

SB0100S01 compared with SB0100

~~{deleted text}~~ shows text that was in SB0100 but was deleted in SB0100S01.

Inserted text shows text that was not in SB0100 but was inserted into SB0100S01.

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Senator Curtis S. Bramble proposes the following substitute bill:

CONSUMER PROTECTION AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions related to consumer protection.

Highlighted Provisions:

This bill:

- ▶ clarifies and amends certain requirements related to the Division of Consumer Protection's enforcement powers;
- ▶ establishes a statute of limitations for an administrative or civil action filed under a chapter administered and enforced by the Division of Consumer Protection;
- ▶ modifies the definition of "educational credentials";
- ▶ addresses institutions that are exempt from the Utah Postsecondary Proprietary School Act; and
- ▶ makes technical and conforming changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-2-6, as last amended by Laws of Utah 2010, Chapter 378

[13-11-17, as last amended by Laws of Utah 2017, Chapter 98](#)

[13-11-19, as last amended by Laws of Utah 2010, Chapter 378](#)

13-34-103, as last amended by Laws of Utah 2014, Chapter 360

13-34-105, as last amended by Laws of Utah 2014, Chapter 360

[13-42-137, as last amended by Laws of Utah 2012, Chapter 152](#)

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

Section 1. Section **13-2-6** is amended to read:

13-2-6. Enforcement powers.

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

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

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

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

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

(ii) state that any request for review of the citation shall be made in writing and be received by the division no more than [~~10~~] 20 calendar days following issuance;

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

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

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

(i) the day on which the division issues a citation [~~is issued by the division~~]; and

(ii) the day on which the division [~~received~~] receives a request for review of a citation[;].

~~[(iii) Saturdays and Sundays; and]~~

~~[(iv) a legal holiday set forth in Subsection 63G-1-301(1)(a).]~~

(c) If the recipient of a citation makes a timely request for review, within [~~10~~] 20 calendar days [~~of~~] after receiving the request, the division shall [~~convene~~] initiate an adjudicative proceeding in accordance with Title 63G, Chapter 4, Administrative Procedures Act.

(d) (i) If the presiding officer finds that there is not substantial evidence that the recipient violated a chapter listed in Section 13-2-1 [~~at the time the citation was issued~~], the citation may not become final, and the division shall immediately vacate the citation and promptly notify the recipient in writing.

(ii) If the presiding officer finds that there is substantial evidence that the recipient violated a chapter listed in Section 13-2-1 [~~at the time the citation was issued~~], the citation shall become final and the division may enter a cease and desist order against the recipient.

(e) A citation issued under this chapter may be personally served upon any person upon whom a summons may be served in accordance with the Utah Rules of Civil Procedure. A citation also may be served by first-class mail, postage prepaid.

(f) If the recipient fails to make a timely request for review, the citation shall become the final order of the division. The period to contest the citation may be extended by the director for good cause shown.

(g) If the chapter violated allows for an administrative fine, after a citation becomes final, the director may impose the administrative fine.

(4) (a) A person [~~violating~~] who has violated, is violating, or has attempted to violate a chapter identified in Section 13-2-1 is subject to the division's jurisdiction if:

(i) the violation or attempted violation is committed [~~either~~] wholly or partly within the state;

(ii) conduct committed outside the state constitutes an attempt to commit a violation

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within the state; or

(iii) transactional resources located within the state are used by the offender to directly or indirectly facilitate a violation or attempted violation.

(b) As used in this section, "transactional resources" means:

(i) any mail drop or mail box, regardless of whether [~~or not~~] the mail drop or mail box is located on the premises of a United States Post Office;

(ii) any telephone or facsimile transmission device;

(iii) any Internet connection by a resident or inhabitant of this state with [~~either~~] a resident_ or nonresident_-maintained internet site;

(iv) any business office or private residence used for a business-related purpose;

(v) any account with or services of a financial institution;

(vi) the services of a common or private carrier; or

(vii) the use of any city, county, or state asset or facility, including any road or highway.

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

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

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

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

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

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

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(c) recover, for each violation, actual damages, or obtain relief under Subsection (2)(b), on behalf of consumers who complained to the enforcing authority within a reasonable time after it instituted proceedings under this chapter; and

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

(2) (a) The enforcing authority may bring a class action on behalf of consumers for the actual damages caused by an act or practice specified as violating this chapter in a rule adopted by the enforcing authority under Subsection 13-11-8(2) before the consumer transactions on which the action is based, or declared to violate Section 13-11-4 or 13-11-5 by final judgment of courts of general jurisdiction and appellate courts of this state that was either reported officially or made available for public dissemination under Subsection 13-11-7(1)(c) by the enforcing authority 10 days before the consumer transactions on which the action is based, or, with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent judgment that became final before the consumer transactions on which the action is based.

(b) (i) On motion of the enforcing authority and without bond in an action under this Subsection (2), the court may make appropriate orders, including appointment of a master or receiver or sequestration of assets, but only if it appears that the defendant is threatening or is about to remove, conceal, or dispose of the defendant's property to the damage of persons for whom relief is requested. An appropriate order may include an order to:

(A) reimburse consumers found to have been damaged;

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

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

(D) impose a fine in an amount determined after considering the factors listed in Subsection (6); or

(E) grant other appropriate relief.

(ii) The court may assess the expenses of a master or receiver against a supplier.

(c) If an act or practice that violates this chapter unjustly enriches a supplier and damages can be computed with reasonable certainty, damages recoverable on behalf of consumers who cannot be located with due diligence shall be transferred to the state treasurer pursuant to Title 67, Chapter 4a, Unclaimed Property Act.

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(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 Chapter 2, Division of Consumer Protection, the division director may issue a cease and desist order and impose an administrative fine of up to \$2,500 for each violation of this chapter.

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

(5) (a) Within 30 days after agency or judicial review of a final division order imposing an administrative fine, the supplier on whom the fine is imposed shall pay the fine in full.

(b) The unpaid amount of a fine is increased by 10%:

(i) if the fine has not been paid in full within 60 days after the final division order imposing the fine; and

(ii) unless the division waives the 10% increase in a stipulated payment plan.

(6) A fine imposed under Subsection (1)(d) or Subsection (2)(b)(i)(D) shall be determined after considering the following factors:

(a) the seriousness, nature, circumstances, extent, and persistence of the conduct constituting the violation;

(b) the harm to other persons resulting either directly or indirectly from the violation;

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- (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 13-11-19 is amended to read:

13-11-19. Actions by consumer.

(1) Whether he seeks or is entitled to damages or otherwise has an adequate remedy at law, a consumer may bring an action to:

- (a) obtain a declaratory judgment that an act or practice violates this chapter; and
- (b) enjoin, in accordance with the principles of equity, a supplier who has violated, is violating, or is likely to violate this chapter.

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

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

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

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(b) If an act or practice that violates this chapter unjustly enriches a supplier and the damages can be computed with reasonable certainty, damages recoverable on behalf of consumers who cannot be located with due diligence shall be transferred to the state treasurer pursuant to Title 67, Chapter 4a, Unclaimed Property Act.

(c) If a supplier shows by a preponderance of the evidence that a violation of this chapter resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error, recovery under this section is limited to the amount, if any, in which the supplier was unjustly enriched by the violation.

(5) Except for services performed by the enforcing authority, the court may award to the prevailing party a reasonable attorney's fee limited to the work reasonably performed if:

(a) the consumer complaining of the act or practice that violates this chapter has brought or maintained an action he knew to be groundless; or a supplier has committed an act or practice that violates this chapter; and

(b) an action under this section has been terminated by a judgment or required by the court to be settled under Subsection 13-11-21(1)(a).

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

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

~~[(8) An action under this section shall be brought within two years after occurrence of a violation of this chapter, or within one year after the termination of proceedings by the enforcing authority with respect to a violation of this chapter, whichever is later. When a supplier sues a consumer, he may assert as a counterclaim any claim under this chapter arising out of the transaction on which suit is brought.]~~

Section ~~{2}~~4. Section **13-34-103** is amended to read:

13-34-103. Definitions.

As used in this chapter:

(1) "Agent" means any person who:

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- (a) owns an interest in or is employed by a proprietary school; and
- (b) (i) enrolls or attempts to enroll a resident of this state in a proprietary school;
- (ii) offers to award educational credentials for remuneration on behalf of a proprietary school; or
- (iii) holds himself out to residents of this state as representing a proprietary school for any purpose.

(2) (a) "Certificate of registration" means approval from the division to operate a school or institution in compliance with this chapter and rules adopted under this chapter.

(b) "Certificate of registration" does not mean an endorsement of the school or institution by either the division or the state.

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

(4) "Educational credentials" means degrees, diplomas, certificates, transcripts, reports, documents, or letters of designation, marks, appellations, series of letters, numbers, or words ~~[which] that~~ signify or appear to signify ~~[enrollment, attendance, progress, or]~~ satisfactory completion of ~~[the requirements or prerequisites]~~ any requirement or prerequisite for any educational program.

(5) "Institution" means an individual, corporation, partnership, association, cooperative, or other legal entity.

(6) "Offer" means to advertise, publicize, solicit, or encourage any person directly or indirectly.

(7) "Operate" in this state means to:

- (a) maintain a place of business in the state;
- (b) solicit business in the state;
- (c) conduct significant educational activities within the state; or
- (d) offer or provide postsecondary instruction leading to a postsecondary degree or certificate to any number of Utah residents from a location outside the state by correspondence or any telecommunications or electronic media technology.

(8) "Ownership" means:

- (a) the controlling interest in a school, institution, or college; or
- (b) if an entity holds the controlling interest in the school, institution, or college, the controlling interest in the entity that holds the controlling interest in the school, institution, or

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college.

(9) "Postsecondary education" means education or educational services offered primarily to individuals who:

- (a) have completed or terminated their secondary or high school education; or
- (b) are beyond the age of compulsory school attendance.

(10) (a) "Proprietary school" means a private institution, including a business, modeling, paramedical, tax preparation, or trade or technical school, that offers postsecondary education:

- (i) in consideration of the payment of tuition or fees; and
- (ii) for the attainment of educational, professional, or vocational objectives.

(b) "Proprietary school" does not include an institution that is exempt from this chapter under Section 13-34-105.

(11) "Utah institution" means a school or institution that:

- (a) offers postsecondary education; and
- (b) is headquartered or primarily operates in Utah.

Section ~~13-34-105~~5. Section **13-34-105** is amended to read:

13-34-105. Exempted institutions.

~~[(1) This chapter does not apply to:]~~

(1) The following institutions are exempt from the provisions of this chapter, if the institution establishes an exemption with the division in accordance with Subsection 13-34-107(1)(b)(ii):

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

- (i) the state;
- (ii) a local school district; or
- (iii) any other Utah governmental subdivision;

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

~~[(c)]~~ (b) a lawful enterprise that offers only professional review programs, including C.P.A. and bar examination review and preparation courses;

~~[(d)]~~ (c) a private institution that:

- (i) provides postsecondary education; and

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

~~(e)~~ (d) ~~[a school or]~~ an institution that is accredited by a regional or national accrediting agency recognized by the United States Department of Education;

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

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

(ii) does not advertise as a school;

~~(g)~~ (f) an institution that exclusively offers one or more of the following:

(i) ~~[(A) exclusively offers]~~ general education ~~[courses or instruction that are]~~:

(A) that is remedial, avocational, nonvocational, or recreational in nature; and

(B) for which the institution does not advertise occupation objectives or grant [educational credentials; or] a degree, diploma, or other educational credential commensurate with a degree or diploma;

(ii) ~~[exclusively prepares]~~ preparation for individuals to teach courses or instruction described in Subsection (1)~~(g)~~(f)(i)(A);

(iii) courses in English as a second language;

(iv) instruction at or below the 12th grade level;

(v) nurse aide training programs that are approved by:

(A) the Bureau of Health Facility Licensing and Certification; or

(B) an entity authorized by the Bureau of Health Facility Licensing and Certification to approve nurse aide certification programs; or

(vi) content:

(A) that is exclusively available on the Internet;

(B) for which the institution charges \$1,000 or less in a 12-month period; and

(C) for which the institution does not grant educational credentials other than a certificate that indicates completion and that does not represent achievement or proficiency;

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

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

(ii) for which academic credit is not awarded;

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~~(f)~~ (h) an institution that offers programs:

(i) in barbering, cosmetology, real estate, or insurance; and

(ii) that are regulated and approved by a state or federal governmental agency;

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

~~(k)~~ (j) an institution that offers aviation training if the institution:

(i) (A) is approved under Federal Aviation Regulations, 14 C.F.R. Part 141; or

(B) provides aviation training under Federal Aviation Regulations, 14 C.F.R. Part 61;

and

~~(ii) 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;]~~

(ii) does not collect tuition, fees, membership dues, or other payment more than 24 hours before the student receives the aviation training; and

~~(f)~~ (k) an institution that provides emergency medical services training if all of the institution's instructors, course coordinators, and courses are approved by the Department of Health~~;~~ and].

~~(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 Registry.]~~

~~(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.]~~

(2) An institution that no longer qualifies for an exemption that the institution established with the division under Subsection 13-34-107(1)(b)(ii) shall comply with the other provisions of Section 13-34-107.

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

(4) For purposes of Subsection (1)~~(f)~~(e), a business organization, trade or

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professional association, fraternal society, or labor union is considered to be conducting the course predominantly for bona fide employees or members if [it] the entity hires a majority of the [~~persons~~] individuals who:

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

(b) apply for employment with that same entity.

(5) If the United States Department of Education no longer recognizes an institution's accrediting agency, the institution remains exempt under Subsection (1)(d):

(a) during any grace period provided by the United States Department of Education for obtaining new accreditation, if the institution demonstrates to the division that the institution is within the grace period; or

(b) if the institution demonstrates to the division that the United States Department of Education otherwise considers the institution to have recognized accreditation.

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Legislative Review Note

~~Office of Legislative Research and General Counsel~~ Section 6. Section 13-42-137 is amended to read:

13-42-137. Statute of limitations -- Tolling.

[(1) An action or proceeding brought pursuant to Subsection 13-42-133(1), (2), or (3) shall be commenced no later than four years after the conduct that is the basis of the administrator's complaint.]

[(2) An action brought pursuant to Section 13-42-135 shall be commenced no later than two years after the latest of:]

[(a) the individual's last transmission of money to a provider;]

[(b) the individual's last transmission of money to a creditor at the direction of the provider;]

[(c) the provider's last disbursement to a creditor of the individual;]

[(d) the provider's last accounting to the individual pursuant to Subsection

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~~13-42-127(1);~~

~~[(c) the date on which the individual discovered or reasonably should have discovered the facts giving rise to the individual's claim; or]~~

~~[(f) termination of actions or proceedings by the administrator with respect to a violation of the chapter.]~~

~~[(3)] The period prescribed in Subsection [(2)(c)] 13-2-6(6) is tolled during any period during which the provider or, if different, the defendant has materially and willfully misrepresented information required by this chapter to be disclosed to the individual, if the information so misrepresented is material to the establishment of the liability of the defendant under this chapter.~~