

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 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;



- 26 ▶ modifies a provision relating to division inspections of a proprietary school;
- 27 ▶ modifies a provision relating to criminal background checks that the division may
- 28 require;
- 29 ▶ authorizes the division to establish a process for dealing with complaints concerning
- 30 postsecondary educational institutions; and
- 31 ▶ establishes a process for the division to confirm that an institution is a private
- 32 nonprofit educational institution.

33 **Money Appropriated in this Bill:**

34 None

35 **Other Special Clauses:**

36 None

37 **Utah Code Sections Affected:**

38 AMENDS:

- 39 **13-34-103**, as enacted by Laws of Utah 2002, Chapter 222
- 40 **13-34-105**, as last amended by Laws of Utah 2010, Chapters 218 and 378
- 41 **13-34-106**, as last amended by Laws of Utah 2005, Chapter 242
- 42 **13-34-107**, as last amended by Laws of Utah 2010, Chapters 278 and 378
- 43 **13-34-108**, as last amended by Laws of Utah 2005, Chapter 242
- 44 **13-34-110**, as enacted by Laws of Utah 2002, Chapter 222
- 45 **13-34-113**, as last amended by Laws of Utah 2008, Chapter 382

46 ENACTS:

- 47 **13-34-107.5**, Utah Code Annotated 1953
- 48 **13-34-107.6**, Utah Code Annotated 1953



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

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

52 **13-34-103. Definitions.**

53 As used in this chapter:

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

55 school and who:

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

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

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

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

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

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

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

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

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

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

76 (b) solicit business in the state;

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

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

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

86 (9) "Postsecondary education" means education or educational services offered
87 primarily to persons who have completed or terminated their secondary or high school

88 education or who are beyond the age of compulsory school attendance.

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

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

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

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

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

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

100 **13-34-105. Exempted institutions.**

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

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

104 (i) the state;

105 (ii) a local school district; or

106 (iii) other Utah governmental subdivision;

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

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

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

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

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

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

119 employees or members; and

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

121 (g) an institution that:

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

123 avocational, nonvocational, or recreational in nature[~~;~~that]; and

124 (B) does not[~~;~~(~~it~~)] advertise occupation objectives[~~;~~] or [~~(it)~~] grant educational

125 credentials; or

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

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

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

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

130 (ii) for which academic credit is not awarded;

131 (i) an institution that offers programs:

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

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

134 (j) an education provider certified by the Division of Real Estate under Section

135 61-2c-204.1;

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

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

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

139 and

140 (ii) exclusively offers aviation training that a student fully receives within 24 hours

141 after the student pays any tuition, fee, or other charge for the aviation training; [~~and~~]

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

143 institution's instructors, course coordinators, and courses are approved by the Department of

144 Health[~~;~~];

145 (m) an institution that exclusively conducts nurse aide training programs that are

146 approved by the State Office of Vocational Education and are subject to the Nurse Aide

147 Registry; and

148 (n) a private, nonprofit educational institution that has been in continuous operation for

149 at least 20 years, except as provided in Subsection (5), Subsection 13-34-106(8) and Section

150 13-34-107.6.

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

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

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

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

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

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

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

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

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

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

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

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

174 **13-34-106. Responsibilities of division.**

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

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

179 (2) issue;

180 (a) certification of registration upon receipt and approval of the registration statement

181 required under Section 13-34-107; and

182 (b) a certificate of exemption under Section 13-34-107.5 upon receipt and approval of
183 an application and verification that the requirements of Subsection 13-34-105(1)(e) and Section
184 13-34-107.5 are met;

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

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

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

192 (a) investigate;

193 (b) audit;

194 (c) review;

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

197 (e) refer a matter to:

198 (i) another governmental entity; or

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

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

204 (7) consent to the use of educational terms in business names in accordance with
205 Section 13-34-114[-]; and

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

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

210 **13-34-107. Advertising, recruiting, or operating a proprietary school -- Required**
211 **registration statement or exemption -- Certificate of registration -- Registration does not**

212 **constitute endorsement.**

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

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

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

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

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

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

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

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

- 232 (i) verified by the oath or affirmation of the owner or a responsible officer of the
233 proprietary school filing the registration statement or exemption; and
- 234 (ii) include a certification as to whether any of the following has violated laws, federal
235 regulations, or state rules as determined in a criminal, civil, or administrative proceeding:

- 236 (A) the proprietary school; or
- 237 (B) any of the following with respect to the proprietary school:
 - 238 (I) an owner;
 - 239 (II) an officer;
 - 240 (III) a director;
 - 241 (IV) an administrator;
 - 242 (V) a faculty member;

243 (VI) a staff member; or

244 (VII) an agent.

245 (b) The proprietary school shall:

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

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

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

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

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

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

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

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

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

265 (b) Fees are not refundable.

266 (c) Fees shall be deposited in the Commerce Service Account created by Section
267 13-1-2.

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

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

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

273 (A) is financially sound; and

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

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

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

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

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

284 (A) pro forma financial statements until the information described in Subsection
285 (6)(b)(ii) is available; and

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

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

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

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

297 (c) In evaluating a proprietary school's fiscal responsibility under this Subsection (6),
298 the division may consider:

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

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

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

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

305 (v) any history of a prior entity that:
306 (A) is owned or operated by any individual with an ownership interest in the
307 proprietary school; and
308 (B) has failed to maintain fiscal responsibility.
309 (d) The division may require evidence of financial status at other times when it is in the
310 best interest of students to require such information.
311 (7) (a) A proprietary school applying for an initial certificate of registration or seeking
312 renewal shall provide in a form approved by the division:
313 (i) a surety bond;
314 (ii) a certificate of deposit; or
315 (iii) an irrevocable letter of credit.
316 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
317 division may make rules providing for:
318 (i) the amount of the bond, certificate, or letter of credit required under Subsection
319 (7)(a), not to exceed in amount the anticipated tuition and fees to be received by the proprietary
320 school during a school year;
321 (ii) the execution of the bond, certificate, or letter of credit;
322 (iii) cancellation of the bond, certificate, or letter of credit during or at the end of the
323 registration term; and
324 (iv) any other matters related to providing the bond, certificate, or letter of credit
325 required under Subsection (7)(a).
326 (c) The bond, certificate, or letter of credit shall be used as a protection against loss of
327 advanced tuition, book fees, supply fees, or equipment fees:
328 (i) collected by the proprietary school from a student or a student's parent, guardian, or
329 sponsor prior to the completion of the program or courses for which it was collected; or
330 (ii) for which the student is liable.
331 (8) (a) Except as provided in Section 13-34-113, the division may not refuse
332 acceptance of a registration statement that is:
333 (i) tendered for filing and, based on a preliminary review, appears to be in compliance
334 with Subsections (1), (2), and (6); and
335 (ii) accompanied by:

- 336 (A) the required fee; and
337 (B) one of the following required by Subsection (7):
338 (I) surety bond;
339 (II) certificate of deposit; or
340 (III) irrevocable letter of credit.
341 (b) A certificate of registration is effective upon the date of issuance.
342 (c) The responsibility of compliance is upon the proprietary school and not upon the
343 division.

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

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

- 350 (A) the required fee; and
351 (B) one of the following required by Subsection (7):
352 (I) surety bond;
353 (II) certificate of deposit; or
354 (III) irrevocable letter of credit.

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

- 358 (a) an acceptance of:
359 (i) a registration statement;
360 (ii) a renewal statement; or
361 (iii) an amended registration statement; and
362 (b) issuance of a certificate of registration.

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

364 **13-34-107.5. Exemption certificate -- Application and renewal process.**

365 (1) As used in this section:

366 (a) "Exemption certificate" means an accredited institution certificate of exemption that

367 complies with:

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

369 Administrative Rulemaking Act; and

370 (ii) this section.

371 (b) "Exempt institution" means an institution that is exempt from this chapter under

372 Subsection 13-34-105(1)(e) but required under 34 C.F.R. 600.9 to be legally authorized by a

373 state.

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

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

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

377 (b) An institution filing an application for an exemption certificate shall file a separate

378 application and pay a separate fee for each physical campus that the institution operates.

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

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

381 (b) include proof of current accreditation from a regional or national accrediting agency

382 recognized by the United States Department of Education;

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

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

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

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

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

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

397 (b) For an exemption certificate that the division issues pursuant to an application the

398 division receives during 2011, the division may extend the period for which the exemption
399 certificate is effective by up to 11 months in order to ensure that renewal dates are
400 appropriately staggered to allow the division to manage resources and work load.

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

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

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

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

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

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

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

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

416 (b) is accompanied by the required fee.

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

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

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

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

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

429 Section 6. Section **13-34-107.6** is enacted to read:

430 **13-34-107.6. Confirmation of private nonprofit educational institution -- Effect of**
431 **confirmation -- Fees.**

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

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

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

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

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

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

445 **13-34-108. Information required to be available -- Documents to be fair and**
446 **accurate -- Fair and ethical practices.**

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

450 (a) the institution or proprietary school makes available:

451 (i) in writing;

452 (ii) to all applicants;

453 (iii) prior to:

454 (A) enrollment of the applicant; or

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

456 (iv) information that includes the following:

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

459 (B) the address of the proprietary school;

- 460 (C) the location of the proprietary school;
- 461 (D) the facilities, faculty, training equipment, and instructional programs of the
- 462 proprietary school;
- 463 (E) enrollment qualifications;
- 464 (F) accurate information regarding the relationship of the program of the institution or
- 465 proprietary school to state licensure requirements for practicing a related occupation and
- 466 profession in Utah;
- 467 (G) tuition, fees, and other charges and expenses;
- 468 (H) financial assistance, cancellation, and tuition refund policies, including the posting
- 469 of:
- 470 (I) a surety bond;
- 471 (II) a certificate of credit; or
- 472 (III) an irrevocable letter of credit;
- 473 (I) length of programs;
- 474 (J) graduation requirements;
- 475 (K) subject to Subsection (2), for each of the immediately preceding three years:
- 476 (I) graduation rates; and
- 477 (II) employment rates; and
- 478 (L) awarding of appropriate educational credentials to indicate satisfactory course
- 479 completions;
- 480 (b) all recruiting documents, advertising, solicitations, publicity releases, and other
- 481 public statements regarding the proprietary school are fair and accurate;
- 482 (c) all agents or sales representatives of the proprietary school are required by the
- 483 proprietary school to comply with ethical practices prescribed by the division; and
- 484 (d) the institution or proprietary school makes available to the division for inspection
- 485 during normal business hours, whether or not the inspection is scheduled or announced, all
- 486 records relevant to:
- 487 (i) the operation of the institution or proprietary school; and
- 488 (ii) the efforts of the institution or proprietary school to comply with this chapter.
- 489 (2) (a) Beginning on May 2, 2005, an institution or proprietary school shall collect and
- 490 maintain the information necessary to comply with Subsection (1)(a)(iv)(K).

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

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

496 **13-34-110. Enforcement of contracts or agreements -- Rescission based on**
497 **defective registration statement.**

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

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

503 (a) fails to file an effective registration statement;

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

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

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

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

515 Section 9. Section **13-34-113** is amended to read:

516 **13-34-113. Denial, suspension, or revocation of a certificate of registration or**
517 **exemption certificate -- Limitations.**

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

- 522 (a) the division finds that the order is in the public interest; and
- 523 (b) (i) the registration statement [or], renewal statement, or application for an
- 524 exemption certificate is incomplete, false, or misleading in any respect;
- 525 (ii) the division determines that the educational credential associated with the
- 526 proprietary school or accredited institution represents the undertaking or completion of
- 527 educational achievement that has not been undertaken and earned; or
- 528 (iii) the proprietary school [or], accredited institution, or an individual described in
- 529 Subsection 13-34-107(2)(a)(ii)(B) has:
- 530 (A) violated any provision of:
- 531 (I) this chapter;
- 532 (II) the rules made by the division pursuant to this chapter; or
- 533 (III) a commitment made in a registration statement for a certificate of registration to
- 534 operate the proprietary school or in an application for an exemption certificate;
- 535 (B) caused or allowed to occur a violation of any provision of:
- 536 (I) this chapter;
- 537 (II) the rules made by the division pursuant to this chapter; or
- 538 (III) a commitment made in a registration statement for a certificate of registration to
- 539 operate the proprietary school;
- 540 (C) been enjoined by any court, or is the subject of an administrative or judicial order
- 541 issued in this or another state, if the injunction or order:
- 542 (I) includes a finding or admission of fraud, breach of fiduciary duty, or material
- 543 misrepresentation; or
- 544 (II) was based on a finding of lack of integrity, truthfulness, or mental competence;
- 545 (D) been convicted of a crime involving moral turpitude;
- 546 (E) obtained or attempted to obtain a certificate of registration under this chapter by
- 547 misrepresentation;
- 548 (F) failed to timely file with the division any report required by:
- 549 (I) this chapter; or
- 550 (II) rules made by the division pursuant to this chapter;
- 551 (G) failed to furnish information requested by the division; or
- 552 (H) failed to pay an administrative fine imposed by the division in accordance with this

553 chapter.

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

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

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

559 (3) (a) The division may:

560 [~~(a)~~] (i) conduct a criminal background check on an individual described in Subsection
561 13-34-107(2)(a)(ii)(B); and

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

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

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

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

569 (D) the cost of fingerprinting.

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

FISCAL NOTE

S.B. 210 1st Sub. (Green)

SHORT TITLE: Utah Postsecondary Proprietary School Act Amendments

SPONSOR: **Bramble, C.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this legislation will result in annual revenue of \$145,500. Ongoing Commerce Department expenses associated with the new exemption are estimated at \$133,200. Commerce Service Fund revenue and expenditures affect the annual transfer to the General Fund. As such, this bill will result in the increase in the annual transfer to the General Fund of \$12,300.

STATE BUDGET DETAIL TABLE

	FY 2011	FY 2012	FY 2013
Revenue:			
General Fund	\$0	\$12,300	\$12,300
Commerce Service Fund	\$0	\$133,200	\$133,200
Total Revenue	\$0	\$145,500	\$145,500
Expenditure:			
Commerce Service Fund	\$0	\$133,200	\$133,200
Total Expenditure	\$0	\$133,200	\$133,200
Net Impact, All Funds (Rev.-Exp.)	\$0	\$12,300	\$12,300
Net Impact, General/Education Funds	\$0	\$12,300	\$12,300

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this legislation is expected to result in 97 proprietary school campuses requesting exemption, paying an average annual fee of \$1,500.