

HB0321S01 compared with HB0321

~~deleted text~~ shows text that was in HB0321 but was deleted in HB0321S01.

inserted text shows text that was not in HB0321 but was inserted into HB0321S01.

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Representative James A. Dunnigan proposes the following substitute bill:

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;

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- ▶ 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}~~ 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:

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

~~}~~ 13-2-1, as last amended by Laws of Utah 2020, Chapter 118

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

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

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

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

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

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

13-34-105, as last amended by Laws of Utah 2018, Chapter 276

13-34a-102, as last amended by Laws of Utah 2017, Chapter 98

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

~~{~~ENACTS:

~~———— 13-58-101, Utah Code Annotated 1953~~

~~———— 13-58-102, Utah Code Annotated 1953~~

~~———— 13-58-201, Utah Code Annotated 1953~~

~~———— 13-58-202, Utah Code Annotated 1953~~

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~~13-58-301, Utah Code Annotated 1953~~

~~13-58-302, Utah Code Annotated 1953~~

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

Section 1. Section ~~{7-23-103.}~~13-2-1 is amended to read:

~~{~~ ~~7-23-103.1. Exemptions:~~

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

~~(1) a depository institution;~~

~~(2) a depository institution holding company;~~

~~(3) an institution directly or indirectly owned or controlled by one or more:~~

~~(a) depository institutions; or~~

~~(b) depository institution holding companies; [or]~~

~~(4) a person that cashes a check in a transaction:~~

~~(a) that is incidental to a retail sale of goods or services; and~~

~~(b) for consideration that does not exceed the greater of:~~

~~(i) 1% of the amount of the check; or~~

~~(ii) \$1[.]; or~~

~~(5) a person who operates in accordance with Title 13, Chapter 58, Earned Wage Access Services Act, as a provider.~~

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

~~†~~ **13-2-1. Consumer protection division established -- Functions.**

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

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

(a) Chapter 5, Unfair Practices Act;

(b) Chapter 10a, Music Licensing Practices Act;

(c) Chapter 11, Utah Consumer Sales Practices Act;

(d) Chapter 15, Business Opportunity Disclosure Act;

~~[(e) Chapter 20, New Motor Vehicle Warranties Act;]~~

(e) Chapter 20, New Motor Vehicles Warranties Act;

(f) Chapter 21, Credit Services Organizations Act;

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- (g) Chapter 22, Charitable Solicitations Act;
- (h) Chapter 23, Health Spa Services Protection Act;
- (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- (j) Chapter 26, Telephone Fraud Prevention Act;
- (k) Chapter 28, Prize Notices Regulation Act;
- (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- ~~[(o) Chapter 39, Child Protection Registry;]~~
- ~~[(p)]~~ (o) Chapter 41, Price Controls During Emergencies Act;
- ~~[(q)]~~ (p) Chapter 42, Uniform Debt-Management Services Act;
- ~~[(r)]~~ (q) Chapter 49, Immigration Consultants Registration Act;
- ~~[(s)]~~ (r) Chapter 51, Transportation Network Company Registration Act;
- ~~[(t)]~~ (s) Chapter 52, Residential Solar Energy Disclosure Act;
- ~~[(u)]~~ (t) Chapter 53, Residential, Vocational and Life Skills Program Act;
- ~~[(v)]~~ (u) Chapter 54, Ticket Website Sales Act;
- ~~[(w)]~~ (v) Chapter 56, Ticket Transferability Act; ~~[(x)]~~ and ~~[(y)]~~
- ~~[(z)]~~ (w) Chapter 57, Maintenance Funding Practices Act ~~[(z)]~~; and
- ~~[(aa)]~~ (x) Chapter 58, Earned Wage Access Services Act.

~~Section 3~~};

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

13-23-2. Definitions.

As used in this chapter:

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

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

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

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

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

(i) for a charge or a fee; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vi) a person offering instruction if the person does not:

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

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

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

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

(viii) a business enterprise, the primary operation of which is to teach or allow an individual to ~~{practice}~~develop a specific ~~{sport}~~skill rather than develop or preserve physical fitness, including gymnastics ~~{, dance}~~, tennis, rock climbing, or a winter sport ~~{, regardless of whether the sport involves the use of free weights or exercise machines}~~;

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

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

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

and

(B) is offered on a nonprofit basis;

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

(xii) a country club;

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

(xiv) a residential weight reduction center;

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

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

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

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

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

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

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

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

(a) for a charge or a fee; and

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

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

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

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

Section ~~(4)~~3. Section **13-23-3** is amended to read:

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

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

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

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

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

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

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

~~(a)~~ (i) the date of the transaction;

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

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

(iv) the consumer's primary location.

(3) (a) A contract ~~{under this section}~~ described in Subsection (1):

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

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

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

(4) ~~[The] A~~ contract described in Subsection (1) or an attachment to ~~[it]~~ the contract shall clearly state ~~[any rules]~~ each rule of the health spa that ~~[apply]~~ applies to:

- (a) the consumer's use of ~~[its]~~ the health spa's facilities and services; and
- (b) cancellation and refund policies of the health spa.

(5) ~~[The] A~~ contract described in Subsection (1) shall specify which equipment or facility of the health spa:

- (a) is omitted from the contract's coverage; or
- (b) may be changed at the health spa's discretion.

(6) ~~[The] A~~ contract described in Subsection (1) shall clearly ~~[state that the consumer has a three-day period after the day on which the contract is executed to rescind the contract.];~~

- (a) state the consumer's rescission rights under Section 13-23-4; and
- (b) provide an email address and a mailing address where the consumer can send the health spa a notice of intent to rescind the contract.

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

- (a) provides the consumer the option to cancel the contract; and
- (b) receives approval from the consumer to assign the contract.

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

- (a) cancel the contract for health spa services; or
- (b) (i) continue the contract at the new location; and
- (ii) designate the newly located health spa facility as the consumer's primary location.

Section ~~{5}~~4. Section **13-23-4** is amended to read:

13-23-4. Rescission.

~~[(1) A consumer may rescind a contract for the purchase of health spa services if he~~

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~~enters into the contract and gives value at a time when the health spa is not fully operational and available for use, and if the health spa does not become fully operational and available for use within 60 days after the date of the contract.]~~

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

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

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

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

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

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

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

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

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

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

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

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Penalties.

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

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

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

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

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

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

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

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

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

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

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

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

(e) If a health spa fails to submit a complete registration renewal application before the day on which a health spa facility's registration expires, the health spa shall pay a fee of \$25 for

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each month or part of a month that passes:

- (i) after the day on which the registration expires; and
- (ii) before the day on which the health spa submits a complete registration renewal

application.

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

~~(f)~~ (g) A health spa registering or renewing a registration shall provide the division a copy of the liability insurance policy that:

- (i) covers the health spa; and
- (ii) is in effect at the time of the registration or registration renewal.

(h) If information in an application to register or renew the registration of a health spa facility materially changes or becomes incorrect or incomplete, the applicant shall, within 30 days after the day on which the information changes or becomes incorrect or incomplete, correct the application or submit the correct information to the division in a manner that the division establishes by rule made in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

- (i) a performance bond issued by a surety authorized to transact surety business in this state;
- (ii) an irrevocable letter of credit issued by a financial institution authorized to do business in this state; or
- (iii) a certificate of deposit.

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

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

- (i) violating this chapter; or
- (ii) [the health spa's] going out of business [or relocating and failing to offer an alternate location within five miles:].

(c) (i) ~~[The]~~ After each consumer has fully recovered damages, the division may

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recover from the bond, letter of credit, or certificate of deposit described in Subsection (2)(a) the costs of collecting and distributing funds under this section, in an amount up to 10% of the face value of the bond, letter of credit, or certificate of deposit [~~but only if the consumers have fully recovered their damages first~~].

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

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

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

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

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

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

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

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

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(b)

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

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

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

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

(a) maintain accurate records of:

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

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

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

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

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

(i) changes ownership;

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

or

(iii) relocates the health spa facility.

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

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

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

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

Section ~~{7}~~6. Section **13-23-6** is amended to read:

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

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

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

(b) the purchase of a package:

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

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

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

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(d) an installment contract that:

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

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

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

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

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

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

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

Section ~~{8}~~7. Section 13-23-7 is amended to read:

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

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

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

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

(b) Each day ~~[the]~~ a violation described in Subsection (2)(a) is committed or permitted

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to continue constitutes a separate punishable offense.

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

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

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

(i) a cease and desist order; and

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

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

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

13-34-105. Exempted institutions.

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

(c) a private institution that:

(i) provides postsecondary education; and

(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;

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

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(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;

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

(i) general education:

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

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

(ii) preparation for individuals to teach courses or instruction described in Subsection (1)(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;

(vii) instruction to advance personal development or general professional skills:

(A) that is not independently sufficient to be a program of training for employment or a specific field; and

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

(viii) instruction designed to prepare an individual to run for political office, for which the institution does not grant a degree, diploma, or other educational credential commensurate

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with a degree or diploma:

- (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;
 - (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;
 - (i) an education provider certified by the Division of Real Estate under Section 61-2c-204.1;
 - (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) does not collect tuition, fees, membership dues, or other payment more than 24 hours before the student receives the aviation training; and
 - (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.
- (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)(d).
- (4) For purposes of Subsection (1)(e), a business organization, trade or professional association, fraternal society, or labor union is considered to be conducting the course predominantly for bona fide employees or members if the entity hires a majority of the individuals who:
- (a) successfully complete the course of instruction or study with a reasonable degree of proficiency; and

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(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.

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

13-34a-102. Definitions.

As used in this chapter:

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

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

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

(b) develops evaluation criteria; and

(c) conducts peer evaluations to assess whether a postsecondary school meets the criteria described in Subsection (2)(b).

(3) "Agent" means a person who:

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

(ii) is employed by a postsecondary school; and

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

(ii) offers to award an educational credential for remuneration on behalf of a postsecondary school; or

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

(4) "Certificate of postsecondary state authorization" means a certificate issued by the division to a postsecondary school in accordance with the provisions of this chapter.

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

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

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document, letter of designation, mark, or series of letters, numbers, or words that represent enrollment, attendance, or satisfactory completion of the requirements or prerequisites of an educational program.

(7) "Intentional violation" means a violation of a provision of this chapter that occurs or continues after the division, the attorney general, a county attorney, or a district attorney gives the violator written notice, delivered by certified mail, that the violator is or has been in violation of the provision.

(8) "Operate" means to:

- (a) maintain a place of business in the state;
- (b) conduct significant educational activities within the state; or
- (c) provide postsecondary education to a Utah resident that:
 - (i) is intended to lead to a postsecondary degree or certificate; and
 - (ii) is provided from a location outside the state by correspondence or

telecommunications or electronic media technology.

(9) "Operating history" means a report, written evaluation, publication, or other documentation regarding:

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

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

- (i) places the postsecondary school on probation;
- (ii) imposes disciplinary action against the postsecondary school;
- (iii) requires the postsecondary school to take corrective action; or
- (iv) provides the postsecondary school with a warning or directive to show cause.

(10) "Ownership" means:

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

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

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

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

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

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

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

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

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

- (a) established by a state or other governmental entity; and
- (b) substantially supported with government funds.

Section ~~9~~10. Section **13-34a-204** is amended to read:

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

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

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

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

- (i) proof of current accreditation from the postsecondary school's accrediting agency;
- (ii) proof that the postsecondary school is fiscally responsible and can reasonably fulfill

the postsecondary school's financial obligations, including:

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

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

(C) a copy of all other financial documentation that the postsecondary school provided to the postsecondary school's accrediting agency since the postsecondary school's last

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

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

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

(v) the number of Utah residents who enrolled in the postsecondary school since the postsecondary school's last registration with the division under this chapter or within the 12 months before the day on which the postsecondary school submits a completed registration form under this section, whichever is longer;

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

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

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

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

(A) convicted of a crime;

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

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

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

(b) pay a nonrefundable fee, established by the division, in accordance with Subsection 13-34a-103(2)(c) to pay for the cost of processing the registration form and issuing the

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certificate of postsecondary state authorization.

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

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

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

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

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

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

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

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

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

(b) Notwithstanding Subsection (8)(a), the division may extend the period for which

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the [exemption] certificate of postsecondary state authorization is effective so that expiration dates are staggered throughout the year.

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

~~CHAPTER 58. EARNED WAGE ACCESS SERVICES ACT~~

~~Part 1. General Provisions~~

~~Section **13-58-101**. Title:~~

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

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

~~**13-58-102**. Definitions:~~

~~As used in this chapter:~~

~~(1) "Annual percentage rate" means the same as defined in 15 U.S.C. Sec. 1606, as implemented by regulations made under that section.~~

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

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

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

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

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

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

~~(a) that is not a loan; and~~

~~(b) under which:~~

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

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

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

~~(B) each fee the person charges; and~~

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~~—— (C) any voluntary payment; and~~

~~—— (iii) the person who remits the earned, unpaid income as described in Subsection (5)(b)(i) may not:~~

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

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

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

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

~~—— (7) "Provider" means a person engaged in the business of providing earned, unpaid income to an individual as part of an earned wage access service.~~

~~—— (8) "Voluntary payment" means any amount of money that an individual voluntarily pays to a provider in relation to an earned wage access service.~~

~~—— Section 12. Section **13-58-201** is enacted to read:~~

Part 2. Providers

~~—— **13-58-201. Provider operations:**~~

~~—— (1) A provider may not remit to an individual an amount based on future earnings.~~

~~—— (2) If an individual is married or in civil union, a provider may not engage in an earned wage access service with the individual unless the provider obtains written consent from the individual's spouse or partner.~~

~~—— (3) If a provider takes custody of an individual's earned, unpaid wages before remitting the earned, unpaid wages to the individual as proceeds, the provider shall ensure that the proceeds are fully FDIC insured at the individual's account level.~~

~~—— Section 13. Section **13-58-202** is enacted to read:~~

~~—— **13-58-202. Annual reports:**~~

~~—— Beginning in 2022, on or before June 30 of each year, a provider shall submit a written report to the division:~~

~~—— (1) in a form the director prescribes; and~~

~~—— (2) that includes for the preceding calendar year:~~

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- ~~_____ (a) gross revenue received for engaging in earned wage access services;~~
- ~~_____ (b) the total number of earned wage access services in which the provider engaged;~~
- ~~_____ (c) the total dollar amount of proceeds the provider remitted;~~
- ~~_____ (d) the total dollar amount of fees the provider received from individuals;~~
- ~~_____ (e) the total number of proceeds for which the provider has not received any repayment;~~
- ~~_____ (f) the total dollar amount of proceeds for which the provider has not received any repayment;~~
- ~~_____ (g) the total number of proceeds for which the provider has received partial repayment;~~
- ~~_____ (h) the total outstanding dollar amount of proceeds for which the provider has received partial repayment; and~~
- ~~_____ (i) the total number of unique individuals to whom the provider remitted proceeds as part of an earned wage access service.~~

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

~~**Part 3. Division Duties**~~

~~**13-58-301. Enforcement.**~~

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

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

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

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

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

~~‡~~