

DIVISION OF CONSUMER PROTECTION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: _____

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;
 - ▶ enacts provisions related to earned wage access services, including provider operational requirements and reporting;
 - ▶ requires the Division of Consumer Protection to make rules and report to the Business and Labor Interim Committee in relation to earned wage access services;
- and
- ▶ makes technical and conforming changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **7-23-103.1**, as renumbered and amended by Laws of Utah 2008, Chapter 96

35 **13-2-1**, as last amended by Laws of Utah 2020, Chapter 118

36 **13-23-2**, as last amended by Laws of Utah 2006, Chapter 47

37 **13-23-3**, as last amended by Laws of Utah 2005, Chapter 18

38 **13-23-4**, as enacted by Laws of Utah 1987, Chapter 105

39 **13-23-5**, as last amended by Laws of Utah 2014, Chapter 189

40 **13-23-6**, as last amended by Laws of Utah 2006, Chapter 47

41 **13-23-7**, as last amended by Laws of Utah 2005, Chapter 18

42 **13-34a-204**, as last amended by Laws of Utah 2017, Chapter 98

43 ENACTS:

44 **13-58-101**, Utah Code Annotated 1953

45 **13-58-102**, Utah Code Annotated 1953

46 **13-58-201**, Utah Code Annotated 1953

47 **13-58-202**, Utah Code Annotated 1953

48 **13-58-301**, Utah Code Annotated 1953

49 **13-58-302**, Utah Code Annotated 1953



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

52 Section 1. Section **7-23-103.1** is amended to read:

53 **7-23-103.1. Exemptions.**

54 The following are not subject to the requirements of this chapter:

- 55 (1) a depository institution;
- 56 (2) a depository institution holding company;
- 57 (3) an institution directly or indirectly owned or controlled by one or more:
- 58 (a) depository institutions; or

- 59 (b) depository institution holding companies; ~~[or]~~
- 60 (4) a person that cashes a check in a transaction:
- 61 (a) that is incidental to a retail sale of goods or services; and
- 62 (b) for consideration that does not exceed the greater of:
- 63 (i) 1% of the amount of the check; or
- 64 (ii) \$1[-]; ~~or~~
- 65 (5) a person who operates in accordance with Title 13, Chapter 58, Earned Wage
- 66 Access Services Act, as a provider.

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

68 **13-2-1. Consumer protection division established -- Functions.**

69 (1) There is established within the Department of Commerce the Division of Consumer
70 Protection.

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

- 72 (a) Chapter 5, Unfair Practices Act;
- 73 (b) Chapter 10a, Music Licensing Practices Act;
- 74 (c) Chapter 11, Utah Consumer Sales Practices Act;
- 75 (d) Chapter 15, Business Opportunity Disclosure Act;
- 76 ~~[(e) Chapter 20, New Motor Vehicle Warranties Act;]~~
- 77 (e) Chapter 20, New Motor Vehicles Warranties Act;
- 78 (f) Chapter 21, Credit Services Organizations Act;
- 79 (g) Chapter 22, Charitable Solicitations Act;
- 80 (h) Chapter 23, Health Spa Services Protection Act;
- 81 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 82 (j) Chapter 26, Telephone Fraud Prevention Act;
- 83 (k) Chapter 28, Prize Notices Regulation Act;
- 84 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- 85 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 86 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 87 ~~[(o) Chapter 39, Child Protection Registry;]~~
- 88 ~~[(p)]~~ (o) Chapter 41, Price Controls During Emergencies Act;
- 89 ~~[(q)]~~ (p) Chapter 42, Uniform Debt-Management Services Act;

- 90 ~~[(r)]~~ (q) Chapter 49, Immigration Consultants Registration Act;
- 91 ~~[(s)]~~ (r) Chapter 51, Transportation Network Company Registration Act;
- 92 ~~[(t)]~~ (s) Chapter 52, Residential Solar Energy Disclosure Act;
- 93 ~~[(u)]~~ (t) Chapter 53, Residential, Vocational and Life Skills Program Act;
- 94 ~~[(v)]~~ (u) Chapter 54, Ticket Website Sales Act;
- 95 ~~[(w)]~~ (v) Chapter 56, Ticket Transferability Act; ~~[and]~~
- 96 ~~[(x)]~~ (w) Chapter 57, Maintenance Funding Practices Act~~[-];~~ and
- 97 (x) Chapter 58, Earned Wage Access Services Act.

98 Section 3. Section **13-23-2** is amended to read:

99 **13-23-2. Definitions.**

100 As used in this chapter:

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

103 ~~[(1)]~~ (2) "Consumer" means a purchaser of health spa services for ~~[valuable]~~
104 consideration.

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

108 ~~[(2)]~~ (4) "Division" means the Division of Consumer Protection.

109 ~~[(3)]~~ (5) (a) "Health spa" means ~~[any person, partnership, joint venture, corporation,~~
110 ~~association, or other entity that, for a charge or fee, provides as one of its primary purposes~~
111 ~~services or facilities that are purported to assist patrons to improve their physical condition or~~
112 ~~appearance through]~~ a business enterprise that provides access to a facility:

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

114 (ii) for the development or preservation of physical fitness or well-being, through
115 exercise, weight control, or athletics.

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

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

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

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

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

- 121 ~~[(i) as a "health spa";]~~
 122 ~~[(ii) as a "spa";]~~
 123 ~~[(iii) as an "exercise gym";]~~
 124 ~~[(iv) as a "health studio";]~~
 125 ~~[(v) as a "health club";]~~
 126 ~~[(vi) as a "personal training facility"; or]~~
 127 ~~[(vii) with any other similar terms.]~~
 128 ~~[(c)]~~ (b) "Health spa" does not include:
 129 (i) ~~[any facility operated by]~~ a licensed physician who operates a facility at which the
 130 physician engages in the practice of medicine;
 131 (ii) ~~[any facility operated by]~~ a hospital, intermediate care facility, or skilled nursing
 132 care facility;
 133 (iii) ~~[any]~~ a public or private school, college, or university;
 134 ~~[(iv) any facility owned or operated by the state or its political subdivisions;]~~
 135 ~~[(v) any facility owned or operated by the United States or its political subdivisions; or]~~
 136 ~~[(vi) instruction offered by an individual if:]~~
 137 (iv) the state or a political subdivision of the state;
 138 (v) the United States or a political subdivision of the United States;
 139 (vi) a person offering instruction if the person does not:
 140 (A) ~~[the individual offering the instruction does not]~~ utilize ~~[another individual as]~~ an
 141 employee or independent contractor; ~~[and]~~ or
 142 (B) ~~[a patron is not granted]~~ grant a consumer the use of a facility containing exercise
 143 equipment~~[-];~~
 144 ~~[(4) "Health spa services" means any service provided by a health spa, including~~
 145 ~~athletic facilities, equipment, and instruction.]~~
 146 (vii) a business enterprise, the primary operation of which is to teach self-defense or a
 147 martial art, including kickboxing, judo, or karate;
 148 (viii) a business enterprise, the primary operation of which is to teach or allow an
 149 individual to practice a specific sport, including gymnastics, dance, tennis, rock climbing, or a
 150 winter sport, regardless of whether the sport involves the use of free weights or exercise
 151 machines;

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

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

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

158 (B) is offered on a nonprofit basis;

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

161 (xii) a country club;

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

163 (xiv) a residential weight reduction center;

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

165 (xvi) a business enterprise that only offers a credit for a service that a separate business
166 enterprise offers;

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

169 (A) a guest, as defined in Section [29-2-102](#); or

170 (B) an operator or employee of the lodging establishment;

171 (xviii) an association, declarant, owner, lessor, or developer of a residential housing
172 complex, planned community, or development, if at least 80% of the individuals accessing the
173 facility reside in the housing complex, planned community, or development; or

174 (xix) a person offering a personal training service exclusively as an employee or
175 independent contractor of a health spa.

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

177 (a) for a charge or a fee; and

178 (b) for the development or preservation of physical fitness or well-being, through
179 exercise, weight control, or athletics.

180 (7) (a) "Health spa service" means instruction, a service, a privilege, or a right that a
181 health spa offers for sale.

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

183 (8) "Personal training service" means the personalized instruction, training,
184 supervision, or monitoring of an individual's physical fitness or well-being, through exercise,
185 weight control, or athletics.

186 Section 4. Section **13-23-3** is amended to read:

187 **13-23-3. Contracts for health spa services.**

188 (1) (a) ~~[Any]~~ A contract for the [sale of health spa services] purchase of a health spa
189 service shall be in writing.

190 (b) The written contract described in Subsection (1)(a) shall constitute the entire
191 agreement between the consumer and the health spa.

192 (2) (a) The health spa shall provide the consumer with a fully completed copy of the
193 contract required by Subsection (1):

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

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

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

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

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

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

200 (iv) the consumer's primary location.

201 (3) (a) A contract under this section:

202 (i) may not have a term in excess of 36 months~~[- but the contract may provide that the~~
203 ~~consumer may exercise an option to renew the term after its expiration.]; and~~

204 (ii) may include an automatic renewal provision, if notice of the automatic renewal
205 provision is provided to the consumer no sooner than 60 days before, and no later than 30 days
206 before, the day on which the contract automatically renews.

207 (b) Except for a lifetime membership sold ~~[prior to]~~ before May 1, 1995, a health spa
208 may not offer a lifetime membership.

209 (4) The contract or an attachment to ~~[it]~~ the contract shall clearly state ~~[any rules]~~ each
210 rule of the health spa that [apply] applies to:

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

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

213 (5) The contract shall specify which equipment or facility of the health spa:

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

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

216 (6) The contract shall clearly [~~state that the consumer has a three-day period after the~~
217 ~~day on which the contract is executed to rescind the contract.];~~

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

219 (b) provide an email address and a mailing address where the consumer can send the
220 health spa a notice of intent to rescind the contract.

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

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

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

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

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

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

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

229 Section 5. Section 13-23-4 is amended to read:

230 **13-23-4. Rescission.**

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

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

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

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

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

243 (ii) if a consumer and health spa execute the contract when the consumer's primary
244 location is not fully operational and available for use, before midnight of the third business day

245 after the day on which the consumer's primary location becomes fully operational and available
 246 for use, as recorded by timestamp or postmark.

247 ~~[(3)]~~ (2) (a) A consumer who rescinds ~~[his]~~ a contract under this section is entitled to a
 248 refund of ~~[any payments he has]~~ every payment the consumer made, less the reasonable value
 249 of any health spa ~~[services he]~~ service the consumer actually received ~~[or \$25, whichever is~~
 250 less].

251 (b) The preparation and processing of the contract ~~[and other documents are not~~
 252 considered to be health spa services that are deductible under this subsection] or another
 253 document is not a health spa service that is deductible under Subsection (2)(a) from any
 254 refundable amount.

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

257 ~~[(4)]~~ (3) (a) ~~[Any]~~ The rescission of a contract under this section is effective upon the
 258 health spa's receipt of written notice of the consumer's intent to rescind the contract. ~~[The~~
 259 ~~notice may be delivered by hand or mailed by certified mail postmarked no later than midnight~~
 260 ~~of the third day after the health spa becomes fully operational and available for use.]~~

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

262 **13-23-5. Registration -- Bond, letter of credit, or certificate of deposit required --**
 263 **Penalties.**

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

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

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

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

275 (iv) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act,

276 the division may establish:

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

279 (B) the health spa facility registration renewal process, including the content of any
280 forms; and

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

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

284 (c) ~~[The]~~ A health spa's registered agent shall be reasonably available from 8 a.m. until
285 5 p.m. during normal working days.

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

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

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

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

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

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

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

302 (i) covers the health spa; and

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

304 (h) If information in an application to register or renew the registration of a health spa
305 facility materially changes or becomes incorrect or incomplete, the applicant shall, within 30
306 days after the day on which the information changes or becomes incorrect or incomplete,

307 correct the application or submit the correct information to the division in a manner that the
 308 division establishes by rule made in accordance with Title 63G, Chapter 3, Utah
 309 Administrative Rulemaking Act.

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

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

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

316 (iii) a certificate of deposit.

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

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

321 (i) violating this chapter; or

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

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

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

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

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

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

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

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

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

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

356 (b)

Principal Amount of	Number of Contracts
357 Bond, Letter of Credit, or Certificate of Deposit	
358 <u>\$5,000</u>	<u>100 or fewer</u>
359 <u>\$10,000</u>	<u>101 to 250</u>
360 \$15,000	[500 or fewer] <u>251 to 500</u>
361 35,000	501 to 1,500
362 50,000	1,501 to 3,000
363 75,000	3,001 or more

364 ~~[(b)]~~ (c) A health spa that is not exempt under Section 13-23-6 shall comply with
365 ~~[Subsection]~~ Subsections (3)(a) and (b) with respect to all of the health spa's unexpired

366 contracts for a health spa [services] service, regardless of whether a portion of those contracts
 367 satisfies the criteria in Section 13-23-6.

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

374 (5) ~~[Each]~~ A health spa shall:

375 (a) maintain accurate records of:

376 (i) the bond, letter of credit, or certificate of [credit] deposit; and

377 (ii) of [any payments] each payment made, due, or to become due to the issuer; and

378 (b) open the records described in Subsection (5)(a) to inspection by the division at any
 379 time during normal business hours.

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

384 (6) (a) A health spa with a health spa facility registered under this section shall submit
 385 a new initial registration for the health spa facility, if the health spa:

386 (i) changes ownership;

387 (ii) permanently ceases and then again commences operation at the health spa facility;

388 or

389 (iii) relocates the health spa facility.

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

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

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

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

401 Section 7. Section **13-23-6** is amended to read:

402 **13-23-6. Exemptions from bond, letter of credit, or certificate of deposit**
403 **requirement.**

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

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

409 (b) the purchase of a package:

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

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

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

415 (d) an installment contract that:

416 (i) provides for the consumer to make all payments due under the contract, including a
417 down payment, an enrollment fee, a membership fee, or any other payment to the health spa, in
418 equal monthly installments spread over the entire term of the contract; and

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

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

425 (2) A health spa that claims exemption from Subsections **13-23-5(2)** through (5) bears
426 the burden of proving to the division that the health spa meets the exemption criteria described
427 in Subsection (1).

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

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

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

436 Section 8. Section 13-23-7 is amended to read:

437 **13-23-7. Enforcement -- Costs and attorney's fees -- Penalties.**

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

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

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

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

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

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

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

452 (i) a cease and desist order; and

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

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

459 Section 9. Section **13-34a-204** is amended to read:

460 **13-34a-204. Postsecondary school -- Procedure to obtain certificate of**
461 **postsecondary state authorization.**

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

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

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

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

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

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

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

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

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

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

487 (v) the number of Utah residents who enrolled in the postsecondary school since the
488 postsecondary school's last registration with the division under this chapter or within the 12
489 months before the day on which the postsecondary school submits a completed registration

490 form under this section, whichever is longer;

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

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

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

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

501 (A) convicted of a crime;

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

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

505 (ix) a notarized personal verification by the owner or a responsible officer of the
506 postsecondary school that the information provided under this Subsection (2)(a) is complete
507 and accurate; and

508 (b) pay a nonrefundable fee, established by the division, in accordance with Subsection
509 13-34a-103(2)(c) to pay for the cost of processing the registration form and issuing the
510 certificate of postsecondary state authorization.

511 (3) If a postsecondary school's accreditor loses its recognition by the United States
512 Department of Education, the postsecondary school may satisfy the requirement of Subsection
513 (2)(a)(i) by demonstrating to the division that the postsecondary school is within a grace period
514 provided by the United States Department of Education for obtaining new accreditation or is
515 otherwise considered by the United States Department of Education to have recognized
516 accreditation.

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

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

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

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

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

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

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

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

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

543 Section 10. Section **13-58-101** is enacted to read:

544 **CHAPTER 58. EARNED WAGE ACCESS SERVICES ACT**

545 **Part 1. General Provisions**

546 **13-58-101. Title.**

547 This chapter is known as the "Earned Wage Access Services Act."

548 Section 11. Section **13-58-102** is enacted to read:

549 **13-58-102. Definitions.**

550 As used in this chapter:

551 (1) "Annual percentage rate" means the same as defined in 15 U.S.C. Sec. 1606, as

552 implemented by regulations made under that section.

553 (2) "Director" means the director of the division.

554 (3) "Division" means the Division of Consumer Protection established in Section
555 13-2-1.

556 (4) "Earned, unpaid income" means an amount that does not exceed:

557 (a) the sum of unpaid wages, government benefits, and cash distributions that an
558 individual has earned or is otherwise entitled to; minus

559 (b) the sum of unpaid wages, government benefits, and cash distributions required
560 through a legal or equitable procedure to be withheld from the individual described in
561 Subsection (4)(a) for payment the individual owes.

562 (5) "Earned wage access service" means an agreement:

563 (a) that is not a loan; and

564 (b) under which:

565 (i) a person remits earned, unpaid income into a deposit account the individual who
566 earned or is otherwise entitled to the earned, unpaid income designates;

567 (ii) on or after a designated day, the person who remits the earned, unpaid income as
568 described in Subsection (5)(b)(i) debits the deposit account described in Subsection (5)(b)(i) in
569 an amount that is less than or equal to the sum of:

570 (A) the earned, unpaid income the person remitted;

571 (B) each fee the person charges; and

572 (C) any voluntary payment; and

573 (iii) the person who remits the earned, unpaid income as described in Subsection

574 (5)(b)(i) may not:

575 (A) charge the individual described in Subsection (5)(b)(i) a mandatory fee that is not a
576 subscription fee for the remittance of the earned, unpaid income;

577 (B) charge the individual described in Subsection (5)(b)(i) an annual percentage rate on
578 remitted earned, unpaid income, on a subscription fee, or on a voluntary payment; or

579 (C) through a legal proceeding, compel the individual described in Subsection (5)(b)(i)
580 to repay remitted earned, unpaid income or to pay a fee.

581 (6) "Proceeds" means earned, unpaid income that a person remits to an individual as
582 part of an earned wage access service.

614 (i) the total number of unique individuals to whom the provider remitted proceeds as
615 part of an earned wage access service.

616 Section 14. Section **13-58-301** is enacted to read:

617 **Part 3. Division Duties**

618 **13-58-301. Enforcement.**

619 In addition to the division's enforcement powers under Chapter 2, Division of
620 Consumer Protection, the division may impose an administrative fine of up to \$500 for each
621 violation of this chapter.

622 Section 15. Section **13-58-302** is enacted to read:

623 **13-58-302. Rulemaking -- Reporting.**

624 (1) The division shall make rules in accordance with Title 63G, Chapter 3, Utah
625 Administrative Rulemaking Act, regarding annual reports required under this chapter,
626 including a filing process for a report and any required supporting documentation.

627 (2) Before October 1, 2023, the director shall provide a written report to the Business
628 and Labor Interim Committee on the status of earned wage access services in the state and
629 make any recommendation the director decides is necessary to improve the regulatory
630 framework of earned wage access services.