

1 **POSTSECONDARY SCHOOL STATE AUTHORIZATION**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: James A. Dunnigan**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill enacts the Utah Postsecondary School State Authorization Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ defines terms;
- 13 ▶ provides that a postsecondary school may obtain state authorization for purposes of
- 14 34 C.F.R. Sec. 600.9 by obtaining a certificate of postsecondary state authorization;
- 15 ▶ allows the Division of Consumer Protection to:
- 16 • enter into a reciprocity agreement with another state; and
- 17 • make rules consistent with the provisions of this bill;
- 18 ▶ establishes qualifications for and a procedure by which a postsecondary school may
- 19 obtain a certificate of postsecondary state authorization from the Division of
- 20 Consumer Protection;
- 21 ▶ provides that, under certain circumstances, the Division of Consumer Protection
- 22 may deny, suspend, or revoke a certificate of postsecondary state authorization;
- 23 ▶ provides procedures to enforce compliance with the provisions of this bill; and
- 24 ▶ makes technical and conforming changes.

25 **Money Appropriated in this Bill:**

26 None

27 **Other Special Clauses:**



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **13-2-1**, as last amended by Laws of Utah 2012, Chapter 375

32 **13-34-103**, as last amended by Laws of Utah 2011, Chapter 221

33 **13-34-105**, as last amended by Laws of Utah 2013, Chapter 124

34 **13-34-106**, as last amended by Laws of Utah 2011, Chapter 221

35 **13-34-110**, as last amended by Laws of Utah 2011, Chapter 221

36 **13-34-113**, as last amended by Laws of Utah 2011, Chapter 221

37 ENACTS:

38 **13-34a-101**, Utah Code Annotated 1953

39 **13-34a-102**, Utah Code Annotated 1953

40 **13-34a-103**, Utah Code Annotated 1953

41 **13-34a-201**, Utah Code Annotated 1953

42 **13-34a-202**, Utah Code Annotated 1953

43 **13-34a-203**, Utah Code Annotated 1953

44 **13-34a-204**, Utah Code Annotated 1953

45 **13-34a-205**, Utah Code Annotated 1953

46 **13-34a-206**, Utah Code Annotated 1953

47 **13-34a-207**, Utah Code Annotated 1953

48 **13-34a-301**, Utah Code Annotated 1953

49 **13-34a-302**, Utah Code Annotated 1953

50 **13-34a-303**, Utah Code Annotated 1953

51 **13-34a-304**, Utah Code Annotated 1953

52 **13-34a-305**, Utah Code Annotated 1953

53 **13-34a-306**, Utah Code Annotated 1953

54 REPEALS:

55 **13-34-107.5**, as enacted by Laws of Utah 2011, Chapter 221

56 **13-34-107.6**, as enacted by Laws of Utah 2011, Chapter 221



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

59 Section 1. Section 13-2-1 is amended to read:

60 **13-2-1. Consumer protection division established -- Functions.**

61 (1) There is established within the Department of Commerce the Division of Consumer
62 Protection.

63 (2) The division shall administer and enforce the following:

- 64 (a) Chapter 5, Unfair Practices Act;
- 65 (b) Chapter 10a, Music Licensing Practices Act;
- 66 (c) Chapter 11, Utah Consumer Sales Practices Act;
- 67 (d) Chapter 15, Business Opportunity Disclosure Act;
- 68 (e) Chapter 20, New Motor Vehicle Warranties Act;
- 69 (f) Chapter 21, Credit Services Organizations Act;
- 70 (g) Chapter 22, Charitable Solicitations Act;
- 71 (h) Chapter 23, Health Spa Services Protection Act;
- 72 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- 73 (j) Chapter 26, Telephone Fraud Prevention Act;
- 74 (k) Chapter 28, Prize Notices Regulation Act;
- 75 (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- 76 (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- 77 (n) Chapter 34a, Utah Postsecondary School State Authorization Act;
- 78 [~~(n)~~] (o) Chapter 41, Price Controls During Emergencies Act;
- 79 [~~(o)~~] (p) Chapter 42, Uniform Debt-Management Services Act; and
- 80 [~~(p)~~] (q) Chapter 49, Immigration Consultants Registration Act.

81 Section 2. Section 13-34-103 is amended to read:

82 **13-34-103. Definitions.**

83 As used in this chapter:

- 84 (1) "Agent" means any person who:
 - 85 (a) owns an interest in or is employed by a proprietary school [~~and who~~]; and
 - 86 [~~(a)~~] (b) (i) enrolls or attempts to enroll a resident of this state in a proprietary school;
 - 87 [~~(b)~~] (ii) offers to award educational credentials for remuneration on behalf of a
 - 88 proprietary school; or
 - 89 [~~(c)~~] (iii) holds himself out to residents of this state as representing a proprietary school

90 for any purpose.

91 (2) (a) "Certificate of registration" means approval ~~[of]~~ from the division to operate a
92 school or institution in compliance with this chapter and rules adopted under this chapter. ~~[The~~
93 ~~registration is not]~~

94 (b) "Certificate of registration" does not mean an endorsement of the school or
95 institution by either the division or the state.

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

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

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

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

105 (7) "Operate" in this state means to:

106 (a) maintain a place of business in the state;

107 (b) solicit business in the state;

108 (c) conduct significant educational activities within the state; or

109 (d) offer or provide postsecondary instruction leading to a postsecondary degree or
110 certificate to any number of Utah residents from a location outside the state by correspondence
111 or any telecommunications or electronic media technology.

112 (8) "Ownership" means:

113 (a) the controlling interest in a school, institution, or college ~~[. If]; or~~

114 (b) if an entity holds the controlling interest in the school, institution, or college ~~[is~~
115 ~~owned or controlled by other than a natural person, "ownership" refers to]~~, the controlling
116 interest in the ~~[legal]~~ entity ~~[which controls]~~ that holds the controlling interest in the school,
117 institution, or college.

118 (9) "Postsecondary education" means education or educational services offered
119 primarily to ~~[persons]~~ individuals who:

120 (a) have completed or terminated their secondary or high school education; or ~~[who]~~

121 (b) are beyond the age of compulsory school attendance.

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

125 [~~(a)~~] (i) in consideration of the payment of tuition or fees; and

126 [~~(b)~~] (ii) for the attainment of educational, professional, or vocational objectives.

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

129 (b) "Proprietary school" does not include an institution that is exempt from this chapter
130 under Section 13-34-105.

131 [~~(12)~~] (11) "Utah institution" means a [~~postsecondary educational~~] school or institution
132 [~~whose headquarters or primary operations are in Utah.]~~ that:

133 (a) offers postsecondary education; and

134 (b) is headquartered or primarily operates in Utah.

135 Section 3. Section **13-34-105** is amended to read:

136 **13-34-105. Exempted institutions.**

137 (1) This chapter does not apply to:

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

139 by:

140 (i) the state;

141 (ii) a local school district; or

142 (iii) other Utah governmental subdivision;

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

144 (c) a lawful enterprise that offers only professional review programs, [~~such as~~]

145 including C.P.A. and bar examination review and preparation courses;

146 (d) a private[~~, postsecondary educational~~] institution that:

147 (i) provides postsecondary education; and

148 (ii) is owned, controlled, operated, or maintained by a bona fide church or religious

149 denomination, [~~which~~] that is exempted from property taxation under the laws of this state;

150 (e) [~~subject to Subsection (3) and Section 13-34-107.5;~~] a school or institution that is

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

152 Department of Education;

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

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

157 (ii) does not~~[, in advertising, describe itself]~~ advertise as a school;

158 (g) an institution that:

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

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

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

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

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

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

167 (i) an institution that offers programs:

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

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

170 (j) an education provider certified by the Division of Real Estate under Section
171 [61-2c-204.1](#);

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

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

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

175 and

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

178 (l) an institution that provides emergency medical services training if all of the
179 institution's instructors, course coordinators, and courses are approved by the Department of
180 Health; and

181 (m) an institution that exclusively conducts nurse aide training programs that are
182 approved by the State Office of Vocational Education and are subject to the Nurse Aide

183 Registry[; and].

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

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

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

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

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

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

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

202 [~~(a) established as an educational institution within the state;~~]

203 [~~(b) independent of the state system of higher education;~~]

204 [~~(c) subject to compliance with the applicable provisions of this chapter; and]~~

205 [~~(d) authorized to operate educational programs beyond secondary education, including~~
 206 ~~programs leading to a degree or certificate.]~~

207 Section 4. Section **13-34-106** is amended to read:

208 **13-34-106. Responsibilities of division.**

209 The division [~~is responsible for the administration of this chapter, and]~~ shall [~~do the~~
 210 ~~following]~~:

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

213 [~~(2) issue:]~~

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

216 ~~[(b) a certificate of exemption under Section 13-34-107.5 upon receipt and approval of~~
 217 ~~an application and verification that the requirements of Subsection 13-34-105(1)(e) and Section~~
 218 ~~13-34-107.5 are met;]~~

219 (2) upon receipt and approval of a registration statement under Section 13-34-107,
 220 issue a certification of registration;

221 (3) receive, investigate, and make available for public inspection ~~[the]~~ a registration
 222 ~~[statements]~~ statement filed by a proprietary ~~[schools]~~ school operating or intending to operate
 223 in the state;

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

226 (5) on the division's own initiative or in response to a complaint filed with the division,
 227 do any of the following with respect to ~~[any]~~ an institution subject to, or reasonably believed by
 228 the division to be subject to, this chapter:

229 (a) investigate;

230 (b) audit;

231 (c) review;

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

234 (e) refer a matter to ~~[-(i)]~~ another governmental entity; ~~[or]~~

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

237 (6) negotiate and enter into an interstate reciprocity ~~[agreements]~~ agreement with ~~[other~~
 238 ~~states]~~ another state, if in the judgment of the division, the ~~[agreements are or will help to]~~
 239 agreement helps effectuate the purposes of this chapter;

240 (7) consent to the use of ~~[educational terms in business names]~~ an educational term in
 241 a business name in accordance with Section 13-34-114; and

242 (8) establish and maintain a process for reviewing and appropriately acting on
 243 complaints concerning ~~[postsecondary educational]~~ institutions ~~[operating]~~ that provide
 244 postsecondary education and operate in the state, including enforcing applicable state laws.

245 Section 5. Section 13-34-110 is amended to read:

246 **13-34-110. Enforcement of contracts or agreements -- Rescission based on**
247 **defective registration statement.**

248 (1) A proprietary school [~~shall be unable to~~] may not enforce in the courts of this state
249 [~~any~~] a contract or agreement relating to postsecondary education services in this state unless,
250 at the time the contract or agreement was [~~entered into~~] executed, an effective registration
251 statement was on file with the division and made accessible to every applicant at the time of
252 admission to the school.

253 (2) It is a violation of this chapter if a proprietary school or [~~its~~] the proprietary school's
254 agent:

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

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

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

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

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

267 Section 6. Section 13-34-113 is amended to read:

268 **13-34-113. Denial, suspension, or revocation of a certificate of registration --**
269 **Limitations.**

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

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

275 (b) (i) the registration statement[;] or renewal statement[;] ~~or application for an~~

276 ~~exemption certificate~~] is incomplete, false, or misleading in any respect;

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

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

282 (A) violated any provision of:

283 (I) this chapter;

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

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

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

288 (I) this chapter;

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

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

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

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

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

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

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

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

301 (I) this chapter; or

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

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

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

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

307 certificate of registration to operate if:

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

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

311 [~~(3)(a) The division may:~~]

312 [~~(i) conduct a criminal background check on an individual described in Subsection
313 ~~13-34-107(2)(a)(ii)(B); and]~~~~

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

317 [~~(A) a fingerprint card in a form acceptable to the division;]~~

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

320 [~~(C) the cost of a criminal background check; and]~~

321 [~~(D) the cost of fingerprinting;]~~

322 [~~(b) Money paid to the division for the cost of a criminal background check is
323 nonlapsing;]~~

324 (3) (a) The division may require an individual described in Subsection

325 13-34-107(2)(a)(ii)(B) to:

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

327 (ii) consent to a criminal background check by:

328 (A) the Federal Bureau of Investigation;

329 (B) the Utah Bureau of Criminal Identification; or

330 (C) another agency of any state that performs criminal background checks.

331 (b) The proprietary school or the individual who is subject to the background check
332 shall pay the cost of:

333 (i) the fingerprint card described in Subsection (3)(a)(i); and

334 (ii) the criminal background check.

335 Section 7. Section **13-34a-101** is enacted to read:

336 **CHAPTER 34a. UTAH POSTSECONDARY SCHOOL**

337 **STATE AUTHORIZATION ACT**

Part 1. General Provisions

13-34a-101. Title.

(1) This chapter is known as "Utah Postsecondary School State Authorization Act."

(2) This part is known as "General Provisions."

Section 8. Section 13-34a-102 is enacted to read:

13-34a-102. Definitions.

As used in this chapter:

(1) "Accredited institution" means a postsecondary school that is accredited by an accrediting agency.

(2) "Accrediting agency" means a regional or national private educational association that:

(a) is recognized by the United States Department of Education;

(b) develops evaluation criteria; and

(c) conducts peer evaluations to assess whether a postsecondary school meets the criteria described in Subsection (2)(b).

(3) "Agent" means a person who:

(a) (i) owns an interest in a postsecondary school; or

(ii) is employed by a postsecondary school; and

(b) (i) enrolls or attempts to enroll a Utah resident in a postsecondary school;

(ii) offers to award an educational credential for remuneration on behalf of a postsecondary school; or

(iii) holds oneself out to Utah residents as representing a postsecondary school for any purpose.

(4) "Certificate of postsecondary state authorization" means a certificate issued by the division to a postsecondary school in accordance with the provisions of this chapter.

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

(6) "Educational credential" means a degree, diploma, certificate, transcript, report, document, letter of designation, mark, or series of letters, numbers, or words that represent enrollment, attendance, or satisfactory completion of the requirements or prerequisites of an educational program.

(7) "Intentional violation" means a violation of a provision of this chapter that occurs

369 or continues after the division, the attorney general, a county attorney, or a district attorney
370 gives the violator written notice, delivered by certified mail, that the violator is or has been in
371 violation of the provision.

372 (8) "Operate" means to:

373 (a) maintain a place of business in the state;

374 (b) conduct significant educational activities within the state; or

375 (c) provide postsecondary education to a Utah resident that:

376 (i) is intended to lead to a postsecondary degree or certificate; and

377 (ii) is provided from a location outside the state by correspondence or
378 telecommunications or electronic media technology.

379 (9) "Operating history" means a report, written evaluation, publication, or other
380 documentation regarding:

381 (a) the current accreditation status of a postsecondary school with an accrediting
382 agency; and

383 (b) an action taken by an accrediting agency that:

384 (i) places a postsecondary school on probation;

385 (ii) imposes disciplinary action against a postsecondary school; or

386 (iii) requires a postsecondary school to take corrective action.

387 (10) "Ownership" means:

388 (a) the controlling interest in a postsecondary school; or

389 (b) if an entity holds the controlling interest in the postsecondary school, the
390 controlling interest in the entity that holds the controlling interest in the postsecondary school.

391 (11) "Postsecondary education" means education or educational services offered
392 primarily to individuals who:

393 (a) have completed or terminated their secondary or high school education; or

394 (b) are beyond the age of compulsory school attendance.

395 (12) (a) "Postsecondary school" means a person that provides or offers educational
396 services to individuals who:

397 (i) have completed or terminated secondary or high school education; or

398 (ii) are beyond the age of compulsory school attendance.

399 (b) "Postsecondary school" does not include an institution that is part of the state

400 system of higher education under Section 53B-1-102.

401 (13) "Private postsecondary school" means a postsecondary school that is not a public
402 postsecondary school.

403 (14) "Public postsecondary school" means a postsecondary school:

404 (a) established by a state or other governmental entity; and

405 (b) substantially supported with government funds.

406 Section 9. Section **13-34a-103** is enacted to read:

407 **13-34a-103. Duties of the division.**

408 (1) The division shall administer and enforce the provisions of this chapter.

409 (2) In administering this chapter, the division shall:

410 (a) receive and review completed registration forms in accordance with the provisions
411 of this chapter;

412 (b) develop, maintain, and make available to the public a list of postsecondary schools
413 that have a current, valid certificate of postsecondary state authorization;

414 (c) adopt a fee schedule in accordance with Section 63J-1-504 to cover the cost of
415 processing a registration form and issuing a certificate of postsecondary state authorization; and

416 (d) in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and
417 consistent with this chapter, make rules governing:

418 (i) the content and form of a registration form;

419 (ii) the filing and review procedures relating to a registration form submitted under this
420 chapter;

421 (iii) the filing and review of complaints filed with the division under this chapter;

422 (iv) the denial, suspension, or revocation of a certificate of postsecondary school state
423 authorization; and

424 (v) enforcement of the provisions of this chapter.

425 (3) (a) The division may execute an interstate reciprocity agreement.

426 (b) If the division executes an interstate reciprocity agreement described in Subsection
427 (3)(a):

428 (i) except as provided by division rule, the provisions of this chapter do not apply to a
429 postsecondary school that obtains state authorization under the reciprocity agreement; and

430 (ii) the division may, in accordance with Title 63G, Chapter 3, Utah Administrative

431 Rulemaking Act, make rules relating to:

432 (A) the standards for granting a postsecondary school state authorization under a
433 reciprocity agreement;

434 (B) any filing, documentation, or fee required for a postsecondary school to obtain state
435 authorization under a reciprocity agreement; and

436 (C) penalties if a postsecondary school that obtains state authorization under a
437 reciprocity agreement fails to comply with the rules that the division makes under this
438 Subsection (3).

439 Section 10. Section **13-34a-201** is enacted to read:

440 **Part 2. State Authorization Procedures**

441 **13-34a-201. Title.**

442 This part is known as "State Authorization Procedures."

443 Section 11. Section **13-34a-202** is enacted to read:

444 **13-34a-202. State authorization -- Certificate of postsecondary state**
445 **authorization.**

446 (1) A postsecondary school that operates in the state obtains state authorization for
447 purposes of 34 C.F.R. Sec. 600.9 if the postsecondary school obtains a certificate of
448 postsecondary state authorization under this chapter.

449 (2) A postsecondary school may obtain state authorization in a manner different from
450 the manner described in Subsection (1) if the alternative manner is accepted by the United
451 States Department of Education.

452 (3) (a) A certificate of postsecondary state authorization is not an endorsement or
453 approval of a postsecondary school by the division or the state.

454 (b) A postsecondary school may not represent that a certificate of postsecondary state
455 authorization is an endorsement or approval by the division or the state.

456 Section 12. Section **13-34a-203** is enacted to read:

457 **13-34a-203. Nonprofit postsecondary school -- Procedure to obtain certificate of**
458 **postsecondary state authorization.**

459 (1) The division shall, in accordance with the provisions of this section, issue a
460 certificate of postsecondary state authorization to a postsecondary school that:

461 (a) is a nonprofit postsecondary school; and

462 (b) has operated as a nonprofit for at least 20 years.
463 (2) To obtain a certificate of postsecondary state authorization under this section, a
464 postsecondary school shall:
465 (a) submit a completed registration form to the division that:
466 (i) for a nonprofit, private postsecondary school, includes:
467 (A) a copy of the private postsecondary school's articles of incorporation;
468 (B) documentation from the United States Internal Revenue Service that demonstrates
469 that the private postsecondary school has nonprofit status, and that the private postsecondary
470 school has had nonprofit status for at least 20 consecutive years from the day on which the
471 private postsecondary school submits the completed registration form; and
472 (C) satisfactory documentation that the private postsecondary school has complied with
473 the complaint process requirements described in Section [13-34a-206](#); or
474 (ii) for a nonprofit, public postsecondary school, includes:
475 (A) documentation sufficient to demonstrate that the public postsecondary school has
476 operated as a nonprofit for at least 20 consecutive years from the day on which the public
477 postsecondary school submits the completed registration form; and
478 (B) satisfactory documentation that the public postsecondary school has complied with
479 the complaint process requirements described in Section [13-34a-206](#); and
480 (b) pay a nonrefundable fee, established by the division, in accordance with Subsection
481 [13-34a-103\(2\)\(c\)](#) to pay for the cost of processing the registration form and issuing the
482 certificate of postsecondary state authorization.
483 (3) The division shall develop and make available to the public:
484 (a) a registration form for nonprofit, private postsecondary schools, as described in
485 Subsection (2)(a)(i); and
486 (b) a registration form for nonprofit, public postsecondary schools, as described in
487 Subsection (2)(a)(ii).
488 (4) The division shall deposit money that the division receives under Subsection (2)(b)
489 into the Commerce Service Account, created in Section [13-1-2](#).
490 (5) If there is a change in circumstance that may affect a postsecondary school's status
491 under this section, the postsecondary school shall notify the division in writing of the change
492 within 30 days after the day on which the change occurs.

- 493 (6) A certificate of postsecondary state authorization issued under this section:
494 (a) establishes a postsecondary school by name as an educational institution, as
495 described in 34 C.F.R. Sec. 600.9(a)(1)(i);
496 (b) makes a postsecondary school independent of the state system of higher education;
497 and
498 (c) authorizes a postsecondary school to operate educational programs in the state that
499 are beyond secondary education, including programs that lead to a degree or certificate.

500 Section 13. Section **13-34a-204** is enacted to read:

501 **13-34a-204. Postsecondary school -- Procedure to obtain certificate of**
502 **postsecondary state authorization.**

503 (1) The division shall, in accordance with the provisions of this section, issue a
504 certificate of postsecondary state authorization to a postsecondary school.

505 (2) To obtain a certificate of postsecondary state authorization under this section, a
506 postsecondary school shall:

507 (a) submit a completed registration form to the division that includes:

508 (i) proof of current accreditation from the postsecondary school's accrediting agency;

509 (ii) proof that the postsecondary school is fiscally responsible and can reasonably fulfill
510 the postsecondary school's financial obligations, including:

511 (A) a copy of an audit of the postsecondary school's financial statements, with all
512 applicable footnotes, including a balance sheet, an income statement, a statement of retained
513 earnings, and a statement of cash flow, that was performed by a certified public accountant;

514 (B) at the postsecondary school's election, a copy of an audit of the postsecondary
515 school's parent company's financial statements, with all applicable footnotes, including a
516 balance sheet, an income statement, a statement of retained earnings, and a statement of cash
517 flow, that was performed by a certified public accountant; and

518 (C) a copy of all other financial documentation that the postsecondary school provided
519 to the postsecondary school's accrediting agency since the postsecondary school's last
520 registration with the division under this chapter or within the 12 months before the day on
521 which the postsecondary school submits a completed registration form under this section,
522 whichever is longer;

523 (iii) proof of good standing in the state where the postsecondary school is organized;

524 (iv) the postsecondary school's operating history with the postsecondary school's
525 accrediting agency since the postsecondary school's last registration with the division under this
526 chapter or within the 12 months before the day on which the postsecondary school submits a
527 completed registration form under this section, whichever is longer;

528 (v) the number of Utah residents who enrolled in the postsecondary school since the
529 postsecondary school's last registration with the division under this chapter or within the 12
530 months before the day on which the postsecondary school submits a completed registration
531 form under this section, whichever is longer;

532 (vi) satisfactory documentation that the postsecondary school has complied with the
533 complaint process requirements described in Section [13-34a-206](#);

534 (vii) (A) the number of complaints that a Utah resident has filed against the
535 postsecondary school since the postsecondary school's last registration with the division under
536 this chapter or within the 12 months before the day on which the postsecondary school submits
537 a completed registration form under this section, whichever is longer; and

538 (B) upon request, includes copies of the complaints described in Subsection
539 (2)(a)(vii)(A);

540 (viii) a disclosure that states whether the postsecondary school or an owner, officer,
541 director, or administrator of the postsecondary school has been:

542 (A) convicted of a crime;

543 (B) subject to an order issued by a court; or

544 (C) subject to an order issued by an administrative agency that imposed disciplinary
545 action; and

546 (ix) a notarized personal verification by the owner or a responsible officer of the
547 postsecondary school that the information provided under Subsection (2)(a) is complete and
548 accurate; and

549 (b) pay a nonrefundable fee, established by the division, in accordance with Subsection
550 [13-34a-103](#)(2)(c) to pay for the cost of processing the registration form and issuing the
551 certificate of postsecondary state authorization.

552 (3) The division shall develop and make available to the public a registration form
553 described in Subsection (2)(a).

554 (4) The division shall deposit money that the division receives under Subsection (2)(b)

555 into the Commerce Service Account, created in Section 13-1-2.

556 (5) If a postsecondary school maintains more than one physical campus in the state, the
557 postsecondary school shall file a separate registration form for each physical campus in the
558 state.

559 (6) (a) A certificate of postsecondary state authorization issued under this section is not
560 transferrable.

561 (b) (i) If a postsecondary school's ownership or governing body changes after the
562 postsecondary school obtains a certificate of postsecondary state authorization under this
563 section, the postsecondary school shall submit a new completed registration form in accordance
564 with Subsection (2) within 60 days after the day on which the change in ownership or
565 governing body occurs.

566 (ii) If a postsecondary school fails to timely comply with the requirements described in
567 Subsection (6)(b)(i), the postsecondary school's certificate of postsecondary state authorization
568 immediately and automatically expires.

569 (c) If there is a change in circumstance that may affect a postsecondary school's status
570 under this section, the postsecondary school shall notify the division in writing of the change
571 within 30 days after the day on which the change occurs.

572 (7) A certificate of postsecondary state authorization issued under this section expires
573 one year after the day on which the certificate of postsecondary state authorization is issued.

574 Section 14. Section **13-34a-205** is enacted to read:

575 **13-34a-205. Background checks.**

576 (1) The division may require an owner, officer, director, administrator, faculty member,
577 staff member, or other agent of a postsecondary school that applies for or holds a certificate of
578 postsecondary state authorization to:

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

580 (b) consent to a criminal background check by:

581 (i) the Federal Bureau of Investigation;

582 (ii) the Utah Bureau of Criminal Identification; or

583 (iii) another agency of any state that performs criminal background checks.

584 (2) The postsecondary school or the postsecondary school's owner, officer, director,
585 administrator, faculty member, staff member, or other agent who is subject to the background

586 check shall pay the cost of:

587 (a) the fingerprint card described in Subsection (1)(a); and

588 (b) the criminal background check.

589 Section 15. Section **13-34a-206** is enacted to read:

590 **13-34a-206. Complaints -- Information for students and prospective students.**

591 (1) A postsecondary school shall provide each student or prospective student written
592 information regarding how to file a complaint against the postsecondary school with the
593 division, the postsecondary school's accrediting agency, and the postsecondary school's
594 approval or licensing entity.

595 (2) To satisfy the requirements described in Subsection (1), a postsecondary school
596 may place a conspicuous link on the postsecondary school's website that links to:

597 (a) the contact information of each entity described in Subsection (1); or

598 (b) a third party's website that states the contact information for each entity described
599 in Subsection (1).

600 (3) The division shall establish a process for reviewing and responding to complaints
601 that the division receives under this chapter.

602 Section 16. Section **13-34a-207** is enacted to read:

603 **13-34a-207. Discontinuance of operations.**

604 (1) If a postsecondary school ceases to operate, at least 30 days before the day on
605 which the postsecondary school ceases to operate, the postsecondary school shall give the
606 division written notice that includes:

607 (a) the date on which the postsecondary school will cease to operate; and

608 (b) for an accredited institution, a written certification, signed by the postsecondary
609 school's owner or officer, that the postsecondary school has complied with the postsecondary
610 school's accrediting agency's closure requirements.

611 (2) After a postsecondary school submits a written notice described in Subsection (1),
612 the postsecondary school may not recruit or enroll new students in the state.

613 Section 17. Section **13-34a-301** is enacted to read:

614 **Part 3. Enforcement**

615 **13-34a-301. Title.**

616 This part is known as "Enforcement."

617 Section 18. Section **13-34a-302** is enacted to read:

618 **13-34a-302. Denial, suspension, or revocation of certificate of postsecondary state**
619 **authorization.**

620 (1) In accordance with Chapter 2, Division of Consumer Protection, and Title 63G,
621 Chapter 4, Administrative Procedures Act, the division may deny, suspend, or revoke a
622 certificate of postsecondary state authorization if:

623 (a) for a certificate of postsecondary state authorization issued under Section
624 13-34a-203, the postsecondary school:

625 (i) fails to comply with a requirement described in Section 13-34a-203;

626 (ii) omits a material fact from the postsecondary school's completed registration form;

627 or

628 (iii) includes a material fact in the postsecondary school's completed registration form
629 that is incomplete, false, inaccurate, or misleading; or

630 (b) for a certificate of postsecondary state authorization issued under Section
631 13-34a-204:

632 (i) the denial, suspension, or revocation is in the public interest; and

633 (ii) the postsecondary school:

634 (A) fails to meet a requirement described in Section 13-34a-204;

635 (B) submits a registration form or any supporting documentation that is incomplete,
636 false, inaccurate, or misleading;

637 (C) grants an educational credential to an individual that the individual did not earn;

638 (D) violates a provision of this chapter or a rule made under this chapter;

639 (E) is the subject of an order issued by a court or an administrative agency that includes

640 a finding or admission of fraud, breach of fiduciary duty, or misrepresentation, or behavior that
641 lacked moral integrity, truthfulness, or mental competence;

642 (F) has been convicted of a crime of moral turpitude;

643 (G) fails to give the division information that the division requests in connection with a
644 certificate of postsecondary state authorization; or

645 (H) fails to timely pay a fine imposed under this chapter.

646 (2) For a postsecondary school that obtains a certificate of postsecondary state

647 authorization under Section 13-34a-204, the division may place reasonable requirements on the

648 postsecondary school if:

649 (a) the requirement protects student interests; and

650 (b) the postsecondary school engaged in any of the behavior described in Subsection

651 (1)(b)(ii).

652 Section 19. Section **13-34a-303** is enacted to read:

653 **13-34a-303. Right to rescind.**

654 If a postsecondary school's certificate of postsecondary state authorization is revoked
655 under Subsection [13-34a-302](#)(2), a student who enrolled in the postsecondary school in reliance
656 upon the postsecondary school's possession of a valid certificate of postsecondary state
657 authorization may rescind any enrollment agreement and obtain a full refund from the
658 postsecondary school for any tuition, fees, or other charges that the student paid to the
659 postsecondary school.

660 Section 20. Section **13-34a-304** is enacted to read:

661 **13-34a-304. Violations.**

662 A postsecondary school violates this chapter if:

663 (1) the postsecondary school fails to comply with a provision of this chapter or a rule
664 made under this chapter; or

665 (2) for a postsecondary school that submits a registration form under section
666 [13-34a-204](#), the postsecondary school:

667 (a) intentionally omits a material fact from the postsecondary school's registration
668 form; or

669 (b) includes a material fact in the postsecondary school's registration form that the
670 postsecondary school knows or should have known is false, deceptive, inaccurate, or
671 misleading.

672 Section 21. Section **13-34a-305** is enacted to read:

673 **13-34a-305. Enforcement.**

674 (1) The division may, in accordance with Chapter 2, Division of Consumer Protection,
675 and Title 63G, Chapter 4, Administrative Procedures Act:

676 (a) investigate a postsecondary school, in response to a complaint or on the division's
677 own initiative, to verify compliance with the provisions of this chapter; or

678 (b) initiate an adjudicative proceeding to enforce compliance with the provisions of

679 this chapter.

680 (2) (a) The division may refer an alleged violation of a provision of this chapter to the
681 attorney general, a county attorney, or a district attorney.

682 (b) The attorney general, county attorney, or district attorney shall investigate the
683 alleged violation, and, following the investigation, may file a civil or criminal action in district
684 court to:

685 (i) enjoin the defendant from further violation of the chapter; and

686 (ii) impose the applicable penalties described in Section [13-34a-306](#).

687 (3) Nothing in this chapter prevents a postsecondary school from performing an
688 internal investigation.

689 Section 22. Section **13-34a-306** is enacted to read:

690 **13-34a-306. Penalties.**

691 (1) In an adjudicative proceeding under Subsection [13-34a-305\(1\)](#) or in a district court
692 action under Subsection [13-34a-305\(2\)](#), the division or the district court may impose a fine of
693 up to:

694 (a) \$1,000 for each violation of this chapter that is not an intentional violation; and

695 (b) \$5,000 for each intentional violation.

696 (2) The division shall deposit any money the division receives under Subsection (1)
697 into the Consumer Protection Education and Training Fund, created in Section [13-2-8](#).

698 (3) A violation of a provision of this chapter is a violation of Section [13-11-4](#).

699 (4) An intentional violation is a class B misdemeanor.

700 Section 23. **Repealer.**

701 This bill repeals:

702 Section **[13-34-107.5](#), Exemption certificate -- Application and renewal process.**

703 Section **[13-34-107.6](#), Confirmation of private nonprofit educational institution --**
704 **Effect of confirmation -- Fees.**

Legislative Review Note

as of 2-24-14 6:52 PM

Office of Legislative Research and General Counsel