

## HB0245S01 compared with HB0245

~~{deleted text}~~ shows text that was in HB0245 but was deleted in HB0245S01.

inserted text shows text that was not in HB0245 but was inserted into HB0245S01.

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Representative Derek E. Brown proposes the following substitute bill:

### CONSUMER PROTECTION AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Derek E. Brown**

Senate Sponsor: ~~{~~ Patricia W. Jones

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#### LONG TITLE

##### General Description:

This bill modifies consumer protection provisions.

##### Highlighted Provisions:

This bill:

▶ defines terms:

- ▶ in a provision requiring excess funds in the Consumer Protection Education and Training Fund to be transferred to the General Fund, increases the threshold from \$100,000 to \$500,000;
- ▶ adds an act to the list of acts considered to be deceptive acts or practices for purposes of the Consumer Sales Practices Act;
- ▶ provides for an increase in the amount of an unpaid fine under the Consumer Sales Practices Act if the fine remains unpaid more than 60 days after a final order;

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- ▶ relocates nonconformity language in the New Motor Vehicle Warranties Act relating to recreational vehicle trailers;
- ▶ requires a health spa to provide a copy of its liability insurance policy;
- ▶ requires registered agents of telephone soliciting businesses to provide proof of residency;
- ▶ allows the cost of a criminal background check to be included in the annual registration fee for telephone soliciting businesses;
- ▶ requires certain participants in a telephone soliciting business to meet certain requirements and to submit to a criminal background check;
- ▶ requires telephone soliciting businesses to correct information contained in an application for registration or renewal of registration if the information materially changes or becomes incorrect or incomplete;
- ▶ provides that each telephone solicitation made in violation of applicable provisions is a separate violation;
- ▶ modifies what constitutes a prohibited practice for a telephone solicitor;
- ▶ modifies a provision relating to a pawnbroker's selling of an article pawned to the pawnbroker;
- ▶ modifies provisions relating to information to be provided with respect to a property disposition hearing under the Pawnshop and Secondhand Merchandise Transaction Information Act;
- ▶ clarifies an exemption for a private, nonprofit educational institution under the Postsecondary Propriety School Act;
- ▶ modifies the definition of "immigration consultant" under the Immigration Consultant Registration Act;
- ▶ requires an annual registration and an annual registration fee for immigration consultants;
- ▶ modifies bond requirements for immigration consultants;
- ▶ modifies the minimum amount of an administrative fine under the Immigration Consultant Registration Act; and
- ▶ makes technical changes.

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

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None

### Other Special Clauses:

None

### Utah Code Sections Affected:

#### AMENDS:

**13-2-8**, as last amended by Laws of Utah 2008, Chapter 382

**13-11-4**, as last amended by Laws of Utah 2012, Chapter 152

**13-11-17**, as last amended by Laws of Utah 2004, Chapter 55

**13-20-2**, as last amended by Laws of Utah 2012, Chapter 77

**13-20-8**, as enacted by Laws of Utah 2012, Chapter 77

**13-22-9**, as last amended by Laws of Utah 2009, Chapter 183

**13-23-5**, as last amended by Laws of Utah 2009, Chapter 183

**13-26-3**, as last amended by Laws of Utah 2009, Chapter 183

**13-26-8**, as last amended by Laws of Utah 2005, Chapter 18

**13-26-11**, as last amended by Laws of Utah 2005, Chapter 18

**13-32a-102**, as last amended by Laws of Utah 2012, Chapter 284

**13-32a-109**, as last amended by Laws of Utah 2012, Chapters 284 and 369

**13-32a-117**, as enacted by Laws of Utah 2012, Chapter 284

**13-34-105**, as last amended by Laws of Utah 2011, Chapter 221

**13-49-102**, as enacted by Laws of Utah 2012, Chapter 375

**13-49-202**, as enacted by Laws of Utah 2012, Chapter 375

**13-49-204**, as enacted by Laws of Utah 2012, Chapter 375

**13-49-402**, as enacted by Laws of Utah 2012, Chapter 375

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

Section 1. Section **13-2-8** is amended to read:

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

(1) There is created a restricted 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

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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 [~~\$100,000~~] \$500,000 at the close of any fiscal year, the excess shall be transferred to the General Fund.

Section 2. Section **13-11-4** is amended to read:

### **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";

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- (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:

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(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

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(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; [or]

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

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

(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.

Section 3. Section **13-11-17** is amended to read:

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

(1) The enforcing authority may bring an action:

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

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

(c) to 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.



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(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:

(A) to reimburse consumers found to have been damaged;

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

(C) to strike or limit the application of unconscionable clauses of contracts to avoid an unconscionable result; or

(D) to 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, 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.

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

(3) (a) The enforcing authority may terminate an investigation or an action other than a

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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 Title 13, 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 administrative 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.

Section 4. Section **13-20-2** is amended to read:

### **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:

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(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) "Nonconformity":]~~

~~[(a) means a defect in or condition of a recreational vehicle trailer that substantially impairs its use, value, or safety; and]~~

~~[(b) 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.]~~

~~[(6)]~~ (5) "Recreational vehicle trailer" means a travel trailer, camping trailer, or fifth wheel trailer.

Section 5. Section **13-20-8** is amended to read:

**13-20-8. Mediation concerning nonconformity in recreational vehicle trailer.**

(1) An owner who purchases a new recreational vehicle trailer and the manufacturer of

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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; ~~and~~
- (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.

Section 6. Section **13-22-9** is amended to read:

**13-22-9. Professional fund raiser's or fund raising counsel's or consultant's permit.**

(1) It is unlawful for any person or entity to act as a professional fund raiser or professional fund raising counsel or consultant, whether or not representing an organization exempt from registration under Section 13-22-8, without first obtaining a permit from the division by complying with all of the following application requirements:

- (a) pay an application fee as determined under Section 63J-1-504; and

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(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, [~~advise~~] advice, counsel or preparation of materials for, or respect to the solicitation and use of the contributions solicited;
  - (B) the method by which the plan, management, [~~advise~~] advice, counsel, or preparation of materials for, or respect to the solicitation will be organized or coordinated and

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the projected length of time of the solicitation;

(C) the anticipated expenses of the plan, management, [~~advise~~] advice, counsel, or preparation of materials for, or 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, [~~advise~~] advice, counsel, or preparation of materials for, or 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 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

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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.

Section 7. Section **13-23-5** is amended to read:

### **13-23-5. Registration -- Bond, letter of credit, or certificate of deposit required --**

#### **Penalties.**

(1) (a) (i) It is unlawful for any health spa facility to operate in this state unless the facility is registered with the division.

(ii) Registration is effective for one year. If the health spa facility renews its registration, the registration shall be renewed at least 30 days prior to its expiration.

(iii) The division shall provide by rule for the form, content, application process, and renewal process of the registration.

(b) Each health spa registering in this state shall designate a registered agent for receiving service of process. The registered agent shall be reasonably available from 8 a.m. until 5 p.m. during normal working days.

(c) The division shall charge and collect a fee for registration under guidelines provided in Section 63J-1-504.

(d) If an applicant fails to file a registration application or renewal by the due date, or files an incomplete registration application or renewal, the applicant shall pay a 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, in addition to the registration fee described in Subsection (1)(c).

(e) 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 renewal.

(2) (a) Each health spa shall obtain and maintain:

(i) a performance bond issued by a surety authorized to transact surety business in this state;

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(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 shall be payable to the division for the benefit of any consumer who incurs damages as the result of:

(i) the health spa's violation of this chapter; or

(ii) the health spa's going out of business or relocating and failing to offer an alternate location within five miles.

(c) (i) The division may recover from the bond, letter of credit, or certificate of deposit the costs of collecting and distributing funds under this section, up to 10% of the face value of the bond, letter of credit, or certificate of deposit but only if the consumers have fully recovered their damages first.

(ii) The total liability of the issuer of the bond, letter of credit, or certificate of deposit may not exceed the amount of the bond, letter of credit, or certificate of deposit.

(iii) The health spa shall maintain a bond, letter of credit, or certificate of deposit in force for one year after it notifies the division in writing that it has ceased all activities regulated by this chapter.

(d) A health spa providing services at more than one location shall comply with the requirements of Subsection (2)(a) for each separate location.

(e) The division may impose a fine against a health spa that fails to comply with the requirements of Subsection (2)(a) of up to \$100 per day that the health spa remains out of compliance. All penalties received shall be deposited into the Consumer Protection Education and Training Fund created in Section 13-2-8.

(3) (a) The minimum principal amount of the bond, letter of credit, or certificate of credit required under Subsection (2) shall be based on the number of unexpired contracts for health spa services to which the health spa is a party, in accordance with the following schedule:

Principal Amount of  
Bond, Letter of Credit,  
or Certificate of Deposit

Number of Contracts

\$15,000

500 or fewer



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|        |                |
|--------|----------------|
| 35,000 | 501 to 1,500   |
| 50,000 | 1,500 to 3,000 |
| 75,000 | 3,001 or more  |

(b) A health spa that is not exempt under Section 13-23-6 shall comply with Subsection (3)(a) with respect to all of the health spa's unexpired contracts for health spa services, regardless of whether a portion of those contracts [~~satisfy~~] satisfies the criteria in Section 13-23-6.

(4) Each health spa shall obtain the bond, letter of credit, or certificate of deposit and furnish a certified copy of the bond, letter of credit, or certificate of deposit to the division prior to selling, offering or attempting to sell, soliciting the sale of, or becoming a party to any contract to provide health spa services. A health spa is considered to be in compliance with this section only if the proof provided to the division shows that the bond, letter of credit, or certificate of credit is current.

(5) Each health spa shall:

(a) maintain accurate records of the bond, letter of credit, or certificate of credit and of any payments made, due, or to become due to the issuer; and

(b) open the records to inspection by the division at any time during normal business hours.

(6) If a health spa changes ownership, ceases operation, discontinues facilities, or relocates and fails to offer an alternate location within five miles within 30 days after its closing, the health spa is subject to the requirements of this section as if it were a new health spa coming into being at the time the health spa changed ownership. The former owner 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:

(a) 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

(b) the former owner has refunded all unearned payments to consumers.

(7) If a health spa ceases operation or relocates and fails to offer an alternative location within five miles, the health spa shall provide the division with 45 days prior notice.

Section 8. Section **13-26-3** is amended to read:

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### 13-26-3. Registration and bond required.

(1) (a) Unless exempt under Section 13-26-4, each telephone soliciting business shall register annually with the division before engaging in telephone solicitations if:

(i) the telephone soliciting business engages in telephone solicitations that:

(A) originate in Utah; or

(B) are received in Utah; or

(ii) the telephone soliciting business conducts any business operations in Utah.

(b) The registration form shall designate an agent residing in this state who is authorized by the telephone soliciting business to receive service of process in any action brought by this state or a resident of this state.

(c) If a telephone soliciting business fails to designate an agent to receive service or fails to appoint a successor to the agent:

(i) the business' application for an initial or renewal registration shall be denied; and

(ii) any current registration shall be suspended until an agent is designated.

(d) (i) For purposes of this section only, the registered agent of a telephone soliciting business shall provide the division proof of residency in the state.

(ii) Proof of residency under Subsection (1)(d)(i) may be provided by a valid Utah driver license, valid governmental photo identification issued to a resident of the state, or other verifiable identification indicating residency in the state.

(2) The division may impose an annual registration fee set pursuant to Section 63J-1-504 that may include the cost of the criminal background check ~~required~~ under ~~described in~~ Subsection (4).

(3) (a) Each telephone soliciting business 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 to do business in this state; or

(iii) a certificate of deposit held in this state in a depository institution regulated by the Department of Financial Institutions.

(b) The bond, letter of credit, or certificate of deposit shall be payable to the division

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for the benefit of any consumer who incurs damages as the result of any telephone solicitation or sales violation of this chapter.

(c) The division may recover from the bond, letter of credit, or certificate of deposit investigative costs, attorney fees, and other costs of collecting and distributing funds under this section and the costs of promoting consumer education, but only if the consumer has first recovered full damages.

(d) A telephone soliciting business shall keep a bond, certificate of deposit, or letter of credit in force for one year after it notifies the division in writing that it has ceased all activities regulated by this chapter.

(e) The amount to be posted in the form of a bond, irrevocable letter of credit, or certificate of deposit shall be:

(i) \$25,000 if:

(A) neither the telephone soliciting business nor any affiliated person has violated this chapter within three years preceding the date of the application; and

(B) the telephone soliciting business has fewer than 10 employees;

(ii) \$50,000 if:

(A) neither the telephone soliciting business nor any affiliated person has violated this chapter within three years preceding the date of the application; and

(B) the telephone soliciting business has 10 or more employees; or

(iii) \$75,000 if the telephone soliciting business or any affiliated person has violated this chapter within three years preceding the date of the application.

(f) For purposes of Subsection (3)(e) an "affiliated person" means a contractor, director, employee, officer, owner, or partner of the telephone soliciting business.

(4) (a) As used in this Subsection (4), "participant" means an individual with a controlling interest in or an owner, officer, director, member, principal, trustee, general partner, limited partner, manager, sole proprietor, or key employee of a person seeking to register or renew a registration as a telephone soliciting business.

(b) As part of the process to register or renew a registration as a telephone soliciting business, a participant:

(i) shall have good moral character;

(ii) may not, **within the previous 10 years**, have been convicted of a felony;

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(iii) may not, within the previous 10 years, have been convicted of a misdemeanor involving moral turpitude, including theft, fraud, or dishonesty; and

(iv) shall submit to the division:

(A) the participant's fingerprints, in a form acceptable to the division, for purposes of a criminal background check; and

(B) consent to a criminal background check by the Bureau of Criminal Identification created in Section 53-10-201.

~~[(4)]~~ (5) The division may establish by rule the registration requirements for telephone soliciting businesses under the terms of Title 63G, Chapter 3, Utah Administrative Rulemaking Act. An administrative proceeding conducted by the division under this chapter shall comply with the requirements of Title 63G, Chapter 4, Administrative Procedures Act.

(6) If information in an application for registration or for renewal of registration as a telephone soliciting business materially changes or becomes incorrect or incomplete, the applicant shall, within 30 days after 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.

~~[(5)]~~ (7) The division director may deny or revoke a registration under this section for any violation of this chapter.

Section 9. Section **13-26-8** is amended to read:

### **13-26-8. Penalties.**

(1) (a) Any telephone soliciting business or any person associated with a telephone soliciting business, including solicitors, salespersons, agents, representatives of a solicitor, or independent contractor, who violates this chapter as a first offense is guilty of a class B misdemeanor.

(b) In the case of a second offense, the person is guilty of a class A misdemeanor.

(c) In the case of three or more offenses, the person is guilty of a third degree felony.

(d) (i) In addition to other penalties under this Subsection (1), 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.

(ii) For purposes of Subsection (1)(d)(i), each telephone solicitation made in violation of this chapter is a separate violation.

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(iii) 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.

(2) Any telephone soliciting business or any person associated with a telephone soliciting business, including solicitors, salespersons, agents, representatives of a solicitor, or independent contractors, who violates any provision of this chapter shall be subject to a civil penalty in a court of competent jurisdiction not exceeding \$2,500 for each unlawful transaction.

Section 10. Section **13-26-11** is amended to read:

### **13-26-11. Prohibited practices.**

(1) It is unlawful for any solicitor:

(a) to solicit a prospective [~~purchasers~~] purchaser on behalf of a telephone soliciting business that is not registered with the division or exempt from registration under this chapter;

(b) to use a fictitious personal name in connection with a telephone solicitation;

(c) to make or cause to be made any untrue material statement, or fail to disclose a material fact necessary to make any statement made not misleading, whether in connection with a telephone solicitation or a filing with the division;

(d) to make or authorize the making of any misrepresentation about its compliance with this chapter to any prospective or actual purchaser;

(e) to fail to refund within 30 days any amount due a purchaser who exercises the right to cancel under Section 13-26-5; or

(f) to fail to orally advise a purchaser of the purchaser's right to cancel under Section 13-26-5 unless the solicitor is exempt under Section 13-26-4.

(2) It is unlawful for any telephone soliciting business:

(a) to cause or permit any solicitor to violate any provision of this chapter; or

(b) to use inmates in telephone soliciting operations where inmates have access to personal data about an individual sufficient to physically locate or contact that individual, such as names, addresses, telephone numbers, Social Security numbers, credit card information, or physical descriptions.

Section 11. Section **13-32a-102** is amended to read:

### **13-32a-102. Definitions.**

As used in this chapter:

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- (1) "Account" means the Pawnbroker and Secondhand Merchandise 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 and that offers for sale antique items.
- (4) "Board" means the Pawnshop and Secondhand Merchandise Advisory Board created by this chapter.
- (5) "Central database" or "database" means the electronic database created and operated under Section 13-32a-105.
- (6) "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.
- (7) "Coin dealer" means a person or business whose sole business activity is the selling and purchasing of coins and precious metals.
- (8) "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:
  - (a) .99 fine or finer ingots of gold, silver, platinum, palladium, or other precious metals; or
  - (b) .925 fine sterling silver ingots, art bars, and medallions.
- (9) "Division" means the Division of Consumer Protection in Title 13, Chapter 1, Department of Commerce.
- (10) "Identification" means a ~~form of positive identification issued by a governmental entity and that:~~ valid U.S. federal or state-issued photo ID, including a U.S. passport, a U.S.

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passport card, a U.S. military ID, and a driver's license.

~~[(a) contains a numerical identifier and a photograph of the person identified; and]~~

~~[(b) may include a state identification card, a state drivers license, a United States military identification card, or a United States passport.]~~

(11) "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 pawnshop or secondhand business is located.

(12) "Misappropriated" means stolen, embezzled, converted, obtained by theft, or otherwise appropriated without authority of the lawful owner.

(13) "Original victim" means a victim who is not a party to the pawn or sale transaction 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.

(14) "Pawnbroker" means a person whose business engages in the following activities:

(a) loans money on one or more deposits of personal property;

(b) deals in the purchase, exchange, or possession of personal property on condition of selling the same property back again to the pledgor or depositor;

(c) loans or advances money on personal property by taking chattel mortgage security on the property and takes or receives the personal property into his possession, and who sells the unredeemed pledges;

(d) deals in the purchase, exchange, or sale of used or secondhand merchandise or personal property; or

(e) engages in a licensed business enterprise as a pawnshop.

(15) "Pawn and secondhand business" means any business operated by a pawnbroker or secondhand merchandise dealer, or the owner or operator of the business.

(16) "Pawn ticket" means a document upon which information regarding a pawn transaction is entered when the pawn transaction is made.

(17) "Pawn transaction" means 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.

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(18) "Pawnshop" means the physical location or premises where a pawnbroker conducts business.

(19) "Pledgor" means a person who conducts a pawn transaction with a pawnshop.

(20) "Property" means any tangible personal property.

(21) "Register" means the record of information required under this chapter to be maintained by pawn and secondhand businesses. The register is an electronic record that is in a format that is compatible with the central database.

(22) "Scrap jewelry" means any item purchased solely:

(a) for its gold, silver, or platinum content; and

(b) for the purpose of reuse of the metal content.

(23) (a) "Secondhand merchandise dealer" means an owner or operator of a business that:

(i) deals in the purchase, exchange, or sale of used or secondhand merchandise or personal property; and

(ii) does not function as a pawnbroker.

(b) "Secondhand merchandise dealer" does not include:

(i) the owner or operator of an antique shop;

(ii) any class of businesses exempt by administrative rule under Section 13-32a-112.5;

(iii) any person or entity who operates auction houses, flea markets, or vehicle, vessel, and outboard motor dealers as defined in Section 41-1a-102;

(iv) the sale of secondhand goods at events commonly known as "garage sales," "yard sales," or "estate sales";

(v) the sale or receipt of secondhand books, magazines, or post cards;

(vi) 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;

(vii) the sale or receipt of secondhand clothing and shoes;

(viii) any person offering his own personal property for sale, purchase, consignment, or trade via the Internet;

(ix) any person or entity offering the personal property of others for sale, purchase, consignment, or trade via the Internet, when that person or entity does not have, and is not



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required to have, a local business or occupational license or other authorization for this activity;

(x) any owner or operator of a retail business that receives used merchandise as a trade-in for similar new merchandise;

(xi) an owner or operator of a business that contracts with other persons or entities to offer those persons' secondhand goods for sale, purchase, consignment, or trade via the Internet;

(xii) any dealer as defined in Section 76-10-901, which concerns scrap metal and secondary metals; or

(xiii) 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.

Section ~~{H}~~12. Section **13-32a-109** is amended to read:

### **13-32a-109. Holding period for articles -- Penalty.**

(1) (a) ~~[The] A~~ pawnbroker may sell ~~[any] an~~ article pawned to the pawnbroker ~~if:~~

~~[(i) after the expiration of]~~

(i) 15 days have passed since the day on which the contract between the pawnbroker and the pledgor was executed;

(ii) the contract period between the pawnbroker and the pledgor ~~has expired;~~ and

~~[(ii) if] (iii) the pawnbroker { } has { complied};~~

~~— (A) holds the article for at least 15 days; and~~

~~— (B) complies} complied with the requirements of Section 13-32a-106 regarding reporting to the central database and Section 13-32a-103.~~

(b) If an article, including scrap jewelry, is purchased by a pawn or secondhand business or a coin dealer, the pawn or secondhand business or coin dealer may sell the article after the pawn or secondhand business or coin dealer has held the article for 15 days and complied with the requirements of Section 13-32a-106 regarding reporting to the central database and Section 13-32a-103, except that pawn, secondhand, and coin dealer businesses are not required to hold precious metals or coins under this Subsection (1)(b).

(c) This Subsection (1) does not preclude a law enforcement agency from requiring a pawn or secondhand business to hold an article if necessary in the course of an investigation.

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(i) If the article was pawned, the law enforcement agency may require the article be held beyond the terms of the contract between the pledgor and the pawn broker.

(ii) If the article was sold to the pawn or secondhand business, the law enforcement agency may require the article be held if the pawn or secondhand business 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.

(2) If a law enforcement agency requires the pawn or secondhand business to hold an article as part of an investigation, the agency shall provide to the pawn or secondhand business a hold ticket issued by the agency, which:

(a) states the active case number;

(b) confirms the date of the hold request and the article to be held; and

(c) facilitates the ability of the pawn or secondhand business to track the article when the prosecution takes over the case.

(3) If an article 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 until further disposition by the law enforcement agency, and as consistent with this chapter.

(4) The initial hold by a law enforcement agency is for a period of 90 days. If the article is not seized by the law enforcement agency, the article shall remain in the custody of the pawn or secondhand business and is subject to the hold unless exigent circumstances require the purchased or pawned article 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 when exigent circumstances require the extension.

(b) When there is an extension of a hold under Subsection (5)(a), the requesting law enforcement agency shall notify the pawn or secondhand business that is subject to the hold prior to 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 an article under Subsection (2) takes precedence over any request to claim or purchase the article subject to the hold.

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(7) When the purpose for the hold on or seizure of an article is terminated, the law enforcement agency requiring the hold or seizure shall within 15 days after the termination:

(a) notify the pawn or secondhand business in writing that the hold or seizure has been terminated;

(b) return the article subject to the seizure to the pawn or secondhand business; or

(c) if the article is not returned to the pawn or secondhand business, advise the pawn or secondhand business either in writing or electronically of the specific alternative disposition of the article.

(8) If the law enforcement agency does not notify the pawn or secondhand business that a hold on an item has expired, the pawn or secondhand business 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. The law enforcement agency shall respond within 30 days by:

(a) confirming that the holding period has expired and that the pawn or secondhand business may manage the item as if acquired in the ordinary course of business; or

(b) providing written notice to the pawn or secondhand business that a court order has continued the period of time for which the item shall be held.

(9) The written notice under Subsection (8)(b) is considered provided when:

(a) personally delivered to the pawn or secondhand business with a signed receipt of delivery;

(b) delivered to the pawn or secondhand business 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.

(10) If the law enforcement agency does not respond within 30 days under Subsection (8), the pawn or secondhand business may manage the item as if acquired in the ordinary course of business.

(11) A violation of this section is a class B misdemeanor and is also subject to civil penalties under Section 13-32a-110.

Section ~~12~~13. Section **13-32a-117** is amended to read:

**13-32a-117. Property disposition if no criminal charges filed -- Administrative hearing.**

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(1) The original victim or the pawn or secondhand business may request an administrative property disposition hearing with the Division of Consumer Protection if:

- (a) more than 30 days have passed since:
  - (i) the law enforcement agency placed a hold on the property; or
  - (ii) the property was seized by the law enforcement agency; and
- (b) an agreement pursuant to Subsection 13-32a-115(2)(b) has not been reached.

(2) The original victim or the pawn or secondhand business shall provide to the Division of Consumer Protection at the time of the request for a property disposition hearing [~~under this section~~]:

(a) a copy of the sworn statement of the original victim taken pursuant to Section 13-32a-115 and the case number assigned by the law enforcement agency[~~;~~]; and

(b) a written notice from the prosecuting agency with jurisdiction over the case involving the property that the prosecuting agency has made an initial determination under Section 77-24-2 and this chapter that the property is no longer needed as evidence.

~~[(3) (a) The Division of Consumer Protection shall notify the law enforcement agency in writing of the request for a property disposition hearing.]~~

~~[(b) The law enforcement agency shall forward the notice to the prosecution agency having jurisdiction over the case involving the property.]~~

~~[(c) (i) The prosecution agency shall, within five business days of receiving the notice, make an initial determination pursuant to Section 77-24-2 and this chapter of whether continued hold or seizure regarding the property as evidence in a criminal trial is necessary.]~~

~~[(ii) If the prosecuting agency determines the property is no longer needed as evidence, the law enforcement agency shall notify in writing the pawn or secondhand business and the original victim of the prosecuting agency's determination as soon as reasonably possible.]~~

~~[(4)]~~ (3) (a) Within 30 days after receiving the request [~~and notification from law enforcement that the property is not needed as evidence pursuant to Section 77-24-2 and this chapter~~] for a property disposition hearing from the original victim or the pawn or secondhand business, the Division of Consumer Protection shall schedule an adjudicative hearing in accordance with Title 63G, Chapter 4, Administrative Procedures Act, to determine ownership of the claimed property. The division shall provide written notice of the hearing to the pawn or secondhand business and the original victim.

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(b) The division shall conduct the hearing to determine disposition of the claimed seized property, taking into consideration:

(i) the proof of ownership of the property and compliance with Subsection 13-32a-115(1) by the original victim;

(ii) the claim of ownership by the pawn or secondhand business and the potential financial loss to the business; and

(iii) compliance by the pawn or secondhand business with the requirements of this chapter.

(c) If the division determines that the property should be released to the pawn or secondhand business, the original victim retains a right of first refusal over the property for 15 days and may purchase the property at the amount financed or paid by the pawn or secondhand business.

(d) The party to whom the division determines the property is to be released shall maintain possession of the property for the duration of any time period regarding any applicable right of appeal.

Section ~~13~~14. Section **13-34-105** is amended to read:

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

(1) This chapter does not apply to:

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

(i) the state;

(ii) a local school district; or

(iii) other Utah governmental subdivision;

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

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

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

(e) subject to Subsection (3) and Section 13-34-107.5, a school or institution that is accredited by a regional or national accrediting agency recognized by the United States

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Department of Education;

(f) 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, in advertising, describe itself as a school;

(g) an institution that:

(i) (A) exclusively offers general education courses or instruction solely remedial, avocational, nonvocational, or recreational in nature; and

(B) does not advertise occupation objectives or grant educational credentials; or

(ii) exclusively prepares individuals to teach courses or instruction described in Subsection (1)(g)(i)(A);

(h) 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;

(i) 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;

(j) an education provider certified by the Division of Real Estate under Section 61-2c-204.1;

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

(l) 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;

(m) an institution that exclusively conducts nurse aide training programs that are approved by the State Office of Vocational Education and are subject to the Nurse Aide

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Registry; and

(n) a private, nonprofit educational institution that has been in continuous operation as a private, nonprofit educational institution for at least 20 years, except as provided in Subsection (5), Subsection 13-34-106(8) and Section 13-34-107.6.

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

(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 regional or national accrediting agency to qualify for the exemption described in Subsection (1)(e).

(4) For purposes of Subsection (1)(f), 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 it hires a majority of the persons who:

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

(b) apply for employment with that same entity.

(5) An institution subject to, or expressly exempted from any part of, this chapter is:

(a) established as an educational institution within the state;

(b) independent of the state system of higher education;

(c) subject to compliance with the applicable provisions of this chapter; and

(d) authorized to operate educational programs beyond secondary education, including programs leading to a degree or certificate.

Section ~~14~~15. Section **13-49-102** is amended to read:

### **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:

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- (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 a person 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; ~~[and]~~ 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.

Section ~~{15}~~16. Section **13-49-202** is amended to read:

### **13-49-202. Application for registration.**

- (1) To register as an immigration consultant a person shall:
  - (a) submit an annual application in a form prescribed by the division;
  - (b) pay ~~[a]~~ 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 applicant has not ~~[be]~~ been convicted of:



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- (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 by the Utah Bureau of Criminal Identification regarding the application.

(2) The division shall register a person who qualifies under this chapter as an immigration consultant.

Section ~~16~~17. Section 13-49-204 is amended to read:

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

(1) Except as provided in Subsection ~~[(5)]~~ (6), 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 attorney general; 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.

~~[(3)]~~ (4) (a) If a surety bond posted by an immigration consultant under this section is canceled due to the person'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 person.

~~[(4)]~~ (5) (a) A bond posted under this section by an immigration consultant may be

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forfeited if the person's registration under this chapter is revoked.

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

~~[(5)]~~ (6) The requirements of this section do not apply to an employee of a nonprofit, tax-exempt corporation who assists clients to complete an application document in an immigration matter, free of charge or for a fee, including reasonable costs, consistent with that authorized by the Board of Immigration Appeals under 8 C.F.R. Sec. 292.2.

~~[(6)]~~ (7) A person may not disseminate by any means a statement indicating that the person 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 person has posted a bond under this section that is maintained throughout the period covered by the statement, such as a listing in a telephone book.

~~[(7)]~~ (8) 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.

Section ~~{17}~~18. Section **13-49-402** is amended to read:

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

(1) The division shall investigate and take action under this part for violations of this chapter.

(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 ~~[\$100]~~ \$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,

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attorney general, or a district or county attorney notifies the person by certified mail that the person is in violation of this chapter.

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**Legislative Review Note**

~~as of 12-28-12 2:47 PM~~

~~Office of Legislative Research and General Counsel}~~