

DIVISION OF CONSUMER PROTECTION

AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Dan R. Eastman

House Sponsor: Roger E. Barrus

LONG TITLE

General Description:

This bill addresses various provisions administered by the Division of Consumer Protection.

Highlighted Provisions:

This bill:

- ▶ increases the maximum amount of an administrative fine under Title 13, Chapter 15, Business Opportunity Disclosure Act;
- ▶ expands the definition of a credit services organization under Title 13, Chapter 21, Credit Services Organizations Act;
- ▶ increases the maximum amount of an administrative fine under Title 13, Chapter 21, Credit Services Organizations Act;
- ▶ narrows the definition of a health spa under Title 13, Chapter 23, Health Spa Services Protection Act;
- ▶ clarifies an exemption from bond requirements under Title 13, Chapter 23, Health Spa Services Protection Act;
- ▶ eliminates references limiting an exemption from Title 13, Chapter 34, Utah Postsecondary Proprietary School Act, to Utah schools;
- ▶ clarifies an exemption under Title 13, Chapter 34, Utah Postsecondary Proprietary School Act, for aviation training; and



28 ▶ makes technical changes.

29 **Monies Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill provides an immediate effective date.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **13-15-6**, as last amended by Chapter 85, Laws of Utah 1995

36 **13-21-2**, as last amended by Chapter 55, Laws of Utah 2004

37 **13-21-8**, as last amended by Chapter 83, Laws of Utah 1995

38 **13-23-2**, as last amended by Chapter 18, Laws of Utah 2005

39 **13-23-6**, as last amended by Chapter 18, Laws of Utah 2005

40 **13-34-105**, as last amended by Chapter 242, Laws of Utah 2005

41 REPEALS:

42 **13-25a-110**, as enacted by Chapter 263, Laws of Utah 2003



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

45 Section 1. Section **13-15-6** is amended to read:

46 **13-15-6. Failure to file disclosures -- Relief where seller fails to comply with**
47 **chapter -- Relief where division granted judgment or injunction -- Administrative fines.**

48 (1) If a seller fails to file the disclosures required under Section 13-15-4, or fails after
49 demand by the division to file the disclosure within 15 days, the division, consistent with
50 Section 13-2-5, shall begin adjudicative proceedings and shall issue a cease and desist order.

51 (2) Any purchaser of a business opportunity from a seller who does not comply with
52 this chapter is entitled, in an appropriate court of competent jurisdiction, to rescission of the
53 contract, to an award of a reasonable attorney's fee and costs of court in an action to enforce the
54 right of rescission, and to the amount of actual damages or \$2,000, whichever is greater.

55 (3) In the event the division is granted judgment or injunctive relief in an appropriate
56 court of competent jurisdiction, the division, in addition to any other relief, is entitled to an
57 award of reasonable attorney's fees, costs of court, and investigative fees.

58 (4) (a) In addition to other penalties under this chapter, and to its other enforcement

59 powers under Title 13, Chapter 2, Division of Consumer Protection, the division director may
60 impose an administrative fine of up to [~~\$1,000~~] \$2,500 for each violation of this chapter.

61 (b) All money received through administrative fines imposed under this section shall
62 be deposited in the Consumer Protection Education and Training Fund created by Section
63 13-2-8.

64 Section 2. Section **13-21-2** is amended to read:

65 **13-21-2. Definitions -- Exemptions.**

66 As used in this chapter:

67 (1) "Buyer" means an individual who is solicited to purchase or who purchases the
68 services of a credit services organization.

69 (2) "Credit reporting agency" means a person [~~that~~] who, for a monetary fee, dues, or
70 on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of
71 assembling or evaluating consumer credit information or other information on consumers for
72 the purpose of furnishing consumer reports to third persons.

73 (3) (a) "Credit services organization" means a person who, with respect to the
74 extension of credit by others, sells, provides, or performs, or represents that the person can or
75 will sell, provide, or perform, in return for the payment of money or other valuable
76 consideration any of the following services:

77 (i) improving a buyer's credit record, history, or rating;

78 (ii) obtaining an extension of credit for a buyer;

79 (iii) providing advice, assistance, instruction, or instructional materials to a buyer with
80 regard to either Subsection (3)(a)(i) or (ii);

81 (iv) providing debt reduction or debt management plans;

82 (v) [~~represent~~] representing itself or its employee as a debt professional or credit
83 counselor; or

84 (vi) [~~negotiate~~] negotiating with a buyer's creditor.

85 (b) "Credit services organization" does not include:

86 (i) a person authorized to make loans or extensions of credit under the laws of this state
87 or the United States who is subject to regulation and supervision by this state or the United
88 States and who derives at least 35% of the person's income from making loans and extensions
89 of credit;

- 90 (ii) a depository institution:
- 91 (A) as defined in Section 7-1-103; or
- 92 (B) that is regulated or supervised by the Federal Deposit Insurance Corporation and
- 93 the National Credit Union Association;
- 94 (iii) a person licensed as a real estate broker by this state if the person is acting within
- 95 the course and scope of that license;
- 96 (iv) a person licensed to practice law in this state if:
- 97 (A) the person renders the services described in Subsection (3)(a) within the course and
- 98 scope of the person's practice as an attorney; and
- 99 (B) the services described in Subsection (3)(a) are incidental to the person's practice as
- 100 an attorney;
- 101 (v) a broker-dealer registered with the Securities and Exchange Commission or the
- 102 Commodity Futures Trading Commission if the broker-dealer is acting within the course and
- 103 scope of that regulation; or
- 104 (vi) a credit reporting agency if the services described in Subsection (3)(a) are
- 105 incidental to the credit reporting agency's services.
- 106 (4) "Extension of credit" means the right to defer payment of debt or to incur debt and
- 107 defer its payment, offered or granted primarily for personal, family, or household purposes.
- 108 Section 3. Section **13-21-8** is amended to read:
- 109 **13-21-8. Burden of proving exception -- Penalties -- Court's criminal and**
- 110 **equitable jurisdiction -- Prosecution.**
- 111 (1) (a) Any waiver by a buyer of any part of this chapter is void.
- 112 (b) Any attempt by a credit services organization to have a buyer waive rights given by
- 113 this chapter is a violation of this chapter.
- 114 (2) In any proceeding involving this chapter, the burden of proving an exemption or an
- 115 exception from a definition is upon the person claiming the exemption or exception.
- 116 (3) (a) Any person who violates this chapter is guilty of a class A misdemeanor.
- 117 (b) Any district court of this state has jurisdiction to restrain and enjoin the violation of
- 118 this chapter.
- 119 (4) The attorney general, any county attorney, any district attorney, or any city attorney
- 120 may prosecute misdemeanor actions or institute injunctive or civil proceedings, or both, under

121 this chapter.

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

124 (6) (a) In addition to other penalties under this section, the division director may issue a
125 cease and desist order and impose an administrative fine of up to [~~\$1,000~~] \$2,500 for each
126 violation of this chapter.

127 (b) All money received through administrative fines imposed under this section shall
128 be deposited in the Consumer Protection Education and Training Fund created by Section
129 13-2-8.

130 Section 4. Section **13-23-2** is amended to read:

131 **13-23-2. Definitions.**

132 As used in this chapter:

133 (1) "Consumer" means a purchaser of health spa services for valuable consideration.

134 (2) "Division" means the Division of Consumer Protection.

135 (3) (a) "Health spa" means any person, partnership, joint venture, corporation,
136 association, or other entity that, for a charge or fee, provides as one of its primary purposes
137 services or facilities that are purported to assist patrons to improve their physical condition or
138 appearance through:

139 (i) aerobic conditioning;

140 (ii) strength training;

141 (iii) fitness training;

142 (iv) yoga training;

143 (v) pilates training; or

144 (vi) other exercise.

145 (b) "Health spa" includes any establishment designated:

146 (i) as a "health spa";

147 (ii) as a "spa";

148 (iii) as an "exercise gym";

149 (iv) as a "health studio";

150 (v) as a "health club";

151 (vi) as a "personal training facility";

- 152 (vii) as a "yoga facility";
- 153 (viii) as a "pilates facility"; or
- 154 (ix) with any other similar terms.
- 155 (c) "Health spa" does not include:
- 156 (i) any facility operated by a licensed physician at which the physician engages in the
- 157 practice of medicine;
- 158 (ii) any facility operated by a ~~health care provider,~~ hospital, intermediate care facility,
- 159 or skilled nursing care facility;
- 160 (iii) any public or private school, college, or university;
- 161 (iv) any facility owned or operated by the state or its political subdivisions; ~~or~~
- 162 (v) any facility owned or operated by the United States or its political subdivisions~~[-];~~

163 or

- 164 (vi) instruction offered by an individual if:
- 165 (A) the individual offering the instruction does not utilize another individual as an
- 166 employee or independent contractor; and
- 167 (B) a patron is not granted the use of a facility containing exercise equipment.
- 168 (4) "Health spa services" means any service provided by a health spa, including athletic
- 169 facilities, equipment, and instruction.

170 Section 5. Section **13-23-6** is amended to read:

171 **13-23-6. Exemptions from bond, letter of credit, or certificate of deposit**
 172 **requirement.**

173 A health spa that offers no paid-in-full membership, but only memberships paid for by
 174 installment contracts is exempt from the application of ~~Section~~ Subsections 13-23-5(2)
 175 through (5) if:

- 176 (1) each contract contains the following clause: "If this health spa ceases operation and
- 177 fails to offer an alternate location within five miles, no further payments under this contract
- 178 shall be due to anyone, including any purchaser of any note associated with or contained in this
- 179 contract.";
- 180 (2) all payments due under each contract, including down payments, enrollment fees,
- 181 membership fees, or any other payments to the health spa, are in equal monthly installments
- 182 spread over the entire term of the contract; and

183 (3) the term of each contract is clearly stated and is not capable of being extended.

184 Section 6. Section **13-34-105** is amended to read:

185 **13-34-105. Exempted institutions.**

186 (1) This chapter does not apply to the following institutions:

187 (a) a Utah institution directly supported, to a substantial degree, with funds provided
188 by:

189 (i) the state;

190 (ii) a local school district; or

191 (iii) other Utah governmental subdivision;

192 (b) an institution that offers instruction exclusively at or below the 12th grade level;

193 (c) a lawful enterprise that offers only professional review programs, such as C.P.A.
194 and bar examination review and preparation courses;

195 (d) a [~~Utah~~] private, postsecondary educational institution that is owned, controlled,
196 operated, or maintained by a bona fide church or religious denomination, which is exempted
197 from property taxation under the laws of this state;

198 (e) subject to Subsection (3), a [~~Utah~~] school or institution that is accredited by a
199 regional or national accrediting agency recognized by the United States Department of
200 Education;

201 (f) subject to Subsection (4), a business organization, trade or professional association,
202 fraternal society, or labor union that:

203 (i) sponsors or conducts courses of instruction or study predominantly for bona fide
204 employees or members; and

205 (ii) does not, in advertising, describe itself as a school;

206 (g) an institution that exclusively offers general education courses or instruction solely
207 remedial, avocational, nonvocational, or recreational in nature, that does not:

208 (i) advertise occupation objectives; or

209 (ii) grant educational credentials;

210 (h) an institution that offers only workshops or seminars:

211 (i) lasting no longer than three calendar days; and

212 (ii) for which academic credit is not awarded;

213 (i) an institution that offers programs;

214 (i) in barbering, cosmetology, real estate, or insurance~~[, or flying]; and~~
 215 (ii) that are regulated and approved by a state or federal governmental agency; [and]
 216 (j) an education provider certified by the Division of Real Estate under Section
 217 61-2c-103~~[,];~~

218 (k) an institution that offers aviation training if the institution:
 219 (i) (A) is approved under Part 141, Federal Aviation Regulations, 14 C.F.R. Chapter
 220 141; or
 221 (B) provides aviation training under Part 61, Federal Aviation Regulations, 14 C.F.R.
 222 Chapter 61; and

223 (ii) exclusively offers aviation training that a student fully receives within 24 hours
 224 after the student pays any tuition, fee, or other charge for the aviation training; and

225 (l) an institution that provides emergency medical services training if all of the
 226 institution's instructors, course coordinators, and courses are approved by the Department of
 227 Health.

228 (2) (a) If available evidence suggests that an exempt institution under this section is not
 229 in compliance with the standards of registration under this chapter and applicable division
 230 rules, the division shall contact the institution and, if appropriate, the state or federal
 231 government agency to request corrective action.

232 (b) Subsection (2)(a) does not apply to an institution exempted under Subsection (1)(e).

233 (3) An institution, branch, extension, or facility operating within the state that is
 234 affiliated with an institution operating in another state must be separately approved by the
 235 affiliate's regional or national accrediting agency to qualify for the exemption described in
 236 Subsection (1)(e).

237 (4) For purposes of Subsection (1)(f), a business organization, trade or professional
 238 association, fraternal society, or labor union is considered to be conducting the course
 239 predominantly for bona fide employees or members if it hires a majority of the persons who:

240 (a) successfully complete its course of instruction or study with a reasonable degree of
 241 proficiency; and

242 (b) apply for employment with that same entity.

243 **Section 7. Repealer.**

244 This bill repeals:

245 Section 13-25a-110, Advisory group.

246 Section 8. Effective date.

247 If approved by two-thirds of all the members elected to each house, this bill takes effect
248 upon approval by the governor, or the day following the constitutional time limit of Utah
249 Constitution Article VII, Section 8, without the governor's signature, or in the case of a veto,
250 the date of veto override.

Legislative Review Note
as of 12-13-05 10:12 AM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel