

## SB0033S01 compared with SB0033

~~{deleted text}~~ shows text that was in SB0033 but was deleted in SB0033S01.

Inserted text shows text that was not in SB0033 but was inserted into SB0033S01.

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Senator Curtis S. Bramble proposes the following substitute bill:

### CONSUMER PROTECTION REVISIONS

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis S. Bramble**

House Sponsor: Val L. Peterson

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#### LONG TITLE

~~{Committee Note:~~

~~—The Business and Labor Interim Committee recommended this bill.~~

~~{General Description:~~

This bill modifies statutes administered by the Division of Consumer Protection.

#### Highlighted Provisions:

This bill:

- ▶ updates the list of statutes administered by the Division of Consumer Protection;
- ▶ amends the Utah Consumer Sales Practices Act to address penalties;
- ▶ amends the Business Opportunity Disclosure Act to require the seller of an assisted marketing plan to, annually, file information and pay a fee;
- ▶ amends the Charitable Solicitations Act, including:
  - modifying the definition of a charitable organization;

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- eliminating the general membership solicitation exemption for a charitable organization; and
- adding a solicitation exemption;
- ▶ amends the Health Spa Services Protection Act to specify the grounds for denial, suspension, or revocation of a health spa registration;
- ▶ modifies the registration exemptions in the Telephone Fraud Prevention Act;
- ▶ amends the Utah Postsecondary School State Authorization Act to:
  - modify definitions;
  - modify the exemption for interstate reciprocity agreements to include agreements signed by the State Board of Regents;
  - allow a postsecondary school to maintain state authorization while it is within a grace period provided by the United States Department of Education or is considered accredited by the United States Department of Education;
  - allow the Division of Consumer Protection to stagger postsecondary school renewal deadlines; and
  - modify the timing and type of information to be provided by a postsecondary school that is closing; and
- ▶ makes technical changes.

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

None

### **Other Special Clauses:**

None

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

AMENDS:

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

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

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

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

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

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

**13-26-4**, as last amended by Laws of Utah 2014, Chapter 189

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

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

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

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

ENACTS:

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

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

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

**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 and Secondhand Merchandise Transaction Information Act;
- (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- (o) Chapter 39, Child Protection Registry;
- ~~(p)~~ (p) Chapter 41, Price Controls During Emergencies Act;
- ~~(q)~~ (q) Chapter 42, Uniform Debt-Management Services Act;
- ~~(r)~~ (r) Chapter 49, Immigration Consultants Registration Act; and

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~~(#)~~ (s) Chapter 51, Transportation Network Company Registration Act.

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

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

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

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

(b) ~~(t)~~ 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) ~~(t)~~ 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) ~~(t)~~ reimburse consumers found to have been damaged;

(B) ~~(t)~~ carry out a transaction in accordance with consumers' reasonable expectations;

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

(D) impose a fine in an amount determined after considering the factors listed in

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Subsection (6); or

~~[(D) to]~~ (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, 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 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%:

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(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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) (i) a complete description of any services promised to be performed by the seller in connection with the placement of the equipment, products, or supplies at any location from which they will be sold or used; and

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

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

(i) has been convicted of a felony or misdemeanor or pleaded nolo contendere 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 ~~[any]~~ a civil action based upon fraud, embezzlement, fraudulent conversion, misappropriation of property, or the use of untrue or misleading representations in the sale or attempted sale of any real or personal property, or upon the use of any unfair, unlawful or deceptive business

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practice; or

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

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

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

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

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

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

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

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

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

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

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

(5) A representation described in Subsection (1)(f) shall be relevant to the geographic



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market in which the business opportunity is to be located. When the statements or representations are made, a warning after the representation in not less than 12 point upper and lower case boldface type shall appear as follows:

### "CAUTION

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

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

#### **13-22-2. Definitions.**

As used in this chapter:

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

~~(1)~~ (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 ~~[, branch, area, office, or similar affiliate]~~ or ~~[any]~~ a person who solicits contributions within the state for a charitable organization ~~[whose principal place of business is outside the state].~~

~~(2)~~ (3) "Charitable purpose" means any benevolent, educational, philanthropic,

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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.

~~[(3)]~~ (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.

~~[(4)]~~ (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 oral or written request, including any request by telephone, radio ~~[or]~~, television, or other advertising or communications media;

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

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

(iv) 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.

~~[(5)]~~ (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.

~~[(6)]~~ (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

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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.

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

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

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

~~[(10)]~~ (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.

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

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

(ii) engages in, or represents being independently engaged in, the business of soliciting contributions for a charitable organization;

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

or

(iv) 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 a bona fide officer, director, volunteer, or full-time employee of a charitable organization.

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

(i) for compensation plans, manages, advises, counsels, consults, or prepares material for, or with respect to, the solicitation in this state of contributions for a charitable

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organization, whether or not at any time the person has custody of contributions from a solicitation;

(ii) does not solicit contributions; and

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

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

~~[(13)]~~ (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.

~~[(14)]~~ (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.

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

### 13-22-8. Exemptions.

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

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

~~[(b)]~~ (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

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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) 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;

~~(f)~~ (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;

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

~~(e)~~ (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;

~~(f)~~ (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;

~~(g)~~ (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)~~(g)~~(f)(i) through (iv); or

(vi) a parent organization, teacher organization, or student organization authorized by

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an entity described in Subsection (1)~~(g)~~~~(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;

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

~~(i)~~ (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;

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

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

~~(l)~~ (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; ~~and~~

~~(m)~~ (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~~[-];~~ and

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(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, 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 (2)(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.

(2) [~~Any~~] An organization claiming an exemption under this section bears the burden of proving [~~its~~] the organization's eligibility for, or the applicability of, the exemption claimed.

(3) [~~Each~~] 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.

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

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

(1) If a charitable campaign consisting of exempt solicitations for the relief of a named

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individual sustaining a life-threatening illness or injury, as described in Subsection 13-22-8(1)~~(d)~~(c), collects proceeds in excess of \$1,000, the organizer of the campaign shall give the division written notice of the following:

(a) the organizer's name and address;

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

(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 \$1,000, 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.

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

### **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



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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; or

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

Section 8. Section 13-26-4 is amended to read:

### **13-26-4. Exemptions from registration.**

(1) In any enforcement action initiated by the division, the person claiming an exemption has the burden of proving that the person is entitled to the exemption.

(2) The following are exempt from the requirements of this chapter except for the requirements of Sections 13-26-8 and 13-26-11:

(a) a broker, agent, dealer, or sales professional licensed under the licensure laws of this state, when soliciting sales within the scope of his 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 utility;

(ii) a newspaper of general circulation;

(iii) a solicitation of sales made by a broadcaster licensed by any state or federal authority;

(iv) a nonprofit organization if no part of the net earnings from the sale inures to the benefit of any member, officer, trustee, or serving board member of the organization, or

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individual, or 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 solicitor'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 business address of the solicitor;

(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) any publicly-traded corporation registered with the Securities and Exchange Commission, or any subsidiary of the corporation;

(d) the solicitation of any 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 that 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 business 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

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registered with any 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 like nature;

(j) the solicitation of a person by a retail business establishment that has been in operation for at least five years in Utah under the same name as that used in connection with telemarketing if both of the following occur on a continuing basis:

(i) products are displayed and offered for sale at the place of business, or services are offered for sale and provided at the place of business; and

(ii) a majority of the seller's business involves the buyer obtaining the products or services at the seller's place of business;

(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 seller provides the consumer with a form that the consumer may use to instruct the seller 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 sellers in commerce; or

(ii) (A) the seller 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; ~~or~~

(l) a telephone marketing service company that provides telemarketing sales services under contract to sellers if:

(i) it has been doing business regularly with customers in Utah for at least five years under the same business name and with its principal office in the same location;

(ii) at least 75% of its contracts are performed on behalf of persons exempted from registration under this chapter; and

(iii) neither the company nor its principals have been enjoined from doing business or subjected to criminal actions for their business activities in this or any other state.

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### Section 8 [-]:

(m) a credit services organization that holds a current registration with the division under Chapter 21, Credit Services Organizations Act, if the credit services organizations'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 21, Uniform Debt-Management Services Act.

### Section 9. Section **13-34a-102** is amended to read:

#### **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 regional or national 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.

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(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 [a] the postsecondary school on probation;

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

(iii) requires [a] 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

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(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.

Section ~~9~~10. Section **13-34a-104** is amended to read:

### **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 State Board of Regents executes an interstate reciprocity agreement under Section 53B-16-109:

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

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(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 State Board of Regents 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.

Section ~~{10}~~11. Section **13-34a-204** is amended to read:

### **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

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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, includes 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 notarized 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.



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(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.

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

~~[(4)]~~ (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.

~~[(5)]~~ (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.

~~[(6)]~~ (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 ~~[(6)]~~ (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.

~~[(7)]~~ (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 exemption certificate is effective so that expiration dates are staggered throughout the year.

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Section ~~{11}~~12. Section 13-34a-207 is amended to read:

### 13-34a-207. Discontinuance of operations.

(1) If a postsecondary school [~~ceases~~] determines that the postsecondary school will cease to operate, [at least] no later than 30 days [before] after the day on which the postsecondary school [~~ceases~~] 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; [~~and~~]

(b) [~~for an accredited institution,~~] a written certification, signed by the postsecondary school's owner or officer, that the postsecondary school [~~has complied~~] 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

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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.

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**Legislative Review Note**

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