to a customer, the molder has a lien on the mold for the balance due from the customer for:
  (a) work for the customer involving the mold; and
  (b) the value of all materials related to work described in Subsection (1)(a).
(2)

(a) Prior to enforcing the lien, the molder shall deliver or send written notice by registered mail to the last-known address of the customer notifying the customer that the molder intends to enforce the lien.
(b) The notice required by Subsection (2)(a) shall:
(i) state that the lien is claimed for damages for failure to pay under a contract for work for the customer involving the mold;
(ii) include a demand for payment; and
(iii) be accompanied by the written contract, if any, for the work performed for the customer.
(3) If the molder is not paid the amount due within 60 days from the day the notice required by Subsection (2) is received by the customer, the molder may sell the mold at a public auction in accordance with Section 13-31-302.

Enacted by Chapter 349, 1998 General Session

13-31-302 Sale of molds for payment of lien.
(1)
(a) Prior to selling a mold, the molder shall send written notice by registered mail to the last-known address of the customer.
(b) The notice required by Subsection (1)(a) shall include:
(i) the molder's intention to sell the mold 30 days from the day the customer received the notice;
(ii) the description of the mold to be sold;
(iii) the time and place of the sale; and
(iv) an itemized statement for the amount due the molder from the customer.
(c) A molder shall publish notice of the molder's intention to sell a mold in a newspaper of general circulation covering the customer's last-known address and as required in Section 45-1-101 if:
(i) the receipt of the mailing of the notice described in Subsection (1)(a) is not returned; or
(ii) the postal service returns the notice described in Subsection (1)(a) as being nondeliverable.
(d) The notice provided for in Subsection (1)(c) shall include a description of the mold.
(2) A molder may sell a mold 30 days from the later of the day:
(a) the customer received the notice in accordance with Subsection (1)(a); or
(b) the date the molder published the notice under Subsection (1)(c).
(3) If from the sale of a mold under this section the molder receives an amount in excess of the amount of the lien, the excess shall be paid as follows:
(a) to any prior lienholder known to the molder at the time of the sale; and
(b) after paying any lienholder under Subsection (3)(a), the remainder:
(i) if the customer's address is known at the time of sale, to the customer; or
(ii) if the customer's address is not known at the time of sale, to the state in accordance with Title 67, Chapter 4a, Revised Uniform Unclaimed Property Act.

Amended by Chapter 388, 2009 General Session

Chapter 32
Swap Meets and Flea Markets Act

13-32-101 Title.

This chapter is known as the "Swap Meets and Flea Markets Act."

Enacted by Chapter 68, 1999 General Session

13-32-102 Definitions.

(1) "Manufacturer's or distributor's representative" means a person who has available for public inspection written proof of authorization from the manufacturer or distributor of a product to offer that product for public retail sale.

(2) "New and unused property" means tangible personal property that:

(a) was acquired by the vendor directly from the producer, manufacturer, wholesaler, or retailer of that property in the ordinary course of business;

(b) has never been used since its production or manufacturing; and

(c) if the property was packaged when originally produced or manufactured, is in its original and unopened package or container.

(3)

(a) "Swap meet" or "flea market" means an event at which personal property is offered for sale or exchange:

(i) by two or more persons and a fee is charged to vendors for the privilege of offering or displaying such personal property or to prospective buyers for admission to the area where such personal property is offered or displayed for sale; or

(ii) if the event is held more than six times in any 12-month period, regardless of the number of persons offering or displaying personal property or the absence of fees.

(b) The terms "swap meet" and "flea market" do not include any events:

(i) that are organized for the exclusive benefit of any community chest, fund, foundation, association, or corporation organized and operated exclusively for religious, educational, or charitable purposes; or

(ii) at which all of the personal property offered for sale or displayed is new and unused property, and all persons selling, exchanging, offering, or displaying the personal property are manufacturer's or distributor's representatives.

(4) "Vendor" means a person who offers for sale or exchange six or more like items of new and unused property at a swap meet or flea market in this state.

Enacted by Chapter 68, 1999 General Session

13-32-103 Prohibited sales.

A vendor who is not a manufacturer's or distributor's representative may not sell or offer for sale or exchange at a swap meet or flea market any:

(1) food product which is manufactured and packaged specifically for consumption by a child under two years of age;

(2) nonprescription or over-the-counter drug or medication other than herbal products, dietary supplements, botanical extracts, or vitamins; or

(3) cosmetic or personal care product which has an expiration date.

Amended by Chapter 378, 2010 General Session

13-32-104 Receipts and transaction records -- Retention of receipts and transaction records.

(1) Every vendor shall maintain receipts or a permanent record book for the acquisition of new and unused property which shall contain:

(a) the date of the transaction on which the property was acquired;
(b) the name and address of the person from whom the property was acquired;
(c) an identification and description of the property acquired;
(d) the price paid for such property; and
(e) the signatures of the person selling the property and the vendor.
(2) The receipt or record for each transaction required by Subsection (1) shall be maintained by the vendor for a period of not less than one year following the date of the transaction.

Amended by Chapter 378, 2010 General Session

13-32-105 Violations.
(1) It is a violation of this chapter for any vendor, required to maintain receipts or records under Section 13-32-104, to knowingly:
(a) falsify, obliterate, or destroy the receipts or records;
(b) refuse or fail to make such receipts available for inspection, upon the request of a law enforcement officer, within a reasonable period of time under the circumstances surrounding the request; or
(c) present credentials pursuant to the requirements of this chapter which are false, fraudulent, forged, or fraudulently obtained.
(2) Nothing contained within this section shall be construed to require a vendor to possess the receipts or records required by Section 13-32-104 on or about the vendor's person without reasonable notice.

Enacted by Chapter 68, 1999 General Session

13-32-106 Penalties.
A person who violates this chapter is guilty of an infraction.

Amended by Chapter 303, 2016 General Session

13-32-107 Exemptions.
The provisions of this chapter do not apply to:
(1) the sale of a motor vehicle or trailer that is required to be registered or is subject to the certificate of title laws of this state;
(2) the sale of agricultural products, forestry products, livestock, or food products other than those which are manufactured and packaged specifically for consumption by a child under two years of age;
(3) business conducted at any industry or association trade show;
(4) the sale of arts or crafts by the person who produced such arts and crafts; and
(5) anyone who displays only samples, catalogs, or brochures and sells property for future delivery.

Amended by Chapter 378, 2010 General Session

Chapter 32a
Pawnshop, Secondhand Merchandise, and Catalytic Converter Transaction Information Act

13-32a-101 Title.

This chapter is known as the "Pawnshop, Secondhand Merchandise, and Catalytic Converter Transaction Information Act."

Amended by Chapter 201, 2022 General Session

13-32a-102 Definitions.

As used in this chapter:

(1) "Account" means the Pawnbroker, Secondhand Merchandise, and Catalytic Converter Operations Restricted Account created in Section 13-32a-113.

(2) "Antique item" means an item:

(a) that is generally older than 25 years;

(b) whose value is based on age, rarity, condition, craftsmanship, or collectability;

(c) that is furniture or other decorative objects produced in a previous time period, as distinguished from new items of a similar nature; and

(d) obtained from auctions, estate sales, other antique shops, and individuals.

(3) "Antique shop" means a business operating at an established location that deals primarily in the purchase, exchange, or sale of antique items.

(4) "Automated recycling kiosk" means an interactive machine that:

(a) is installed inside a commercial site used for the selling of goods and services to consumers;

(b) is monitored remotely by a live representative during the hours of operation;

(c) only engages in secondhand merchandise transactions involving wireless communication devices; and

(d) has the following technological functions:

(i) verifies the seller's identity by a live representative using the individual's identification;

(ii) generates a ticket; and

(iii) electronically transmits the secondhand merchandise transaction information to the central database.

(5) "Automated recycling kiosk operator" means a person whose sole business activity is the operation of one or more automated recycling kiosks.

(6) "Board" means the Pawnshop, Secondhand Merchandise, and Catalytic Converter Advisory Board created by this chapter.

(7) "Catalytic converter" means the same as that term is defined in Section 76-6-1402.

(8)

(a) "Catalytic converter purchase" means a purchase from an individual of a used catalytic converter that is no longer affixed to a vehicle.

(b) "Catalytic converter purchase" does not mean a purchase of a catalytic converter:

(i) from a business regularly engaged in automobile repair, crushing, dismantling, recycling, or salvage;

(ii) from a new or used vehicle dealer licensed under Title 41, Chapter 3, Motor Vehicle Business Regulation Act;

(iii) from another catalytic converter purchaser; or

(iv) that has never been affixed to a vehicle.

(9) "Catalytic converter purchaser" means a person who purchases a used catalytic converter in a catalytic converter purchase.

(10) "Central database" or "database" means the electronic database created and operated under Section 13-32a-105.

(11) "Children's product" means a used item that is for the exclusive use of children, or for the care of children, including clothing and toys.
(12) "Children's product resale business" means a business operating at a commercial location and primarily selling children's products.
(13) "Coin" means a piece of currency, usually metallic and usually in the shape of a disc that is:
(a) stamped metal, and issued by a government as monetary currency; or
(b)
(i) worth more than its current value as currency; and
(ii) worth more than its metal content value.
(14) "Coin dealer" means a person whose sole business activity is the selling and purchasing of numismatic items and precious metals.
(15) "Collectible paper money" means paper currency that is no longer in circulation and is sold and purchased for the paper currency's collectible value.
(16)
(a) "Commercial grade precious metals" or "precious metals" means ingots, monetized bullion, art bars, medallions, medals, tokens, and currency that are marked by the refiner or fabricator indicating their fineness and include:
(i) .99 fine or finer ingots of gold, silver, platinum, palladium, or other precious metals; or
(ii) .925 fine sterling silver ingots, art bars, and medallions.
(b) "Commercial grade precious metals" or "precious metals" does not include jewelry.
(17) "Consignment shop" means a business, operating at an established location:
(a) that deals primarily in the offering for sale property owned by a third party; and
(b) where the owner of the property only receives consideration upon the sale of the property by the business.
(18) "Division" means the Division of Consumer Protection created in Chapter 1, Department of Commerce.
(19) "Exonumia" means a privately issued token for trade that is sold and purchased for the token's collectible value.
(20) "Gift card" means a record that:
(a) is usable at:
(i) a single merchant; or
(ii) a specified group of merchants;
(b) is prefunded before the record is used; and
(c) can be used for the purchase of goods or services.
(21) "Identification" means any of the following non-expired forms of identification issued by a state government, the United States government, or a federally recognized Indian tribe, if the identification includes a unique number, photograph of the bearer, and date of birth:
(a) a United States Passport or United States Passport Card;
(b) a state-issued driver license;
(c) a state-issued identification card;
(d) a state-issued concealed carry permit;
(e) a United States military identification;
(f) a United States resident alien card;
(g) an identification of a federally recognized Indian tribe; or
(h) notwithstanding Section 53-3-207, a Utah driving privilege card.
(22) "IMEI number" means an International Mobile Equipment Identity number.
(23) "Indicia of being new" means property that:
(a) is represented by the individual pawning or selling the property as new;

(b) is unopened in the original packaging; or
(c) possesses other distinguishing characteristics that indicate the property is new.
(24) "Local law enforcement agency" means the law enforcement agency that has direct responsibility for ensuring compliance with central database reporting requirements for the jurisdiction where the pawn or secondhand business or catalytic converter purchaser is located.
(25) "Numismatic item" means a coin, collectible paper money, or exonumia.
(26) "Original victim" means a victim who is not a party to the pawn or sale transaction or catalytic converter purchase and includes:
(a) an authorized representative designated in writing by the original victim; and
(b) an insurer who has indemnified the original victim for the loss of the described property.
(27) "Pawn or secondhand business" means a business operated by a pawnbroker or secondhand merchandise dealer, or the owner or operator of the business.
(28) "Pawn transaction" means:
(a) an extension of credit in which an individual delivers property to a pawnbroker for an advance of money and retains the right to redeem the property for the redemption price within a fixed period of time;
(b) a loan of money on one or more deposits of personal property;
(c) the purchase, exchange, or possession of personal property on condition of selling the same property back again to the pledgor or depositor; or
(d) a loan or advance of money on personal property by the pawnbroker taking chattel mortgage security on the personal property, taking or receiving the personal property into the pawnbroker's possession, and selling the unredeemed pledges.
(29) "Pawnbroker" means a person whose business:
(a) engages in a pawn transaction; or
(b) holds itself out as being in the business of a pawnbroker or pawnshop, regardless of whether the person or business enters into pawn transactions or secondhand merchandise transactions.
(30) "Pawnshop" means the physical location or premises where a pawnbroker conducts business.
(31) "Pledgor" means an individual who conducts a pawn transaction with a pawnshop.
(32) "Property" means an article of tangible personal property, numismatic item, precious metal, gift card, transaction card, or other physical or digital card or certificate evidencing store credit, and includes a wireless communication device.
(33) "Retail media item" means recorded music, a movie, or a video game that is produced and distributed in hard copy format for retail sale.
(34) "Scrap jewelry" means an item purchased solely:
(a) for its gold, silver, or platinum content; and
(b) for the purpose of reuse of the metal content.
(35)
(a) "Secondhand merchandise dealer" means a person whose business:
(i) engages in a secondhand merchandise transaction; and
(ii) does not engage in a pawn transaction.
(b) "Secondhand merchandise dealer" includes a coin dealer and an automated recycling kiosk operator.
(c) "Secondhand merchandise dealer" does not include:
(i) an antique shop when dealing in antique items;
(ii) a person who operates an auction house, flea market, or vehicle, vessel, and outboard motor dealers as defined in Section 41-1a-102;

(iii) the sale of secondhand goods at events commonly known as "garage sales," "yard sales," "estate sales," "storage unit sales," or "storage unit auctions";
(iv) the sale or receipt of secondhand books, magazines, post cards, or nonelectronic:
(A) card games;
(B) table-top games; or
(C) magic tricks;
(v) the sale or receipt of used merchandise donated to recognized nonprofit, religious, or charitable organizations or any school-sponsored association, and for which no compensation is paid;
(vi) the sale or receipt of secondhand clothing, shoes, furniture, or appliances;
(vii) a person offering the person's own personal property for sale, purchase, consignment, or trade via the Internet;
(viii) a person offering the personal property of others for sale, purchase, consignment, or trade via the Internet, when that person does not have, and is not required to have, a local business or occupational license or other authorization for this activity;
(ix) an owner or operator of a retail business that:
(A) receives used merchandise as a trade-in for similar new merchandise ; or
(B) receives used retail media items as a trade-in for similar new or used retail media items;
(x) an owner or operator of a business that contracts with other persons to offer those persons' secondhand goods for sale, purchase, consignment, or trade via the Internet;
(xi) any dealer as defined in Section 76-6-1402, that concerns scrap metal and secondary metals;
(xii) the purchase of items in bulk that are:
(A) sold at wholesale in bulk packaging;
(B) sold by a person licensed to conduct business in Utah; and
(C) regularly sold in bulk quantities as a recognized form of sale;
(xiii) the owner or operator of a children's product resale business;
(xiv) a consignment shop when dealing in consigned property; or
(xv) a catalytic converter purchaser.
(36) "Secondhand merchandise transaction" means the purchase or exchange of used or secondhand property.
(37) "Ticket" means a document upon which information is entered when a pawn transaction or secondhand merchandise transaction is made.
(38) "Transaction card" means a card, code, or other means of access to a value with the retail business issued to a person that allows the person to obtain, purchase, or receive any of the following:
(a) goods;
(b) services;
(c) money; or
(d) anything else of value.
(39) "Wireless communication device" means a cellular telephone or a portable electronic device designed to receive and transmit a text message, email, video, or voice communication.

Amended by Chapter 201, 2022 General Session

13-32a-102.5 Administration and enforcement.
(1) The division shall administer and enforce this chapter in accordance with the authority under Title 13, Chapter 2, Division of Consumer Protection.

(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.
(3) Reasonable attorney fees, costs, and interest shall be awarded to the division in any action brought to enforce the provisions of this chapter.
(4) Municipal and county law enforcement agencies, prosecutorial agencies, and governmental agencies may enforce the criminal and civil provisions of this chapter.

Amended by Chapter 284, 2012 General Session

13-32a-103.1 Transaction or gift cards.
(1) A retail business engaging in a transaction involving a transaction card or gift card issued by that retail business and that bears the branding of that retail business is not subject to this chapter.
(2) A pawn or secondhand business may not purchase or pawn a gift card or transaction card.
(3) This chapter does not prohibit a pawn or secondhand business from issuing or accepting as payment a gift card that:
  (a) is issued solely by the pawn or secondhand business; and
  (b) bears the brand or name of the pawn or secondhand business.

Enacted by Chapter 309, 2019 General Session

13-32a-103.5 Specie legal tender exempt from chapter.
Specie legal tender as defined in Section 59-1-1501.1 that is used as legal tender is exempt from this chapter.

Amended by Chapter 309, 2019 General Session

13-32a-104 Tickets required to be maintained -- Contents -- Identification of items -- Exceptions -- Prohibition against pawning or selling certain property.
(1) A pawn or secondhand business shall keep a ticket for property a person pawns or sells to the pawn or secondhand business. A pawn or secondhand business shall document on the ticket the following information regarding the property:
  (a) the date and time of the transaction;
  (b) whether the transaction is a pawn or purchase;
  (c) the ticket number;
  (d) the date by which the property must be redeemed, if the property is pawned;
  (e) the following information regarding the individual who pawns or sells the property:
    (i) the individual's full name and date of birth as they appear on the individual's identification and the individual's residence address and telephone number;
    (ii) the unique number and type of identification presented to the pawn or secondhand business;
    (iii) the individual's signature; and
    (iv)
      (A) subject to any rule made under Subsection (8), an electronic or tangible legible fingerprint of the individual's right index finger, or if the right index finger cannot be fingerprinted, a legible fingerprint of the individual with a notation identifying the fingerprint and the reason why the right index fingerprint was unavailable; and

(B) notwithstanding the other provisions of this Subsection (1), an electronic legible fingerprint is not required to be documented on the ticket;

(f) the amount loaned on, paid for, or value for trade-in of each article of property;

(g) the full name of the individual conducting the pawn transaction or secondhand merchandise transaction on behalf of the pawn or secondhand business or the initials or a unique identifying number of the individual, if the pawn or secondhand business maintains a record of the initials or unique identifying number of the individual; and

(h) an accurate description of each article of property, with available identifying marks, including:

(i)

(A) names, brand names, numbers, serial numbers, model numbers, IMEI numbers, color, manufacturers' names, and size;

(B) metallic composition, and any jewels, stones, or glass;

(C) any other marks of identification or indicia of ownership on the property;

(D) the weight of the property, if the payment is based on weight;

(E) any other unique identifying feature; and

(F) gold content, if indicated; or

(ii) if multiple articles of property of a similar nature are delivered together in one transaction and the articles of property do not bear serial or model numbers and do not include precious metals or gemstones, such as musical or video recordings, books, or hand tools, the description of the articles is adequate if it includes the quantity of the articles and a description of the type of articles delivered.

(2)

(a) A pawn or secondhand business may not accept property if, upon inspection, it is apparent that:

(i) a serial number or another form of indicia of ownership has been removed, altered, defaced, or obliterated;

(ii) the property is not a numismatic item and has indicia of being new, but is not accompanied by a written receipt or other satisfactory proof of ownership other than the seller's own statement; or

(iii) except as provided in Subsection 13-32a-103.1(3), the property is a gift card, transaction card, or other physical or digital card or certificate evidencing store credit.

(b) A pawn or secondhand business is not subject to Subsection (2)(a)(ii) if the pawn or secondhand business is the original seller of the property and is accepting a return of the property as provided by the pawn or secondhand business' established return policy.

(c) Property is presumed to have had indicia of being new at the time of a transaction if the property is subsequently advertised by the pawn or secondhand business as being new.

(3)

(a) An individual may not pawn or sell any property to a business regulated under this chapter if the property is subject to being turned over to a law enforcement agency in accordance with Title 77, Chapter 24a, Lost or Mislaid Personal Property.

(b) If an individual attempts to sell or pawn property to a business regulated under this chapter and the employee or owner of the business knows or has reason to know that the property is subject to Title 77, Chapter 24a, Lost or Mislaid Personal Property, the employee or owner shall advise the individual of the requirements of Title 77, Chapter 24a, Lost or Mislaid Personal Property, and may not receive the property in pawn or sale.

(4) A coin dealer is subject to Section 13-32a-104.5 and not subject to this section.

(5) An automated recyling kiosk operator is subject to Section 13-32a-104.6 and is not subject to this section.

(6) A catalytic converter purchaser is subject to Section 13-32a-104.7 and is not subject to this section.
(7) A violation of this section is a class B misdemeanor and is also subject to civil penalties under Section 13-32a-110.
(8) The division shall establish standards and criteria for fingerprint legibility by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(9)
(a) As used in this Subsection (9), "jewelry" means:
(i) any jewelry purchased by the pawn or secondhand business, including scrap jewelry and watches; or
(ii) any jewelry pawned to a pawnbroker and the contract period between the pawnbroker and the pledgor has expired, including scrap jewelry and watches.
(b) On and after January 1, 2020, a pawn or secondhand business shall obtain:
(i) a color digital photograph clearly and accurately depicting:
(A) each item of jewelry; and
(B) if an item of jewelry has one or more engravings, an additional color digital photograph specifically depicting any engraving; and
(ii) a color digital photograph of an item that bears an identifying mark, including:
(A) a serial number, engraving, owner label, or similar identifying mark; and
(B) an additional photograph that clearly depicts the identifying mark described in Subsection (9)(b)(ii)(A).

Amended by Chapter 201, 2022 General Session

13-32a-104.5 Database information from coin dealers -- New and prior customers.
(1) A coin dealer shall maintain a ticket under this section for each secondhand merchandise transaction of a numismatic item or precious metal with an individual with whom the coin dealer has not previously conducted a secondhand merchandise transaction.
(2) For a secondhand merchandise transaction under Subsection (1), the coin dealer or the coin dealer's employee shall document the following information on the ticket regarding every numismatic item or precious metal transaction:
(a) the date and time of the transaction;
(b) the ticket number;
(c) the following information regarding the individual who sells the numismatic item or precious metal:
(i) the individual's full name and date of birth as they appear on the individual's identification and the individual's residence address and telephone number;
(ii) the unique number and type of identification presented to the coin dealer;
(iii) the individual's signature; and
(iv)
(A) subject to any rule made under Subsection (6), an electronic or tangible legible fingerprint of the individual's right index finger, or if the right index finger cannot be fingerprinted, a legible fingerprint of the individual with a notation identifying the fingerprint and the reason why a right index fingerprint is unavailable; and
(B) notwithstanding the other provisions of this Subsection (2), an electronic legible fingerprint is not required to be documented on the ticket;
(d) the amount paid for or trade-in value of each numismatic item or precious metal;

(e) the full name of the individual conducting the transaction on behalf of the pawn or secondhand business or the initials or unique identifying number, if the coin dealer maintains a record of the initials or unique identifying number of the individual; and
(f) an accurate description of each numismatic item or precious metal, with available identifying marks, including:
(i) type and name of numismatic item or type and content of precious metal;
(ii) metallic composition, and any jewels, stones, or glass;
(iii) any other marks of identification or indicia of ownership on the article;
(iv) the weight of the article, if the payment is based on weight;
(v) any other unique identifying feature; and
(vi) metallic content.
(3)
(a) If multiple numismatic items or precious metals of the same type in an amount that would make reporting of each item unreasonably difficult are part of a single sale transaction, a coin dealer shall document the property as a grouping.
(b) The description for a grouping described in Subsection (3)(a) must be an accurate description, with available identifying marks, including:
(i) type and name of numismatic items or type and content of precious metal;
(ii) metallic composition, and any jewels, stones, or glass;
(iii) any other marks of identification or indicia of ownership on the article;
(iv) the weight of the articles, if the payment is based on the weight;
(v) any other unique identifying features; and
(vi) metallic content.
(4) If the individual selling a numismatic item or precious metal to the coin dealer has an established previous transaction history with the coin dealer, the coin dealer or the coin dealer's employee shall document the following information on the ticket:
(a) the date and time of the transaction and the ticket number;
(b) indication that the coin dealer has conducted business with the seller previously;
(c) the full name of the individual conducting the transaction on behalf of the pawn or secondhand business or the initials or unique identifying number, if the coin dealer maintains a record of the initials or unique identifying number of the individual;
(d) the initials of the seller's legal name, including any middle name;
(e) form of identification presented by the seller at the time of sale;
(f) the last four digits of the unique identifying number on the form of identification;
(g) the individual's signature;
(h) the amount paid for or trade-in value of each numismatic item or precious metal; and
(i) the identifying information under Subsection (2)(f) and under Subsection (3) as applicable.
(5) A coin dealer may not accept any numismatic item or precious metal if, upon inspection, it is apparent that serial numbers or identifying characteristics have been intentionally defaced on that numismatic item or precious metal.
(6) The division shall establish standards and criteria for fingerprint legibility by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

Amended by Chapter 66, 2021 General Session

13-32a-104.6 Database information from automated recycling kiosk operators.
(1) An automated recycling kiosk operator shall generate a ticket under this section for each secondhand merchandise transaction in which the automated recycling kiosk operator

engages. An automated recycling kiosk operator shall document on the ticket the following information:

(a) the date and time of the transaction;

(b) the ticket number;

(c) a color digital photograph of the front and back of each wireless communication device;

(d) the following information regarding the individual who sells the wireless communication device:

(i) the individual's full name and date of birth as they appear on the individual's identification and the individual's residence address and telephone number;

(ii) the unique number and type of identification presented to the automated recycling kiosk;

(iii) the individual's signature;

(iv) a color digital photograph of the individual; and

(v)

(A) subject to rules made under Subsection (3), an electronic or tangible legible fingerprint of the individual's right index finger, or if the right index finger cannot be fingerprinted, a legible fingerprint of the individual with a notation identifying the fingerprint and the reason why the right index fingerprint was unavailable; and

(B) notwithstanding the other provisions of this Subsection (1), an electronic legible fingerprint is not required to be documented on the ticket;

(e) the full name of the individual conducting the secondhand merchandise transaction on behalf of the automated recycling kiosk operator or the initials or a unique identifying number of the individual, if the automated recycling kiosk maintains a record of the initials or unique identifying number of the individual;

(f) the amount paid for each wireless communication device; and

(g) subject to Subsection (4), an accurate description of each wireless communication device, including any:

(i) names, brand names, numbers, serial numbers, IMEI numbers, model numbers, color, manufacturers' names, and size;

(ii) other marks of identification or indicia of ownership on the wireless communication device; and

(iii) other unique identifying characteristics.

(2) A violation of this section is a class B misdemeanor and is also subject to civil penalties under Section 13-32a-110.

(3) The division shall establish standards and criteria for fingerprint legibility by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(4) If an automated recycling kiosk cannot electronically extract a wireless communication device's serial number or IMEI number from the wireless communication device at the time of the transaction:

(a) the automated recycling kiosk operator may not pay the seller more than $25 for the wireless communication device;

(b) the automated recycling kiosk operator shall engage in and document reasonable efforts to obtain and upload to the central database the wireless communication device's serial number and IMEI number within 15 calendar days of the date of the transaction; and

(c) the central database information for the wireless communication device may not be considered submitted for purposes of Subsection 13-32a-109(1)(b) until the earlier of when:

(i) the wireless communication device's serial number and IMEI number have both been uploaded to the central database; or

(ii) more than 45 calendar days have passed since the date of the transaction.

(5) An automated recycling kiosk operator may not purchase more than 10 wireless communication devices with serial numbers or IMEI numbers that cannot be electronically extracted by an automated recycling kiosk at the time of the transaction from the same individual during the same calendar year.
(6) An automated recycling kiosk operator may only purchase a wireless communication device with serial numbers or IMEI numbers that cannot be electronically extracted by an automated recycling kiosk at the time of the transaction in a single-item transaction.

Enacted by Chapter 66, 2021 General Session

13-32a-104.7 Database information from catalytic converter purchasers -- Penalties.

(1) As soon as practicable, but no later than January 1, 2023, a catalytic converter purchaser shall document information for each catalytic converter purchase as required under this section and upload the information to the central database under Section 13-32a-106.
(2) A catalytic converter purchaser shall document the following information regarding a catalytic converter purchase:
  (a) the date and time of the catalytic converter purchase;
  (b) the following information regarding the individual selling the catalytic converter:
    (i) the individual's:
      (A) full name and date of birth as they appear on the individual's identification;
      (B) residence address;
      (C) telephone number; and
      (D) signature on a certificate stating that the individual has the legal right to sell the catalytic converter;
    (ii) the type of identification the individual presents under Subsection (2)(b)(i)(A) and the unique number on the identification;
    (iii) a color digital photograph or still video of the individual taken at the time of the sale, or a clearly legible photocopy of the individual's identification; and
    (iv) except as provided in Subsection (3), an electronic or tangible legible fingerprint of the individual's right index finger, or if the right index finger cannot be fingerprinted, a legible fingerprint of the individual with a notation identifying the finger fingerprinted and the reason why the right index fingerprint is unavailable;
  (c) the amount paid for the catalytic converter;
  (d) the full name of the individual conducting the purchase on behalf of the catalytic converter purchaser or the initials or unique identifying employee number, if the catalytic converter purchaser maintains a record of the initials or unique identifying employee number of the individual;
  (e) an accurate description of the catalytic converter, with available identifying marks, including:
    (i) if available, the name, brand name, number, serial number, model number, manufacturer information, and size of the catalytic converter;
    (ii) any marks of identification or indicia of ownership on the catalytic converter;
    (iii) the weight of the catalytic converter, if the payment is based on weight; and
    (iv) other unique identifying characteristics of the catalytic converter; and
  (f) a color, digital photograph of the catalytic converter.
(3) If the individual selling a catalytic converter to the catalytic converter purchaser previously has sold one or more catalytic converters to the catalytic converter purchaser, the catalytic converter purchaser is not required to obtain the fingerprint under Subsection (2)(b)(iv).

(4) A catalytic converter purchaser may not accept a catalytic converter if, upon inspection, it is apparent that the serial number or identifying characteristics have been intentionally defaced on the catalytic converter.
(5) The division shall establish standards and criteria for fingerprint legibility under Subsection (2)(b)(iv) by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(6) A violation of this section is a class B misdemeanor and is also subject to civil penalties under Section 13-32a-110.
(7) A dealer, as defined in Section 76-6-1402, that purchases a catalytic converter under this section shall comply with Title 76, Chapter 6, Part 14, Regulation of Metal Dealers.

Enacted by Chapter 201, 2022 General Session

13-32a-105 Central database -- Implementation -- Notification.
(1) In accordance with this section, there is created a central database as a statewide repository for:
  (a) information that a pawn or secondhand business or a catalytic converter purchaser is required to submit in accordance with this chapter; and
  (b) the use of a participating law enforcement agency that meets the requirements of Section 13-32a-111.
(2) The division shall:
  (a) establish and operate the central database; or
  (b) contract with a third party to establish and operate the central database in accordance with Title 63G, Chapter 6a, Utah Procurement Code.
(3) Funding for the creation and operation of the central database shall be from the account.
(4)
  (a) An entity that operates the central database may not hold any financial or operating interest in a pawn or secondhand business or catalytic converter purchaser in any state.
  (b) The division shall verify before a bid is awarded that the selected entity meets the requirements of Subsection (4)(a).
  (c) If any entity is awarded a bid under this Subsection (4) and is later found to hold any interest in violation of Subsection (4)(a), the award is subject to being opened again for request for proposal.
(5)
  (a) Beginning January 1, 2020, upon a query by a pawnbroker, the central database shall provide notification of the volume of business an individual seeking to enter into a transaction with the pawnbroker has engaged in with any pawnbroker regulated by this chapter within the previous 30 days based on the records in the central database at the time of the query.
  (b) Information entered in the central database shall be retained for five years and shall then be deleted.
(6) Upon request, the entity responsible for establishing and operating the central database under Subsection (2) shall provide technical information and advice for an information technology representative of a pawn or secondhand business or catalytic converter purchaser that is required to provide information to the central database.

Amended by Chapter 201, 2022 General Session

13-32a-106 Transaction information provided to the central database -- Protected information.

(1)

(a) Except as provided in Subsection 13-32a-104.6(4), a pawn or secondhand business or catalytic converter purchaser shall transmit electronically in a compatible format information required to be recorded under Sections 13-32a-104, 13-32a-104.5, 13-32a-104.6, and 13-32a-104.7 that is capable of being transmitted electronically to the central database within 24 hours after entering into the transaction.

(b) The division may specify by rule, made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the information capable of being transmitted electronically under Subsection (1)(a).

(2)

(a) A pawn or secondhand business shall maintain tickets generated by the pawn or secondhand business and shall maintain the tickets in a manner so that the tickets are available to local law enforcement agencies as required by this chapter and as requested by any law enforcement agency as part of an investigation or reasonable random inspection conducted under this chapter.

(b)

(i) A catalytic converter purchaser is not required to generate or maintain a ticket for a catalytic converter purchase.

(ii) A catalytic converter purchaser shall make the information documented under Section 13-32a-104.7 available to a local law enforcement agency in accordance with this chapter and upon request by a law enforcement agency as part of an investigation or reasonable random inspection conducted under this chapter.

(3)

(a) If a pawn or secondhand business or catalytic converter purchaser experiences a computer or electronic malfunction that affects the business's or purchaser's ability to report transactions as required in Subsection (1), the pawn or secondhand business or catalytic converter purchaser shall immediately notify the division and the local law enforcement agency of the malfunction.

(b) The pawn or secondhand business or catalytic converter purchaser shall solve the malfunction within three business days after the day on which the business or purchaser experiences the malfunction or notify the division and the local law enforcement agency under Subsection (4).

(4) If the computer or electronic malfunction under Subsection (3) cannot be solved within three business days after the day on which the pawn or secondhand business or catalytic converter purchaser experiences the malfunction, the pawn or secondhand business or catalytic converter purchaser shall notify the division and the local law enforcement agency of the reasons for the delay and provide documentation from a reputable computer maintenance company of the reasons why the computer or electronic malfunction cannot be solved within three business days.

(5) A computer or electronic malfunction does not suspend the obligation of the pawn or secondhand business or catalytic converter purchaser to comply with all other provisions of this chapter.

(6) During the malfunction under Subsections (3) and (4), the pawn or secondhand business or catalytic converter purchaser shall:

(a) arrange with the local law enforcement agency a mutually acceptable alternative method by which the pawn or secondhand business or catalytic converter purchaser provides the required information to the local law enforcement agency; and
(b) a pawn or secondhand business or catalytic converter purchaser shall maintain the tickets, if applicable, and other related information required under this chapter in a written form.
(7) A pawn or secondhand business or catalytic converter purchaser that violates the electronic transaction reporting requirement under this section is subject to an administrative fine of $50 per day if:
(a) the pawn or secondhand business or catalytic converter purchaser is unable to submit the information electronically due to a computer or electronic malfunction;
(b) the three business day period under Subsection (3) has expired; and
(c) the pawn or secondhand business or catalytic converter purchaser has not provided documentation regarding the pawn or secondhand business's or catalytic converter purchaser's inability to solve the malfunction as required under Subsection (4).
(8) A pawn or secondhand business or catalytic converter purchaser is not responsible for a delay in transmission of information that results from a malfunction in the central database.
(9) A violation of this section is a class B misdemeanor and is also subject to civil penalties under Section 13-32a-110.

Amended by Chapter 201, 2022 General Session
Amended by Chapter 274, 2022 General Session

13-32a-106.5 Confidentiality of pawn and purchase transactions.
(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.
(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:
(a) investigating possible criminal conduct involving the property delivered:
(i) to the pawn or secondhand business in a pawn transaction or secondhand merchandise transaction; or
(ii) to a catalytic converter purchaser in a catalytic converter purchase;
(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;
(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:
(i) a description of the property;
(ii) the name and address of the pawn or secondhand business or catalytic converter purchaser that received the property; and
(iii) the name, address, and date of birth of the conveying individual; and
(d) taking enforcement action under Section 13-2-5 against a pawn or secondhand business or catalytic converter purchaser.

(3) An insurance company making a request under Subsection (2)(c) shall provide the police report case number concerning the described property.

(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).

(b) Each separate violation of Subsection (4)(a) is a class B misdemeanor.

(c) Each separate violation of Subsection (4)(a) is subject to a civil penalty not to exceed $250.

Amended by Chapter 201, 2022 General Session

13-32a-108 Retention of records -- Reasonable inspection.

(1) A pawn or secondhand business or local law enforcement agency, whichever has custody of a ticket or copy of a ticket, shall retain the ticket or copy for no less than three years after the date of the transaction.

(2)

(a) A law enforcement agency or the division may conduct random reasonable inspections of pawn or secondhand businesses or catalytic converter purchasers for the purpose of monitoring compliance with the requirements of this chapter.

(b) A law enforcement agency or the division shall conduct an inspection under Subsection (2)(a) during the regular business hours of the pawn or secondhand business or catalytic converter purchaser.

(3) A violation of this section is a class B misdemeanor and is also subject to civil penalties under Section 13-32a-110.

Amended by Chapter 201, 2022 General Session

13-32a-109 Holding period for property -- Return of property -- Penalty.

(1)

(a) A pawnbroker may sell property pawned to the pawnbroker if:

(i) 15 calendar days have passed after the day on which the pawnbroker submits the information and any required photograph to the central database;

(ii) the contract period between the pawnbroker and the pledgor expires; and

(iii) the pawnbroker has complied with Sections 13-32a-104 and 13-32a-106.

(b) If property, including scrap jewelry, is purchased by a pawn or secondhand business or catalytic converter purchaser, the pawn or secondhand business or catalytic converter purchaser may sell the property if the pawn or secondhand business or catalytic converter purchaser has held the property for 15 calendar days after the day on which the pawn or secondhand business or catalytic converter purchaser submits the information to the central database, and complied with Sections 13-32a-104, 13-32a-104.6, 13-32a-104.7, and 13-32a-106, except that the pawn or secondhand business is not required to hold precious metals or numismatic items under this Subsection (1)(b).

(c)

(i) This Subsection (1) does not preclude a law enforcement agency from requiring a pawn or secondhand business or catalytic converter purchaser to hold property if necessary in the course of an investigation.

(ii) If the property is pawned, the law enforcement agency may require the property be held beyond the terms of the contract between the pledgor and the pawnbroker.

(iii) If the property is sold to the pawn or secondhand business or catalytic converter purchaser, the law enforcement agency may require the property be held if the pawn or secondhand business or catalytic converter purchaser has not sold the article.

(d) If the law enforcement agency requesting a hold on property under this Subsection (1) is not the local law enforcement agency, the requesting law enforcement agency shall notify the local law enforcement agency of the request and also the pawn or secondhand business or catalytic converter purchaser.

(2) If a law enforcement agency requires the pawn or secondhand business or catalytic converter purchaser to hold property as part of an investigation, the law enforcement agency shall provide to the pawn or secondhand business or catalytic converter purchaser a hold form issued by the law enforcement agency, that:

(a) states the active case number;

(b) confirms the date of the hold request and the property to be held; and

(c) facilitates the ability of the pawn or secondhand business or catalytic converter purchaser to track the property when the prosecution takes over the case.

(3) If property is not seized by a law enforcement agency that has placed a hold on the property, the property shall remain in the custody of the pawn or secondhand business or catalytic converter purchaser until further disposition by the law enforcement agency, and in accordance with this chapter.

(4)

(a) The initial hold by a law enforcement agency is for a period of 90 days.

(b) If the property is not seized by the law enforcement agency, the property shall remain in the custody of the pawn or secondhand business or catalytic converter purchaser and is subject to the hold unless exigent circumstances require the property to be seized by the law enforcement agency.

(5)

(a) A law enforcement agency may extend any hold for up to an additional 90 days if circumstances require the extension.

(b) If there is an extension of a hold under Subsection (5)(a), the requesting law enforcement agency shall notify the pawn or secondhand business or catalytic converter purchaser that is subject to the hold before the expiration of the initial 90 days.

(c) A law enforcement agency may not hold an item for more than the 180 days allowed under Subsections (5)(a) and (b) without obtaining a court order authorizing the hold.

(6) A hold on property under Subsection (2) takes precedence over any request to claim or purchase the property subject to the hold.

(7) If an original victim who has complied with Section 13-32a-115 has not been identified and the hold or seizure of the property is terminated, the law enforcement agency requiring the hold or seizure shall within 15 business days after the day on which the termination occurs:

(a) notify the pawn or secondhand business or catalytic converter purchaser in writing that the hold or seizure has been terminated;

(b) return the property subject to the seizure to the pawn or secondhand business or catalytic converter purchaser; or

(c) if the property is not returned to the pawn or secondhand business or catalytic converter purchaser, advise the pawn or secondhand business or catalytic converter purchaser either in writing or electronically of the specific alternative disposition of the property.

(8)

(a) If the original victim who has complied with Section 13-32a-115 has been identified and the hold or seizure of property is terminated, the law enforcement agency requiring the hold or seizure shall:
(i) document the original victim who has positively identified the property; and
(ii) provide the documented information concerning the original victim to the prosecuting agency to determine whether continued possession of the property is necessary for purposes of prosecution, as provided in Section 24-3-103.
(b) If the prosecuting agency determines that continued possession of the property is not necessary for purposes of prosecution, as provided in Section 24-3-103, the prosecuting agency shall provide a written or electronic notification to the law enforcement agency that authorizes the return of the property to an original victim who has complied with Section 13-32a-115.
(c)
(i) A law enforcement agency shall promptly provide notice to the pawn or secondhand business or catalytic converter purchaser of the authorized return of the property under this Subsection (8).
(ii) The notice shall identify the original victim, advise the pawn or secondhand business or catalytic converter purchaser that the original victim has identified the property, and direct the pawn or secondhand business or catalytic converter purchaser to release the property to the original victim at no cost to the original victim.
(iii) If the property was seized, the notice shall advise that the property will be returned to the original victim within 15 days after the day on which the pawn or secondhand business or catalytic converter purchaser receives the notice, except as provided under Subsection (8)(d).
(d) The pawn or secondhand business or catalytic converter purchaser shall release property under Subsection (8)(c) unless within 15 days after the day on which the notice is received the pawn or secondhand business or catalytic converter purchaser complies with Section 13-32a-116.5.
(9)
(a) If the law enforcement agency does not notify the pawn or secondhand business or catalytic converter purchaser that a hold on the property has expired, the pawn or secondhand business or catalytic converter purchaser shall send a letter by registered or certified mail to the law enforcement agency that ordered the hold and inform the agency that the holding period has expired.
(b) The law enforcement agency shall respond within 30 days by:
(i) confirming that the hold period has expired and that the pawn or secondhand business or catalytic converter purchaser may manage the property as if acquired in the ordinary course of business; or
(ii) providing written notice to the pawn or secondhand business or catalytic converter purchaser that a court order has continued the period of time for which the item shall be held.
(10) The written notice under Subsection (9)(b)(ii) is considered provided when:
(a) personally delivered to the pawn or secondhand business or catalytic converter purchaser with a signed receipt of delivery;
(b) delivered to the pawn or secondhand business or catalytic converter purchaser by registered or certified mail; or
(c) delivered by any other means with the mutual assent of the law enforcement agency and the pawn or secondhand business or catalytic converter purchaser.

(11) If the law enforcement agency does not respond within 30 days under Subsection (9), the pawn or secondhand business or catalytic converter purchaser may manage the property as if acquired in the ordinary course of business.
(12) A violation of this section is a class B misdemeanor and is also subject to civil penalties under Section 13-32a-110.

Amended by Chapter 201, 2022 General Session
Amended by Chapter 274, 2022 General Session

13-32a-109.5 Seizure of property -- Notification to pawn or secondhand business or catalytic converter purchaser.

If a law enforcement agency determines seizure of property pawned or sold to a pawn or secondhand business or catalytic converter purchaser is necessary under this chapter during the course of a criminal investigation, in addition to the hold provisions under Section 13-32a-109, the law enforcement agency shall:
(1) notify the pawn or secondhand business or catalytic converter purchaser of the specific property to be seized; and
(2) issue to the pawn or secondhand business or catalytic converter purchaser a seizure form approved by the division and that:
(a) provides the active case number related to the property to be seized;
(b) provides the date of the seizure request;
(c) provides the reason for the seizure;
(d) describes the property to be seized;
(e) states each reason the property is necessary during the course of a criminal investigation; and
(f) includes any information that facilitates the ability of the pawn or secondhand business or catalytic converter purchaser to track the property when the prosecution agency takes over the case.

Amended by Chapter 201, 2022 General Session

13-32a-110 Administrative or civil penalties -- Criminal prosecution.
(1) A violation of any of the following sections is subject to an administrative or civil penalty of not more than $500:
(a) Section 13-32a-104, tickets required to be maintained;
(b) Section 13-32a-104.5, database information from coin dealers;
(c) Section 13-32a-104.6, database information from automated recycling kiosk operators;
(d) Section 13-32a-104.7, database information from catalytic converter purchasers;
(e) Section 13-32a-106, transaction information provided to the central database;
(f) Section 13-32a-108, retention of records;
(g) Section 13-32a-109, holding period for property;
(h) Section 13-32a-110.5, transactions with certain individuals prohibited;
(i) Section 13-32a-111, fees to fund account; or
(j) Section 13-32a-112.1, annual training.
(2) This section does not prohibit civil action by a governmental entity regarding the operation or license of a pawn or secondhand business or catalytic converter purchaser.
(3) The imposition of civil penalties under this section does not prohibit criminal prosecution by a governmental entity for criminal violations of this chapter.

Amended by Chapter 201, 2022 General Session

13-32a-110.5 Transactions with certain individuals prohibited.

A pawn or secondhand business or catalytic converter purchaser may not engage in a pawn transaction or secondhand merchandise transaction or catalytic converter purchase with an individual who:

(1) is younger than 18 years old; or

(2) appears to be under the influence of alcohol or a controlled substance.

Amended by Chapter 201, 2022 General Session

13-32a-111 Fees to fund account.

(1)

(a) A pawn or secondhand business or catalytic converter purchaser in operation shall pay an annual fee of no more than $500, set in accordance with Section 63J-1-504.

(b) A law enforcement agency within Utah that participates in the use of the central database shall pay an annual fee set in accordance with Section 63J-1-504.

(c) A law enforcement agency outside Utah that requests access to the central database shall pay an annual fee set in accordance with Section 63J-1-504.

(2) A fee paid under Subsection (1) shall be paid annually to the division on or before January 31.

(3) A fee received by the division under this section shall be deposited into the account.

(4) The division may only increase fees for a pawn or secondhand business or catalytic converter purchaser under Section 63J-1-504.

Amended by Chapter 201, 2022 General Session

13-32a-112 Pawnshop, Secondhand Merchandise, and Catalytic Converter Advisory Board.

(1) There is created within the division the "Pawnshop, Secondhand Merchandise, and Catalytic Converter Advisory Board."

(2) The board consists of seven voting members appointed by the executive director of the Department of Commerce:

(a) one law enforcement officer whose work regularly involves pawn or secondhand business or catalytic converter purchases, recommended by the Utah Chiefs of Police Association;

(b) one law enforcement officer whose work regularly involves pawn or secondhand business or catalytic converter purchases, recommended by the Utah Sheriffs Association;

(c) one state, county, or municipal prosecutor, recommended by a prosecutors' association or council;

(d) one pawnbroker, recommended by the pawn industry;

(e) one secondhand merchandise dealer, recommended by the secondhand merchandise industry;

(f) one coin dealer, recommended by the Utah Coin Dealers Association; and

(g) one representative from the catalytic converter purchaser industry, recommended by the catalytic converter purchaser industry.

(3) After receiving a recommendation for a member by a respective association, council, or industry for the board, the executive director may:

(a) decline the recommendation; and

(b) request another recommendation from the respective association, council, or industry.

(4)
(a) A member of the board shall be appointed to a term of not more than four years, and may be reappointed upon expiration of the member's term.
(b) Notwithstanding the requirements of Subsection (4)(a), the executive director of the Department of Commerce shall, at the time of appointments or reappointments, adjust the length of terms to ensure that the terms of board members are staggered so that approximately half of the board is appointed every two years.
(c) When a vacancy occurs in the membership for any reason, the executive director of the Department of Commerce shall appoint a member for the unexpired term.
(d) The executive director of the Department of Commerce may remove a member and replace the member in accordance with this section for the following reasons:
(i) the member fails or refuses to fulfill the duties of a board member, including attendance at board meetings; or
(ii) the member, an entity owned by the member, an entity that the member is employed by, or an entity that the member is representing, engages in a violation of this chapter or Section 76-6-408.
(e) Notwithstanding Subsection (4)(d), members of the board as of May 13, 2019, are removed from the board and the executive director of the Department of Commerce shall appoint the board members in accordance with this section.
(5)
(a) The board shall elect one voting member as the chair of the board by a majority of the members present at the board's first meeting each year.
(b) The chair shall preside over the board for a period of one year.
(c) The board shall meet quarterly upon the call of the chair.
(d) A quorum of five members is required for the board to take action. An action taken by majority of a quorum present at a meeting constitutes an action of the board.
(6)
(a) The duties and powers of the board include the following:
(i) recommending to the division appropriate rules regarding the administration and enforcement of this chapter;
(ii) recommending to the division changes related to the central database; and
(iii) advising the division on matters related to the pawn and secondhand merchandise and catalytic converter purchase industries.
(b) This Subsection (6) does not require the board's approval to act on a rule or amend this chapter.
(7)
(a) A pawn or secondhand business or catalytic converter purchaser may file with the board complaints regarding law enforcement agency practices perceived to be inconsistent with this chapter.
(b) The board may refer the complaints to the Peace Officers Standards and Training Division.

Amended by Chapter 201, 2022 General Session

13-32a-112.1 Annual training.
(1)
(a) The division shall provide training sessions, whether online or in-person, at least once each year regarding compliance with this chapter and other applicable state laws.

(b) A pawn or secondhand business or catalytic converter purchaser shall ensure that each individual employed by the pawn or secondhand business or catalytic converter purchaser with access to the central database annually completes the training described in Subsection (1)(a) in order for that individual to continue to have access to the central database.
(c) A law enforcement agency participating in the use of the central database shall ensure that each individual employed by the law enforcement agency with access to the central database annually completes the training described in Subsection (1)(a) in order for that individual to continue to have access to the central database.
(2) The division shall monitor and keep a record of training completion.

Amended by Chapter 201, 2022 General Session

13-32a-112.5 Temporary businesses subject to chapter.

A pawn or secondhand business or catalytic converter purchaser that operates on a temporary basis or from a location that is not a permanent retail location:
(1) shall comply with this chapter; and
(2) is subject to enforcement of this chapter.

Amended by Chapter 201, 2022 General Session

13-32a-113 Pawnbroker, Secondhand Merchandise, and Catalytic Converter Operations Restricted Account.

(1) There is created within the General Fund a restricted account known as the "Pawnbroker, Secondhand Merchandise, and Catalytic Converter Operations Restricted Account."
(2)
(a) The account shall be funded from fees and administrative and civil fines imposed and collected under Sections 13-32a-106, 13-32a-110, and 13-32a-111.
(b) The fees and administrative and civil fines shall be paid to the division, which shall deposit them in the account.
(c) The Legislature shall appropriate funds in the account to the division for:
(i) the costs of providing training required under this chapter;
(ii) the costs of the central database created in Section 13-32a-105; and
(iii) the division's costs of administering this chapter.

Amended by Chapter 201, 2022 General Session

13-32a-114 Preemption of local ordinances -- Exceptions.

(1) This chapter preempts town, city, county, and other local ordinances governing pawn or secondhand businesses or catalytic converter purchasers, if the ordinances are more restrictive than the provisions of this chapter or are not consistent with this chapter.
(2) Subsection (1) does not preclude a city, county, or other local governmental unit from:
(a) enacting or enforcing local ordinances concerning public health, safety, or welfare, if the ordinances are uniform and equal in application to pawn and secondhand businesses or catalytic converter purchasers and other retail businesses or activities;
(b) requiring a pawn or secondhand business or catalytic converter purchaser to obtain and maintain a business license and providing for revocation of the business license based on multiple violations of Section 76-6-408; or

(c) enacting zoning ordinances that restrict areas where pawn or secondhand businesses or catalytic converter purchasers and other retail businesses or activities can be located.

Amended by Chapter 201, 2022 General Session

13-32a-115 Criminal investigation -- Prosecution -- Property disposition.

(1) If the property pawned or sold to a pawn or secondhand business or catalytic converter purchaser is the subject of a criminal investigation and a hold has been placed on the property under Section 13-32a-109, the original victim shall do the following to establish a claim:
  (a) positively identify to law enforcement the property stolen or lost;
  (b) if a police report has not already been filed for the original theft or loss of property, file a police report, and provide for the law enforcement agency information surrounding the original theft or loss of property; and
  (c) give a sworn statement under penalty of law that:
    (i) claims ownership of the property;
    (ii) references the original theft or loss; and
    (iii) identifies the perpetrator if known.
(2) The pawn or secondhand business or catalytic converter purchaser shall retain possession of any property subject to a hold until a criminal prosecution is commenced relating to the property for which the hold was placed unless:
  (a) during the course of a criminal investigation the actual physical possession by law enforcement of the property purchased or pawned is essential for the purpose of forensic testing of the property, or if the property contains unique or sensitive personal identifying information; or
  (b) an agreement between the original victim and the pawn or secondhand business or catalytic converter purchaser to return the property is reached.
(3)
  (a) Upon the commencement of a criminal prosecution, any property subject to a hold for investigation under this chapter may be seized by the law enforcement agency that requested the hold.
  (b) Subsequent disposition of the property shall be consistent with this chapter.
(4) At all times during the course of a criminal investigation and subsequent prosecution, the property subject to a law enforcement hold shall be kept secure by the pawn or secondhand business or catalytic converter purchaser subject to the hold unless the pawned or purchased property has been seized by the law enforcement agency pursuant to Section 13-32a-109.5.

Amended by Chapter 201, 2022 General Session

13-32a-116 Property disposition -- Property subject to prosecution -- Property not used as evidence.

When property that is pawned or sold to a pawn or secondhand business or catalytic converter purchaser is the subject of a criminal proceeding, and has been seized by law enforcement pursuant to this chapter, the prosecuting agency shall notify the seizing agency, the original victim, and the pawn or secondhand business or catalytic converter purchaser in compliance with Subsection 13-32a-109(8), if the prosecuting agency determines the article is no longer needed as evidence pending resolution of the criminal case.

Amended by Chapter 201, 2022 General Session

13-32a-116.5 Contested disposition of property - Procedure.

(1) If a pawn or secondhand business or catalytic converter purchaser receives notice from a law enforcement agency under Section 13-32a-109 that property that is the subject of a hold or seizure shall be returned to an identified original victim, the pawn or secondhand business or catalytic converter purchaser may contest the determination and seek a specific alternative disposition if within 15 business days after the day on which the pawn or secondhand business or catalytic converter purchaser receives the notice:

(a) the pawn or secondhand business or catalytic converter purchaser gives notice to the identified original victim, by certified mail, that the pawn or secondhand business or catalytic converter purchaser contests the determination to return the property to the original victim; and

(b) the pawn or secondhand business or catalytic converter purchaser files a petition in a court having jurisdiction over the matter to determine rightful ownership of the property as provided in Section 24-3-104.

(2) A pawn or secondhand business or catalytic converter purchaser is guilty of a class B misdemeanor if the pawn or secondhand business or catalytic converter purchaser:

(a) holds or sells property in violation of a notification from a law enforcement agency that the property is to be returned to an original victim; and

(b) does not comply with the requirements of this section within the time periods specified.

Amended by Chapter 201, 2022 General Session
Amended by Chapter 274, 2022 General Session

13-32a-118 Payment limitation for catalytic converter purchases.

(1) A catalytic converter purchaser, when making a catalytic converter purchase, may not pay the seller for the catalytic converter with cash or a gift card.

(2) Subsection (1) does not apply to a catalytic converter purchase in which the amount paid to the seller is under $100.

Enacted by Chapter 201, 2022 General Session

Chapter 34
Utah Postsecondary Proprietary School Act

Part 1
General Provisions

13-34-101 Title.

This chapter is known as the "Utah Postsecondary Proprietary School Act."

Enacted by Chapter 222, 2002 General Session

13-34-102 Legislative intent.

It is the policy of this state to do the following:

(1) encourage private postsecondary education and training;

(2) assure and protect the integrity of certificates and diplomas conferred by proprietary postsecondary educational institutions;
(3) protect students and potential students from deceptively promoted, inadequately staffed, and unqualified proprietary institutions and programs; and
(4) avoid unnecessary interference by the division with the internal academic policies and management practices of postsecondary educational institutions, but to facilitate disclosure of those matters to students and the public.

Enacted by Chapter 222, 2002 General Session

13-34-103 Definitions.

As used in this chapter:
(1) "Agent" means any person who:
(a) owns an interest in or is employed by a proprietary school; and
(b)
(i) enrolls or attempts to enroll a resident of this state in a proprietary school;
(ii) offers to award educational credentials for remuneration on behalf of a proprietary school; or
(iii) holds himself out to residents of this state as representing a proprietary school for any purpose.
(2)
(a) "Certificate of registration" means approval from the division to operate a school or institution in compliance with this chapter and rules adopted under this chapter.
(b) "Certificate of registration" does not mean an endorsement of the school or institution by either the division or the state.
(3) "Division" means the Division of Consumer Protection.
(4) "Educational credentials" means degrees, diplomas, certificates, transcripts, reports, documents, or letters of designation, marks, appellations, series of letters, numbers, or words that signify or appear to signify satisfactory completion of any requirement or prerequisite for any educational program.
(5) "Institution" means an individual, corporation, partnership, association, cooperative, or other legal entity.
(6) "Offer" means to advertise, publicize, solicit, or encourage any person directly or indirectly.
(7) "Operate" in this state means to:
(a) maintain a place of business in the state;
(b) solicit business in the state;
(c) conduct significant educational activities within the state; or
(d) offer or provide postsecondary instruction leading to a postsecondary degree or certificate to any number of Utah residents from a location outside the state by correspondence or any telecommunications or electronic media technology.
(8) "Ownership" means:
(a) the controlling interest in a school, institution, or college; or
(b) if an entity holds the controlling interest in the school, institution, or college, the controlling interest in the entity that holds the controlling interest in the school, institution, or college.
(9) "Postsecondary education" means education or educational services offered primarily to individuals who:
(a) have completed or terminated their secondary or high school education; or
(b) are beyond the age of compulsory school attendance.
(10)

(a) "Proprietary school" means a private institution, including a business, modeling, paramedical, tax preparation, or trade or technical school, that offers postsecondary education:
(i) in consideration of the payment of tuition or fees; and
(ii) for the attainment of educational, professional, or vocational objectives.
(b) "Proprietary school" does not include an institution that is exempt from this chapter under Section 13-34-105.
(11) "Utah institution" means a school or institution that:
(a) offers postsecondary education; and
(b) is headquartered or primarily operates in Utah.

Amended by Chapter 276, 2018 General Session

13-34-104 Prohibited acts -- Exceptions -- Responsibilities of proprietary schools.
(1) Except as provided in this chapter, a proprietary school may not offer, sell, or award a degree or any other type of educational credential unless the student has enrolled in and successfully completed a prescribed program of study as outlined in the proprietary school's catalogue.
(2) The prohibition described in Subsection (1) does not apply to:
(a) honorary credentials clearly designated as such on the front side of a diploma; or
(b) certificates and awards by a proprietary school that offers other educational credentials requiring enrollment in and successful completion of a prescribed program of study in compliance with the requirements of this chapter.
(3) A proprietary school shall provide bona fide instruction through student-faculty interaction.
(4) A proprietary school may not enroll a student in a program unless the proprietary school has made a good-faith determination that the student has the ability to benefit from the program.
(5) A proprietary school may not make or cause to be made any oral, written, or visual statement or representation that an institution described in Subsection 13-34-107(2)(a)(ii) knows or should know to be:
(a) false;
(b) deceptive;
(c) substantially inaccurate; or
(d) misleading.
(6) The division shall establish standards and criteria by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the following:
(a) the awarding of educational credentials;
(b) bona fide instruction through student-faculty interaction; and
(c) determination of the ability of a student to benefit from a program.

Amended by Chapter 378, 2010 General Session

13-34-105 Exempted institutions.
(1) The following institutions are exempt from the provisions of this chapter, if the institution establishes an exemption with the division in accordance with Subsection 13-34-107(1)(b)(ii):
(a) a Utah institution directly supported, to a substantial degree, with funds provided by:
(i) the state;
(ii) a local school district; or
(iii) any other Utah governmental subdivision;
(b) a lawful enterprise that offers only professional review programs, including C.P.A. and bar examination review and preparation courses;

(c) a private institution that:
(i) provides postsecondary education; and
(ii) is owned, controlled, operated, or maintained by a bona fide church or religious denomination, that is exempted from property taxation under the laws of this state;
(d) an institution that is accredited by an accrediting agency recognized by the United States Department of Education;
(e) subject to Subsection (4), a business organization, trade or professional association, fraternal society, or labor union that:
(i) sponsors or conducts courses of instruction or study predominantly for bona fide employees or members; and
(ii) does not advertise as a school;
(f) an institution that, with regard to postsecondary education, exclusively offers one or more of the following:
(i) general education:
(A) that is remedial, avocational, nonvocational, or recreational in nature; and
(B) for which the institution does not advertise occupation objectives or grant a degree, diploma, or other educational credential commensurate with a degree or diploma;
(ii) preparation for individuals to teach courses or instruction described in Subsection (1)(f)(i)(A);
(iii) courses in English as a second language;
(iv) instruction at or below the 12th grade level;
(v) nurse aide training programs that are approved by:
(A) the Bureau of Health Facility Licensing and Certification; or
(B) an entity authorized by the Bureau of Health Facility Licensing and Certification to approve nurse aide certification programs;
(vi) content:
(A) that is exclusively available on the Internet;
(B) for which the institution charges $1,000 or less in a 12-month period; and
(C) for which the institution does not grant educational credentials other than a certificate that indicates completion and that does not represent achievement or proficiency;
(vii) instruction to advance personal development or general professional skills:
(A) that is not independently sufficient to be a program of training for employment or a specific field; and
(B) for which the institution does not grant a degree, diploma, or other educational credential commensurate with a degree or diploma; or
(viii) instruction designed to prepare an individual to run for political office, for which the institution does not grant a degree, diploma, or other educational credential commensurate with a degree or diploma;
(g) an institution that offers only workshops or seminars:
(i) lasting no longer than three calendar days; and
(ii) for which academic credit is not awarded;
(h) an institution that offers programs:
(i) in barbering, cosmetology, real estate, or insurance; and
(ii) that are regulated and approved by a state or federal governmental agency;
(i) an education provider certified by the Division of Real Estate under Section 61-2c-204.1;
(j) an institution that offers aviation training if the institution:
(i)
(A) is approved under Federal Aviation Regulations, 14 C.F.R. Part 141; or
(B) provides aviation training under Federal Aviation Regulations, 14 C.F.R. Part 61; and

(ii) does not collect tuition, fees, membership dues, or other payment more than 24 hours before the student receives the aviation training; and

(k) an institution that provides emergency medical services training if all of the institution's instructors, course coordinators, and courses are approved by the Department of Health.

(2) An institution that no longer qualifies for an exemption that the institution established with the division under Subsection 13-34-107(1)(b)(ii) shall comply with the other provisions of Section 13-34-107.

(3) An institution, branch, extension, or facility operating within the state that is affiliated with an institution operating in another state shall be separately approved by the affiliate's accrediting agency to qualify for the exemption described in Subsection (1)(d).

(4) For purposes of Subsection (1)(e), a business organization, trade or professional association, fraternal society, or labor union is considered to be conducting the course predominantly for bona fide employees or members if the entity hires a majority of the individuals who:

(a) successfully complete the course of instruction or study with a reasonable degree of proficiency; and

(b) apply for employment with that same entity.

(5) If the United States Department of Education no longer recognizes an institution's accrediting agency, the institution remains exempt under Subsection (1)(d):

(a) during any grace period provided by the United States Department of Education for obtaining new accreditation, if the institution demonstrates to the division that the institution is within the grace period; or

(b) if the institution demonstrates to the division that the United States Department of Education otherwise considers the institution to have recognized accreditation.

Amended by Chapter 266, 2021 General Session

13-34-106 Responsibilities of division.

The division shall:

(1) prescribe the contents of the registration statements required by this chapter relating to the quality of education and ethical and business practices;

(2) upon receipt and approval of a registration statement under Section 13-34-107, issue a certification of registration;

(3) receive, investigate, and make available for public inspection a registration statement filed by a proprietary school operating or intending to operate in the state;

(4) maintain and publicize a list of proprietary schools for which a registration statement is on file with the division;

(5) on the division's own initiative or in response to a complaint filed with the division, do any of the following with respect to an institution subject to, or reasonably believed by the division to be subject to, this chapter:

(a) investigate;

(b) audit;

(c) review;

(d) appropriately act, including enforcing this chapter or any other law enforced by the division; or

(e) refer a matter to another governmental entity;

(6) negotiate and enter into an interstate reciprocity agreement with another state, if in the judgment of the division, the agreement helps effectuate the purposes of this chapter;

(7) consent to the use of an educational term in a business name in accordance with Section 13-34-114; and

(8) establish and maintain a process for reviewing and appropriately acting on complaints concerning institutions that provide postsecondary education and operate in the state, including enforcing applicable state laws.

Amended by Chapter 360, 2014 General Session

13-34-107 Advertising, recruiting, or operating a proprietary school -- Required registration statement or exemption -- Certificate of registration -- Registration does not constitute endorsement.

(1)
(a) Unless an institution complies with Subsection (1)(b), the institution may not do any of the following in this state:
(i) advertise a proprietary school;
(ii) recruit students for a proprietary school; or
(iii) operate a proprietary school.
(b) An institution may not engage in an activity described in Subsection (1)(a) unless the institution:
(i)
(A) files with the division a registration statement relating to the proprietary school that is in compliance with:
(I) applicable rules made by the division; and
(II) the requirements set forth in this chapter; and
(B) obtains a certificate of registration; or
(ii) establishes an exemption with the division.
(c)
(i) Except as provided in Subsection (1)(c)(ii), an institution that files a registration statement under this section shall file a separate registration statement and pay a separate fee for each physical campus that the institution operates as a proprietary school.
(ii) An institution that registered with the division before May 10, 2011 is not required to comply with Subsection (1)(c)(i) until the institution's next regular renewal date.
(2)
(a) The registration statement or exemption described in Subsection (1) shall be:
(i) verified by the oath or affirmation of the owner or a responsible officer of the proprietary school filing the registration statement or exemption; and
(ii) include a certification as to whether any of the following has violated laws, federal regulations, or state rules as determined in a criminal, civil, or administrative proceeding:
(A) the proprietary school; or
(B) any of the following with respect to the proprietary school:
(I) an owner;
(II) an officer;
(III) a director;
(IV) an administrator;
(V) a faculty member;
(VI) a staff member; or
(VII) an agent.
(b) The proprietary school shall:
(i) make available, upon request, a copy of the registration statement, showing the date upon which it was filed; and

(ii) display the certificate of registration obtained from the division in a conspicuous place on the proprietary school's premises.

(3)

(a) A registration statement and the accompanying certificate of registration are not transferable.

(b) In the event of a change in ownership or in the governing body of the proprietary school, the new owner or governing body, within 30 days after the change, shall file a new registration statement.

(4)

(a) Except as provided in Subsection (3)(b), a registration statement or a renewal statement and the accompanying certificate of registration are effective for a period of two years after the date of filing and issuance.

(b) No later than one year after the issuance or renewal of a certificate of registration to a proprietary school, the proprietary school shall:

(i) submit a review of the proprietary school's continued qualification for a certificate of registration, on a form approved by the division; and

(ii) pay a fee established under this section and Section 63J-1-504.

(5)

(a) The division shall establish a graduated fee structure for the filing of registration statements by various classifications of institutions pursuant to Section 63J-1-504.

(b) Fees are not refundable.

(c) Fees shall be deposited in the Commerce Service Account created by Section 13-1-2.

(6)

(a) Each proprietary school shall:

(i) demonstrate fiscal responsibility at the time the proprietary school files its registration statement as prescribed by rules of the division; and

(ii) as provided in Subsection (6)(b), provide evidence to the division that the proprietary school:

(A) is financially sound; and

(B) can reasonably fulfill commitments to and obligations the proprietary school has incurred with students and creditors.

(b) The evidence that a propriety school is required to provide under Subsection (6)(a)(ii) includes:

(i) for a proprietary school that has not operated long enough to complete a fiscal year:

(A) pro forma financial statements until the information described in Subsection (6)(b)(ii) is available; and

(B) a commercial credit report for the proprietary school and a consumer credit report for each individual with an ownership interest in the proprietary school; and

(ii) for a proprietary school that has completed a fiscal year or as soon as a proprietary school completes its first fiscal year:

(A) 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

(B) a certified fiscal audit of the proprietary school's financial statement, performed by a certified or licensed public accountant, or a commercial credit report for the proprietary school and a consumer credit report for each individual with an ownership interest in the proprietary school.

(c) In evaluating a proprietary school's fiscal responsibility under this Subsection (6), the division may consider:

(i) any judgment, tax lien, collection action, bankruptcy schedule, or history of late payments to creditors;
(ii) documentation showing the resolution of any matter listed in Subsection (6)(c)(i);
(iii) the proprietary school's explanation for any of the matters listed in Subsection (6)(c)(i);
(iv) any guarantee agreement provided for the proprietary school; and
(v) any history of a prior entity that:
(A) is owned or operated by any individual with an ownership interest in the proprietary school; and
(B) has failed to maintain fiscal responsibility.
(d) The division may require evidence of financial status at other times when it is in the best interest of students to require such information.
(7)
(a) A proprietary school applying for an initial certificate of registration or seeking renewal shall provide in a form approved by the division:
(i) a surety bond;
(ii) a certificate of deposit; or
(iii) an irrevocable letter of credit.
(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules providing for:
(i) the amount of the bond, certificate, or letter of credit required under Subsection (7)(a), not to exceed in amount the anticipated tuition and fees to be received by the proprietary school during a school year;
(ii) the execution of the bond, certificate, or letter of credit;
(iii) cancellation of the bond, certificate, or letter of credit during or at the end of the registration term; and
(iv) any other matters related to providing the bond, certificate, or letter of credit required under Subsection (7)(a).
(c) The bond, certificate, or letter of credit shall be used as a protection against loss of advanced tuition, book fees, supply fees, or equipment fees:
(i) collected by the proprietary school from a student or a student's parent, guardian, or sponsor prior to the completion of the program or courses for which it was collected; or
(ii) for which the student is liable.
(8)
(a) Except as provided in Section 13-34-113, the division may not refuse acceptance of a registration statement that is:
(i) tendered for filing and, based on a preliminary review, appears to be in compliance with Subsections (1), (2), and (6); and
(ii) accompanied by:
(A) the required fee; and
(B) one of the following required by Subsection (7):
(I) surety bond;
(II) certificate of deposit; or
(III) irrevocable letter of credit.
(b) A certificate of registration is effective upon the date of issuance.
(c) The responsibility of compliance is upon the proprietary school and not upon the division.
(d)
(i) If it appears to the division that a registration statement on file may not be in compliance with this chapter, the division may advise the proprietary school as to the apparent deficiencies.

(ii) After a proprietary school has been notified of a deficiency under Subsection (8)(d)(i), a new or amended statement may be presented for filing by the proprietary school, accompanied by:
(A) the required fee; and
(B) one of the following required by Subsection (7):
(I) surety bond;
(II) certificate of deposit; or
(III) irrevocable letter of credit.
(9) The following does not constitute and may not be represented by any person to constitute, an endorsement or approval of the proprietary school by either the division or the state:
(a) an acceptance of:
(i) a registration statement;
(ii) a renewal statement; or
(iii) an amended registration statement; and
(b) issuance of a certificate of registration.

Amended by Chapter 221, 2011 General Session

13-34-108 Information required to be available -- Documents to be fair and accurate -- Fair and ethical practices.
(1) It is a violation of this chapter for any institution or proprietary school, which is required to file a registration statement under this chapter, to offer postsecondary education in this state unless:
(a) the institution or proprietary school makes available:
(i) in writing;
(ii) to all applicants;
(iii) prior to:
(A) enrollment of the applicant; or
(B) the receipt of any tuition by the institution or proprietary school; and
(iv) information that includes the following:
(A) the proprietary school name, which shall be representative of the programs offered at the proprietary school;
(B) the address of the proprietary school;
(C) the location of the proprietary school;
(D) the facilities, faculty, training equipment, and instructional programs of the proprietary school;
(E) enrollment qualifications;
(F) accurate information regarding the relationship of the program of the institution or proprietary school to state licensure requirements for practicing a related occupation and profession in Utah;
(G) tuition, fees, and other charges and expenses;
(H) financial assistance, cancellation, and tuition refund policies, including the posting of:
(I) a surety bond;
(II) a certificate of credit; or
(III) an irrevocable letter of credit;
(I) length of programs;
(J) graduation requirements;
(K) subject to Subsection (2), for each of the immediately preceding three years:
(I) graduation rates; and

(II) employment rates; and
(L) awarding of appropriate educational credentials to indicate satisfactory course completions;
(b) all recruiting documents, advertising, solicitations, publicity releases, and other public statements regarding the proprietary school are fair and accurate;
(c) all agents or sales representatives of the proprietary school are required by the proprietary school to comply with ethical practices prescribed by the division; and
(d) the institution or proprietary school makes available to the division for inspection during normal business hours, whether or not the inspection is scheduled or announced, all records relevant to:
(i) the operation of the institution or proprietary school; and
(ii) the efforts of the institution or proprietary school to comply with this chapter.
(2)
(a) Beginning on May 2, 2005, an institution or proprietary school shall collect and maintain the information necessary to comply with Subsection (1)(a)(iv)(K).
(b) Prior to May 2, 2008, if an institution or proprietary school has the information described in Subsection (1)(a)(iv)(K) for a time period of three years or less, the institution or proprietary school shall provide the information for the time period the institution or proprietary school has the information.

Amended by Chapter 221, 2011 General Session

13-34-109 Discontinuance of operations -- Filing of transcripts.
(1) If a proprietary school elects to discontinue its operations in this state, the proprietor or administrator of the school shall file with the division a copy of each student's grade transcript in either written or microfilm form, relating to all courses of instruction and all students enrolled in the school during the previous 10 years.
(2) The responsibility to file records under this section is enforceable by injunction issued by a court of competent jurisdiction in an action brought upon the request of the division or, on his own initiative, by the attorney general or by the county attorney of the county in which the proprietary school is or was operating.
(3) The division shall maintain for at least 10 years a file of all records received by it under this section.

Enacted by Chapter 222, 2002 General Session

13-34-110 Enforcement of contracts or agreements -- Rescission based on defective registration statement.
(1) A proprietary school may not enforce in the courts of this state a contract or agreement relating to postsecondary education services in this state unless, at the time the contract or agreement was executed, an effective registration statement was on file with the division and made accessible to every applicant at the time of admission to the school.
(2) It is a violation of this chapter if a proprietary school or the proprietary school's agent:
(a) fails to file an effective registration statement;
(b) willfully omits from a registration statement provided under Section 13-34-107 a material statement of fact required by this chapter or applicable regulations; or
(c) includes in a registration statement any material statement of fact that the proprietary school knew or should have known to be false, deceptive, inaccurate, or misleading.

(3) A student who enrolled in a proprietary school, in reliance upon the school's registration statement, may rescind the contract or agreement of enrollment and obtain a refund from the school of all tuition, fees, and other charges paid to the school if the school or its agent committed a violation under Subsection (2).
(4) A violation of this chapter is also a violation of Section 13-11-4.

Amended by Chapter 360, 2014 General Session

13-34-111 Referral of suspected violations -- Penalty.
(1) The division may report any information concerning a possible violation of this chapter or of rules made under this chapter to the attorney general, the county attorney, or district attorney of any county or prosecution district in which the activity is occurring or has occurred.
(2) The attorney described in Subsection (1) shall investigate the complaint and immediately prosecute or bring suit to enjoin an act determined to be a violation of the chapter or rules.
(3)
  (a) In addition to other penalties and remedies in this chapter, and in addition to its other enforcement powers under Section 13-2-6, the division director may:
    (i) issue a cease and desist order; and
    (ii) impose an administrative fine of up to:
      (A) $100 per day that a proprietary school operates without an effective certificate of registration if the violation is not an intentional violation;
      (B) $1,000 for each violation of this chapter that is not:
        (I) described in Subsection (3)(a)(ii)(A); or
        (II) an intentional violation; or
      (C) $5,000 for each intentional violation of this chapter.
  (b) All money received through administrative fines imposed under Subsection (3)(a) shall be deposited in the Consumer Protection Education and Training Fund created by Section 13-2-8.
(4) An intentional violation of this chapter is a class B misdemeanor, except as otherwise provided in Subsection 13-34-201(2).
(5) A person intentionally violates this chapter if:
  (a) the violation occurs after one of the following notifies the person by certified mail that the person is in violation of the chapter:
    (i) the division;
    (ii) the attorney general; or
    (iii) a district or county attorney; and
  (b) the violation is the same as the violation for which the person received the notification described in Subsection (5)(a).

Amended by Chapter 242, 2005 General Session

13-34-112 Limitation of authority.
Except for satisfying the criteria and standards for registration provided for in this chapter or by division rule, nothing in this chapter gives the division authority to regulate the content of individual courses or regulate the day-to-day operations of a proprietary educational institution.

Enacted by Chapter 222, 2002 General Session

13-34-113 Denial, suspension, or revocation of a certificate of registration -- Limitations.

(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 a certificate of registration to operate a proprietary school under this chapter if:

(a) the division finds that the order is in the public interest; and

(b)

(i) the registration statement or renewal statement is incomplete, false, or misleading in any respect;

(ii) the division determines that the educational credential associated with the proprietary school represents the undertaking or completion of educational achievement that has not been undertaken and earned; or

(iii) the proprietary school or an individual described in Subsection 13-34-107(2)(a)(ii)(B) has:

(A) violated any provision of:

(I) this chapter;

(II) the rules made by the division pursuant to this chapter; or

(III) a commitment made in a registration statement for a certificate of registration to operate the proprietary school;

(B) caused or allowed to occur a violation of any provision of:

(I) this chapter;

(II) the rules made by the division pursuant to this chapter; or

(III) a commitment made in a registration statement for a certificate of registration to operate the proprietary school;

(C) been enjoined by any court, or is the subject of an administrative or judicial order issued in this or another state, if the injunction or order:

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

(II) was based on a finding of lack of integrity, truthfulness, or mental competence;

(D) been convicted of a crime involving moral turpitude;

(E) obtained or attempted to obtain a certificate of registration under this chapter by misrepresentation;

(F) failed to timely file with the division any report required by:

(I) this chapter; or

(II) rules made by the division pursuant to this chapter;

(G) failed to furnish information requested by the division; or

(H) failed to pay an administrative fine imposed by the division in accordance with this chapter.

(2) Division staff may place reasonable limits upon a proprietary school's continued certificate of registration to operate if:

(a) there are serious concerns about the proprietary school's ability to provide the training in the manner approved by the division; and

(b) limitation is warranted to protect the students' interests.

(3)

(a) The division may require an individual described in Subsection 13-34-107(2)(a)(ii)(B) to:

(i) submit a fingerprint card in a form acceptable to the division; and

(ii) consent to a criminal background check by:

(A) the Federal Bureau of Investigation;

(B) the Utah Bureau of Criminal Identification; or

(C) another agency of any state that performs criminal background checks.

(b) The proprietary school or the individual who is subject to the background check shall pay the cost of:
(i) the fingerprint card described in Subsection (3)(a)(i); and
(ii) the criminal background check.

Amended by Chapter 360, 2014 General Session

13-34-114 Consent to use of educational terms in business names.

(1) For purposes of this section:
(a) "Business name" means a name filed with the Division of Corporations and Commercial Code under:
(i) Section 16-6a-401;
(ii) Section 16-10a-401;
(iii) Section 16-11-16;
(iv) Section 42-2-6.6;
(v) Section 48-2e-108; or
(vi) Section 48-3a-108.
(b) "Educational term" means the term:
(i) "university";
(ii) "college"; or
(iii) "institute" or "institution."
(2) If a statute listed in Subsection (1)(a) requires the written consent of the division to file a business name with the Division of Corporations and Commercial Code that includes an educational term, the division may consent to the use of an educational term in accordance with this statute.
(3) The division shall consent to the use of an educational term in a business name if the person seeking to file the name:
(a) is registered under this chapter;
(b) is exempt from the chapter under Section 13-34-105; or
(c)
(i) is not engaged in educational activities; and
(ii) does not represent that it is engaged in educational activities.
(4) The division may withhold consent to use of an educational term in a business name if the person seeking to file the name:
(a) offers, sells, or awards a degree or any other type of educational credential; and
(b) fails to provide bona fide instruction through student-faculty interaction according to the standards and criteria established by the division under Subsection 13-34-104(5).

Amended by Chapter 281, 2018 General Session

Part 2
Fraudulent Educational Credentials

13-34-201 Fraudulent educational credentials.

(1) A person may not use, give, or receive, or attempt or conspire to do so, in connection with a business, trade, profession, or occupation, a degree or other document which has been

purchased, obtained, fraudulently or illegally issued, counterfeited, materially altered, or found, or which serves to evidence the undertaking or completion of scholastic achievement if the education has not been undertaken and attained.

(2) A violation of this section is a class A misdemeanor.

Enacted by Chapter 222, 2002 General Session

Chapter 34a
Utah Postsecondary School State Authorization Act

Part 1
General Provisions

13-34a-101 Title.

(1) This chapter is known as "Utah Postsecondary School State Authorization Act."

(2) This part is known as "General Provisions."

Enacted by Chapter 360, 2014 General Session

13-34a-102 Definitions.

As used in this chapter:

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

(2) "Accrediting agency" means a private educational association that:

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

(b) develops evaluation criteria; and

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

(3) "Agent" means a person who:

(a)

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

(ii) is employed by a postsecondary school; and

(b)

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

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

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

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

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

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

(7) "Intentional violation" means a violation of a provision of this chapter that occurs or continues after the division, the attorney general, a county attorney, or a district attorney gives the violator written notice, delivered by certified mail, that the violator is or has been in violation of the provision.
(8) "Operate" means to:
(a) maintain a place of business in the state;
(b) conduct significant educational activities within the state; or
(c) provide postsecondary education to a Utah resident that:
(i) is intended to lead to a postsecondary degree or certificate; and
(ii) is provided from a location outside the state by correspondence or telecommunications or electronic media technology.
(9) "Operating history" means a report, written evaluation, publication, or other documentation regarding:
(a) the current accreditation status of a postsecondary school with an accrediting agency; and
(b) an action taken by an accrediting agency that:
(i) places the postsecondary school on probation;
(ii) imposes disciplinary action against the postsecondary school;
(iii) requires the postsecondary school to take corrective action; or
(iv) provides the postsecondary school with a warning or directive to show cause.
(10) "Ownership" means:
(a) the controlling interest in a postsecondary school; or
(b) if an entity holds the controlling interest in the postsecondary school, the controlling interest in the entity that holds the controlling interest in the postsecondary school.
(11) "Postsecondary education" means education or educational services offered primarily to individuals who:
(a) have completed or terminated their secondary or high school education; or
(b) are beyond the age of compulsory school attendance.
(12)
(a) "Postsecondary school" means a person that provides or offers educational services to individuals who:
(i) have completed or terminated secondary or high school education; or
(ii) are beyond the age of compulsory school attendance.
(b) "Postsecondary school" does not include an institution that is part of the state system of higher education under Section 53B-1-102.
(13) "Private postsecondary school" means a postsecondary school that is not a public postsecondary school.
(14) "Public postsecondary school" means a postsecondary school:
(a) established by a state or other governmental entity; and
(b) substantially supported with government funds.

Amended by Chapter 266, 2021 General Session

13-34a-103 Duties of the division.
(1) The division shall administer and enforce the provisions of this chapter.
(2) In administering this chapter, the division shall:
(a) receive and review completed registration forms in accordance with the provisions of this chapter;

(b) develop, maintain, and make available to the public a list of postsecondary schools that have a current, valid certificate of postsecondary state authorization;
(c) adopt a fee schedule in accordance with Section 63J-1-504 to cover the cost of processing a registration form and issuing a certificate of postsecondary state authorization; and
(d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this chapter, make rules governing:
(i) the content and form of a registration form;
(ii) the filing and review procedures relating to a registration form submitted under this chapter;
(iii) the filing and review of complaints filed with the division under this chapter;
(iv) the denial, suspension, or revocation of a certificate of postsecondary school state authorization; and
(v) enforcement of the provisions of this chapter.

Enacted by Chapter 360, 2014 General Session

13-34a-104 Authority to execute interstate reciprocity agreement -- Rulemaking.
(1) The division may execute an interstate reciprocity agreement that:
(a) is for purposes of state authorization under 34 C.F.R. Sec. 600.9; and
(b) is for the benefit of:
(i) postsecondary schools in the state; or
(ii)
(A) postsecondary schools in the state; and
(B) institutions that are part of the state system of higher education under Section 53B-1-102.
(2) If the division executes an interstate reciprocity agreement described in Subsection (1) or the Utah Board of Higher Education executes an interstate reciprocity agreement under Section 53B-16-109:
(a) except as provided by division rule, this chapter does not apply to a postsecondary school that obtains state authorization under the reciprocity agreement; and
(b) the division may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules relating to:
(i) the standards for granting a postsecondary school state authorization under a reciprocity agreement;
(ii) any filing, document, or fee required for a postsecondary school to obtain authorization under a reciprocity agreement; and
(iii) penalties if a postsecondary school fails to comply with the rules that the division makes under this Subsection (2).
(3) If the division executes an interstate reciprocity agreement described in Subsection (1) that includes institutions that are part of the state system of higher education under Section 53B-1-102, the Utah Board of Higher Education may make rules that:
(a) implement the reciprocity agreement; and
(b) relate to institutions that are part of the state system of higher education under Section 53B-1-102.

Amended by Chapter 365, 2020 General Session

Part 2

State Authorization Procedures

13-34a-201 Title.

This part is known as "State Authorization Procedures."

Enacted by Chapter 360, 2014 General Session

13-34a-202 State authorization -- Certificate of postsecondary state authorization.

(1) A postsecondary school that operates in the state obtains state authorization for purposes of 34 C.F.R. Sec. 600.9 if the postsecondary school obtains a certificate of postsecondary state authorization under this chapter.

(2) A postsecondary school may obtain state authorization in a manner different from the manner described in Subsection (1) if the alternative manner is accepted by the United States Department of Education.

(3)

(a) A certificate of postsecondary state authorization is not an endorsement or approval of a postsecondary school by the division or the state.

(b) A postsecondary school may not represent that a certificate of postsecondary state authorization is an endorsement or approval by the division or the state.

Enacted by Chapter 360, 2014 General Session

13-34a-203 Nonprofit postsecondary school -- Procedure to obtain certificate of postsecondary state authorization.

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

(a) is a nonprofit postsecondary school; and

(b) has operated as a nonprofit for at least 20 years.

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

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

(i) for a nonprofit, private postsecondary school, includes:

(A) a copy of the private postsecondary school's articles of incorporation;

(B) documentation from the United States Internal Revenue Service that demonstrates that the private postsecondary school has nonprofit status, and that the private postsecondary school has had nonprofit status for at least 20 consecutive years from the day on which the private postsecondary school submits the completed registration form; and

(C) satisfactory documentation that the private postsecondary school has complied with the complaint process requirements described in Section 13-34a-206; or

(ii) for a nonprofit, public postsecondary school, includes:

(A) documentation sufficient to demonstrate that the public postsecondary school has operated as a nonprofit for at least 20 consecutive years from the day on which the public postsecondary school submits the completed registration form; and

(B) satisfactory documentation that the public postsecondary school has complied with the complaint process requirements described in Section 13-34a-206; and

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

(3) The division shall develop and make available to the public:

(a) a registration form for nonprofit, private postsecondary schools, as described in Subsection (2)(a)(i); and

(b) a registration form for nonprofit, public postsecondary schools, as described in Subsection (2)(a)(ii).

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

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

(6) A certificate of postsecondary state authorization issued under this section:

(a) establishes a postsecondary school by name as an educational institution, as described in 34 C.F.R. Sec. 600.9(a)(1)(i);

(b) makes a postsecondary school independent of the state system of higher education; and

(c) authorizes a postsecondary school to operate educational programs in the state that are beyond secondary education, including programs that lead to a degree or certificate.

Enacted by Chapter 360, 2014 General Session

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii)

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

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

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

(A) convicted of a crime;

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

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

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

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

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

(4) The division shall develop and make available to the public a registration form described in Subsection (2)(a).

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

(6) If a postsecondary school maintains more than one physical campus in the state, the postsecondary school shall file a separate registration form for each physical campus in the state.

(7)

(a) A certificate of postsecondary state authorization issued under this section is not transferrable.

(b)

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

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

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

(8)

(a) A certificate of postsecondary state authorization issued under this section expires one year after the day on which the certificate of postsecondary state authorization is issued.

(b) Notwithstanding Subsection (8)(a), the division may extend the period for which the certificate of postsecondary state authorization is effective so that expiration dates are staggered throughout the year.

Amended by Chapter 266, 2021 General Session

13-34a-205 Background checks.

(1) The division may require an owner, officer, director, administrator, faculty member, staff member, or other agent of a postsecondary school that applies for or holds a certificate of postsecondary state authorization to:

(a) submit a fingerprint card in a form acceptable to the division; and

(b) consent to a criminal background check by:

(i) the Federal Bureau of Investigation;

(ii) the Utah Bureau of Criminal Identification; or

(iii) another agency of any state that performs criminal background checks.

(2) The postsecondary school or the postsecondary school's owner, officer, director, administrator, faculty member, staff member, or other agent who is subject to the background check shall pay the cost of:

(a) the fingerprint card described in Subsection (1)(a); and

(b) the criminal background check.

Enacted by Chapter 360, 2014 General Session

13-34a-206 Complaints -- Information for students and prospective students.

(1) A postsecondary school shall provide each student or prospective student written 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.

(2) To satisfy the requirements described in Subsection (1), a postsecondary school may place a conspicuous link on the postsecondary school's website that links to:

(a) the contact information of each entity described in Subsection (1); or

(b) a third party's website that states the contact information for each entity described in Subsection (1).

(3) The division shall establish a process for reviewing and responding to complaints that the division receives under this chapter.

Enacted by Chapter 360, 2014 General Session

13-34a-207 Discontinuance of operations.

(1) If a postsecondary school determines that the postsecondary school will cease to operate, no later than 30 days after the day on which the postsecondary school determines it will cease to operate, the postsecondary school shall give the division written notice that includes:
(a) the date on which the postsecondary school will cease to operate;
(b) a written certification, signed by the postsecondary school's owner or officer, that the postsecondary school is compliant and will continue to be compliant with the postsecondary school's accrediting agency's closure requirements;
(c) a copy of any teach-out plan, as defined under 34 C.F.R. Sec. 602.3, approved by the postsecondary school's accrediting agency; and
(d) to the extent permitted by law:
(i) a current list of students residing in the state who are enrolled in the postsecondary school; and
(ii) for each student described in Subsection (1)(d)(i):
(A) a list of the one or more programs in which the student is enrolled; and
(B) the student's anticipated graduation date.
(2) After a postsecondary school submits a written notice described in Subsection (1), the postsecondary school may not recruit or enroll new students in the state.
(3)
(a) The provisions of this Subsection (3) apply to the extent not prohibited by federal law.
(b) If a postsecondary school that ceases operation has a student transcript or student diploma, the postsecondary school shall:
(i) provide for the storage of the student transcript or student diploma; and
(ii) make the student transcript or student diploma available to the same extent that an education record is available under the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99.
(c) The division may:
(i) accept a copy of a student transcript or student diploma from a postsecondary school that ceases operation; and
(ii) charge a reasonable fee for providing a copy of a student transcript or student diploma.
(d) Notwithstanding Title 63G, Chapter 2, Government Records Access and Management Act, for a student transcript or student diploma held by the division under this chapter, the division shall treat the student transcript or student diploma as if it were an education record under the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99, that is controlled or maintained by a governmental entity and apply the Family Educational Rights and Privacy Act, 34 C.F.R. Part 99, as it relates to disclosure of the student transcript or student diploma.

Amended by Chapter 98, 2017 General Session

Part 3
Enforcement

13-34a-301 Title.
This part is known as "Enforcement."

Enacted by Chapter 360, 2014 General Session

13-34a-302 Denial, suspension, or revocation of certificate of postsecondary state authorization.

(1) In accordance with Chapter 2, Division of Consumer Protection, and Title 63G, Chapter 4, Administrative Procedures Act, the division may deny, suspend, or revoke a certificate of postsecondary state authorization if:

(a) for a certificate of postsecondary state authorization issued under Section 13-34a-203, the postsecondary school:

(i) fails to comply with a requirement described in Section 13-34a-203;

(ii) omits a material fact from the postsecondary school's completed registration form; or

(iii) includes a material fact in the postsecondary school's completed registration form that is incomplete, false, inaccurate, or misleading; or

(b) for a certificate of postsecondary state authorization issued under Section 13-34a-204:

(i) the denial, suspension, or revocation is in the public interest; and

(ii) the postsecondary school:

(A) fails to meet a requirement described in Section 13-34a-204;

(B) submits a registration form or any supporting documentation that is incomplete, false, inaccurate, or misleading;

(C) grants an educational credential to an individual that the individual did not earn;

(D) violates a provision of this chapter or a rule made under this chapter;

(E) is the subject of an order issued by a court or an administrative agency that includes a finding or admission of fraud, breach of fiduciary duty, or misrepresentation, or behavior that lacked moral integrity, truthfulness, or mental competence;

(F) has been convicted of a crime of moral turpitude;

(G) fails to give the division information that the division requests in connection with a certificate of postsecondary state authorization; or

(H) fails to timely pay a fine imposed under this chapter.

(2) For a postsecondary school that obtains a certificate of postsecondary state authorization under Section 13-34a-204, the division may place reasonable requirements on the postsecondary school if:

(a) the requirement protects student interests; and

(b) the postsecondary school engaged in any of the behavior described in Subsection (1)(b)(ii).

Enacted by Chapter 360, 2014 General Session

13-34a-303 Right to rescind.

If a postsecondary school's certificate of postsecondary state authorization is revoked under Subsection 13-34a-302(2), a student who enrolled in the postsecondary school in reliance upon the postsecondary school's possession of a valid certificate of postsecondary state authorization may rescind any enrollment agreement and obtain a full refund from the postsecondary school for any tuition, fees, or other charges that the student paid to the postsecondary school.

Enacted by Chapter 360, 2014 General Session

13-34a-304 Violations.

A postsecondary school violates this chapter if:

(1) the postsecondary school fails to comply with a provision of this chapter or a rule made under this chapter; or

(2) for a postsecondary school that submits a registration form under Section 13-34a-204, the postsecondary school:
(a) intentionally omits a material fact from the postsecondary school's registration form; or
(b) includes a material fact in the postsecondary school's registration form that the postsecondary school knows or should have known is false, deceptive, inaccurate, or misleading.

Enacted by Chapter 360, 2014 General Session

13-34a-305 Enforcement.
(1) The division may, in accordance with Chapter 2, Division of Consumer Protection, and Title 63G, Chapter 4, Administrative Procedures Act:
(a) investigate a postsecondary school, in response to a complaint or on the division's own initiative, to verify compliance with the provisions of this chapter; or
(b) initiate an adjudicative proceeding to enforce compliance with the provisions of this chapter.
(2)
(a) The division may refer an alleged violation of a provision of this chapter to the attorney general, a county attorney, or a district attorney.
(b) The attorney general, county attorney, or district attorney shall investigate the alleged violation, and, following the investigation, may file a civil or criminal action in district court to:
(i) enjoin the defendant from further violation of the chapter; and
(ii) impose the applicable penalties described in Section 13-34a-306.
(3) Nothing in this chapter prevents a postsecondary school from performing an internal investigation.

Enacted by Chapter 360, 2014 General Session

13-34a-306 Penalties.
(1) In an adjudicative proceeding under Subsection 13-34a-305(1) or in a district court action under Subsection 13-34a-305(2), the division or the district court may impose a fine of up to:
(a) $1,000 for each violation of this chapter that is not an intentional violation; and
(b) $5,000 for each intentional violation.
(2) The division shall deposit any money the division receives under Subsection (1) into the Consumer Protection Education and Training Fund, created in Section 13-2-8.
(3) A violation of a provision of this chapter is a violation of Section 13-11-4.
(4) An intentional violation is a class B misdemeanor.

Enacted by Chapter 360, 2014 General Session

Chapter 35
Powersport Vehicle Franchise Act

Part 1
General Administration

13-35-101 Title.

This chapter is known as the "Powersport Vehicle Franchise Act."

Enacted by Chapter 234, 2002 General Session

13-35-102 Definitions.

As used in this chapter:

(1) "Advisory board" or "board" means the Utah Powersport Vehicle Franchise Advisory Board created in Section 13-35-103.

(2) "Dealership" means a site or location in this state:

(a) at which a franchisee conducts the business of a new powersport vehicle dealer; and

(b) that is identified as a new powersport vehicle dealer's principal place of business for registration purposes under Section 13-35-105.

(3) "Department" means the Department of Commerce.

(4) "Executive director" means the executive director of the Department of Commerce.

(5) "Franchise" or "franchise agreement" means a written agreement, for a definite or indefinite period, in which:

(a) a person grants to another person a license to use a trade name, trademark, service mark, or related characteristic; and

(b) a community of interest exists in the marketing of new powersport vehicles, new powersport vehicle parts, and services related to the sale or lease of new powersport vehicles at wholesale or retail.

(6) "Franchisee" means a person with whom a franchisor has agreed or permitted, in writing or in practice, to purchase, sell, or offer for sale new powersport vehicles manufactured, produced, represented, or distributed by the franchisor.

(7)

(a) "Franchisor" means a person who has, in writing or in practice, agreed with or permits a franchisee to purchase, sell, or offer for sale new powersport vehicles manufactured, produced, represented, or distributed by the franchisor, and includes:

(i) the manufacturer or distributor of the new powersport vehicles;

(ii) an intermediate distributor;

(iii) an agent, officer, or field or area representative of the franchisor; and

(iv) a person who is affiliated with a manufacturer or a representative or who directly or indirectly through an intermediary is controlled by, or is under common control with the manufacturer.

(b) For purposes of Subsection (7)(a)(iv), a person is controlled by a manufacturer if the manufacturer has the authority directly or indirectly by law or by an agreement of the parties, to direct or influence the management and policies of the person.

(8) "Lead" means the referral by a franchisor to a franchisee of an actual or potential customer for the purchase or lease of a new powersport vehicle, or for service work related to the franchisor's vehicles.

(9) "Line-make" means the powersport vehicles that are offered for sale, lease, or distribution under a common name, trademark, service mark, or brand name of the franchisor, or manufacturer of the powersport vehicle.

(10) "New powersport vehicle dealer" means a person who is engaged in the business of buying, selling, offering for sale, or exchanging new powersport vehicles either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise who has established a place of business for the sale, lease, trade, or display of powersport vehicles.

(11) "Notice" or "notify" includes both traditional written communications and all reliable forms of electronic communication unless expressly prohibited by statute or rule.
(12)
(a) "Powersport vehicle" means:
(i) an all-terrain type I, type II, or type III vehicle "ATV" defined in Section 41-22-2;
(ii) a snowmobile as defined in Section 41-22-2;
(iii) a motorcycle as defined in Section 41-1a-102;
(iv) a personal watercraft as defined in Section 73-18-2;
(v) except as provided in Subsection (12)(b), a motor-driven cycle as defined in Section 41-6a-102; or
(vi) a moped as defined in Section 41-6a-102.
(b) "Powersport vehicle" does not include:
(i) an electric assisted bicycle defined in Section 41-6a-102;
(ii) a motor assisted scooter as defined in Section 41-6a-102; or
(iii) an electric personal assistive mobility device as defined in Section 41-6a-102.
(13) "Relevant market area" means:
(a) for a powersport dealership in a county that has a population of less than 225,000:
(i) the county in which the powersport dealership exists or is to be established or relocated; and
(ii) in addition to the county described in Subsection (13)(a)(i), the area within a 15-mile radius from the site of the existing, new, or relocated dealership; or
(b) for a powersport dealership in a county that has a population of 225,000 or more, the area within a 10-mile radius from the site of the existing, new, or relocated dealership.
(14) "Sale, transfer, or assignment" means any disposition of a franchise or an interest in a franchise, with or without consideration, including a bequest, inheritance, gift, exchange, lease, or license.
(15) "Serve" or "served," unless expressly indicated otherwise by statute or rule, includes any reliable form of communication.
(16) "Written," "write," "in writing," or other variations of those terms shall include all reliable forms of electronic communication.

Amended by Chapter 166, 2018 General Session

13-35-103 Utah Powersport Vehicle Franchise Advisory Board -- Creation -- Appointment of members -- Alternate members -- Chair -- Quorum -- Conflict of interest.
(1) There is created within the department the Utah Powersport Vehicle Franchise Advisory Board that consists of:
(a) the executive director or the executive director's designee; and
(b) seven members appointed by the executive director, with the concurrence of the governor, as follows:
(i) four new powersport vehicle franchisees, each from a different congressional district in the state; and
(ii)
(A) three members representing powersport vehicle franchisors registered by the department pursuant to Section 13-35-105;
(B) three members of the general public, none of whom shall be related to any franchisee; or
(C) three members consisting of any combination of these representatives under this Subsection (1)(b)(ii).
(2)

(a) The executive director shall also appoint, with the concurrence of the governor, three alternate members, with at least one alternate from each of the designations set forth in Subsections (1)(b)(i) and (1)(b)(ii), except that the new powersport vehicle franchisee alternate or alternates for the designation under Subsection (1)(b)(i) may be from any congressional district.

(b) An alternate shall take the place of a regular advisory board member from the same designation at a meeting of the advisory board where that regular advisory board member is absent or otherwise disqualified from participating in the advisory board meeting.

(3)

(a)

(i) Members of the advisory board appointed under Subsections (1)(b) and (2) shall be appointed for a term of four years.

(ii) No specific term shall apply to the executive director or the executive director's designee.

(b) In the event of a vacancy on the advisory board of a member appointed under Subsection (1)(b) or (2), the executive director with the concurrence of the governor, shall appoint an individual to complete the unexpired term of the member whose office is vacant.

(c) A member may not be appointed to more than two consecutive terms.

(4)

(a) The executive director or the executive director's designee shall be the chair of the advisory board.

(b) The department shall keep a record of all hearings, proceedings, transactions, communications, and recommendations of the advisory board.

(5)

(a) Four or more members of the advisory board constitute a quorum for the transaction of business.

(b) The action of a majority of a quorum present is considered the action of the advisory board.

(6)

(a) A member of the advisory board may not participate as a board member in a proceeding or hearing:

(i) involving the member's business or employer; or

(ii) when a member, a member's business, family, or employer has a pecuniary interest in the outcome or other conflict of interest concerning an issue before the advisory board.

(b) If a member of the advisory board is disqualified under Subsection (6)(a), the executive director shall select the appropriate alternate member to act on the issue before the advisory board as provided in Subsection (2).

(7) Except for the executive director or the executive director's designee, an individual may not be appointed or serve on the advisory board while holding any other elective or appointive state or federal office.

(8) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(9) The department shall provide necessary staff support to the advisory board.

Amended by Chapter 244, 2022 General Session

13-35-104 Powers and duties of the advisory board and the executive director.

(1)
(a) Except as provided in Subsection 13-35-106(3), the advisory board shall make recommendations to the executive director on the administration and enforcement of this chapter, including adjudicative and rulemaking proceedings.
(b) The executive director shall:
(i) consider the advisory board's recommendations; and
(ii) issue any final decision by the department.
(2) The executive director, in consultation with the advisory board, shall make rules for the administration of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(3)
(a) An adjudicative proceeding under this chapter shall be conducted in accordance with Title 63G, Chapter 4, Administrative Procedures Act.
(b) In an adjudicative proceeding under this chapter, any order issued by the executive director:
(i) shall comply with Section 63G-4-208, whether the proceeding is a formal or an informal adjudicative proceeding under Title 63G, Chapter 4, Administrative Procedures Act; and
(ii) if the order modifies or rejects a finding of fact in a recommendation from the advisory board, shall be made on the basis of information learned from the executive director's:
(A) personal attendance at the hearing; or
(B) review of the record developed at the hearing.

Amended by Chapter 382, 2008 General Session

13-35-105 Registration -- Fees.
(1) A franchisee or franchisor doing business in this state shall:
(a) annually register or renew its registration with the department in a manner established by the department; and
(b) pay an annual registration fee in an amount determined by the department in accordance with Sections 13-1-2 and 63J-1-504.
(2) The department shall register or renew the registration of a franchisee or franchisor if the franchisee or franchisor complies with this chapter and rules made by the department under this chapter.
(3) A franchisee or franchisor registered under this section shall comply with this chapter and any rules made by the department under this chapter including any amendments to this chapter or the rules made after a franchisee or franchisor enter into a franchise agreement.
(4) The fee imposed under Subsection (1)(b) shall be collected by the department and deposited into the Commerce Service Account created by Section 13-1-2.
(5) Notwithstanding Subsection (1), an agent, officer, or field or area representative of a franchisor does not need to be registered under this section if the franchisor is registered under this section.

Amended by Chapter 278, 2010 General Session

13-35-106 Administrative proceedings commenced by the agency.
(1) Except as provided in Subsection (3), after a hearing and after receipt of the advisory board's recommendation, if the executive director finds that a person has violated this chapter or any rule made under this chapter, the executive director may:
(a) issue a cease and desist order; and

(b) assess an administrative fine.

(2)

(a) In determining the amount and appropriateness of an administrative fine under Subsection (1), the executive director shall consider:

(i) the gravity of the violation;

(ii) any history of previous violations; and

(iii) any attempt made by the person to retaliate against another person for seeking relief under this chapter or other federal or state law relating to the motor vehicle industry.

(b) In addition to any other action permitted under Subsection (1), the department may file an action with a court seeking to enforce the executive director's order and pursue the executive director's assessment of a fine in an amount not to exceed $5,000 for each day a person violates an order of the executive director.

(3)

(a) In addition to the grounds for issuing an order on an emergency basis listed in Subsection 63G-4-502(1), the executive director may issue an order on an emergency basis if the executive director determines that irreparable damage is likely to occur if immediate action is not taken.

(b) In issuing an emergency order under Subsection (3)(a), the executive director shall comply with the requirements of Subsections 63G-4-502(2) and (3).

Amended by Chapter 382, 2008 General Session

13-35-107 Administrative proceedings -- Request for agency action.

(1)

(a) A person may commence an adjudicative proceeding in accordance with this chapter and with Title 63G, Chapter 4, Administrative Procedures Act, to:

(i) remedy a violation of this chapter;

(ii) obtain approval of an act regulated by this chapter; or

(iii) obtain any determination that this chapter specifically authorizes that person to request.

(b) A person shall commence an adjudicative proceeding by filing a request for agency action in accordance with Section 63G-4-201.

(2) After receipt of the advisory board's recommendation, the executive director shall apportion in a fair and equitable manner between the parties any costs of the adjudicative proceeding, including reasonable attorney fees.

Amended by Chapter 382, 2008 General Session

Part 2
Franchises in General

13-35-201 Prohibited acts by franchisors -- Disclosures.

(1) A franchisor in this state may not:

(a) except as provided in Subsection (2), require a franchisee to order or accept delivery of any new powersport vehicle, part, accessory, equipment, or other item not otherwise required by law that is not voluntarily ordered by the franchisee;

(b) require a franchisee to:

(i) participate monetarily in any advertising campaign or contest; or
(ii) purchase any promotional materials, display devices, or display decorations or materials;
(c) require a franchisee to change the capital structure of the franchisee's dealership or the means by or through which the franchisee finances the operation of the franchisee's dealership, if the dealership at all times meets reasonable capital standards determined by and applied in a nondiscriminatory manner by the franchisor;
(d) require a franchisee to refrain from participating in the management of, investment in, or acquisition of any other line of new powersport vehicles or related products, if the franchisee:
(i) maintains a reasonable line of credit for each make or line of powersport vehicles; and
(ii) complies with reasonable capital and facilities requirements of the franchisor;
(e) require a franchisee to prospectively agree to a release, assignment, novation, waiver, or estoppel that would:
(i) relieve a franchisor from any liability, including notice and hearing rights imposed on the franchisor by this chapter; or
(ii) require any controversy between the franchisee and a franchisor to be referred to a third party if the decision by the third party would be binding;
(f) require a franchisee to change the location of the principal place of business of the franchisee's dealership or make any substantial alterations to the dealership premises, if the change or alterations would be unreasonable;
(g) coerce or attempt to coerce a franchisee to join, contribute to, or affiliate with an advertising association;
(h) require, coerce, or attempt to coerce a franchisee to enter into an agreement with the franchisor or do any other act that is unfair or prejudicial to the franchisee, by threatening to cancel a franchise agreement or other contractual agreement or understanding existing between the franchisor and franchisee;
(i) adopt, change, establish, modify, or implement a plan or system for the allocation, scheduling, or delivery of new powersport vehicles, parts, or accessories to its franchisees so that the plan or system is not fair, reasonable, and equitable;
(j) increase the price of any new powersport vehicle that the franchisee has ordered from the franchisor and for which there exists at the time of the order a bona fide sale to a retail purchaser if the order was made prior to the franchisee's receipt of an official written price increase notification;
(k) fail to indemnify and hold harmless its franchisee against any judgment for damages or settlement approved in writing by the franchisor:
(i) including court costs and attorneys' fees arising out of actions, claims, or proceedings including those based on:
(A) strict liability;
(B) negligence;
(C) misrepresentation;
(D) express or implied warranty;
(E) revocation as described in Section 70A-2-608; or
(F) rejection as described in Section 70A-2-602; and
(ii) to the extent the judgment or settlement relates to alleged defective or negligent actions by the franchisor;
(l) threaten or coerce a franchisee to waive or forbear its right to protest the establishment or relocation of a same line-make franchisee in the relevant market area of the affected franchisee;

(m) fail to ship monthly to a franchisee, if ordered by the franchisee, the number of new powersport vehicles of each make, series, and model needed by the franchisee to achieve a percentage of total new vehicle sales of each make, series, and model equitably related to the total new vehicle production or importation being achieved nationally at the time of the order by each make, series, and model covered under the franchise agreement;
(n) require or otherwise coerce a franchisee to under-utilize the franchisee's existing facilities;
(o) fail to include in any franchise agreement the following language or language to the effect that: "If any provision in this agreement contravenes the laws, rules, or regulations of any state or other jurisdiction where this agreement is to be performed, or provided for by such laws or regulations, the provision is considered to be modified to conform to such laws, rules, or regulations, and all other terms and provisions shall remain in full force.";
(p) engage in the distribution, sale, offer for sale, or lease of a new powersport vehicle to purchasers who acquire the vehicle in this state except through a franchisee with whom the franchisor has established a written franchise agreement, if the franchisor's trade name, trademark, service mark, or related characteristic is an integral element in the distribution, sale, offer for sale, or lease;
(q) except as provided in Subsection (2), authorize or permit a person to perform warranty service repairs on powersport vehicles, except warranty service repairs:
  (i) by a franchisee with whom the franchisor has entered into a franchise agreement for the sale and service of the franchisor's powersport vehicles; or
  (ii) on owned powersport vehicles by a person or government entity who has purchased new powersport vehicles pursuant to a franchisor's or manufacturer's fleet discount program;
(r) fail to provide a franchisee with a written franchise agreement;
(s) notwithstanding any other provisions of this chapter, unreasonably fail or refuse to offer to its same line-make franchised dealers all models manufactured for that line-make, or unreasonably require a dealer to pay any extra fee, remodel, renovate, recondition the dealer's existing facilities, or purchase unreasonable advertising displays or other materials as a prerequisite to receiving a model or series of vehicles;
(t) except as provided in Subsection (5), directly or indirectly:
  (i) own an interest in a new powersport vehicle dealer or dealership;
  (ii) operate or control a new powersport vehicle dealer or dealership;
  (iii) act in the capacity of a new powersport vehicle dealer, as defined in Section 13-35-102; or
  (iv) operate a powersport vehicle service facility;
(u) fail to timely pay for all reimbursements to a franchisee for incentives and other payments made by the franchisor;
(v) directly or indirectly influence or direct potential customers to franchisees in an inequitable manner, including:
  (i) charging a franchisee a fee for a referral regarding a potential sale or lease of any of the franchisee's products or services in an amount exceeding the actual cost of the referral;
  (ii) giving a customer referral to a franchisee on the condition that the franchisee agree to sell the vehicle at a price fixed by the franchisor; or
  (iii) advising a potential customer as to the amount that the potential customer should pay for a particular product;
(w) fail to provide comparable delivery terms to each franchisee for a product of the franchisor, including the time of delivery after the placement of an order by the franchisee;
(x) if personnel training is provided by the franchisor to its franchisees, unreasonably fail to make that training available to each franchisee on proportionally equal terms;

(y) condition a franchisee's eligibility to participate in a sales incentive program on the requirement that a franchisee use the financing services of the franchisor or a subsidiary or affiliate of the franchisor for inventory financing;

(z) make available for public disclosure, except with the franchisee's permission or under subpoena or in any administrative or judicial proceeding in which the franchisee or the franchisor is a party, any confidential financial information regarding a franchisee, including:

(i) monthly financial statements provided by the franchisee;

(ii) the profitability of a franchisee; or

(iii) the status of a franchisee's inventory of products;

(aa) use any performance standard, incentive program, or similar method to measure the performance of franchisees unless the standard or program:

(i) is designed and administered in a fair, reasonable, and equitable manner;

(ii) if based upon a survey, utilizes an actuarially generally acceptable, valid sample; and

(iii) is, upon request by a franchisee, disclosed and explained in writing to the franchisee, including:

(A) how the standard or program is designed;

(B) how the standard or program will be administered; and

(C) the types of data that will be collected and used in the application of the standard or program;

(bb) other than sales to the federal government, directly or indirectly, sell, lease, offer to sell, or offer to lease, a new powersport vehicle or any powersport vehicle owned by the franchisor, except through a franchised new powersport vehicle dealer;

(cc) compel a franchisee, through a finance subsidiary, to agree to unreasonable operating requirements, except that this Subsection (1)(cc) may not be construed to limit the right of a financing subsidiary to engage in business practices in accordance with the usage of trade in retail and wholesale powersport vehicle financing;

(dd) condition the franchisor's participation in co-op advertising for a product category on the franchisee's participation in any program related to another product category or on the franchisee's achievement of any level of sales in a product category other than that which is the subject of the co-op advertising;

(ee) discriminate against a franchisee in the state in favor of another franchisee of the same line-make in the state by:

(i) selling or offering to sell a new powersport vehicle to one franchisee at a higher actual price, including the price for vehicle transportation, than the actual price at which the same model similarly equipped is offered to or is made available by the franchisor to another franchisee in the state during a similar time period;

(ii) except as provided in Subsection (6), using a promotional program or device or an incentive, payment, or other benefit, whether paid at the time of the sale of the new powersport vehicle to the franchisee or later, that results in the sale of or offer to sell a new powersport vehicle to one franchisee in the state at a higher price, including the price for vehicle transportation, than the price at which the same model similarly equipped is offered or is made available by the franchisor to another franchisee in the state during a similar time period; or

(iii) except as provided in Subsection (7), failing to provide or direct a lead in a fair, equitable, and timely manner; or

(ff) through an affiliate, take any action that would otherwise be prohibited under this chapter.

(2) Subsection (1)(a) does not prevent the franchisor from requiring that a franchisee carry a reasonable inventory of:

(a) new powersport vehicle models offered for sale by the franchisor; and

(b) parts to service the repair of the new powersport vehicles.

(3) Subsection (1)(d) does not prevent a franchisor from:

(a) requiring that a franchisee maintain separate sales personnel or display space; or

(b) refusing to permit a combination of new powersport vehicle lines, if justified by reasonable business considerations.

(4) Upon the written request of any franchisee, a franchisor shall disclose in writing to the franchisee the basis on which new powersport vehicles, parts, and accessories are allocated, scheduled, and delivered among the franchisor's dealers of the same line-make.

(5)

(a) A franchisor may engage in any of the activities listed in Subsection (1)(t), for a period not to exceed 12 months if:

(i)

(A) the person from whom the franchisor acquired the interest in or control of the new powersport vehicle dealership was a franchised new powersport vehicle dealer; and

(B) the franchisor's interest in the new powersport vehicle dealership is for sale at a reasonable price and on reasonable terms and conditions; or

(ii) the franchisor is engaging in the activity listed in Subsection (1)(t) for the purpose of broadening the diversity of its dealer body and facilitating the ownership of a new powersport vehicle dealership by a person who:

(A) is part of a group that has been historically underrepresented in the franchisor's dealer body;

(B) would not otherwise be able to purchase a new powersport vehicle dealership;

(C) has made a significant investment in the new powersport vehicle dealership which is subject to loss;

(D) has an ownership interest in the new powersport vehicle dealership; and

(E) operates the new powersport vehicle dealership under a plan to acquire full ownership of the dealership within a reasonable period of time and under reasonable terms and conditions.

(b) After receipt of the advisory board's recommendation, the executive director may, for good cause shown, extend the time limit set forth in Subsection (5)(a) for an additional period not to exceed 12 months.

(c) Notwithstanding Subsection (1)(t), a franchisor may own, operate, or control a new powersport vehicle dealership trading in a line-make of powersport vehicle if:

(i) as to that line-make of powersport vehicle, there are no more than four franchised new powersport vehicle dealerships licensed and in operation within the state as of January 1, 2002;

(ii) the franchisor does not own directly or indirectly, more than a 45% interest in the dealership;

(iii) at the time the franchisor first acquires ownership or assumes operation or control of the dealership, the distance between the dealership thus owned, operated, or controlled and the nearest unaffiliated new powersport vehicle dealership trading in the same line-make is not less than 150 miles;

(iv) all the franchisor's franchise agreements confer rights on the franchisee to develop and operate as many dealership facilities as the franchisee and franchisor shall agree are appropriate within a defined geographic territory or area; and

(v) as of January 1, 2002, no fewer than half of the franchisees of the line-make within the state own and operate two or more dealership facilities in the geographic area covered by the franchise agreement.

(6) Subsection (1)(ee)(ii) does not prohibit a promotional or incentive program that is functionally available to all franchisees of the same line-make in the state on substantially comparable terms.
(7) Subsection (1)(ee)(iii) may not be construed to:
(a) permit provision of or access to customer information that is otherwise protected from disclosure by law or by contract between franchisor and a franchisee; or
(b) require a franchisor to disregard the preference of a potential customer in providing or directing a lead, provided that the franchisor does not direct the customer to such a preference.
(8) Subsection (1)(ff) does not limit the right of an affiliate to engage in business practices in accordance with the usage of trade in which the affiliate is engaged.

Amended by Chapter 268, 2005 General Session

13-35-202 Sale or transfer of ownership.
(1)
(a) The franchisor shall give effect to the change in a franchise agreement as a result of an event listed in Subsection (1)(b):
(i) subject to Subsection 13-35-305(2)(b); and
(ii) unless exempted under Subsection (2).
(b) The franchisor shall give effect to the change in a franchise agreement pursuant to Subsection (1)(a) for the:
(i) sale of a dealership;
(ii) contract for sale of a dealership;
(iii) transfer of ownership of a franchisee's dealership by sale, transfer of the business, or by stock transfer; or
(iv) change in the executive management of the franchisee's dealership.
(2) A franchisor is exempted from the requirements of Subsection (1) if:
(a) the transferee is denied, or would be denied, a new powersport vehicle franchisee's registration pursuant to Section 13-35-105; or
(b) the proposed sale or transfer of the business or change of executive management will be substantially detrimental to the distribution of the franchisor's new powersport vehicles or to competition in the relevant market area, provided that the franchisor has given written notice to the franchisee within 60 days following receipt by the franchisor of the following:
(i) a copy of the proposed contract of sale or transfer executed by the franchisee and the proposed transferee;
(ii) a completed copy of the franchisor's written application for approval of the change in ownership or executive management, if any, including the information customarily required by the franchisor; and
(iii)
(A) a written description of the business experience of the executive management of the transferee in the case of a proposed sale or transfer of the franchisee's business; or
(B) a written description of the business experience of the person involved in the proposed change of the franchisee's executive management in the case of a proposed change of executive management.
(3) For purposes of this section, the refusal by the franchisor to accept a proposed transferee is presumed to be unreasonable and undertaken without good cause if the proposed franchisee:
(a) is of good moral character; and

(b) otherwise meets the written, reasonable, and uniformly applied standards or qualifications, if any, of the franchisor relating to the business experience of executive management and financial capacity to operate and maintain the dealership required by the franchisor of its franchisees.

(4)

(a) If after receipt of the written notice from the franchisor described in Subsection (1) the franchisee objects to the franchisor's refusal to accept the proposed sale or transfer of the business or change of executive management, the franchisee may file an application for a hearing before the board up to 60 days from the date of receipt of the notice.

(b) After a hearing, and the executive director's receipt of the advisory board's recommendation, the executive director shall determine, and enter an order providing that:

(i) the proposed transferee or change in executive management:

(A) shall be approved; or

(B) may not be approved for specified reasons; or

(ii) a proposed transferee or change in executive management is approved if specific conditions are timely satisfied.

(c)

(i) The franchisee shall have the burden of proof with respect to all issues raised by the franchisee's application for a hearing as provided in this section.

(ii) During the pendency of the hearing, the franchise agreement shall continue in effect in accordance with its terms.

(d) The advisory board and the executive director shall expedite, upon written request, any determination sought under this section.

Amended by Chapter 268, 2005 General Session

13-35-203 Succession to franchise.

(1)

(a) A successor, including a family member of a deceased or incapacitated franchisee, who is designated by the franchisee may succeed the franchisee in the ownership and operation of the dealership under the existing franchise agreement if:

(i) the designated successor gives the franchisor written notice of an intent to succeed to the rights of the deceased or incapacitated franchisee in the franchise agreement within 180 days after the franchisee's death or incapacity;

(ii) the designated successor agrees to be bound by all of the terms and conditions of the franchise agreement; and

(iii) the designated successor meets the criteria generally applied by the franchisor in qualifying franchisees.

(b) A franchisor may refuse to honor the existing franchise agreement with the designated successor only for good cause.

(2)

(a) The franchisor may request in writing from a designated successor the personal and financial data that is reasonably necessary to determine whether the existing franchise agreement should be honored.

(b) The designated successor shall supply the personal and financial data promptly upon the request.

(3)

(a) If a franchisor believes that good cause exists for refusing to honor the requested succession, the franchisor shall serve upon the designated successor notice of its refusal to approve the succession, within 60 days after the later of:
(i) receipt of the notice of the designated successor's intent to succeed the franchisee in the ownership and operation of the dealership; or
(ii) the receipt of the requested personal and financial data.
(b) Failure to serve the notice pursuant to Subsection (3)(a) is considered approval of the designated successor and the franchise agreement is considered amended to reflect the approval of the succession the day following the last day the franchisor can serve notice under Subsection (3)(a).
(4) The notice of the franchisor provided in Subsection (3) shall state:
(a) the specific grounds for the refusal to approve the succession; and
(b) that discontinuance of the franchise agreement shall take effect not less than 180 days after the date the notice of refusal is served unless the proposed successor files an application for hearing under Subsection (6).
(5)
(a) This section does not prevent a franchisee from designating a person as the successor by written instrument filed with the franchisor.
(b) If a franchisee files an instrument under Subsection (5)(a), the instrument governs the succession rights to the management and operation of the dealership subject to the designated successor satisfying the franchisor's qualification requirements as described in this section.
(6)
(a) If a franchisor serves a notice of refusal to a designated successor pursuant to Subsection (3), the designated successor may, within the 180-day period provided in Subsection (4), file with the advisory board an application for a hearing and a determination by the executive director regarding whether good cause exists for the refusal.
(b) If application for a hearing is timely filed, the franchisor shall continue to honor the franchise agreement until after:
(i) the requested hearing has been concluded;
(ii) a decision is rendered by the executive director; and
(iii) the applicable appeal period has expired following a decision by the executive director.

Amended by Chapter 268, 2005 General Session

13-35-204 Franchisor's obligations related to service -- Franchisor audits -- Time limits.
(1) Each franchisor shall specify in writing to each of its franchisees licensed as a new powersport vehicle dealer in this state:
(a) the franchisee's obligations for new powersport vehicle preparation, delivery, and warranty service on its products;
(b) the schedule of compensation to be paid to the franchisee for parts, work, and service; and
(c) the time allowance for the performance of work and service.
(2)
(a) The schedule of compensation described in Subsection (1) shall include reasonable compensation for diagnostic work, as well as repair service, parts, and labor.
(b) Time allowances described in Subsection (1) for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed.
(3)

(a) In the determination of what constitutes reasonable compensation under this section, the principal factor to be considered is the prevailing wage rates being paid by franchisees in the relevant market area in which the franchisee is doing business.
(b) Compensation of the franchisee for warranty service work may not be less than the amount charged by the franchisee for like parts and service to retail or fleet customers, if the amounts are reasonable. For purposes of this Subsection (3)(b), the term "cost" shall be that same price paid by a franchisee to a franchisor or supplier for the part when the part is purchased for a nonwarranty repair.
(4) A franchisor may not fail to:
(a) perform any warranty obligation;
(b) include in written notices of franchisor's recalls to new powersport vehicle owners and franchisees the expected date by which necessary parts and equipment will be available to franchisees for the correction of the defects; or
(c) compensate any of the franchisees for repairs effected by the recall.
(5) If a franchisor disallows a franchisee's claim for a defective part, alleging that the part is not defective, the franchisor at its option shall:
(a) return the part to the franchisee at the franchisor's expense; or
(b) pay the franchisee the cost of the part.
(6)
(a) A claim made by a franchisee pursuant to this section for labor and parts shall be paid within 30 days after its approval.
(b)
(i) A claim shall be either approved or disapproved by the franchisor within 30 days after receipt of the claim on a form generally used by the franchisor and containing the generally required information.
(ii) Any claim not specifically disapproved of in writing within 30 days after the receipt of the form is considered to be approved, and payment shall be made within 30 days.
(7) Warranty service audits of franchisee records may be conducted by the franchisor on a reasonable basis.
(8) A franchisee's claim for warranty compensation may not be denied except for good cause such as performance of nonwarranty repairs, lack of material documentation, fraud, or misrepresentation.
(9)
(a) Any charge backs for warranty parts or service compensation and service incentives shall only be enforceable for the 12-month period immediately following the date the payment for warranty reimbursement was made by the franchisor.
(b) Except as provided in Subsection (9)(c), all charge backs levied by a franchisor for sales compensation or sales incentives arising out of the sale or lease of a powersport vehicle sold by a franchisee shall be compensable only if written notice of the charge back is received by the franchisee within 24 months immediately following the date when payment for the sales compensation was made by the franchisor.
(c) The time limitations of this Subsection (9) do not preclude charge backs for any fraudulent claim that was previously paid.

Amended by Chapter 131, 2003 General Session

13-35-205 Liability for damages to motor vehicles in transit -- Disclosure required.
(1)

(a) A franchisee is solely liable for damage to a new powersport vehicle after delivery by and acceptance from the carrier.
(b) A delivery receipt or bill of lading, or similar document, signed by a franchisee is evidence of a franchisee's acceptance of a new powersport vehicle.
(2) A franchisor is liable for all damage to a powersport vehicle before delivery to and acceptance by the franchisee, including that time in which the vehicle is in the control of a carrier or transporter.
(3) A franchisor shall disclose to the franchisee any repairs made prior to delivery, only if the cost of the repair exceeds 3% of the manufacturer's wholesale price, as measured by retail repair costs.
(4) Notwithstanding Subsections (1), (2), and (3), the franchisee is liable for damage to a new powersport vehicle after delivery to the carrier or transporter if the franchisee selected:
(a) the method and mode of transportation; and
(b) the carrier or transporter.

Enacted by Chapter 234, 2002 General Session

Part 3
Restrictions on Termination, Relocation, and Establishment of Franchises

13-35-301 Termination or noncontinuance of franchise.
(1) Except as provided in Subsection (2), a franchisor may not terminate or refuse to continue a franchise agreement unless:
(a) the franchisee has received written notice from the franchisor 60 days before the effective date of termination or noncontinuance setting forth the specific grounds for termination or noncontinuance that are relied on by the franchisor as establishing good cause for the termination or noncontinuance;
(b) the franchisor has good cause for termination or noncontinuance; and
(c) the franchisor is willing and able to comply with Section 13-35-105.
(2) A franchisor may terminate a franchise, without complying with Subsection (1):
(a) if for a particular line-make the franchisor or manufacturer discontinues that line-make;
(b) if the franchisee's registration as a new powersport vehicle dealer is revoked under Section 13-35-105; or
(c) upon a mutual written agreement of the franchisor and franchisee.
(3)
(a) At any time before the effective date of termination or noncontinuance of the franchise, the franchisee may apply to the advisory board for a hearing on the merits, and following notice to all parties concerned, the hearing shall be promptly held as provided in Section 13-35-304.
(b) A termination or noncontinuance subject to a hearing under Subsection (3)(a) may not become effective until:
(i) final determination of the issue by the executive director; and
(ii) the applicable appeal period has lapsed.

Amended by Chapter 268, 2005 General Session

13-35-302 Issuance of additional franchises -- Relocation of existing franchisees.

(1)
(a) Except as provided in Subsection (2), a franchisor shall comply with Subsection (1)(b) if the franchisor seeks to:
(i) enter into a franchise establishing a powersport vehicle dealership within a relevant market area where the same line-make is represented by another franchisee; or
(ii) relocate an existing powersport vehicle dealership.
(b)
(i) If a franchisor seeks to take an action listed in Subsection (1)(a), prior to taking the action, the franchisor shall in writing notify the advisory board and each franchisee in that line-make in the relevant market area that the franchisor intends to take an action described in Subsection (1)(a).
(ii) The notice required by Subsection (1)(b)(i) shall:
(A) specify the good cause on which it intends to rely for the action; and
(B) be delivered by registered or certified mail or by any form of reliable delivery through which receipt is verifiable.
(c) Within 45 days of receiving notice required by Subsection (1)(b), any franchisee that is required to receive notice under Subsection (1)(b) may protest to the advisory board the establishing or relocating of the dealership. When a protest is filed, the department shall inform the franchisor that:
(i) a timely protest has been filed;
(ii) a hearing is required;
(iii) the franchisor may not establish or relocate the proposed dealership until the advisory board has held a hearing; and
(iv) the franchisor may not establish or relocate a proposed dealership if the executive director determines that there is not good cause for permitting the establishment or relocation of the dealership.
(d) If multiple protests are filed under Subsection (1)(c), hearings may be consolidated to expedite the disposition of the issue.
(2) Subsection (1) does not apply to the relocation of a franchisee's dealership:
(a) less than two miles from the existing location of the franchisee's dealership; or
(b) farther away from all powersport dealerships that are:
(i) of the same line-make as the franchisee's dealership; and
(ii) in the franchisee's existing dealership's relevant market area.
(3) For purposes of this section:
(a) relocation of an existing franchisee's dealership in excess of one mile from its existing location is considered the establishment of an additional franchise in the line-make of the relocating franchise;
(b) the reopening in a relevant market area of a dealership that has not been in operation for one year or more is considered the establishment of an additional powersport vehicle dealership; and
(c)
(i) except as provided in Subsection (3)(c)(ii), the establishment of a temporary additional place of business by a powersport vehicle franchisee is considered the establishment of an additional powersport vehicle dealership; and
(ii) the establishment of a temporary additional place of business by a powersport vehicle franchisee is not considered the establishment of an additional powersport vehicle dealership if the powersport vehicle franchisee is participating in a trade show where three or more powersport vehicle dealers are participating.

Amended by Chapter 414, 2016 General Session

13-35-303 Effect of terminating a franchise.

If under Section 13-35-301 the executive director permits a franchisor to terminate or not continue a franchise and prohibits the franchisor from entering into a franchise for the sale of new powersport vehicles of a line-make in a relevant market area, the franchisor may not enter into a franchise for the sale of new powersport vehicles of that line-make in the specified relevant market area unless the executive director determines, after a recommendation by the advisory board, that there has been a change of circumstances so that the relevant market area at the time of the establishment of the new franchise agreement can reasonably be expected to support the new franchisee.

Amended by Chapter 268, 2005 General Session

13-35-304 Hearing regarding termination, relocation, or establishment of franchises.

(1)

(a) Within 10 days of receiving an application from a franchisee under Subsection 13-35-301(3) challenging its franchisor's right to terminate or not continue a franchise, or an application under Subsection 13-35-302(1) challenging the establishment or relocation of a franchise, the executive director shall:

(i) enter an order designating the time and place for the hearing; and

(ii) send a copy of the order by certified or registered mail, with return receipt requested, or by any form of reliable delivery through which receipt is verifiable to:

(A) the applicant;

(B) the franchisor; and

(C) if the application involves the establishment of a new franchise or the relocation of an existing dealership, to all franchisees in the relevant market area engaged in the business of offering to sell or lease the same line-make.

(b) A copy of an order mailed under Subsection (1)(a) shall be addressed to the franchisee at the place where the franchisee's business is conducted.

(2) Any person who can establish an interest in the application may intervene as a party to the hearing, whether or not that person receives notice.

(3) Any person may appear and testify on the question of the public interest in the termination or noncontinuation of a franchise or in the establishment of an additional franchise.

(4)

(a)

(i) Any hearing ordered under Subsection (1) shall be conducted no later than 120 days after the application for hearing is filed.

(ii) A final decision on the challenge shall be made by the executive director no later than 30 days after the hearing.

(b) Failure to comply with the time requirements of Subsection (4)(a) is considered a determination that the franchisor acted with good cause or, in the case of a protest of a proposed establishment or relocation of a dealer, that good cause exists for permitting the proposed additional or relocated new motor vehicle dealer, unless:

(i) the delay is caused by acts of the franchisor or the additional or relocating franchisee; or

(ii) the delay is waived by the parties.

(5) The franchisor has the burden of proof to establish that under this chapter it should be granted permission to:
(a) terminate or not continue the franchise;
(b) enter into a franchise agreement establishing an additional franchise; or
(c) relocate the dealership of an existing franchisee.

Amended by Chapter 268, 2005 General Session

13-35-305 Evidence to be considered in determining cause to terminate or discontinue.
(1) In determining whether a franchisor has established good cause for terminating or not continuing a franchise agreement, the advisory board and the executive director shall consider:
(a) the amount of business transacted by the franchisee, as compared to business available to the franchisee;
(b) the investment necessarily made and obligations incurred by the franchisee in the performance of the franchisee's part of the franchise agreement;
(c) the permanency of the investment;
(d) whether it is injurious or beneficial to the public welfare or public interest for the business of the franchisee to be disrupted;
(e) whether the franchisee has adequate powersport vehicle sales and service facilities, equipment, vehicle parts, and qualified service personnel to reasonably provide for the needs of the consumer for the new powersport vehicles handled by the franchisee and has been and is rendering adequate services to the public;
(f) whether the franchisee refuses to honor warranties of the franchisor under which the warranty service work is to be performed pursuant to the franchise agreement, if the franchisor reimburses the franchisee for the warranty service work;
(g) failure by the franchisee to substantially comply with those requirements of the franchise agreement that are determined by the advisory board or the executive director to be:
(i) reasonable;
(ii) material; and
(iii) not in violation of this chapter;
(h) evidence of bad faith by the franchisee in complying with those terms of the franchise agreement that are determined by the advisory board or the executive director to be:
(i) reasonable;
(ii) material; and
(iii) not in violation of this chapter;
(i) prior misrepresentation by the franchisee in applying for the franchise;
(j) transfer of any ownership or interest in the franchise without first obtaining approval from the franchisor or the executive director after receipt of the advisory board's recommendation; and
(k) any other factor the advisory board or the executive director consider relevant.
(2) Notwithstanding any franchise agreement, the following do not constitute good cause, as used in this chapter for the termination or noncontinuation of a franchise:
(a) the sole fact that the franchisor desires:
(i) greater market penetration; or
(ii) more sales or leases of new powersport vehicles;
(b) the change of ownership of the franchisee's dealership or the change of executive management of the franchisee's dealership unless the franchisor proves that the change of ownership or executive management will be substantially detrimental to the distribution of the franchisor's powersport vehicles; or

(c) the fact that the franchisee has justifiably refused or declined to participate in any conduct covered by Section 13-35-201.

(3) For purposes of Subsection (2), "substantially detrimental" includes the failure of any proposed transferee to meet the objective criteria applied by the franchisor in qualifying franchisees at the time of application.

Amended by Chapter 268, 2005 General Session

13-35-306 Evidence to be considered in determining cause to relocate existing franchisee or establish a new franchised dealership.

In determining whether a franchisor has established good cause for relocating an existing franchisee or establishing a new franchised dealership for the same line-make in a given relevant market area, the advisory board and the executive director shall consider:

(1) the amount of business transacted by other franchisees of the same line-make in that relevant market area, as compared to business available to the franchisees;

(2) the investment necessarily made and obligations incurred by other franchisees of the same line-make in that relevant market area in the performance of their part of their franchisee agreements;

(3) the permanency of the existing and proposed investment;

(4) whether it is injurious or beneficial to the public welfare or public interest for an additional franchise to be established; and

(5) whether the franchisees of the same line-make in that relevant market area are providing adequate service to consumers for the powersport vehicles of the line-make, which shall include the adequacy of:

(a) the powersport vehicle sale and service facilities;

(b) equipment;

(c) supply of vehicle parts; and

(d) qualified service personnel.

Amended by Chapter 268, 2005 General Session

13-35-307 Franchisor's repurchase obligations upon termination or noncontinuation of franchise.

(1)

(a) Except as provided in Subsection (1)(b), if a franchise is terminated or not continued by the franchisor or franchisee, the franchisor shall pay the franchisee:

(i) the franchisee's cost of new, undamaged, unsold, and unregistered powersport vehicles in the franchisee's inventory acquired from the franchisor or another franchisee of the same line-make and invoiced during the 30-month period immediately before the franchise is terminated or not continued;

(ii) any charges made by the franchisor for distribution, delivery, or taxes;

(iii) the franchisee's cost of any accessories added on a vehicle;

(iv) the cost of new, undamaged, and unsold supplies, parts, and accessories as set forth in the franchisor's catalog at the time of termination or noncontinuation less all allowances paid or credited to the franchisee by the franchisor;

(v) except as provided in Subsection (1)(c), the fair market value, but not less than the franchisee's depreciated acquisition cost, of each undamaged sign owned by the franchisee

that bears a common name, trade name, or trademark of the franchisor if acquisition of the sign was recommended or required by the franchisor;

(vi) the fair market value, but not less than the franchisee's depreciated acquisition cost, of all special tools, equipment, and furnishings acquired from the franchisor or sources approved by the franchisor that were recommended or required by the franchisor and are in good and usable condition; and

(vii) the cost of transporting, handling, packing, and loading powersport vehicles, supplies, parts, accessories, signs, special tools, equipment, and furnishings.

(b) The franchisor may deduct the sum of all allowances paid or credited to the franchisee by the franchisor from the amount owed under Subsection (1)(a).

(c) If a franchisee has a sign with multiple manufacturers listed, the franchisor shall pay only for its pro rata portion of the sign described in Subsection (1)(a)(v).

(2) The franchisor shall pay the franchisee the amounts specified in Subsection (1) within 90 days after the tender of the property to the franchisor if the franchisee has:

(a) clear title to the property; or

(b) the manufacturer's statement of origin.

(3) If repurchased inventory and equipment are subject to a security interest, the franchisor may make payment jointly to the franchisee and to the holder of the security interest.

Amended by Chapter 262, 2012 General Session

Chapter 37
Notice of Intent to Sell Nonpublic Personal Information Act

Part 1
General Provisions

13-37-101 Title.

This chapter is known as the "Notice of Intent to Sell Nonpublic Personal Information Act."

Enacted by Chapter 97, 2003 General Session

13-37-102 Definitions.

As used in this chapter:

(1) "Affiliate" means a person that controls, is controlled by, or is under common control with:

(a) a commercial entity; and

(b)

(i) directly; or

(ii) indirectly through one or more intermediaries.

(2)

(a) Subject to Subsection (2)(b), "commercial entity" means a person that:

(i) has an office or other place of business located in the state; and

(ii) in the ordinary course of business transacts a consumer transaction in this state.

(b) "Commercial entity" does not include:

(i) a governmental entity; or

(ii) an entity providing services on behalf of a governmental entity.

(3) "Compensation" means anything of economic value that is paid or transferred to a commercial entity for or in direct consideration of the disclosure of nonpublic personal information.

(4)

(a) "Consumer transaction" means:

(i) a sale, lease, assignment, award by chance, or other written or oral transfer or disposition:

(A) that is initiated or completed in this state; and

(B) of:

(I) goods;

(II) services; or

(III) other tangible or intangible property, except securities and insurance or services related thereto; or

(ii) a transaction:

(A) that is initiated or completed in this state; and

(B) that constitutes credit offered or extended by a commercial entity to a person primarily for personal, family, or household purposes.

(b) "Consumer transaction" includes:

(i) the use of nonpublic personal information in relation to a transaction with a person if the transaction is for primarily personal, family, or household purposes; and

(ii) with respect to any transaction described in Subsection (4)(a):

(A) an offer or solicitation;

(B) an agreement;

(C) the performance of an agreement; or

(D) a charitable solicitation as defined in Section 13-11-3.

(c) "Consumer transaction" does not include a transaction related to real property.

(5)

(a) "Nonpublic personal information" means information that:

(i) is not public information; and

(ii) either alone or in conjunction with public information, identifies a person in distinction from other persons.

(b) "Nonpublic personal information" includes:

(i) a person's Social Security number;

(ii) information used to determine a person's credit worthiness including a person's:

(A) income; or

(B) employment history;

(iii) the purchasing patterns of a person; or

(iv) the personal preferences of a person.

(6) "Public information" means a person's:

(a) name;

(b) telephone number; or

(c) street address.

(7)

(a) Subject to Subsection (7)(b), "third party" means a person other than the commercial entity that obtains nonpublic personal information.

(b) "Third party" does not include an affiliate or agent of the commercial entity that obtains nonpublic personal information.

Enacted by Chapter 97, 2003 General Session

Part 2
Notice of Disclosure

13-37-201 Required notice.

(1)
(a) In accordance with this section, a commercial entity shall provide the notice described in this section to a person if:
(i) the commercial entity enters into a consumer transaction with that person;
(ii) as a result of the consumer transaction described in this Subsection (1)(a), the commercial entity obtains nonpublic personal information concerning that person; and
(iii) the commercial entity intends to or wants the ability to disclose the nonpublic personal information:
(A) to a third party; and
(B) for compensation; and
(iv) the compensation described in Subsection (1)(a)(iii)(B):
(A) is the primary consideration for the commercial entity disclosing the nonpublic personal information;
(B) is directly related to the commercial entity disclosing the nonpublic personal information; and
(C) is not compensation received by the commercial entity in consideration of a transaction described in Subsection (5).
(b) For purposes of this chapter, a commercial entity is considered to have obtained information as a result of a consumer transaction if:
(i) the person provides the information to the commercial entity:
(A) at any time during the consumer transaction; and
(B) at the request of the commercial entity; or
(ii)
(A) the commercial entity otherwise obtains the information; and
(B) but for the consumer transaction, the commercial entity would not obtain the information.
(2) The notice required by Subsection (1) shall be given before the earlier of:
(a) the point at which the person is requested to provide the nonpublic personal information; or
(b) the commercial entity otherwise obtains the nonpublic personal information as a result of the consumer transaction described in Subsection (1)(a).
(3) The notice required by Subsection (1):
(a) shall read substantially as follows: "We may choose to disclose nonpublic personal information about you, the consumer, to a third party for compensation.";
(b) may be made:
(i) orally, if the consumer transaction itself is entirely conducted orally; or
(ii) in writing, if the notice is written in dark bold; and
(c) shall be sufficiently conspicuous so that a reasonable person would perceive the notice before providing the nonpublic personal information.
(4) This chapter does not apply to:
(a) a commercial entity that is subject to a federal law or regulation that governs the disclosure of nonpublic information to a third party; or
(b) a covered entity as defined in 45 C.F.R. Parts 160 and 164.

(5) Notwithstanding the other provisions of this section, a commercial entity is not required to provide notice under this section if:
  (a) the disclosure of the nonpublic personal information is related to the third party providing to the commercial entity:
    (i) services, including business outsource services;
    (ii) personal or real property; or
    (iii) other thing of value; and
  (b) compensation received by the commercial entity as part of the transaction is received by the commercial entity for or in consideration of the transaction described in Subsection (5)(a).

Enacted by Chapter 97, 2003 General Session

13-37-202 Disclosure of nonpublic personal information prohibited without notice.
(1) A commercial entity may not disclose nonpublic personal information that the commercial entity obtained on or after January 1, 2004, as a result of a consumer transaction if the commercial entity fails to comply with Section 13-37-201.
(2) This chapter may not be interpreted as authorizing a commercial entity to disclose nonpublic personal information to a greater extent than the commercial entity is otherwise permitted to disclose nonpublic personal information.

Enacted by Chapter 97, 2003 General Session

13-37-203 Liability.
(1) A person may bring an action against a commercial entity in a court of competent jurisdiction in this state if:
  (a) the commercial entity enters into a consumer transaction with that person;
  (b) as a result of the consumer transaction described in Subsection (1)(a), the commercial entity obtains nonpublic personal information concerning that person; and
  (c) the commercial entity violates this chapter.
(2) In an action brought under Subsection (1), a commercial entity that violates this chapter is liable to the person who brings the action for:
  (a) $500 for each time the commercial entity fails to provide the notice required by this section in relation to the nonpublic personal information of the person who brings the action; and
  (b) court costs.
(3) A person may not bring a class action under this chapter.

Enacted by Chapter 97, 2003 General Session

Chapter 38a
Financial Transaction Card Protection Act

Part 1
General Provisions

13-38a-101 Title.

(1) This chapter is known as the "Financial Transaction Card Protection Act."
(2) This part is known as "General Provisions."

Enacted by Chapter 421, 2013 General Session

13-38a-102 Definitions.

As used in this chapter:

(1)
(a) "Financial transaction card" means any card, code, or other means of access to a person's account issued to a person that allows the person to obtain, purchase, or receive any of the following:
(i) goods;
(ii) services;
(iii) money; or
(iv) anything else of value.
(b) "Financial transaction card" includes:
(i) a credit card;
(ii) a credit plate;
(iii) a bank services card;
(iv) a banking card;
(v) a check guarantee card;
(vi) a debit card;
(vii) a telephone credit card; and
(viii) a device for access as defined in Section 7-16a-102.
(2) "Receipt" means any document related to the transaction of business provided to a person that uses a financial transaction card.

Renumbered and Amended by Chapter 421, 2013 General Session

Part 2
Financial Transaction Card Receipts

13-38a-201 Title.

This part is known as "Financial Transaction Card Receipts."

Enacted by Chapter 421, 2013 General Session

13-38a-202 Limitation on information contained in receipts.

(1) A person that accepts a financial transaction card for the transaction of business may not, on a financial transaction card receipt:
(a) print more than the last five digits of the financial transaction card account number; or
(b) print the financial transaction card expiration date.
(2)
(a) This section applies only to receipts that are electronically printed.
(b) This section does not apply to transactions in which the initial means of recording the financial transaction card number is by:

(i) handwriting; or
(ii) an imprint or copy of the financial transaction card.

Enacted by Chapter 421, 2013 General Session

13-38a-203 Private action.

(1) A person may bring an action in any state court of competent jurisdiction against a person that violates any of the requirements of this chapter.
(2) In an action under Subsection (1), a person may:
(a) recover the amount of any actual damages caused by the violation of this chapter;
(b) recover court costs and reasonable attorney fees as determined by the court; and
(c) seek to enjoin conduct in violation of this chapter.

Renumbered and Amended by Chapter 421, 2013 General Session

Chapter 39
Child Protection Registry

Part 1
General Provisions

13-39-101 Title.

This chapter is known as the "Child Protection Registry."

Enacted by Chapter 338, 2004 General Session

13-39-102 Definitions.

As used in this chapter:
(1) "Attorney general" means the same as that term is defined in Section 77-42-102.
(2) "Contact point" means an electronic identification to which a communication may be sent, including:
(a) an email address;
(b) an instant message identity, subject to rules made by the unit under Subsection 13-39-203(1);
(c) a mobile or other telephone number;
(d) a facsimile number; or
(e) an electronic address:
(i) similar to a contact point listed in this Subsection (2); and
(ii) defined as a contact point by rule made by the unit under Subsection 13-39-203(1).
(3) "Registry" means the child protection registry established in Section 13-39-201.
(4) "Unit" means the Internet Crimes Against Children unit within the Office of the Attorney General created in Section 67-5-21.

Amended by Chapter 356, 2019 General Session

Part 2
Operation of the Child Protection Registry

13-39-201 Establishment of child protection registry.

(1) The unit shall:
  (a) establish and operate a child protection registry to compile and secure a list of contact points the unit has received pursuant to this section; or
  (b) contract with a third party to establish and secure the registry described in Subsection (1)(a).
(2)
  (a) A person may register a contact point with the unit pursuant to rules established by the unit under Subsection 13-39-203(1) if:
    (i) the contact point belongs to a minor;
    (ii) a minor has access to the contact point; or
    (iii) the contact point is used in a household in which a minor is present.
  (b) A school or other institution that primarily serves minors may register its domain name with the unit pursuant to rules made by the unit under Subsection 13-39-203(1).
  (c) The unit shall provide a disclosure in a confirmation message sent to a person who registers a contact point under this section that reads: "No solution is completely secure. The most effective way to protect children on the Internet is to supervise use and review all email messages and other correspondence. Under law, theft of a contact point from the Child Protection Registry is a second degree felony. While every attempt will be made to secure the Child Protection Registry, registrants and their guardians should be aware that their contact points may be at a greater risk of being misappropriated by marketers who choose to disobey the law."
(3) A person desiring to send a communication described in Subsection 13-39-202(1) to a contact point or domain shall:
  (a) use a mechanism established by rule made by the unit under Subsection 13-39-203(2); and
  (b) pay a fee for use of the mechanism described in Subsection (3)(a) determined by the unit in accordance with Section 63J-1-504.
(4) The unit may implement a program to offer discounted compliance fees to senders who meet enhanced security conditions established and verified by the division, the third party registry provider, or a designee.
(5) The contents of the registry, and any complaint filed about a sender who violates this chapter, are not subject to public disclosure under Title 63G, Chapter 2, Government Records Access and Management Act.
(6) The state shall promote the registry on the state's official Internet website.

Amended by Chapter 356, 2019 General Session

13-39-202 Prohibition of sending certain materials to a registered contact point -- Exception for consent.

(1) A person may not send, cause to be sent, or conspire with a third party to send a communication to a contact point or domain that has been registered for more than 30 calendar days with the unit under Section 13-39-201 if the communication:
  (a) has the primary purpose of advertising or promoting a product or service that a minor is prohibited by law from purchasing; or

(b) contains or has the primary purpose of advertising or promoting material that is harmful to minors, as defined in Section 76-10-1201.

(2) Except as provided in Subsection (4), consent of a minor is not a defense to a violation of this section.

(3) An Internet service provider does not violate this section for solely transmitting a message across the network of the Internet service provider.

(4)

(a) Notwithstanding Subsection (1), a person may send a communication to a contact point if, before sending the communication, the person sending the communication receives consent from an adult who controls the contact point.

(b) Any person who proposes to send a communication under Subsection (4)(a) shall:

(i) verify the age of the adult who controls the contact point by inspecting the adult's government-issued identification card in a face-to-face transaction;

(ii) obtain a written record indicating the adult's consent that is signed by the adult;

(iii) include in each communication:

(A) a notice that the adult may rescind the consent; and

(B) information that allows the adult to opt out of receiving future communications; and

(iv) notify the unit that the person intends to send communications under this Subsection (4).

(c) The unit shall implement rules to verify that a person providing notification under Subsection (4)(b)(iv) complies with this Subsection (4).

Amended by Chapter 356, 2019 General Session

13-39-203 Rulemaking authority.

In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the unit shall make rules to establish procedures under which:

(1)

(a) a person may register a contact point with the unit under Section 13-39-201, including:

(i) the information necessary to register an instant message identity; and

(ii) for purposes of Subsection 13-39-102(2)(e), an electronic address that is similar to a contact point listed in Subsection 13-39-102(2); and

(b) a school or other institution that primarily serves minors may register its domain name with the unit under Section 13-39-201;

(2) the unit shall:

(a) provide a mechanism under which a person described in Subsection 13-39-201(3) may verify compliance with the registry to remove registered contact points from the person's communications; and

(b) establish the mechanism described in Subsection (2)(a) in a manner that protects the privacy and security of a contact point registered with the unit under Section 13-39-201; and

(3) the unit may:

(a) implement a program offering discounted fees to a sender who meets enhanced security conditions established and verified by the unit, the third party registry provider, or a designee; and

(b) allow the third party registry provider to assist in any public or industry awareness campaign promoting the registry.

Amended by Chapter 356, 2019 General Session

Part 3
Enforcement

13-39-301 Criminal penalty.

(1) A person who violates Section 13-39-202 commits a computer crime and is guilty of a:
  (a) class B misdemeanor for a first offense with respect to a contact point registered with the unit under Subsection 13-39-201(2)(a); and
  (b) class A misdemeanor:
    (i) for each subsequent violation with respect to a contact point registered with the unit under Subsection 13-39-201(2)(a); or
    (ii) for each violation with respect to a domain name registered with the unit under Subsection 13-39-201(2)(b).
(2) A person commits a computer crime and is guilty of a second degree felony if the person:
  (a) uses information obtained from the unit under this chapter to violate Section 13-39-202;
  (b) improperly:
    (i) obtains contact points from the registry; or
    (ii) attempts to obtain contact points from the registry; or
  (c) uses, or transfers to a third party to use, information from the registry to send a solicitation.
(3) A criminal conviction or penalty under this section does not relieve a person from civil liability in an action under Section 13-39-302.
(4) Each communication sent in violation of Section 13-39-202 is a separate offense under this section.

Amended by Chapter 356, 2019 General Session

13-39-302 Civil action for violation.

(1) For a violation of Section 13-39-202, an action may be brought by:
  (a) a user of a contact point or domain name registered with the division under Section 13-39-201; or
  (b) a legal guardian of a user described in Subsection (1)(a).
(2) In each action under Subsection (1):
  (a) a person described in Subsection (1) may recover the greater of:
    (i) actual damages; or
    (ii) $1,000 for each communication sent in violation of Section 13-39-202; and
  (b) the prevailing party shall be awarded costs and reasonable attorney fees.

Enacted by Chapter 338, 2004 General Session

13-39-303 Administrative enforcement.

(1) The attorney general:
  (a) shall investigate violations of this chapter; and
  (b) may bring an action against a person who violates this chapter.
(2) A person who violates this chapter is subject to:
  (a) a cease and desist order or other injunctive relief; and
  (b) a fine of not more than $2,500 for each separate communication sent in violation of Section 13-39-202.

(3)
(a) A person who intentionally violates this chapter is subject to a fine of not more than $5,000 for each communication intentionally sent in violation of Section 13-39-202.
(b) For purposes of this section, a person intentionally violates this chapter if the violation occurs after the attorney general or a district or county attorney notifies the person by certified mail that the person is in violation of this chapter.

Amended by Chapter 356, 2019 General Session

13-39-304 Defenses.

It is a defense to an action brought under this chapter that a person:
(1) reasonably relied on the mechanism established by the unit under Subsection 13-39-203(2); and
(2) took reasonable measures to comply with this chapter.

Amended by Chapter 356, 2019 General Session

Chapter 40
Utah E-Commerce Integrity Act

Part 1
General Provisions

13-40-101 Title.

This chapter is known as the "Utah E-Commerce Integrity Act."

Repealed and Re-enacted by Chapter 200, 2010 General Session

13-40-102 Definitions.

As used in this chapter:
(1)
(a) "Cause to be copied" means to distribute or transfer computer software, or any component of computer software.
(b) "Cause to be copied" does not include providing:
(i) transmission, routing, intermediate temporary storage, or caching of software;
(ii) a storage or hosting medium, such as a compact disk, website, or computer server through which the software was distributed by a third party; or
(iii) an information location tool, such as a directory, index, reference, pointer, or hypertext link, through which the user of the computer located the software.
(2)
(a) "Computer software" means a sequence of instructions written in any programming language that is executed on a computer.
(b) "Computer software" does not include a data component of a webpage that is not executable independently of the webpage.

(3) "Computer virus" means a computer program or other set of instructions that is designed to degrade the performance of or disable a computer or computer network and is designed to have the ability to replicate itself on another computer or computer network without the authorization of the owner of the other computer or computer network.
(4) "Damage" means any significant impairment to the:
(a) performance of a computer; or
(b) integrity or availability of data, software, a system, or information.
(5) "Execute," when used with respect to computer software, means the performance of the functions or the carrying out of the instructions of the computer software.
(6) "False pretenses" means the representation of a fact or circumstance that is not true and is calculated to mislead.
(7)
(a) "Identifying information" means any information that can be used to access a person's financial accounts or to obtain goods and services, including the person's:
(i) address;
(ii) birth date;
(iii) Social Security number;
(iv) driver license number;
(v) non-driver governmental identification number;
(vi) telephone number;
(vii) bank account number;
(viii) student identification number;
(ix) credit or debit card number;
(x) personal identification number;
(xi) unique biometric data;
(xii) employee or payroll number;
(xiii) automated or electronic signature;
(xiv) computer image file;
(xv) photograph; or
(xvi) computer screen name or password.
(b) "Identifying information" does not include information that is lawfully obtained from publicly available information, or from federal, state, or local government records lawfully made available to the general public.
(8) "Intentionally deceptive" means any of the following:
(a) an intentionally and materially false or fraudulent statement;
(b) a statement or description that intentionally omits or misrepresents material information in order to deceive an owner or operator of a computer; or
(c) an intentional and material failure to provide a notice to an owner or operator concerning the installation or execution of computer software, for the purpose of deceiving the owner or operator.
(9) "Internet" means the global information system that is logically linked together by a globally unique address space based on the Internet protocol (IP), or its subsequent extensions, and that is able to support communications using the transmission control protocol/Internet protocol (TCP/IP) suite, or its subsequent extensions, or other IP-compatible protocols, and that provides, uses, or makes accessible, either publicly or privately, high-level services layered on communications and related infrastructure.
(10) "Internet service provider" means:
(a) an Internet service provider, as defined in Section 76-10-1230; or

(b) a hosting company, as defined in Section 76-10-1230.
(11) "Message" means a graphical or text communication presented to an authorized user of a computer.
(12)
(a) "Owner or operator" means the owner or lessee of a computer, or a person using a computer with the owner's or lessee's authorization.
(b) "Owner or operator" does not include a person who owned a computer before the first retail sale of the computer.
(13) "Person" means any individual, partnership, corporation, limited liability company, or other organization, or any combination thereof.
(14) "Personally identifiable information" means any of the following information if it allows the entity holding the information to identify the owner or operator of a computer:
(a) the first name or first initial in combination with the last name and a home or other physical address including street name;
(b) a personal identification code in conjunction with a password required to access an identified account, other than a password, personal identification number, or other identification number transmitted by an authorized user to the issuer of the account or its agent;
(c) a Social Security number, tax identification number, driver license number, passport number, or any other government-issued identification number; or
(d) an account balance, overdraft history, or payment history that personally identifies an owner or operator of a computer.
(15) "Webpage" means a location that has a single uniform resource locator (URL) with respect to the World Wide Web or another location that can be accessed on the Internet.

Repealed and Re-enacted by Chapter 200, 2010 General Session

13-40-103 Application of chapter.

This chapter applies to conduct involving a computer, software, or an advertisement located in, sent to, or displayed in this state.

Enacted by Chapter 200, 2010 General Session

Part 2
Phishing and Pharming

13-40-201 Phishing and pharming.

(1) A person is guilty of phishing if, with intent to defraud or injure an individual, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by another:
(a) the person makes a communication under false pretenses purporting to be by or on behalf of a legitimate business, without the authority or approval of the legitimate business; and
(b) the person uses the communication to induce, request, or solicit another person to provide identifying information or property.
(2) A person is guilty of pharming if, with intent to defraud or injure another, or with knowledge that the person is facilitating a fraud or injury to be perpetrated by another, the person:

(a) creates or operates a webpage that represents itself as belonging to or being associated with a legitimate business, without the authority or approval of the legitimate business, if that webpage may induce any user of the Internet to provide identifying information or property; or
(b) alters a setting on a user's computer or similar device or software program through which the user may search the Internet, causing any user of the Internet to view a communication that represents itself as belonging to or being associated with a legitimate business, if the message has been created or is operated without the authority or approval of the legitimate business and induces, requests, or solicits any user of the Internet to provide identifying information or property.

Repealed and Re-enacted by Chapter 200, 2010 General Session

13-40-202 Removal of domain name or content -- Liability.

If an Internet registrar or Internet service provider believes in good faith that an Internet domain name controlled or operated by the Internet registrar or Internet service provider, or content residing on an Internet website or other online location controlled or operated by the Internet registrar or Internet service provider, is used to engage in a violation of this part, the Internet registrar or Internet service provider is not liable under any provision of the laws of this state or of any political subdivision of the state for removing or disabling access to the Internet domain name or other content.

Repealed and Re-enacted by Chapter 200, 2010 General Session

13-40-203 Application of part.

(1) This part applies to the discovery of a phishing or pharming incident that occurs on or after July 1, 2010.
(2) This part does not apply to a telecommunications provider's or Internet service provider's good faith transmission or routing of, or intermediate temporary storing or caching of, identifying information.

Enacted by Chapter 200, 2010 General Session

13-40-204 Relation to other law.

The conduct prohibited by this part is of statewide concern, and this part's provisions supersede and preempt any provision of law of a political subdivision of the state.

Enacted by Chapter 200, 2010 General Session

Part 3
Spyware Protection

13-40-301 Prohibition on the use of software.

A person who is not an owner or operator of a computer may not cause computer software to be copied on the computer knowingly, with conscious avoidance of actual knowledge, or willfully, if the software is used to:
(1) modify, through intentionally deceptive means, settings of a computer controlling:

(a) the webpage that appears when an owner or operator launches an Internet browser or similar computer software used to access and navigate the Internet;
(b) the default provider or web proxy that an owner or operator uses to access or search the Internet; or
(c) an owner's or an operator's list of bookmarks used to access webpages;
(2) collect, through intentionally deceptive means, personally identifiable information:
(a) through the use of a keystroke-logging function that records all or substantially all keystrokes made by an owner or operator of a computer and transfers that information from the computer to another person;
(b) in a manner that correlates personally identifiable information with data concerning all or substantially all of the webpages visited by an owner or operator, other than webpages operated by the person providing the software, if the computer software was installed in a manner designed to conceal from all authorized users of the computer the fact that the software is being installed; or
(c) by extracting from the hard drive of an owner's or an operator's computer, an owner's or an operator's Social Security number, tax identification number, driver license number, passport number, any other government-issued identification number, an account balance, or overdraft history for a purpose unrelated to any of the purposes of the software or service described to an authorized user;
(3) prevent, through intentionally deceptive means, an owner's or an operator's reasonable efforts to block or disable the installation or execution of computer software by causing computer software that the owner or operator has properly removed or disabled to automatically reinstall or reactivate on the computer without the authorization of an authorized user;
(4) intentionally misrepresent that computer software will be uninstalled or disabled by an owner's or an operator's action;
(5) through intentionally deceptive means, remove, disable, or render inoperative security, antispyware, or antivirus computer software installed on an owner's or an operator's computer;
(6) enable use of an owner's or an operator's computer to:
(a) access or use a modem or Internet service for the purpose of causing damage to an owner's or an operator's computer or causing an owner or operator, or a third party affected by that conduct, to incur financial charges for a service that the owner or operator did not authorize;
(b) open multiple, sequential, stand-alone messages in an owner's or an operator's computer without the authorization of an owner or operator and with knowledge that a reasonable computer user could not close the messages without turning off the computer or closing the software application in which the messages appear, unless the communication originated from the computer's operating system, a software application the user activated, or a service provider that the user chose to use, or was presented for any of the purposes described in Section 13-40-303; or
(c) transmit or relay commercial electronic mail or a computer virus from the computer, if the transmission or relay is initiated by a person other than the authorized user without the authorization of an authorized user;
(7) modify, without the authorization of an owner or operator, any of the following settings related the computer's access to, or use of, the Internet:
(a) settings that protect information about an owner or operator for the purpose of taking personally identifiable information of the owner or operator;
(b) security settings, for the purpose of causing damage to a computer; or
(c) settings that protect the computer from the uses identified in Subsection (6); or

(8) prevent, without the authorization of an owner or operator, an owner's or an operator's reasonable efforts to block the installation of, or to disable, computer software by:
(a) presenting the owner or operator with an option to decline installation of computer software with knowledge that, when the option is selected by the authorized user, the installation nevertheless proceeds;
(b) falsely representing that computer software has been disabled;
(c) requiring in an intentionally deceptive manner the user to access the Internet to remove the software with knowledge or reckless disregard of the fact that the software frequently operates in a manner that prevents the user from accessing the Internet;
(d) changing the name, location, or other designation information of the software for the purpose of preventing an authorized user from locating the software to remove it;
(e) using randomized or intentionally deceptive filenames, directory folders, formats, or registry entries for the purpose of avoiding detection and removal of the software by an authorized user;
(f) causing the installation of software in a particular computer directory or in computer memory for the purpose of evading an authorized user's attempt to remove the software from the computer; or
(g) requiring, without the authority of the owner of the computer, that an authorized user obtain a special code or download software from a third party to uninstall the software.

Repealed and Re-enacted by Chapter 200, 2010 General Session

13-40-302 Other prohibited conduct.

A person who is not an owner or operator of a computer may not, with regard to the computer:
(1) induce an owner or operator to install a computer software component onto the owner's or the operator's computer by intentionally misrepresenting that installing the computer software is necessary for security or privacy reasons or in order to open, view, or play a particular type of content; or
(2) use intentionally deceptive means to cause the execution of a computer software component with the intent of causing the computer to use the computer software component in a manner that violates any other provision of this chapter.

Repealed and Re-enacted by Chapter 200, 2010 General Session

13-40-303 Exceptions.

Sections 13-40-301 and 13-40-302 do not apply to the monitoring of, or interaction with, an owner's or an operator's Internet or other network connection, service, or computer, by a telecommunications carrier, cable operator, computer hardware or software provider, or provider of information service or interactive computer service for network or computer security purposes, diagnostics, technical support, maintenance, repair, network management, authorized updates of computer software or system firmware, authorized remote system management, or detection or prevention of the unauthorized use of or fraudulent or other illegal activities in connection with a network, service, or computer software, including scanning for and removing computer software prescribed under this chapter.

Enacted by Chapter 200, 2010 General Session

Part 4
Enforcement

13-40-401 Phishing and pharming violations.

(1) A civil action against a person who violates any provision of Part 2, Phishing and Pharming, may be filed by:
  (a) an Internet service provider that is adversely affected by the violation;
  (b) an owner of a webpage, computer server, or a trademark that is used without authorization in the violation; or
  (c) the attorney general.
(2) A person permitted to bring a civil action under Subsection (1) may obtain either actual damages for a violation of this chapter or a civil penalty not to exceed $150,000 per violation of Part 2, Phishing and Pharming.
(3) A violation of Part 2, Phishing and Pharming, by a state-chartered or licensed financial institution is enforceable exclusively by the financial institution's primary state regulator.

Repealed and Re-enacted by Chapter 200, 2010 General Session

13-40-402 Spyware protection violations.

(1) The attorney general, an Internet service provider, or a software company that expends resources in good faith assisting authorized users harmed by a violation of Part 3, Spyware Protection, or a trademark owner whose mark is used to deceive authorized users in violation of Part 3, Spyware Protection, may bring a civil action against a person who violates Part 3, Spyware Protection, to recover:
  (a) actual damages and liquidated damages of at least $1,000 per violation of Part 3, Spyware Protection, not to exceed $1,000,000 for a pattern or practice of violations; and
  (b) attorney fees and costs.
(2) The court may increase a damage award to an amount equal to not more than three times the amount otherwise recoverable under Subsection (1) if the court determines that the defendant committed the violation willfully and knowingly.
(3) The court may reduce liquidated damages recoverable under Subsection (1) to a minimum of $100, not to exceed $100,000 for each violation, if the court finds that the defendant established and implemented practices and procedures reasonably designed to prevent a violation of Part 3, Spyware Protection.
(4) In the case of a violation of Subsection 13-40-301(6)(a) that causes a telecommunications carrier or provider of voice over Internet protocol service to incur costs for the origination, transport, or termination of a call triggered using the modem or Internet-capable device of a customer of the telecommunications carrier or provider of voice over Internet protocol as a result of the violation, the telecommunications carrier or provider of voice over Internet protocol may bring a civil action against the violator:
  (a) to recover the charges the telecommunications carrier or provider of voice over Internet protocol is required to pay to another carrier or to an information service provider as a result of the violation, including charges for the origination, transport, or termination of the call;
  (b) to recover the costs of handling customer inquiries or complaints with respect to amounts billed for the calls;
  (c) to recover reasonable attorney fees and costs; and
  (d) for injunctive relief.

(5) For purposes of a civil action under Subsections (1), (2), and (3), a single action or conduct that violates more than one provision of Part 3, Spyware Protection, shall be considered as multiple violations based on the number of provisions violated.

Enacted by Chapter 200, 2010 General Session

Chapter 41
Price Controls During Emergencies Act

Part 1
General Provisions

13-41-101 Title.

This chapter is known as the "Price Controls During Emergencies Act."

Enacted by Chapter 306, 2005 General Session

13-41-102 Definitions.

For purposes of this chapter:

(1) "Consumer" means a person who seeks to acquire or acquires a good or service for consumption.

(2) "Division" means the Division of Consumer Protection.

(3)

(a) "Emergency territory" means the geographical area:

(i) for which there has been a state of emergency declared; and

(ii) that is directly affected by the events giving rise to a state of emergency.

(b) "Emergency territory" does not include a geographical area that is affected by the events giving rise to a state of emergency only by economic market forces.

(4) "Excessive price" means:

(a) for a person that sold the good or provided the service in the 30-day period immediately preceding the day on which a state of emergency is declared:

(i) a price for a good or service that exceeds by more than 10% the highest price the person charged for the good or service in the 30-day period immediately preceding the day on which the state of emergency is declared; or

(ii) if the person's total cost for the good or service exceeds the average total cost to the person for the good or service in the 30-day period immediately preceding the day on which the state of emergency is declared, a price that exceeds by more than 10% the sum of:

(A) the total cost to the person for the good or service; and

(B) the person's customary margin; or

(b) for a person that did not sell the good or provide the service in the 30-day period immediately preceding the day on which a state of emergency is declared, a price for a good or service that is more than twice the person's total cost for the good or service.

(5) "Good" means any personal property displayed, held, or offered for sale by a merchant that is necessary for consumption or use as a direct result of events giving rise to a state of emergency.

(6) "Margin" means the difference between the sale price and the total cost of the good or service.
(7) "Retail" means the level of distribution where a good or service is typically sold directly, or otherwise provided, to a member of the public who is an end user and does not resell the good or service.
(8) "Service" means any activity that is performed in whole or in part for the purpose of financial gain including personal service, professional service, rental, leasing, or licensing for use that is necessary for consumption or use as a direct result of events giving rise to a state of emergency.
(9) "State of emergency" means a declaration of:
(a) an emergency or major disaster by the president of the United States of America; or
(b) a state of emergency by the governor under Section 53-2a-206.
(10)
(a) "Total cost" means an amount equal to:
(i) the sum of all costs associated with a person obtaining a product or service and providing the product or service to a consumer, including fees, shipping, or employee labor; minus
(ii) any trade discount, cash discount, or manufacturer rebate.
(b) "Total cost" does not include an amount that incorporates an ongoing cost to operate a business that is not directly associated with a good or service.

Amended by Chapter 226, 2021 General Session

Part 2
Excessive Prices Prohibited

13-41-201 Excessive price prohibited.
(1) A person may not offer for sale, offer to provide, sell, or provide a good or service to a consumer at an excessive price, if:
(a) a state of emergency exists; and
(b) the person offers for sale, offers to provide, sells, or provides the good or service at retail:
(i)
(A) during the time period for which a state of emergency declared by the governor exists, if the state of emergency described in Subsection (1) is declared by the governor; or
(B) for 30 days after the day on which the state of emergency begins, if the state of emergency described in Subsection (1)(a) is declared by the president of the United States; and
(ii) within the emergency territory.
(2) A person may offer for sale, offer to provide, sell, or provide a good or service as otherwise prohibited under Subsection (1), if the person establishes that:
(a) the good or service is identical, similar, or comparable in nature to a good or service that the person sold or provided in the 30-day period immediately preceding the day on which the state of emergency described in Subsection (1)(a) is declared; and
(b) the person applies the same margin to the good or service as the margin applied to the identical, similar, or comparable good or service described in Subsection (2)(a) during the 30-day period immediately preceding the day on which the state of emergency described in Subsection (1)(a) is declared.

(3) Upon request of the division, a person allegedly offering for sale, offering to provide, selling, or providing a good or service at an excessive price in accordance with this chapter shall provide documentation to the division that the person is in compliance with this chapter.

Amended by Chapter 226, 2021 General Session

13-41-202 Enforcement -- Penalty.

(1) The division shall enforce this chapter.

(2) In determining whether to investigate, contact, or request information from a person in the enforcement of this chapter, the division shall consider:

(a) whether a complaint, information, or evidence reasonably justifies further division inquiry;

(b) the burden contact, investigation, or providing information places on the person;

(c) the result of a previous investigation of the person, including whether the previous investigation suggests that the person did not violate this chapter;

(d) whether the person may benefit from receiving information about requirements under this chapter; and

(e) the potential gravity of harm to consumers, considering price, availability, and volume of a good or service.

(3) In enforcing this chapter, the division may not publicly disclose the identity of a person the division investigates unless:

(a) the person's identity is a matter of public record in an enforcement proceeding; or

(b) the person consents to public disclosure.

(4) In determining whether to impose penalties against a person who violates this chapter, the division shall consider:

(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;

(b) the person's efforts to comply with this chapter;

(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

(d) any other factor that the division considers appropriate.

(5)

(a) If the division finds that a person has violated, or is violating, this chapter, the division may:

(i) issue a cease and desist order; and

(ii) subject to Subsection (5)(b), impose an administrative fine for each violation of this chapter.

(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.

(6) The division may sue in a court of competent jurisdiction to enforce an order under Subsection (5).

(7) In a suit brought under Subsection (5), if the division prevails, the court may award the division:

(a) court costs;

(b) attorney fees; and

(c) the division's costs incurred in the investigation of the violation of this chapter.

(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.

Amended by Chapter 226, 2021 General Session

Chapter 42
Uniform Debt-Management Services Act

13-42-101 Title.

This chapter shall be known as the "Uniform Debt-Management Services Act."

Enacted by Chapter 154, 2006 General Session

13-42-102 Definitions.

In this chapter:

(1) "Administrator" means the Division of Consumer Protection.

(2) "Affiliate":

(a) with respect to an individual, means:

(i) the spouse of the individual;

(ii) a sibling of the individual or the spouse of a sibling;

(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;

(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

(v) any other individual occupying the residence of the individual; and

(b) with respect to an entity, means:

(i) a person that directly or indirectly controls, is controlled by, or is under common control with the entity;

(ii) an officer of, or an individual performing similar functions with respect to, the entity;

(iii) a director of, or an individual performing similar functions with respect to, the entity;

(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 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;

(v) an officer or director of, or an individual performing similar functions with respect to, a person described in Subsection (2)(b)(i);

(vi) the spouse of, or an individual occupying the residence of, an individual described in Subsections (2)(b)(i) through (v); or

(vii) an individual who has the relationship specified in Subsection (2)(a)(iv) to an individual or the spouse of an individual described in Subsections (2)(b)(i) through (v).

(3) "Agreement" means an agreement between a provider and an individual for the performance of debt-management services.
(4) "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.
(5) "Business address" means the physical location of a business, including the name and number of a street.
(6) "Certified counselor" means an individual certified by a training program or certifying organization, approved by the administrator, that authenticates the competence of individuals providing education and assistance to other individuals in connection with debt-management services.
(7) "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.
(8) "Day" means calendar day.
(9) "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:
(a) legal services provided in an attorney-client relationship if:
(i) the services are provided by an attorney who:
(A) is licensed or otherwise authorized to practice law in this state; and
(B) provides legal services in representing the individual in the individual's relationship with a creditor; and
(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;
(b) accounting services provided in an accountant-client relationship if:
(i) the services are provided by a certified public accountant who:
(A) is licensed to provide accounting services in this state; and
(B) provides accounting services in representing the individual in the individual's relationship with a creditor; and
(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
(c) financial-planning services provided in a financial planner-client relationship by a member of a financial-planning profession if:
(i) the administrator, by rule, determines that members are:
(A) licensed by this state;
(B) subject to a disciplinary mechanism;
(C) subject to a code of professional responsibility; and
(D) subject to a continuing education requirement; and
(ii) there is no intermediary between the individual and the creditor other than the financial planner or an individual under the direct supervision of the financial planner.
(10) "Entity" means a person other than an individual.
(11) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.
(12) "Lead generator" means a person who, in the regular course of business, supplies a provider with the name of a potential customer, directs a communication of an individual to a provider, or otherwise refers a customer to a provider.

(13) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a public corporation, government, or governmental subdivision, agency, or instrumentality.
(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.
(15) "Principal amount of the debt" means the amount of a debt at the time of an agreement.
(16) "Provider" means a person that provides, offers to provide, or agrees to provide debt-management services directly or through others.
(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.
(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.
(19) "Sign" means, with present intent to authenticate or adopt a record:
(a) to execute or adopt a tangible symbol; or
(b) to attach to or logically associate with the record an electronic sound, symbol, or process.
(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.
(21) "Trust account" means an account held by a provider that is:
(a) established in a bank in which deposit accounts are insured;
(b) separate from other accounts of the provider or its designee;
(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
(d) used to hold money of one or more individuals for disbursement to creditors of the individuals.

Amended by Chapter 152, 2012 General Session

13-42-103 Exempt agreements and persons.
(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.
(2) This chapter does not apply to a provider to the extent that the provider:
(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
(b) receives no compensation for debt-management services from or on behalf of the individuals to whom it provides the services or from their creditors.
(3) 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:
(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;
(b) a bank;
(c) an affiliate, as defined in Subsection 13-42-102(2)(b)(i), of a bank if the affiliate is regulated by a federal or state banking regulatory authority; or
(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.

Enacted by Chapter 154, 2006 General Session

13-42-104 Registration required.

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

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

(3) The administrator shall maintain and publicize a list of the names of all registered providers.

Enacted by Chapter 154, 2006 General Session

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

(1) An application for registration as a provider shall be in a form prescribed by the administrator.

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

(a) the fee established by the administrator in accordance with Section 63J-1-504;

(b) the bond required by Section 13-42-113;

(c) identification of all trust accounts subject to Section 13-42-122 and an irrevocable consent authorizing the administrator to review and examine the trust accounts;

(d) evidence of insurance in the amount of $250,000:

(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;

(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;

(iii) with a deductible not exceeding $5,000;

(iv) payable to the applicant and this state for the benefit of the residents of this state, as their interests may appear; and

(v) not subject to cancellation by the applicant or the insurer until 60 days after written notice has been given to the administrator;

(e) a record consenting to the jurisdiction of this state containing:

(i) the name, business address, and other contact information of its registered agent in this state for purposes of service of process; or

(ii) the appointment of the administrator as agent of the provider for purposes of service of process; and

(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.

(3)

(a) The administrator may waive or reduce the insurance requirement in Subsection (2)(d) if the provider does not:

(i) maintain control of a trust account or receive money paid by an individual pursuant to a plan for distribution to creditors;

(ii) make payments to creditors on behalf of individuals;

(iii) collect fees by means of automatic payment from individuals; and

(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.

(b) A waiver or reduction in insurance requirements allowed by the administrator under Subsection (3)(a) shall balance the reduction in risk posed by a provider meeting the stated requirements against any continued need for insurance against employee and director dishonesty.

Amended by Chapter 152, 2012 General Session

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

An application for registration as a provider shall be signed under penalty of perjury and include:

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

(2) all names under which the applicant conducts business;

(3) the address of each location in this state at which the applicant will provide debt-management services or a statement that the applicant will have no such location;

(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;

(5) identification of every jurisdiction in which, during the five years immediately preceding the application:

(a) the applicant or any of its officers or directors has been licensed or registered to provide debt-management services; or

(b) individuals have resided when they received debt-management services from the applicant;

(6) a statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to have access to the trust account required by Section 13-42-122;

(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 has not been in operation for the two years preceding the application, for the period of its existence;

(8) evidence of accreditation by an independent accrediting organization approved by the administrator;

(9) evidence that, no later than 12 months after initial employment, each of the applicant's counselors becomes certified as a certified counselor;

(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 or to be used in those programs;

(11) a description of the applicant's financial analysis and initial budget plan, including any form or electronic model, used to evaluate the financial condition of individuals;

(12) a copy of each form of agreement that the applicant will use with individuals who reside in this state;

(13) the schedule of fees and charges that the applicant will use with individuals who reside in this state;

(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;

(15) the names and addresses of all employers of each director during the 10 years immediately preceding the application;

(16) a description of any ownership interest of at least 10% by a director, owner, or employee of the applicant in:
(a) any affiliate of the applicant; or
(b) any entity that provides products or services to the applicant or any individual relating to the applicant's debt-management services;
(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 has not been in operation for the three years preceding the application, for the period of its existence;
(18) the identity of each director who is an affiliate, as defined in Subsection 13-42-102(2)(a) or (2)(b)(i), (ii), (iv), (v), (vi), or (vii), of the applicant; and
(19) any other information that the administrator reasonably requires to perform the administrator's duties under Section 13-42-109.

Amended by Chapter 152, 2012 General Session

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

An applicant or registered provider shall notify the administrator no later than 10 days after a 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).

Amended by Chapter 152, 2012 General Session

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 shall make the information in an application for registration as a provider available to the public.

Enacted by Chapter 154, 2006 General Session

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

(1) Except as otherwise provided in Subsections (2) and (3), the administrator shall issue a certificate of registration as a provider to a person that complies with Sections 13-42-105 and 13-42-106.
(2) The administrator may deny registration if:
(a) the application contains information that is materially erroneous or incomplete;
(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;
(c) the applicant or any of its officers, directors, or owners has defaulted in the payment of money collected for others; or
(d) the administrator finds that the financial responsibility, experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this chapter.
(3) The administrator shall deny registration if:
(a) the application is not accompanied by the fee established by the administrator in accordance with Section 63J-1-504; or
(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 501, the applicant's board of directors is not independent of the applicant's employees and agents.

(4) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a board of directors is not independent for purposes of Subsection (3) if more than one-fourth of its members:
(a) are affiliates of the applicant, as defined in Subsection 13-42-102(2)(a) or 13-42-102(2)(b)(i), (ii), (iv), (v), (vi), or (vii); or
(b) after the date 10 years before first becoming a director of the applicant, were employed by or directors of a person that received from the applicant more than $25,000 in either the current year or the preceding year.

Amended by Chapter 183, 2009 General Session

13-42-110 Certificate of registration -- Timing.
(1) The administrator shall approve or deny an initial registration as a provider no later than 120 days after an application is filed. In connection with a request pursuant to Subsection 13-42-106(19) for additional information, the administrator may extend the 120-day period for not more than 60 days. Within seven days after denying an application, the administrator, in a record, shall inform the applicant of the reasons for the denial.
(2) If the administrator denies an application for registration as a provider or does not act on an application within the time prescribed in Subsection (1), the applicant may appeal and request a hearing pursuant to Title 63G, Chapter 4, Administrative Procedures Act.
(3) Subject to Subsection 13-42-111(4) and Section 13-42-134, a registration as a provider is valid for one year.

Amended by Chapter 152, 2012 General Session

13-42-111 Renewal of registration.
(1) A provider shall obtain a renewal of its registration annually.
(2) An application for renewal of registration as a provider shall be in a form prescribed by the administrator, signed under penalty of perjury, and:
(a) be filed no fewer than 30 and no more than 60 days before the registration expires;
(b) be accompanied by the fee established by the administrator in accordance with Section 63J-1-504 and the bond required by Section 13-42-113;
(c) contain the matter required for initial registration as a provider by Subsections 13-42-106(8) and (9) and a financial statement, audited by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application;
(d) disclose any changes in the information contained in the applicant's application for registration or its immediately previous application for renewal, as applicable;
(e) supply evidence of insurance in an amount equal to the larger of $250,000 or the highest daily balance in the trust account required by Section 13-42-122 during the six-month period immediately preceding the application:
(i) against risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant;
(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;
(iii) with a deductible not exceeding $5,000;
(iv) payable to the applicant and this state for the benefit of the residents of this state, as their interests may appear; and

(v) not subject to cancellation by the applicant or the insurer until 60 days after written notice has been given to the administrator;

(f) disclose the total amount of money received by the applicant pursuant to 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;

(g) disclose, to the best of the applicant's knowledge, the gross amount of money accumulated during the preceding 12 months pursuant to plans by or on behalf of individuals who reside in this state and with whom the applicant has agreements; and

(h) provide any other information that the administrator reasonably requires to perform the administrator's duties under this section.

(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 shall make the information in an application for renewal of registration as a provider available to the public.

(4) If a registered provider files a timely and complete application for renewal of registration, the registration remains effective until the administrator, in a record, notifies the applicant of a denial and states the reasons for the denial.

(5) If the administrator 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 Title 63G, Chapter 4, Administrative Procedures Act. 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 has agreements. If the denial is affirmed, subject to the administrator's order and Section 13-42-134, the applicant shall continue to provide debt-management services to individuals with whom it has agreements until, with the approval of the administrator, it transfers the agreements to another registered provider or returns to the individuals all unexpended money that is under the applicant's control.

(6)

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

(i) maintain control of a trust account or receive money paid by an individual pursuant to a plan for distribution to creditors;

(ii) make payments to creditors on behalf of individuals;

(iii) collect fees by means of automatic payment from individuals; and

(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.

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

Amended by Chapter 152, 2012 General Session

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

(1)

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

(b) The administrator 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:
(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;
(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);
(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
(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.
(2) The administrator, 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 to the administrator in compliance with this section.

Amended by Chapter 152, 2012 General Session

13-42-113 Bond required.
(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, which shall:
(a) be in effect during the period of registration and for two years after the provider ceases providing debt-management services to individuals in this state; and
(b) run to this state for the benefit of this state and of individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear.
(2) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a surety bond filed pursuant to Subsection (1) shall:
(a) be in the amount of $100,000;
(b) be issued by a bonding, surety, or insurance company authorized to do business in this state and rated at least A- by a nationally recognized rating organization; and
(c) have payment conditioned on noncompliance of the provider or its agent with this chapter.
(3) 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 and, no later than 30 days after notice by the administrator, file a new or additional surety bond in an amount to comply with the $100,000 requirement. If for any reason a surety terminates a bond, the provider shall immediately file a new surety bond in the amount of $100,000.
(4) The administrator or an individual may obtain satisfaction out of the surety bond procured pursuant to this section if:
(a) the administrator 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
(b) an individual recovers a final judgment pursuant to Subsection 13-42-135(1), Subsection 13-42-135(2), or Subsection 13-42-135(3)(a), (b), or (d).
(5) If claims against a surety bond exceed or are reasonably expected to exceed the amount of the bond, the administrator, on the initiative of the administrator 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:
(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);
(b) to final judgments recovered by individuals pursuant to Subsection 13-42-135(1), Subsection 13-42-135(2), or Subsection 13-42-135(3)(a), (b) or (d), pro rata;
(c) to claims of individuals established to the satisfaction of the administrator, pro rata; and
(d) if a final order or judgment is issued under Subsection 13-42-133(1), to the expenses charged pursuant to Subsection 13-42-132(2)(a).

Amended by Chapter 152, 2012 General Session

13-42-114 Bond required -- Substitute.
(1) Instead of the surety bond required by Section 13-42-113, a provider, with the approval of the administrator and in the amount required by Subsection (2), may deliver to the administrator:
(a) an irrevocable letter of credit, issued or confirmed by a bank approved by the administrator, payable on presentation of a certificate by the administrator stating that the provider or its agent has not complied with this chapter; or
(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:
(i) deposited and maintained with a bank approved by the administrator for this purpose; and
(ii) delivered by the bank to the administrator on presentation of a certificate by the administrator stating that the provider or its agent has not complied with this chapter.
(2) If a provider furnishes a substitute pursuant to Subsection (1), Subsections 13-42-113(1), (3), (4), and (5) apply to the substitute.

Amended by Chapter 152, 2012 General Session

13-42-115 Requirement of good faith.
A provider shall act in good faith in all matters under this chapter.

Enacted by Chapter 154, 2006 General Session

13-42-116 Customer service.
A provider that is required to be registered under this chapter shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a certified counselor or customer service representative, as appropriate, during ordinary business hours.

Enacted by Chapter 154, 2006 General Session

13-42-117 Prerequisites for providing debt-management services.
(1) Before providing debt-management services, a provider shall give the individual an itemized list of goods and services and the charges for each. The list shall be clear and conspicuous, be in a record the individual may keep whether or not the individual assents to an agreement, and describe the goods and services the provider offers:
(a) free of additional charge if the individual enters into an agreement;
(b) for a charge if the individual does not enter into an agreement; and

(c) for a charge if the individual enters into an agreement, using the following terminology, as applicable, and format:

Set-up fee _____
dollar amount of fee

Monthly service fee _____
dollar amount of fee or method of determining amount

Settlement fee _____
dollar amount of fee or method of determining amount

Goods and services in addition to those provided in connection with a plan:

_____ _____
(item) dollar amount or method of determining amount

_____ _____
(item) dollar amount or method of determining amount.

(2) A provider may not furnish debt-management services unless the provider, through the services of a certified counselor:

(a) provides the individual with reasonable education about the management of personal finance;

(b) has prepared a financial analysis including at least the following matters affecting the individual's financial condition:

(i) assets;

(ii) income;

(iii) debt, including secured debt; and

(iv) other liabilities; and

(c) if the individual is to make regular, periodic payments to a creditor or a provider:

(i) has prepared a plan for the individual;

(ii) has made a determination, based on the provider's analysis of the information provided by the individual and otherwise available to it, that the plan is suitable for the individual and the individual will be able to meet the payment obligations under the plan; and

(iii) believes that each creditor of the individual listed as a participating creditor in the plan will accept payment of the individual's debts as provided in the plan.

(3) Before an individual assents to an agreement to engage in a plan, a provider shall:

(a) provide the individual with a copy of the analysis and plan required by Subsection (2) in a record that identifies the provider and that the individual may keep whether or not the individual assents to the agreement;

(b) inform the individual of the availability, at the individual's option, of assistance by a toll-free communication system or in person to discuss the financial analysis and plan required by Subsection (2); and

(c) with respect to all creditors identified by the individual or otherwise known by the provider to be creditors of the individual, provide the individual with a list of:

(i) creditors that the provider expects to participate in the plan and grant concessions;

(ii) creditors that the provider expects to participate in the plan but not grant concessions;

(iii) creditors that the provider expects not to participate in the plan; and

(iv) all other creditors.

(4) Before an individual assents to an agreement, the provider shall inform the individual, in a separate record that the individual may keep whether or not the individual assents to the agreement:

(a) of the name and business address of the provider;

(b) that plans are not suitable for all individuals and the individual may ask the provider about other ways, including bankruptcy, to deal with indebtedness;

(c) of the amount of time necessary to achieve the results that the provider represents to be achievable;
(d) if the provider intends to include a settlement offer to any of the individual's creditors or debt collectors:
(i) of the time by which the provider will make a bona fide settlement offer to any of the individual's creditors or debt collectors; and
(ii) of the amount of money or the percentage of each outstanding debt that the individual must accumulate before the provider will make a bona fide settlement offer to each creditor or debt collector;
(e) that establishment of a plan may adversely affect the individual's credit rating or credit scores;
(f) that nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation;
(g) if the provider requests or requires the individual to place money in an account at an insured financial institution, that the individual:
(i) owns the funds held in the account;
(ii) may withdraw from the provider's plan at any time without penalty; and
(iii) is entitled to receive all money in the account, other than money that the provider earns as provided in Section 13-42-123, at the time the individual withdraws from the provider's plan;
(h) unless it is not true, that the provider may receive compensation from the creditors of the individual; and
(i) that, unless the individual is insolvent, if a creditor settles for less than the full amount of the debt, the plan may result in the creation of taxable income to the individual, even though the individual does not receive any money.

(5) If a provider may receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may comply with Subsection (4) by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.
(2) Using a debt-management plan may make it harder for you to obtain credit.
(3) We may receive compensation for our services from your creditors.

_____

Name and business address of provider

(6) If a provider will not receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, a provider may comply with Subsection (4) by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.
(2) Using a debt-management plan may make it harder for you to obtain credit.

_____

Name and business address of provider

(7) If an agreement contemplates that creditors will settle debts for less than the full principal amount of debt owed, a provider may comply with Subsection (4) by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

(1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.
(2) Nonpayment of your debts under our program may
hurt your credit rating or credit scores;
lead your creditors to increase finance and other charges; and
lead your creditors to undertake activity, including lawsuits, to collect the debts.
(3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.

_____
Name and business address of provider

Amended by Chapter 152, 2012 General Session

13-42-118 Communication by electronic or other means.

(1) In this section:
(a) "Consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.
(b) "Federal act" means the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.
(2) A provider may satisfy the requirements of Section 13-42-117, 13-42-119, or 13-42-127 by means of the 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.
(3) 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.
(4) With respect to disclosure by means of an Internet website, the disclosure of the information required by Subsection 13-42-117(4) shall appear on one or more screens that:
(a) contain no other information; and
(b) the individual is able to see before proceeding to assent to formation of an agreement.
(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 will send the individual a written copy of the materials, and shall comply with a request as provided in Subsection (6).
(6) If a provider is requested, before the expiration of 90 days after an agreement is completed or terminated, to send 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 at no charge no later than three business days after the request, but the provider need not comply with a request more than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If a request is made more than 90 days after an agreement is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.
(7) A provider that maintains an Internet website shall disclose on the home page of its website or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents:
(a) its name and all names under which it does business;
(b) its principal business address, telephone number, and electronic-mail address, if any; and
(c) the names of its principal officers.

(8) Subject to Subsection (9), if a consumer who has consented 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 agreement with the consumer.
(9) If a provider wishes to terminate an agreement with a consumer pursuant to Subsection (8), it shall notify the consumer that it will terminate the agreement unless the consumer, no later than 30 days after receiving the notification, consents to electronic communication in the manner provided in Section 101(c) of the federal act. If the consumer consents, the provider may terminate the agreement only as permitted by Subsection 13-42-119(1)(f)(iv)(D).

Amended by Chapter 152, 2012 General Session

13-42-119 Form and contents of agreement.
(1) An agreement shall:
(a) be in a record;
(b) be dated and signed by the provider and the individual;
(c) include the name of the individual and the address where the individual resides;
(d) include the name, business address, and telephone number of the provider;
(e) be delivered to the individual immediately upon formation of the agreement; and
(f) disclose:
(i) the services to be provided;
(ii) the amount, or method of determining the amount, of all fees, individually itemized, to be paid by the individual;
(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;
(iv) if a plan provides for regular periodic payments to creditors:
(A) each creditor of the individual to which payment will be made, the amount owed to each creditor, and any concessions the provider reasonably believes each creditor will offer;
(B) the schedule of expected payments to each creditor, including the amount of each payment and the date on which it will be made;
(C) each creditor that the provider believes will not participate in the plan and to which the provider will not direct payment; and
(D) that the provider may terminate the agreement for good cause, upon return of unexpended money of the individual;
(v) if a plan contemplates the settlement of the individual's debt for less than the principal amount of the debt, an estimate of:
(A) the duration of the plan based on all enrolled debts;
(B) the length of time before the individual may reasonably expect a settlement offer; and
(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;
(vi) how the provider will comply with its obligations under Subsection 13-42-127(1);
(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 designee has received 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;
(viii) that the individual may contact the administrator with any questions or complaints regarding the provider; and

(ix) the address, telephone number, and Internet address or website of the administrator.
(2) For purposes of Subsection (1)(e), delivery of an electronic record occurs when it is made available in a format in which the individual may retrieve, save, and print it and the individual is notified that it is available.
(3) If the administrator 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.
(4) An agreement shall provide that:
(a) the individual authorizes any bank in which the provider or its agent has established a trust account to disclose to the administrator any financial records relating to the trust account; and
(b) the provider will notify the individual no later than five business days after learning of a creditor's final decision to reject or withdraw from a plan and that this notice will include:
(i) the identity of the creditor; and
(ii) the right of the individual to modify or terminate the agreement.
(5) An agreement may not:
(a) provide for application of the law of any jurisdiction other than the United States and this state;
(b) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. Section 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;
(c) contain a provision that restricts the individual's remedies under this chapter or law other than this chapter; or
(d) contain a provision that:
(i) limits or releases the liability of any person for not performing the agreement or for violating this chapter; or
(ii) indemnifies any person for liability arising under the agreement or this chapter.
(6) A provision in an agreement which violates Subsection (4) or (5) is void.

Amended by Chapter 152, 2012 General Session

13-42-120 Termination of agreement.
(1) An individual who is a party to an agreement may terminate the agreement at any time, without penalty or obligation, by giving the provider notice in a record.
(2) A provider may terminate an agreement if an individual who is a party to the agreement fails for 60 days to make a payment or deposit required by the agreement or if other good cause exists.
(3) If an agreement is terminated:
(a) the provider, no later than seven business days after the termination, shall pay the individual who is a party to the agreement all money the provider or its designee received from or on behalf of the individual, other than:
(i) an amount properly disbursed to a creditor; and
(ii) fees earned pursuant to Section 13-42-123; and
(b) any power of attorney granted by the individual to the provider is revoked.

Repealed and Re-enacted by Chapter 152, 2012 General Session

13-42-121 Required language.

Unless the administrator, by rule, provides otherwise, the disclosures and documents required by this chapter shall be in English. 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.

Amended by Chapter 152, 2012 General Session

13-42-122 Trust account.

(1) All money paid to a provider by or on behalf of an individual for distribution to creditors pursuant to a plan is held in trust. No later than two business days after receipt, the provider shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.

(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 to pay a creditor or the provider's fees, or both, if:

(a) the money is held in an insured account at a bank;

(b) the individual owns the money held in the account and is paid any interest accrued on the account;

(c) 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);

(d) 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

(e) the individual may terminate the agreement at any time without penalty and on termination must receive all money in the account, other than money earned by the provider in compliance with this section.

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

(4) Money held in trust by a provider is not property of the provider or its designee. 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 money has not been disbursed to creditors of the individual.

(5) A provider shall:

(a) maintain separate records of account for each individual to whom the provider is furnishing debt-management services;

(b) disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the agreement, except that:

(i) the provider may delay payment to the extent that a payment by the individual is not final; and

(ii) if a plan provides for regular periodic payments to creditors, the disbursement shall comply with the due dates established by each creditor; and

(c) promptly correct any payments that are not made or that are misdirected 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.

(6) A provider may not commingle money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services with money of other persons.
(7) A trust account shall at all times have a cash balance equal to the sum of the balances of each individual's account.
(8) If a provider has established a trust account pursuant to Subsection (1), the provider shall reconcile the trust account at least once a month. The reconciliation shall compare the cash balance in the trust account with the sum of the balances in each individual's account. If the provider or its designee has more than one trust account, each trust account shall be individually reconciled.
(9) 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 by a method approved by the administrator. Unless the administrator by rule provides otherwise, no later than five days thereafter, the provider shall give notice to the administrator describing the remedial action taken or to be taken.
(10) If an individual terminates an agreement or it becomes reasonably apparent to a provider 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 paid to creditors, less fees that are payable to the provider under Section 13-42-123.
(11) Before relocating a trust account from one bank to another, a provider shall inform the administrator of the name, business address, and telephone number of the new bank. As soon as practicable, the provider shall inform the administrator of the account number of the trust account at the new bank.

Amended by Chapter 152, 2012 General Session

13-42-123 Fees and other charges.
(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.
(2) A provider may not impose charges or receive payment for debt-management services until the provider and the individual have signed an agreement that complies with Sections 13-42-119 and 13-42-128.
(3) 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). The administrator may authorize a provider to charge a fee based on the nature and extent of the services furnished by the provider.
(4)
(a) Subsections (4)(b) through (d) are subject to adjustment of dollar amounts pursuant to Subsection 13-42-132(6).
(b) If an individual assents to a plan that contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may charge:
(i) a fee not exceeding $50 for consultation, obtaining a credit report, setting up an account, and the like; and
(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.

(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 fee or consideration for the provider's service unless:
(i) the provider has renegotiated, settled, reduced, or otherwise altered the terms of at least one debt under an agreement executed by the individual;
(ii) the individual has made at least one payment pursuant to that agreement between the individual and the creditor or debt collector; and
(iii) the fee or consideration for any individual debt that is renegotiated, settled, reduced, or otherwise altered:
(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
(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 may not change from one individual debt to another.
(d) 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 provides to the individual a fee not exceeding $100 or, with the approval of the administrator, a larger fee. The administrator may approve a fee larger than $100 if the nature and extent of the educational and counseling services warrant the larger fee.
(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.
(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 fee paid pursuant to Subsection (4)(d).
(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:
(a) compensation for services in connection with settling a debt shall be reasonable and clearly disclosed in the agreement; and
(b) a fee for settling a debt may be collected only as the debt is settled.
(7) Subject to adjustment of the dollar amount pursuant to 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.

Amended by Chapter 152, 2012 General Session

13-42-124 Voluntary contributions.

A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual. A provider may accept voluntary contributions from an individual but, until 30 days after completion or termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount the provider may charge the individual under Section 13-42-123.

Enacted by Chapter 154, 2006 General Session

13-42-125 Voidable agreements.

(1) If a provider imposes a fee or other charge or receives money or other payments not authorized by Section 13-42-123 or 13-42-124, the individual may void the agreement and recover as provided in Section 13-42-135.
(2) If a provider is not registered as required by this chapter when an individual assents to an agreement, the agreement is voidable by the individual.
(3) If an individual voids an agreement under Subsection (2), the provider does not have a claim against the individual for breach of contract or for restitution.

Enacted by Chapter 154, 2006 General Session

13-42-126 Retention of records.

(1) For each individual for whom a provider provides debt-management services, the provider shall maintain records for five years after the final payment made by the individual.
(2) The provider shall produce a copy of the records to the individual within a reasonable time after a request for the records.
(3) The provider may use electronic or other means of storage of the records.

Repealed and Re-enacted by Chapter 152, 2012 General Session

13-42-127 Periodic reports and retention of records.

(1) A provider shall provide the accounting required by Subsection (2):
  (a) on cancellation or termination of an agreement; and
  (b) before cancellation or termination of any agreement:
    (i) at least once each month; and
    (ii) no later than five business days after a request by an individual, but the provider need not comply with more than one request in any calendar month.
(2) A provider, in a record, shall provide each individual for whom it has established a plan an accounting of the following information:
  (a) the amount in an account containing money paid by or on behalf of the individual for fees or distribution to a creditor, or both, as of the date one month before the date of the accounting;
  (b) the amount paid into the account since the last report;
  (c) the amounts and dates of disbursement made on the individual's behalf, or by the individual on the direction of the provider, since the last report to each creditor listed in the plan;
  (d) the amounts deducted, as fees or otherwise, from the amount paid into the account since the last report;
  (e) if, since the last report, a creditor has agreed to accept as payment in full an amount less than the principal amount of the debt owed by the individual:
    (i) the total amount and terms of the settlement;
    (ii) the amount of the debt when the individual assented to the plan;
    (iii) the amount of the debt when the creditor agreed to the settlement; and
    (iv) the calculation of a settlement fee; and
  (f) the amount in the account as of the date of the accounting.
(3) If an agreement contemplates that a creditor will settle a debt for less than the principal amount of the debt and the provider delegates performance of its duties under this section to another person, the provider may provide the information required by Subsection (2)(e) in a record separate from the record containing the other information required by Subsection (2).

Amended by Chapter 152, 2012 General Session

13-42-128 Prohibited acts and practices.

(1) A provider may not, directly or indirectly:

(a) include a secured debt in a plan, except as authorized by law other than this chapter;

(b) misappropriate or misapply money held in trust;

(c) settle a debt on behalf of an individual, unless the individual assents to the settlement after the creditor has assented;

(d) take a power of attorney that authorizes it to settle a debt;

(e) exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;

(f) initiate a transfer from an individual's account at a bank or with another person unless the transfer is:

(i) a return of money to the individual; or

(ii) before termination of an agreement, properly authorized by the agreement and this chapter, and for:

(A) payment to one or more creditors pursuant to an agreement; or

(B) payment of a fee;

(g) offer a gift or bonus, premium, reward, or other compensation to an individual for executing an agreement;

(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:

(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

(ii) compensates its employees on the basis of a formula that incorporates the number of individuals the employee refers to the provider;

(i) receive a bonus, commission, or other benefit for referring an individual to a person;

(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;

(k) compensate its employees on the basis of a formula that incorporates the number of individuals the employee induces to enter into agreements;

(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:

(i) is in full settlement of the debt; or

(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;

(m) make a representation that:

(i) the provider will furnish money to pay bills or prevent attachments;

(ii) payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or

(iii) participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment;

(n) misrepresent that it is authorized or competent to furnish legal advice or perform legal services;

(o) represent in its agreements, disclosures required by this chapter, advertisements, or Internet website that it is:
(i) a not-for-profit entity unless it is organized and properly operating as a not-for-profit entity under the law of the state in which it was formed; or
(ii) a tax-exempt entity unless it has received certification of tax-exempt status from the Internal Revenue Service and is properly operating as a not-for-profit entity under the law of the state in which it was formed;
(p) take a confession of judgment or power of attorney to confess judgment against an individual;
(q) employ an unfair, unconscionable, or deceptive act or practice;
(r) knowingly omit any material information or material aspect of any provider's service, including:
(i) the amount of money or the percentage of the debt amount that an individual may save by using the provider's service;
(ii) the amount of time necessary to achieve the results that the provider represents as achievable;
(iii) the amount of money or the percentage of each outstanding debt that the individual is required to accumulate before the provider will:
(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
(B) make a bona fide offer to negotiate, settle, or modify the terms of the individual's debt;
(iv) the effect of the service on:
(A) an individual's creditworthiness; or
(B) collection efforts of the individual's creditors or debt collectors;
(v) the percentage or number of individuals who achieve the results that the provider represents are achievable; and
(vi) whether a provider's service is offered or provided by a nonprofit entity; or
(s) make or use any untrue or misleading statement:
(i) to the administrator; or
(ii) in the provision of services subject to this chapter.
(2) If a provider furnishes debt-management services to an individual, the provider may not, directly or indirectly:
(a) purchase a debt or obligation of the individual;
(b) receive from or on behalf of the individual:
(i) a promissory note or other negotiable instrument other than a check or a demand draft; or
(ii) a post-dated check or demand draft;
(c) lend money or provide credit to the individual, unless the loan or credit is:
(i) a deferral of a settlement fee at no additional expense to the individual; or
(ii) through an affiliate that is licensed separately from the provider;
(d) obtain a mortgage or other security interest from any person in connection with the services provided to the individual;
(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:
(i) the administrator, on proper demand;
(ii) a creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a plan; or
(iii) the extent necessary to administer the plan;
(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;

(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; or
(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.
(3) This chapter does not authorize any person to engage in the practice of law.
(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:
(a) for educational or counseling services required in connection with a government-sponsored program; or
(b) as authorized in Subsection 13-42-123(4)(d).
(5) Unless a person supplies goods, services, or facilities generally and supplies them to the provider at a cost no greater than the cost the person generally charges to 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:
(a) owns more than 10% of the person; or
(b) is an employee or affiliate of the person.

Amended by Chapter 152, 2012 General Session

13-42-129 Notice of litigation.

No later than 30 days after a provider has been served with notice of a civil action for 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 in a record that it has been sued.

Enacted by Chapter 154, 2006 General Session

13-42-130 Advertising.

(1) If a provider whose agreements contemplate that creditors will reduce finance charges or fees for late payment, default, or delinquency advertises debt-management services, it shall disclose, in an easily comprehensible manner, that using a debt-management plan may make it harder for the individual to obtain credit.
(2) If a provider whose agreements contemplate that creditors will settle for less than the full principal amount of debt that advertises debt-management services, it shall disclose, in an easily comprehensible manner:
(a) the information specified in Subsections 13-42-117(4)(e) and (f); and
(b) the provider's settlement fee structure, consistent with the limitations of Section 13-42-123.

Amended by Chapter 152, 2012 General Session

13-42-131 Provider liability for the conduct of other persons -- Prohibited conduct of person providing service to provider.

(1) If a provider delegates any of its duties or obligations under an agreement or this chapter to another person, including an independent contractor, the provider is liable for conduct of the person which, if done by the provider, would violate the agreement or this chapter.

(2) A lead generator or other person that provides services to or for a provider may not engage in an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information, with respect to an individual who the lead generator or other person has reason to believe is or may become a customer of the provider.

Amended by Chapter 152, 2012 General Session

13-42-132 Powers of administrator.

(1) The administrator may act on its own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with this chapter, refer cases to the attorney general, and seek or provide remedies as provided in this chapter.
(2) The administrator may investigate and examine, in this state or elsewhere, by subpoena or otherwise, the activities, books, accounts, and records of a person that provides or offers to provide debt-management services, or a person to which a provider has delegated its obligations under an agreement or this chapter, to determine compliance with this chapter. Information that identifies individuals who have agreements with the provider may not be disclosed to the public. In connection with the investigation, the administrator may:
  (a) charge the person the reasonable expenses necessarily incurred to conduct the examination;
  (b) require or permit a person to file a statement under oath as to all the facts and circumstances of a matter to be investigated; and
  (c) seek a court order authorizing seizure from a bank at which the person maintains an account contemplated by 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 and relates to individuals who reside in this state.
(3) The administrator may adopt rules to implement the provisions of this chapter in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(4) The administrator may enter into cooperative arrangements with any other federal or state agency having authority over providers and may exchange with any of those agencies information about a provider, including information obtained during an examination of the provider.
(5) The administrator shall establish fees in accordance with Section 63J-1-504 to be paid by providers for the expense of administering this chapter.
(6) The administrator, 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 the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers or, if that index is not available, another index adopted by rule by the administrator. The administrator 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%. The dollar amount shall be rounded to the nearest $100, except that the amounts in Section 13-42-123 shall be rounded to the nearest dollar.
(7) The administrator shall notify registered providers of any change in dollar amounts made pursuant to Subsection (6) and make that information available to the public.

Amended by Chapter 152, 2012 General Session

13-42-133 Administrative remedies.

(1) The administrator may enforce this chapter and rules adopted under this chapter by taking one or more of the following actions:

(a) ordering a provider, lead generator, person administering an account pursuant to Subsection 13-42-122(2), or director, employee, or other agent of a provider to cease and desist from any violations;
(b) ordering a provider, lead generator, person administering an account pursuant to Subsection 13-42-122(2), or person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation;
(c) subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), imposing on a provider, lead generator, person administering an account pursuant to Subsection 13-42-122(2), or other person that violates or causes a violation an administrative fine not exceeding $10,000 for each violation;
(d) prosecuting a civil action to:
(i) enforce an order; or
(ii) obtain restitution or equitable relief, or both; or
(e) intervening in an action brought under Section 13-42-135.
(2) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), if a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under Subsection (1)(a) or (b), the administrator may impose an administrative fine not exceeding $20,000 for each violation.
(3) The administrator may maintain an action to enforce this chapter in any county.
(4) The administrator may recover the reasonable costs of enforcing the chapter under Subsections (1) through (3), including attorney fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community.
(5) In determining the amount of an administrative fine to impose under Subsection (1) or (2), the administrator shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, the net worth of the violator, and any other factor the administrator considers relevant to the determination of the administrative fine.
(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.

Amended by Chapter 152, 2012 General Session

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

(1) In this section, "insolvent" means:
(a) having generally ceased to pay debts in the ordinary course of business other than as a result of good-faith dispute;
(b) being unable to pay debts as they become due; or
(c) being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C. Sec. 101 et seq.
(2) The administrator may suspend, revoke, or deny renewal of a provider's registration if:
(a) a fact or condition exists that, if it had existed when the registrant applied for registration as a provider, would have been a reason for denying registration;
(b) the provider has committed a material violation of this chapter or a rule or order of the administrator under this chapter;
(c) the provider is insolvent;
(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 Subsection 13-42-122(2), or a person to whom the provider has delegated its obligations under an agreement or this chapter has refused to permit the administrator to make an examination authorized by this chapter,

failed to comply with Subsection 13-42-132(2)(b) no later than 15 days after request, or made a material misrepresentation or omission in complying with Subsection 13-42-132(2)(b); or

(e) the provider has not responded within a reasonable time and in an appropriate manner to communications from the administrator.

(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:

(a) with the administrator's approval, the provider transfers the agreement to another registered provider; or

(b) the provider returns to the individual all unexpended money that is under the provider's control.

(4) If a provider does not comply with Subsection 13-42-122(8) or if the administrator otherwise finds that the public health or safety or general welfare requires emergency action, the administrator may order a summary suspension of the provider's registration, effective on the date specified in the order.

(5) If the administrator suspends, revokes, or denies renewal of the registration of a provider, the administrator 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.

(6) If the administrator suspends or revokes a provider's registration, the provider may appeal and request a hearing pursuant to Title 63G, Chapter 4, Administrative Procedures Act.

Amended by Chapter 152, 2012 General Session

13-42-135 Private enforcement.

(1) If an individual voids an agreement pursuant to 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 the agreement, except amounts paid to creditors, in addition to the recovery under Subsections (3)(c) and (d).

(2) If an individual voids an agreement pursuant to 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 to the provider, in addition to the recovery under Subsection (3)(d).

(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 the violation:

(a) compensatory damages for injury, including noneconomic injury, caused by the violation;

(b) except as otherwise provided in Subsection (4) and subject to adjustment of the dollar amount pursuant to 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;

(c) punitive damages; and

(d) reasonable attorney fees and costs.

(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.

(5) 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 to avoid the error. An error of legal judgment with respect to a provider's obligations under this chapter is not a good-faith error.

If, in connection with a violation, the provider has received 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 of the violation.

(6) The administrator 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.

Amended by Chapter 152, 2012 General Session

13-42-136 Violation of Consumer Sales Practices Act.

If an act or practice of a provider violates both this chapter and Chapter 11, Utah Consumer Sales Practices Act, an individual may not recover under both for the same act or practice.

Enacted by Chapter 154, 2006 General Session

13-42-137 Statute of limitations -- Tolling.

The period prescribed in Subsection 13-2-6(6) is tolled during any period during which the provider or, if different, the defendant has materially and willfully misrepresented information required by this chapter to be disclosed to the individual, if the information so misrepresented is material to the establishment of the liability of the defendant under this chapter.

Amended by Chapter 276, 2018 General Session

13-42-138 Uniformity of application and construction.

In applying and construing this uniform act, consideration shall be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Amended by Chapter 378, 2010 General Session

13-42-139 Relation to Electronic Signatures in Global and National Commerce Act.

This chapter modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

Amended by Chapter 152, 2012 General Session

13-42-140 Transitional provisions -- Application to existing transactions.

(1) Transactions entered into before July 1, 2007 and the rights, duties, and interests resulting from them may be completed, terminated, or enforced as required or permitted by a law amended, repealed, or modified by this chapter as though the amendment, repeal, or modification had not occurred.

(2)

(a) A person registered under Chapter 21, Credit Services Organizations Act, on June 30, 2007, that is required to be registered under this chapter on July 1, 2007, shall be considered to be registered under this chapter until the license in effect on June 30, 2007, expires.

(b) Notwithstanding Subsection (2)(a), except for the registration requirement, a person subject to this chapter shall comply with this chapter for any transaction entered into on or after July 1, 2007.

Enacted by Chapter 154, 2006 General Session

13-42-141 Severability.

If any provision of this chapter or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

Enacted by Chapter 154, 2006 General Session

Chapter 43
Property Rights Ombudsman Act

Part 1
General Provisions

13-43-101 Title.

This chapter is known as the "Property Rights Ombudsman Act."

Enacted by Chapter 258, 2006 General Session

13-43-102 Definitions.

As used in this chapter:

(1) "Constitutional taking" or "taking" means a governmental action resulting in a taking of real property that requires compensation to the owner of the property under:
  (a) the Fifth or Fourteenth Amendment of the Constitution of the United States; or
  (b) Utah Constitution Article I, Section 22.
(2) "Takings and eminent domain law" means the provisions of the federal and state constitutions, the case law interpreting those provisions, and any relevant statutory provisions that:
  (a) involve constitutional issues arising from the use or ownership of real property;
  (b) require a governmental unit to compensate a real property owner for a constitutional taking; or
  (c) provide for relocation assistance to those persons who are displaced by the use of eminent domain.

Enacted by Chapter 258, 2006 General Session

Part 2
Office of the Property Rights Ombudsman

13-43-201 Office of the Property Rights Ombudsman.

(1) There is created an Office of the Property Rights Ombudsman in the Department of Commerce.
(2) The executive director of the Department of Commerce, with the concurrence of the Land Use and Eminent Domain Advisory Board created in Section 13-43-202, shall appoint attorneys

with background or expertise in takings, eminent domain, and land use law to fill legal positions within the Office of the Property Rights Ombudsman.

(3) A person appointed under this section is an exempt employee.

(4) An attorney appointed under this section is an at-will employee who may be terminated without cause by:

(a) the executive director of the Department of Commerce; or

(b) an action of the land Use and Eminent Domain Advisory Board.

Enacted by Chapter 258, 2006 General Session

13-43-202 Land Use and Eminent Domain Advisory Board -- Appointment -- Compensation -- Duties.

(1) There is created the Land Use and Eminent Domain Advisory Board, within the Office of the Property Rights Ombudsman, consisting of the following seven members:

(a) one individual representing special service districts, nominated by the Utah Association of Special Districts;

(b) one individual representing municipal government, nominated by the Utah League of Cities and Towns;

(c) one individual representing county government, nominated by the Utah Association of Counties;

(d) one individual representing the residential construction industry, nominated by the Utah Home Builders Association;

(e) one individual representing the real estate industry, nominated by the Utah Association of Realtors;

(f) one individual representing the land development community, jointly nominated by the Utah Association of Realtors and the Utah Home Builders Association; and

(g) one individual who:

(i) is a citizen with experience in land use issues;

(ii) does not hold public office; and

(iii) is not currently employed, nor has been employed in the previous 12 months, by any of the entities or industries listed in Subsections (1)(a) through (f).

(2) After receiving nominations, the governor shall appoint members to the board.

(3) The term of office of each member is four years, except that the governor shall appoint three of the members of the board to an initial two-year term.

(4) Each mid-term vacancy shall be filled for the unexpired term in the same manner as an appointment under Subsections (1) and (2).

(5)

(a) Board members shall elect a chair from their number and establish rules for the organization and operation of the board.

(b) Five members of the board constitute a quorum for the conduct of the board's business.

(c) The affirmative vote of five members is required to constitute the decision of the board on any matter.

(6) A member may not receive compensation or benefits for the member's service, but may receive per diem and travel expenses in accordance with:

(a) Section 63A-3-106;

(b) Section 63A-3-107; and

(c) rules made by the Division of Finance pursuant to Sections 63A-3-106 and 63A-3-107.

(7) A member need not give a bond for the performance of official duties.

(8) The Office of the Property Rights Ombudsman shall provide staff to the board.
(9) The board shall:
(a) receive reports from the Office of the Property Rights Ombudsman that are requested by the board;
(b) establish rules of conduct and performance for the Office of the Property Rights Ombudsman;
(c) receive donations or contributions from any source for the Office of the Property Rights Ombudsman's benefit;
(d) subject to any restriction placed on a donation or contribution received under Subsection (9)(c), authorize the expenditure of donations or contributions for the Office of the Property Rights Ombudsman's benefit;
(e) receive budget recommendations from the Office of the Property Rights Ombudsman; and
(f) revise budget recommendations received under Subsection (9)(e).
(10) The board shall maintain a resource list of qualified arbitrators and mediators who may be appointed under Section 13-43-204 and qualified persons who may be appointed to render advisory opinions under Section 13-43-205.

Amended by Chapter 3, 2021 Special Session 1

13-43-203 Office of the Property Rights Ombudsman -- Duties.
(1) The Office of the Property Rights Ombudsman shall:
(a) develop and maintain expertise in and understanding of takings, eminent domain, and land use law;
(b) clearly identify the specific information that is prepared for distribution to property owners whose land is being acquired under the provisions of Section 78B-6-505;
(c) assist state agencies and local governments in developing the guidelines required by Title 63L, Chapter 4, Constitutional Takings Issues Act;
(d) at the request of a state agency or local government, assist the state agency or local government, in analyzing actions with potential takings implications or other land use issues;
(e) advise real property owners who:
(i) have a legitimate potential or actual takings claim against a state or local government entity or have questions about takings, eminent domain, and land use law; or
(ii) own a parcel of property that is landlocked, as to the owner's rights and options with respect to obtaining access to a public street;
(f) identify state or local government actions that have potential takings implications and, if appropriate, advise those state or local government entities about those implications;
(g) provide information to private citizens, civic groups, government entities, and other interested parties about takings, eminent domain, and land use law and their rights, including a right to just compensation, and responsibilities under the takings, eminent domain, or land use laws through seminars and publications, and by other appropriate means;
(h)
(i) provide the information described in Section 78B-6-505 on the Office of the Property Rights Ombudsman's website in a form that is easily accessible; and
(ii) ensure that the information is current; and
(i)
(i) provide education and training regarding:
(A) the drafting and application of land use laws and regulations; and
(B) land use dispute resolution; and

(ii) use any money transmitted in accordance with Subsection 15A-1-209(5) to pay for any expenses required to provide the education and training described in Subsection (1)(i)(i), including grants to a land use training organization that:
(A) the Land Use and Eminent Domain Advisory Board, created in Section 13-43-202, selects and proposes; and
(B) the property rights ombudsman and the executive director of the Department of Commerce jointly approve.

(2)
(a) Neither the Office of the Property Rights Ombudsman nor its individual attorneys may represent private parties, state agencies, local governments, or any other individual or entity in a legal action that arises from or relates to a matter addressed in this chapter.
(b) An action by an attorney employed by the Office of the Property Rights Ombudsman, by a neutral third party acting as mediator or arbitrator under Section 13-43-204, or by a neutral third party rendering an advisory opinion under Section 13-43-205 or 13-43-206, taken within the scope of the duties set forth in this chapter, does not create an attorney-client relationship between the Office of the Property Rights Ombudsman, or the office's attorneys or appointees, and an individual or entity.

(3) No member of the Office of the Property Rights Ombudsman nor a neutral third party rendering an advisory opinion under Section 13-43-205 or 13-43-206, may be compelled to testify in a civil action filed concerning the subject matter of any review, mediation, or arbitration by, or arranged through, the office.

(4)
(a) Except as provided in Subsection (4)(b), evidence of a review by the Office of the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action.
(b) Subsection (4)(a) does not apply to:
(i) actions brought under authority of Title 78A, Chapter 8, Small Claims Courts;
(ii) a judicial confirmation or review of the arbitration itself as authorized in Title 78B, Chapter 11, Utah Uniform Arbitration Act;
(iii) actions for de novo review of an arbitration award or issue brought under the authority of Subsection 13-43-204(3)(a)(i); or
(iv) advisory opinions provided for in Sections 13-43-205 and 13-43-206.

Amended by Chapter 215, 2018 General Session

13-43-204 Office of the Property Rights Ombudsman -- Arbitration or mediation of disputes.

(1) If requested by the private property owner, or in the case of a water conveyance facility either the private property owner or the facility owner of the water conveyance facility, and if otherwise appropriate, the Office of the Property Rights Ombudsman shall mediate, or conduct or arrange arbitration for:
(a) a dispute between the owner and a government entity or other type of condemning entity:
(i) involving taking or eminent domain issues;
(ii) involved in an action for eminent domain under Title 78B, Chapter 6, Part 5, Eminent Domain; or
(iii) involving relocation assistance under Title 57, Chapter 12, Utah Relocation Assistance Act; or
(b) the private property owner and the facility owner of a water conveyance facility as described in Section 73-1-15.5 regarding:

(i) the relocation of the water conveyance facility; or
(ii) a modification to the method of water delivery of the water conveyance facility.
(2) If arbitration or mediation is requested by a private property owner under this section, Section 57-12-14, or 78B-6-522, or either the private property owner or the facility owner of a water conveyance facility under Section 73-1-15.5, and arranged by the Office of the Property Rights Ombudsman, the parties shall participate in the mediation or arbitration as if the matter were ordered to mediation or arbitration by a court.
(3)
(a)
(i) In conducting or arranging for arbitration under Subsection (1), the Office of the Property Rights Ombudsman shall follow the procedures and requirements of Title 78B, Chapter 11, Utah Uniform Arbitration Act.
(ii) In applying Title 78B, Chapter 11, Utah Uniform Arbitration Act, the arbitrator and parties shall treat the matter as if:
(A) it were ordered to arbitration by a court; and
(B) the Office of the Property Rights Ombudsman or other arbitrator chosen as provided for in this section was appointed as arbitrator by the court.
(iii) For the purpose of an arbitration conducted under this section, if the dispute to be arbitrated is not already the subject of legal action, the district court having jurisdiction over the county where the private property involved in the dispute is located is the court referred to in Title 78B, Chapter 11, Utah Uniform Arbitration Act.
(iv) An arbitration award under this chapter may not be vacated under the provisions of Subsection 78B-11-124(1)(e) because of the lack of an arbitration agreement between the parties.
(b) The Office of the Property Rights Ombudsman shall issue a written statement declining to mediate, arbitrate, or to appoint an arbitrator when, in the opinion of the Office of the Property Rights Ombudsman:
(i) the issues are not ripe for review;
(ii) assuming the alleged facts are true, no cause of action exists under United States or Utah law;
(iii) all issues raised are beyond the scope of the Office of the Property Rights Ombudsman's statutory duty to review; or
(iv) the mediation or arbitration is otherwise not appropriate.
(c)
(i) The Office of the Property Rights Ombudsman shall appoint another person to arbitrate a dispute when:
(A) either party objects to the Office of the Property Rights Ombudsman serving as the arbitrator and agrees to pay for the services of another arbitrator;
(B) the Office of the Property Rights Ombudsman declines to arbitrate the dispute for a reason other than those stated in Subsection (3)(b) and one or both parties are willing to pay for the services of another arbitrator; or
(C) the Office of the Property Rights Ombudsman determines that it is appropriate to appoint another person to arbitrate the dispute with no charge to the parties for the services of the appointed arbitrator.
(ii) In appointing another person to arbitrate a dispute, the Office of the Property Rights Ombudsman shall appoint an arbitrator who is agreeable to:
(A) both parties; or
(B) the Office of the Property Rights Ombudsman and the party paying for the arbitrator.

(iii) The Office of the Property Rights Ombudsman may, on its own initiative or upon agreement of both parties, appoint a panel of arbitrators to conduct the arbitration.

(iv) The Department of Commerce may pay an arbitrator per diem and reimburse expenses incurred in the performance of the arbitrator's duties at the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

(d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law, regulations, and rules of Utah and the United States in conducting the arbitration and in determining the award.

(e)

(i) The property owner and government entity, or other condemning entity, may agree in advance of arbitration that the arbitration is binding and that no de novo review may occur.

(ii) The private property owner and facility owner of a water conveyance facility, as described in Section 73-1-15.5, may agree in advance of arbitration that the arbitration is binding and that no de novo review may occur.

(f) Arbitration by or through the Office of the Property Rights Ombudsman is not necessary before bringing legal action to adjudicate any claim.

(g) The lack of arbitration by or through the Office of the Property Rights Ombudsman does not constitute, and may not be interpreted as constituting, a failure to exhaust available administrative remedies or as a bar to bringing legal action.

(h) Arbitration under this section is not subject to Title 63G, Chapter 4, Administrative Procedures Act, or Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act.

(i) Within 30 days after an arbitrator issues a final award, and except as provided in Subsection (3)(e), any party to the arbitration may submit the dispute, the award, or any issue upon which the award is based, to the district court for review by trial de novo.

(4) The filing with the Office of the Property Rights Ombudsman of a request for mediation or arbitration of a constitutional taking issue does not stay:

(a) a county or municipal land use decision;

(b) a land use appeal authority decision; or

(c) the occupancy of the property.

(5) A member of the Office of the Property Rights Ombudsman, or an arbitrator appointed by the office, may not be compelled to testify in a civil action filed concerning the subject matter of any review, mediation, or arbitration by the Office of the Property Rights Ombudsman.

Amended by Chapter 349, 2018 General Session

13-43-205 Advisory opinion.

(1) A local government, private entity, or a potentially aggrieved person may, in accordance with Section 13-43-206, request a written advisory opinion:

(a) from a neutral third party to determine compliance with:

(i) Section 10-9a-505.5 and Sections 10-9a-507 through 10-9a-511;

(ii) Section 17-27a-505.5 and Sections 17-27a-506 through 17-27a-510; and

(iii)Title 11, Chapter 36a, Impact Fees Act; and

(b) at any time before:

(i) a final decision on a land use application by a local appeal authority under Title 11, Chapter 36a, Impact Fees Act, or Section 10-9a-708 or 17-27a-708;

(ii) the deadline for filing an appeal with the district court under Title 11, Chapter 36a, Impact Fees Act, or Section 10-9a-801 or 17-27a-801, if no local appeal authority is designated to hear the issue that is the subject of the request for an advisory opinion; or

(iii) the enactment of an impact fee, if the request for an advisory opinion is a request to review and comment on a proposed impact fee facilities plan or a proposed impact fee analysis as defined in Section 11-36a-102.

(2) A private property owner may, in accordance with Section 13-43-206, request a written advisory opinion from a neutral third party to determine if a condemning entity:

(a) is in occupancy of the owner's property;

(b) is occupying the property:

(i) for a public use authorized by law; and

(ii) without colorable legal or equitable authority; and

(c) continues to occupy the property without the owner's consent, the occupancy would constitute a taking of private property for a public use without just compensation.

(3) An advisory opinion issued under Subsection (2) may justify an award of attorney fees against a condemning entity in accordance with Section 13-43-206 only if the court finds that the condemning entity:

(a) does not have a colorable claim or defense for the entity's actions; and

(b) continued occupancy without payment of just compensation and in disregard of the advisory opinion.

Amended by Chapter 59, 2014 General Session

13-43-206 Advisory opinion -- Process.

(1) A request for an advisory opinion under Section 13-43-205 shall be:

(a) filed with the Office of the Property Rights Ombudsman; and

(b) accompanied by a filing fee of $150.

(2) The Office of the Property Rights Ombudsman may establish policies providing for partial fee waivers for a person who is financially unable to pay the entire fee.

(3) A person requesting an advisory opinion need not exhaust administrative remedies, including remedies described under Section 10-9a-801 or 17-27a-801, before requesting an advisory opinion.

(4) The Office of the Property Rights Ombudsman shall:

(a) deliver notice of the request to opposing parties indicated in the request;

(b) inquire of all parties if there are other necessary parties to the dispute; and

(c) deliver notice to all necessary parties.

(5) If a governmental entity is an opposing party, the Office of the Property Rights Ombudsman shall deliver the request in the manner provided for in Section 63G-7-401.

(6)

(a) The Office of the Property Rights Ombudsman shall promptly determine if the parties can agree to a neutral third party to issue an advisory opinion.

(b) If no agreement can be reached within four business days after notice is delivered pursuant to Subsections (4) and (5), the Office of the Property Rights Ombudsman shall appoint a neutral third party to issue an advisory opinion.

(7) All parties that are the subject of the request for advisory opinion shall:

(a) share equally in the cost of the advisory opinion; and

(b) provide financial assurance for payment that the neutral third party requires.

(8) The neutral third party shall comply with the provisions of Section 78B-11-109, and shall promptly:

(a) seek a response from all necessary parties to the issues raised in the request for advisory opinion;

(b) investigate and consider all responses; and
(c) issue a written advisory opinion within 15 business days after the appointment of the neutral third party under Subsection (6)(b), unless:
(i) the parties agree to extend the deadline; or
(ii) the neutral third party determines that the matter is complex and requires additional time to render an opinion, which may not exceed 30 calendar days.
(9) An advisory opinion shall include a statement of the facts and law supporting the opinion's conclusions.
(10)
(a) Copies of any advisory opinion issued by the Office of the Property Rights Ombudsman shall be delivered as soon as practicable to all necessary parties.
(b) A copy of the advisory opinion shall be delivered to the government entity in the manner provided for in Section 63G-7-401.
(11) An advisory opinion issued by the Office of the Property Rights Ombudsman is not binding on any party to, nor admissible as evidence in, a dispute involving land use law except as provided in Subsection (12).
(12) Subject to Subsection (13), if a dispute involving land use law results in the issuance of an advisory opinion described in this section, if the same issue that is the subject of the advisory opinion is subsequently litigated on the same facts and circumstances at issue in the advisory opinion, and if the relevant issue is resolved consistent with the advisory opinion, the substantially prevailing party on that cause of action may collect:
(a) reasonable attorney fees and court costs pertaining to the development of that cause of action from the date of the delivery of the advisory opinion to the date of the court's resolution; and
(b) subject to Subsection (13), if the court finds that the opposing party knowingly and intentionally violated the law governing that cause of action, a civil penalty of $250 per day:
(i) beginning on the later of:
(A) 30 days after the day on which the advisory opinion was delivered; or
(B) the day on which the action was filed; and
(ii) ending the day on which the court enters a final judgment.
(13)
(a) Subsection (12) does not apply unless the resolution described in Subsection (12) is final.
(b) A court may not impose a civil penalty under Subsection (12)(b) against or in favor of a party other than the land use applicant or a government entity.
(14) In addition to any amounts awarded under Subsection (12), if the dispute described in Subsection (12) in whole or in part concerns an impact fee, and if the result of the litigation requires that the political subdivision or private entity refund the impact fee in accordance with Section 11-36a-603, the political subdivision or private entity shall refund the impact fee in an amount that is based on the difference between the impact fee paid and what the impact fee should have been if the political subdivision or private entity had correctly calculated the impact fee.
(15) Nothing in this section is intended to create any new cause of action under land use law.
(16) Unless filed by the local government, a request for an advisory opinion under Section 13-43-205 does not stay the progress of a land use application, the effect of a land use decision, or the condemning entity's occupancy of a property.

Amended by Chapter 4, 2020 Special Session 5

Chapter 44
Protection of Personal Information Act

Part 1
General Provisions

13-44-101 Title.

This chapter is known as the "Protection of Personal Information Act."

Amended by Chapter 61, 2009 General Session

13-44-102 Definitions.

As used in this chapter:

(1)

(a) "Breach of system security" means an unauthorized acquisition of computerized data maintained by a person that compromises the security, confidentiality, or integrity of personal information.

(b) "Breach of system security" does not include the acquisition of personal information by an employee or agent of the person possessing unencrypted computerized data unless the personal information is used for an unlawful purpose or disclosed in an unauthorized manner.

(2) "Consumer" means a natural person.

(3) "Financial institution" means the same as that term is defined in 15 U.S.C. Sec. 6809.

(4)

(a) "Personal information" means a person's first name or first initial and last name, combined with any one or more of the following data elements relating to that person when either the name or date element is unencrypted or not protected by another method that renders the data unreadable or unusable:

(i) Social Security number;

(ii)

(A) financial account number, or credit or debit card number; and

(B) any required security code, access code, or password that would permit access to the person's account; or

(iii) driver license number or state identification card number.

(b) "Personal information" does not include information regardless of its source, contained in federal, state, or local government records or in widely distributed media that are lawfully made available to the general public.

(5) "Record" includes materials maintained in any form, including paper and electronic.

Amended by Chapter 348, 2019 General Session

13-44-103 Applicability.

This chapter does not apply to a financial institution or an affiliate, as defined in 15 U.S.C. Sec. 6809, of a financial institution.

Enacted by Chapter 348, 2019 General Session

Part 2
Protection of Personal Information

13-44-201 Protection of personal information.

(1) Any person who conducts business in the state and maintains personal information shall implement and maintain reasonable procedures to:
  (a) prevent unlawful use or disclosure of personal information collected or maintained in the regular course of business; and
  (b) destroy, or arrange for the destruction of, records containing personal information that are not to be retained by the person.
(2) The destruction of records under Subsection (1)(b) shall be by:
  (a) shredding;
  (b) erasing; or
  (c) otherwise modifying the personal information to make the information indecipherable.

Amended by Chapter 348, 2019 General Session

13-44-202 Personal information -- Disclosure of system security breach.

(1)
  (a) A person who owns or licenses computerized data that includes personal information concerning a Utah resident shall, when the person becomes aware of a breach of system security, conduct in good faith a reasonable and prompt investigation to determine the likelihood that personal information has been or will be misused for identity theft or fraud purposes.
  (b) If an investigation under Subsection (1)(a) reveals that the misuse of personal information for identity theft or fraud purposes has occurred, or is reasonably likely to occur, the person shall provide notification to each affected Utah resident.
(2) A person required to provide notification under Subsection (1) shall provide the notification in the most expedient time possible without unreasonable delay:
  (a) considering legitimate investigative needs of law enforcement, as provided in Subsection (4)(a);
  (b) after determining the scope of the breach of system security; and
  (c) after restoring the reasonable integrity of the system.
(3)
  (a) A person who maintains computerized data that includes personal information that the person does not own or license shall notify and cooperate with the owner or licensee of the information of any breach of system security immediately following the person's discovery of the breach if misuse of the personal information occurs or is reasonably likely to occur.
  (b) Cooperation under Subsection (3)(a) includes sharing information relevant to the breach with the owner or licensee of the information.
(4)
  (a) Notwithstanding Subsection (2), a person may delay providing notification under Subsection (1) at the request of a law enforcement agency that determines that notification may impede a criminal investigation.

(b) A person who delays providing notification under Subsection (4)(a) shall provide notification in good faith without unreasonable delay in the most expedient time possible after the law enforcement agency informs the person that notification will no longer impede the criminal investigation.

(5)

(a) A notification required by this section may be provided:

(i) in writing by first-class mail to the most recent address the person has for the resident;

(ii) electronically, if the person's primary method of communication with the resident is by electronic means, or if provided in accordance with the consumer disclosure provisions of 15 U.S.C. Section 7001;

(iii) by telephone, including through the use of automatic dialing technology not prohibited by other law; or

(iv) for residents of the state for whom notification in a manner described in Subsections (5)(a)(i) through (iii) is not feasible, by publishing notice of the breach of system security:

(A) in a newspaper of general circulation; and

(B) as required in Section 45-1-101.

(b) If a person maintains the person's own notification procedures as part of an information security policy for the treatment of personal information the person is considered to be in compliance with this chapter's notification requirements if the procedures are otherwise consistent with this chapter's timing requirements and the person notifies each affected Utah resident in accordance with the person's information security policy in the event of a breach.

(c) A person who is regulated by state or federal law and maintains procedures for a breach of system security under applicable law established by the primary state or federal regulator is considered to be in compliance with this part if the person notifies each affected Utah resident in accordance with the other applicable law in the event of a breach.

(6) A waiver of this section is contrary to public policy and is void and unenforceable.

Amended by Chapter 348, 2019 General Session

Part 3
Enforcement

13-44-301 Enforcement -- Confidentiality agreement -- Penalties.

(1) The attorney general may enforce this chapter's provisions.

(2)

(a) Nothing in this chapter creates a private right of action.

(b) Nothing in this chapter affects any private right of action existing under other law, including contract or tort.

(3) A person who violates this chapter's provisions is subject to a civil penalty of:

(a) no greater than $2,500 for a violation or series of violations concerning a specific consumer; and

(b) no greater than $100,000 in the aggregate for related violations concerning more than one consumer, unless:

(i) the violations concern:

(A) 10,000 or more consumers who are residents of the state; and

(B) 10,000 or more consumers who are residents of other states; or

(ii) the person agrees to settle for a greater amount.

(4)

(a) In addition to the penalties provided in Subsection (3), the attorney general may seek, in an action brought under this chapter:

(i) injunctive relief to prevent future violations of this chapter; and

(ii) attorney fees and costs.

(b) The attorney general shall bring an action under this chapter in:

(i) the district court located in Salt Lake City; or

(ii) the district court for the district in which resides a consumer who is affected by the violation.

(5) The attorney general shall deposit any amount received under Subsection (3), (4), or (10) into the Attorney General Litigation Fund created in Section 76-10-3114.

(6) In enforcing this chapter, the attorney general may:

(a) investigate the actions of any person alleged to violate Section 13-44-201 or 13-44-202;

(b) subpoena a witness;

(c) subpoena a document or other evidence;

(d) require the production of books, papers, contracts, records, or other information relevant to an investigation;

(e) conduct an adjudication in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to enforce a civil provision under this chapter; and

(f) enter into a confidentiality agreement in accordance with Subsection (7).

(7)

(a) If the attorney general has reasonable cause to believe that an individual is in possession, custody, or control of information that is relevant to enforcing this chapter, the attorney general may enter into a confidentiality agreement with the individual.

(b) In a civil action brought under this chapter, a court may issue a confidentiality order that incorporates the confidentiality agreement described in Subsection (7)(a).

(c) A confidentiality agreement entered into under Subsection (7)(a) or a confidentiality order issued under Subsection (7)(b) may:

(i) address a procedure;

(ii) address testimony taken, a document produced, or material produced under this section;

(iii) provide whom may access testimony taken, a document produced, or material produced under this section;

(iv) provide for safeguarding testimony taken, a document produced, or material produced under this section; or

(v) require that the attorney general:

(A) return a document or material to an individual; or

(B) notwithstanding Section 63A-12-105 or a retention schedule created in accordance with Section 63G-2-604, destroy the document or material at a designated time.

(8) A subpoena issued under Subsection (6) may be served by certified mail.

(9) A person's failure to respond to a request or subpoena from the attorney general under Subsection (6)(b), (c), or (d) is a violation of this chapter.

(10)

(a) The attorney general may inspect and copy all records related to the business conducted by the person alleged to have violated this chapter, including records located outside the state.

(b) For records located outside of the state, the person who is found to have violated this chapter shall pay the attorney general's expenses to inspect the records, including travel costs.

(c) Upon notification from the attorney general of the attorney general's intent to inspect records located outside of the state, the person who is found to have violated this chapter shall pay

the attorney general $500, or a higher amount if $500 is estimated to be insufficient, to cover the attorney general's expenses to inspect the records.

(d) To the extent an amount paid to the attorney general by a person who is found to have violated this chapter is not expended by the attorney general, the amount shall be refunded to the person who is found to have violated this chapter.

(e) The Division of Corporations and Commercial Code or any other relevant entity shall revoke any authorization to do business in this state of a person who fails to pay any amount required under this Subsection (10).

(11)

(a) Subject to Subsection (11)(c), the attorney general shall keep confidential a procedure agreed to, testimony taken, a document produced, or material produced under this section pursuant to a subpoena, confidentiality agreement, or confidentiality order, unless the individual who agreed to the procedure, provided testimony, produced the document, or produced material waives confidentiality in writing.

(b) Subject to Subsections (11)(c) and (11)(d), the attorney general may use, in an enforcement action taken under this section, testimony taken, a document produced, or material produced under this section to the extent the use is not restricted or prohibited by a confidentiality agreement or a confidentiality order.

(c) The attorney general may use, in an enforcement action taken under this section, testimony taken, a document produced, or material produced under this section that is restricted or prohibited from use by a confidentiality agreement or a confidentiality order if the individual who provided testimony or produced the document or material waives the restriction or prohibition in writing.

(d) The attorney general may disclose testimony taken, a document produced, or material produced under this section, without consent of the individual who provided the testimony or produced the document or material, or the consent of an individual being investigated, to:

(i) a grand jury; or

(ii) a federal or state law enforcement officer, if the person from whom the information was obtained is notified 20 days or greater before the day on which the information is disclosed, and the federal or state law enforcement officer certifies that the federal or state law enforcement officer will:

(A) maintain the confidentiality of the testimony, document, or material; and

(B) use the testimony, document, or material solely for an official law enforcement purpose.

(12)

(a) An administrative action filed under this chapter shall be commenced no later than 10 years after the day on which the alleged breach of system security last occurred.

(b) A civil action under this chapter shall be commenced no later than five years after the day on which the alleged breach of system security last occurred.

Amended by Chapter 348, 2019 General Session

Chapter 45
Consumer Credit Protection Act

Part 1

General Provisions

13-45-101 Title.

This chapter is known as the "Consumer Credit Protection Act."

Enacted by Chapter 344, 2006 General Session

13-45-102 Definitions.

As used in this chapter:

(1) "Consumer" means an individual who is not a protected consumer.

(2) "Consumer reporting agency" means a person who, for fees, dues, or on a cooperative basis, regularly engages in whole or in part in the practice of assembling or evaluating information concerning a consumer's credit or other information for the purpose of furnishing a credit report to another person.

(3) "Consumer who is subject to a protected consumer security freeze" means an individual:

(a) for whom a credit reporting agency placed a security freeze under Section 13-45-503; and

(b) who, on the day on which a request for the removal of the security freeze is submitted under Section 13-45-504, is not a protected consumer.

(4) "Credit report" means a consumer report, as defined in 15 U.S.C. Sec. 1681a, that is used or collected in whole or part for the purpose of serving as a factor in establishing a consumer's eligibility for credit for personal, family, or household purposes.

(5) "File" is as defined in 15 U.S.C. Sec. 1681a.

(6) "Incapacitated person" means an individual who is incapacitated, as defined in Section 75-1-201.

(7) "Normal business hours" means Sunday through Saturday, between the hours of 6:00 a.m. and 9:30 p.m., Mountain Standard or Mountain Daylight Time.

(8)

(a) "Personal information" means personally identifiable financial information:

(i) provided by a consumer to another person;

(ii) resulting from any transaction with the consumer or any service performed for the consumer; or

(iii) otherwise obtained by another person.

(b) "Personal information" does not include:

(i) publicly available information, as that term is defined by the regulations prescribed under 15 U.S.C. Sec. 6804; or

(ii) any list, description, or other grouping of consumers, and publicly available information pertaining to the consumers, that is derived without using any nonpublic personal information.

(c) Notwithstanding Subsection (8)(b), "personal information" includes any list, description, or other grouping of consumers, and publicly available information pertaining to the consumers, that is derived using any nonpublic personal information other than publicly available information.

(9) "Proper identification" has the same meaning as in 15 U.S.C. Sec. 1681h(a)(1), and includes:

(a) the consumer's full name, including first, last, and middle names and any suffix;

(b) any name the consumer previously used;

(c) the consumer's current and recent full addresses, including street address, any apartment number, city, state, and ZIP code;

(d) the consumer's Social Security number; and
(e) the consumer's date of birth.
(10) "Protected consumer" means an individual who, at the time a request for a security freeze is made, is:
(a) less than 16 years of age;
(b) an incapacitated person; or
(c) a protected person.
(11) "Protected person" means the same as that term is defined in Section 75-5b-102.
(12) "Record" means a compilation of information that:
(a) identifies a protected consumer;
(b) is created by a consumer reporting agency solely for the purpose of complying with this section; and
(c) may not be created or used to consider the protected consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living.
(13) "Representative" means a person who provides to a consumer reporting agency sufficient proof of authority to act on behalf of a protected consumer.
(14)
(a) "Sufficient proof of authority" means documentation that shows that a person has authority to act on behalf of a protected consumer.
(b) "Sufficient proof of authority" includes:
(i) a court order;
(ii) a lawfully executed power of attorney; or
(iii) a written, notarized statement signed by the person that expressly describes the person's authority to act on behalf of the protected consumer.
(15)
(a) "Sufficient proof of identification" means information or documentation that identifies a protected consumer or a representative.
(b) "Sufficient proof of identification" includes:
(i) a Social Security number or a copy of a Social Security card issued by the United States Social Security Administration;
(ii) a certified or official copy of a birth certificate; or
(iii) a copy of a government issued driver license or identification card.

Amended by Chapter 191, 2015 General Session

Part 2
Security Freeze

13-45-201 Security freeze.
(1) As used in this part:
(a) "Security freeze" means a prohibition, consistent with the provisions of this section, on a consumer reporting agency's furnishing of a consumer's credit report to a third party intending to use the credit report to determine the consumer's eligibility for credit.
(b) "Unique personal identifier" means a personal identification number, password, or other secure form of identity verification accepted by a consumer reporting agency and intended for

use by a consumer to place, remove, or temporarily remove a security freeze in accordance with this chapter.

(2)

(a) A consumer may request a security freeze on a consumer's credit report by:

(i) submitting a request for a security freeze to the consumer reporting agency by:

(A) certified mail to the postal address identified by the consumer reporting agency in accordance with Subsection (5); or

(B) electronic means developed by the consumer reporting agency in accordance with Subsection (5); and

(ii) providing proper identification to the consumer reporting agency.

(b) Upon receipt of a request described in Subsection (2)(a), the consumer reporting agency shall:

(i) place a security freeze on the consumer's credit report:

(A) if the consumer submits the request by certified mail, as soon as practicable but no later than five business days after the business day on which the consumer reporting agency receives the request and the consumer's proper identification;

(B) if the consumer submits the request by a contact method described in Subsection (5)(b)(ii) or (iii) that is not a mobile application, as soon as practicable but no later than 24 hours after the consumer reporting agency receives the request and the consumer's proper identification; or

(C) if the consumer submits the request by mobile application, within 15 minutes after the consumer reporting agency receives the request and the consumer's proper identification;

(ii) provide the consumer a unique personal identifier, unless the consumer reporting agency previously provided the consumer a unique personal identifier; and

(iii) within five business days after the business day on which the consumer reporting agency places the security freeze, provide the consumer confirmation that the consumer reporting agency placed the security freeze.

(3) If a security freeze is in place, a consumer reporting agency may not release a consumer's credit report, or information from the credit report, to a third party that intends to use the information to determine a consumer's eligibility for credit without prior authorization from the consumer.

(4)

(a) Notwithstanding Subsection (3), a consumer reporting agency may communicate to a third party requesting a consumer's credit report that a security freeze is in effect on the consumer's credit report.

(b) If a third party requesting a consumer's credit report in connection with the consumer's application for credit is notified of the existence of a security freeze under Subsection (4)(a), the third party may treat the consumer's application as incomplete.

(5)

(a) A consumer reporting agency shall develop a contact method to receive and process a consumer's request to place, remove, or temporarily remove a security freeze.

(b) A contact method under Subsection (5)(a) shall include:

(i) a postal address;

(ii) an electronic contact method chosen by the consumer reporting agency, which may include the use of fax, Internet, or other electronic means; and

(iii) the use of telephone in a manner that is consistent with any federal requirements placed on the consumer reporting agency.

(6) A security freeze placed under this section may be removed only in accordance with Section 13-45-202.
(7)
(a) The time requirement described in Subsection (2)(b)(i)(B) or (C), as applicable, does not apply if the consumer reporting agency's ability to place the security freeze is prevented by:
(i) an act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomena;
(ii) unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrence;
(iii) operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption;
(iv) governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives;
(v) regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems; or
(vi) commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled.
(b) In the event of a circumstance described in Subsection (7)(a), the consumer reporting agency shall place the security freeze as soon as practicable.

Amended by Chapter 36, 2018 General Session

13-45-202 Removal of security freeze -- Requirements and timing.
(1) A consumer reporting agency shall remove a security freeze from a consumer's credit report only if:
(a)
(i) the consumer reporting agency receives the consumer's request through the contact method established and required in accordance with Subsection 13-45-201(5); and
(ii) the consumer reporting agency receives the consumer's proper identification or unique personal identifier; or
(b) the consumer makes a material misrepresentation of fact in connection with the placement of the security freeze and the consumer reporting agency notifies the consumer in writing before removing the security freeze.
(2) A consumer reporting agency shall temporarily remove a security freeze upon receipt of:
(a) the consumer's request through the contact method established by the consumer reporting agency in accordance with Subsection 13-45-201(5);
(b) the consumer's proper identification or unique personal identifier; and
(c) a specific designation of the period of time for which the security freeze is to be removed.
(3) A consumer reporting agency shall remove or temporarily remove a security freeze from a consumer's credit report within:
(a) three business days after the business day on which the consumer's written request to remove the security freeze is received by the consumer reporting agency at the postal address chosen by the consumer reporting agency in accordance with Subsection 13-45-201(5)(b)(i); or
(b) 15 minutes after the consumer's request is received by the consumer reporting agency through a contact method described in Subsection 13-45-201(5)(b)(ii) or (iii), and includes the consumer's unique personal identifier.

(4)
(a) The time requirement described in Subsection (3)(b) does not apply if the consumer reporting agency's ability to remove the security freeze is prevented by:
(i) an act of God, including fire, earthquakes, hurricanes, storms, or similar natural disaster or phenomena;
(ii) unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations, or similar occurrence;
(iii) operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time, or similar disruption;
(iv) governmental action, including emergency orders or regulations, judicial or law enforcement action, or similar directives;
(v) regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer reporting agency's systems; or
(vi) commercially reasonable maintenance of, or repair to, the consumer reporting agency's systems that is unexpected or unscheduled.
(b) In the event of a circumstance described in Subsection (4)(a), the consumer reporting agency shall remove the security freeze as soon as practicable.

Amended by Chapter 36, 2018 General Session

13-45-203 Exceptions.
(1) Notwithstanding Section 13-45-201, a consumer reporting agency may furnish a consumer's credit report to a third party if:
(a)
(i) the purpose of the credit report is to:
(A) use the credit report for purposes permitted under 15 U.S.C. Sec. 1681b(c); or
(B) review the consumer's account with the third party, including for account maintenance or monitoring, credit line increases, or other upgrades or enhancements; or
(C) collect on a financial obligation owed by the consumer to the third party requesting the credit report; or
(ii)
(A) the purpose of the credit report is to:
(I) review the consumer's account with another person; or
(II) collect on a financial obligation owed by the consumer to another person; and
(B) use the credit report for purposes permitted under 15 U.S.C. Sec. 1681b(c); or
(b) the third party requesting the credit report is a subsidiary, affiliate, agent, assignee, or prospective assignee of the person holding the consumer's account or to whom the consumer owes a financial obligation.
(2)
(a) The consumer's request for a security freeze does not prohibit the consumer reporting agency from disclosing the consumer's credit report for other than credit related purposes consistent with the definition of credit report found in Section 13-45-102.
(b) The following list identifies the types of credit report disclosures by consumer reporting agencies to third parties that are not prohibited by a security freeze:
(i) the third party does not use the credit report for the purpose of serving as a factor in establishing a consumer's eligibility for credit;

(ii) the third party is acting under a court order, warrant, or subpoena requiring release of the credit report;
(iii) the third party is a child support agency, or its agent or assignee, acting under Part D, Title IV of the Social Security Act or a similar state law;
(iv) the federal Department of Health and Human Services or a similar state agency, or its agent or assignee, investigating Medicare or Medicaid fraud;
(v)
(A) the purpose of the credit report is to investigate or collect delinquent taxes, assessments, or unpaid court orders; and
(B) the third party is:
(I) the federal Internal Revenue Service;
(II) a state taxing authority;
(III) the Department of Motor Vehicles;
(IV) a county, municipality, or other entity with taxing authority;
(V) a federal, state, or local law enforcement agency; or
(VI) the agent or assignee of any entity listed in Subsections (1)(b) and (2)(b)(v)(B);
(vi) the third party is administering a credit file monitoring subscription to which the consumer has subscribed; or
(vii) the third party requests the credit report for the sole purpose of providing the consumer with a copy of the consumer's credit report or credit score upon the consumer's request.
(3) Section 13-45-201 does not apply to:
(a) a consumer reporting agency, the sole purpose of which is to resell credit information by assembling and merging information contained in the database of another consumer reporting agency and that does not maintain a permanent database of credit information from which a consumer's credit report is produced;
(b) a check services or fraud prevention services company that issues:
(i) reports on incidents of fraud; or
(ii) authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar methods of payment; or
(c) a deposit account information service company that issues reports concerning account closures based on fraud, substantial overdrafts, automated teller machine abuse, or similar information concerning a consumer to a requesting financial institution for the purpose of evaluating a consumer's request to create a deposit account.
(4) Nothing in this chapter prohibits a person from obtaining, aggregating, or using information lawfully obtained from public records in a manner that does not otherwise violate this chapter.

Enacted by Chapter 344, 2006 General Session

13-45-204 Fees for security freeze.
(1) A consumer reporting agency may not charge a fee for placing, removing, or temporarily removing a security freeze.
(2) A consumer reporting agency may not charge a fee to download or install a mobile application through which a person places or removes a security freeze.

Amended by Chapter 36, 2018 General Session

13-45-205 Changes to information in a credit report subject to a security freeze.

(1) If a credit report is subject to a security freeze, a consumer reporting agency shall notify the consumer who is the subject of the credit report within 30 days if the consumer reporting agency changes the consumer's:
  (a) name;
  (b) date of birth;
  (c) Social Security number; or
  (d) address.
(2)
  (a) Notwithstanding Subsection (1), a consumer reporting agency may make technical modifications to information in a credit report that is subject to a security freeze without providing notification to the consumer.
  (b) Technical modifications under Subsection (2)(a) include:
    (i) the addition or subtraction of abbreviations to names and addresses; and
    (ii) transpositions or corrections of incorrect numbering or spelling.
(3) When providing notice of a change of address under Subsection (1), the consumer reporting agency shall provide notice to the consumer at both the new address and the former address.

Enacted by Chapter 344, 2006 General Session

Part 3
Protection of Personal Information

13-45-301 Protection of personal information.
(1) Except as allowed by other law, a person may not display a Social Security number in a manner or location that is likely to be open to public view.
(2) The state, or a branch, agency, or political subdivision of the state, may not employ or contract for the employment of an inmate in any Department of Corrections facility or county jail in any capacity that would allow any inmate access to any other person's personal information.

Enacted by Chapter 344, 2006 General Session

Part 4
Enforcement

13-45-401 Enforcement -- Confidentiality agreement -- Penalties.
(1) The attorney general may enforce the provisions of this chapter.
(2) A person who violates a provision of this chapter is subject to a civil fine of:
  (a) no greater than $2,500 for a violation or series of violations concerning a specific consumer; and
  (b) no greater than $100,000 in the aggregate for related violations concerning more than one consumer, unless:
    (i) the violations concern:
      (A) 10,000 or more consumers who are residents of the state; and
      (B) 10,000 or more consumers who are residents of other states; or
    (ii) the person agrees to settle for a greater amount.

(3)
(a) In addition to the penalties provided in Subsection (2), the attorney general may seek, in an action brought under this chapter:
(i) injunctive relief to prevent future violations of this chapter; and
(ii) attorney fees and costs.
(b) The attorney general shall bring an action under this chapter in:
(i) the district court located in Salt Lake City; or
(ii) the district court for the district in which resides a consumer who is the subject of a credit report on which a violation occurs.
(4) The attorney general shall deposit any amount received under Subsection (2) or (3) into the Attorney General Litigation Fund created in Section 76-10-3114.
(5)
(a) If the attorney general has reasonable cause to believe that an individual is in possession, custody, or control of information that is relevant to enforcing this chapter, the attorney general may enter into a confidentiality agreement with the individual.
(b) In a civil action brought under this chapter, a court may issue a confidentiality order that incorporates the confidentiality agreement described in Subsection (5)(a).
(c) A confidentiality agreement entered into under Subsection (5)(a) or a confidentiality order issued under Subsection (5)(b) may:
(i) address a procedure;
(ii) address testimony taken, a document produced, or material produced under this section;
(iii) provide whom may access testimony taken, a document produced, or material produced under this section;
(iv) provide for safeguarding testimony taken, a document produced, or material produced under this section; or
(v) require that the attorney general:
(A) return a document or material to an individual; or
(B) notwithstanding Section 63A-12-105 or a retention schedule created in accordance with Section 63G-2-604, destroy the document or material at a designated time.
(6)
(a) Subject to Subsection (6)(c), the attorney general shall keep confidential a procedure agreed to, testimony taken, a document produced, or material produced under this section pursuant to a subpoena, confidentiality agreement, or confidentiality order, unless the individual who agreed to the procedure, provided testimony, or produced the document or material waives confidentiality in writing.
(b) Subject to Subsections (6)(c) and (6)(d), the attorney general may use, in an enforcement action taken under this section, testimony taken, a document produced, or material produced under this section to the extent the use is not restricted or prohibited by a confidentiality agreement or a confidentiality order.
(c) The attorney general may use, in an enforcement action taken under this section, testimony taken, a document produced, or material produced under this section that is restricted or prohibited from use by a confidentiality agreement or a confidentiality order if the individual who provided testimony, produced the document, or produced the material waives the restriction or prohibition in writing.
(d) The attorney general may disclose testimony taken, a document produced, or material produced under this section, without consent of the individual who provided the testimony, produced the document, or produced the material, or without the consent of an individual being investigated, to:

(i) a grand jury; or
(ii) a federal or state law enforcement officer, if the person from whom the information was obtained is notified 20 days or greater before the day on which the information is disclosed, and the federal or state law enforcement officer certifies that the federal or state law enforcement officer will:
(A) maintain the confidentiality of the testimony, document, or material; and
(B) use the testimony, document, or material solely for an official law enforcement purpose.
(7) A civil action filed under this chapter shall be commenced no later than five years after the day on which the alleged violation last occurred.

Amended by Chapter 348, 2019 General Session

Part 5
Credit Report Protection for Minors

13-45-501 Title.
This part is known as "Credit Report Protection for Minors."

Enacted by Chapter 191, 2015 General Session

13-45-502 Definitions.
As used in this part, "security freeze" means:
(1) if a consumer reporting agency does not have a file that pertains to a protected consumer, a restriction that:
(a) is placed on the protected consumer's record in accordance with this part; and
(b) except as otherwise provided in this part, prohibits the consumer reporting agency from releasing the protected consumer's record; or
(2) if a consumer reporting agency has a file that pertains to the protected consumer, a restriction that:
(a) is placed on the protected consumer's credit report in accordance with this part; and
(b) except as otherwise provided in this part, prohibits the consumer reporting agency from releasing the protected consumer's credit report or any information derived from the protected consumer's credit report.

Enacted by Chapter 191, 2015 General Session

13-45-503 Applicability.
This part does not apply to the use of a protected consumer's credit report or record by:
(1) a person administering a credit file monitoring subscription service to which:
(a) the protected consumer has subscribed; or
(b) the protected consumer's representative has subscribed on the protected consumer's behalf;
(2) a person who, upon request from the protected consumer or the protected consumer's representative, provides the protected consumer or the protected consumer's representative with a copy of the protected consumer's credit report;
(3) a check services or fraud prevention services company that issues:
(a) reports on incidents of fraud; or

(b) authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers, or similar payment methods;
(4) a deposit account information service company that issues reports regarding account closures due to fraud, substantial overdrafts, automated teller machine abuse, or similar information regarding an individual to inquiring banks or other financial institutions for use only in reviewing an individual's request for a deposit account at the inquiring bank or financial institution;
(5) an insurance company for the purpose of conducting the insurance company's ordinary business;
(6) a consumer reporting agency that:
(a) only resells credit information by assembling and merging information contained in a database of another consumer reporting agency or multiple consumer reporting agencies; and
(b) does not maintain a permanent database of credit information from which new credit reports are produced; or
(7) a consumer reporting agency's database or file that consists of information that:
(a) concerns and is used for:
(i) criminal record information;
(ii) fraud prevention or detection;
(iii) personal loss history information; or
(iv) employment, tenant, or individual background screening; and
(b) is not used for credit granting purposes.

Enacted by Chapter 191, 2015 General Session

13-45-504 Security freeze for protected consumer.
(1) A consumer reporting agency shall place a security freeze for a protected consumer if:
(a) the consumer reporting agency receives a request from the protected consumer's representative for the placement of the security freeze; and
(b) the protected consumer's representative:
(i) submits the request described in Subsection (1)(a):
(A) to the address or other point of contact provided by the consumer reporting agency; and
(B) in the manner specified by the consumer reporting agency;
(ii) submits to the consumer reporting agency:
(A) sufficient proof of identification of the protected consumer;
(B) sufficient proof of identification of the protected consumer's representative; and
(C) sufficient proof of authority to act on behalf of the protected consumer; and
(iii) if applicable, pays the consumer reporting agency a fee described in Subsection 13-45-506(2).
(2) If a consumer reporting agency does not have a file that pertains to a protected consumer when the consumer reporting agency receives a request described in Subsection (1), the consumer reporting agency shall create a record for the protected consumer.
(3) A consumer reporting agency shall place a security freeze for a protected consumer within 30 days after the day on which the consumer reporting agency receives a request described in Subsection (1).
(4) After a consumer reporting agency places a security freeze under this section, the consumer reporting agency may not release the protected consumer's credit report, any information derived from the protected consumer's credit report, or any record created for the protected

consumer, unless the security freeze for the protected consumer is removed in accordance with Section 13-45-505.

(5) A security freeze that is placed in accordance with this section shall remain in effect until:

(a) the protected consumer's representative or the consumer who is subject to a protected consumer security freeze requests the consumer reporting agency remove the security freeze in accordance with Subsection 13-45-505(1); or

(b) the security freeze is removed in accordance with Subsection 13-45-505(3).

Enacted by Chapter 191, 2015 General Session

13-45-505 Removal of security freeze for protected consumer.

(1) To remove a security freeze that is placed under this part, the protected consumer's representative or the consumer who is subject to a protected consumer security freeze shall:

(a) submit a request for the removal of the security freeze to the consumer reporting agency:

(i) at the address or other point of contact provided by the consumer reporting agency; and

(ii) in the manner specified by the consumer reporting agency;

(b) provide to the consumer reporting agency:

(i) in the case of a request by a protected consumer's representative:

(A) sufficient proof of identification of the protected consumer;

(B) sufficient proof of identification of the protected consumer's representative; and

(C) sufficient proof of authority to act on behalf of the protected consumer; or

(ii) in the case of a request by the consumer who is subject to a protected consumer security freeze:

(A) sufficient proof of identification of the consumer who is subject to a protected consumer security freeze; and

(B) proof that the consumer who is subject to a protected consumer security freeze is not a protected consumer; and

(c) if applicable, pay the consumer reporting agency a fee described in Subsection 13-45-506(2).

(2) Within 30 days after the day on which a consumer reporting agency receives a request under Subsection (1), the consumer reporting agency shall remove the security freeze.

(3) A consumer reporting agency may remove a security freeze for a protected consumer or delete a record of a protected consumer if the security freeze was placed or the record was created based on a material misrepresentation of fact by the protected consumer or the protected consumer's representative.

Enacted by Chapter 191, 2015 General Session

13-45-506 Fees.

(1) Except as provided in Subsection (2), a consumer reporting agency may not charge a fee for any service performed under this part.

(2) A consumer reporting agency may charge a reasonable fee, which does not exceed $5, for each placement or removal of a security freeze under this part, unless:

(a) the protected consumer's representative:

(i) has obtained a police report that states the protected consumer is the alleged victim of identity fraud; and

(ii) provides a copy of the report to the consumer reporting agency; or

(b)

(i) the protected consumer is less than 16 years of age at the time the request is submitted to the consumer reporting agency; and
(ii) the consumer reporting agency has a file that pertains to the protected consumer.

Enacted by Chapter 191, 2015 General Session

Chapter 47
Private Employer Verification Act

Part 1
General Provisions

(Contingently Repealed)
13-47-101 Title.
This chapter is known as the "Private Employer Verification Act."

Enacted by Chapter 403, 2010 General Session

(Contingently Repealed)
13-47-102 Definitions.
As used in this chapter:
(1) "Department" means the Department of Commerce.
(2) "Employee" means an individual:
(a) who is hired to perform services in Utah; and
(b) to whom a private employer provides a federal form required for federal taxation purposes to report income paid to the individual for the services performed.
(3)
(a) Except as provided in Subsection (3)(b), "private employer" means a person who for federal taxation purposes is required to provide a federal form:
(i) to an individual who performs services for the person in Utah; and
(ii) to report income paid to the individual who performs the services.
(b) "Private employer" does not mean a public employer as defined in Section 63G-12-102.
(4)
(a) "Status verification system" means an electronic system operated by the federal government, through which an employer may inquire to verify the federal legal working status of an individual who is a newly hired employee.
(b) "Status verification system" includes:
(i) the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. Sec. 1324a;
(ii) a federal program equivalent to the program described in Subsection (4)(b)(i) that is designated by the United States Department of Homeland Security or other federal agency authorized to verify the employment eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986;
(iii) the Social Security Number Verification Service or similar online verification process implemented by the United States Social Security Administration; or

(iv) an independent third-party system with an equal or higher degree of reliability as the programs, systems, or processes described in Subsection (4)(b)(i), (ii), or (iii).

Amended by Chapter 189, 2014 General Session

(Contingently Repealed)
13-47-103 Scope of chapter.

A private employer shall comply with this chapter, and this chapter shall be enforced without regard to race, color, national origin, gender, religion, age, disability, familial status, or source of income.

Enacted by Chapter 403, 2010 General Session

Part 2
Verification by Private Employer

(Contingently Repealed)
13-47-201 Verification required for new hires.

(1) A private employer who employs 150 or more employees on or after May 4, 2022, may not hire a new employee on or after May 4, 2022, unless the private employer:
  (a) is registered with a status verification system to verify the federal legal working status of any new employee; and
  (b) uses the status verification system to verify the federal legal working status of the new employee in accordance with the requirements of the status verification system.
(2) This section does not apply to a private employer of a foreign national if the foreign national holds a visa issued in response to a petition by the private employer that is classified as H-2A or H-2B.

Amended by Chapter 338, 2022 General Session

(Contingently Repealed)
13-47-202 Liability protections.

(1) A private employer may not be held civilly liable under state law in a cause of action for the private employer's unlawful hiring of an unauthorized alien, as defined in 8 U.S.C. Sec. 1324a, if:
  (a) the private employer complies with Section 13-47-201; and
  (b) the information obtained in accordance with the status verification system indicated that the employee's federal legal status allowed the private employer to hire the employee.
(2) A private employer may not be held civilly liable under state law in a cause of action for the private employer's refusal to hire an individual if:
  (a) the private employer complies with Section 13-47-201; and
  (b) the information obtained in accordance with the status system verification indicated that the individual's federal legal status was that of an unauthorized alien as defined in 8 U.S.C. Sec. 1324a.

Enacted by Chapter 403, 2010 General Session

(Contingently Repealed)

13-47-203 Voluntary registration by private employer certifying participation in verification.

(1)

(a) A private employer may register with the department certifying that the private employer is in compliance with Section 13-47-201.

(b) A private employer may register with the department under this section regardless of whether the private employer is required to comply with Section 13-47-201.

(2) To register or renew a registration with the department under this part, a private employer shall:

(a) file a registration statement with the department that certifies compliance with Section 13-47-201; and

(b) pay a fee established by the department in accordance Section 63J-1-504 that reflects the cost of registering employers under this section and publishing the list described in Section 13-47-204.

(3) A registration under this part expires every two years on the anniversary of the day on which the registration is filed with the department.

(4) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may make rules to provide for:

(a) the form of a registration statement under this section;

(b) the process of filing a registration statement under this section; and

(c) the process of renewing a registration statement under this section.

Enacted by Chapter 403, 2010 General Session

(Contingently Repealed)

13-47-204 Department to publish list of registered private employers.

On and after July 1, 2010, the department shall publish electronically a list of private employers who register under Section 13-47-203 on a website accessible to the general public without a charge.

Enacted by Chapter 403, 2010 General Session

Chapter 48
Motor Vehicle Rental Company Disclosure Act

13-48-101 Title.

This chapter is known as the "Motor Vehicle Rental Company Disclosure Act."

Enacted by Chapter 357, 2011 General Session

13-48-102 Definitions.

As used in this chapter:

(1) "Motor vehicle license cost recovery fee" means a fee or charge that may be separately stated and charged on the short-term motor vehicle lease or rental contract in a motor vehicle lease or rental transaction originating in this state to recover the costs incurred by a motor vehicle rental company to license, title, register, obtain license plates for, and inspect rental motor vehicles.

(2) "Motor vehicle rental company" means any person or organization in the business of renting motor vehicles to the public.

Enacted by Chapter 357, 2011 General Session

13-48-103 Motor vehicle rental company -- Fee disclosure and collection requirements.

(1) A motor vehicle rental company may include separately stated surcharges, fees, or charges in a rental agreement, including:
  (a) motor vehicle license cost recovery fees;
  (b) airport access fees;
  (c) airport concession fees; and
  (d) all applicable taxes.
(2) If a motor vehicle rental company includes a motor vehicle license cost recovery fee as a separately stated charge in a rental transaction, the amount of the fee shall represent the motor vehicle rental company's good-faith estimate of the motor vehicle rental company's daily charge as calculated by the motor vehicle rental company to recover its actual total annual motor vehicle titling, registration, obtaining license plates, and motor vehicle inspection and emission costs.
(3) If the total amount of the motor vehicle license cost recovery fees collected by a motor vehicle rental company under this section in any calendar year exceeds the motor vehicle rental company's actual costs to license, title, register, and obtain license plates for the motor vehicles and have the motor vehicles pass inspections and emissions for that calendar year, the motor vehicle rental company shall retain the excess amount and adjust the estimated average per motor vehicle license cost recovery fee for the following calendar year by the corresponding amount.

Enacted by Chapter 357, 2011 General Session

Chapter 49
Immigration Consultants Registration Act

Part 1
General Provisions

13-49-101 Title.

This chapter is known as the "Immigration Consultants Registration Act."

Enacted by Chapter 375, 2012 General Session

13-49-102 Definitions.

As used in this chapter:

(1) "Client" means a person who receives services from or enters into an agreement to receive services from an immigration consultant.
(2) "Compensation" means anything of economic value that is paid, loaned, granted, given, donated, or transferred to a person for or in consideration of:
  (a) services;

(b) personal or real property; or
(c) another thing of value.
(3) "Department" means the Department of Commerce.
(4) "Division" means the Division of Consumer Protection in the department.
(5) "Immigration consultant" means an individual who provides nonlegal assistance or advice on an immigration matter including:
(a) completing a document provided by a federal or state agency, but not advising a person as to the person's answers on the document;
(b) translating a person's answer to a question posed in a document provided by a federal or state agency;
(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;
(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
(e) for valuable consideration, referring a person to a person who could undertake legal representation activities in an immigration matter.
(6) "Immigration matter" means a proceeding, filing, or action affecting the immigration or citizenship status of a person that arises under:
(a) immigration and naturalization law;
(b) executive order or presidential proclamation; or
(c) action of the United States Citizenship and Immigration Services, the United States Department of State, or the United States Department of Labor.

Amended by Chapter 236, 2015 General Session

Part 2
Registration Requirements

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

(1)
(a) Except as provided in Subsection (1)(b), an individual may not engage in an activity of an immigration consultant for compensation unless the individual is registered under this chapter.
(b) Except for Subsections 13-49-303(3) and (4), this chapter does not apply to an individual authorized:
(i) to practice law in this state; or
(ii) by federal law to represent an individual before the Board of Immigration Appeals or the United States Citizenship and Immigration Services.
(2) An immigration consultant may only offer nonlegal assistance or advice in an immigration matter.

Amended by Chapter 348, 2016 General Session

13-49-202 Application for registration.

(1) To register as an immigration consultant an individual shall:
(a) submit an annual application in a form prescribed by the division;

(b) pay an annual registration fee determined by the department in accordance with Section 63J-1-504, which includes the costs of the criminal background check required under Subsection (1)(e);
(c) have good moral character in that the individual has not been convicted of:
(i) a felony; or
(ii) within the last 10 years, a misdemeanor involving theft, fraud, or dishonesty;
(d) submit fingerprint cards in a form acceptable to the division at the time the application is filed; and
(e) consent to a fingerprint background check of the individual by the Utah Bureau of Criminal Identification regarding the application.
(2) The division shall register an individual who qualifies under this chapter as an immigration consultant.

Amended by Chapter 236, 2015 General Session

13-49-203 Requirement to submit to criminal background check.
(1) The division shall require an applicant for registration as an immigration consultant to:
(a) submit a fingerprint card in a form acceptable to the division; and
(b) consent to a fingerprint criminal background check by the Utah Bureau of Criminal Identification.
(2)
(a) The division shall obtain information from a criminal history record maintained by the Utah Bureau of Criminal Identification pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.
(b) The information obtained under Subsection (2)(a) may only be used by the division to determine whether an applicant for registration as an immigration consultant meets the requirements of Subsection 13-49-202(1)(c).

Amended by Chapter 348, 2016 General Session

13-49-204 Bonds -- Exemption -- Statements dependent on posting bond.
(1) An immigration consultant shall post a cash bond or surety bond:
(a) in the amount of $50,000; and
(b) payable to the division for the benefit of any person damaged by a fraud, misstatement, misrepresentation, unlawful act, omission, or failure to provide services of an immigration consultant, or an agent, representative, or employee of an immigration consultant.
(2) A bond required under this section shall be:
(a) in a form approved by the division; and
(b) conditioned upon the faithful compliance of an immigration consultant with this chapter and division rules.
(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.
(4)
(a) If a surety bond posted by an immigration consultant under this section is canceled due to the immigration consultant's negligence, the division may assess a $300 reinstatement fee.
(b) No part of a bond posted by an immigration consultant under this section may be withdrawn:

(i) during the one-year period the registration under this chapter is in effect; or
(ii) while a revocation proceeding is pending against the immigration consultant.

(5)
(a) A bond posted under this section by an immigration consultant may be forfeited if the immigration consultant's registration under this chapter is revoked.
(b) Notwithstanding Subsection (5)(a), the division may make a claim against a bond posted by an immigration consultant for money owed the division under this chapter without the division first revoking the immigration consultant's registration.

(6) 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 a bond under this section that is maintained throughout the period covered by the statement.

(7) 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.

Amended by Chapter 236, 2015 General Session

Part 3
Operational Requirements

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

(1)
(a) Before an immigration consultant may provide services to a client, the immigration consultant shall provide the client with a written contract. The contents of the written contract shall comply with this section and rules made by the division in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
(b) A 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.

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

(3) A written contract under this section shall:
(a) state the purpose for which the immigration consultant has been hired;
(b) state the one or more services to be performed;
(c) state the price for a service to be performed;
(d) include a statement printed in 10-point boldface type that the immigration consultant is not an attorney and may not perform the legal services that an attorney performs;
(e) with regard to a document to be prepared by the immigration consultant:
(i) list the document to be prepared;
(ii) explain the purpose of the document;
(iii) explain the process to be followed in preparing of the document;
(iv) explain the action to be taken by the immigration consultant;
(v) state the agency or office where each document will be filed; and
(vi) state the approximate processing times according to current published agency guidelines;
(f) include a provision stating that the person may report complaints relating to an immigration consultant to the:

(i) division, including a toll-free telephone number and Internet web site; and
(ii) Office of Immigrant Assistance of the United States Department of Justice, including a toll-free telephone number and Internet website;
(g) 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
(h) in accordance with Subsection (1)(b), include a provision stating in bold 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."
(4) A written contract may not contain a provision relating to the following:
(a) a guarantee or promise, unless the immigration consultant has some basis in fact for making the guarantee or promise; or
(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.
(5) An immigration consultant may not make a statement described in Subsection (4) orally to a client.
(6) A written contract is void if not written in accordance with this section.

Amended by Chapter 236, 2015 General Session

13-49-302 Accounting for services -- Receipts.
(1) An immigration consultant shall provide a signed receipt to a client for each payment made by that client. The receipt shall be typed or computer generated on the immigration consultant's letterhead.
(2) An immigration consultant shall make a statement of accounting for the services rendered and payments made:
(a) in the client's native language;
(b) to the client every two months;
(c) that is typed or computer generated on the immigration consultant's letterhead;
(d) that lists the individual charges and total charges for services; and
(e) that lists the payments made by the client.

Enacted by Chapter 375, 2012 General Session

13-49-303 Notice to be displayed -- Disclosure to be provided in writing.
(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:
(a) the full name, address, and evidence of compliance with any applicable bonding requirement including the bond number;
(b) a statement that the immigration consultant is not an attorney; and
(c) the name of each immigration consultant employed at each location.
(2)

(a) Before providing any services, an immigration consultant shall provide a client with a written disclosure in the native language of the client that includes the following:
(i) the immigration consultant's name, address, and telephone number;
(ii) the immigration consultant's agent for service of process;
(iii) evidence of compliance with any applicable bonding requirement, including the bond number; and
(iv) a list of the services that the immigration consultant provides and the current and total fee for each service.
(b) An immigration consultant shall obtain the signature of the client verifying that the client received the written disclosures described in Subsection (2)(a) before a service is provided.
(3)
(a) Except as provided in Subsections (3)(b) and (3)(c), an immigration consultant who prints, displays, publishes, distributes, or broadcasts, or who causes to be printed, displayed, published, distributed, or broadcasted, any advertisement for services as an immigration consultant, shall include in that advertisement a clear and conspicuous statement that the immigration consultant is not an attorney.
(b) Subsection (3)(a) does not apply to an immigration consultant who is not licensed as an attorney in any state or territory of the United States, but is authorized by federal law to represent persons before the Board of Immigration Appeals or the United States Citizenship and Immigration Services. A person described in this Subsection (3)(b) 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 before the Board of Immigration Appeals or the United States Citizenship and Immigration Services.
(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.
(4) 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.

Amended by Chapter 236, 2015 General Session

13-49-304 Translations -- Prohibited acts.
(1) For purposes of this section, "literal translation" of a word or phrase from one language means the translation of a word or phrase without regard to the true meaning of the word or phrase in the language that is being translated.
(2) An immigration consultant may not, with the intent to mislead, literally translate, from English into another language, words or titles, including, "notary public," "notary," "licensed," "attorney," "lawyer," or any other terms that imply that the immigration consultant is an attorney, in any document, including an advertisement, stationery, letterhead, business card, or other comparable written material describing the immigration consultant.

Amended by Chapter 236, 2015 General Session

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

(1) An immigration consultant shall deliver to a client a copy of a document completed on behalf of the client. An immigration consultant shall include on a document delivered to a client the name and address of the immigration consultant.

(2) An immigration consultant shall retain a copy of a document of a client for not less than three years from the date of the last service to the client.

(3)

(a) An immigration consultant shall return to a client all original documents that the client has provided to the immigration consultant in support of the client's application including an original birth certificate, rental agreement, utility bill, employment document, a registration document issued by the Division of Motor Vehicles, or a passport.

(b) An original document that does not need to be submitted to immigration authorities as an original document shall be returned by the immigration consultant immediately after making a copy.

Amended by Chapter 236, 2015 General Session

Part 4
Prohibited Acts and Penalties

13-49-401 Unlawful acts.

(1) It is unlawful for an immigration consultant to:

(a) make a false or misleading statement to a client while providing services to that client;

(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;

(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

(d) charge a client a fee for referral of the client to another person for services that the immigration consultant cannot or will not provide to the client.

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

Enacted by Chapter 375, 2012 General Session

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

(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:

(a) require a person to file a statement in writing;

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

(c) require the production of any books, papers, documents, merchandise, or other material relevant to the investigation.
(2) A person who violates this chapter is subject to:
(a) a cease and desist order; and
(b) an administrative fine of not less than $1,000 or more than $5,000 for each separate violation.
(3) An administrative fine shall be deposited in the Consumer Protection Education and Training Fund created in Section 13-2-8.
(4)
(a) A person who intentionally violates this chapter:
(i) is guilty of a class A misdemeanor; and
(ii) may be fined up to $10,000.
(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.

Amended by Chapter 236, 2015 General Session

13-49-403 Action by attorney general or district or county attorney.
(1) Upon referral from the division, the attorney general or any district or county attorney may:
(a) bring an action for temporary or permanent injunctive or other relief in any court of competent jurisdiction for any violation of this part;
(b) bring an action in any court of competent jurisdiction for the collection of penalties authorized under Subsection 13-49-402(2); or
(c) bring an action under Subsection 13-49-402(4).
(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.

Enacted by Chapter 375, 2012 General Session

13-49-404 Recovery of losses.
In addition to any other remedies, a person suffering pecuniary loss because of a violation by another person of this chapter may bring an action in any court of competent jurisdiction and may recover:
(1) the greater of $500 or twice the amount of the pecuniary loss; and
(2) court costs and reasonable attorney fees as determined by the court.

Enacted by Chapter 375, 2012 General Session

Chapter 50
Residential Construction Contracts Act

Part 1
General Provisions

13-50-101 Title.
(1) This chapter is known as the "Residential Construction Contracts Act."
(2) This part is known as "General Provisions."

Enacted by Chapter 160, 2013 General Session

13-50-102 Definitions.
As used in this chapter:
(1) "Rebate" means:
(a) any allowance or discount against charged fees; or
(b) payment of any form of compensation, except for an item of nominal value, to:
(i) an insured; or
(ii) a person directly or indirectly associated with a residential building.
(2) "Repair work" means any work done to siding, gutters, a roof system, or a window system to repair damage caused by wind or hail.
(3) "Residential building" means a single or multiple family dwelling of up to four units.
(4) "Residential contractor" means a person that, for compensation, other than wages as an employee, contracts or offers to contract to:
(a) perform repair work on a residential building;
(b) arrange for, manage, or process repair work on a residential building; or
(c) serve as a representative, agent, or assignee of the owner or possessor of a residential building for purposes of repair work on the residential building.
(5) "Roof system" includes roof coverings, roof sheathing, roof weatherproofing, roof framing, roof ventilation, and roof insulation.

Amended by Chapter 88, 2020 General Session

Part 2
Right to Cancel Certain Residential Construction Contracts

13-50-201 Title.
This part is known as "Right to Cancel Certain Residential Construction Contracts."

Enacted by Chapter 160, 2013 General Session

13-50-202 Right to cancel.
(1) A person that enters into a written contract with a residential contractor for the performance of repair work on a residential building may cancel the contract if:
(a) at the time of the execution of the contract, the residential contractor knew or should have known that the person intended that all or part of the contract would be paid with proceeds of a property and casualty insurance policy;
(b) the property and casualty insurer denies any part of the person's claim relating to the repair work governed by the contract; and
(c) within five business days after the day on which the person receives written notice from the person's property and casualty insurer that all or part of the person's claim relating to the repair work governed by the contract is denied, the person deposits in the United States mail,

or otherwise provides, written notice of cancellation to the physical address provided in the contract.

(2) Except as provided in Subsection (3), within 10 business days after the day on which a person cancels a contract under Subsection (1), the residential contractor shall return to the person all payments, partial payments, deposits, and evidence of indebtedness made by the person in relation to the contract.

(3) A residential contractor may retain or collect the reasonable value of any repair work described in the contract that was actually performed, if the owner of the residential building expressly instructed the residential contractor to perform the repair work without waiting for the property and casualty insurer to provide notice of whether it accepts or denies coverage of the contract.

Enacted by Chapter 160, 2013 General Session

13-50-203 Required provisions.

A written contract between a person and a residential contractor for the performance of repair work on a residential building shall:

(1) include a notice of the person's right to cancel the contract, as described in Section 13-50-202, that is in substantially the following form:

"Utah Code Section 13-50-202 provides that if, when you signed this contract, the residential contractor knew or should have known that you intended that all or part of the contract would be paid with proceeds of a property and casualty insurance policy, you may cancel this contract within five business days after the day on which you receive written notification from your property and casualty insurer that your claim, or a portion of your claim, has been denied";

(2) state the mailing address where the residential contractor receives written notice; and

(3) include a detachable copy of a notice of cancellation that is in substantially the following form:

"NOTICE OF CANCELLATION

If your property and casualty insurer denies your claim, or a portion of your claim, to pay for the repair work to be provided under this contract, you may cancel the contract by mailing or delivering a signed and dated copy of this cancellation notice or any other written cancellation notice to _____ (name of residential contractor) at _____ (address where residential contractor receives notices) any time within five business days after the day on which you receive written notice from your property and casualty insurer that your claim, or a portion of your claim, for coverage of the repair services described in this contract has been denied. If you cancel, any payments made by you under the contract will be returned within 10 business days after the day on which the residential contractor receives your written cancellation notice, except that the residential contractor may retain or collect the reasonable value of any repair work actually performed, if you expressly instructed the residential contractor to perform the repair work without waiting for notice of coverage from your property and casualty insurer.

I HEREBY CANCEL THIS TRANSACTION.

Dated_____

Signature_____"

Enacted by Chapter 160, 2013 General Session

Part 3
Insured Homeowners Protection Act

13-50-301 Post-loss assignment of rights or benefits to a residential contractor.

(1) A post-loss assignment of rights or benefits to a residential contractor under a property and casualty insurance policy insuring a residential building:

(a) may authorize a residential contractor to be named as a copayee for the payment of benefits under a property and casualty insurance policy covering the residential building;

(b) shall include:

(i) an itemized description of the work to be done on the insured residential building; and

(ii) the total amount the insured agreed to pay for the work described in Subsection (1)(b)(i);

(c) shall include a statement that the residential contractor has made no assurances that an insurance contract will fully cover the claimed loss;

(d) shall include a notice in substantially the following form and in capitalized 14-point type:

"YOU ARE AGREEING TO GIVE UP CERTAIN RIGHTS YOU HAVE UNDER YOUR INSURANCE POLICY. PLEASE READ AND UNDERSTAND THIS DOCUMENT BEFORE SIGNING.

THE ITEMIZED DESCRIPTION OF THE WORK TO BE DONE SHOWN IN THIS ASSIGNMENT FORM HAS NOT BEEN AGREED TO BY THE INSURER. THE INSURER HAS THE RIGHT TO PAY ONLY FOR THE COST TO REPAIR OR REPLACE DAMAGED PROPERTY CAUSED BY A COVERED PERIL.";

(e) may not impair the interest of a mortgagee listed on the declarations page of the property and casualty insurance policy that is the subject of the assignment; and

(f) may not prevent or inhibit an insurer from communicating with a named insured listed on the declarations page of the property and casualty insurance policy that is the subject of the assignment.

(2) A party receiving the assignment described in Subsection (1) shall:

(a) deliver the assignment to the insurer of the residential building within five business days after the earlier of the day on which:

(i) the assignment is executed; or

(ii) repair work begins on the residential building; and

(b) cooperate with the insurer of the residential building in an investigation into the claimed loss by:

(i) providing each document and record the insurer requests; and

(ii) complying with each post-loss duty included in the insurance policy.

Enacted by Chapter 88, 2020 General Session

13-50-302 Residential contractor, prohibited acts.

A residential contractor may not rebate or offer to rebate any portion of an insurance deductible as an inducement to the sale of a good or service.

Enacted by Chapter 88, 2020 General Session

13-50-303 Violation notice.

(1) Any written contract, repair estimate, or work order that a residential contractor prepares to provide a good or service paid for from the proceeds of a property and casualty insurance

policy shall include a notice of the prohibition described in Section 13-50-302 in substantially the following form and in capitalized 14-point type:

"IT IS A VIOLATION OF UTAH LAW FOR A RESIDENTIAL CONTRACTOR TO REBATE ANY PORTION OF AN INSURANCE DEDUCTIBLE AS AN INDUCEMENT TO THE INSURED TO ACCEPT A RESIDENTIAL CONTRACTOR'S PROPOSAL TO REPAIR DAMAGED PROPERTY. REBATE OF A DEDUCTIBLE INCLUDES GRANTING ANY ALLOWANCE OR OFFERING ANY DISCOUNT AGAINST THE FEES TO BE CHARGED FOR WORK TO BE PERFORMED OR PAYING THE INSURED POLICYHOLDER THE DEDUCTIBLE AMOUNT SET FORTH IN THE INSURANCE POLICY.

THE INSURED POLICY HOLDER IS PERSONALLY RESPONSIBLE FOR PAYMENT OF THE DEDUCTIBLE.".

(2) Under any agreement in which a residential contractor provides a good or service paid for from the proceeds of a property and casualty insurance policy, no payment may be made to the residential contractor until:

(a) the named insured signs the notice described in Subsection (1); and

(b) the residential contractor delivers the notice signed in accordance with Subsection (2)(a) to the named insured's insurance company.

Enacted by Chapter 88, 2020 General Session

13-50-304 Violation of part.

A post-loss assignment of rights or benefits entered into with a residential contractor is void if the residential contractor violates a provision of this part.

Enacted by Chapter 88, 2020 General Session

Chapter 51
Transportation Network Company Registration Act

Part 1
Registration

13-51-101 Title.

This chapter is known as "Transportation Network Company Registration Act."

Enacted by Chapter 461, 2015 General Session

13-51-102 Definitions.

(1) "Division" means the Division of Consumer Protection within the Department of Commerce.

(2) "Prearranged ride" means a period of time that:

(a) begins when the transportation network driver has accepted a passenger's request for a ride through the transportation network company's software application; and

(b) ends when the passenger exits the transportation network driver's vehicle.

(3) "Software application" means an Internet-connected software platform, including a mobile application, that a transportation network company uses to:

(a) connect a transportation network driver to a passenger; and
(b) process passenger requests.
(4) "Transportation network company" means an entity that:
(a) uses a software application to connect a passenger to a transportation network driver providing transportation network services;
(b) is not:
(i) a taxicab, as defined in Section 53-3-102; or
(ii) a motor carrier, as defined in Section 72-9-102; and
(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.
(5) "Transportation network driver" means:
(a) an individual who:
(i) pays a fee to a transportation network company, and, in exchange, receives a connection to a potential passenger from the transportation network company;
(ii) operates a motor vehicle that:
(A) the individual owns, leases, or is authorized to use; and
(B) the individual uses to provide transportation network services; and
(iii) receives, in exchange for providing a passenger a ride, compensation that exceeds the individual's cost to provide the ride; or
(b) a level four or five automated driving system, as defined in Section 41-26-102.1, when the automated driving system is operating the vehicle and used to provide a passenger a ride in exchange for compensation.
(6) "Transportation network services" means, for a transportation network driver providing services through a transportation network company:
(a) providing a prearranged ride; or
(b) being engaged in a waiting period.
(7) "Waiting period" means a period of time when:
(a) a transportation network driver is logged into a transportation network company's software application; and
(b) the transportation network driver is not engaged in a prearranged ride.

Amended by Chapter 459, 2019 General Session

13-51-103 Exemptions -- Transportation network company and transportation network driver.
(1) A transportation network company or a transportation network driver is not subject to the requirements applicable to:
(a) a motor carrier, under Title 72, Chapter 9, Motor Carrier Safety Act;
(b) a common carrier, under Title 59, Chapter 12, Sales and Use Tax Act; or
(c) a taxicab, under Title 53, Chapter 3, Uniform Driver License Act.
(2) A transportation network driver is:
(a)
(i) an independent contractor of a transportation network company; and
(ii) not an employee of a transportation network company; or
(b) for a motor vehicle with a level four or five automated driving system as defined in Section 41-26-102.1, in driverless operation, an automated driving system if dispatched:
(i) at the direction of, on behalf of, or as an agent of a transportation network company; or

(ii) at the direction of, on behalf of, or as an agent of a third party pursuant to an agreement between the third party and a transportation network company, operated on behalf of and as an agent of the transportation network company.

Amended by Chapter 459, 2019 General Session

13-51-104 Licensure -- Division audits -- Fines.

(1) A person may not operate a transportation network company without registering with the division under Subsection (2).

(2) The division shall register a person to operate a transportation network company if:

(a) the person:

(i) demonstrates to the division that the person meets the definition of a transportation network company under Section 13-51-102; and

(ii) pays a registration fee in an amount determined by the division in accordance with Section 63J-1-504; and

(b) the division determines that the person complies with the operating requirements for a transportation network company described in this chapter.

(3) A transportation network company's registration under Subsection (2) is:

(a) valid until one year after the day on which the transportation network company registers with the division; and

(b) renewable if the transportation network company meets the requirements of Subsection (2).

(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:

(a) no more than twice per year;

(b) at a location agreed to by the division and the transportation network company; and

(c) notwithstanding Subsection (4)(a), at any time to investigate a complaint.

(5) The division may fine a transportation network company up to $500 for each violation of this chapter.

Enacted by Chapter 461, 2015 General Session

13-51-105 Operating requirements.

(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.

(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:

(a) posts the method for calculating the fare on the transportation network company's software application;

(b) provides a passenger the rate used to calculate the fare for a prearranged ride; and

(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.

(3) For each prearranged ride, a transportation network company shall:

(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; and

(b) shortly after the prearranged ride is complete, transmit an electronic receipt to the passenger that lists:

(i) the prearranged ride's origin and destination;
(ii) the prearranged ride's total time and distance; and
(iii) an itemization of the total fare the passenger paid, if any.

(4) A transportation network driver may not, while providing transportation network services:
(a) provide a ride to an individual who requests the ride by a means other than a transportation network company's software application;
(b) solicit or accept cash payments from a passenger; or
(c) accept any means of payment other than payment through a transportation network company's software application.

(5) A transportation network company shall maintain a record of:
(a) all trips, for a minimum of five years after the day on which the trip occurred; and
(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 provided transportation network services using the transportation network company's software application.

(6) A transportation network company shall adopt a policy that prohibits unlawful discrimination with respect to a passenger and shall:
(a) provide a copy of the policy to each transportation network driver; or
(b) post the policy on the transportation network company's website.

(7)
(a) A transportation network driver shall accommodate:
(i) a service animal; or
(ii) an individual with a physical disability.
(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).

(8) A transportation network company shall:
(a) allow a passenger to request a prearranged ride in a wheelchair-accessible vehicle; and
(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.

(9) A transportation network company shall disclose to a transportation network driver:
(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;
(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;
(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
(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.

(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:
(a) cooperate with a liability insurer that insures the vehicle the transportation network driver uses to provide the transportation network services;

(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
(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.
(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:
(a) directly to the person that is repairing the vehicle; or
(b) jointly to the owner of the vehicle and the primary lienholder.

Enacted by Chapter 461, 2015 General Session

13-51-106 Transportation network driver drug or alcohol use policy.
(1) A transportation network company shall implement a policy that:
(a) provides that a transportation network driver may not use a drug or alcohol or be under the influence of a drug or alcohol while providing transportation network services;
(b) is posted on the transportation network company's website or software application; and
(c) provides procedures for a passenger to report to the transportation network company a transportation network driver who the passenger suspects violated the policy.
(2) If a transportation network company receives a complaint about a transportation network driver under Subsection (1)(c), the transportation network company shall:
(a) suspend the transportation network company driver; and
(b) conduct an investigation into the transportation network company driver and the conduct alleged in the complaint.
(3) A transportation network company shall maintain records related to a complaint or investigation under this section for a minimum of two years after the day on which the transportation network company receives the complaint.

Enacted by Chapter 461, 2015 General Session

13-51-107 Driver requirements.
(1) Before a transportation network company allows an individual to use the transportation network company's software application as a transportation network driver, the transportation network company shall:
(a) require the individual to submit to the transportation network company:
(i) the individual's name, address, and age;
(ii) a copy of the individual's driver license, including the driver license number; and
(iii) proof that the vehicle that the individual will use to provide transportation network services is registered with the Division of Motor Vehicles;
(b) require the individual to consent to a criminal background check of the individual by the transportation network company or the transportation network company's designee; and
(c) obtain and review a report that lists the individual's driving history.
(2) A transportation company may not allow an individual to provide transportation network services as a transportation network driver if the individual:

(a) has committed more than three moving violations in the three years before the day on which the individual applies to become a transportation network driver;
(b) has been convicted, in the seven years before the day on which the individual applies to become a transportation network driver, of:
(i) driving under the influence of alcohol or drugs;
(ii) fraud;
(iii) a sexual offense;
(iv) a felony involving a motor vehicle;
(v) a crime involving property damage;
(vi) a crime involving theft;
(vii) a crime of violence; or
(viii) an act of terror;
(c) is required to register as a sex offender in accordance with Title 77, Chapter 41, Sex and Kidnap Offender Registry;
(d) does not have a valid Utah driver license; or
(e) is not at least 18 years of age.
(3)
(a) A transportation network company shall prohibit a transportation network driver from accepting a request for a prearranged ride if the motor vehicle that the transportation network driver uses to provide transportation network services fails to comply with:
(i) equipment standards described in Section 41-6a-1601; and
(ii) emission requirements adopted by a county under Section 41-6a-1642.
(b)
(i) If upon visual inspection, a defect relating to the equipment standards described in Section 41-6a-1601 can be reasonably identified, an airport operator may perform a safety inspection of a transportation network driver's vehicle operating within the airport to ensure compliance with equipment standards described in Section 41-6a-1601.
(ii) An airport operator shall conduct all inspections under this Subsection (3) in such a manner to minimize impact to the transportation network driver's and transportation network company vehicle's availability to provide prearranged rides.
(4) A transportation network driver, while providing transportation network services, shall carry proof, in physical or electronic form, that the transportation network driver is covered by insurance that satisfies the requirements of Section 13-51-108.

Amended by Chapter 276, 2020 General Session
Amended by Chapter 377, 2020 General Session

13-51-108 Insurance.
(1) A transportation network company or a transportation network driver shall maintain insurance that covers, on a primary basis, a transportation network driver's use of a vehicle during a prearranged ride and that includes:
(a) an acknowledgment that the transportation network driver is using the vehicle in connection with a transportation network company during a prearranged ride or that the transportation network driver is otherwise using the vehicle for a commercial purpose;
(b) liability coverage for a minimum amount of $1,000,000 per occurrence;
(c) personal injury protection to the extent required under Sections 31A-22-306 through 31A-22-309;
(d) uninsured motorist coverage where required by Section 31A-22-305; and

(e) underinsured motorist coverage where required by Section 31A-22-305.3.

(2) A transportation network company or a transportation network driver shall maintain insurance that covers, on a primary basis, a transportation network driver's use of a vehicle during a waiting period and that includes:

(a) an acknowledgment that the transportation network driver is using the vehicle in connection with a transportation network company during a waiting period or that the transportation network driver is otherwise using the vehicle for a commercial purpose;

(b) liability coverage in a minimum amount, per occurrence, of:

(i) $50,000 to any one individual;

(ii) $100,000 to all individuals; and

(iii) $30,000 for property damage;

(c) personal injury protection to the extent required under Sections 31A-22-306 through 31A-22-309;

(d) uninsured motorist coverage where required by Section 31A-22-305; and

(e) underinsured motorist coverage where required by Section 31A-22-305.3.

(3) A transportation network company and a transportation network driver may satisfy the requirements of Subsections (1) and (2) by:

(a) the transportation network driver purchasing coverage that complies with Subsections (1) and (2);

(b) the transportation network company purchasing, on the transportation network driver's behalf, coverage that complies with Subsections (1) and (2); or

(c) a combination of Subsections (3)(a) and (b).

(4) An insurer may offer to a transportation network driver a personal automobile liability insurance policy, or an amendment or endorsement to a personal automobile liability policy, that:

(a) covers a private passenger motor vehicle while used to provide transportation network services; and

(b) satisfies the coverage requirements described in Subsection (1) or (2).

(5) Nothing in this section requires a personal automobile insurance policy to provide coverage while a driver is providing transportation network services.

(6) If a transportation network company does not purchase a policy that complies with Subsections (1) and (2) on behalf of a transportation network driver, the transportation network company shall verify that the driver has purchased a policy that complies with Subsections (1) and (2).

(7) An insurance policy that a transportation network company or a transportation network driver maintains under Subsection (1) or (2):

(a) satisfies the security requirements of Section 41-12a-301; and

(b) may be placed with:

(i) an insurer that is certified under Section 31A-4-103; or

(ii) a surplus lines insurer eligible under Section 31A-15-103.

(8) An insurer that provides coverage for a transportation network driver explicitly for the transportation network driver's transportation network services under Subsection (1) or (2) shall have the duty to defend a liability claim arising from an occurrence while the transportation network driver is providing transportation network services.

(9) If insurance a transportation network driver maintains under Subsection (1) or (2) lapses or ceases to exist, a transportation network company shall provide coverage complying with Subsection (1) or (2) beginning with the first dollar of a claim.

(10)

(a) An insurance policy that a transportation network company or transportation network driver maintains under Subsection (1) or (2) may not provide that coverage is dependent on a transportation network driver's personal automobile insurance policy first denying a claim.
(b) Subsection (10)(a) does not apply to coverage a transportation network company provides under Subsection (9) in the event a transportation network driver's coverage under Subsection (1) or (2) lapses or ceases to exist.
(11) A personal automobile insurer:
(a) notwithstanding Section 31A-22-302, may offer a personal automobile liability policy that excludes coverage for a loss that arises from the use of the insured vehicle to provide transportation network services; and
(b) does not have the duty to defend or indemnify a loss if an exclusion described in Subsection (11)(a) excludes coverage according to the policy's terms.

Amended by Chapter 138, 2016 General Session
Amended by Chapter 359, 2016 General Session

13-51-109 Preemption clause.
(1) Except as provided in Subsection (2), this chapter supersedes any regulation of a municipality, county, or local government regarding a transportation network company, a transportation network driver, or transportation network services.
(2) This chapter does not supersede a municipal, county, or local government regulation regarding a transportation network driver providing transportation network services at an airport.

Enacted by Chapter 461, 2015 General Session

Part 2
Transportation Network Vehicle Recovery Fund

13-51-201 Transportation Network Vehicle Recovery Fund -- Creation -- Report to the Legislature.
(1) As used in this part, "fund" means the Transportation Network Vehicle Recovery Fund created in Subsection (2).
(2) There is created an expendable special revenue fund called the "Transportation Network Vehicle Recovery Fund."
(3) The fund consists of:
(a) money deposited in the fund before July 1, 2018; and
(b) interest earned on the money in the fund.
(4) The division may allocate resources necessary to administer the fund.
(5) The division shall use money from the fund to cover the division's cost to administer this part.
(6) The fund is not insurance as defined in Section 31A-1-301.

Amended by Chapter 111, 2018 General Session

13-51-203 Payment of a claim from the fund.

(1) A person that holds a lien on a vehicle used by a transportation network driver to provide transportation network services may submit a claim to the division for payment from the fund for physical damage to the vehicle.
(2) The division shall pay a claim for payment from the fund to a person that holds a lien on a vehicle described in Subsection (1) for physical damage to the vehicle if:
(a) the physical damage to the vehicle occurred during a waiting period or a prearranged ride;
(b) the lien complies with Section 41-1a-601;
(c) the person required the transportation network driver, by contract, to maintain insurance coverage for physical damage to the vehicle;
(d) the insurance coverage described in Subsection (2)(c):
(i) names the person as the loss payee;
(ii) was in effect at the time the physical damage occurred; and
(iii) denied coverage to the person as the loss payee on the sole basis that the transportation network driver used the vehicle to provide transportation network services in the state; and
(e) the division determines, no earlier than 10 days after the day on which the person makes the claim, that:
(i) no other insurance is available from the relevant transportation network company; and
(ii) the fund has enough money to cover the cost of the claim.
(3) If the division grants a claim to a person for a lien on a transportation network driver's vehicle under Subsection (2), the fund shall pay the person the lesser of, as estimated by the division:
(a) the cost to repair the vehicle;
(b) the actual cash value of the vehicle less any salvage costs; or
(c) the amount of money in the fund.
(4) The division may not accept or pay a claim under this section after the balance of the fund is zero.

Amended by Chapter 111, 2018 General Session

13-51-204 State not liable.

The state, a state agency, or a political subdivision is not liable for:
(1) the granting or denial of a claim under Section 13-51-203;
(2) a claim made against the fund; or
(3) a failure of the fund to pay an amount that the division orders paid from the fund.

Enacted by Chapter 359, 2016 General Session

Chapter 52
Residential Solar Energy Disclosure Act

Part 1
General Provisions

13-52-101 Title.

This chapter is known as the "Residential Solar Energy Disclosure Act."

Enacted by Chapter 290, 2018 General Session

13-52-102 Definitions.

As used in this chapter:

(1) "Customer" means a person who, for primarily personal, family, or household purposes:
  (a) purchases a residential solar energy system under a system purchase agreement;
  (b) leases a residential solar energy system under a system lease agreement; or
  (c) purchases electricity under a power purchase agreement.
(2) "Division" means the Division of Consumer Protection, established in Section 13-2-1.
(3) "Power purchase agreement" means an agreement:
  (a) between a customer and a solar retailer;
  (b) for the customer's purchase of electricity generated by a residential solar energy system owned by the solar retailer; and
  (c) that provides for the customer to make payments over a term of at least five years.
(4) "Residential solar energy system":
  (a) means a solar energy system that:
    (i) is installed in the state;
    (ii) generates electricity primarily for on-site consumption for personal, family, or household purposes;
    (iii) is situated on no more than four units of residential real property; and
    (iv) has an electricity delivery capacity that exceeds one kilowatt; and
  (b) does not include a generator that:
    (i) produces electricity; and
    (ii) is intended for occasional use.
(5) "Solar agreement" means a system purchase agreement, a system lease agreement, or a power purchase agreement.
(6) "Solar energy system" means a system or configuration of solar energy devices that collects and uses solar energy to generate electricity.
(7) "Solar retailer" means a person who:
  (a) sells or proposes to sell a residential solar energy system to a customer under a system purchase agreement;
  (b) owns the residential solar energy system that is the subject of a system lease agreement or proposed system lease agreement; or
  (c) sells or proposes to sell electricity to a customer under a power purchase agreement.
(8) "System lease agreement" means an agreement:
  (a) under which a customer leases a residential solar energy system from a solar retailer; and
  (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.
(9) "System purchase agreement" means an agreement under which a customer purchases a residential solar energy system from a solar retailer.

Enacted by Chapter 290, 2018 General Session

13-52-103 Applicability of chapter.

This chapter:

(1) applies to each solar agreement entered into on or after September 3, 2018, including a solar agreement that accompanies the transfer of ownership or lease of real property; and
(2) does not apply to:

(a) the transfer of title or rental of real property on which a residential solar energy system is or is expected to be located, if the presence of the residential solar energy system is incidental to the transfer of title or rental;
(b) a lender, governmental entity, or other third party that enters into an agreement with a customer to finance a residential solar energy system but is not a party to a system purchase agreement, power purchase agreement, or lease agreement;
(c) a sale or lease of, or the purchase of electricity from, a solar energy system that is not a residential solar energy system; or
(d) the lease of a residential solar energy system or the purchase of power from a residential solar energy system under an agreement providing for payments over a term of less than five years.

Enacted by Chapter 290, 2018 General Session

Part 2
Disclosure Statement

13-52-201 Disclosure statement required.
(1)
(a) Before entering a solar agreement, a solar retailer shall provide to a potential customer a separate, written disclosure statement as provided in this section and, as applicable, Sections 13-52-202, 13-52-203, 13-52-204, and 13-52-205.
(b)
(i) The requirement under Subsection (1)(a) may be satisfied by the electronic delivery of a disclosure statement to the potential customer.
(ii) An electronic document under Subsection (1)(a) satisfies the font-size standard under Subsection (2)(a) if the required disclosures are displayed in a clear and conspicuous manner.
(2) A disclosure statement under Subsection (1) shall:
(a) be in at least 12-point font;
(b) contain:
(i) the name, address, telephone number, and any email address of the potential customer;
(ii) the name, address, telephone number, and email address of the solar retailer; and
(iii)
(A) the name, address, telephone number, email address, and state contractor license number of the person who is expected to install the system that is the subject of the solar agreement; and
(B) if the solar retailer selected the person who is expected to provide operations or maintenance support to the potential customer or introduced that person to the potential customer, the name, address, telephone number, email address, and state contractor license of the operations or maintenance support person; and
(c) include applicable information and disclosures as provided in Sections 13-52-202, 13-52-203, 13-52-204, and 13-52-205.

Enacted by Chapter 290, 2018 General Session

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:

(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;

(2) if the solar retailer provides any written estimate of the savings the potential customer is projected to realize from the system:

(a)

(i) the estimated projected savings over the life of the solar agreement; and

(ii) at the discretion of the solar retailer, the estimated projected savings over any longer period not to exceed the anticipated useful life of the system;

(b) any material assumptions used to calculate estimated projected savings and the source of those assumptions, including:

(i) if an annual electricity rate increase is assumed, the rate of the increase and the solar retailer's basis for the assumption of the rate increase;

(ii) the potential customer's eligibility for or receipt of tax credits or other governmental or utility incentives;

(iii) system production data, including production degradation;

(iv) the system's eligibility for interconnection under any net metering or similar program;

(v) electrical usage and the system's designed offset of the electrical usage;

(vi) historical utility costs paid by the potential customer;

(vii) any rate escalation affecting a payment between the potential customer and the solar retailer; and

(viii) the costs associated with replacing equipment making up part of the system or, if those costs are not assumed, a statement indicating that those costs are not assumed; and

(c) two separate statements in capital letters in close proximity to any written estimate of projected savings, with substantially the following form and content:

(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."; and

(ii) "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.";

(3) a notice with substantially the following form and content: "Legislative or regulatory action may affect or eliminate your ability to sell or get credit for any excess power generated by the system, and may affect the price or value of that power.";

(4) a notice describing any right a customer has under applicable law to cancel or rescind a solar agreement;

(5) a statement describing the system and indicating the system design assumptions, including the make and model of the solar panels and inverters, 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 over the term of the solar agreement or, at the solar retailer's option, over the estimated useful life of the system;

(6) a description of any warranty, representation, or guarantee of energy production of the system;

(7) the approximate start and completion dates for the installation of the system;

(8) a statement indicating whether any warranty or maintenance obligations related to the system may be transferred by the solar retailer to a third party and, if so, a statement with substantially the following form and content: "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 system maintenance or repair.";
(9) if the solar retailer will not obtain customer approval to connect the system to the customer's utility, a statement to that effect and a description of what the customer must do to interconnect the system to the utility;
(10) 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;
(11) a statement indicating whether the solar retailer will make a fixture filing or other notice in the county real property records covering the system, including a Notice of Independently Owned Solar Energy System, and any fees or other costs associated with the filing that may be charged to the customer;
(12) a statement in capital letters with substantially 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.";
(13) 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."; and
(14) 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.

Enacted by Chapter 290, 2018 General Session

13-52-203 Contents of disclosure statement for system purchase agreement.

If a solar retailer is proposing to enter a system purchase agreement with a potential customer, the disclosure statement required in Subsection 13-52-201(1) shall include:
(1) a statement with substantially the following form and content: "You are entering an agreement to purchase an energy generation system. You will own the system installed on your property. You may be entitled to federal tax credits because of the purchase. You should consult your tax advisor.";
(2) the price quoted to the potential customer for a cash purchase of the system;
(3)
(a) the schedule of required and anticipated payments from the customer to the solar retailer and third parties over the term of the system purchase agreement, including application fees, up-front charges, down payment, scheduled payments under the system purchase agreement, payments at the end of the term of the system purchase agreement, payments for any operations or maintenance contract offered by or through the solar retailer in connection

with the system purchase agreement, and payments for replacement of system components likely to require replacement before the end of the useful life of the system as a whole; and

(b) the total of all payments referred to in Subsection (3)(a);

(4) a statement indicating that the cost of insuring the system is not included within the schedule of payments under Subsection (3);

(5) a statement, if applicable, with substantially the following form and content: "You are responsible for obtaining insurance coverage for any loss or damage to the system. You should consult an insurance professional to understand how to protect against the risk of loss or damage to the system. You should also consult your home insurer about the potential impact of installing a system."; and

(6) information about whether the system may be transferred to a purchaser of the home or real property where the system is located and any conditions for a transfer.

Enacted by Chapter 290, 2018 General Session

13-52-204 Contents of disclosure statement for system lease agreement.

If a solar retailer is proposing to enter a system lease agreement with a potential customer, the disclosure statement required in Subsection 13-52-201(1) shall include:

(1) a statement with substantially the following form and content: "You are entering an agreement to lease an energy generation system. You will lease (not own) the system installed on your property. You will not be entitled to any federal tax credit associated with the lease.";

(2) information about whether the system lease agreement may be transferred to a purchaser of the home or real property where the system is located and, if so, any conditions for a transfer;

(3) if the solar retailer will not obtain insurance against damage or loss to the system, a statement to that effect and a description of the consequences to the customer if there is damage or loss to the system; and

(4) information about what will happen to the system at the end of the term of the system lease agreement.

Enacted by Chapter 290, 2018 General Session

13-52-205 Contents of disclosure statement for power purchase agreement.

If a solar retailer is proposing to enter a power purchase agreement with a potential customer, the disclosure statement required in Subsection 13-52-201(1) shall include:

(1) a statement with substantially the following form and content: "You are entering an agreement to purchase power from an energy generation system. You will not own the system installed on your property. You will not be entitled to any federal tax credit associated with the purchase.";

(2) information about whether the power purchase agreement may be transferred to a purchaser of the home or real property where the system is located and, if so, any conditions for a transfer;

(3) if the solar retailer will not obtain insurance against damage or loss to the system, a statement to that effect and a description of the consequences to the customer if there is damage or loss to the system; and

(4) information about what will happen to the system at the end of the term of the power purchase agreement.

Enacted by Chapter 290, 2018 General Session

13-52-206 Good faith estimate allowed.

A solar retailer that does not, at the time of providing a disclosure statement required in Subsection 13-52-201(1), have information required under Section 13-52-202, 13-52-203, 13-52-204, or 13-52-205 to be included in the disclosure statement may make a good faith estimate of that information, if the solar retailer clearly indicates that the information is an estimate and provides the basis for the estimate.

Enacted by Chapter 290, 2018 General Session

Part 3
Enforcement

13-52-301 Division enforcement authority -- Administrative fine.

(1) Subject to Subsection (2), the division may enforce the provisions of this chapter by:
  (a) conducting an investigation into an alleged violation of this chapter;
  (b) issuing a cease and desist order against a further violation of this chapter; and
  (c) imposing an administrative fine of no more than $2,500 per solar agreement on a solar retailer that:
    (i) materially fails to comply with the disclosure requirements of this chapter; or
    (ii) violates any other provision of this chapter, if the division finds that the violation is a willful or intentional attempt to mislead or deceive a customer.

(2) The division may not commence any enforcement action under this section more than four years after the date of execution of the solar agreement with respect to which a violation is alleged to have occurred.

(3) The division shall, in its discretion:
  (a) deposit an administrative fine collected under Subsection (1)(c) in the Consumer Protection Education and Training Fund created in Section 13-2-8; or
  (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.

(4) Nothing in this chapter may be construed to affect:
  (a) a remedy a customer has independent of this chapter; or
  (b) the division's ability or authority to enforce any other law or regulation.

Enacted by Chapter 290, 2018 General Session

Chapter 53
Residential, Vocational and Life Skills Program Act

13-53-101 Title.

This chapter is known as the "Residential, Vocational and Life Skills Program Act."

Enacted by Chapter 252, 2018 General Session

13-53-102 Definitions.

As used in this chapter:

(1) "Division" means the Division of Consumer Protection.

(2) "Human services program" means the same as that term is defined in Section 62A-2-101.

(3) "Participant" means an individual who:

(a) resides at a residential, vocational and life skills program facility;

(b) receives from the residential, vocational and life skills program:

(i) vocational training; or

(ii) life skills training; and

(c) does not receive monetary compensation from the residential, vocational and life skills program.

(4) "Proprietary school" means the same as that term is defined in Section 13-34-102.

(5) "Residential, vocational and life skills program" means a program that:

(a) is operated by a nonprofit corporation, as defined in Section 16-6a-102;

(b) does not accept local, state, or federal government funding, government grant money, or any other form of government assistance to operate or provide services or training;

(c) operates on a mutually voluntary basis with each participant;

(d) houses at a program facility in this state participants who are unrelated to an owner or a manager of the program facility without charging money for lodging, food, clothing, or training;

(e) may house transitional graduates for a fee;

(f) provides vocational training to participants;

(g) provides life skills training to participants;

(h) maintains a director or senior staff member at a program facility at all times when the facility is in use;

(i) does not provide mental health services;

(j) does not provide substance use disorder treatment;

(k) does not accept payment from an insurance provider for a participant;

(l) does not award a degree, diploma, or other educational credential commensurate with a degree or diploma;

(m) does not hold itself out as a human services program; and

(n) does not hold itself out as a proprietary school.

(6) "Transitional graduate" means an individual who:

(a) graduated from a residential, vocational and life skills program;

(b) continues to reside at the residential, vocational and life skills program facility; and

(c) is employed by an entity not directly affiliated with the residential, vocational and life skills program.

(7) "Vocational training entity" is a commercial entity where a participant receives vocational training.

Enacted by Chapter 252, 2018 General Session

13-53-103 Registration of a residential, vocational and life skills program.

(1) An owner or a manager of a residential, vocational and life skills program shall annually register the residential, vocational and life skills program with the division.

(2) An application for registration shall be on a form approved by the division and shall require:

(a) the name, address, telephone number, email address, website, and facsimile number, if any, of the nonprofit corporation operating the residential, vocational and life skills program;

(b) the name and address of the registered agent of the corporation operating the residential, vocational and life skills program;
(c) the name, address, telephone number, email address, website, and facsimile number, if any, of the residential, vocational and life skills program;
(d) the name and address of any entity that controls, is controlled by, or is affiliated with the residential, vocational and life skills program;
(e) the name and residential address of any officer, director, manager, or administrator of the residential, vocational and life skills program;
(f) the name, address, telephone number, email address, website, and facsimile number, if any, of any vocational training entity affiliated with the residential, vocational and life skills program;
(g) a disclosure indicating whether any officer, director, or administrator of the residential, vocational and life skills program has been the subject of an administrative action by the division;
(h) a disclosure indicating whether any officer, director, or administrator of the residential, vocational and life skills program has been convicted of a felony or a crime of moral turpitude within the previous 10 years;
(i) if the organization is a charitable organization, as defined by Section 13-22-2, a copy of the charitable organization's registration or exemption;
(j) financial information described in Subsection 13-53-108(1);
(k) proof of a commercial general liability and umbrella insurance policy providing at least a $1,000,000 per occurrence limit of liability;
(l) a copy of the disclosure required under Section 13-53-106;
(m) evidence that the applicant meets the description of a residential, vocational and life skills program under Subsection 13-53-102(5); and
(n) additional information that the division requires, as provided in administrative rule.
(3) A residential, vocational and life skills program is registered on the day that the division issues the registration.
(4) The division's issuance of a registration for a residential, vocational and life skills program does not constitute the state's or the division's endorsement or approval of the residential, vocational and life skills program.
(5) An applicant for the registration of a residential, vocational and life skills program shall file a separate application and pay a separate application fee for each residential, vocational and life skills program location.
(6) The division may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the registration application process.
(7) The division may set fees in accordance with Section 63J-1-504 for a residential, vocational and life skills program registration application.

Enacted by Chapter 252, 2018 General Session

13-53-104 Registration denial, suspension, or revocation.

(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 and life skills program, if:
(a) the entity holding the registration fails to meet the description of a residential, vocational and life skills program under Subsection 13-53-102(5);

(b) the operation of the residential, vocational and life skills program creates a serious risk to public safety or welfare;
(c) the registration application or any supplemental information required by the division is incomplete, false, misleading, or filed in an untimely manner;
(d) the residential, vocational and 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;
(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
(ii) the residential, vocational and life skills program does not have adequate controls to minimize associated risks to the participants of the residential, vocational and life skills program and to the public; or
(f) the residential, vocational and life skills program fails to pay an administrative fine that the division lawfully imposes on the residential, vocational and life skills program.
(2) The division may place reasonable limits upon a residential, vocational and life skills program's operations, if:
(a) the division has reasonable concerns about the residential, vocational and life skills program's ability to comply with this chapter; and
(b) the limitation is reasonably calculated to protect the interests of the public or the participants of the residential, vocational and life skills program.
(3) When the demands of public safety permit, the division shall allow a residential, vocational and life skills program a reasonable amount of time to remedy a violation under this chapter before the division suspends or revokes a registration.
(4) The division may require an individual described in Subsection 13-53-103(2)(e) to submit to a criminal background check, at the individual's expense or the expense of the residential, vocational and life skills program.

Enacted by Chapter 252, 2018 General Session

13-53-105 Prohibited acts.

A residential, vocational and life skills program may not:
(1) operate without a registration issued under Section 13-53-103;
(2) utilize any behavioral intervention that is not peer-led or that uses the services of any professional or any person purporting to be a professional;
(3) accept a participant before providing to the participant the disclosure described in Section 13-53-106; or
(4) use physical force or permit the use of physical force.

Enacted by Chapter 252, 2018 General Session

13-53-106 Disclosure to participants.

(1) Before accepting a participant, a residential, vocational and life skills program shall provide to the prospective participant a written disclosure.
(2) The written disclosure shall include:
(a) a statement that the program is a registered residential, vocational and life skills program, but that the residential, vocational and life skills program is not endorsed by the state or the division;

(b) a statement that the prospective participant's continuation in the program is voluntary and that a participant may leave at any time;
(c) the conditions under which a participant is removed from the residential, vocational and life skills program or required to leave a program facility;
(d) a statement that the residential, vocational and life skills program will contact Adult Probation and Parole, if required by law; and
(e) a description of:
(i) the lodging, food, clothing, and other resources that are available to a participant;
(ii) the nature and scope of the residential, vocational and life skills program, including any activities or work that a participant is required to perform;
(iii) the scope and substance of peer-led activities;
(iv) the types of vocational training available to a participant, including the limitations on availability;
(v) the nature and extent of possible exposure to profanity, accusation, confrontation, nonphysical threats, or nonphysical corrective interaction;
(vi) the terms of any prohibition from contact with a participant's family, friends, or associates; and
(vii) any crimes committed within the previous two years at the residential, vocational and life skills program facility or at a vocational training entity affiliated with the residential, vocational and life skills program.

Enacted by Chapter 252, 2018 General Session

13-53-107 Participant screening.
(1) A residential, vocational and life skills program shall interview and screen all prospective participants for medical prescriptions, physical and mental health history, and recent alcohol or drug use.
(2) Unless an individual obtains a medical clearance from a physician or physician assistant, a residential, vocational and life skills program may not have as a participant an individual who:
(a) has a recent diagnosis of a mental, social, psychiatric, or psychological illness; or
(b) has an active prescription for medication for a mental, social, psychiatric, or psychological illness.
(3) A residential, vocational and life skills program may not admit a minor.

Amended by Chapter 349, 2019 General Session

13-53-108 Financial requirements.
(1) When applying for registration under Subsection 13-53-103(2), an applicant shall demonstrate fiscal responsibility by providing evidence to the division that the residential, vocational and life skills program:
(a) is financially sound; and
(b) reasonably has the fiscal ability to fulfill commitments and obligations to the participants of the residential, vocational and life skills program.
(2) Evidence acceptable to satisfy the requirement described in Subsection (1) includes:
(a) for a residential, vocational and life skills program that has been in operation less than one fiscal year:
(i) pro forma financial statements until further information described in Subsection (2)(b) is available; and

(ii) a commercial credit report for the residential, vocational and life skills program; or

(b) for a residential, vocational and life skills program that has completed a fiscal year, and as soon as the residential, vocational and life skills program completes its first fiscal year:

(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

(ii) a certified fiscal audit of the residential, vocational and life skills program's financial statement, performed by a certified or licensed public accountant.

(3) In evaluating a residential, vocational and life skills program's fiscal responsibility, the division may consider:

(a) any judgment, tax lien, collection action, bankruptcy schedule, or history of late payments to creditors;

(b) documentation showing the resolution of a matter described in Subsection (3)(a);

(c) the residential, vocational and life skills program's explanation for a matter described in Subsection (3)(a);

(d) a guarantee agreement provided for the residential, vocational and life skills program; and

(e) history of a prior entity that:

(i) is owned or operated by any individual who is an officer, a director, or an administrator of the residential, vocational and life skills program; and

(ii) has failed to maintain fiscal responsibility.

(4) The division may require evidence of financial status at other times when it is in the best interest of the program participants to require the information.

(5) The division may perform a fiscal audit of a residential, vocational and life skills program.

(6) A residential, vocational and 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 and life skills program's organizational complexity.

Enacted by Chapter 252, 2018 General Session

13-53-109 Discontinuance of operations.

(1) A residential, vocational and life skills program that is closing shall adopt a plan for the provision of food, shelter, and clothing for at least 30 days from the date of closure to participants displaced by the closure.

(2) At least 30 days before the day on which the residential, vocational and life skills program will close, the residential, vocational and life skills program shall provide written notice to the division of:

(a) the intended date of closure; and

(b) the plan described in Subsection (1).

Enacted by Chapter 252, 2018 General Session

13-53-110 Enforcement.

(1) The division may investigate facilities and enforce this chapter under the authority described in Chapter 2, Division of Consumer Protection.

(2) To monitor the welfare of participants and transitional graduates, if any, and to monitor the safe operation of a residential, vocational and life skills program, the division shall:

(a) annually perform an on-site inspection of a registered residential, vocational and life skills program;

(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
(c) coordinate with each relevant state and municipal entity to monitor the residential, vocational and life skills program's compliance with the entity's relevant health and safety regulations.
(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:
(a) issue a cease and desist order;
(b) impose an administrative fine of up to $2,500 for each violation of this chapter; and
(c) seek injunctive relief in a court of competent jurisdiction.
(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.

Enacted by Chapter 252, 2018 General Session

13-53-111 Recidivism reporting requirements.
(1) A residential, vocational and life skills program shall collect data on recidivism of participants, including data on:
(a) participants who participate in the residential, vocational and life skills program while under the supervision of a criminal court or the Board of Pardons and Parole and are convicted of another offense while participating in the program or within two years after the day on which the program ends; and
(b) the type of services provided to, and employment of, the participants described in Subsection (1)(a).
(2) A residential, vocational and life skills program shall annually, on or before August 31, provide the data described in Subsection (1) to the State Commission on Criminal and Juvenile Justice, to be included in the report described in Subsection 63M-7-204(1)(x).

Enacted by Chapter 187, 2022 General Session

Chapter 54
Ticket Website Sales Act

Part 1
General Provisions

13-54-101 Title.
This chapter is known as the "Ticket Website Sales Act."

Enacted by Chapter 115, 2019 General Session
Amended by Chapter 115, 2019 General Session, (Coordination Clause)

13-54-102 Definitions.
(1) "Consumer" means a person who purchases a ticket for use by the person or the person's invitee.
(2) "Division" means the Division of Consumer Protection in the Department of Commerce.
(3) "Domain" means the portion of text in a URL that is to the left of the top-level domain.

(4) "Event" means a single, specific occurrence of one of the following, that takes place at a venue:
(a) a concert;
(b) a game;
(c) a performance;
(d) a show; or
(e) an occasion similar to the occasions described in Subsections (4)(a) through (d).
(5) "Event participant" means any of the following persons who is associated with an event or on behalf of whom a person sells a ticket to an event:
(a) an artist;
(b) a league;
(c) a team;
(d) a tour group;
(e) a venue; or
(f) any person similar to the persons described in Subsections (5)(a) through (e).
(6) "Person" does not include a government entity.
(7) "Primary ticket seller" means the person who first sells a particular ticket.
(8)
(a) "Reseller" means a person who sells or offers for sale a ticket after it is sold by a primary ticket seller.
(b) "Reseller" includes a person who engages in conduct described in Subsection (8)(a), regardless of whether the person is also the primary ticket seller of the ticket or the primary ticket seller of another ticket to the same event.
(c) "Reseller" does not include a person who transfers a ticket to another person without reimbursement or consideration.
(9) "Ticket" means evidence of an individual's right of entry to an event.
(10) "Ticket aggregator" means a person who aggregates the prices for which other persons offer tickets for sale or resale.
(11) "Ticket website" means:
(a) with respect to a reseller, a website on which the reseller sells or offers for sale or resale one or more tickets; or
(b) with respect to a ticket aggregator, a website on which the ticket aggregator aggregates the prices for which other persons offer tickets for sale or resale.
(12) "Top-level domain" includes .com, .net, and .org.
(13) "URL" means the uniform resource locator for a website on the Internet.
(14)
(a) "Venue" means real property located in the state where one or more persons host a concert, game, performance, show, or similar occasion.
(b) "Venue" includes an arena, a stadium, a theater, a concert hall, an amphitheater, a fairground, a club, a convention center, a public assembly facility, or a mass gathering location.

Enacted by Chapter 115, 2019 General Session

13-54-103 Exemptions.
(1) This chapter does not apply to:
(a) an entity that is owned, controlled, operated, or maintained by a bona fide church or religious organization that is exempt from property taxation under the laws of the state; or
(b) a consumer reselling a ticket that the consumer purchased as a consumer.

(2) A person who claims an exemption under this section has the burden of proving that the person is entitled to the exemption.

Enacted by Chapter 115, 2019 General Session

Part 2
Requirements and Prohibited Practices

13-54-201 Disclosure requirements.

(1) A reseller or ticket aggregator shall clearly and conspicuously disclose on each of its ticket websites that:
  (a) the website is a secondary market and is not the primary ticket seller; and
  (b) the price of a ticket on the website may be higher than face value.
(2) A reseller shall clearly and conspicuously disclose during the checkout process an itemization of the total price for which the reseller is offering the ticket for sale or resale, including taxes and each fee.

Enacted by Chapter 115, 2019 General Session

13-54-202 Prohibited practices.

(1)
  (a) It is unlawful for any person who is not a primary ticket seller to represent, directly or indirectly, that the person is a primary ticket seller.
  (b) If a presiding officer or court determines appropriate after considering other relevant factors, the following actions by a person who is not a primary ticket seller establish a presumption that the person is representing that the person is a primary ticket seller in violation of Subsection (1)(a):
    (i) using the name of an event in the domain of the person's ticket website, unless the person has written authorization from an agent of the event;
    (ii) using the name of an event participant in the domain of the person's ticket website, unless the person has written authorization from the event participant or an agent of the event participant; or
    (iii) using, in paid search results, the name of an event or event participant in a manner described in Subsection (1)(b)(i) or (ii).
(2) It is unlawful for a person who lists or offers a ticket for sale to:
  (a) accept payment for the ticket; and
  (b) fail to deliver to the consumer who purchases the ticket a ticket that reflects the transaction to which the parties agreed.
(3) It is unlawful for a person to fail to comply with a provision of Section 13-54-201.
(4) Nothing in this section prohibits a person from including the name of an event or an event participant in a URL after the top-level domain.

Amended by Chapter 154, 2021 General Session

Part 3

Enforcement

13-54-301 Enforcement powers.

(1) The division may enforce the provisions of this chapter in accordance with Chapter 2, Division of Consumer Protection.

(2)

(a) In addition to the division's enforcement powers under Chapter 2, Division of Consumer Protection:

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

(ii) the division may bring an action in a court of competent jurisdiction to enforce the provisions of this chapter.

(b) In a court action by the division to enforce a provision of this chapter, the court may:

(i) find that an act or practice violates a provision of this chapter; and

(ii) award, for each violation of this chapter:

(A) actual damages on behalf of each consumer who complained to the division within a reasonable time after the division initiated the court action; and

(B) a fine of up to $2,500.

(c) For any judgment in favor of the division under this section, the court may award:

(i) costs, including the costs of investigation; and

(ii) reasonable attorney fees.

(3) Each ticket sold or offered for sale while a person is in violation of a provision of this chapter constitutes a separate violation of this chapter.

(4) Nothing in this chapter affects:

(a) a remedy available to a person independent of this chapter; or

(b) the division's ability or authority to enforce any other law.

Enacted by Chapter 115, 2019 General Session

Chapter 56
Ticket Transferability Act

Part 1
General Provisions

13-56-101 Title.

This chapter is known as the "Ticket Transferability Act."

Enacted by Chapter 423, 2019 General Session

13-56-102 Definitions.

As used in this section:

(1) "Division" means the Division of Consumer Protection in the Department of Commerce.

(2) "Event" means a single, specific occurrence of one of the following, that takes place at a venue:

(a) a concert;

(b) a game;
(c) a performance;
(d) a show; or
(e) an occasion similar to the occasions described in Subsections (2)(a) through (d).
(3) "Exempt entity" means:
(a) a Division I college postseason basketball tournament;
(b) a nonprofit organization that:
(i) is exempt from federal income taxation under Section 501(c)(3), Internal Revenue Code;
(ii) is domiciled in the state; and
(iii) produces an annual international film festival in the state; or
(c) a public or private postsecondary institution that is located in the state.
(4) "Restricted ticket" means a ticket to an event that is subject to a restriction that prohibits the purchaser from reselling or otherwise transferring the ticket by any lawful method.
(5) "Transferrable ticket" means a ticket to an event that a person issues using a delivery method that enables the purchaser to lawfully resell the ticket independent of the person who issued the ticket or the person's agent or operator.
(6)
(a) "Venue" means real property located in the state where one or more persons host a concert, game, performance, show, or similar occasion.
(b) "Venue" includes an arena, a stadium, a theater, a concert hall, an amphitheater, a fairground, a club, a convention center, a public assembly facility, or a mass gathering location.
(7) "Venue operator" means a person who operates a venue.

Enacted by Chapter 423, 2019 General Session

13-56-103 Scope.
(1) This chapter does not apply to an event or venue of an exempt entity.
(2) Nothing in this chapter prohibits a venue operator from maintaining and enforcing one or more policies regarding conduct or behavior at or in connection with the venue.

Enacted by Chapter 423, 2019 General Session

Part 2
Ticket Resale Restrictions

13-56-201 Limitations on ticket resale restrictions -- Disclosures.
(1) Except as provided in Subsection (2), each ticket issued for an event shall be a transferrable ticket.
(2)
(a)
(i) Up to 10% of the total number of tickets issued for an event may be restricted tickets.
(ii) The total number of tickets described in Subsection (2)(a)(i):
(A) includes each ticket that provides access to the event, regardless of whether the ticket is made available for sale; and

(B) does not include a ticket that is part of a youth basketball program associated with a professional sports team where tickets are donated or issued at a reduced rate.

(b) Notwithstanding Subsection (2)(a), each calendar year, an unlimited number of restricted tickets may be issued for up to 10% of the total concert and theater events held at the same venue during the calendar year.

(3) A person who issues a restricted ticket shall provide the purchaser a clear and conspicuous written notice that states the ticket may not be resold or transferred.

(4) A person may not discriminate against an individual or deny an individual admission to an event solely because the individual:

(a) resold a ticket to the event independent of the person who issued the ticket or the person's agent or operator; or

(b) purchased a resold ticket to the event independent of the person who issued the ticket or the person's agent or operator.

Enacted by Chapter 423, 2019 General Session

Part 3
Enforcement and Reporting

13-56-301 Enforcement powers -- Penalty.

(1) The division may enforce the provisions of this chapter in accordance with Chapter 2, Division of Consumer Protection.

(2) A person who violates a provision of this chapter is subject to a fine of up to $250 per violation.

Enacted by Chapter 423, 2019 General Session

13-56-302 Reporting.

(1) As used in this section, "reporting period" means:

(a) for a report submitted under this section in compliance with a July 15 deadline, January 1 through June 30 of the calendar year in which the report is submitted; or

(b) for a report submitted under this section in compliance with a January 15 deadline, July 1 through December 31 of the calendar year immediately preceding the calendar year in which the report is submitted.

(2) On or before July 15, 2020, and July 15 of each year thereafter, a venue operator shall submit a report described in Subsection (4) to the division, if there was an event scheduled at the venue during the reporting period for which a person issued one or more restricted tickets.

(3) On or before January 15, 2021, and January 15 of each year thereafter, a venue operator shall submit a report described in Subsection (4) to the division, if there was an event scheduled at the venue during the reporting period for which a person issued one or more restricted tickets.

(4) A report submitted in accordance with this section shall contain the following information:

(a) for each event scheduled at the venue during the reporting period and for which a person issued a restricted ticket:

(i) the total number of tickets issued for the event;

(ii) the number of restricted tickets issued for the event;

(iii) the date of the event; and

(iv) the type of event;

(b)
(i) for a report submitted in compliance with a July 15 deadline, the number of concert or theater events scheduled at the venue during the reporting period; or
(ii) for a report submitted in compliance with a January 15 deadline, the number of concert or theater events scheduled at the venue during the preceding calendar year; and
(c) the number of concert or theater events scheduled at the venue during the reporting period for which a person issued a restricted ticket under Subsection 13-56-201(2)(b).

Enacted by Chapter 423, 2019 General Session

Chapter 57
Maintenance Funding Practices Act

Part 1
General Provisions

13-57-101 Title.
This chapter is known as the "Maintenance Funding Practices Act."

Enacted by Chapter 118, 2020 General Session

13-57-102 Definitions.
As used in this chapter:
(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.
(2) "Director" means the director of the Division of Consumer Protection.
(3) "Division" means the Division of Consumer Protection of the Department of Commerce established in Section 13-2-1.
(4) "Health care provider" means the same as that term is defined in Section 78B-3-403.
(5) "Individual" means a person who:
(a) resides in this state; and
(b) has or may have a pending legal action in this state.
(6) "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.
(7) "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.
(8)
(a) "Maintenance funding provider" means a business entity that engages in the business of legal funding.
(b) "Maintenance funding provider" does not include:
(i) an immediate family member of an individual;
(ii) an accountant providing accounting services to an individual; or
(iii) an attorney providing legal services to an individual.

Enacted by Chapter 118, 2020 General Session

Part 2
Maintenance Funding Providers

13-57-201 Maintenance funding provider registration and registration renewal.

(1) Except as provided in Subsection (4), a business entity may not act as a maintenance funding provider in this state without registering with the division.

(2) To register as a maintenance funding provider, a business entity shall submit to the division an application for registration:
  (a) in the manner the division determines; and
  (b) that includes:
    (i) an application fee in an amount determined by the division in accordance with Sections 13-1-2 and 63J-1-504; and
    (ii) anything else the division requires as established in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(3) Each year a maintenance funding provider shall renew the maintenance funding provider's registration by submitting to the division an application for registration renewal:
  (a) in the manner the division determines; and
  (b) that includes:
    (i) an application fee in an amount determined by the division in accordance with Sections 13-1-2 and 63J-1-504; and
    (ii) anything else the division requires as established in rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

(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:
  (a) if the person:
    (i) applies for registration in accordance with this section; and
    (ii) complies with the requirements of this chapter; and
  (b) until the division makes a determination regarding the person's application for registration under this section.

Enacted by Chapter 118, 2020 General Session

13-57-202 Maintenance funding provider operations.

(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.

(2) Before executing a maintenance funding agreement, a maintenance funding provider shall file with the division a template of the maintenance funding agreement.

(3) A maintenance funding provider may not:
  (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:
    (i) an attorney authorized to practice law;
    (ii) a health care provider; or

(iii) an employee, independent contractor, or other person affiliated with a person described in Subsection (3)(a)(i) or (ii);
(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;
(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;
(d) intentionally advertise materially false or misleading information about the maintenance funding provider's services;
(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
(f) knowingly pay or offer to pay court costs, filing fees, or attorney fees using legal funding.
(4) A maintenance funding provider shall provide an individual who enters a maintenance funding agreement a copy of the executed maintenance funding agreement.

Enacted by Chapter 118, 2020 General Session

13-57-203 Annual reports.
(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:
(a) under oath;
(b) with the director; and
(c) in a form the director prescribes.
(2) The report described in Subsection (1) shall include, for the preceding calendar year:
(a) the number of maintenance funding agreements entered into by the maintenance funding provider;
(b) the total dollar amount of legal funding the maintenance funding provider provided;
(c) the total dollar amount of charges under each maintenance funding agreement, itemized and including the annual rate of return;
(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;
(e) the total dollar amount and number of maintenance funding transactions in which the realized profit to the company was less than contracted; and
(f) any other information the director requires concerning the maintenance funding provider's business or operations in the state.

Enacted by Chapter 118, 2020 General Session

Part 3
Maintenance Funding Agreements

13-57-301 Maintenance funding agreements.
(1) A maintenance funding agreement shall:
(a) be in writing;
(b) contain a right of rescission permitting the individual to cancel the agreement without penalty or further obligation, if the individual returns to the maintenance funding provider the full amount of the disbursed funds:

(i) within five business days after the day on which the individual and maintenance funding provider enter the agreement; and

(ii)

(A) in person by delivering the maintenance funding provider's uncashed check to the maintenance funding provider's office; or

(B) by insured, certified, or registered United States mail to the address specified in the maintenance funding agreement in the form of the maintenance funding provider's uncashed check or a registered or certified check or money order;

(c) contain the disclosures described in Section 13-57-302;

(d) include the amount of money the maintenance funding provider provides to the individual;

(e) include an itemization of one-time charges;

(f) include a payment schedule that:

(i) includes the funded amount and all charges; and

(ii) lists the total amount of any realized settlement, judgment, award, or verdict to be paid to the maintenance funding provider at the end of each six-month period, if the contract is satisfied during that period; and

(g) include a provision that the maintenance funding agreement includes no charge or fee other than the charges and fees disclosed in the maintenance funding agreement; and

(h) include a provision that:

(i) if there are no available proceeds from the legal action, the individual will owe the maintenance funding provider nothing; and

(ii) the maintenance funding provider's total charges will be paid only to the extent there are available proceeds from the legal action after the settlement of all liens, fees, and other costs.

(2) A maintenance funding agreement may not require an individual to make a payment to the maintenance funding provider in an amount determined as a percentage of the recovery from the legal action.

Enacted by Chapter 118, 2020 General Session

13-57-302 Required disclosures.

A maintenance funding provider shall disclose in a maintenance funding agreement:

(1) that the maintenance funding provider may not participate in deciding whether, when, or the amount for which a legal action is settled;

(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;

(3) the following statement in substantially the following form, in all capital letters and at least a 12-point type: "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.";

(4) in accordance with Section 13-57-301, the following statement in substantially the following form and at least a 12-point type: "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

(5) immediately above the line for the individual's signature, the following statement in at least a 12-point type: "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."

Enacted by Chapter 118, 2020 General Session

Part 4
Division Duties

13-57-401 Rulemaking.

The division shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

(1) establish an application process for a business entity to register with the division as a maintenance funding provider, in accordance with Section 13-57-201;

(2) establish a filing process for a maintenance funding provider to file a maintenance funding agreement with the division;

(3) establish a filing process for annual reports required under Section 13-57-203; and

(4) carry out the provisions of this chapter.

Enacted by Chapter 118, 2020 General Session

13-57-402 Public education regarding legal funding -- Reporting to Legislature.

(1) The director shall help educate the general public regarding legal funding in the state by:

(a) analyzing and summarizing data maintenance funding providers submit under Section 13-57-203; and

(b) publishing the analysis and summary described in Subsection (1)(a) on the division's web page.

(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.

Enacted by Chapter 118, 2020 General Session

Part 5

Miscellaneous

13-57-501 Enforceability.

If a maintenance funding provider violates a provision of this chapter, a maintenance funding agreement associated with the violation is unenforceable by the maintenance funding provider or any successor-in-interest to the maintenance funding agreement.

Enacted by Chapter 118, 2020 General Session

13-57-502 Penalties -- Enforcement.

(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:
  (a) revoking or suspending a maintenance funding provider's registration;
  (b) ordering a maintenance funding provider to cease and desist from further legal funding;
  (c) imposing a penalty of up to:
    (i) $1,000 per violation; or
    (ii) $10,000 per violation that the division finds willful; or
  (d) ordering the maintenance funding provider to make restitution to an individual.
(2) The division's enforcement powers under this section and Section 13-2-6 do not affect an individual's legal claim against a maintenance funding provider.

Enacted by Chapter 118, 2020 General Session

13-57-503 Applicability.

The requirements of this chapter for a maintenance funding provider do not apply to:
(1) a bank while in the course of conducting a banking business as described in Section 7-3-1;
(2) a deferred deposit lender, as defined in Section 7-23-102, while engaged in the business of deferred deposit lending;
(3) a title lender, as defined in Section 7-24-102, while engaged in the business of extending a title loan; or
(4) a creditor, as defined in Section 70C-1-302, subject to the provisions of Title 70C, Utah Consumer Credit Code.

Enacted by Chapter 118, 2020 General Session

Chapter 58
Motorboat Agreements Act

Part 1
General Provisions

13-58-101 Title.

This chapter is known as the "Motorboat Agreements Act."

Enacted by Chapter 185, 2021 General Session

13-58-102 Definitions.

As used in this chapter:

(1) "Agreement" means an agreement between:
  (a) a motorboat dealer; and
  (b)
    (i) a manufacturer; or
    (ii) a distributor.
(2) "Distributor" means a person who:
  (a) has an agreement with a manufacturer of motorboats to distribute motorboats within this state; and
  (b) in whole or in part sells or distributes motorboats to motorboat dealers.
(3) "Manufacturer" means a person engaged in the business of constructing, manufacturing, assembling, producing, or importing new motorboats for the purpose of sale or trade.
(4) "Motorboat" means the same as that term is defined in Section 73-18-2.
(5) "Motorboat dealer" means a person who:
  (a) is engaged in the business of buying, selling, offering for sale, or exchanging new motorboats either outright or on conditional sale, bailment, lease, chattel mortgage, or otherwise; and
  (b) has established in this state a place of business for the sale, lease, trade, or display of new motorboats.

Enacted by Chapter 185, 2021 General Session

Part 2
Agreements

13-58-201 Agreement requirement -- Terms of agreements.

(1) A person may not act as a motorboat dealer in this state without entering into an agreement.
(2) An agreement shall include:
  (a) each working capital standard, inventory standard, facility standard, equipment standard, and tool standard, if any, including each agreed upon minimum product stocking requirement;
  (b) provisions for termination or nonrenewal of the agreement;
  (c) the designation of a successor motorboat dealer in the event of the motorboat dealer's death or disability;
  (d) the obligations of the manufacturer, distributor, and motorboat dealer in the preparation and delivery of, and warranty service on, new motorboats and new motorboat motors;
  (e) the obligations of the manufacturer, distributor, and new motorboat dealer upon termination of the agreement, including obligations in relation to:
    (i) inventory of new motorboats;
    (ii) inventory of new motorboat motors;
    (iii) inventory of parts;
    (iv) equipment;
    (v) furnishings;
    (vi) special tools; and
    (vii) required signs;

(f) each standard for maintenance of:
(i) a dedicated or self-funded line of credit, if any; and
(ii) a trade-in line of credit or self-funded trade-in line of credit, if any; and
(g) dispute resolution procedures.

Enacted by Chapter 185, 2021 General Session

Part 3
Default

13-58-301 Motorboat dealer default.

A motorboat dealer defaults on an agreement if the motorboat dealer:
(1) materially fails to:
(a) meet minimum product stocking requirements as specified under the agreement;
(b) make timely payment of a material obligation as specified under the agreement; or
(c) meet an applicable standard, as specified by the agreement, for:
(i) a dedicated or self-funded line of credit; or
(ii) a trade-in or self-funded trade-in line of credit; or
(2) markets the manufacturer's motorboats outside of the motorboat dealer's territory in violation of the agreement.

Enacted by Chapter 185, 2021 General Session

13-58-302 Cure of default.

(1) If a motorboat dealer defaults as described in Section 13-58-301, the manufacturer or distributor who is part of the agreement shall:
(a) give the dealer written notice of the dealer's default; and
(b) allow the dealer to cure the default within the period described in Subsection (2).
(2) A motorboat dealer may cure a default no later than:
(a) 30 days after the day on which the dealer receives the notice described in Subsection (1), if the dealer defaulted as described in Subsection 13-58-301(1)(b) or (2);
(b) 60 days after the day on which the dealer receives the notice described in Subsection (1), if the dealer defaulted as described in Subsection 13-58-301(1)(a); and
(c) 160 days after the day on which the dealer receives the notice described in Subsection (1), if the dealer defaulted as described in Subsection 13-58-301(1)(c).

Amended by Chapter 274, 2022 General Session

Part 4
Termination or Nonrenewal of Agreements

13-58-401 Termination or nonrenewal of agreement -- Notice -- Repurchase obligations.

(1) Except as provided in Section 13-58-402, a manufacturer or distributor may not terminate or fail to renew an agreement with a motorboat dealer unless:
(a) the motorboat dealer defaults as described in Section 13-58-301;

(b) the manufacturer or distributor gives the motorboat dealer written notice as described in Section 13-58-302 that clearly and concisely states:
(i) the default; and
(ii) that if the dealer fails to cure the default, the manufacturer or distributor may terminate the agreement;
(c) the manufacturer or distributor provides the motorboat dealer the applicable period to cure the default as described in Subsection 13-58-302(2); and
(d) the motorboat dealer fails to cure the default during the applicable period described in Subsection 13-58-302(2).
(2) If an agreement is terminated or not renewed in violation of this section, the manufacturer shall pay to the motorboat dealer:
(a) an amount that equals:
(i) the dealer's cost of each new, undamaged, unsold, and unregistered motorboat, motorboat motor, and trailer in the dealer's inventory that the dealer:
(A) acquired from the manufacturer or from another dealer; and
(B) invoiced during the 24-month period immediately before the day on which the agreement terminates or is not renewed; minus
(ii) each applicable dealer rebate and discount;
(b) for each charge the manufacturer made for distribution, delivery, or taxes;
(c) an amount that equals the dealer's cost for accessories added on a motorboat or trailer;
(d) an amount that equals:
(i) the cost of all new, undamaged, and unsold supplies, parts, and accessories, as advertised in the manufacturer's catalog or website on the day on which the agreement terminates or is not renewed; minus
(ii) all allowance the manufacturer paid or credited to the dealer;
(e) an amount that equals the greater of the fair market value for or the dealer's depreciated acquisition cost of a sign, if:
(i) the manufacturer required or recommended the dealer to acquire the sign;
(ii) the sign bears the manufacturer's name, trade name, or trademark;
(iii) the sign is undamaged; and
(iv) the dealer owns the sign;
(f) an amount that equals the greater of the fair market value for or the dealer's depreciated acquisition cost of all special tools, equipment, and furnishings:
(i) acquired from the manufacturer or a source the manufacturer approved;
(ii) that the manufacturer required the dealer to acquire; and
(iii) that are in good and usable condition; and
(g) the cost of transporting, handling, packing, and loading all motorboats, motorboat motors, trailers, supplies, parts, accessories, signs, special tools, equipment, and furnishings.
(3) A manufacturer shall pay a motorboat dealer the amounts described in Subsection (2) within 90 days after the day on which the tender of the property to the manufacturer occurs, if the dealer has:
(a) clear title to the property; or
(b) the manufacturer's statement of origin.
(4) If an item described in Subsection (2) is subject to a security interest, the manufacturer may make payment jointly to:
(a) the motorboat dealer; and
(b) the holder of the security interest.

Enacted by Chapter 185, 2021 General Session

13-58-402 Termination without time to cure.

A manufacturer or distributor may terminate an agreement with a motorboat dealer upon written notice and without a cure period described in Section 13-58-302, if:

(1) the motorboat dealer:
(a) financially defaults to the manufacturer, the distributor, or a financing source;
(b) becomes subject to an order for relief, as defined in 11 U.S.C. Sec. 102;
(c) files a voluntary petition in bankruptcy;
(d) has had an involuntary petition in bankruptcy filed against the motorboat dealer;
(e) engages in an act of material fraud in relation to the performance of a right or obligation under the agreement;
(f) is a corporation that ceases to exist;
(g) becomes insolvent;
(h) takes or fails to take an action that constitutes an admission of inability to pay debts as the debts mature;
(i) makes a general assignment for the benefit of creditors to an agent authorized to liquidate any substantial amount of assets;
(j) applies to a court for the appointment of a receiver for any assets or properties;
(k) fails to substantially comply with a federal, state, or local law, rule, regulation, ordinance, or order applicable to the agreement;
(l) receives three valid notices of a default under Section 13-58-302 for the same default within a 12-month period, regardless of whether the dealer cures the default;
(m) transfers an interest in the dealership without the manufacturer's written consent;
(n) has pleaded guilty to or has been convicted of a felony, or of any misdemeanor relating to the relationship between the motorboat dealer and manufacturer;
(o) or one of the owners of the motorboat dealer is convicted or enters a plea of nolo contendere to a felony; or
(p) makes a material misrepresentation;
(2) there is a closeout or sale of a substantial part of the dealer's assets related to the motorboat dealership;
(3) there is a commencement or dissolution or liquidation of the motorboat dealership;
(4) there is a change without the prior written approval of the manufacturer in the location of the motorboat dealer's principal place of business under the dealership agreement; or
(5) the motorboat dealer's license is suspended, revoked, or is not renewed.

Enacted by Chapter 185, 2021 General Session

Chapter 59
Health Care Consumer Protection Act

Part 1
General Provisions

13-59-101 Title.

This chapter is known as the "Health Care Consumer Protection Act."

Enacted by Chapter 138, 2021 General Session

13-59-102 Definitions.

As used in this chapter:

(1) "Enrollee" means the same as that term is defined in Section 31A-1-301.

(2) "Health benefit plan" means the same as that term is defined in Section 31A-1-301.

(3) "Health care provider" means a person licensed to provide health care under:

(a)Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act; or

(b)Title 58, Occupations and Professions.

Enacted by Chapter 138, 2021 General Session

Part 2
Consumer Protection Violations

13-59-201 Misrepresentation of health insurance coverage.

(1) A health care provider or a health care provider's representative may not represent to an enrollee that the health care provider is a contracted provider under the enrollee's health benefit plan if the health care provider is not a contracted provider under the enrollee's health benefit plan.

(2) A knowing or intentional violation of Subsection (1) is a deceptive act or practice under Section 13-11-4.

Enacted by Chapter 138, 2021 General Session

Chapter 60
Genetic Information Privacy Act

Part 1
General Provisions

13-60-101 Title.

This chapter is known as the "Genetic Information Privacy Act."

Enacted by Chapter 361, 2021 General Session

13-60-102 Definitions.

As used in this chapter:

(1) "Biological sample" means any human material known to contain DNA, including tissue, blood, urine, or saliva.

(2) "Consumer" means an individual who is a resident of the state.

(3) "Deidentified data" means data that:

(a) cannot reasonably be linked to an identifiable individual; and
(b) possessed by a company that:
(i) takes administrative and technical measures to ensure that the data cannot be associated with a particular consumer;
(ii) makes a public commitment to maintain and use data in deidentified form and not attempt to reidentify data; and
(iii) enters into legally enforceable contractual obligation that prohibits a recipient of the data from attempting to reidentify the data.
(4) "Direct-to-consumer genetic testing company" or "company" means an entity that:
(a) offers consumer genetic testing products or services directly to consumers; or
(b) collects, uses, or analyzes genetic data that a consumer provides to the entity.
(5) "DNA" means deoxyribonucleic acid.
(6) "Express consent" means a consumer's affirmative response to a clear, meaningful, and prominent notice regarding the collection, use, or disclosure of genetic data for a specific purpose.
(7)
(a) "Genetic data" means any data, regardless of format, concerning a consumer's genetic characteristics.
(b) "Genetic data" includes:
(i) raw sequence data that result from sequencing all or a portion of a consumer's extracted DNA;
(ii) genotypic and phenotypic information obtained from analyzing a consumer's raw sequence data; and
(iii) self-reported health information regarding a consumer's health conditions that the consumer provides to a company that the company:
(A) uses for scientific research or product development; and
(B) analyzes in connection with the consumer's raw sequence data.
(c) "Genetic data" does not include deidentified data.
(8) "Genetic testing" means:
(a) a laboratory test of a consumer's complete DNA, regions of DNA, chromosomes, genes, or gene products to determine the presence of genetic characteristics of the consumer; or
(b) an interpretation of a consumer's genetic data.

Enacted by Chapter 361, 2021 General Session

13-60-103 Limitations.

This chapter does not apply to:
(1) protected health information that is collected by a covered entity or business associate as those terms are defined in 45 C.F.R. Parts 160 and 164;
(2) a public or private institution of higher education; or
(3) an entity owned or operated by a public or private institution of higher education.

Enacted by Chapter 361, 2021 General Session

Part 2
Consumer Genetic Data

13-60-201 Consumer genetic information -- Privacy notice -- Consent -- Access -- Deletion -- Destruction.

(1) A direct-to-consumer genetic testing company shall:

(a) provide to a consumer:

(i) essential information about the company's collection, use, and disclosure of genetic data; and

(ii) a prominent, publicly available privacy notice that includes information about the company's data collection, consent, use, access, disclosure, transfer, security, retention, and deletion practices;

(b) obtain a consumer's initial express consent for collection, use, or disclosure of the consumer's genetic data that:

(i) clearly describes the company's use of the genetic data that the company collects through the company's genetic testing product or service;

(ii) specifies who has access to test results; and

(iii) specifies how the company may share the genetic data;

(c) if the company engages in any of the following, obtain a consumer's:

(i) separate express consent for:

(A) the transfer or disclosure of the consumer's genetic data to any person other than the company's vendors and service providers;

(B) the use of genetic data beyond the primary purpose of the company's genetic testing product or service; or

(C) the company's retention of any biological sample provided by the consumer following the company's completion of the initial testing service requested by the consumer;

(ii) informed consent in accordance with the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46, for transfer or disclosure of the consumer's genetic data to a third party for:

(A) research purposes; or

(B) research conducted under the control of the company for the purpose of publication or generalizable knowledge; and

(iii) express consent for:

(A) marketing to a consumer based on the consumer's genetic data; or

(B) marketing by a third party person to a consumer based on the consumer having ordered or purchased a genetic testing product or service;

(d) require valid legal process for the company's disclosure of a consumer's genetic data to law enforcement or any government entity without the consumer's express written consent;

(e) develop, implement, and maintain a comprehensive security program to protect a consumer's genetic data against unauthorized access, use, or disclosure; and

(f) provide a process for a consumer to:

(i) access the consumer's genetic data;

(ii) delete the consumer's account and genetic data; and

(iii) destroy the consumer's biological sample.

(2) Notwithstanding Subsection (1)(c)(iii), a direct-to-consumer genetic testing company with a first-party relationship to a consumer may, without obtaining the consumer's express consent, provide customized content or offers on the company's website or through the company's application or service.

Enacted by Chapter 361, 2021 General Session

13-60-202 Prohibited disclosures.

A direct-to-consumer genetic testing company may not disclose a consumer's genetic data without the consumer's written consent to:

(1) an entity that offers health insurance, life insurance, or long-term care insurance; or

(2) an employer of the consumer.

Enacted by Chapter 361, 2021 General Session

Part 3
Enforcement

13-60-301 Enforcement powers of the attorney general.

(1) The attorney general may enforce this chapter.

(2) The attorney general may initiate a civil enforcement action against a person for violating this chapter.

(3) In an action to enforce this chapter, the attorney general may recover:

(a) actual damages to the consumer;

(b) costs;

(c) attorney fees; and

(d) $2,500 for each violation of this chapter.

Enacted by Chapter 361, 2021 General Session

Effective 12/31/2023

Chapter 61
Utah Consumer Privacy Act

Effective 12/31/2023

Part 1
General Provisions

Effective 12/31/2023

13-61-101 Definitions.

As used in this chapter:

(1) "Account" means the Consumer Privacy Restricted Account established in Section 13-61-403.

(2) "Affiliate" means an entity that:

(a) controls, is controlled by, or is under common control with another entity; or

(b) shares common branding with another entity.

(3) "Aggregated data" means information that relates to a group or category of consumers:

(a) from which individual consumer identities have been removed; and

(b) that is not linked or reasonably linkable to any consumer.

(4) "Air carrier" means the same as that term is defined in 49 U.S.C. Sec. 40102.

(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.

(6)

(a) "Biometric data" means data generated by automatic measurements of an individual's unique biological characteristics.

(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.

(c) "Biometric data" does not include:

(i) a physical or digital photograph;

(ii) a video or audio recording;

(iii) data generated from an item described in Subsection (6)(c)(i) or (ii);

(iv) information captured from a patient in a health care setting; or

(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.

(7) "Business associate" means the same as that term is defined in 45 C.F.R. Sec. 160.103.

(8) "Child" means an individual younger than 13 years old.

(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.

(10)

(a) "Consumer" means an individual who is a resident of the state acting in an individual or household context.

(b) "Consumer" does not include an individual acting in an employment or commercial context.

(11) "Control" or "controlled" as used in Subsection (2) means:

(a) ownership of, or the power to vote, more than 50% of the outstanding shares of any class of voting securities of an entity;

(b) control in any manner over the election of a majority of the directors or of the individuals exercising similar functions; or

(c) the power to exercise controlling influence of the management of an entity.

(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.

(13) "Covered entity" means the same as that term is defined in 45 C.F.R. Sec. 160.103.

(14) "Deidentified data" means data that:

(a) cannot reasonably be linked to an identified individual or an identifiable individual; and

(b) are possessed by a controller who:

(i) takes reasonable measures to ensure that a person cannot associate the data with an individual;

(ii) publicly commits to maintain and use the data only in deidentified form and not attempt to reidentify the data; and

(iii) contractually obligates any recipients of the data to comply with the requirements described in Subsections (14)(b)(i) and (ii).

(15) "Director" means the director of the Division of Consumer Protection.

(16) "Division" means the Division of Consumer Protection created in Section 13-2-1.

(17) "Governmental entity" means the same as that term is defined in Section 63G-2-103.

(18) "Health care facility" means the same as that term is defined in Section 26-21-2.

(19) "Health care provider" means the same as that term is defined in Section 26-21-2.
(20) "Identifiable individual" means an individual who can be readily identified, directly or indirectly.
(21) "Institution of higher education" means a public or private institution of higher education.
(22) "Local political subdivision" means the same as that term is defined in Section 11-14-102.
(23) "Nonprofit corporation" means:
(a) the same as that term is defined in Section 16-6a-102; or
(b) a foreign nonprofit corporation as defined in Section 16-6a-102.
(24)
(a) "Personal data" means information that is linked or reasonably linkable to an identified individual or an identifiable individual.
(b) "Personal data" does not include deidentified data, aggregated data, or publicly available information.
(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.
(26) "Processor" means a person who processes personal data on behalf of a controller.
(27) "Protected health information" means the same as that term is defined in 45 C.F.R. Sec. 160.103.
(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:
(a) kept separate from the consumer's personal data; and
(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.
(29) "Publicly available information" means information that a person:
(a) lawfully obtains from a record of a governmental entity;
(b) reasonably believes a consumer or widely distributed media has lawfully made available to the general public; or
(c) if the consumer has not restricted the information to a specific audience, obtains from a person to whom the consumer disclosed the information.
(30) "Right" means a consumer right described in Section 13-61-201.
(31)
(a) "Sale," "sell," or "sold" means the exchange of personal data for monetary consideration by a controller to a third party.
(b) "Sale," "sell," or "sold" does not include:
(i) a controller's disclosure of personal data to a processor who processes the personal data on behalf of the controller;
(ii) a controller's disclosure of personal data to an affiliate of the controller;
(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;
(iv) the disclosure or transfer of personal data when a consumer directs a controller to:
(A) disclose the personal data; or
(B) interact with one or more third parties;
(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;
(vi) the disclosure of information that the consumer:
(A) intentionally makes available to the general public via a channel of mass media; and
(B) does not restrict to a specific audience; or

(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.

(32)

(a) "Sensitive data" means:

(i) personal data that reveals:

(A) an individual's racial or ethnic origin;

(B) an individual's religious beliefs;

(C) an individual's sexual orientation;

(D) an individual's citizenship or immigration status; or

(E) information regarding an individual's medical history, mental or physical health condition, or medical treatment or diagnosis by a health care professional;

(ii) the processing of genetic personal data or biometric data, if the processing is for the purpose of identifying a specific individual; or

(iii) specific geolocation data.

(b) "Sensitive data" does not include personal data that reveals an individual's:

(i) racial or ethnic origin, if the personal data are processed by a video communication service; or

(ii) if the personal data are processed by a person licensed to provide health care under Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, 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.

(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.

(b) "Specific geolocation data" does not include:

(i) the content of a communication; or

(ii) any data generated by or connected to advanced utility metering infrastructure systems or equipment for use by a utility.

(34)

(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.

(b) "Targeted advertising" does not include advertising:

(i) based on a consumer's activities within a controller's website or online application or any affiliated website or online application;

(ii) based on the context of a consumer's current search query or visit to a website or online application;

(iii) directed to a consumer in response to the consumer's request for information, product, a service, or feedback; or

(iv) processing personal data solely to measure or report advertising:

(A) performance;

(B) reach; or

(C) frequency.

(35) "Third party" means a person other than:

(a) the consumer, controller, or processor; or

(b) an affiliate or contractor of the controller or the processor.
(36) "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that:
(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
(b) is the subject of efforts that are reasonable under the circumstances to maintain the information's secrecy.

Enacted by Chapter 462, 2022 General Session

Effective 12/31/2023
13-61-102 Applicability.
(1) This chapter applies to any controller or processor who:
(a)
(i) conducts business in the state; or
(ii) produces a product or service that is targeted to consumers who are residents of the state;
(b) has annual revenue of $25,000,000 or more; and
(c) satisfies one or more of the following thresholds:
(i) during a calendar year, controls or processes personal data of 100,000 or more consumers; or
(ii) derives over 50% of the entity's gross revenue from the sale of personal data and controls or processes personal data of 25,000 or more consumers.
(2) This chapter does not apply to:
(a) a governmental entity or a third party under contract with a governmental entity when the third party is acting on behalf of the governmental entity;
(b) a tribe;
(c) an institution of higher education;
(d) a nonprofit corporation;
(e) a covered entity;
(f) a business associate;
(g) information that meets the definition of:
(i) protected health information for purposes of the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Sec. 1320d et seq., and related regulations;
(ii) patient identifying information for purposes of 42 C.F.R. Part 2;
(iii) identifiable private information for purposes of the Federal Policy for the Protection of Human Subjects, 45 C.F.R. Part 46;
(iv) identifiable private information or personal data collected as part of human subjects research pursuant to or under the same standards as:
(A) the good clinical practice guidelines issued by the International Council for Harmonisation; or
(B) the Protection of Human Subjects under 21 C.F.R. Part 50 and Institutional Review Boards under 21 C.F.R. Part 56;
(v) personal data used or shared in research conducted in accordance with one or more of the requirements described in Subsection (2)(g)(iv);
(vi) information and documents created specifically for, and collected and maintained by, a committee listed in Section 26-1-7;

(vii) information and documents created for purposes of the federal Health Care Quality Improvement Act of 1986, 42 U.S.C. Sec. 11101 et seq., and related regulations;
(viii) patient safety work product for purposes of 42 C.F.R. Part 3; or
(ix) information that is:
(A) deidentified in accordance with the requirements for deidentification set forth in 45 C.F.R. Part 164; and
(B) derived from any of the health care-related information listed in this Subsection (2)(g);
(h) information originating from, and intermingled to be indistinguishable with, information under Subsection (2)(g) that is maintained by:
(i) a health care facility or health care provider; or
(ii) a program or a qualified service organization as defined in 42 C.F.R. Sec. 2.11;
(i) information used only for public health activities and purposes as described in 45 C.F.R. Sec. 164.512;
(j)
(i) an activity by:
(A) a consumer reporting agency, as defined in 15 U.S.C. Sec. 1681a;
(B) a furnisher of information, as set forth in 15 U.S.C. Sec. 1681s-2, who provides information for use in a consumer report, as defined in 15 U.S.C. Sec. 1681a; or
(C) a user of a consumer report, as set forth in 15 U.S.C. Sec. 1681b;
(ii) subject to regulation under the federal Fair Credit Reporting Act, 15 U.S.C. Sec. 1681 et seq.; and
(iii) involving the collection, maintenance, disclosure, sale, communication, or use of any personal data bearing on a consumer's:
(A) credit worthiness;
(B) credit standing;
(C) credit capacity;
(D) character;
(E) general reputation;
(F) personal characteristics; or
(G) mode of living;
(k) a financial institution or an affiliate of a financial institution governed by, or personal data collected, processed, sold, or disclosed in accordance with, Title V of the Gramm-Leach-Bliley Act, 15 U.S.C. Sec. 6801 et seq., and related regulations;
(l) personal data collected, processed, sold, or disclosed in accordance with the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Sec. 2721 et seq.;
(m) personal data regulated by the federal Family Education Rights and Privacy Act, 20 U.S.C. Sec. 1232g, and related regulations;
(n) personal data collected, processed, sold, or disclosed in accordance with the federal Farm Credit Act of 1971, 12 U.S.C. Sec. 2001 et seq.;
(o) data that are processed or maintained:
(i) in the course of an individual applying to, being employed by, or acting as an agent or independent contractor of a controller, processor, or third party, to the extent the collection and use of the data are related to the individual's role;
(ii) as the emergency contact information of an individual described in Subsection (2)(o)(i) and used for emergency contact purposes; or
(iii) to administer benefits for another individual relating to an individual described in Subsection (2)(o)(i) and used for the purpose of administering the benefits;
(p) an individual's processing of personal data for purely personal or household purposes; or

(q) an air carrier.

(3) A controller is in compliance with any obligation to obtain parental consent under this chapter if the controller complies with the verifiable parental consent mechanisms under the Children's Online Privacy Protection Act, 15 U.S.C. Sec. 6501 et seq., and the act's implementing regulations and exemptions.

(4) This chapter does not require a person to take any action in conflict with the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. Sec. 1320d et seq., or related regulations.

Enacted by Chapter 462, 2022 General Session

Effective 12/31/2023

13-61-103 Preemption -- Reference to other laws.

(1) This chapter supersedes and preempts any ordinance, resolution, rule, or other regulation adopted by a local political subdivision regarding the processing of personal data by a controller or processor.

(2) Any reference to federal law in this chapter includes any rules or regulations promulgated under the federal law.

Enacted by Chapter 462, 2022 General Session

Effective 12/31/2023

Part 2
Rights Relating to Personal Data

Effective 12/31/2023

13-61-201 Consumer rights -- Access -- Deletion -- Portability -- Opt out of certain processing.

(1) A consumer has the right to:

(a) confirm whether a controller is processing the consumer's personal data; and

(b) access the consumer's personal data.

(2) A consumer has the right to delete the consumer's personal data that the consumer provided to the controller.

(3) A consumer has the right to obtain a copy of the consumer's personal data, that the consumer previously provided to the controller, in a format that:

(a) to the extent technically feasible, is portable;

(b) to the extent practicable, is readily usable; and

(c) allows the consumer to transmit the data to another controller without impediment, where the processing is carried out by automated means.

(4) A consumer has the right to opt out of the processing of the consumer's personal data for purposes of:

(a) targeted advertising; or

(b) the sale of personal data.

(5) Nothing in this section requires a person to cause a breach of security system as defined in Section 13-44-102.

Enacted by Chapter 462, 2022 General Session

Effective 12/31/2023

13-61-202 Exercising consumer rights.

(1) A consumer may exercise a right by submitting a request to a controller, by means prescribed by the controller, specifying the right the consumer intends to exercise.

(2) In the case of processing personal data concerning a known child, the parent or legal guardian of the known child shall exercise a right on the child's behalf.

(3) In the case of processing personal data concerning a consumer subject to guardianship, conservatorship, or other protective arrangement under Title 75, Chapter 5, Protection of Persons Under Disability and Their Property, the guardian or the conservator of the consumer shall exercise a right on the consumer's behalf.

Enacted by Chapter 462, 2022 General Session

Effective 12/31/2023

13-61-203 Controller's response to requests.

(1) Subject to the other provisions of this chapter, a controller shall comply with a consumer's request under Section 13-61-202 to exercise a right.

(2)

(a) Within 45 days after the day on which a controller receives a request to exercise a right, the controller shall:

(i) take action on the consumer's request; and

(ii) inform the consumer of any action taken on the consumer's request.

(b) The controller may extend once the initial 45-day period by an additional 45 days if reasonably necessary due to the complexity of the request or the volume of the requests received by the controller.

(c) If a controller extends the initial 45-day period, before the initial 45-day period expires, the controller shall:

(i) inform the consumer of the extension, including the length of the extension; and

(ii) provide the reasons the extension is reasonably necessary as described in Subsection (2)(b).

(d) The 45-day period does not apply if the controller reasonably suspects the consumer's request is fraudulent and the controller is not able to authenticate the request before the 45-day period expires.

(3) If, in accordance with this section, a controller chooses not to take action on a consumer's request, the controller shall within 45 days after the day on which the controller receives the request, inform the consumer of the reasons for not taking action.

(4)

(a) A controller may not charge a fee for information in response to a request, unless the request is the consumer's second or subsequent request during the same 12-month period.

(b)

(i) Notwithstanding Subsection (4)(a), a controller may charge a reasonable fee to cover the administrative costs of complying with a request or refuse to act on a request, if:

(A) the request is excessive, repetitive, technically infeasible, or manifestly unfounded;

(B) the controller reasonably believes the primary purpose in submitting the request was something other than exercising a right; or

(C) the request, individually or as part of an organized effort, harasses, disrupts, or imposes undue burden on the resources of the controller's business.

(ii) A controller that charges a fee or refuses to act in accordance with this Subsection (4)(b) bears the burden of demonstrating the request satisfied one or more of the criteria described in Subsection (4)(b)(i).

(5) If a controller is unable to authenticate a consumer request to exercise a right described in Section 13-61-201 using commercially reasonable efforts, the controller:

(a) is not required to comply with the request; and

(b) may request that the consumer provide additional information reasonably necessary to authenticate the request.

Enacted by Chapter 462, 2022 General Session

Effective 12/31/2023

Part 3
Requirements for Controllers and Processors

Effective 12/31/2023

13-61-301 Responsibility according to role.

(1) A processor shall:

(a) adhere to the controller's instructions; and

(b) taking into account the nature of the processing and information available to the processor, by appropriate technical and organizational measures, insofar as reasonably practicable, assist the controller in meeting the controller's obligations, including obligations related to the security of processing personal data and notification of a breach of security system described in Section 13-44-202.

(2) Before a processor performs processing on behalf of a controller, the processor and controller shall enter into a contract that:

(a) clearly sets forth instructions for processing personal data, the nature and purpose of the processing, the type of data subject to processing, the duration of the processing, and the parties' rights and obligations;

(b) requires the processor to ensure each person processing personal data is subject to a duty of confidentiality with respect to the personal data; and

(c) requires the processor to engage any subcontractor pursuant to a written contract that requires the subcontractor to meet the same obligations as the processor with respect to the personal data.

(3)

(a) Determining whether a person is acting as a controller or processor with respect to a specific processing of data is a fact-based determination that depends upon the context in which personal data are to be processed.

(b) A processor that adheres to a controller's instructions with respect to a specific processing of personal data remains a processor.

Enacted by Chapter 462, 2022 General Session

Effective 12/31/2023

13-61-302 Responsibilities of controllers -- Transparency -- Purpose specification and data minimization -- Consent for secondary use -- Security -- Nondiscrimination -- Nonretaliation -- Nonwaiver of consumer rights.

(1)
(a) A controller shall provide consumers with a reasonably accessible and clear privacy notice that includes:
(i) the categories of personal data processed by the controller;
(ii) the purposes for which the categories of personal data are processed;
(iii) how consumers may exercise a right;
(iv) the categories of personal data that the controller shares with third parties, if any; and
(v) the categories of third parties, if any, with whom the controller shares personal data.
(b) If a controller sells a consumer's personal data to one or more third parties or engages in targeted advertising, the controller shall clearly and conspicuously disclose to the consumer the manner in which the consumer may exercise the right to opt out of the:
(i) sale of the consumer's personal data; or
(ii) processing for targeted advertising.

(2)
(a) A controller shall establish, implement, and maintain reasonable administrative, technical, and physical data security practices designed to:
(i) protect the confidentiality and integrity of personal data; and
(ii) reduce reasonably foreseeable risks of harm to consumers relating to the processing of personal data.
(b) Considering the controller's business size, scope, and type, a controller shall use data security practices that are appropriate for the volume and nature of the personal data at issue.

(3) Except as otherwise provided in this chapter, a controller may not process sensitive data collected from a consumer without:
(a) first presenting the consumer with clear notice and an opportunity to opt out of the processing; or
(b) in the case of the processing of personal data concerning a known child, processing the data in accordance with the federal Children's Online Privacy Protection Act, 15 U.S.C. Sec. 6501 et seq., and the act's implementing regulations and exemptions.

(4)
(a) A controller may not discriminate against a consumer for exercising a right by:
(i) denying a good or service to the consumer;
(ii) charging the consumer a different price or rate for a good or service; or
(iii) providing the consumer a different level of quality of a good or service.
(b) This Subsection (4) does not prohibit a controller from offering a different price, rate, level, quality, or selection of a good or service to a consumer, including offering a good or service for no fee or at a discount, if:
(i) the consumer has opted out of targeted advertising; or
(ii) the offer is related to the consumer's voluntary participation in a bona fide loyalty, rewards, premium features, discounts, or club card program.

(5) A controller is not required to provide a product, service, or functionality to a consumer if:
(a) the consumer's personal data are or the processing of the consumer's personal data is reasonably necessary for the controller to provide the consumer the product, service, or functionality; and
(b) the consumer does not:
(i) provide the consumer's personal data to the controller; or

(ii) allow the controller to process the consumer's personal data.

(6) Any provision of a contract that purports to waive or limit a consumer's right under this chapter is void.

Enacted by Chapter 462, 2022 General Session

Effective 12/31/2023

13-61-303 Processing deidentified data or pseudonymous data.

(1) The provisions of this chapter do not require a controller or processor to:

(a) reidentify deidentified data or pseudonymous data;

(b) maintain data in identifiable form or obtain, retain, or access any data or technology for the purpose of allowing the controller or processor to associate a consumer request with personal data; or

(c) comply with an authenticated consumer request to exercise a right described in Subsections 13-61-202(1) through (3), if:

(i)

(A) the controller is not reasonably capable of associating the request with the personal data; or

(B) it would be unreasonably burdensome for the controller to associate the request with the personal data;

(ii) the controller does not:

(A) use the personal data to recognize or respond to the consumer who is the subject of the personal data; or

(B) associate the personal data with other personal data about the consumer; and

(iii) the controller does not sell or otherwise disclose the personal data to any third party other than a processor, except as otherwise permitted in this section.

(2) The rights described in Subsections 13-61-201(1) through (3) do not apply to pseudonymous data if a controller demonstrates that any information necessary to identify a consumer is kept:

(a) separately; and

(b) subject to appropriate technical and organizational measures to ensure the personal data are not attributed to an identified individual or an identifiable individual.

(3) A controller who uses pseudonymous data or deidentified data shall take reasonable steps to ensure the controller:

(a) complies with any contractual obligations to which the pseudonymous data or deidentified data are subject; and

(b) promptly addresses any breach of a contractual obligation described in Subsection (3)(a).

Enacted by Chapter 462, 2022 General Session

Effective 12/31/2023

13-61-304 Limitations.

(1) The requirements described in this chapter do not restrict a controller's or processor's ability to:

(a) comply with a federal, state, or local law, rule, or regulation;

(b) comply with a civil, criminal, or regulatory inquiry, investigation, subpoena, or summons by a federal, state, local, or other governmental entity;

(c) cooperate with a law enforcement agency concerning activity that the controller or processor reasonably and in good faith believes may violate federal, state, or local laws, rules, or regulations;

(d) investigate, establish, exercise, prepare for, or defend a legal claim;
(e) provide a product or service requested by a consumer or a parent or legal guardian of a child;
(f) perform a contract to which the consumer or the parent or legal guardian of a child is a party, including fulfilling the terms of a written warranty or taking steps at the request of the consumer or parent or legal guardian before entering into the contract with the consumer;
(g) take immediate steps to protect an interest that is essential for the life or physical safety of the consumer or of another individual;
(h)
(i) detect, prevent, protect against, or respond to a security incident, identity theft, fraud, harassment, malicious or deceptive activity, or any illegal activity; or
(ii) investigate, report, or prosecute a person responsible for an action described in Subsection (1)(h)(i);
(i)
(i) preserve the integrity or security of systems; or
(ii) investigate, report, or prosecute a person responsible for harming or threatening the integrity or security of systems, as applicable;
(j) if the controller discloses the processing in a notice described in Section 13-61-302, engage in public or peer-reviewed scientific, historical, or statistical research in the public interest that adheres to all other applicable ethics and privacy laws;
(k) assist another person with an obligation described in this subsection;
(l) process personal data to:
(i) conduct internal analytics or other research to develop, improve, or repair a controller's or processor's product, service, or technology;
(ii) identify and repair technical errors that impair existing or intended functionality; or
(iii) effectuate a product recall;
(m) process personal data to perform an internal operation that is:
(i) reasonably aligned with the consumer's expectations based on the consumer's existing relationship with the controller; or
(ii) otherwise compatible with processing to aid the controller or processor in providing a product or service specifically requested by a consumer or a parent or legal guardian of a child or the performance of a contract to which the consumer or a parent or legal guardian of a child is a party; or
(n) retain a consumer's email address to comply with the consumer's request to exercise a right.

(2) This chapter does not apply if a controller's or processor's compliance with this chapter:
(a) violates an evidentiary privilege under Utah law;
(b) as part of a privileged communication, prevents a controller or processor from providing personal data concerning a consumer to a person covered by an evidentiary privilege under Utah law; or
(c) adversely affects the privacy or other rights of any person.

(3) A controller or processor is not in violation of this chapter if:
(a) the controller or processor discloses personal data to a third party controller or processor in compliance with this chapter;
(b) the third party processes the personal data in violation of this chapter; and
(c) the disclosing controller or processor did not have actual knowledge of the third party's intent to commit a violation of this chapter.

(4) If a controller processes personal data under an exemption described in Subsection (1), the controller bears the burden of demonstrating that the processing qualifies for the exemption.

(5) Nothing in this chapter requires a controller, processor, third party, or consumer to disclose a trade secret.

Enacted by Chapter 462, 2022 General Session

Effective 12/31/2023

13-61-305 No private cause of action.

A violation of this chapter does not provide a basis for, nor is a violation of this chapter subject to, a private right of action under this chapter or any other law.

Enacted by Chapter 462, 2022 General Session

Effective 12/31/2023

Part 4
Enforcement

Effective 12/31/2023

13-61-401 Investigative powers of division.

(1) The division shall establish and administer a system to receive consumer complaints regarding a controller's or processor's alleged violation of this chapter.

(2)

(a) The division may investigate a consumer complaint to determine whether the controller or processor violated or is violating this chapter.

(b) If the director has reasonable cause to believe that substantial evidence exists that a person identified in a consumer complaint is in violation of this chapter, the director shall refer the matter to the attorney general.

(c) Upon request, the division shall provide consultation and assistance to the attorney general in enforcing this chapter.

Enacted by Chapter 462, 2022 General Session

Effective 12/31/2023

13-61-402 Enforcement powers of the attorney general.

(1) The attorney general has the exclusive authority to enforce this chapter.

(2) Upon referral from the division, the attorney general may initiate an enforcement action against a controller or processor for a violation of this chapter.

(3)

(a) At least 30 days before the day on which the attorney general initiates an enforcement action against a controller or processor, the attorney general shall provide the controller or processor:

(i) written notice identifying each provision of this chapter the attorney general alleges the controller or processor has violated or is violating; and

(ii) an explanation of the basis for each allegation.

(b) The attorney general may not initiate an action if the controller or processor:

(i) cures the noticed violation within 30 days after the day on which the controller or processor receives the written notice described in Subsection (3)(a); and

(ii) provides the attorney general an express written statement that:
(A) the violation has been cured; and
(B) no further violation of the cured violation will occur.
(c) The attorney general may initiate an action against a controller or processor who:
(i) fails to cure a violation after receiving the notice described in Subsection (3)(a); or
(ii) after curing a noticed violation and providing a written statement in accordance with Subsection (3)(b), continues to violate this chapter.
(d) In an action described in Subsection (3)(c), the attorney general may recover:
(i) actual damages to the consumer; and
(ii) for each violation described in Subsection (3)(c), an amount not to exceed $7,500.
(4) All money received from an action under this chapter shall be deposited into the Consumer Privacy Account established in Section 13-61-403.
(5) If more than one controller or processor are involved in the same processing in violation of this chapter, the liability for the violation shall be allocated among the controllers or processors according to the principles of comparative fault.

Enacted by Chapter 462, 2022 General Session

Effective 12/31/2023
13-61-403 Consumer Privacy Restricted Account.
(1) There is created a restricted account known as the "Consumer Privacy Account."
(2) The account shall be funded by money received through civil enforcement actions under this chapter.
(3) Upon appropriation, the division or the attorney general may use money deposited into the account for:
(a) investigation and administrative costs incurred by the division in investigating consumer complaints alleging violations of this chapter;
(b) recovery of costs and attorney fees accrued by the attorney general in enforcing this chapter; and
(c) providing consumer and business education regarding:
(i) consumer rights under this chapter; and
(ii) compliance with the provisions of this chapter for controllers and processors.
(4) If the balance in the account exceeds $4,000,000 at the close of any fiscal year, the Division of Finance shall transfer the amount that exceeds $4,000,000 into the General Fund.

Enacted by Chapter 462, 2022 General Session

Effective 12/31/2023
13-61-404 Attorney general report.
(1) The attorney general and the division shall compile a report:
(a) evaluating the liability and enforcement provisions of this chapter, including the effectiveness of the attorney general's and the division's efforts to enforce this chapter; and
(b) summarizing the data protected and not protected by this chapter including, with reasonable detail, a list of the types of information that are publicly available from local, state, and federal government sources.
(2) The attorney general and the division may update the report as new information becomes available.

(3) The attorney general and the division shall submit the report to the Business and Labor Interim Committee before July 1, 2025.

Enacted by Chapter 462, 2022 General Session

Chapter 62
Digital Asset Management Act

Part 1
General Provisions

13-62-101 Definitions.

As used in this chapter:

(1) "Agent" means a person who is authorized to act on behalf of an owner with respect to a digital asset.

(2) "Control" means:

(a) an owner or an agent has the exclusive legal authority to conduct a transaction relating to the digital asset, including by means of a private key or the use of a multi-signature arrangement the owner or agent authorizes; or

(b) a secured party has created a smart contract which gives the secured party exclusive legal authority to conduct a transaction relating to a digital security.

(3)

(a) "Digital asset" means a representation of economic, proprietary, or access rights that is stored in a computer readable format.

(b) "Digital asset" includes:

(i) a digital user asset; or

(ii) a digital security.

(4) "Digital security" means a digital asset which constitutes a security, as that term is defined in Section 70A-8-101.

(5)

(a) "Digital user asset" means a digital asset that is used or bought primarily for consumptive, personal, or household purposes.

(b) "Digital user asset" includes an open blockchain token.

(c) "Digital user asset" does not include a digital security.

(6) "Multi-signature arrangement" means a system of access control relating to a digital asset for the purposes of preventing unauthorized transactions relating to the asset, in which two or more private keys are required to conduct a transaction.

(7) "Private key" means a unique element of cryptographic data, which is:

(a) held by a person;

(b) paired with a unique, publicly available element of cryptographic data; and

(c) associated with an algorithm that is necessary to carry out an encryption or decryption required to execute a transaction.

(8) "Smart contract" means a transaction which is comprised of code, script, or programming language that executes the terms of an agreement, and which may include taking custody of

and transferring a digital asset, or issuing executable instructions for these actions, based on the occurrence or nonoccurrence of specified conditions.

Enacted by Chapter 448, 2022 General Session

13-62-102 Ownership of digital assets.

(1) Digital securities are intangible personal property and shall be considered securities and investment property for purposes of this chapter, Title 70A, Chapter 8, Uniform Commercial Code - Investment Securities, and Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions.
(2) An owner of a digital user asset may demonstrate ownership of the digital user asset through control.
(3) Nothing in this chapter shall be interpreted to restrict or impair an owner's right to own a digital asset.

Enacted by Chapter 448, 2022 General Session