

SB0210S01 compared with SB0210

~~deleted text~~ shows text that was in SB0210 but was deleted in SB0210S01.

inserted text shows text that was not in SB0210 but was inserted into SB0210S01.

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Senator Curtis S. Bramble proposes the following substitute bill:

UTAH POSTSECONDARY PROPRIETARY SCHOOL ACT

AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: ~~_____~~ Derek E. Brown

LONG TITLE

General Description:

This bill modifies the Utah Postsecondary Proprietary School Act.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ modifies institutions that are exempt from the act;
- ▶ provides for the Division of Consumer Protection to issue certificates of exemption to specified institutions and establishes a process for issuing an exemption certificate and renewals;
- ▶ modifies the division's authority with respect to complaints against institutions

SB0210S01 compared with SB0210

subject to the act;

- ▶ requires institutions to file separate registration and exempt applications for each campus that the institution operates;
- ▶ requires a proprietary school to submit a review of its continued qualification for certification;
- ▶ specifies information that a proprietary school is required to submit to demonstrate that it is financially sound;
- ▶ modifies a provision relating to division inspections of a proprietary school; ~~and~~
- ▶ modifies a provision relating to criminal background checks that the division may require ~~and~~;
- ▶ authorizes the division to establish a process for dealing with complaints concerning postsecondary educational institutions; and
- ▶ establishes a process for the division to confirm that an institution is a private nonprofit educational institution.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-34-103, as enacted by Laws of Utah 2002, Chapter 222

13-34-105, as last amended by Laws of Utah 2010, Chapters 218 and 378

13-34-106, as last amended by Laws of Utah 2005, Chapter 242

13-34-107, as last amended by Laws of Utah 2010, Chapters 278 and 378

13-34-108, as last amended by Laws of Utah 2005, Chapter 242

13-34-110, as enacted by Laws of Utah 2002, Chapter 222

13-34-113, as last amended by Laws of Utah 2008, Chapter 382

ENACTS:

13-34-107.5, Utah Code Annotated 1953

13-34-107.6, Utah Code Annotated 1953

SB0210S01 compared with SB0210

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

Section 1. Section **13-34-103** is amended to read:

13-34-103. Definitions.

As used in this chapter:

(1) "Agent" means any person who owns an interest in or is employed by a proprietary school and who:

(a) enrolls or attempts to enroll a resident of this state in a proprietary school;

(b) offers to award educational credentials for remuneration on behalf of a proprietary school; or

(c) holds himself out to residents of this state as representing a proprietary school for any purpose.

(2) "Certificate of registration" means approval of the division to operate a school or institution in compliance with this chapter and rules adopted under this chapter. The registration is not an endorsement of the school or institution by either the division or the state [~~of Utah~~].

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

(4) "Educational credentials" means degrees, diplomas, certificates, transcripts, reports, documents, or letters of designation, marks, appellations, series of letters, numbers, or words which signify or appear to signify enrollment, attendance, progress, or satisfactory completion of the requirements or prerequisites for any educational program.

(5) "Institution" means an individual, corporation, partnership, association, cooperative, or other legal entity.

(6) "Offer" means to advertise, publicize, solicit, or encourage any person directly or indirectly.

(7) "Operate" in this state means to [~~have a significant presence within~~]:

(a) maintain a place of business in the state[~~, to~~];

(b) solicit business in the state;

(c) conduct significant educational activities within the state[~~;~~]; or [~~to~~]

(d) offer or provide postsecondary instruction leading to a postsecondary degree or certificate to any number of Utah residents [~~assembled at a receiving site in Utah~~] from a location outside the state by correspondence or any telecommunications or electronic media

SB0210S01 compared with SB0210

technology.

(8) "Ownership" means the controlling interest in a school, institution, or college. If the school, institution, or college is owned or controlled by other than a natural person, "ownership" refers to the controlling interest in the legal entity which controls the school, institution, or college.

(9) "Postsecondary education" means education or educational services offered primarily to persons who have completed or terminated their secondary or high school education or who are beyond the age of compulsory school attendance.

(10) "Proprietary school" means any private institution, including business, modeling, paramedical, tax preparation, or trade [and] or technical [schools, which] school, other than a school exempted under this chapter, that offers postsecondary education:

(a) in consideration of the payment of tuition or fees; and

(b) for the attainment of educational, professional, or vocational objectives[~~other than those schools exempted under this chapter~~].

(11) "Rules" means those rules adopted by the division under the Utah Administrative Rulemaking Act necessary to enforce and administer this chapter.

(12) "Utah [~~school or~~] institution" means a postsecondary educational school or institution whose headquarters or primary operations are in Utah.

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

13-34-105. Exempted institutions.

(1) This chapter does not apply to [~~the following institutions~~]:

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

(i) the state;

(ii) a local school district; or

(iii) other Utah governmental subdivision;

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

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

(d) a private, postsecondary educational institution that is owned, controlled, operated, or maintained by a bona fide church or religious denomination, which is exempted from

SB0210S01 compared with SB0210

property taxation under the laws of this state;

(e) subject to Subsection (3) and Section 13-34-107.5, a school or institution that is accredited by a regional or national accrediting agency recognized by the United States Department of Education;

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

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

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

(g) an institution that:

(i) (A) exclusively offers general education courses or instruction solely remedial, avocational, nonvocational, or recreational in nature~~[, that]~~; and

(B) does not~~[(i)]~~ advertise occupation objectives~~;~~ or ~~[(ii)]~~ grant educational credentials; or

(ii) exclusively prepares individuals to teach courses or instruction described in Subsection (1)(g)(i)(A);

(h) an institution that offers only workshops or seminars:

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

(ii) for which academic credit is not awarded;

(i) an institution that offers programs:

(i) in barbering, cosmetology, real estate, or insurance; and

(ii) that are regulated and approved by a state or federal governmental agency;

(j) an education provider certified by the Division of Real Estate under Section 61-2c-204.1;

(k) an institution that offers aviation training if the institution:

(i) (A) is approved under Federal Aviation Regulations, 14 C.F.R. Part 141; or

(B) provides aviation training under Federal Aviation Regulations, 14 C.F.R. Part 61;

and

(ii) exclusively offers aviation training that a student fully receives within 24 hours after the student pays any tuition, fee, or other charge for the aviation training; ~~[and]~~

(l) an institution that provides emergency medical services training if all of the

SB0210S01 compared with SB0210

institution's instructors, course coordinators, and courses are approved by the Department of Health[-]; ~~f. and~~

(m) an institution that exclusively conducts nurse aide training programs that are approved by the State Office of Vocational Education and are subject to the Nurse Aide Registry; ~~f. and~~

(n) a private, nonprofit educational institution that has been in continuous operation for at least 20 years, except as provided in Subsection (5), Subsection 13-34-106(8) and Section 13-34-107.6.

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

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

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

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

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

(b) apply for employment with that same entity.

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

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

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

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

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

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

SB0210S01 compared with SB0210

13-34-106. Responsibilities of division.

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

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

(2) issue:

(a) certification of registration upon receipt and approval of the registration statement required under Section 13-34-107; and

(b) a certificate of exemption under Section 13-34-107.5 upon receipt and approval of an application and verification that the requirements of Subsection 13-34-105(1)(e) and Section 13-34-107.5 are met;

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

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

(5) [~~investigate and audit,~~] on the division's own initiative or in response to a complaint filed with the division, do any of the following with respect to any institution subject to, or reasonably believed by the division to be subject to, this chapter[?];

(a) investigate;

(b) audit;

(c) review;

(d) appropriately act, including enforcing this chapter or any other law enforced by the division; and

(e) refer a matter to:

(i) another governmental entity; or

(ii) the institution's accrediting body, if the institution is an exempt institution under Section 13-34-107.5;

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

(7) consent to the use of educational terms in business names in accordance with

SB0210S01 compared with SB0210

Section 13-34-114~~[-]; and~~

(8) establish and maintain a process for reviewing and appropriately acting on complaints concerning postsecondary educational institutions operating in the state, including enforcing applicable state laws.

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

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

(1) (a) Unless an institution complies with Subsection (1)(b), the institution may not do any of the following in this state:

- (i) advertise a proprietary school;
- (ii) recruit students for a proprietary school; or
- (iii) operate a proprietary school.

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

(i) (A) files with the division a registration statement relating to the proprietary school that is in compliance with:

- (I) applicable rules made by the division; and
- (II) the requirements set forth in this chapter; and
- (B) obtains a certificate of registration; or
- (ii) establishes an exemption with the division.

(c) (i) Except as provided in Subsection (1)(c)(ii), an institution that files a registration statement under this section shall file a separate registration statement and pay a separate fee for each physical campus that the institution operates as a proprietary school.

(ii) An institution that registered with the division before May 10, 2011 is not required to comply with Subsection (1)(c)(i) until the institution's next regular renewal date.

(2) (a) The registration statement or exemption described in Subsection (1) shall be:

(i) verified by the oath or affirmation of the owner or a responsible officer of the proprietary school filing the registration statement or exemption; and

(ii) include a certification as to whether any of the following has violated laws, federal regulations, or state rules as determined in a criminal, civil, or administrative proceeding:

SB0210S01 compared with SB0210

(A) the proprietary school; or

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

(I) an owner;

(II) an officer;

(III) a director;

(IV) an administrator;

(V) a faculty member;

(VI) a staff member; or

(VII) an agent.

(b) The proprietary school shall:

(i) make available, upon request, a copy of the registration statement, showing the date upon which it was filed; and

(ii) display the certificate of registration obtained from the division in a conspicuous place on the proprietary school's premises.

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

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

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

(b) No later than one year after the issuance or renewal of a certificate of registration to a proprietary school, the proprietary school shall:

(i) submit a review of the proprietary school's continued qualification for a certificate of registration, on a form approved by the division; and

(ii) pay a fee established under this section and Section 63J-1-504.

(5) (a) The division shall establish a graduated fee structure for the filing of registration statements by various classifications of institutions pursuant to Section 63J-1-504.

(b) Fees are not refundable.

(c) Fees shall be deposited in the Commerce Service Account created by Section

SB0210S01 compared with SB0210

13-1-2.

(6) (a) Each proprietary school shall:

(i) demonstrate fiscal responsibility at the time the proprietary school files its registration statement as prescribed by rules of the division; and

(ii) as provided in Subsection (6)(b), provide evidence to the division that the proprietary school:

(A) is financially sound; and

(B) can reasonably fulfill commitments to and obligations the proprietary school has incurred with students and creditors.

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

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

(b) The evidence that a propriety school is required to provide under Subsection (6)(a)(ii) includes:

(i) for a proprietary school that has not operated long enough to complete a fiscal year:

(A) pro forma financial statements until the information described in Subsection

(6)(b)(ii) is available; and

(B) a commercial credit report for the proprietary school and a consumer credit report for each individual with an ownership interest in the proprietary school; and

(ii) for a proprietary school that has completed a fiscal year or as soon as a proprietary school completes its first fiscal year:

(A) a current financial statement, with all applicable footnotes, for the most recent fiscal year, including a balance sheet, a statement of income, a statement of retained earnings, and a statement of cash flow; and

(B) a certified fiscal audit of the proprietary school's financial statement, performed by a certified or licensed public accountant, or a commercial credit report for the proprietary school and a consumer credit report for each individual with an ownership interest in the proprietary school.

(c) In evaluating a proprietary school's fiscal responsibility under this Subsection (6),

SB0210S01 compared with SB0210

the division may consider:

(i) any judgment, tax lien, collection action, bankruptcy schedule, or history of late payments to creditors;

(ii) documentation showing the resolution of any matter listed in Subsection (6)(c)(i);

(iii) the proprietary school's explanation for any of the matters listed in Subsection (6)(c)(i);

(iv) any guarantee agreement provided for the proprietary school; and

(v) any history of a prior entity that:

(A) is owned or operated by any individual with an ownership interest in the proprietary school; and

(B) has failed to maintain fiscal responsibility.

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

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

(i) a surety bond;

(ii) a certificate of deposit; or

(iii) an irrevocable letter of credit.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division may make rules providing for:

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

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

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

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

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

(i) collected by the proprietary school from a student or a student's parent, guardian, or

SB0210S01 compared with SB0210

sponsor prior to the completion of the program or courses for which it was collected; or

(ii) for which the student is liable.

(8) (a) Except as provided in Section 13-34-113, the division may not refuse acceptance of a registration statement that is:

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

(ii) accompanied by:

(A) the required fee; and

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

(I) surety bond;

(II) certificate of deposit; or

(III) irrevocable letter of credit.

(b) A certificate of registration is effective upon the date of issuance.

(c) The responsibility of compliance is upon the proprietary school and not upon the division.

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

(ii) After a proprietary school has been notified of a deficiency under Subsection (8)(d)(i), a new or amended statement may be presented for filing by the proprietary school, accompanied by:

(A) the required fee; and

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

(I) surety bond;

(II) certificate of deposit; or

(III) irrevocable letter of credit.

(9) The following does not constitute and may not be represented by any person to constitute, an endorsement or approval of the proprietary school by either the division or the state:

(a) an acceptance of:

(i) a registration statement;

SB0210S01 compared with SB0210

- (ii) a renewal statement; or
- (iii) an amended registration statement; and
- (b) issuance of a certificate of registration.

Section 5. Section **13-34-107.5** is enacted to read:

13-34-107.5. Exemption certificate -- Application and renewal process.

(1) As used in this section:

(a) "Exemption certificate" means an accredited institution certificate of exemption that complies with:

(i) applicable rules made by the division under Title 63G, Chapter 3, Utah

Administrative Rulemaking Act; and

(ii) this section.

(b) "Exempt institution" means an institution that is exempt from this chapter under Subsection 13-34-105(1)(e) but required under 34 C.F.R. 600.9 to be legally authorized by a state.

(2) (a) An institution wishing to be acknowledged as an exempt institution shall:

(i) file with the division an application for an exemption certificate; and

(ii) pay the division a fee established by the division.

(b) An institution filing an application for an exemption certificate shall file a separate application and pay a separate fee for each physical campus that the institution operates.

(3) An application under Subsection (2) shall:

(a) be on a form approved by the division;

(b) include proof of current accreditation from a regional or national accrediting agency recognized by the United States Department of Education;

(c) include an identical copy of each financial statement the institution provides to its accrediting agency;

(d) be verified by the oath or affirmation of the owner or a responsible officer of the institution filing the application; and

(e) include a certification as to whether the institution or an owner, officer, director, or administrator of the institution has violated a law, federal regulation, or state rule as determined in a criminal, civil, or administrative proceeding.

(4) (a) An exemption certificate is not transferrable.

SB0210S01 compared with SB0210

(b) If there is a change, as defined by the United States Department of Education, in the ownership or the governing body of an institution that, before the change, is an exempt institution, the institution shall file a new application under Subsection (2) within 30 days after the change.

(5) (a) Except as provided in Subsections (4)(b) and (5)(b), an exemption certificate is effective for two years after its issuance.

(b) For an exemption certificate that the division issues pursuant to an application the division receives during 2011, the division may extend the period for which the exemption certificate is effective by up to 11 months in order to ensure that renewal dates are appropriately staggered to allow the division to manage resources and work load.

(6) No later than one year after the division's issuance or renewal of an exemption certificate to an institution, the institution shall:

(a) submit a review, on a form approved by the division, of the institution's continued qualification for an exemption certificate; and

(b) pay a fee that the division establishes under this section and Section 63J-1-504.

(7) (a) The division shall, as provided in Section 63J-1-504, establish a graduated fee structure for the filing of an application for an exemption certificate under this section based on various classifications of institutions seeking to be an exempt institution.

(b) A fee paid under this section is not refundable.

(c) Fees paid under this section shall be deposited in the Commerce Service Account created in Section 13-1-2.

(8) Except as provided in Section 13-34-113, the division may not refuse acceptance of an application under Subsection (2) that:

(a) is tendered for filing and, based on the division's preliminary review, appears to comply with this section; and

(b) is accompanied by the required fee.

(9) (a) An exemption certificate is effective on the date it is issued.

(b) The responsibility for compliance with the requirements for issuance of an exemption certificate is upon the institution and not upon the division.

(10) (a) If it appears to the division that an institution is not in compliance with requirements to qualify for an exemption certificate, the division may advise the institution as

SB0210S01 compared with SB0210

to the apparent deficiencies.

(b) After receiving notification from the division under Subsection (10)(a), an institution may file a new or amended application for an exemption certificate, accompanied by the required fee.

(11) A person may not represent that the division's acceptance of any application for an exemption certificate under this section or the division's issuance of an exemption certificate constitutes an endorsement or approval of the institution by the division or the state.

Section 6. Section ~~{13-34-108}~~13-34-107.6 is ~~{amended}~~enacted to read:

13-34-107.6. Confirmation of private nonprofit educational institution -- Effect of confirmation -- Fees.

(1) Upon the request of an institution proving to the reasonable satisfaction of the division that the institution is an institution described in Subsection 13-34-105(1)(n), the division shall issue a written finding and confirmation to the institution confirming that it is an institution described in Subsection 13-34-105(1)(n).

(2) A written finding and confirmation under Subsection (1) has the effect of establishing the institution by name as an educational institution by the state by action issued by a state agency, as contemplated in 34 C.F.R. Section 600.9(a)(1)(i)(a).

(3) (a) The division shall establish a fee, not to exceed \$1,500.00, for processing a request and issuing a written finding and confirmation as provided in Subsection (1).

(b) Fees paid under this section shall be deposited in the Commerce Service Account created in Section 13-1-2.

(c) A fee paid under this section is not refundable.

Section 7. Section 13-34-108 is amended to read:

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

(1) It is a violation of this chapter for any institution or proprietary school, which is required to file a registration statement under this chapter, to offer postsecondary education in this state unless:

(a) the institution or proprietary school makes available:

(i) in writing;

(ii) to all applicants;

SB0210S01 compared with SB0210

(iii) prior to:

(A) enrollment of the applicant; or

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

(iv) information that includes the following:

(A) the proprietary school name, which shall be representative of the programs offered at the proprietary school;

(B) the address of the proprietary school;

(C) the location of the proprietary school;

(D) the facilities, faculty, training equipment, and instructional programs of the proprietary school;

(E) enrollment qualifications;

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

(G) tuition, fees, and other charges and expenses;

(H) financial assistance, cancellation, and tuition refund policies, including the posting of:

(I) a surety bond;

(II) a certificate of credit; or

(III) an irrevocable letter of credit;

(I) length of programs;

(J) graduation requirements;

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

(I) graduation rates; and

(II) employment rates; and

(L) awarding of appropriate educational credentials to indicate satisfactory course completions;

(b) all recruiting documents, advertising, solicitations, publicity releases, and other public statements regarding the proprietary school are fair and accurate;

(c) all agents or sales representatives of the proprietary school are required by the proprietary school to comply with ethical practices prescribed by the division; and

SB0210S01 compared with SB0210

(d) the institution or proprietary school makes available to the division for inspection during normal business hours, whether or not the inspection is scheduled or announced, all records relevant to:

- (i) the operation of the institution or proprietary school; and
- (ii) the efforts of the institution or proprietary school to comply with this chapter.

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

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

Section ~~7~~8. Section **13-34-110** is amended to read:

13-34-110. Enforcement of contracts or agreements -- Rescission based on defective registration statement.

(1) A proprietary school shall be unable to enforce in the courts of this state any contract or agreement relating to postsecondary education services in this state unless, at the time the contract or agreement was entered into, an effective registration statement was on file with the division and made accessible to every applicant at the time of admission to the school.

(2) It is a violation of this chapter if a proprietary school or its agent:

(a) fails to file an effective registration statement;

(b) willfully omits from a registration statement provided under Section 13-34-107 or an application under Section 13-34-107.5 for an exemption certificate any material statement of fact required by this chapter and applicable regulations; or

(c) includes in a registration statement any material statement of fact that was known, or should have been known, to the proprietary school to be false, deceptive, inaccurate, or misleading.

(3) A student who enrolled in a proprietary school, in reliance upon the school's registration statement, may rescind the contract or agreement of enrollment and obtain a refund from the school of all tuition, fees, and other charges paid to the school if the school or its agent committed a violation under Subsection (2).

(4) A violation of this chapter is also a violation of Section 13-11-4.

SB0210S01 compared with SB0210

Section ~~8~~9. Section 13-34-113 is amended to read:

13-34-113. Denial, suspension, or revocation of a certificate of registration or exemption certificate -- Limitations.

(1) In accordance with Chapter 2, Division of Consumer Protection, and Title 63G, Chapter 4, Administrative Procedures Act, the division may initiate proceedings to deny, suspend, or revoke a certificate of registration to operate a proprietary school under this chapter or an exemption certificate under Section 13-34-107.5 if:

(a) the division finds that the order is in the public interest; and

(b) (i) the registration statement [~~or~~], renewal statement, or application for an exemption certificate is incomplete, false, or misleading in any respect;

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

(iii) the proprietary school [~~or~~], accredited institution, or an individual described in Subsection 13-34-107(2)(a)(ii)(B) has:

(A) violated any provision of:

(I) this chapter;

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

(III) a commitment made in a registration statement for a certificate of registration to operate the proprietary school or in an application for an exemption certificate;

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

(I) this chapter;

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

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

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

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

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

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

SB0210S01 compared with SB0210

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

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

(I) this chapter; or

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

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

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

(2) Division staff may place reasonable limits upon a proprietary school's continued certificate of registration to operate if:

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

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

(3) (a) The division may:

~~[(a)]~~ (i) conduct a criminal background check on an individual described in Subsection 13-34-107(2)(a)(ii)(B); and

~~[(b)]~~ (ii) require a proprietary school to provide to the division any information and to cover any costs necessary to conduct a criminal background check on an individual described in Subsection 13-34-107(2)(a)(ii)(B) ~~[(I) through (IV), including:~~

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

(B) consent to a criminal background check by the Utah Bureau of Criminal Identification and the Federal Bureau of Investigation;

(C) the cost of a criminal background check; and

(D) the cost of fingerprinting.

(b) Money paid to the division for the cost of a criminal background check is nonlapsing.

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Legislative Review Note

SB0210S01 compared with SB0210

~~as of 2-16-11 9:13 AM~~

~~Office of Legislative Research and General Counsel}~~