

SB0274S01 compared with SB0274

~~deleted text~~ shows text that was in SB0274 but was deleted in SB0274S01.

inserted text shows text that was not in SB0274 but was inserted into SB0274S01.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: _____

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;

SB0274S01 compared with SB0274

- 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 ~~{ an attorney may engage in }~~;
- ▶ provides that certain providers of legal services owe a fiduciary duty to the person to whom legal services are provided;
- ▶ creates a private right of action for a breach of certain fiduciary duties; and
- ▶ defines terms.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

~~{ 13-2-1 (Superseded 12/31/23), as last amended by Laws of Utah 2022, Chapter 201~~

{ 13-2-1 (Effective 12/31/23), as last amended by Laws of Utah 2022, Chapters 201, 462
76-10-3201, as enacted by Laws of Utah 2022, Chapter 415

ENACTS:

13-63-101, Utah Code Annotated 1953

13-63-201, Utah Code Annotated 1953

13-63-202, Utah Code Annotated 1953

13-63-203, Utah Code Annotated 1953

13-63-204, Utah Code Annotated 1953

13-63-301, Utah Code Annotated 1953

13-63-302, Utah Code Annotated 1953

13-63-303, Utah Code Annotated 1953

13-63-304, Utah Code Annotated 1953

13-63-305, Utah Code Annotated 1953

13-63-401, Utah Code Annotated 1953

13-63-402, Utah Code Annotated 1953

SB0274S01 compared with SB0274

13-63-403, Utah Code Annotated 1953

13-63-404, Utah Code Annotated 1953

13-64-101, Utah Code Annotated 1953

13-64-201, Utah Code Annotated 1953

13-64-202, Utah Code Annotated 1953

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

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 Section 13-2-1 (~~Superseded~~ **Effective 12/31/23**) is amended to read:

~~{ 13-2-1 (Superseded 12/31/23). 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;~~

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

~~(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, Secondhand Merchandise, and Catalytic Converter Transaction Information Act;~~

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

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

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

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

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

SB0274S01 compared with SB0274

- ~~(r) Chapter 51, Transportation Network Company Registration Act;~~
- ~~(s) Chapter 52, Residential Solar Energy Disclosure Act;~~
- ~~(t) Chapter 53, Residential, Vocational and Life Skills Program Act;~~
- ~~(u) Chapter 54, Ticket Website Sales Act;~~
- ~~(v) Chapter 56, Ticket Transferability Act; [and]~~
- ~~(w) Chapter 57, Maintenance Funding Practices Act[.]; and~~
- ~~(x) Chapter 63, Lawyer Referral Consultants Registration Act.~~
- ~~Section 2. Section 13-2-1 (Effective 12/31/23) is amended to read:~~

‡ **13-2-1 (Effective 12/31/23). 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;
- (f) Chapter 21, Credit Services Organizations Act;
- (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, Secondhand Merchandise, and Catalytic Converter Transaction Information Act;
- (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- (o) Chapter 41, Price Controls During Emergencies Act;
- (p) Chapter 42, Uniform Debt-Management Services Act;
- (q) Chapter 49, Immigration Consultants Registration Act;

SB0274S01 compared with SB0274

- (r) Chapter 51, Transportation Network Company Registration Act;
- (s) Chapter 52, Residential Solar Energy Disclosure Act;
- (t) Chapter 53, Residential, Vocational and Life Skills Program Act;
- (u) Chapter 54, Ticket Website Sales Act;
- (v) Chapter 56, Ticket Transferability Act;
- (w) Chapter 57, Maintenance Funding Practices Act; [~~and~~]
- (x) Chapter 61, Utah Consumer Privacy Act[~~;~~]; and
- (y) Chapter 63, Lawyer Referral Consultants Registration Act.

Section ~~3~~2. Section **13-63-101** is enacted to read:

CHAPTER 63. LAWYER REFERRAL CONSULTANTS REGISTRATION ACT

Part 1. General Provisions

13-63-101. Definitions.

As used in this chapter:

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

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

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

(a) services;

(b) personal or real property; or

(c) another thing of value.

~~{~~ (4) "Department" means the Department of Commerce.

~~}~~ (~~5~~4) "Division" means the Division of Consumer Protection in the ~~{department}~~Department of Commerce.

~~(~~6~~5) "Law firm" means ~~{a person that employs an attorney.~~~~

~~_____~~ (~~7~~) an entity consisting of one or more licensed lawyers lawfully engaged in the practice of law.

(~~6~~) "Lawyer referral consultant" means an individual that engages in lawyer referral service.

(~~8~~7) "Lawyer referral service" means assisting a person to find an attorney or law

SB0274S01 compared with SB0274

firm that provides legal services in the legal field appropriate for the person's legal matter.

(~~9~~8) "Legal services" means any form of legal advice or legal representation that is subject to the laws of this state.

Section ~~4~~3. Section **13-63-201** is enacted to read:

Part 2. Registration Requirements

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

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

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

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

Section ~~5~~4. Section **13-63-202** is enacted to read:

13-63-202. Application for registration.

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

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

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

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

(i) a felony; or

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

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

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

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

Section ~~6~~5. Section **13-63-203** is enacted to read:

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

SB0274S01 compared with SB0274

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

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

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

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

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

Section ~~7~~6. Section **13-63-204** is enacted to read:

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

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

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

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

(i) fraud;

(ii) misstatement;

(iii) misrepresentation;

(iv) unlawful act;

(v) omission; or

(vi) failure to provide lawyer referral services.

(2) A bond under this section shall be:

(a) in a form approved by the division;~~f~~and

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

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

(3) A lawyer referral consultant shall keep the bond required under this section in force

SB0274S01 compared with SB0274

for one year after:

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

(b) the lawyer referral consultant notifies the division in writing that the lawyer referral

consultant has ceased all activities regulated under this chapter.

(4) (a) If a surety bond posted by a lawyer referral consultant under this section is canceled due to the lawyer referral consultant's negligence, the division may assess a \$300 reinstatement fee.

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

(i) during the one-year period the registration under this chapter is in effect; or

(ii) while a revocation proceeding is pending against the ~~immigration~~ lawyer referral consultant.

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

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

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

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

Section ~~8~~7. Section 13-63-301 is enacted to read:

Part 3. Operational Requirements

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

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

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

SB0274S01 compared with SB0274

Administrative Rulemaking Act.

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

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

(3) A written contract under this section shall:

(a) state the purpose for which the lawyer referral consultant has been hired;

(b) state the one or more lawyer referral services to be performed;

(c) state the price for a lawyer referral service to be performed;

(d) include a statement printed in 10-point boldface type that the lawyer referral consultant is not an attorney and may not perform the legal services that an attorney performs;

~~{ (e) with regard to a document to be prepared by the lawyer referral consultant:~~

~~— (i) list the document to be prepared;~~

~~— (ii) explain the purpose of the document;~~

~~— (iii) explain the process to be followed in preparing of the document;~~

~~— (iv) explain the action to be taken by the lawyer referral consultant; and~~

~~— (v) state the agency or office where each document will be filed;~~

~~‡ (ff)e) include a provision stating that the client may report complaints relating to a lawyer referral consultant to the division, including a toll-free telephone number and Internet website;~~

~~(fgf) include a provision stating that complaints concerning the unauthorized practice of law may be reported to the Utah State Bar, including a toll-free telephone number and Internet website; and~~

~~(fhg) in accordance with Subsection (1)(b), include a provision stating in boldface on the first page of the written contract in both English and in the client's native language in accordance with Subsection (2): "You may cancel this contract on or before midnight of the third business day after execution of the written contract."~~

(4) A written contract may not contain a provision relating to a guarantee or promise unless the lawyer referral consultant has some basis in fact for making the guarantee of promise.

SB0274S01 compared with SB0274

(5) A lawyer referral consultant may not make a guarantee or promise described in Subsection (4) orally to a client.

(6) A written contract is void if not written in accordance with this section.

Section ~~{9}~~8. Section **13-63-302** is enacted to read:

13-63-302. Accounting for services -- Receipts.

(1) (a) A lawyer referral consultant shall provide a signed receipt to a client for each payment made by that client.

(b) A receipt described in Subsection (1)(a) shall be typed or computer generated on the lawyer referral consultant's letterhead.

(2) A lawyer referral consultant shall make a statement of accounting for the lawyer referral services rendered and payments made:

(a) in the client's native language;

(b) that is typed or computer generated on the lawyer referral consultant's letterhead;

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

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

Section ~~{10}~~9. Section **13-63-303** is enacted to read:

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

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

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

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

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

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

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

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

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

(iv) a list of the services that the lawyer referral consultant provides and the current and

SB0274S01 compared with SB0274

total fee for each service.

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

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

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

(ii) A person described in Subsection (3)(b)(i) shall include in any advertisement for lawyer referral services a clear and conspicuous statement that the person is not an attorney licensed to practice law in this state, but is an attorney licensed in another state or territory of the United States.

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

Section ~~{11}~~10. Section **13-63-304** is enacted to read:

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

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

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

Section ~~{12}~~11. Section **13-63-305** is enacted to read:

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

A lawyer referral consultant shall:

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

SB0274S01 compared with SB0274

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

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

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

Section ~~{13}~~12. Section **13-63-401** is enacted to read:

Part 4. Prohibited Acts and Penalties

13-63-401. Unlawful acts.

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

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

(b) make a guarantee or promise to a client, unless the guarantee or promise is in writing and the lawyer referral consultant has some basis in fact for making the guarantee or promise; or

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

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

Section ~~{14}~~13. Section **13-63-402** is enacted to read:

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

(1) ~~{(a)}~~ The division ~~{may make an investigation the division considers necessary to determine whether a person is violating, has violated, or is about to violate this chapter or any rule made or order issued}~~ shall administer and enforce the provisions of this chapter in accordance with Chapter 2, Division of Consumer Protection.

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

~~{(b)}~~ As part of the investigation described in Subsection (1)(a), the division may:

~~(i) require a person to file a statement in writing;~~

~~(ii) administer oaths, subpoena witnesses and compel their attendance, take evidence, and examine under oath any person in connection with an investigation; and~~

SB0274S01 compared with SB0274

~~_____ (iii) require the production of any books, papers, documents, merchandise, or other material relevant to the investigation.~~

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

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

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

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

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

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

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

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

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

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

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

~~_____ (a) reasonable attorney fees;~~

~~_____ (b) court costs; and~~

~~_____ (c) investigative fees.~~

~~_____ (5) (a) A person who violates an administrative or court order issued for a violation of this chapter is subject to:~~

~~_____ (a) a cease and desist order; and~~

~~_____ (b) an administrative fine of not less than \$1,000 or} a civil penalty of no more than \$5,000 for each {separate violation.~~

~~_____ (3) An administrative fine} violation.~~

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

~~_____ (c) All money received for the payment of a fine or civil penalty imposed under this section shall be deposited {in}into the Consumer Protection Education and Training Fund~~

SB0274S01 compared with SB0274

created in Section 13-2-8.

(~~f4~~) (a) ~~6~~ A person who intentionally violates this chapter:

(~~fi~~) a is guilty of a class A misdemeanor; and

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

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

Section (~~f15~~) ~~14~~. Section **13-63-403** is enacted to read:

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

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

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

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

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

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

Section (~~f16~~) ~~15~~. Section **13-63-404** is enacted to read:

13-63-404. Recovery of losses.

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

(1) the greater of:

(a) \$500; or

(b) twice the amount of the pecuniary loss; and

(2) court costs and reasonable attorney fees as determined by the court.

Section (~~f17~~) ~~16~~. Section **13-64-101** is enacted to read:

CHAPTER 64. FIDUCIARY DUTY FOR CERTAIN PROVIDERS OF LEGAL SERVICES

SB0274S01 compared with SB0274

Part 1. General Provisions

13-64-101. Definitions.

As used in this chapter:

- (1) "Business entity" means a sole proprietorship, partnership, limited partnership, limited liability company, corporation, or other legal entity that is:
 - (a) used to carry on a business for profit; and
 - (b) a participant in the sandbox.
- (2) "Court rule" means rules of procedure, evidence, or practice for use of the courts of this state.
- (3) "Out-of-state attorney" means an individual admitted and licensed to practice law in another state or territory of the United States who is authorized by court rule to practice law in this state without being admitted and licensed to practice law in this state.
- (4) "Participant" means a business entity or a business entity's officer, director, partner, or employee that provides legal services under the sandbox:
 - (a) to a person other than the business entity; and
 - (b) for the business entity's profit.
- (5) "Sandbox" means the regulatory sandbox program established by the Utah Supreme Court for authorizing nontraditional legal service providers to practice law on a limited and temporary basis under Utah Supreme Court Rule of Professional Practice 14-802.

Section ~~{18}~~17. Section 13-64-201 is enacted to read:

Part 2. Duty and Cause of Action

13-64-201. Fiduciary duty.

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

- (1) the person to whom legal service is provided;
- (2) in relation to legal service provided; and
- (3) as applicable, that supersedes the duties described in Subsection 16-10a-840(1).

Section ~~{19}~~18. Section 13-64-202 is enacted to read:

13-64-202. Cause of action.

- (1) A person may bring an action in a court of competent jurisdiction for:
 - (a) a breach of the fiduciary duty described in Section 13-64-201; or
 - (b) an out-of-state attorney's breach of a fiduciary duty arising from an attorney-client

SB0274S01 compared with SB0274

relationship.

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

- (a) actual damages;
- (b) punitive damages;
- (c) injunctive relief;
- (d) attorney fees; or
- (e) any combination of relief described in Subsections (2)(a) through (2)(d).

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

76-10-3201. Prohibition on kickbacks.

(1) As used in this section:

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

- (i) direct or indirect;
- (ii) overt or covert; or
- (iii) in cash or in kind.

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

(i) a fee that is:

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

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

(ii) payment for medical services.

(2) (a) An actor may not solicit or receive a kickback or bribe in return for the referral of a person to another person for the furnishing of any good or service that relates to any insurance claim or a claim for damages.

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

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

SB0274S01 compared with SB0274

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

~~{4}5~~ This section does not apply to an individual licensed to practice law when:
~~(a) referring[, without compensation,] a client for medical treatment or evaluation[.], if the referral is made without:~~

- ~~(i) compensation;~~
- ~~(ii) payment of a lien; or~~
- ~~(iii) payment for medical services};~~

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

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

Section ~~{21}~~20. **Effective date.**

~~{(1) Except as provided in Subsection (2), this}~~ This bill takes effect on May 2, 2024.
~~{(2) The changes affecting Section 13-2-1 (Effective 12/21/23) take effect on December 31, 2023.}~~