

Senator Michael K. McKell proposes the following substitute bill:

REGULATIONS FOR LEGAL SERVICES

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael K. McKell

House Sponsor: Nelson T. Abbott

LONG TITLE

General Description:

This bill enacts and amends provisions related to the regulation of legal services and lawyer referral services.

Highlighted Provisions:

This bill:

- ▶ enacts provisions related to lawyer referral consultants, including provisions that:
 - require certain persons to be registered as lawyer referral consultants;
 - establish application requirements;
 - require criminal background checks for lawyer referral consultants;
 - establish requirements for posting bond;
 - establish requirements for a contract that a lawyer referral consultant enters into;
 - require accounting for lawyer referral services;
 - address delivery, release, and treatment of documents;
 - provide requirements for posting certain notices; and
 - provide for enforcement of provisions and recovery of losses;
- ▶ amends provisions related to exceptions to a prohibition on kickbacks for certain activities;
- ▶ provides that certain providers of legal services owe a fiduciary duty to the person to



26 whom legal services are provided;

27 ▶ creates a private right of action for a breach of certain fiduciary duties; and

28 ▶ defines terms.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 This bill provides a special effective date.

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **13-2-1 (Effective 12/31/23)**, as last amended by Laws of Utah 2022, Chapters 201, 462

36 **76-10-3201**, as enacted by Laws of Utah 2022, Chapter 415

37 ENACTS:

38 **13-63-101**, Utah Code Annotated 1953

39 **13-63-201**, Utah Code Annotated 1953

40 **13-63-202**, Utah Code Annotated 1953

41 **13-63-203**, Utah Code Annotated 1953

42 **13-63-204**, Utah Code Annotated 1953

43 **13-63-301**, Utah Code Annotated 1953

44 **13-63-302**, Utah Code Annotated 1953

45 **13-63-303**, Utah Code Annotated 1953

46 **13-63-304**, Utah Code Annotated 1953

47 **13-63-305**, Utah Code Annotated 1953

48 **13-63-401**, Utah Code Annotated 1953

49 **13-63-402**, Utah Code Annotated 1953

50 **13-63-403**, Utah Code Annotated 1953

51 **13-63-404**, Utah Code Annotated 1953

52 **13-64-101**, Utah Code Annotated 1953

53 **13-64-201**, Utah Code Annotated 1953

54 **13-64-202**, Utah Code Annotated 1953

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

57 Section 1. Section 13-2-1 (Effective 12/31/23) is amended to read:

58 **13-2-1 (Effective 12/31/23). Consumer protection division established --**

59 **Functions.**

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

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

63 (a) Chapter 5, Unfair Practices Act;

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

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

66 (d) Chapter 15, Business Opportunity Disclosure Act;

67 (e) Chapter 20, New Motor Vehicle Warranties Act;

68 (f) Chapter 21, Credit Services Organizations Act;

69 (g) Chapter 22, Charitable Solicitations Act;

70 (h) Chapter 23, Health Spa Services Protection Act;

71 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;

72 (j) Chapter 26, Telephone Fraud Prevention Act;

73 (k) Chapter 28, Prize Notices Regulation Act;

74 (l) Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter
75 Transaction Information Act;

76 (m) Chapter 34, Utah Postsecondary Proprietary School Act;

77 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;

78 (o) Chapter 41, Price Controls During Emergencies Act;

79 (p) Chapter 42, Uniform Debt-Management Services Act;

80 (q) Chapter 49, Immigration Consultants Registration Act;

81 (r) Chapter 51, Transportation Network Company Registration Act;

82 (s) Chapter 52, Residential Solar Energy Disclosure Act;

83 (t) Chapter 53, Residential, Vocational and Life Skills Program Act;

84 (u) Chapter 54, Ticket Website Sales Act;

85 (v) Chapter 56, Ticket Transferability Act;

86 (w) Chapter 57, Maintenance Funding Practices Act; [~~and~~]

87 (x) Chapter 61, Utah Consumer Privacy Act[-]; and

88 (y) Chapter 63, Lawyer Referral Consultants Registration Act.

89 Section 2. Section 13-63-101 is enacted to read:

90 **CHAPTER 63. LAWYER REFERRAL CONSULTANTS REGISTRATION ACT**

91 **Part 1. General Provisions**

92 **13-63-101. Definitions.**

93 As used in this chapter:

94 (1) "Attorney" means an individual who is authorized to provide legal services in any
95 state or territory of the United States.

96 (2) "Client" means a person that is provided lawyer referral services by a lawyer
97 referral consultant.

98 (3) "Compensation" means anything of economic value that is paid, loaned, granted,
99 given, donated, or transferred to a person for or in consideration of:

100 (a) services;

101 (b) personal or real property; or

102 (c) another thing of value.

103 (4) "Digital marketing service" means an Internet-based company that:

104 (a) advertises legal services on behalf of a law firm; and

105 (b) does not contact prospective clients individually.

106 (5) "Division" means the Division of Consumer Protection in the Department of
107 Commerce.

108 (6) "Law firm" means an entity consisting of one or more licensed lawyers lawfully
109 engaged in the practice of law.

110 (7) "Lawyer referral consultant" means an individual that engages in lawyer referral
111 service.

112 (8) (a) "Lawyer referral service" means assisting a person to find an attorney or law
113 firm that provides legal services in the legal field appropriate for the person's legal matter.

114 (b) "Lawyer referral service" does not include a digital marketing service.

115 (9) "Legal services" means any form of legal advice or legal representation that is
116 subject to the laws of this state.

117 Section 3. Section 13-63-201 is enacted to read:

118 **Part 2. Registration Requirements**

119 **13-63-201. Requirement to be registered as a lawyer referral consultant.**

120 (1) (a) Except as provided in Subsection (1)(b), an individual may not engage in an
121 activity of a lawyer referral consultant for compensation unless the individual is registered
122 under this chapter.

123 (b) Except as provided in Subsections 13-63-303(3) and (4), this chapter does not
124 apply to an attorney.

125 (2) A lawyer referral consultant may only offer nonlegal assistance or advice in
126 providing lawyer referral services.

127 Section 4. Section 13-63-202 is enacted to read:

128 **13-63-202. Application for registration.**

129 (1) To register as a lawyer referral consultant an individual shall:

130 (a) submit an annual application in a form prescribed by the division;

131 (b) pay an annual registration fee determined by the division in accordance with
132 Section 63J-1-504, which shall include the costs of the criminal background check required
133 under Subsection (1)(e);

134 (c) have good moral character in that the individual has not been convicted of:

135 (i) a felony; or

136 (ii) within the prior 10 years, a misdemeanor involving theft, fraud, or dishonesty;

137 (d) submit fingerprint cards in a form acceptable to the division at the time the
138 application is filed; and

139 (e) consent to a fingerprint background check of the individual by the Bureau of
140 Criminal Identification regarding the application.

141 (2) The division shall register an individual who qualifies under this chapter as a
142 lawyer referral consultant.

143 Section 5. Section 13-63-203 is enacted to read:

144 **13-63-203. Requirement to submit to criminal background check.**

145 (1) The division shall require an applicant for registration as a lawyer referral
146 consultant to:

147 (a) submit a fingerprint card in a form acceptable to the division; and

148 (b) consent to a fingerprint criminal background check by the Bureau of Criminal
149 Identification.

150 (2) (a) The division shall obtain information from a criminal background history record
151 maintained by the Bureau of Criminal Identification pursuant to Title 53, Chapter 10, Part 2,
152 Bureau of Criminal Identification.

153 (b) The information obtained under Subsection (2)(a) may only be used by the division
154 to determine whether an applicant for registration as a lawyer referral consultant meets the
155 requirements of Subsection [13-63-202\(1\)\(c\)](#).

156 Section 6. Section **13-63-204** is enacted to read:

157 **13-63-204. Bonds - Exemption - Statements dependent on posting bond.**

158 (1) A lawyer referral consultant shall post a cash bond or surety bond:

159 (a) in the amount of \$50,000; and

160 (b) payable to the division for the benefit of any person damaged by any of the
161 following acts that a lawyer referral consultant or the lawyer referral consultant's agent,
162 representative, or employee commits:

163 (i) fraud;

164 (ii) misstatement;

165 (iii) misrepresentation;

166 (iv) unlawful act;

167 (v) omission; or

168 (vi) failure to provide lawyer referral services.

169 (2) A bond under this section shall be:

170 (a) in a form approved by the division;

171 (b) conditioned upon the faithful compliance of a lawyer referral consultant with this
172 chapter and division rules; and

173 (c) maintained at all times while the lawyer referral consultant provides lawyer referral
174 services.

175 (3) A lawyer referral consultant shall keep the bond required under this section in force
176 for one year after:

177 (a) the lawyer referral consultant's registration expires; or

178 (b) the lawyer referral consultant notifies the division in writing that the lawyer referral
179 consultant has ceased all activities regulated under this chapter.

180 (4) (a) If a surety bond posted by a lawyer referral consultant under this section is

181 canceled due to the lawyer referral consultant's negligence, the division may assess a \$300
182 reinstatement fee.

183 (b) No part of a bond posted by a lawyer referral consultant under this section may be
184 withdrawn:

185 (i) during the one-year period the registration under this chapter is in effect; or
186 (ii) while a revocation proceeding is pending against the lawyer referral consultant.

187 (5) (a) A bond posted under this section by a lawyer referral consultant may be
188 forfeited if the lawyer referral consultant's registration under this chapter is revoked.

189 (b) Notwithstanding Subsection (5)(a), the division may make a claim against a bond
190 posted by a lawyer referral consultant for money owed to the division under this chapter
191 without the division first revoking the lawyer referral consultant's registration.

192 (6) An individual may not disseminate by any means a statement indicating that the
193 individual is a lawyer referral consultant, or proposes to engage in the business of a lawyer
194 referral consultant, unless the individual has posted a bond under this section that is maintained
195 throughout the period covered by the statement.

196 (7) A lawyer referral consultant may not make or authorize the making of an oral or
197 written reference to the lawyer referral consultant's compliance with the bonding requirements
198 of this section except as provided in this section.

199 Section 7. Section **13-63-301** is enacted to read:

200 **Part 3. Operational Requirements**

201 **13-63-301. Requirements for written contract -- Prohibited statements.**

202 (1) (a) Before a lawyer referral consultant may provide lawyer referral services to a
203 client, the lawyer referral consultant shall provide the client with a written contract.

204 (b) The contents of the written contract described in Subsection (1)(a) shall comply
205 with this section and rules made by the division in accordance with Title 63G, Chapter 3, Utah
206 Administrative Rulemaking Act.

207 (c) A prospective client may cancel a written contract on or before midnight of the
208 third business day after execution of the written contract, excluding weekends and state and
209 federal holidays.

210 (2) A written contract under this section shall be stated in both English and in the
211 client's native language.

- 212 (3) A written contract under this section shall:
213 (a) state the purpose for which the lawyer referral consultant has been hired;
214 (b) state the one or more lawyer referral services to be performed;
215 (c) state the price for a lawyer referral service to be performed;
216 (d) include a statement printed in 10-point boldface type that the lawyer referral
217 consultant is not an attorney and may not perform the legal services that an attorney performs;
218 (e) include a provision stating that the client may report complaints relating to a lawyer
219 referral consultant to the division, including a toll-free telephone number and Internet website;
220 (f) include a provision stating that complaints concerning the unauthorized practice of
221 law may be reported to the Utah State Bar, including a toll-free telephone number and Internet
222 website; and
223 (g) in accordance with Subsection (1)(b), include a provision stating in boldface on the
224 first page of the written contract in both English and in the client's native language in
225 accordance with Subsection (2): "You may cancel this contract on or before midnight of the
226 third business day after execution of the written contract."
227 (4) A written contract may not contain a provision relating to a guarantee or promise
228 unless the lawyer referral consultant has some basis in fact for making the guarantee of
229 promise.
230 (5) A lawyer referral consultant may not make a guarantee or promise described in
231 Subsection (4) orally to a client.
232 (6) A written contract is void if not written in accordance with this section.
233 Section 8. Section **13-63-302** is enacted to read:
234 **13-63-302. Accounting for services -- Receipts.**
235 (1) (a) A lawyer referral consultant shall provide a signed receipt to a client for each
236 payment made by that client.
237 (b) A receipt described in Subsection (1)(a) shall be typed or computer generated on
238 the lawyer referral consultant's letterhead.
239 (2) A lawyer referral consultant shall make a statement of accounting for the lawyer
240 referral services rendered and payments made:
241 (a) in the client's native language;
242 (b) that is typed or computer generated on the lawyer referral consultant's letterhead;

243 (c) that lists the individual and total charges for services; and

244 (d) that lists the payments made by the client.

245 Section 9. Section **13-63-303** is enacted to read:

246 **13-63-303. Notice to be displayed -- Disclosure to be provided in writing.**

247 (1) A lawyer referral consultant shall conspicuously display in the lawyer referral
248 consultant's office a notice that shall be at least 12 by 20 inches with boldface type or print with
249 each character at least one inch in height and width, that contains the following information:

250 (a) the full name, address, and evidence of compliance with any applicable bonding
251 requirement including the bond number;

252 (b) a statement that the lawyer referral consultant is not an attorney; and

253 (c) the name of each lawyer referral consultant employed at each location.

254 (2) (a) Before providing any services, a lawyer referral consultant shall provide a client
255 with a written disclosure in the native language of the client that includes the following:

256 (i) the lawyer referral consultant's name, address, and telephone number;

257 (ii) the lawyer referral consultant's agent for service of process;

258 (iii) evidence of compliance with any applicable bonding requirement, including the
259 bond number; and

260 (iv) a list of the services that the lawyer referral consultant provides and the current and
261 total fee for each service.

262 (b) A lawyer referral consultant shall obtain the signature of the client verifying that the
263 client received the written disclosure described in Subsection (2)(a) before a service is
264 provided.

265 (3) (a) Except as provided in Subsection (3)(b), a lawyer referral consultant who prints,
266 displays, publishes, distributes, or broadcasts, or who causes to be printed, displayed,
267 published, distributed, or broadcasted, any advertisement for services as a lawyer referral
268 consultant, shall include in that advertisement a clear and conspicuous statement that the
269 lawyer referral consultant is not an attorney.

270 (b) (i) Subsection (3)(a) does not apply to a person who is not an active member of the
271 Utah State Bar, but is an attorney licensed in another state or territory of the United States.

272 (ii) A person described in Subsection (3)(b)(i) shall include in any advertisement for
273 lawyer referral services a clear and conspicuous statement that the person is not an attorney

274 licensed to practice law in this state, but is an attorney licensed in another state or territory of
275 the United States.

276 (4) If an advertisement subject to this section is in a language other than English, the
277 statement required by Subsection (3) shall be in the same language as the advertisement.

278 Section 10. Section **13-63-304** is enacted to read:

279 **13-63-304. Translations -- Prohibited acts.**

280 (1) As used in this section, "literal translation" of a word or phrase from one language
281 means the translation of a word or phrase without regard to the true meaning of the word or
282 phrase in the language that is being translated.

283 (2) A lawyer referral consultant may not, with the intent to mislead, literally translate,
284 from English into another language, words or titles, including, "notary public," "notary,"
285 "licensed," "attorney," "lawyer," or any other terms that imply that the lawyer referral
286 consultant is an attorney, in any document, including an advertisement, stationery, letterhead,
287 business card, or other comparable written material describing the lawyer referral consultant.

288 Section 11. Section **13-63-305** is enacted to read:

289 **13-63-305. Documents -- Treatment of original documents.**

290 A lawyer referral consultant shall:

291 (1) deliver to a client a copy of a document completed on behalf of the client;

292 (2) include on a document delivered to a client the name and address of the lawyer
293 referral consultant;

294 (3) retain a copy of a document of a client for not less than three years from the date of
295 the last service the lawyer referral consultant provides to the client; and

296 (4) return to a client all original documents that the client has provided to the lawyer
297 referral consultant.

298 Section 12. Section **13-63-401** is enacted to read:

299 **Part 4. Prohibited Acts and Penalties**

300 **13-63-401. Unlawful acts.**

301 (1) It is unlawful for a lawyer referral consultant to:

302 (a) make a false or misleading statement to a client while providing services to that
303 client;

304 (b) make a guarantee or promise to a client, unless the guarantee or promise is in

305 writing and the lawyer referral consultant has some basis in fact for making the guarantee or
306 promise; or

307 (c) charge a client a fee for referral of the client to another person for services that the
308 lawyer referral consultant cannot or will not provide to the client.

309 (2) A sign describing the prohibition described in Subsection (1)(c) shall be
310 conspicuously displayed in the office of a lawyer referral consultant.

311 Section 13. Section **13-63-402** is enacted to read:

312 **13-63-402. Violations -- Actions by division.**

313 (1) The division shall administer and enforce the provisions of this chapter in
314 accordance with Chapter 2, Division of Consumer Protection.

315 (2) The attorney general, upon request, shall give legal advice to, and act as counsel
316 for, the division in the exercise of the division's responsibilities under this chapter.

317 (3) (a) In addition to the division's enforcement powers under Chapter 2, Division of
318 Consumer Protection:

319 (i) the division director may impose an administrative fine of up to \$2,500 for each
320 violation of this chapter; and

321 (ii) the division may bring an action in a court of competent jurisdiction to enforce a
322 provision of this chapter.

323 (b) In a court action by the division to enforce a provision of this chapter, the court
324 may:

325 (i) declare that an act or practice violates a provision of this chapter;

326 (ii) issue an injunction for a violation of this chapter;

327 (iii) order disgorgement of any money received in violation of this chapter;

328 (iv) order payment of disgorged money to an injured purchaser or consumer;

329 (v) impose a fine of up to \$2,500 for each violation of this chapter; or

330 (vi) award any other relief that the court deems reasonable and necessary.

331 (4) If a court of competent jurisdiction grants judgment or injunctive relief to the
332 division, the court shall award the division:

333 (a) reasonable attorney fees;

334 (b) court costs; and

335 (c) investigative fees.

336 (5) (a) A person who violates an administrative or court order issued for a violation of
337 this chapter is subject to a civil penalty of no more than \$5,000 for each violation.

338 (b) A civil penalty authorized under this section may be imposed in any civil action
339 brought by the attorney general on behalf of the division.

340 (c) All money received for the payment of a fine or civil penalty imposed under this
341 section shall be deposited into the Consumer Protection Education and Training Fund created
342 in Section 13-2-8.

343 (6) A person who intentionally violates this chapter:

344 (a) is guilty of a class A misdemeanor; and

345 (b) may be fined up to \$10,000.

346 (c) A person intentionally violates this part if the violation occurs after the division,
347 attorney general, or a district or county attorney notifies the person by certified mail that the
348 person is in violation of this chapter.

349 Section 14. Section **13-63-403** is enacted to read:

350 **13-63-403. Action by attorney general or district or county attorney.**

351 (1) Upon referral from the division, the attorney general or any district or county
352 attorney may:

353 (a) bring an action for temporary or permanent injunctive or other relief in any court of
354 competent jurisdiction for any violation of this part;

355 (b) bring an action in any court of competent jurisdiction for the collection of penalties
356 authorized under Subsection 13-63-402(2); or

357 (c) bring an action under Subsection 13-63-402(4).

358 (2) A court may, upon entry of final judgment, award restitution when appropriate to
359 any person suffering loss because of a violation of this part if proof of loss is submitted to the
360 satisfaction of the court.

361 Section 15. Section **13-63-404** is enacted to read:

362 **13-63-404. Recovery of losses.**

363 In addition to any other remedies, a person suffering pecuniary loss because of a
364 violation by another person of this chapter may bring an action in any court of competent
365 jurisdiction and may recover:

366 (1) the greater of:

- 367 (a) \$500; or
- 368 (b) twice the amount of the pecuniary loss; and
- 369 (2) court costs and reasonable attorney fees as determined by the court.

370 Section 16. Section **13-64-101** is enacted to read:

371 **CHAPTER 64. FIDUCIARY DUTY FOR CERTAIN PROVIDERS OF LEGAL**
 372 **SERVICES**

373 **Part 1. General Provisions**

374 **13-64-101. Definitions.**

375 As used in this chapter:

376 (1) "Business entity" means a sole proprietorship, partnership, limited partnership,
377 limited liability company, corporation, or other legal entity that is:

378 (a) used to carry on a business for profit; and

379 (b) a participant in the sandbox.

380 (2) "Court rule" means rules of procedure, evidence, or practice for use of the courts of
381 this state.

382 (3) "Out-of-state attorney" means an individual admitted and licensed to practice law in
383 another state or territory of the United States who is authorized by court rule to practice law in
384 this state without being admitted and licensed to practice law in this state.

385 (4) "Participant" means a business entity or a business entity's officer, director, partner,
386 or employee that provides legal services under the sandbox:

387 (a) to a person other than the business entity; and

388 (b) for the business entity's profit.

389 (5) "Sandbox" means the regulatory sandbox program established by the Utah Supreme
390 Court for authorizing nontraditional legal service providers to practice law on a limited and
391 temporary basis under Utah Supreme Court Rule of Professional Practice 14-802.

392 Section 17. Section **13-64-201** is enacted to read:

393 **Part 2. Duty and Cause of Action**

394 **13-64-201. Fiduciary duty.**

395 Each officer, director, and partner of a participant owes a fiduciary duty to:

396 (1) the person to whom legal service is provided;

397 (2) in relation to legal service provided; and

398 (3) as applicable, that supersedes the duties described in Subsection [16-10a-840\(1\)](#).

399 Section 18. Section **13-64-202** is enacted to read:

400 **13-64-202. Cause of action.**

401 (1) A person may bring an action in a court of competent jurisdiction for:

402 (a) a breach of the fiduciary duty described in Section [13-64-201](#); or

403 (b) an out-of-state attorney's breach of a fiduciary duty arising from an attorney-client
404 relationship.

405 (2) If a court of competent jurisdiction finds that a person breached a fiduciary duty
406 described in this chapter, the person who brings an action described in Subsection (1) is
407 entitled to:

408 (a) actual damages;

409 (b) punitive damages;

410 (c) injunctive relief;

411 (d) attorney fees; or

412 (e) any combination of relief described in Subsections (2)(a) through (2)(d).

413 Section 19. Section **76-10-3201** is amended to read:

414 **76-10-3201. Prohibition on kickbacks.**

415 (1) As used in this section:

416 (a) "Kickback or bribe" means a rebate, compensation, or any other form of
417 remuneration, that is:

418 (i) direct or indirect;

419 (ii) overt or covert; or

420 (iii) in cash or in kind.

421 (b) "Kickback or bribe" does not include:

422 (i) a fee that is:

423 ~~[(i)]~~ (A) shared between two or more individuals, each of whom is licensed to practice
424 law; and

425 ~~[(ii)]~~ (B) charged for services provided in the individual's capacity as a licensee
426 described in Subsection (1)(b)(i)[-]; or

427 (ii) payment for medical services ~~Ĥ→~~ **rendered** ~~←Ĥ~~ .

428 (2) (a) An actor may not solicit or receive a kickback or bribe in return for the referral

429 of a person to another person for the furnishing of any good or service that relates to any
430 insurance claim or a claim for damages.

431 (b) An actor may not offer or pay a kickback or bribe to induce the referral of a person
432 to another person for the furnishing of any good or service that relates to any insurance claim or
433 a claim for damages.

434 (3) A violation of Subsection (2)(a) or (b) is a third degree felony.

435 (4) This section does not apply to an individual licensed to practice law or a medical
436 provider when referring[~~,-without compensation,~~] a client for medical treatment or evaluation,
437 if the referral is made without compensation.

438 (5) This section does not apply to an individual licensed to practice law when:

439 (a) paying a lien, contractual reimbursement, or medical bill on behalf of a client from
440 proceeds of a settlement or judgment; or

441 (b) marketing to, or engaging in client development activities with, an individual
442 licensed to provide medical treatment or evaluation, if the marketing or client development
443 activities are not for the purpose of inducing the individual licensed to provide medical
444 treatment or evaluation to refer a particular person to the individual licensed to practice law.

445 Section 20. **Effective date.**

446 This bill takes effect on May 2, 2024.