

1 **CONSUMER PROTECTION AMENDMENTS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Derek E. Brown**

5 Senate Sponsor: Patricia W. Jones

7 **LONG TITLE**

8 **General Description:**

9 This bill modifies consumer protection provisions.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ in a provision requiring excess funds in the Consumer Protection Education and
14 Training Fund to be transferred to the General Fund, increases the threshold from
15 \$100,000 to \$500,000;
- 16 ▶ adds an act to the list of acts considered to be deceptive acts or practices for
17 purposes of the Consumer Sales Practices Act;
- 18 ▶ provides for an increase in the amount of an unpaid fine under the Consumer Sales
19 Practices Act if the fine remains unpaid more than 60 days after a final order;
- 20 ▶ relocates nonconformity language in the New Motor Vehicle Warranties Act
21 relating to recreational vehicle trailers;
- 22 ▶ requires a health spa to provide a copy of its liability insurance policy;
- 23 ▶ requires registered agents of telephone soliciting businesses to provide proof of
24 residency;
- 25 ▶ allows the cost of a criminal background check to be included in the annual
26 registration fee for telephone soliciting businesses;
- 27 ▶ requires certain participants in a telephone soliciting business to meet certain
28 requirements and to submit to a criminal background check;
- 29 ▶ requires telephone soliciting businesses to correct information contained in an

30 application for registration or renewal of registration if the information materially changes or
31 becomes incorrect or incomplete;

32 ▶ provides that each telephone solicitation made in violation of applicable provisions
33 is a separate violation;

34 ▶ modifies what constitutes a prohibited practice for a telephone solicitor;

35 ▶ modifies a provision relating to a pawnbroker's selling of an article pawned to the
36 pawnbroker;

37 ▶ modifies provisions relating to information to be provided with respect to a property
38 disposition hearing under the Pawnshop and Secondhand Merchandise Transaction
39 Information Act;

40 ▶ clarifies an exemption for a private, nonprofit educational institution under the
41 Postsecondary Propriety School Act;

42 ▶ modifies the definition of "immigration consultant" under the Immigration
43 Consultant Registration Act;

44 ▶ requires an annual registration and an annual registration fee for immigration
45 consultants;

46 ▶ modifies bond requirements for immigration consultants;

47 ▶ modifies the minimum amount of an administrative fine under the Immigration
48 Consultant Registration Act; and

49 ▶ makes technical changes.

50 **Money Appropriated in this Bill:**

51 None

52 **Other Special Clauses:**

53 None

54 **Utah Code Sections Affected:**

55 AMENDS:

56 **13-2-8**, as last amended by Laws of Utah 2008, Chapter 382

57 **13-11-4**, as last amended by Laws of Utah 2012, Chapter 152

- 58 **13-11-17**, as last amended by Laws of Utah 2004, Chapter 55
- 59 **13-20-2**, as last amended by Laws of Utah 2012, Chapter 77
- 60 **13-20-8**, as enacted by Laws of Utah 2012, Chapter 77
- 61 **13-22-9**, as last amended by Laws of Utah 2009, Chapter 183
- 62 **13-23-5**, as last amended by Laws of Utah 2009, Chapter 183
- 63 **13-26-3**, as last amended by Laws of Utah 2009, Chapter 183
- 64 **13-26-8**, as last amended by Laws of Utah 2005, Chapter 18
- 65 **13-26-11**, as last amended by Laws of Utah 2005, Chapter 18
- 66 **13-32a-102**, as last amended by Laws of Utah 2012, Chapter 284
- 67 **13-32a-109**, as last amended by Laws of Utah 2012, Chapters 284 and 369
- 68 **13-32a-117**, as enacted by Laws of Utah 2012, Chapter 284
- 69 **13-34-105**, as last amended by Laws of Utah 2011, Chapter 221
- 70 **13-49-102**, as enacted by Laws of Utah 2012, Chapter 375
- 71 **13-49-202**, as enacted by Laws of Utah 2012, Chapter 375
- 72 **13-49-204**, as enacted by Laws of Utah 2012, Chapter 375
- 73 **13-49-402**, as enacted by Laws of Utah 2012, Chapter 375



74
75 *Be it enacted by the Legislature of the state of Utah:*

76 Section 1. Section **13-2-8** is amended to read:

77 **13-2-8. Consumer Protection Education and Training Fund.**

78 (1) There is created a restricted special revenue fund known as the "Consumer
79 Protection Education and Training Fund."

80 (2) (a) Unless otherwise provided by a chapter listed in Section 13-2-1, all money not
81 distributed as consumer restitution that is received by the division from administrative fines
82 and settlements, from criminal restitution, or from civil damages, forfeitures, penalties, and
83 settlements when the division receives the money on its own behalf and not in a representative
84 capacity, shall be deposited into the fund.

85 (b) Any portion of the fund may be maintained in an interest-bearing account.

86 (c) All interest earned on fund money shall be deposited into the fund.

87 (3) Notwithstanding Title 63J, Chapter 1, Budgetary Procedures Act, the division may
88 use the fund with the approval of the executive director of the Department of Commerce in a
89 manner consistent with the duties of the division under this chapter for:

90 (a) consumer protection education for members of the public;

91 (b) equipment for and training of division personnel;

92 (c) publication of consumer protection brochures, laws, policy statements, or other
93 material relevant to the division's enforcement efforts; and

94 (d) investigation and litigation undertaken by the division.

95 (4) If the balance in the fund exceeds [~~\$100,000~~] \$500,000 at the close of any fiscal
96 year, the excess shall be transferred to the General Fund.

97 Section 2. Section **13-11-4** is amended to read:

98 **13-11-4. Deceptive act or practice by supplier.**

99 (1) A deceptive act or practice by a supplier in connection with a consumer transaction
100 violates this chapter whether it occurs before, during, or after the transaction.

101 (2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or
102 practice if the supplier knowingly or intentionally:

103 (a) indicates that the subject of a consumer transaction has sponsorship, approval,
104 performance characteristics, accessories, uses, or benefits, if it has not;

105 (b) indicates that the subject of a consumer transaction is of a particular standard,
106 quality, grade, style, or model, if it is not;

107 (c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or
108 has been used to an extent that is materially different from the fact;

109 (d) indicates that the subject of a consumer transaction is available to the consumer for
110 a reason that does not exist, including any of the following reasons falsely used in an
111 advertisement:

112 (i) "going out of business";

113 (ii) "bankruptcy sale";

- 114 (iii) "lost our lease";
- 115 (iv) "building coming down";
- 116 (v) "forced out of business";
- 117 (vi) "final days";
- 118 (vii) "liquidation sale";
- 119 (viii) "fire sale";
- 120 (ix) "quitting business"; or
- 121 (x) an expression similar to any of the expressions in Subsections (2)(d)(i) through
- 122 (ix);
- 123 (e) indicates that the subject of a consumer transaction has been supplied in accordance
- 124 with a previous representation, if it has not;
- 125 (f) indicates that the subject of a consumer transaction will be supplied in greater
- 126 quantity than the supplier intends;
- 127 (g) indicates that replacement or repair is needed, if it is not;
- 128 (h) indicates that a specific price advantage exists, if it does not;
- 129 (i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier
- 130 does not have;
- 131 (j) (i) indicates that a consumer transaction involves or does not involve a warranty, a
- 132 disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if
- 133 the representation is false; or
- 134 (ii) fails to honor a warranty or a particular warranty term;
- 135 (k) indicates that the consumer will receive a rebate, discount, or other benefit as an
- 136 inducement for entering into a consumer transaction in return for giving the supplier the names
- 137 of prospective consumers or otherwise helping the supplier to enter into other consumer
- 138 transactions, if receipt of the benefit is contingent on an event occurring after the consumer
- 139 enters into the transaction;
- 140 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the
- 141 services within the time advertised or otherwise represented or, if no specific time is advertised

142 or represented, fails to ship the goods or furnish the services within 30 days, unless within the
143 applicable time period the supplier provides the buyer with the option to:

144 (i) cancel the sales agreement and receive a refund of all previous payments to the
145 supplier if the refund is mailed or delivered to the buyer within 10 business days after the day
146 on which the seller receives written notification from the buyer of the buyer's intent to cancel
147 the sales agreement and receive the refund; or

148 (ii) extend the shipping date to a specific date proposed by the supplier;

149 (m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the
150 requirements of Subsection (3)(a) of the purchaser's right to cancel a direct solicitation sale
151 within three business days of the time of purchase if:

152 (i) the sale is made other than at the supplier's established place of business pursuant to
153 the supplier's personal contact, whether through mail, electronic mail, facsimile transmission,
154 telephone, or any other form of direct solicitation; and

155 (ii) the sale price exceeds \$25;

156 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
157 76, Chapter 6a, Pyramid Scheme Act;

158 (o) represents that the funds or property conveyed in response to a charitable
159 solicitation will be donated or used for a particular purpose or will be donated to or used by a
160 particular organization, if the representation is false;

161 (p) if a consumer indicates the consumer's intention of making a claim for a motor
162 vehicle repair against the consumer's motor vehicle insurance policy:

163 (i) commences the repair without first giving the consumer oral and written notice of:

164 (A) the total estimated cost of the repair; and

165 (B) the total dollar amount the consumer is responsible to pay for the repair, which
166 dollar amount may not exceed the applicable deductible or other copay arrangement in the
167 consumer's insurance policy; or

168 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
169 consumer was initially told the consumer was responsible to pay as an insurance deductible or

170 other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that
171 amount is less than the full amount the motor vehicle insurance policy requires the insured to
172 pay as a deductible or other copay arrangement, unless:

173 (A) the consumer's insurance company denies that coverage exists for the repair, in
174 which case, the full amount of the repair may be charged and collected from the consumer; or

175 (B) the consumer misstates, before the repair is commenced, the amount of money the
176 insurance policy requires the consumer to pay as a deductible or other copay arrangement, in
177 which case, the supplier may charge and collect from the consumer an amount that does not
178 exceed the amount the insurance policy requires the consumer to pay as a deductible or other
179 copay arrangement;

180 (q) includes in any contract, receipt, or other written documentation of a consumer
181 transaction, or any addendum to any contract, receipt, or other written documentation of a
182 consumer transaction, any confession of judgment or any waiver of any of the rights to which a
183 consumer is entitled under this chapter;

184 (r) charges a consumer for a consumer transaction or a portion of a consumer
185 transaction that has not previously been agreed to by the consumer;

186 (s) solicits or enters into a consumer transaction with a person who lacks the mental
187 ability to comprehend the nature and consequences of:

188 (i) the consumer transaction; or

189 (ii) the person's ability to benefit from the consumer transaction;

190 (t) solicits for the sale of a product or service by providing a consumer with an
191 unsolicited check or negotiable instrument the presentment or negotiation of which obligates
192 the consumer to purchase a product or service, unless the supplier is:

193 (i) a depository institution under Section 7-1-103;

194 (ii) an affiliate of a depository institution; or

195 (iii) an entity regulated under Title 7, Financial Institutions Act;

196 (u) sends an unsolicited mailing to a person that appears to be a billing, statement, or
197 request for payment for a product or service the person has not ordered or used, or that implies

198 that the mailing requests payment for an ongoing product or service the person has not received
199 or requested;

200 (v) issues a gift certificate, instrument, or other record in exchange for payment to
201 provide the bearer, upon presentation, goods or services in a specified amount without printing
202 in a readable manner on the gift certificate, instrument, packaging, or record any expiration
203 date or information concerning a fee to be charged and deducted from the balance of the gift
204 certificate, instrument, or other record; ~~[or]~~

205 (w) misrepresents the geographical origin or location of the supplier's business~~[-]; or~~

206 (x) fails to comply with the restrictions of Section 15-10-201 on automatic renewal
207 provisions.

208 (3) (a) The notice required by Subsection (2)(m) shall:

209 (i) be a conspicuous statement written in dark bold with at least 12-point type on the
210 first page of the purchase documentation; and

211 (ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT
212 ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period
213 reflecting the supplier's cancellation policy but not less than three business days) AFTER THE
214 DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS
215 LATER."~~[-]~~

216 (b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's
217 cancellation policy:

218 (i) is communicated to the buyer; and

219 (ii) offers greater rights to the buyer than Subsection (2)(m).

220 (4) (a) A gift certificate, instrument, or other record that does not print an expiration
221 date in accordance with Subsection (2)(v) does not expire.

222 (b) A gift certificate, instrument, or other record that does not include printed
223 information concerning a fee to be charged and deducted from the balance of the gift
224 certificate, instrument, or other record is not subject to the charging and deduction of the fee.

225 (c) Subsections (2)(v) and (4)(b) do not apply to a gift certificate, instrument, or other

226 record useable at multiple, unaffiliated sellers of goods or services if an expiration date is
227 printed on the gift certificate, instrument, or other record.

228 Section 3. Section **13-11-17** is amended to read:

229 **13-11-17. Actions by enforcing authority.**

230 (1) The enforcing authority may bring an action:

231 (a) to obtain a declaratory judgment that an act or practice violates this chapter;

232 (b) to enjoin, in accordance with the principles of equity, a supplier who has violated,
233 is violating, or is otherwise likely to violate this chapter; and

234 (c) to recover, for each violation, actual damages, or obtain relief under Subsection
235 (2)(b), on behalf of consumers who complained to the enforcing authority within a reasonable
236 time after it instituted proceedings under this chapter.

237 (2) (a) The enforcing authority may bring a class action on behalf of consumers for the
238 actual damages caused by an act or practice specified as violating this chapter in a rule adopted
239 by the enforcing authority under Subsection 13-11-8(2) before the consumer transactions on
240 which the action is based, or declared to violate Section 13-11-4 or 13-11-5 by final judgment
241 of courts of general jurisdiction and appellate courts of this state that was either reported
242 officially or made available for public dissemination under Subsection 13-11-7(1)(c) by the
243 enforcing authority 10 days before the consumer transactions on which the action is based, or,
244 with respect to a supplier who agreed to it, was prohibited specifically by the terms of a consent
245 judgment that became final before the consumer transactions on which the action is based.

246 (b) (i) On motion of the enforcing authority and without bond in an action under this
247 Subsection (2), the court may make appropriate orders, including appointment of a master or
248 receiver or sequestration of assets, but only if it appears that the defendant is threatening or is
249 about to remove, conceal, or dispose of the defendant's property to the damage of persons for
250 whom relief is requested. An appropriate order may include an order:

251 (A) to reimburse consumers found to have been damaged;

252 (B) to carry out a transaction in accordance with consumers' reasonable expectations;

253 (C) to strike or limit the application of unconscionable clauses of contracts to avoid an

254 unconscionable result; or

255 (D) to grant other appropriate relief.

256 (ii) The court may assess the expenses of a master or receiver against a supplier.

257 (c) If an act or practice that violates this chapter unjustly enriches a supplier and
258 damages can be computed with reasonable certainty, damages recoverable on behalf of
259 consumers who cannot be located with due diligence shall be transferred to the state treasurer
260 pursuant to Title 67, Chapter 4a, Unclaimed Property Act.

261 (d) If a supplier shows by a preponderance of the evidence that a violation of this
262 chapter resulted from a bona fide error notwithstanding the maintenance of procedures
263 reasonably adapted to avoid the error, recovery under this Subsection (2) is limited to the
264 amount, if any, by which the supplier was unjustly enriched by the violation.

265 (e) An action may not be brought by the enforcing authority under this Subsection (2)
266 more than two years after the occurrence of a violation of this chapter.

267 (3) (a) The enforcing authority may terminate an investigation or an action other than a
268 class action upon acceptance of the supplier's written assurance of voluntary compliance with
269 this chapter. Acceptance of an assurance may be conditioned on a commitment to reimburse
270 consumers or take other appropriate corrective action.

271 (b) An assurance is not evidence of a prior violation of this chapter. Unless an
272 assurance has been rescinded by agreement of the parties or voided by a court for good cause,
273 subsequent failure to comply with the terms of an assurance is prima facie evidence of a
274 violation.

275 (4) (a) In addition to other penalties and remedies set out under this chapter, and in
276 addition to its other enforcement powers under Title 13, Chapter 2, Division of Consumer
277 Protection, the division director may issue a cease and desist order and impose an
278 administrative fine of up to \$2,500 for each violation of this chapter.

279 (b) All money received through administrative fines imposed under this section shall
280 be deposited in the Consumer Protection Education and Training Fund created by Section
281 13-2-8.

282 (5) (a) Within 30 days after agency or judicial review of a final division order imposing
283 an administrative fine, the supplier on whom the fine is imposed shall pay the fine in full.

284 (b) The unpaid amount of a fine is increased by 10%:

285 (i) if the fine has not been paid in full within 60 days after the final division order
286 imposing the fine; and

287 (ii) unless the division waives the 10% increase in a stipulated payment plan.

288 Section 4. Section **13-20-2** is amended to read:

289 **13-20-2. Definitions.**

290 As used in this chapter:

291 (1) "Consumer" means an individual who enters into an agreement or contract for the
292 transfer, lease, purchase of a new motor vehicle other than for purposes of resale, or sublease
293 during the duration of the period defined under Section 13-20-5.

294 (2) "Manufacturer" means manufacturer, importer, distributor, or anyone who is named
295 as the warrantor on an express written warranty on a motor vehicle.

296 (3) "Motor home" means a self-propelled vehicular unit, primarily designed as a
297 temporary dwelling for travel, recreational, and vacation use.

298 (4) (a) "Motor vehicle" includes:

299 (i) a motor home, as defined in this section, but only the self-propelled vehicle and
300 chassis sold in this state;

301 (ii) a motor vehicle, as defined in Section 41-1a-102, sold in this state; and

302 (iii) a motorcycle, as defined in Section 41-1a-102, sold in this state if the motorcycle
303 is designed primarily for use and operation on paved highways.

304 (b) "Motor vehicle" does not include:

305 (i) those portions of a motor home designated, used, or maintained primarily as a
306 mobile dwelling, office, or commercial space;

307 (ii) a road tractor or truck tractor as defined in Section 41-1a-102;

308 (iii) a mobile home as defined in Section 41-1a-102;

309 (iv) any motor vehicle with a gross laden weight of over 12,000 pounds, except:

- 310 (A) a motor home as defined under Subsection (3); and
- 311 (B) a farm tractor as defined in Section 41-1a-102;
- 312 (v) a motorcycle, as defined in Section 41-1a-102, if the motorcycle is designed
- 313 primarily for use or operation over unimproved terrain;
- 314 (vi) an electric assisted bicycle as defined in Section 41-6a-102;
- 315 (vii) a moped as defined in Section 41-6a-102;
- 316 (viii) a motor assisted scooter as defined in Section 41-6a-102; or
- 317 (ix) a motor-driven cycle as defined in Section 41-6a-102.

318 ~~[(5) "Nonconformity":]~~

319 ~~[(a) means a defect in or condition of a recreational vehicle trailer that substantially~~

320 ~~impairs its use, value, or safety, and]~~

321 ~~[(b) does not include a defect or condition that occurs as a result of:]~~

322 ~~[(i) the use of the recreational vehicle trailer for business or commercial purposes; or]~~

323 ~~[(ii) abuse, neglect, modification, or alteration of the recreational vehicle trailer by a~~

324 ~~person other than the manufacturer or the manufacturer's authorized service agent.]~~

325 ~~[(6)]~~ (5) "Recreational vehicle trailer" means a travel trailer, camping trailer, or fifth

326 wheel trailer.

327 Section 5. Section **13-20-8** is amended to read:

328 **13-20-8. Mediation concerning nonconformity in recreational vehicle trailer.**

329 (1) An owner who purchases a new recreational vehicle trailer and the manufacturer of

330 the recreational vehicle trailer shall engage in mediation concerning resolution of a

331 nonconformity in the recreational vehicle trailer, as provided in this section, if:

- 332 (a) the owner notifies the manufacturer in writing of the nonconformity;
- 333 (b) the nonconformity is manifest in the structural or functional integrity of the roof,
- 334 subfloor, or wall of the recreational vehicle trailer;
- 335 (c) following notification under Subsection (1)(a), the manufacturer makes at least four
- 336 attempts to correct the nonconformity, but the nonconformity persists; ~~[and]~~
- 337 (d) following at least four attempts by the manufacturer to correct the nonconformity,

338 the owner submits to the manufacturer a written request for mediation[-];

339 (e) the nonconformity substantially impairs the use, value, or safety of the recreational
340 vehicle trailer; and

341 (f) the nonconformity does not include a defect or condition that occurs as a result of:

342 (i) the use of the recreational vehicle trailer for business or commercial purposes; or

343 (ii) abuse, neglect, modification, or alteration of the recreational vehicle trailer by a
344 person other than the manufacturer or the manufacturer's authorized service agent.

345 (2) Mediation under this section shall:

346 (a) take place in the county in which the owner purchased the recreational vehicle
347 trailer; and

348 (b) be conducted by the Consumer Arbitration Program for Recreation Vehicles.

349 (3) The manufacturer of the recreational vehicle trailer shall pay the cost of mediation.

350 (4) The failure of mediation to resolve an owner's concerns about an alleged
351 nonconformity in the owner's recreational vehicle trailer does not impair or affect any right or
352 remedy the owner otherwise has under the law.

353 Section 6. Section **13-22-9** is amended to read:

354 **13-22-9. Professional fund raiser's or fund raising counsel's or consultant's**
355 **permit.**

356 (1) It is unlawful for any person or entity to act as a professional fund raiser or
357 professional fund raising counsel or consultant, whether or not representing an organization
358 exempt from registration under Section 13-22-8, without first obtaining a permit from the
359 division by complying with all of the following application requirements:

360 (a) pay an application fee as determined under Section 63J-1-504; and

361 (b) submit a written application, verified under oath, on a form approved by the
362 division that includes:

363 (i) the applicant's name, address, telephone number, facsimile number, if any;

364 (ii) the name and address of any organization or person controlled by, controlling, or
365 affiliated with the applicant;

- 366 (iii) the applicant's business, occupation, or employment for the three-year period
367 immediately preceding the date of the application;
- 368 (iv) whether it is an individual, joint venture, partnership, limited liability company,
369 corporation, association, or other entity;
- 370 (v) the names and residence addresses of any officer or director of the applicant;
- 371 (vi) the name and address of the registered agent for service of process and a consent to
372 service of process;
- 373 (vii) if a professional fund raiser:
- 374 (A) the purpose of the solicitation and use of the contributions to be solicited;
- 375 (B) the method by which the solicitation will be conducted and the projected length of
376 time it is to be conducted;
- 377 (C) the anticipated expenses of the solicitation, including all commissions, costs of
378 collection, salaries, and any other items;
- 379 (D) a statement of what percentage of the contributions collected as a result of the
380 solicitation are projected to remain available to the charitable organization declared in the
381 application, including a satisfactory statement of the factual basis for the projected percentage
382 and projected anticipated revenues provided to the charitable organization, and if a flat fee is
383 charged, documentation to support the reasonableness of the flat fee; and
- 384 (E) a statement of total contributions collected or received by the professional fund
385 raiser within the calendar year immediately preceding the date of the application, including a
386 description of the expenditures made from or the use made of the contributions;
- 387 (viii) if a professional fund raising counsel or consultant:
- 388 (A) the purpose of the plan, management, [~~advise~~] advice, counsel or preparation of
389 materials for, or respect to the solicitation and use of the contributions solicited;
- 390 (B) the method by which the plan, management, [~~advise~~] advice, counsel, or
391 preparation of materials for, or respect to the solicitation will be organized or coordinated and
392 the projected length of time of the solicitation;
- 393 (C) the anticipated expenses of the plan, management, [~~advise~~] advice, counsel, or

394 preparation of materials for, or respect to the solicitation, including all commissions, costs of
395 collection, salaries, and any other items;

396 (D) a statement of total fees to be earned or received from the charitable organization
397 declared in the application, and what percentage of the contributions collected as a result of the
398 plan, management, [~~advise~~] advice, counsel, or preparation of materials for, or respect to the
399 solicitation are projected after deducting the total fees to be earned or received remain available
400 to the charitable organization declared in the application, including a satisfactory statement of
401 the factual basis for the projected percentage and projected anticipated revenues provided to the
402 charitable organization, and if a flat fee is charged, documentation to support the
403 reasonableness of such flat fee; and

404 (E) a statement of total net fees earned or received within the calendar year
405 immediately preceding the date of the application, including a description of the expenditures
406 made from or the use of the net earned or received fees in the planning, management, advising,
407 counseling, or preparation of materials for, or respect to the solicitation and use of the
408 contributions solicited for the charitable organization;

409 (ix) disclosure of any injunction, judgment, or administrative order against the
410 applicant or the applicant's conviction of any crime involving moral turpitude;

411 (x) a copy of any written agreements with any charitable organization;

412 (xi) the disclosure of any injunction, judgment, or administrative order or conviction of
413 any crime involving moral turpitude with respect to any officer, director, manager, operator, or
414 principal of the applicant;

415 (xii) a copy of all agreements to which the applicant is, or proposes to be, a party
416 regarding the use of proceeds;

417 (xiii) an acknowledgment that fund raising in the state will not commence until both
418 the professional fund raiser or professional fund raising counsel or consultant and the charity,
419 and its parent foundation, if any, are registered and in compliance with this chapter; and

420 (xiv) any additional information the division may require by rule.

421 (2) If any information contained in the application for a permit becomes incorrect or

422 incomplete, the applicant or registrant shall, within 30 days after the information becomes
423 incorrect or incomplete, correct the application or file the complete information required by the
424 division.

425 (3) In addition to the permit fee, an applicant failing to file a permit application or
426 renewal by the due date or filing an incomplete permit application or renewal shall pay an
427 additional fee of \$25 for each month or part of a month after the date on which the permit
428 application or renewal were due to be filed.

429 Section 7. Section **13-23-5** is amended to read:

430 **13-23-5. Registration -- Bond, letter of credit, or certificate of deposit required --**
431 **Penalties.**

432 (1) (a) (i) It is unlawful for any health spa facility to operate in this state unless the
433 facility is registered with the division.

434 (ii) Registration is effective for one year. If the health spa facility renews its
435 registration, the registration shall be renewed at least 30 days prior to its expiration.

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

438 (b) Each health spa registering in this state shall designate a registered agent for
439 receiving service of process. The registered agent shall be reasonably available from 8 a.m.
440 until 5 p.m. during normal working days.

441 (c) The division shall charge and collect a fee for registration under guidelines
442 provided in Section 63J-1-504.

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

447 (e) A health spa registering or renewing a registration shall provide the division a copy
448 of the liability insurance policy that:

449 (i) covers the health spa; and

450 (ii) is in effect at the time of the registration or renewal.
451 (2) (a) Each health spa shall obtain and maintain:
452 (i) a performance bond issued by a surety authorized to transact surety business in this
453 state;
454 (ii) an irrevocable letter of credit issued by a financial institution authorized to do
455 business in this state; or
456 (iii) a certificate of deposit.
457 (b) The bond, letter of credit, or certificate of deposit shall be payable to the division
458 for the benefit of any consumer who incurs damages as the result of:
459 (i) the health spa's violation of this chapter; or
460 (ii) the health spa's going out of business or relocating and failing to offer an alternate
461 location within five miles.
462 (c) (i) The division may recover from the bond, letter of credit, or certificate of deposit
463 the costs of collecting and distributing funds under this section, up to 10% of the face value of
464 the bond, letter of credit, or certificate of deposit but only if the consumers have fully recovered
465 their damages first.
466 (ii) The total liability of the issuer of the bond, letter of credit, or certificate of deposit
467 may not exceed the amount of the bond, letter of credit, or certificate of deposit.
468 (iii) The health spa shall maintain a bond, letter of credit, or certificate of deposit in
469 force for one year after it notifies the division in writing that it has ceased all activities
470 regulated by this chapter.
471 (d) A health spa providing services at more than one location shall comply with the
472 requirements of Subsection (2)(a) for each separate location.
473 (e) The division may impose a fine against a health spa that fails to comply with the
474 requirements of Subsection (2)(a) of up to \$100 per day that the health spa remains out of
475 compliance. All penalties received shall be deposited into the Consumer Protection Education
476 and Training Fund created in Section 13-2-8.
477 (3) (a) The minimum principal amount of the bond, letter of credit, or certificate of

478 credit required under Subsection (2) shall be based on the number of unexpired contracts for
479 health spa services to which the health spa is a party, in accordance with the following
480 schedule:

481	Principal Amount of Bond, Letter of Credit, or Certificate of Deposit	Number of Contracts
482	\$15,000	500 or fewer
483	35,000	501 to 1,500
484	50,000	1,500 to 3,000
485	75,000	3,001 or more

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

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

496 (5) Each health spa shall:

497 (a) maintain accurate records of the bond, letter of credit, or certificate of credit and of
498 any payments made, due, or to become due to the issuer; and

499 (b) open the records to inspection by the division at any time during normal business
500 hours.

501 (6) If a health spa changes ownership, ceases operation, discontinues facilities, or
502 relocates and fails to offer an alternate location within five miles within 30 days after its

503 closing, the health spa is subject to the requirements of this section as if it were a new health
504 spa coming into being at the time the health spa changed ownership. The former owner may
505 not release, cancel, or terminate the owner's liability under any bond, letter of credit, or
506 certificate of deposit previously filed with the division, unless:

507 (a) the new owner has filed a new bond, letter of credit, or certificate of deposit for the
508 benefit of consumers covered under the previous owner's bond, letter of credit, or certificate of
509 deposit; or

510 (b) the former owner has refunded all unearned payments to consumers.

511 (7) If a health spa ceases operation or relocates and fails to offer an alternative location
512 within five miles, the health spa shall provide the division with 45 days prior notice.

513 Section 8. Section **13-26-3** is amended to read:

514 **13-26-3. Registration and bond required.**

515 (1) (a) Unless exempt under Section 13-26-4, each telephone soliciting business shall
516 register annually with the division before engaging in telephone solicitations if:

517 (i) the telephone soliciting business engages in telephone solicitations that:

518 (A) originate in Utah; or

519 (B) are received in Utah; or

520 (ii) the telephone soliciting business conducts any business operations in Utah.

521 (b) The registration form shall designate an agent residing in this state who is
522 authorized by the telephone soliciting business to receive service of process in any action
523 brought by this state or a resident of this state.

524 (c) If a telephone soliciting business fails to designate an agent to receive service or
525 fails to appoint a successor to the agent:

526 (i) the business' application for an initial or renewal registration shall be denied; and

527 (ii) any current registration shall be suspended until an agent is designated.

528 (d) (i) For purposes of this section only, the registered agent of a telephone soliciting
529 business shall provide the division proof of residency in the state.

530 (ii) Proof of residency under Subsection (1)(d)(i) may be provided by a valid Utah

531 driver license, valid governmental photo identification issued to a resident of the state, or other
532 verifiable identification indicating residency in the state.

533 (2) The division may impose an annual registration fee set pursuant to Section
534 63J-1-504 that may include the cost of the criminal background check described in Subsection
535 (4).

536 (3) (a) Each telephone soliciting business engaging in telephone solicitation or sales in
537 this state shall obtain and maintain the following security:

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

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

542 (iii) a certificate of deposit held in this state in a depository institution regulated by the
543 Department of Financial Institutions.

544 (b) The bond, letter of credit, or certificate of deposit shall be payable to the division
545 for the benefit of any consumer who incurs damages as the result of any telephone solicitation
546 or sales violation of this chapter.

547 (c) The division may recover from the bond, letter of credit, or certificate of deposit
548 investigative costs, attorney fees, and other costs of collecting and distributing funds under this
549 section and the costs of promoting consumer education, but only if the consumer has first
550 recovered full damages.

551 (d) A telephone soliciting business shall keep a bond, certificate of deposit, or letter of
552 credit in force for one year after it notifies the division in writing that it has ceased all activities
553 regulated by this chapter.

554 (e) The amount to be posted in the form of a bond, irrevocable letter of credit, or
555 certificate of deposit shall be:

556 (i) \$25,000 if:

557 (A) neither the telephone soliciting business nor any affiliated person has violated this
558 chapter within three years preceding the date of the application; and

559 (B) the telephone soliciting business has fewer than 10 employees;

560 (ii) \$50,000 if:

561 (A) neither the telephone soliciting business nor any affiliated person has violated this
562 chapter within three years preceding the date of the application; and

563 (B) the telephone soliciting business has 10 or more employees; or

564 (iii) \$75,000 if the telephone soliciting business or any affiliated person has violated
565 this chapter within three years preceding the date of the application.

566 (f) For purposes of Subsection (3)(e) an "affiliated person" means a contractor,
567 director, employee, officer, owner, or partner of the telephone soliciting business.

568 (4) (a) As used in this Subsection (4), "participant" means an individual with a
569 controlling interest in or an owner, officer, director, member, principal, trustee, general partner,
570 limited partner, manager, sole proprietor, or key employee of a person seeking to register or
571 renew a registration as a telephone soliciting business.

572 (b) As part of the process to register or renew a registration as a telephone soliciting
573 business, a participant:

574 (i) may not, within the previous 10 years, have been convicted of a felony;

575 (ii) may not, within the previous 10 years, have been convicted of a misdemeanor
576 involving moral turpitude, including theft, fraud, or dishonesty; and

577 (iii) shall submit to the division:

578 (A) the participant's fingerprints, in a form acceptable to the division, for purposes of a
579 criminal background check; and

580 (B) consent to a criminal background check by the Bureau of Criminal Identification
581 created in Section 53-10-201.

582 [~~4~~] (5) The division may establish by rule the registration requirements for telephone
583 soliciting businesses under the terms of Title 63G, Chapter 3, Utah Administrative Rulemaking
584 Act. An administrative proceeding conducted by the division under this chapter shall comply
585 with the requirements of Title 63G, Chapter 4, Administrative Procedures Act.

586 (6) If information in an application for registration or for renewal of registration as a

587 telephone soliciting business materially changes or becomes incorrect or incomplete, the
588 applicant shall, within 30 days after the information changes or becomes incorrect or
589 incomplete, correct the application or submit the correct information to the division in a
590 manner that the division establishes by rule.

591 [~~5~~] (7) The division director may deny or revoke a registration under this section for
592 any violation of this chapter.

593 Section 9. Section **13-26-8** is amended to read:

594 **13-26-8. Penalties.**

595 (1) (a) Any telephone soliciting business or any person associated with a telephone
596 soliciting business, including solicitors, salespersons, agents, representatives of a solicitor, or
597 independent contractor, who violates this chapter as a first offense is guilty of a class B
598 misdemeanor.

599 (b) In the case of a second offense, the person is guilty of a class A misdemeanor.

600 (c) In the case of three or more offenses, the person is guilty of a third degree felony.

601 (d) (i) In addition to other penalties under this Subsection (1), the division director may
602 issue a cease and desist order and impose an administrative fine of up to \$2,500 for each
603 violation of this chapter.

604 (ii) For purposes of Subsection (1)(d)(i), each telephone solicitation made in violation
605 of this chapter is a separate violation.

606 (iii) All money received through administrative fines imposed under this section shall
607 be deposited in the Consumer Protection Education and Training Fund created by Section
608 13-2-8.

609 (2) Any telephone soliciting business or any person associated with a telephone
610 soliciting business, including solicitors, salespersons, agents, representatives of a solicitor, or
611 independent contractors, who violates any provision of this chapter shall be subject to a civil
612 penalty in a court of competent jurisdiction not exceeding \$2,500 for each unlawful transaction.

613 Section 10. Section **13-26-11** is amended to read:

614 **13-26-11. Prohibited practices.**

- 615 (1) It is unlawful for any solicitor:
- 616 (a) to solicit a prospective [~~purchasers~~] purchaser on behalf of a telephone soliciting
- 617 business that is not registered with the division or exempt from registration under this chapter;
- 618 (b) to use a fictitious personal name in connection with a telephone solicitation;
- 619 (c) to make or cause to be made any untrue material statement, or fail to disclose a
- 620 material fact necessary to make any statement made not misleading, whether in connection
- 621 with a telephone solicitation or a filing with the division;
- 622 (d) to make or authorize the making of any misrepresentation about its compliance
- 623 with this chapter to any prospective or actual purchaser;
- 624 (e) to fail to refund within 30 days any amount due a purchaser who exercises the right
- 625 to cancel under Section 13-26-5; or
- 626 (f) to fail to orally advise a purchaser of the purchaser's right to cancel under Section
- 627 13-26-5 unless the solicitor is exempt under Section 13-26-4.

- 628 (2) It is unlawful for any telephone soliciting business:
- 629 (a) to cause or permit any solicitor to violate any provision of this chapter; or
- 630 (b) to use inmates in telephone soliciting operations where inmates have access to
- 631 personal data about an individual sufficient to physically locate or contact that individual, such
- 632 as names, addresses, telephone numbers, Social Security numbers, credit card information, or
- 633 physical descriptions.

634 Section 11. Section **13-32a-102** is amended to read:

635 **13-32a-102. Definitions.**

636 As used in this chapter:

- 637 (1) "Account" means the Pawnbroker and Secondhand Merchandise Operations
- 638 Restricted Account created in Section 13-32a-113.
- 639 (2) "Antique item" means an item:
- 640 (a) that is generally older than 25 years;
- 641 (b) whose value is based on age, rarity, condition, craftsmanship, or collectability;
- 642 (c) that is furniture or other decorative objects produced in a previous time period, as

643 distinguished from new items of a similar nature; and

644 (d) obtained from auctions, estate sales, other antique shops, and individuals.

645 (3) "Antique shop" means a business operating at an established location and that
646 offers for sale antique items.

647 (4) "Board" means the Pawnshop and Secondhand Merchandise Advisory Board
648 created by this chapter.

649 (5) "Central database" or "database" means the electronic database created and
650 operated under Section 13-32a-105.

651 (6) "Coin" means a piece of currency, usually metallic and usually in the shape of a
652 disc that is:

653 (a) stamped metal, and issued by a government as monetary currency; or

654 (b) (i) worth more than its current value as currency; and

655 (ii) worth more than its metal content value.

656 (7) "Coin dealer" means a person or business whose sole business activity is the selling
657 and purchasing of coins and precious metals.

658 (8) "Commercial grade precious metals" or "precious metals" means ingots, monetized
659 bullion, art bars, medallions, medals, tokens, and currency that are marked by the refiner or
660 fabricator indicating their fineness and include:

661 (a) .99 fine or finer ingots of gold, silver, platinum, palladium, or other precious
662 metals; or

663 (b) .925 fine sterling silver ingots, art bars, and medallions.

664 (9) "Division" means the Division of Consumer Protection in Title 13, Chapter 1,
665 Department of Commerce.

666 (10) "Identification" means a ~~[form of positive identification issued by a governmental~~
667 ~~entity and that:] valid U.S. federal or state-issued photo ID, including a U.S. passport, a U.S.~~
668 ~~passport card, a U.S. military ID, and a driver license.~~

669 ~~[(a) contains a numerical identifier and a photograph of the person identified; and]~~

670 ~~[(b) may include a state identification card, a state drivers license, a United States~~

671 ~~military identification card, or a United States passport.]~~

672 (11) "Local law enforcement agency" means the law enforcement agency that has
673 direct responsibility for ensuring compliance with central database reporting requirements for
674 the jurisdiction where the pawnshop or secondhand business is located.

675 (12) "Misappropriated" means stolen, embezzled, converted, obtained by theft, or
676 otherwise appropriated without authority of the lawful owner.

677 (13) "Original victim" means a victim who is not a party to the pawn or sale transaction
678 and includes:

679 (a) an authorized representative designated in writing by the original victim; and

680 (b) an insurer who has indemnified the original victim for the loss of the described
681 property.

682 (14) "Pawnbroker" means a person whose business engages in the following activities:

683 (a) loans money on one or more deposits of personal property;

684 (b) deals in the purchase, exchange, or possession of personal property on condition of
685 selling the same property back again to the pledgor or depositor;

686 (c) loans or advances money on personal property by taking chattel mortgage security
687 on the property and takes or receives the personal property into his possession, and who sells
688 the unredeemed pledges;

689 (d) deals in the purchase, exchange, or sale of used or secondhand merchandise or
690 personal property; or

691 (e) engages in a licensed business enterprise as a pawnshop.

692 (15) "Pawn and secondhand business" means any business operated by a pawnbroker
693 or secondhand merchandise dealer, or the owner or operator of the business.

694 (16) "Pawn ticket" means a document upon which information regarding a pawn
695 transaction is entered when the pawn transaction is made.

696 (17) "Pawn transaction" means an extension of credit in which an individual delivers
697 property to a pawnbroker for an advance of money and retains the right to redeem the property
698 for the redemption price within a fixed period of time.

- 699 (18) "Pawnshop" means the physical location or premises where a pawnbroker
700 conducts business.
- 701 (19) "Pledgor" means a person who conducts a pawn transaction with a pawnshop.
- 702 (20) "Property" means any tangible personal property.
- 703 (21) "Register" means the record of information required under this chapter to be
704 maintained by pawn and secondhand businesses. The register is an electronic record that is in a
705 format that is compatible with the central database.
- 706 (22) "Scrap jewelry" means any item purchased solely:
707 (a) for its gold, silver, or platinum content; and
708 (b) for the purpose of reuse of the metal content.
- 709 (23) (a) "Secondhand merchandise dealer" means an owner or operator of a business
710 that:
711 (i) deals in the purchase, exchange, or sale of used or secondhand merchandise or
712 personal property; and
713 (ii) does not function as a pawnbroker.
- 714 (b) "Secondhand merchandise dealer" does not include:
715 (i) the owner or operator of an antique shop;
716 (ii) any class of businesses exempt by administrative rule under Section 13-32a-112.5;
717 (iii) any person or entity who operates auction houses, flea markets, or vehicle, vessel,
718 and outboard motor dealers as defined in Section 41-1a-102;
- 719 (iv) the sale of secondhand goods at events commonly known as "garage sales," "yard
720 sales," or "estate sales";
- 721 (v) the sale or receipt of secondhand books, magazines, or post cards;
- 722 (vi) the sale or receipt of used merchandise donated to recognized nonprofit, religious,
723 or charitable organizations or any school-sponsored association, and for which no
724 compensation is paid;
- 725 (vii) the sale or receipt of secondhand clothing and shoes;
- 726 (viii) any person offering his own personal property for sale, purchase, consignment, or

727 trade via the Internet;

728 (ix) any person or entity offering the personal property of others for sale, purchase,
 729 consignment, or trade via the Internet, when that person or entity does not have, and is not
 730 required to have, a local business or occupational license or other authorization for this activity;

731 (x) any owner or operator of a retail business that receives used merchandise as a
 732 trade-in for similar new merchandise;

733 (xi) an owner or operator of a business that contracts with other persons or entities to
 734 offer those persons' secondhand goods for sale, purchase, consignment, or trade via the
 735 Internet;

736 (xii) any dealer as defined in Section 76-10-901, which concerns scrap metal and
 737 secondary metals; or

738 (xiii) the purchase of items in bulk that are:

739 (A) sold at wholesale in bulk packaging;

740 (B) sold by a person licensed to conduct business in Utah; and

741 (C) regularly sold in bulk quantities as a recognized form of sale.

742 Section 12. Section **13-32a-109** is amended to read:

743 **13-32a-109. Holding period for articles -- Penalty.**

744 (1) (a) ~~[The]~~ A pawnbroker may sell ~~[any]~~ an article pawned to the pawnbroker if:

745 ~~[(i) after the expiration of]~~

746 (i) 15 days have passed since the day on which the contract between the pawnbroker
 747 and the pledgor was executed;

748 (ii) the contract period between the pawnbroker and the pledgor has expired; and

749 ~~[(ii) if]~~ (iii) the pawnbroker has complied with the requirements of Section 13-32a-106
 750 regarding reporting to the central database and Section 13-32a-103.

751 (b) If an article, including scrap jewelry, is purchased by a pawn or secondhand
 752 business or a coin dealer, the pawn or secondhand business or coin dealer may sell the article
 753 after the pawn or secondhand business or coin dealer has held the article for 15 days and
 754 complied with the requirements of Section 13-32a-106 regarding reporting to the central

755 database and Section 13-32a-103, except that pawn, secondhand, and coin dealer businesses are
756 not required to hold precious metals or coins under this Subsection (1)(b).

757 (c) This Subsection (1) does not preclude a law enforcement agency from requiring a
758 pawn or secondhand business to hold an article if necessary in the course of an investigation.

759 (i) If the article was pawned, the law enforcement agency may require the article be
760 held beyond the terms of the contract between the pledgor and the pawn broker.

761 (ii) If the article was sold to the pawn or secondhand business, the law enforcement
762 agency may require the article be held if the pawn or secondhand business has not sold the
763 article.

764 (d) If the law enforcement agency requesting a hold on property under this Subsection
765 (1) is not the local law enforcement agency, the requesting law enforcement agency shall notify
766 the local law enforcement agency of the request and also the pawn or secondhand business.

767 (2) If a law enforcement agency requires the pawn or secondhand business to hold an
768 article as part of an investigation, the agency shall provide to the pawn or secondhand business
769 a hold ticket issued by the agency, which:

770 (a) states the active case number;

771 (b) confirms the date of the hold request and the article to be held; and

772 (c) facilitates the ability of the pawn or secondhand business to track the article when
773 the prosecution takes over the case.

774 (3) If an article is not seized by a law enforcement agency that has placed a hold on the
775 property, the property shall remain in the custody of the pawn or secondhand business until
776 further disposition by the law enforcement agency, and as consistent with this chapter.

777 (4) The initial hold by a law enforcement agency is for a period of 90 days. If the
778 article is not seized by the law enforcement agency, the article shall remain in the custody of
779 the pawn or secondhand business and is subject to the hold unless exigent circumstances
780 require the purchased or pawned article to be seized by the law enforcement agency.

781 (5) (a) A law enforcement agency may extend any hold for up to an additional 90 days
782 when exigent circumstances require the extension.

783 (b) When there is an extension of a hold under Subsection (5)(a), the requesting law
784 enforcement agency shall notify the pawn or secondhand business that is subject to the hold
785 prior to the expiration of the initial 90 days.

786 (c) A law enforcement agency may not hold an item for more than the 180 days
787 allowed under Subsections (5)(a) and (b) without obtaining a court order authorizing the hold.

788 (6) A hold on an article under Subsection (2) takes precedence over any request to
789 claim or purchase the article subject to the hold.

790 (7) When the purpose for the hold on or seizure of an article is terminated, the law
791 enforcement agency requiring the hold or seizure shall within 15 days after the termination:

792 (a) notify the pawn or secondhand business in writing that the hold or seizure has been
793 terminated;

794 (b) return the article subject to the seizure to the pawn or secondhand business; or

795 (c) if the article is not returned to the pawn or secondhand business, advise the pawn or
796 secondhand business either in writing or electronically of the specific alternative disposition of
797 the article.

798 (8) If the law enforcement agency does not notify the pawn or secondhand business
799 that a hold on an item has expired, the pawn or secondhand business shall send a letter by
800 registered or certified mail to the law enforcement agency that ordered the hold and inform the
801 agency that the holding period has expired. The law enforcement agency shall respond within
802 30 days by:

803 (a) confirming that the holding period has expired and that the pawn or secondhand
804 business may manage the item as if acquired in the ordinary course of business; or

805 (b) providing written notice to the pawn or secondhand business that a court order has
806 continued the period of time for which the item shall be held.

807 (9) The written notice under Subsection (8)(b) is considered provided when:

808 (a) personally delivered to the pawn or secondhand business with a signed receipt of
809 delivery;

810 (b) delivered to the pawn or secondhand business by registered or certified mail; or

811 (c) delivered by any other means with the mutual assent of the law enforcement agency
812 and the pawn or secondhand business.

813 (10) If the law enforcement agency does not respond within 30 days under Subsection
814 (8), the pawn or secondhand business may manage the item as if acquired in the ordinary
815 course of business.

816 (11) A violation of this section is a class B misdemeanor and is also subject to civil
817 penalties under Section 13-32a-110.

818 Section 13. Section **13-32a-117** is amended to read:

819 **13-32a-117. Property disposition if no criminal charges filed -- Administrative**
820 **hearing.**

821 (1) The original victim or the pawn or secondhand business may request an
822 administrative property disposition hearing with the Division of Consumer Protection if:

823 (a) more than 30 days have passed since:

824 (i) the law enforcement agency placed a hold on the property; or

825 (ii) the property was seized by the law enforcement agency; and

826 (b) an agreement pursuant to Subsection 13-32a-115(2)(b) has not been reached.

827 (2) The original victim or the pawn or secondhand business shall provide to the
828 Division of Consumer Protection at the time of the request for a property disposition hearing
829 ~~[under this section]:~~

830 (a) a copy of the sworn statement of the original victim taken pursuant to Section
831 13-32a-115 and the case number assigned by the law enforcement agency[-]; and

832 (b) a written notice from the prosecuting agency with jurisdiction over the case
833 involving the property that the prosecuting agency has made an initial determination under
834 Section 77-24-2 and this chapter that the property is no longer needed as evidence.

835 ~~[(3) (a) The Division of Consumer Protection shall notify the law enforcement agency~~
836 ~~in writing of the request for a property disposition hearing.]~~

837 ~~[(b) The law enforcement agency shall forward the notice to the prosecution agency~~
838 ~~having jurisdiction over the case involving the property.]~~

839 ~~[(c) (i) The prosecution agency shall, within five business days of receiving the notice,~~
840 ~~make an initial determination pursuant to Section 77-24-2 and this chapter of whether~~
841 ~~continued hold or seizure regarding the property as evidence in a criminal trial is necessary.]~~

842 ~~[(ii) If the prosecuting agency determines the property is no longer needed as evidence,~~
843 ~~the law enforcement agency shall notify in writing the pawn or secondhand business and the~~
844 ~~original victim of the prosecuting agency's determination as soon as reasonably possible.]~~

845 ~~[(4)]~~ (3) (a) Within 30 days after receiving the request ~~[and notification from law~~
846 ~~enforcement that the property is not needed as evidence pursuant to Section 77-24-2 and this~~
847 ~~chapter]~~ for a property disposition hearing from the original victim or the pawn or secondhand
848 business, the Division of Consumer Protection shall schedule an adjudicative hearing in
849 accordance with Title 63G, Chapter 4, Administrative Procedures Act, to determine ownership
850 of the claimed property. The division shall provide written notice of the hearing to the pawn or
851 secondhand business and the original victim.

852 (b) The division shall conduct the hearing to determine disposition of the claimed
853 seized property, taking into consideration:

854 (i) the proof of ownership of the property and compliance with Subsection
855 13-32a-115(1) by the original victim;

856 (ii) the claim of ownership by the pawn or secondhand business and the potential
857 financial loss to the business; and

858 (iii) compliance by the pawn or secondhand business with the requirements of this
859 chapter.

860 (c) If the division determines that the property should be released to the pawn or
861 secondhand business, the original victim retains a right of first refusal over the property for 15
862 days and may purchase the property at the amount financed or paid by the pawn or secondhand
863 business.

864 (d) The party to whom the division determines the property is to be released shall
865 maintain possession of the property for the duration of any time period regarding any
866 applicable right of appeal.

867 Section 14. Section **13-34-105** is amended to read:

868 **13-34-105. Exempted institutions.**

869 (1) This chapter does not apply to:

870 (a) a Utah institution directly supported, to a substantial degree, with funds provided

871 by:

872 (i) the state;

873 (ii) a local school district; or

874 (iii) other Utah governmental subdivision;

875 (b) an institution that offers instruction exclusively at or below the 12th grade level;

876 (c) a lawful enterprise that offers only professional review programs, such as C.P.A.

877 and bar examination review and preparation courses;

878 (d) a private, postsecondary educational institution that is owned, controlled, operated,

879 or maintained by a bona fide church or religious denomination, which is exempted from

880 property taxation under the laws of this state;

881 (e) subject to Subsection (3) and Section 13-34-107.5, a school or institution that is

882 accredited by a regional or national accrediting agency recognized by the United States

883 Department of Education;

884 (f) subject to Subsection (4), a business organization, trade or professional association,

885 fraternal society, or labor union that:

886 (i) sponsors or conducts courses of instruction or study predominantly for bona fide

887 employees or members; and

888 (ii) does not, in advertising, describe itself as a school;

889 (g) an institution that:

890 (i) (A) exclusively offers general education courses or instruction solely remedial,

891 avocational, nonvocational, or recreational in nature; and

892 (B) does not advertise occupation objectives or grant educational credentials; or

893 (ii) exclusively prepares individuals to teach courses or instruction described in

894 Subsection (1)(g)(i)(A);

- 895 (h) an institution that offers only workshops or seminars:
- 896 (i) lasting no longer than three calendar days; and
- 897 (ii) for which academic credit is not awarded;
- 898 (i) an institution that offers programs:
- 899 (i) in barbering, cosmetology, real estate, or insurance; and
- 900 (ii) that are regulated and approved by a state or federal governmental agency;
- 901 (j) an education provider certified by the Division of Real Estate under Section
- 902 61-2c-204.1;
- 903 (k) an institution that offers aviation training if the institution:
- 904 (i) (A) is approved under Federal Aviation Regulations, 14 C.F.R. Part 141; or
- 905 (B) provides aviation training under Federal Aviation Regulations, 14 C.F.R. Part 61;
- 906 and
- 907 (ii) exclusively offers aviation training that a student fully receives within 24 hours
- 908 after the student pays any tuition, fee, or other charge for the aviation training;
- 909 (l) an institution that provides emergency medical services training if all of the
- 910 institution's instructors, course coordinators, and courses are approved by the Department of
- 911 Health;
- 912 (m) an institution that exclusively conducts nurse aide training programs that are
- 913 approved by the State Office of Vocational Education and are subject to the Nurse Aide
- 914 Registry; and
- 915 (n) a private, nonprofit educational institution that has been in continuous operation as
- 916 a private, nonprofit educational institution for at least 20 years, except as provided in
- 917 Subsection (5), Subsection 13-34-106(8) and Section 13-34-107.6.
- 918 (2) If available evidence suggests that an exempt institution under this section is not in
- 919 compliance with the standards of registration under this chapter and applicable division rules,
- 920 the division shall contact the institution and, if appropriate, the state or federal government
- 921 agency to request corrective action.
- 922 (3) An institution, branch, extension, or facility operating within the state that is

923 affiliated with an institution operating in another state shall be separately approved by the
924 affiliate's regional or national accrediting agency to qualify for the exemption described in
925 Subsection (1)(e).

926 (4) For purposes of Subsection (1)(f), a business organization, trade or professional
927 association, fraternal society, or labor union is considered to be conducting the course
928 predominantly for bona fide employees or members if it hires a majority of the persons who:

929 (a) successfully complete its course of instruction or study with a reasonable degree of
930 proficiency; and

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

932 (5) An institution subject to, or expressly exempted from any part of, this chapter is:

933 (a) established as an educational institution within the state;

934 (b) independent of the state system of higher education;

935 (c) subject to compliance with the applicable provisions of this chapter; and

936 (d) authorized to operate educational programs beyond secondary education, including
937 programs leading to a degree or certificate.

938 Section 15. Section **13-49-102** is amended to read:

939 **13-49-102. Definitions.**

940 As used in this chapter:

941 (1) "Client" means a person who receives services from or enters into an agreement to
942 receive services from an immigration consultant.

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

945 (a) services;

946 (b) personal or real property; or

947 (c) another thing of value.

948 (3) "Department" means the Department of Commerce.

949 (4) "Division" means the Division of Consumer Protection in the department.

950 (5) "Immigration consultant" means a person who provides nonlegal assistance or

951 advice on an immigration matter including:

952 (a) completing a document provided by a federal or state agency, but not advising a
953 person as to the person's answers on the document;

954 (b) translating a person's answer to a question posed in a document provided by a
955 federal or state agency;

956 (c) securing for a person supporting documents, such as a birth certificate, that may be
957 necessary to complete a document provided by a federal or state agency;

958 (d) submitting a completed document on a person's behalf and at the person's request to
959 the United States Citizenship and Immigration Services; [~~and~~] or

960 (e) for valuable consideration, referring a person to a person who could undertake legal
961 representation activities in an immigration matter.

962 (6) "Immigration matter" means a proceeding, filing, or action affecting the
963 immigration or citizenship status of a person that arises under:

964 (a) immigration and naturalization law;

965 (b) executive order or presidential proclamation; or

966 (c) action of the United States Citizenship and Immigration Services, the United States
967 Department of State, or the United States Department of Labor.

968 Section 16. Section **13-49-202** is amended to read:

969 **13-49-202. Application for registration.**

970 (1) To register as an immigration consultant a person shall:

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

972 (b) pay [~~a~~] an annual registration fee determined by the department in accordance with
973 Section 63J-1-504, which includes the costs of the criminal background check required under
974 Subsection (1)(e);

975 (c) have good moral character in that the applicant has not [~~be~~] been convicted of:

976 (i) a felony; or

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

978 (d) submit fingerprint cards in a form acceptable to the division at the time the

979 application is filed; and

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

982 (2) The division shall register a person who qualifies under this chapter as an
983 immigration consultant.

984 Section 17. Section ~~13-49-204~~ is amended to read:

985 **13-49-204. Bonds -- Exemption -- Statements dependent on posting bond.**

986 (1) Except as provided in Subsection [~~(5)~~] (6), an immigration consultant shall post a
987 cash bond or surety bond:

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

989 (b) payable to the division for the benefit of any person damaged by a fraud,
990 misstatement, misrepresentation, unlawful act, omission, or failure to provide services of an
991 immigration consultant, or an agent, representative, or employee of an immigration consultant.

992 (2) A bond required under this section shall be:

993 (a) in a form approved by the attorney general; and

994 (b) conditioned upon the faithful compliance of an immigration consultant with this
995 chapter and division rules.

996 (3) An immigration consultant shall keep the bond required under this section in force
997 for one year after the immigration consultant's registration expires or the immigration
998 consultant notifies the division in writing that the immigration consultant has ceased all
999 activities regulated under this chapter.

1000 [~~(3)~~] (4) (a) If a surety bond posted by an immigration consultant under this section is
1001 canceled due to the person's negligence, the division may assess a \$300 reinstatement fee.

1002 (b) No part of a bond posted by an immigration consultant under this section may be
1003 withdrawn:

1004 (i) during the one-year period the registration under this chapter is in effect; or

1005 (ii) while a revocation proceeding is pending against the person.

1006 [~~(4)~~] (5) (a) A bond posted under this section by an immigration consultant may be

1007 forfeited if the person's registration under this chapter is revoked.

1008 (b) Notwithstanding Subsection [~~(4)~~] (5)(a), the division may make a claim against a
1009 bond posted by an immigration consultant for money owed the division under this [~~division~~]
1010 chapter without the [~~commission~~] division first revoking the immigration consultant's
1011 registration.

1012 [~~(5)~~] (6) The requirements of this section do not apply to an employee of a nonprofit,
1013 tax-exempt corporation who assists clients to complete an application document in an
1014 immigration matter, free of charge or for a fee, including reasonable costs, consistent with that
1015 authorized by the Board of Immigration Appeals under 8 C.F.R. Sec. 292.2.

1016 [~~(6)~~] (7) A person may not disseminate by any means a statement indicating that the
1017 person is an immigration consultant, engages in the business of an immigration consultant, or
1018 proposes to engage in the business of an immigration consultant, unless the person has posted a
1019 bond under this section that is maintained throughout the period covered by the statement, such
1020 as a listing in a telephone book.

1021 [~~(7)~~] (8) An immigration consultant may not make or authorize the making of an oral
1022 or written reference to the immigration consultant's compliance with the bonding requirements
1023 of this section except as provided in this chapter.

1024 Section 18. Section **13-49-402** is amended to read:

1025 **13-49-402. Violations -- Actions by division.**

1026 (1) The division shall investigate and take action under this part for violations of this
1027 chapter.

1028 (2) A person who violates this chapter is subject to:

1029 (a) a cease and desist order; and

1030 (b) an administrative fine of not less than [~~\$100~~] \$1,000 or more than \$5,000 for each
1031 separate violation.

1032 (3) An administrative fine shall be deposited in the Consumer Protection Education
1033 and Training Fund created in Section 13-2-8.

1034 (4) (a) A person who intentionally violates this chapter:

1035 (i) is guilty of a class A misdemeanor; and

1036 (ii) may be fined up to \$10,000.

1037 (b) A person intentionally violates this part if the violation occurs after the division,

1038 attorney general, or a district or county attorney notifies the person by certified mail that the

1039 person is in violation of this chapter.