

DIVISION OF CONSUMER PROTECTION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill amends and enacts provisions under the administration and enforcement of the Division of Consumer Protection.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ amends the statutes that the Division of Consumer Protection administers and enforces;
- ▶ amends provisions regarding contracts for health spa services;
- ▶ amends provisions regarding a consumer's right to rescind a health spa service contract;
- ▶ amends provisions regarding the registration of a health spa facility;
- ▶ amends provisions related to bond, letter of credit, or certificate of deposit requirements for a health spa facility;
- ▶ amends provisions under the Utah Postsecondary Proprietary School Act; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 30 **13-2-1**, as last amended by Laws of Utah 2020, Chapter 118
- 31 **13-23-2**, as last amended by Laws of Utah 2006, Chapter 47
- 32 **13-23-3**, as last amended by Laws of Utah 2005, Chapter 18
- 33 **13-23-4**, as enacted by Laws of Utah 1987, Chapter 105
- 34 **13-23-5**, as last amended by Laws of Utah 2014, Chapter 189
- 35 **13-23-6**, as last amended by Laws of Utah 2006, Chapter 47
- 36 **13-23-7**, as last amended by Laws of Utah 2005, Chapter 18
- 37 **13-34-105**, as last amended by Laws of Utah 2018, Chapter 276
- 38 **13-34a-102**, as last amended by Laws of Utah 2017, Chapter 98
- 39 **13-34a-204**, as last amended by Laws of Utah 2017, Chapter 98

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

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

43 **13-2-1. Consumer protection division established -- Functions.**

44 (1) There is established within the Department of Commerce the Division of Consumer
 45 Protection.

46 (2) The division shall administer and enforce the following:

- 47 (a) Chapter 5, Unfair Practices Act;
- 48 (b) Chapter 10a, Music Licensing Practices Act;
- 49 (c) Chapter 11, Utah Consumer Sales Practices Act;
- 50 (d) Chapter 15, Business Opportunity Disclosure Act;
- 51 ~~[(e) Chapter 20, New Motor Vehicle Warranties Act;]~~
- 52 (e) Chapter 20, New Motor Vehicles Warranties Act;
- 53 (f) Chapter 21, Credit Services Organizations Act;
- 54 (g) Chapter 22, Charitable Solicitations Act;
- 55 (h) Chapter 23, Health Spa Services Protection Act;
- 56 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 57 (j) Chapter 26, Telephone Fraud Prevention Act;

- 58 (k) Chapter 28, Prize Notices Regulation Act;
- 59 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- 60 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 61 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 62 ~~[(o) Chapter 39, Child Protection Registry;]~~
- 63 ~~[(p)]~~ (o) Chapter 41, Price Controls During Emergencies Act;
- 64 ~~[(q)]~~ (p) Chapter 42, Uniform Debt-Management Services Act;
- 65 ~~[(r)]~~ (q) Chapter 49, Immigration Consultants Registration Act;
- 66 ~~[(s)]~~ (r) Chapter 51, Transportation Network Company Registration Act;
- 67 ~~[(t)]~~ (s) Chapter 52, Residential Solar Energy Disclosure Act;
- 68 ~~[(u)]~~ (t) Chapter 53, Residential, Vocational and Life Skills Program Act;
- 69 ~~[(v)]~~ (u) Chapter 54, Ticket Website Sales Act;
- 70 ~~[(w)]~~ (v) Chapter 56, Ticket Transferability Act; and
- 71 ~~[(x)]~~ (w) Chapter 57, Maintenance Funding Practices Act.

72 Section 2. Section 13-23-2 is amended to read:

73 **13-23-2. Definitions.**

74 As used in this chapter:

75 (1) "Business enterprise" means a sole proprietorship, partnership, association, joint
76 venture, corporation, limited liability company, or other entity used in carrying on a business.

77 ~~[(1)]~~ (2) "Consumer" means a purchaser of health spa services for [~~valuable~~]
78 consideration.

79 (3) "Consumer's primary location" means the health spa facility that a health spa
80 designates in a contract for health spa services as the health spa facility the consumer will
81 primarily use for health spa services.

82 ~~[(2)]~~ (4) "Division" means the Division of Consumer Protection.

83 ~~[(3)]~~ (5) (a) "Health spa" means [~~any person, partnership, joint venture, corporation,~~
84 ~~association, or other entity that, for a charge or fee, provides as one of its primary purposes~~
85 ~~services or facilities that are purported to assist patrons to improve their physical condition or~~

86 ~~appearance through~~ a business enterprise that provides access to a facility:

87 (i) for a charge or a fee; and

88 (ii) for the development or preservation of physical fitness or well-being, through

89 exercise, weight control, or athletics.

90 ~~[(i) aerobic conditioning;]~~

91 ~~[(ii) strength training;]~~

92 ~~[(iii) fitness training; or]~~

93 ~~[(iv) other exercise.]~~

94 ~~[(b) "Health spa" includes any establishment designated:]~~

95 ~~[(i) as a "health spa";]~~

96 ~~[(ii) as a "spa";]~~

97 ~~[(iii) as an "exercise gym";]~~

98 ~~[(iv) as a "health studio";]~~

99 ~~[(v) as a "health club";]~~

100 ~~[(vi) as a "personal training facility"; or]~~

101 ~~[(vii) with any other similar terms.]~~

102 ~~[(c)]~~ (b) "Health spa" does not include:

103 (i) ~~[any facility operated by]~~ a licensed physician who operates a facility at which the
104 physician engages in the practice of medicine;

105 (ii) ~~[any facility operated by]~~ a hospital, intermediate care facility, or skilled nursing
106 care facility;

107 (iii) ~~[any]~~ a public or private school, college, or university;

108 ~~[(iv) any facility owned or operated by the state or its political subdivisions;]~~

109 ~~[(v) any facility owned or operated by the United States or its political subdivisions; or]~~

110 ~~[(vi) instruction offered by an individual if:]~~

111 (iv) the state or a political subdivision of the state;

112 (v) the United States or a political subdivision of the United States;

113 (vi) a person offering instruction if the person does not;

114 (A) ~~[the individual offering the instruction does not]~~ utilize ~~[another individual as]~~ an
115 employee or independent contractor; ~~[and]~~ or

116 (B) ~~[a patron is not granted]~~ grant a consumer the use of a facility containing exercise
117 equipment~~[.];~~

118 ~~[(4) "Health spa services" means any service provided by a health spa, including~~
119 ~~athletic facilities, equipment, and instruction.]~~

120 (vii) a business enterprise, the primary operation of which is to teach self-defense or a
121 martial art, including kickboxing, judo, or karate;

122 (viii) a business enterprise, the primary operation of which is to teach or allow an
123 individual to develop a specific skill rather than develop or preserve physical fitness, including
124 gymnastics, tennis, rock climbing, or a winter sport;

125 (ix) a business enterprise, the primary operation of which is to teach or allow an
126 individual to practice yoga or Pilates;

127 (x) a private employer who owns and operates a facility exclusively for the benefit of
128 the employer's employees, retirees, or family members, if the operation of the facility:

129 (A) is only incidental to the overall function and purpose of the employer's business;
130 and

131 (B) is offered on a nonprofit basis;

132 (xi) an individual providing professional services within the scope of the individual's
133 license with the Division of Occupational and Professional Licensing;

134 (xii) a country club;

135 (xiii) a nonprofit religious, ethnic, or community organization;

136 (xiv) a residential weight reduction center;

137 (xv) a business enterprise that only offers virtual services;

138 (xvi) a business enterprise that only offers a credit for a service that a separate business
139 enterprise offers;

140 (xvii) the owner of a lodging establishment, as defined in Section [29-2-102](#), if the
141 owner only provides access to the lodging establishment's facility to:

- 142 (A) a guest, as defined in Section [29-2-102](#); or
- 143 (B) an operator or employee of the lodging establishment;
- 144 (xviii) an association, declarant, owner, lessor, or developer of a residential housing
- 145 complex, planned community, or development, if at least 80% of the individuals accessing the
- 146 facility reside in the housing complex, planned community, or development; or
- 147 (xix) a person offering a personal training service exclusively as an employee or
- 148 independent contractor of a health spa.

149 (6) "Health spa facility" means a facility to which a business entity provides access:

- 150 (a) for a charge or a fee; and
- 151 (b) for the development or preservation of physical fitness or well-being, through
- 152 exercise, weight control, or athletics.

153 (7) (a) "Health spa service" means instruction, a service, a privilege, or a right that a

154 health spa offers for sale.

155 (b) "Health spa service" includes a personal training service.

156 (8) "Personal training service" means the personalized instruction, training,

157 supervision, or monitoring of an individual's physical fitness or well-being, through exercise,

158 weight control, or athletics.

159 Section 3. Section **13-23-3** is amended to read:

160 **13-23-3. Contracts for health spa services.**

161 (1) (a) ~~[Any]~~ A contract for the ~~[sale of health spa services]~~ purchase of a health spa

162 service shall be in writing.

163 (b) The written contract described in Subsection (1)(a) shall constitute the entire

164 agreement between the consumer and the health spa.

165 (2) (a) The health spa shall provide the consumer with a fully completed copy of the

166 contract required by Subsection (1):

167 (i) at the time of ~~[its]~~ the contract's execution~~[-];~~ and

168 (ii) at any time, upon the consumer's request.

169 (b) The copy described in Subsection (2)(a) shall show:

170 ~~[(a)]~~ (i) the date of the transaction;

171 ~~[(b)]~~ (ii) the name and address of the health spa; ~~[and]~~

172 ~~[(c)]~~ (iii) the name, address, and telephone number of the consumer~~[-]; and~~

173 (iv) the consumer's primary location.

174 (3) (a) A contract described in Subsection (1):

175 (i) may not have a term in excess of 36 months~~[- but the contract may provide that the~~

176 ~~consumer may exercise an option to renew the term after its expiration.]; and~~

177 (ii) may include an automatic renewal provision, if notice of the automatic renewal

178 provision is provided to the consumer no sooner than 60 days before, and no later than 30 days

179 before, the day on which the contract automatically renews.

180 (b) Except for a lifetime membership sold ~~[prior to]~~ before May 1, 1995, a health spa

181 may not offer a lifetime membership.

182 (4) ~~[The]~~ A contract described in Subsection (1) or an attachment to [it] the contract

183 shall clearly state ~~[any rules]~~ each rule of the health spa that ~~[apply]~~ applies to:

184 (a) the consumer's use of ~~[its]~~ the health spa's facilities and services; and

185 (b) cancellation and refund policies of the health spa.

186 (5) ~~[The]~~ A contract described in Subsection (1) shall specify which equipment or

187 facility of the health spa:

188 (a) is omitted from the contract's coverage; or

189 (b) may be changed at the health spa's discretion.

190 (6) ~~[The]~~ A contract described in Subsection (1) shall clearly [state that the consumer

191 ~~has a three-day period after the day on which the contract is executed to rescind the contract.];~~

192 (a) state the consumer's rescission rights under Section 13-23-4; and

193 (b) provide an email address and a mailing address where the consumer can send the

194 health spa a notice of intent to rescind the contract.

195 (7) A health spa may not assign a contract for a health spa service unless the health spa:

196 (a) provides the consumer the option to cancel the contract; and

197 (b) receives approval from the consumer to assign the contract.

198 (8) Before a health spa changes a consumer's primary location, the health spa shall
199 provide the consumer the option to:

200 (a) cancel the contract for health spa services; or

201 (b) (i) continue the contract at the new location; and

202 (ii) designate the newly located health spa facility as the consumer's primary location.

203 Section 4. Section ~~13-23-4~~ is amended to read:

204 **13-23-4. Rescission.**

205 ~~[(1) A consumer may rescind a contract for the purchase of health spa services if he~~
206 ~~enters into the contract and gives value at a time when the health spa is not fully operational~~
207 ~~and available for use, and if the health spa does not become fully operational and available for~~
208 ~~use within 60 days after the date of the contract.]~~

209 ~~[(2) A consumer's right to rescind his contract under this section continues for three~~
210 ~~business days after the health spa becomes fully operational and available for use.]~~

211 (1) A consumer may rescind a contract for the purchase of a health spa service by
212 emailing or mailing written notice of the consumer's intent to rescind:

213 (a) to the email address or mailing address the health spa provided in the contract, as
214 described in Subsection ~~13-23-4~~(6)(b); and

215 (b) (i) before midnight of the third business day after the day on which the consumer
216 and health spa execute the contract, as recorded by timestamp or postmark; or

217 (ii) if a consumer and health spa execute the contract when the consumer's primary
218 location is not fully operational and available for use, before midnight of the third business day
219 after the day on which the consumer's primary location becomes fully operational and available
220 for use, as recorded by timestamp or postmark.

221 ~~[(3)]~~ (2) (a) A consumer who rescinds [his] a contract under this section is entitled to a
222 refund of [any payments he has] every payment the consumer made, less the reasonable value
223 of any health spa [services he] service the consumer actually received [or \$25, whichever is
224 less].

225 (b) The preparation and processing of the contract [and other documents are not

226 ~~considered to be health spa services that are deductible under this subsection]~~ or another
 227 document is not a health spa service that is deductible under Subsection (2)(a) from any
 228 refundable amount.

229 (c) In an enforcement action that the division initiates, a health spa has the burden of
 230 proving that any value the health spa retains under Subsection (2)(a) is reasonable.

231 ~~[(4)]~~ (3) (a) [Any] The rescission of a contract under this section is effective upon the
 232 health spa's receipt of written notice of the consumer's intent to rescind the contract. ~~[The~~
 233 ~~notice may be delivered by hand or mailed by certified mail postmarked no later than midnight~~
 234 ~~of the third day after the health spa becomes fully operational and available for use.]~~

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

236 **13-23-5. Registration -- Bond, letter of credit, or certificate of deposit required --**
 237 **Penalties.**

238 (1) (a) (i) ~~[It is unlawful for any health spa facility to operate]~~ A health spa may not
 239 operate a health spa facility in this state unless the [facility is registered] health spa registers the
 240 health spa facility with the division in accordance with this section.

241 (ii) Registration of a health spa facility under this chapter is effective for one year. [If
 242 the health spa facility renews its registration, the registration shall be renewed at least 30 days
 243 prior to its expiration:]

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

246 (iii) To renew a health spa facility registration under this section, the health spa shall
 247 submit a registration renewal application to the division at least 30 days before the day on
 248 which the health spa facility's registration expires.

249 (iv) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
 250 the division may establish:

251 (A) the initial health spa facility registration process, including the content of any
 252 forms;

253 (B) the health spa facility registration renewal process, including the content of any

254 forms; and

255 (C) a surety exemption process, including the content of any forms.

256 (b) Each health spa registering a health spa facility in this state shall designate a
257 registered agent for receiving service of process.

258 (c) [The] A health spa's registered agent shall be reasonably available from 8 a.m. until
259 5 p.m. during normal working days.

260 ~~[(c)]~~ (d) The division shall charge and collect a fee for registration and registration
261 renewal under guidelines provided in Section 63J-1-504.

262 ~~[(d) If an applicant fails to file a registration application or renewal by the due date, or~~
263 ~~files an incomplete registration application or renewal, the applicant shall pay a fee of \$25 for~~
264 ~~each month or part of a month after the date on which the registration application or renewal~~
265 ~~were due to be filed, in addition to the registration fee described in Subsection (1)(c).]~~

266 (e) If a health spa fails to submit a complete registration renewal application before the
267 day on which a health spa facility's registration expires, the health spa shall pay a fee of \$25 for
268 each month or part of a month that passes:

269 (i) after the day on which the registration expires; and

270 (ii) before the day on which the health spa submits a complete registration renewal
271 application.

272 (f) The fee described in Subsection (1)(e) is in addition to the registration renewal fee
273 described in Subsection (1)(d).

274 ~~[(e)]~~ (g) A health spa registering or renewing a registration shall provide the division a
275 copy of the liability insurance policy that:

276 (i) covers the health spa; and

277 (ii) is in effect at the time of the registration or registration renewal.

278 (h) If information in an application to register or renew the registration of a health spa
279 facility materially changes or becomes incorrect or incomplete, the applicant shall, within 30
280 days after the day on which the information changes or becomes incorrect or incomplete,
281 correct the application or submit the correct information to the division in a manner that the

282 division establishes by rule made in accordance with Title 63G, Chapter 3, Utah
283 Administrative Rulemaking Act.

284 (2) (a) ~~[Each]~~ Except as provided in Section 13-23-6, for each health spa facility a
285 health spa operates, the health spa shall obtain and maintain:

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

288 (ii) an irrevocable letter of credit issued by a financial institution authorized to do
289 business in this state; or

290 (iii) a certificate of deposit.

291 (b) The bond, letter of credit, or certificate of deposit described in Subsection (2)(a)
292 shall be payable to the division for the benefit of ~~[any]~~ a consumer who incurs damages as the
293 result of the health spa:

294 ~~[(i) the health spa's violation of this chapter; or]~~

295 (i) violating this chapter; or

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

298 (c) (i) ~~[The]~~ After each consumer has fully recovered damages, the division may
299 recover from the bond, letter of credit, or certificate of deposit described in Subsection (2)(a)
300 the costs of collecting and distributing funds under this section, in an amount up to 10% of the
301 face value of the bond, letter of credit, or certificate of deposit ~~[but only if the consumers have~~
302 ~~fully recovered their damages first].~~

303 (ii) The total liability of the issuer of the bond, letter of credit, or certificate of deposit
304 described in this Subsection (2) may not exceed the amount of the bond, letter of credit, or
305 certificate of deposit.

306 (iii) ~~[The]~~ A health spa shall maintain a bond, letter of credit, or certificate of deposit
307 described in this Subsection (2) in force for one year after ~~[it]~~ the day on which the health spa
308 notifies the division in writing that ~~[it]~~ the health spa has ceased all activities regulated ~~[by]~~
309 under this chapter at the health spa facility.

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

312 ~~[(e)]~~ (d) (i) The division may impose a fine against a health spa that fails to comply
313 with the requirements of this Subsection (2)~~[(a)]~~ of up to \$100 per day that the health spa
314 remains out of compliance.

315 (ii) ~~[All penalties received shall be deposited]~~ The division shall deposit each fine the
316 division collects under this Subsection (2)(d) into the Consumer Protection Education and
317 Training Fund created in Section 13-2-8.

318 (3) (a) ~~[The]~~ In accordance with the schedule established in Subsection (3)(b), a health
319 spa shall base the minimum principal amount of the bond, letter of credit, or certificate of
320 [credit] deposit required under Subsection (2) [shall be based] on:

321 (i) the number of unexpired contracts for a health spa [services to which the health spa
322 is a party, in accordance with the following schedule:] service, at the time the health spa
323 submits the health spa facility registration or registration renewal application, that designate the
324 health spa facility as the consumer's primary location; or

325 (ii) if at the time the health spa submits the health spa facility registration application
326 the health spa has not executed a contract for a health spa service that designates the health spa
327 facility as a consumer's primary location, the number of contracts for a health spa service
328 designating the health spa facility as a consumer's primary location that the health spa
329 reasonably expects to execute during the health spa facility's first year of registration.

330 (b)

Principal Amount of	Number of Contracts
331 Bond, Letter of Credit, or Certificate of Deposit	
332 <u>\$5,000</u>	<u>100 or fewer</u>
333 <u>\$10,000</u>	<u>101 to 250</u>
334 <u>\$15,000</u>	[500 or fewer] <u>251 to 500</u>

335	35,000	501 to 1,500
336	50,000	1,501 to 3,000
337	75,000	3,001 or more

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

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

- 348 (5) ~~[Each]~~ A health spa shall:
 349 (a) maintain accurate records of:
 350 (i) the bond, letter of credit, or certificate of ~~[credit]~~ deposit; and
 351 (ii) of ~~[any payments]~~ each payment made, due, or to become due to the issuer; and
 352 (b) open the records described in Subsection (5)(a) to inspection by the division at any
 353 time during normal business hours.

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

- 358 (6) (a) A health spa with a health spa facility registered under this section shall submit
 359 a new initial registration for the health spa facility, if the health spa:
 360 (i) changes ownership;
 361 (ii) permanently ceases and then again commences operation at the health spa facility;
 362 or

363 (iii) relocates the health spa facility.

364 (b) The former owner of a health spa may not release, cancel, or terminate the owner's
365 liability under any bond, letter of credit, or certificate of deposit previously filed with the
366 division, unless:

367 ~~[(a)]~~ (i) the new owner has filed a new bond, letter of credit, or certificate of deposit for
368 the benefit of consumers covered under the previous owner's bond, letter of credit, or certificate
369 of deposit; or

370 ~~[(b)]~~ (ii) the former owner has refunded all unearned payments to consumers.

371 (7) If a health spa permanently ceases operation or relocates ~~[and fails to offer an~~
372 ~~alternative location within five miles]~~ a health spa facility, the health spa shall provide the
373 division ~~[with 45 days prior]~~ notice at least 45 days before the day on which health spa
374 permanently ceases operation or relocates the health spa facility.

375 Section 6. Section 13-23-6 is amended to read:

376 **13-23-6. Exemptions from bond, letter of credit, or certificate of deposit**
377 **requirement.**

378 (1) A health spa ~~[that offers no paid-in-full membership, but only memberships paid~~
379 ~~for by installment contracts]~~ is exempt from ~~[the application of]~~ Subsections 13-23-5(2)
380 through (5) ~~[if:]~~ for a health spa facility, if the health spa only offers access to a health spa
381 service at the health spa facility through:

382 (a) the purchase of an individual class or session;

383 (b) the purchase of a package:

384 (i) with a defined number of classes or sessions; and

385 (ii) for which the health spa may not hold more than \$150 worth of a consumer's
386 unused credit;

387 (c) the purchase of a monthly membership or pass, payment for which the health spa
388 does not collect from a consumer more than two months in advance;

389 (d) an installment contract that:

390 (i) provides for the consumer to make all payments due under the contract, including a

391 down payment, an enrollment fee, a membership fee, or any other payment to the health spa, in
392 equal monthly installments spread over the entire term of the contract; and

393 (ii) contains the following clause: "If this health spa ceases operations at or relocates
394 the consumer's primary location, no further payments under this contract shall be due to
395 anyone, including any assignee of the contract or purchaser of any note associated with or
396 contained in this contract, unless the consumer has been presented with the option to cancel the
397 contract and has agreed to the assignment or sale of the consumer's contract."; or

398 (e) a combination of health spa services described in Subsections (1)(a) through (d).

399 (2) A health spa that claims exemption from Subsections [13-23-5\(2\)](#) through (5) bears
400 the burden of proving to the division that the health spa meets the exemption criteria described
401 in Subsection (1).

402 ~~[(1) each contract contains the following clause: "If this health spa ceases operation~~
403 ~~and fails to offer an alternate location within five miles, no further payments under this contract~~
404 ~~shall be due to anyone, including any purchaser of any note associated with or contained in this~~
405 ~~contract.";~~]

406 ~~[(2) all payments due under each contract, including down payments, enrollment fees,~~
407 ~~membership fees, or any other payments to the health spa, are in equal monthly installments~~
408 ~~spread over the entire term of the contract; and]~~

409 ~~[(3) the term of each contract is clearly stated and is not capable of being extended.]~~

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

411 **13-23-7. Enforcement -- Costs and attorney's fees -- Penalties.**

412 (1) (a) The division may, on behalf of [any] a consumer or on [its] the division's own
413 behalf, file an action for injunctive relief, damages, or both to enforce this chapter.

414 (b) In addition to any relief granted, the division is entitled to an award for reasonable
415 attorney's fees, court costs, and reasonable investigative expenses.

416 (2) (a) A person who willfully violates [any] a provision of this chapter, either by
417 failing to comply with any requirement or by doing any act prohibited in this chapter, is guilty
418 of a class B misdemeanor.

419 (b) Each day ~~[the]~~ a violation described in Subsection (2)(a) is committed or permitted
420 to continue constitutes a separate punishable offense.

421 ~~[(b)]~~ (c) In the case of a second offense, the person is guilty of a class A misdemeanor.

422 ~~[(c)]~~ (d) In the case of ~~[three or more offenses]~~ a third or subsequent offense, the
423 person is guilty of a third degree felony.

424 (3) (a) In addition to any other penalty available under this chapter, a person who
425 violates this chapter is subject to:

426 (i) a cease and desist order; and

427 (ii) an administrative fine of up to \$2,500 for each separate violation that is not a
428 violation described in Subsection 13-23-5(2)~~[(c)]~~(d) up to \$10,000 for any series of violations
429 arising out of the same operative facts.

430 (b) ~~[AH]~~ The division shall deposit all administrative fines collected under this chapter
431 ~~[shall be deposited in]~~ into the Consumer Protection Education and Training Fund created in
432 Section 13-2-8.

433 Section 8. Section **13-34-105** is amended to read:

434 **13-34-105. Exempted institutions.**

435 (1) The following institutions are exempt from the provisions of this chapter, if the
436 institution establishes an exemption with the division in accordance with Subsection
437 13-34-107(1)(b)(ii):

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

440 (i) the state;

441 (ii) a local school district; or

442 (iii) any other Utah governmental subdivision;

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

445 (c) a private institution that:

446 (i) provides postsecondary education; and

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

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

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

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

455 (ii) does not advertise as a school;

456 (f) an institution that, with regard to postsecondary education, exclusively offers one or
457 more of the following:

458 (i) general education:

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

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

462 (ii) preparation for individuals to teach courses or instruction described in Subsection
463 (1)(f)(i)(A);

464 (iii) courses in English as a second language;

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

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

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

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

470 (vi) content:

471 (A) that is exclusively available on the Internet;

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

473 (C) for which the institution does not grant educational credentials other than a

474 certificate that indicates completion and that does not represent achievement or proficiency;

475 (vii) instruction to advance personal development or general professional skills:
476 (A) that is not independently sufficient to be a program of training for employment or a
477 specific field; and
478 (B) for which the institution does not grant a degree, diploma, or other educational
479 credential commensurate with a degree or diploma; or
480 (viii) instruction designed to prepare an individual to run for political office, for which
481 the institution does not grant a degree, diploma, or other educational credential commensurate
482 with a degree or diploma;
483 (g) an institution that offers only workshops or seminars:
484 (i) lasting no longer than three calendar days; and
485 (ii) for which academic credit is not awarded;
486 (h) an institution that offers programs:
487 (i) in barbering, cosmetology, real estate, or insurance; and
488 (ii) that are regulated and approved by a state or federal governmental agency;
489 (i) an education provider certified by the Division of Real Estate under Section
490 61-2c-204.1;
491 (j) an institution that offers aviation training if the institution:
492 (i) (A) is approved under Federal Aviation Regulations, 14 C.F.R. Part 141; or
493 (B) provides aviation training under Federal Aviation Regulations, 14 C.F.R. Part 61;
494 and
495 (ii) does not collect tuition, fees, membership dues, or other payment more than 24
496 hours before the student receives the aviation training; and
497 (k) an institution that provides emergency medical services training if all of the
498 institution's instructors, course coordinators, and courses are approved by the Department of
499 Health.
500 (2) An institution that no longer qualifies for an exemption that the institution
501 established with the division under Subsection 13-34-107(1)(b)(ii) shall comply with the other
502 provisions of Section 13-34-107.

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

507 (4) For purposes of Subsection (1)(e), a business organization, trade or professional
508 association, fraternal society, or labor union is considered to be conducting the course
509 predominantly for bona fide employees or members if the entity hires a majority of the
510 individuals who:

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

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

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

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

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

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

522 **13-34a-102. Definitions.**

523 As used in this chapter:

524 (1) "Accredited institution" means a postsecondary school that is accredited by an
525 accrediting agency.

526 (2) "Accrediting agency" means a [~~regional or national~~] private educational association
527 that:

528 (a) is recognized by the United States Department of Education;

529 (b) develops evaluation criteria; and

530 (c) conducts peer evaluations to assess whether a postsecondary school meets the

531 criteria described in Subsection (2)(b).

532 (3) "Agent" means a person who:

533 (a) (i) owns an interest in a postsecondary school; or

534 (ii) is employed by a postsecondary school; and

535 (b) (i) enrolls or attempts to enroll a Utah resident in a postsecondary school;

536 (ii) offers to award an educational credential for remuneration on behalf of a

537 postsecondary school; or

538 (iii) holds oneself out to Utah residents as representing a postsecondary school for any

539 purpose.

540 (4) "Certificate of postsecondary state authorization" means a certificate issued by the

541 division to a postsecondary school in accordance with the provisions of this chapter.

542 (5) "Division" means the Division of Consumer Protection.

543 (6) "Educational credential" means a degree, diploma, certificate, transcript, report,

544 document, letter of designation, mark, or series of letters, numbers, or words that represent

545 enrollment, attendance, or satisfactory completion of the requirements or prerequisites of an

546 educational program.

547 (7) "Intentional violation" means a violation of a provision of this chapter that occurs

548 or continues after the division, the attorney general, a county attorney, or a district attorney

549 gives the violator written notice, delivered by certified mail, that the violator is or has been in

550 violation of the provision.

551 (8) "Operate" means to:

552 (a) maintain a place of business in the state;

553 (b) conduct significant educational activities within the state; or

554 (c) provide postsecondary education to a Utah resident that:

555 (i) is intended to lead to a postsecondary degree or certificate; and

556 (ii) is provided from a location outside the state by correspondence or

557 telecommunications or electronic media technology.

558 (9) "Operating history" means a report, written evaluation, publication, or other

559 documentation regarding:

560 (a) the current accreditation status of a postsecondary school with an accrediting
561 agency; and

562 (b) an action taken by an accrediting agency that:

563 (i) places the postsecondary school on probation;

564 (ii) imposes disciplinary action against the postsecondary school;

565 (iii) requires the postsecondary school to take corrective action; or

566 (iv) provides the postsecondary school with a warning or directive to show cause.

567 (10) "Ownership" means:

568 (a) the controlling interest in a postsecondary school; or

569 (b) if an entity holds the controlling interest in the postsecondary school, the
570 controlling interest in the entity that holds the controlling interest in the postsecondary school.

571 (11) "Postsecondary education" means education or educational services offered
572 primarily to individuals who:

573 (a) have completed or terminated their secondary or high school education; or

574 (b) are beyond the age of compulsory school attendance.

575 (12) (a) "Postsecondary school" means a person that provides or offers educational
576 services to individuals who:

577 (i) have completed or terminated secondary or high school education; or

578 (ii) are beyond the age of compulsory school attendance.

579 (b) "Postsecondary school" does not include an institution that is part of the state
580 system of higher education under Section [53B-1-102](#).

581 (13) "Private postsecondary school" means a postsecondary school that is not a public
582 postsecondary school.

583 (14) "Public postsecondary school" means a postsecondary school:

584 (a) established by a state or other governmental entity; and

585 (b) substantially supported with government funds.

586 Section 10. Section **13-34a-204** is amended to read:

587 **13-34a-204. Postsecondary school -- Procedure to obtain certificate of**
588 **postsecondary state authorization.**

589 (1) The division shall, in accordance with the provisions of this section, issue a
590 certificate of postsecondary state authorization to a postsecondary school.

591 (2) To obtain a certificate of postsecondary state authorization under this section, a
592 postsecondary school shall:

593 (a) submit a completed registration form to the division that includes:

594 (i) proof of current accreditation from the postsecondary school's accrediting agency;

595 (ii) proof that the postsecondary school is fiscally responsible and can reasonably fulfill
596 the postsecondary school's financial obligations, including:

597 (A) a copy of an audit of the postsecondary school's financial statements, with all
598 applicable footnotes, including a balance sheet, an income statement, a statement of retained
599 earnings, and a statement of cash flow, that was performed by a certified public accountant;

600 (B) at the postsecondary school's election, a copy of an audit of the postsecondary
601 school's parent company's financial statements, with all applicable footnotes, including a
602 balance sheet, an income statement, a statement of retained earnings, and a statement of cash
603 flow, that was performed by a certified public accountant; and

604 (C) a copy of all other financial documentation that the postsecondary school provided
605 to the postsecondary school's accrediting agency since the postsecondary school's last
606 registration with the division under this chapter or within the 12 months before the day on
607 which the postsecondary school submits a completed registration form under this section,
608 whichever is longer;

609 (iii) proof of good standing in the state where the postsecondary school is organized;

610 (iv) the postsecondary school's operating history with the postsecondary school's
611 accrediting agency since the postsecondary school's last registration with the division under this
612 chapter or within the 12 months before the day on which the postsecondary school submits a
613 completed registration form under this section, whichever is longer;

614 (v) the number of Utah residents who enrolled in the postsecondary school since the

615 postsecondary school's last registration with the division under this chapter or within the 12
616 months before the day on which the postsecondary school submits a completed registration
617 form under this section, whichever is longer;

618 (vi) satisfactory documentation that the postsecondary school has complied with the
619 complaint process requirements described in Section 13-34a-206;

620 (vii) (A) the number of complaints that a Utah resident has filed against the
621 postsecondary school since the postsecondary school's last registration with the division under
622 this chapter or within the 12 months before the day on which the postsecondary school submits
623 a completed registration form under this section, whichever is longer; and

624 (B) upon request, [~~includes~~] copies of the complaints described in Subsection
625 (2)(a)(vii)(A);

626 (viii) a disclosure that states whether the postsecondary school or an owner, officer,
627 director, or administrator of the postsecondary school has been:

628 (A) convicted of a crime;

629 (B) subject to an order issued by a court; or

630 (C) subject to an order issued by an administrative agency that imposed disciplinary
631 action; and

632 (ix) a [~~notarized~~] personal verification by the owner or a responsible officer of the
633 postsecondary school that the information provided under this Subsection (2)(a) is complete
634 and accurate; and

635 (b) pay a nonrefundable fee, established by the division, in accordance with Subsection
636 13-34a-103(2)(c) to pay for the cost of processing the registration form and issuing the
637 certificate of postsecondary state authorization.

638 (3) If a postsecondary school's accreditor loses its recognition by the United States
639 Department of Education, the postsecondary school may satisfy the requirement of Subsection
640 (2)(a)(i) by demonstrating to the division that the postsecondary school is within a grace period
641 provided by the United States Department of Education for obtaining new accreditation or is
642 otherwise considered by the United States Department of Education to have recognized

643 accreditation.

644 (4) The division shall develop and make available to the public a registration form
645 described in Subsection (2)(a).

646 (5) The division shall deposit money that the division receives under Subsection (2)(b)
647 into the Commerce Service Account, created in Section 13-1-2.

648 (6) If a postsecondary school maintains more than one physical campus in the state, the
649 postsecondary school shall file a separate registration form for each physical campus in the
650 state.

651 (7) (a) A certificate of postsecondary state authorization issued under this section is not
652 transferrable.

653 (b) (i) If a postsecondary school's ownership or governing body changes after the
654 postsecondary school obtains a certificate of postsecondary state authorization under this
655 section, the postsecondary school shall submit a new completed registration form in accordance
656 with Subsection (2) within 60 days after the day on which the change in ownership or
657 governing body occurs.

658 (ii) If a postsecondary school fails to timely comply with the requirements described in
659 Subsection (7)(b)(i), the postsecondary school's certificate of postsecondary state authorization
660 immediately and automatically expires.

661 (c) If there is a change in circumstance that may affect a postsecondary school's status
662 under this section, the postsecondary school shall notify the division in writing of the change
663 within 30 days after the day on which the change occurs.

664 (8) (a) A certificate of postsecondary state authorization issued under this section
665 expires one year after the day on which the certificate of postsecondary state authorization is
666 issued.

667 (b) Notwithstanding Subsection (8)(a), the division may extend the period for which
668 the ~~[exemption]~~ certificate of postsecondary state authorization is effective so that expiration
669 dates are staggered throughout the year.