

**REGULATING PROPRIETARY  
POSTSECONDARY SCHOOLS**

2005 GENERAL SESSION

STATE OF UTAH

**Sponsor: Dan R. Eastman**

---

---

**LONG TITLE**

**General Description:**

This bill modifies the Utah Postsecondary Proprietary School Act.

**Highlighted Provisions:**

This bill:

- ▶ modifies provisions related to what constitutes a prohibited act;
- ▶ clarifies rulemaking authority;
- ▶ adds to the list of exemptions education providers certified by the Division of Real Estate;
- ▶ authorizes the division to conduct audits;
- ▶ addresses registration statements, exemptions, and certificates of registration;
- ▶ modifies the information that must be made available to applicants and the division;
- ▶ provides for additional penalties;
- ▶ addresses denial, suspension, or revocation of a certificate for registration including conducting criminal background checks; and
- ▶ makes technical changes.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**



28 AMENDS:

29 **13-34-104**, as enacted by Chapters 125 and 222, Laws of Utah 2002

30 **13-34-105**, as last amended by Chapter 131, Laws of Utah 2003

31 **13-34-106**, as enacted by Chapter 222, Laws of Utah 2002

32 **13-34-107**, as enacted by Chapter 222, Laws of Utah 2002

33 **13-34-108**, as enacted by Chapter 222, Laws of Utah 2002

34 **13-34-111**, as enacted by Chapter 222, Laws of Utah 2002

35 **13-34-113**, as enacted by Chapter 222, Laws of Utah 2002



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

38 Section 1. Section **13-34-104** is amended to read:

39 **13-34-104. Prohibited acts -- Exceptions -- Responsibilities of proprietary schools.**

40 (1) Except as provided in this chapter, a proprietary school may not offer, sell, or  
41 award a degree or any other type of educational credential unless the student has enrolled in  
42 and successfully completed a prescribed program of study as outlined in the proprietary  
43 school's catalogue.

44 (2) [~~This~~] The prohibition described in Subsection (1) does not apply to:

45 (a) honorary credentials clearly designated as such on the front side of a diploma[;]; or

46 (b) certificates and awards by [~~schools that offer~~] a proprietary school that offers other  
47 educational credentials requiring enrollment in and successful completion of a prescribed  
48 program of study in compliance with the requirements of this chapter.

49 (3) A proprietary school must provide bona fide instruction through student-faculty  
50 interaction.

51 (4) A proprietary school may not enroll a student in a program unless the proprietary  
52 school has made a good-faith determination that the student has the ability to benefit from the  
53 program.

54 (5) A proprietary school may not make or cause to be made any oral, written, or visual  
55 statement or representation that an institution described in Subsection 13-34-107(2)(a)(ii)  
56 knows or should know to be:

57 (a) false;

58 (b) deceptive;

59 (c) substantially inaccurate; or

60 (d) misleading.

61 ~~[(5)]~~ (6) The division shall establish standards and criteria by rule made in accordance  
62 with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, for the following:

63 (a) the awarding of educational credentials;

64 (b) bona fide instruction through student-faculty interaction; and

65 (c) determination of the ability of a student to benefit from a program.

66 Section 2. Section **13-34-105** is amended to read:

67 **13-34-105. Exempted institutions.**

68 (1) This chapter does not apply to the following institutions:

69 (a) a Utah institution directly supported, to a substantial degree, with funds provided  
70 by:

71 (i) the state[;];

72 (ii) a local school district[;]; or

73 (iii) other Utah governmental subdivision;

74 (b) an institution ~~[which]~~ that offers instruction exclusively at or below the 12th grade  
75 level;

76 (c) a lawful enterprise ~~[which]~~ that offers only professional review programs, such as  
77 C.P.A. and bar examination review and preparation courses;

78 (d) a Utah private, postsecondary educational institution that is owned, controlled,  
79 operated, or maintained by a bona fide church or religious denomination, which is exempted  
80 from property taxation under the laws of this state;

81 (e) subject to Subsection (3), a Utah school or institution ~~[which]~~ that is accredited by a  
82 regional or national accrediting agency recognized by the United States Department of  
83 Education~~[- An institution, branch, extension, or facility operating within the state which is~~  
84 ~~affiliated with an institution operating in another state must be separately approved by the~~  
85 ~~affiliate's regional or national accrediting agency to qualify for this exemption];~~

86 (f) subject to Subsection (4), a business organization, trade or professional association,  
87 fraternal society, or labor union that:

88 (i) sponsors or conducts courses of instruction or study predominantly for bona fide  
89 employees or members; and

90           (ii) does not, in advertising, describe itself as a school; [~~for purposes of this Subsection~~  
 91 ~~(1)(f), a business organization, trade or professional association, fraternal society, or labor~~  
 92 ~~union that hires a majority of the persons who successfully complete its course of instruction or~~  
 93 ~~study with a reasonable degree of proficiency and apply for employment with that same entity~~  
 94 ~~is considered to be conducting the course predominantly for bona fide employees or members;]~~

95           (g) an institution that exclusively offers general education courses or instruction solely  
 96 remedial, avocational, nonvocational, or recreational in nature, [~~which~~] that does not:

97           (i) advertise occupation objectives; or

98           (ii) grant educational credentials;

99           (h) an institution [~~which~~] that offers only workshops or seminars;

100           (i) lasting no longer than three calendar days; and

101           (ii) for which academic credit is not awarded; [~~and~~]

102           (i) an institution [~~which~~] that offers programs in barbering, cosmetology, real estate,  
 103 insurance, or flying that are regulated and approved by a state or federal governmental  
 104 agency[-]; and

105           (j) an education provider certified by the Division of Real Estate under Section  
 106 61-2c-103.

107           (2) (a) If available evidence suggests that an exempt institution under this section is not  
 108 in compliance with the standards of registration under this chapter and applicable division  
 109 rules, the division shall contact the institution and, if appropriate, the state or federal  
 110 government agency to request corrective action.

111           (b) Subsection (2)(a) does not apply to an institution exempted under Subsection (1)(e).

112           (3) An institution, branch, extension, or facility operating within the state that is  
 113 affiliated with an institution operating in another state must be separately approved by the  
 114 affiliate's regional or national accrediting agency to qualify for the exemption described in  
 115 Subsection (1)(e).

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

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

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

122 Section 3. Section **13-34-106** is amended to read:

123 **13-34-106. Responsibilities of division.**

124 The division is responsible for the administration of this chapter, and shall do the  
125 following:

126 (1) prescribe the contents of the registration statements required by this chapter relating  
127 to the quality of education and ethical and business practices;

128 (2) issue certification of registration upon receipt and approval of the registration  
129 statement required under Section 13-34-107;

130 (3) receive, investigate, and make available for public inspection the registration  
131 statements filed by proprietary schools operating or intending to operate in the state;

132 (4) maintain and publicize a list of proprietary schools for which a registration  
133 statement is on file with the division;

134 (5) investigate and audit, on ~~[its]~~ the division's own initiative or in response to a  
135 complaint filed with ~~[it]~~ the division, any institution subject to, or reasonably believed by the  
136 division to be subject to, this chapter;

137 (6) negotiate and enter into interstate reciprocity agreements with other states, if in the  
138 judgment of the division, the agreements are or will help to effectuate the purposes of this  
139 chapter; and

140 (7) consent to the use of educational terms in business names in accordance with  
141 Section 13-34-114.

142 Section 4. Section **13-34-107** is amended to read:

143 **13-34-107. Advertising, recruiting, or operating a proprietary school -- Required**  
144 **registration statement or exemption -- Certificate of registration -- Registration does not**  
145 **constitute endorsement.**

146 (1) (a) ~~[An]~~ Unless an institution complies with Subsection (1)(b), the institution may  
147 not do any of the following in this state:

148 (i) advertise[;] a proprietary school;

149 (ii) recruit students for[;] a proprietary school; or

150 (iii) operate a proprietary school [in this state].

151 (b) An institution may not engage in an activity described in Subsection (1)(a) unless

152 [it has] the institution:

153 ~~[(a) filed]~~ (i) (A) files with the division a registration statement relating to the  
154 proprietary school that is in compliance with:

155 (I) applicable rules ~~[promulgated]~~ made by the division; and ~~[is also in compliance~~  
156 ~~with the other]~~

157 (II) the requirements set forth in this chapter; ~~[or]~~ and

158 (B) obtains a certificate of registration; or

159 ~~[(b)]~~ (ii) ~~[established]~~ establishes an exemption with the division.

160 ~~[(2) (a) The division may refuse to accept a statement of registration or exemption if:]~~

161 ~~[(i) the proprietary school or an owner, administrator, faculty, staff, or agent of the~~  
162 ~~school has violated laws, federal regulations, or state rules as determined in a criminal, civil, or~~  
163 ~~administrative proceeding; and]~~

164 ~~[(ii) the division determines the violation is relevant to the appropriate operation of the~~  
165 ~~school.]~~

166 ~~[(b)]~~ (2) (a) The ~~[statement of]~~ registration statement or exemption described in  
167 Subsection (1) shall be:

168 (i) verified by the oath or affirmation of the owner or a responsible officer of the  
169 proprietary school filing ~~[it. (c) The statement shall]~~ the registration statement or exemption;  
170 and

171 (ii) include a certification as to whether ~~[the school or an owner, administrator, faculty,~~  
172 ~~staff, or agent of the school]~~ any of the following has violated laws, federal regulations, or state  
173 rules as determined in a criminal, civil, or administrative proceeding[-]:

174 (A) the proprietary school; or

175 (B) any of the following with respect to the proprietary school:

176 (I) an owner;

177 (II) an officer;

178 (III) a director;

179 (IV) an administrator;

180 (V) a faculty member;

181 (VI) a staff member; or

182 (VII) an agent.

183           ~~[(d)]~~ (b) The proprietary school shall:

184           (i) make available, upon request, a copy of the registration statement, showing the date  
185 upon which it was filed~~[-]~~; and ~~[a]~~

186           (ii) display the certificate of registration ~~[shall be displayed by the proprietary school]~~  
187 obtained from the division in a conspicuous place on ~~[its]~~ the proprietary school's premises.

188           (3) (a) A registration statement and the accompanying certificate of registration are not  
189 transferable.

190           (b) In the event of a change in ownership or in the governing body of the proprietary  
191 school, the new owner or governing body, within 30 days after the change, shall file a new  
192 registration statement.

193           (4) ~~[A]~~ Except as provided in Subsection (3)(b), a registration statement or a renewal  
194 statement and the accompanying certificate of registration are effective for a period of two  
195 years after the date of filing and issuance.

196           (5) (a) The division shall establish a graduated fee structure for the filing of registration  
197 statements by various classifications of institutions pursuant to Section 63-38-3.2.

198           (b) Fees are not refundable.

199           (c) Fees shall be deposited in the Commerce Service Fund pursuant to Section 13-1-2.

200           (6) (a) Each proprietary school shall:

201           (i) demonstrate fiscal responsibility at the time ~~[it]~~ the proprietary school files its  
202 registration statement as prescribed by rules of the division~~[-]~~; and

203           ~~[(b) It shall]~~ (ii) provide evidence to the division that ~~[it]~~ the proprietary school:

204           (A) is financially sound; and

205           (B) can reasonably fulfill commitments to and obligations ~~[it]~~ the proprietary school  
206 has incurred with students and creditors.

207           ~~[(e)]~~ (b) A proprietary school applying for an initial certificate of registration to operate  
208 shall prepare and submit financial statements and supporting documentation as requested by  
209 the division.

210           ~~[(d)]~~ (c) A proprietary school applying for renewal of a certificate of registration to  
211 operate or renewal under new ownership must provide audited financial statements.

212           ~~[(e)]~~ (d) The division may require evidence of financial status at other times when it is  
213 in the best interest of students to require such information.

214 (7) (a) A proprietary school applying for an initial certificate of registration or seeking  
215 renewal shall provide in a form approved by the division:

216 (i) a surety bond[;];

217 (ii) a certificate of deposit[;]; or

218 (iii) an irrevocable letter of credit [~~in a form approved by the division~~].

219 (b) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the  
220 division may make rules providing for:

221 (i) the amount of the bond, certificate, or letter of credit required under Subsection  
222 (7)(a), not to exceed in amount the anticipated tuition and fees to be received by the proprietary  
223 school during a school year;

224 (ii) the execution of the bond, certificate, or letter of credit;

225 (iii) cancellation of the bond, certificate, or letter of credit during or at the end of the  
226 registration term; and

227 (iv) any other matters related to providing the bond, certificate, or letter of credit  
228 required under Subsection (7)(a).

229 (c) The bond, certificate, or letter of credit shall be used as a protection against loss of  
230 advanced tuition, book fees, supply fees, or equipment fees:

231 (i) collected by the proprietary school from a student or a student's parent, guardian, or  
232 sponsor prior to the completion of the program or courses for which it was collected; or

233 (ii) for which the student is liable.

234 (8) (a) [~~The~~] Except as provided in Section 13-34-113, the division [~~cannot~~] may not  
235 refuse acceptance of a registration statement that is;

236 (i) tendered for filing and, based on a preliminary review, appears to be in compliance  
237 with Subsections (1), (2), and (6)[;]; and

238 (ii) accompanied by:

239 (A) the required fee[;]; and

240 (B) one of the following required by Subsection (7):

241 (I) surety bond;

242 (II) certificate of deposit; or

243 (III) irrevocable letter of credit.

244 [~~(b) A statement is effective upon approval by the division or its designated officer in~~]

245 ~~accordance with division rules.]~~

246 ~~[(e) The division may not register a program at a proprietary institution if it determines~~  
247 ~~that the educational credential associated with the program represents the undertaking or~~  
248 ~~completion of educational achievement that has not been undertaken and earned.]~~

249 ~~[(d)] (b) A certificate of registration is effective upon the date of issuance.~~

250 ~~[(e)] (c) The responsibility of compliance is upon the proprietary school and not upon~~  
251 ~~the division.~~

252 ~~[(f)] (d) (i) If it appears to the division that a registration statement on file may not be~~  
253 ~~in compliance with this chapter, the division may advise the proprietary school as to the~~  
254 ~~apparent deficiencies.~~

255 ~~[(g) A] (ii) After a proprietary school has been notified of a deficiency under~~  
256 ~~Subsection (8)(d)(i), a new or amended statement may [then] be presented for filing by the~~  
257 ~~proprietary school, accompanied by:~~

258 ~~(A) the required fee[-]; and~~

259 ~~(B) one of the following required by Subsection (7):~~

260 ~~(I) surety bond;~~

261 ~~(II) certificate of deposit; or~~

262 ~~(III) irrevocable letter of credit.~~

263 ~~(9) The [acceptance of a registration statement, renewal statement, or amended~~  
264 ~~registration statement and issuance of a certificate of registration shall] following does not~~  
265 ~~constitute[-, nor] and may not be represented by any person to constitute, an endorsement or~~  
266 ~~approval of the proprietary school by either the division or the state[-];~~

267 ~~(a) an acceptance of:~~

268 ~~(i) a registration statement;~~

269 ~~(ii) a renewal statement; or~~

270 ~~(iii) an amended registration statement; and~~

271 ~~(b) issuance of a certificate of registration.~~

272 Section 5. Section **13-34-108** is amended to read:

273 **13-34-108. Information required to be available -- Documents to be fair and**  
274 **accurate -- Fair and ethical practices.**

275 (1) It is a violation of this chapter for any institution or proprietary school, which is

276 required to file a registration statement under this chapter, to offer postsecondary education in  
277 this state unless:

278 ~~[(1) it]~~ (a) the institution or proprietary school makes available;

279 (i) in writing;

280 (ii) to all applicants;

281 (iii) prior to;

282 (A) enrollment of the applicant; or

283 (B) the receipt of any tuition by the institution or proprietary school; and

284 (iv) information that includes the following:

285 ~~[(a)]~~ (A) the proprietary school name, which shall be representative of the programs  
286 offered at the proprietary school;

287 (B) the address of the proprietary school;

288 (C) the location of the proprietary school;

289 ~~[(b)]~~ (D) the facilities, faculty, training equipment, and instructional programs of the  
290 proprietary school;

291 ~~[(c)]~~ (E) enrollment qualifications;

292 (F) accurate information regarding the relationship of the program of the institution or  
293 proprietary school to state licensure requirements for practicing a related occupation and  
294 profession in Utah;

295 ~~[(d)]~~ (G) tuition, fees, and other charges and expenses;

296 (H) financial assistance, cancellation, and tuition refund policies, including the posting  
297 of;

298 (I) a surety bond;

299 (II) a certificate of credit; or

300 (III) an irrevocable letter of credit;

301 ~~[(e)]~~ (I) length of programs;

302 ~~[(f)]~~ (J) graduation requirements; ~~[and]~~

303 (K) subject to Subsection (2), for each of the immediately preceding three years:

304 (I) graduation rates; and

305 (II) employment rates; and

306 ~~[(g)]~~ (L) awarding of appropriate educational credentials to indicate satisfactory course

307 completions;

308 ~~[(2)]~~ (b) all recruiting documents, advertising, solicitations, publicity releases, and  
 309 other public statements regarding the proprietary school are fair and accurate; ~~[and]~~

310 ~~[(3)]~~ (c) all agents or sales representatives of the proprietary school are required by the  
 311 proprietary school to comply with ethical practices prescribed by the division[-]; and

312 (d) the institution or proprietary school makes available to the division for inspection  
 313 during normal business hours all records relevant to:

314 (i) the operation of the institution or proprietary school; and

315 (ii) the efforts of the institution or proprietary school to comply with this chapter.

316 (2) (a) Beginning on May 2, 2005 an institution or proprietary school shall collect and  
 317 maintain the information necessary to comply with Subsection (1)(a)(iv)(K).

318 (b) Prior to May 2, 2008, if an institution or proprietary school has the information  
 319 described in Subsection (1)(a)(iv)(K) for a time period of three years or less, the institution or  
 320 proprietary school shall provide the information for the time period the institution or  
 321 proprietary school has the information.

322 Section 6. Section **13-34-111** is amended to read:

323 **13-34-111. Referral of suspected violations -- Penalty.**

324 (1) The division may report any information concerning a possible violation of this  
 325 chapter or of rules ~~[promulgated]~~ made under this chapter to the attorney general, the county  
 326 attorney, or district attorney of any county or prosecution district in which the activity is  
 327 occurring or has occurred.

328 (2) The attorney described in Subsection (1) shall investigate the complaint and  
 329 immediately prosecute or bring suit to enjoin an act determined to be a violation of the chapter  
 330 or ~~[regulations]~~ rules.

331 (3) (a) In addition to other penalties and remedies in this chapter, and in addition to its  
 332 other enforcement powers under Section 13-2-6, the division director may:

333 (i) issue a cease and desist order; and

334 (ii) impose an administrative fine of up to:

335 (A) \$100 per day that a proprietary school operates without an effective certificate of  
 336 registration if the violation is not an intentional violation;

337 (B) \$1,000 for each violation of this chapter that is not:

- 338 (I) described in Subsection (3)(a)(ii)(A); or
- 339 (II) an intentional violation; or
- 340 (C) \$5,000 for each intentional violation of this chapter.

341 (b) All money received through administrative fines imposed under Subsection (3)(a)  
 342 shall be deposited in the Consumer Protection Education and Training Fund created by Section  
 343 13-2-8.

344 (4) ~~[A willful]~~ An intentional violation of this chapter is a class B misdemeanor, except  
 345 as otherwise provided in Subsection 13-34-201(2).

346 (5) A person intentionally violates this chapter if:

347 (a) the violation occurs after one of the following notifies the person by certified mail  
 348 that the person is in violation of the chapter:

- 349 (i) the division;
- 350 (ii) the attorney general; or
- 351 (iii) a district or county attorney; and

352 (b) the violation is the same as the violation for which the person received the  
 353 notification described in Subsection (5)(a).

354 Section 7. Section **13-34-113** is amended to read:

355 **13-34-113. Denial, suspension, or revocation of a certificate of registration --**  
 356 **Limitations.**

357 ~~[(1) The division may refuse to issue or renew a certificate of registration to operate or~~  
 358 ~~may initiate proceedings to terminate a certificate of registration to operate a postsecondary~~  
 359 ~~proprietary school if the school:]~~

360 ~~[(a) violates a rule adopted by the division under this chapter;]~~

361 ~~[(b) furnishes false, misleading, or incomplete information to the division, or fails to~~  
 362 ~~furnish information requested by the division; or]~~

363 (1) In accordance with Chapter 2, Division of Consumer Protection, and Title 63,  
 364 Chapter 46b, Administrative Procedures Act, the division may initiate proceedings to deny,  
 365 suspend, or revoke a certificate of registration to operate a proprietary school under this chapter  
 366 if:

- 367 (a) the division finds that the order is in the public interest; and
- 368 (b) (i) the registration statement or renewal statement is incomplete, false, or

369 misleading in any respect;

370 (ii) the division determines that the educational credential associated with the  
371 proprietary school represents the undertaking or completion of educational achievement that  
372 has not been undertaken and earned; or

373 (iii) the proprietary school or an individual described in Subsection  
374 13-34-107(2)(a)(ii)(B) has:

375 (A) violated any provision of:

376 (I) this chapter;

377 (II) the rules made by the division pursuant to this chapter; or

378 [~~(c) violates~~] (III) a commitment made in [~~an application~~] a registration statement for a  
379 certificate of registration to operate the proprietary school[-];

380 (B) caused or allowed to occur a violation of any provision of:

381 (I) this chapter;

382 (II) the rules made by the division pursuant to this chapter; or

383 (III) a commitment made in a registration statement for a certificate of registration to  
384 operate the proprietary school;

385 (C) been enjoined by any court, or is the subject of an administrative or judicial order  
386 issued in this or another state, if the injunction or order:

387 (I) includes a finding or admission of fraud, breach of fiduciary duty, or material  
388 misrepresentation; or

389 (II) was based on a finding of lack of integrity, truthfulness, or mental competence;

390 (D) been convicted of a crime involving moral turpitude;

391 (E) obtained or attempted to obtain a certificate of registration under this chapter by  
392 misrepresentation;

393 (F) failed to timely file with the division any report required by:

394 (I) this chapter; or

395 (II) rules made by the division pursuant to this chapter;

396 (G) failed to furnish information requested by the division; or

397 (H) failed to pay an administrative fine imposed by the division in accordance with this  
398 chapter.

399 (2) Division staff may place reasonable limits upon a proprietary school's continued

400 certificate of registration to operate if:

401        (a) there are serious concerns about the proprietary school's ability to provide the  
402 training in the manner approved by the division; and [if]

403        (b) limitation is warranted to protect the students' interests.

404        ~~[(3)(a) Division staff may take interim action to suspend a school's certificate of~~  
405 ~~registration to operate if there is substantive evidence indicating that the welfare of students is~~  
406 ~~at risk through the school's noncompliance with rules adopted by the division.]~~

407        ~~[(b) Suspension may result in a termination action by the division under Subsection~~  
408 ~~(1):]~~

409        (3) The division may:

410        (a) conduct a criminal background check on an individual described in Subsection  
411 13-34-107(2)(a)(ii)(B); and

412        (b) require a proprietary school to provide to the division any information necessary to  
413 conduct a criminal background check on an individual described in Subsection  
414 13-34-107(2)(a)(ii)(B).

---

---

**Legislative Review Note**  
**as of 12-7-04 8:42 AM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**

**Interim Committee Note**  
**as of 12-08-04 9:35 AM**

The Business and Labor Interim Committee recommended this bill.

---

---

**Fiscal Note**  
**Bill Number SB0018**

**Regulating Proprietary Postsecondary Schools**

*14-Jan-05*

*2:19 PM*

---

---

**State Impact**

No Fiscal Impact

---

**Individual and Business Impact**

Any additional expenses can be handled within existing operating budgets

---

**Office of the Legislative Fiscal Analyst**