

**STATE RESPONSIBILITY FOR REGULATION
OF POSTSECONDARY PROPRIETARY
SCHOOLS**

2002 GENERAL SESSION

STATE OF UTAH

Sponsor: Afton B. Bradshaw

This act modifies provisions related to postsecondary proprietary schools. The act transfers the responsibility for registering and regulating postsecondary proprietary schools from the State Board of Regents to the Division of Consumer Protection. The act has a July 1, 2002 effective date and provides a repealer.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 13-2-1**, as last amended by Chapter 283, Laws of Utah 2001
- 16-6a-401**, as enacted by Chapter 300, Laws of Utah 2000
- 16-10a-401**, as last amended by Chapter 131, Laws of Utah 2000
- 16-11-16**, as enacted by Chapter 131, Laws of Utah 2000
- 42-2-6.6**, as last amended by Chapter 218, Laws of Utah 2001
- 48-2a-102**, as last amended by Chapter 131, Laws of Utah 2000
- 48-2c-106**, as enacted by Chapter 260, Laws of Utah 2001

ENACTS:

- 13-34-101**, Utah Code Annotated 1953
- 13-34-102**, Utah Code Annotated 1953
- 13-34-103**, Utah Code Annotated 1953
- 13-34-104**, Utah Code Annotated 1953
- 13-34-105**, Utah Code Annotated 1953
- 13-34-106**, Utah Code Annotated 1953
- 13-34-107**, Utah Code Annotated 1953
- 13-34-108**, Utah Code Annotated 1953
- 13-34-109**, Utah Code Annotated 1953

- 13-34-110, Utah Code Annotated 1953
- 13-34-111, Utah Code Annotated 1953
- 13-34-112, Utah Code Annotated 1953
- 13-34-113, Utah Code Annotated 1953
- 13-34-114, Utah Code Annotated 1953
- 13-34-201, Utah Code Annotated 1953

REPEALS:

- 53B-5-101, as enacted by Chapter 167, Laws of Utah 1987
- 53B-5-102, as last amended by Chapter 155, Laws of Utah 1990
- 53B-5-103, as last amended by Chapter 287, Laws of Utah 1995
- 53B-5-104, as last amended by Chapter 155, Laws of Utah 1990
- 53B-5-105, as last amended by Chapter 287, Laws of Utah 1995
- 53B-5-106, as last amended by Chapter 86, Laws of Utah 1998
- 53B-5-107, as last amended by Chapter 58, Laws of Utah 2000
- 53B-5-108, as last amended by Chapter 58, Laws of Utah 2000
- 53B-5-109, as enacted by Chapter 167, Laws of Utah 1987
- 53B-5-110, as enacted by Chapter 167, Laws of Utah 1987
- 53B-5-111, as last amended by Chapter 38, Laws of Utah 1993
- 53B-5-112, as last amended by Chapter 155, Laws of Utah 1990
- 53B-5-113, as enacted by Chapter 287, Laws of Utah 1995
- 53B-5-114, as last amended by Chapter 260, Laws of Utah 2001
- 53B-5-201, as enacted by Chapter 167, Laws of Utah 1987

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

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

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

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

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

- ~~[(1)]~~ (a) Chapter 5, Unfair Practices Act;
- ~~[(2)]~~ (b) Chapter 10a, Music Licensing Practices Act;
- ~~[(3)]~~ (c) Chapter 11, Utah Consumer Sales Practices Act;
- ~~[(4)]~~ (d) Chapter 15, Business Opportunity Disclosure Act;
- ~~[(5)]~~ (e) Chapter 20, New Motor ~~[Vehicle]~~ Vehicles Warranties Act;
- ~~[(6)]~~ (f) Chapter 21, Credit Services Organizations Act;
- ~~[(7)]~~ (g) Chapter 22, Charitable Solicitations Act;
- ~~[(8)]~~ (h) Chapter 23, Health Spa Services Protection Act;
- ~~[(9)]~~ (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- ~~[(10)]~~ (j) Chapter 26, Telephone Fraud Prevention Act;
- ~~[(11)]~~ (k) Chapter 28, Prize Notices Regulation Act; ~~[and]~~
- ~~[(12)]~~ (l) Chapter 30, Utah Personal Introduction Services Protection Act~~[-];~~ and
- (m) Chapter 34, Utah Postsecondary Proprietary School Act.

Section 2. Section **13-34-101** is enacted to read:

CHAPTER 34. UTAH POSTSECONDARY PROPRIETARY SCHOOL ACT

Part 1. General Provisions

13-34-101. Title.

This chapter is known as the "Utah Postsecondary Proprietary School Act."

Section 3. Section **13-34-102** is enacted to read:

13-34-102. Legislative intent.

It is the policy of this state to do the following:

- (1) encourage private postsecondary education and training;
- (2) assure and protect the integrity of certificates and diplomas conferred by proprietary postsecondary educational institutions;
- (3) protect students and potential students from deceptively promoted, inadequately staffed, and unqualified proprietary institutions and programs; and
- (4) avoid unnecessary interference by the division with the internal academic policies and management practices of postsecondary educational institutions, but to facilitate disclosure of those

matters to students and the public.

Section 4. Section **13-34-103** is enacted 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 the state, to conduct significant educational activities within the state, or to offer 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 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, trade and technical schools, which offers postsecondary education in consideration of the payment of tuition or fees 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 5. Section **13-34-104** is enacted to read:

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

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

(2) This prohibition does not apply to honorary credentials clearly designated as such on the front side of a diploma, or certificates and awards by schools that offer other educational credentials requiring enrollment in and successful completion of a prescribed program of study in compliance with the requirements of this chapter.

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

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

(5) The division shall establish standards and criteria for the following:

- (a) the awarding of educational credentials;
- (b) bona fide instruction through student-faculty interaction; and
- (c) determination of the ability of a student to benefit from a program.

Section 6. Section **13-34-105** is enacted 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 the state, a local school district, or other Utah governmental subdivision;
 - (b) an institution which offers instruction exclusively at or below the 12th grade level;
 - (c) a lawful enterprise which offers only professional review programs, such as C.P.A. and bar examination review and preparation courses;
 - (d) a Utah private, postsecondary educational institution that is owned, controlled, operated, or maintained by a bona fide church or religious denomination, which is exempted from property taxation under the laws of this state;
 - (e) a Utah school or institution which is accredited by a regional or national accrediting agency recognized by the United States Department of Education. An institution, branch, extension, or facility operating within the state which is affiliated with an institution operating in another state must be separately approved by the affiliate's regional or national accrediting agency to qualify for this exemption;
 - (f) a business organization, trade or professional association, fraternal society, or labor union that sponsors or conducts courses of instruction or study predominantly for bona fide employees or members and does not, in advertising, describe itself as a school. For purposes of this subsection, a business organization, trade or professional association, fraternal society, or labor union that hires a majority of the persons who successfully complete its course of instruction or study with a reasonable degree of proficiency and apply for employment with that same entity is considered to be conducting the course predominantly for bona fide employees or members;
 - (g) an institution that exclusively offers general education courses or instruction solely remedial, avocational, nonvocational, or recreational in nature, which does not advertise occupation

objectives or grant educational credentials;

(h) an institution which offers only workshops or seminars lasting no longer than three calendar days and for which academic credit is not awarded; and

(i) an institution which offers programs in barbering, cosmetology, real estate, insurance, or flying that are regulated and approved by a state or federal governmental agency.

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

Section 7. Section **13-34-106** is enacted to read:

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

(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, on its own initiative or in response to a complaint filed with it, any institution subject to, or reasonably believed by the division to be subject to, this chapter;

(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 Section 13-34-114.

Section 8. Section **13-34-107** is enacted to read:

13-34-107. Operation of proprietary schools -- Required registration statement -- Fee -- Denial of registration -- Registration does not constitute endorsement.

(1) An institution may not advertise, recruit students for, or operate a proprietary school in this state unless it has:

(a) filed with the division a registration statement relating to the school that is in compliance with applicable rules promulgated by the division and is also in compliance with the other requirements set forth in this chapter; or

(b) established an exemption with the division.

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

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

(ii) the division determines the violation is relevant to the appropriate operation of the school.

(b) The statement of registration or exemption shall be verified by the oath or affirmation of the owner or a responsible officer of the school filing it.

(c) The statement shall include a certification as to whether the school or an owner, administrator, faculty, staff, or agent of the school has violated laws, federal regulations, or state rules as determined in a criminal, civil, or administrative proceeding.

(d) The proprietary school shall make available, upon request, a copy of the statement, showing the date upon which it was filed, and a certificate of registration shall be displayed by the proprietary school in a conspicuous place on its 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 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.

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

(b) Fees are not refundable.

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

(6) (a) Each proprietary school shall demonstrate fiscal responsibility at the time it files its registration statement as prescribed by rules of the division.

(b) It shall provide evidence to the division that it is financially sound and can reasonably fulfill commitments to and obligations it has incurred with students and creditors.

(c) 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.

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

(e) 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 or seeking renewal shall provide a surety bond, certificate of deposit, or irrevocable letter of credit in a form approved by the division.

(b) In accordance with Title 63, Chapter 46a, 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 school from a student or a student's parent, guardian, or 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) The division cannot refuse acceptance of a registration statement that is tendered for filing and, based on a preliminary review, appears to be in compliance with Subsections (1), (2), and (6), accompanied by the required fee.

(b) A statement is effective upon approval by the division or its designated officer in accordance with division rules.

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

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

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

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

(g) A new or amended statement may then be presented for filing by the proprietary school, accompanied by the required fee.

(9) The acceptance of a registration statement, renewal statement, or amended registration statement and issuance of a certificate of registration shall not constitute, nor be represented by any person to constitute, an endorsement or approval of the proprietary school by either the division or the state.

Section 9. Section **13-34-108** is enacted to read:

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

It is a violation of this chapter for any institution or school, which is required to file a

registration statement under this chapter, to offer postsecondary education in this state unless:

(1) it makes available to all applicants, prior to enrollment, information that includes the following:

(a) the school name, which shall be representative of the programs offered at the school, its address, and location;

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

(c) enrollment qualifications;

(d) tuition, fees, and other charges and expenses, as well as financial assistance, cancellation, and tuition refund policies, including the posting of a surety bond, certificate of credit, or irrevocable letter of credit;

(e) length of programs;

(f) graduation requirements; and

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

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

(3) all agents or sales representatives of the school are required by the school to comply with ethical practices prescribed by the division.

Section 10. Section **13-34-109** is enacted to read:

13-34-109. Discontinuance of operations -- Filing of transcripts.

(1) If a proprietary school elects to discontinue its operations in this state, the proprietor or administrator of the school shall file with the division a copy of each student's grade transcript in either written or microfilm form, relating to all courses of instruction and all students enrolled in the school during the previous ten years.

(2) The responsibility to file records under this section is enforceable by injunction issued by a court of competent jurisdiction in an action brought upon the request of the division or, on his own initiative, by the attorney general or by the county attorney of the county in which the proprietary school is or was operating.

(3) The division shall maintain for at least ten years a file of all records received by it under this section.

Section 11. Section **13-34-110** is enacted 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 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.

Section 12. Section **13-34-111** is enacted to read:

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

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

(2) The attorney shall investigate the complaint and immediately prosecute or bring suit to enjoin an act determined to be a violation of the chapter or regulations.

(3) (a) In addition to other penalties and remedies in this chapter, and in addition to its other

enforcement powers under Section 13-2-6, the division director may issue a cease and desist order and impose an administrative fine of up to \$1,000 for each violation of this chapter.

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

(4) A willful violation of this chapter is a class B misdemeanor, except as otherwise provided in Subsection 13-34-201(2).

Section 13. Section **13-34-112** is enacted to read:

13-34-112. Limitation of authority.

Except for satisfying the criteria and standards for registration provided for in this chapter or by division rule, nothing in this chapter gives the division authority to regulate the content of individual courses or regulate the day-to-day operations of a proprietary educational institution.

Section 14. Section **13-34-113** is enacted to read:

13-34-113. Suspension, termination, or refusal to register.

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

(a) violates a rule adopted by the division under this chapter;

(b) furnishes false, misleading, or incomplete information to the division, or fails to furnish information requested by the division; or

(c) violates a commitment made in an application for a certificate of registration to operate the school.

(2) Division staff may place reasonable limits upon a school's continued certificate of registration to operate if there are serious concerns about the school's ability to provide the training in the manner approved by the division and if limitation is warranted to protect the students' interests.

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

(b) Suspension may result in a termination action by the division under Subsection (1).

Section 15. Section **13-34-114** is enacted to read:

13-34-114. Consent to use of educational terms in business names.

(1) For purposes of this section:

(a) "Business name" means a name filed with the Division of Corporations and Commercial Code under:

(i) Section 16-6a-401;

(ii) Section 16-10a-401;

(iii) Section 16-11-16;

(iv) Section 42-2-6.6;

(v) Section 48-2a-102; or

(vi) Section 48-2c-106.

(b) "Educational term" means the term:

(i) "university";

(ii) "college"; or

(iii) "institution."

(2) If a statute listed in Subsection (1)(a) requires the written consent of the division to file a business name with the Division of Corporations and Commercial Code that includes an educational term, the division may consent to the use of an educational term in accordance with this statute.

(3) The division shall consent to the use of an educational term in a business name if the person seeking to file the name:

(a) is registered under this chapter;

(b) is exempt from the chapter under Section 13-34-105; or

(c) (i) is not engaged in educational activities; and

(ii) does not represent that it is engaged in educational activities.

(4) The division may withhold consent to use of an educational term in a business name if the person seeking to file the name:

(a) offers, sells, or awards a degree or any other type of educational credential; and

(b) fails to provide bona fide instruction through student-faculty interaction according to the standards and criteria established by the division under Subsection 13-34-104(5).

Section 16. Section **13-34-201** is enacted to read:

Part 2. Fraudulent Educational Credentials

13-34-201. Fraudulent educational credentials.

(1) A person may not use, give, or receive, or attempt or conspire to do so, in connection with a business, trade, profession, or occupation, a degree or other document which has been purchased, obtained, fraudulently or illegally issued, counterfeited, materially altered, or found, or which serves to evidence the undertaking or completion of scholastic achievement if the education has not been undertaken and attained.

(2) A violation of this section is a class A misdemeanor.

Section 17. Section **16-6a-401** is amended to read:

16-6a-401. Corporate name.

(1) The corporate name of a nonprofit corporation:

(a) may, but need not contain:

(i) the word "corporation," "incorporated," or "company"; or

(ii) an abbreviation of "corporation," "incorporated," or "company";

(b) may not contain any word or phrase that indicates or implies that it is organized for any purpose other than one or more of the purposes contained in Section 16-6a-301 and its articles of incorporation;

(c) except as authorized by the division under Subsection (2), shall be distinguishable, as defined in Section 16-10a-401, from:

(i) the name of any domestic corporation incorporated in this state;

(ii) the name of any foreign corporation authorized to conduct affairs in this state;

(iii) the name of any domestic nonprofit corporation incorporated in this state;

(iv) the name of any foreign nonprofit corporation authorized to conduct affairs in this state;

(v) the name of any domestic limited liability company formed in this state;

(vi) the name of any foreign limited liability company authorized to conduct affairs in this

state;

- (vii) the name of any limited partnership formed or authorized to conduct affairs in this state;
- (viii) any name that is reserved under Section 16-6a-402 or 16-10a-402;
- (ix) the name of any entity that has registered its name under Section 42-2-5;
- (x) the name of any trademark or service mark registered by the division; or
- (xi) any assumed name filed under Section 42-2-5;

(d) shall be, for purposes of recordation, either translated into English or transliterated into letters of the English alphabet if it is not in English;

(e) without the written consent of the United States Olympic Committee, may not contain the words:

- (i) "Olympic";
- (ii) "Olympiad"; or
- (iii) "Citius Altius Fortius"; and

(f) without the written consent of the ~~[State Board of Regents]~~ Division of Consumer Protection issued in accordance with Section ~~[53B-5-114]~~ 13-34-114, may not contain the words:

- (i) "university";
- (ii) "college"; or
- (iii) "institute."

(2) The division may authorize the use of the name applied for if:

(a) the name is distinguishable from one or more of the names and trademarks described in Subsection (1)(c) that are on the division's records; or

(b) if the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state registered or reserved with the division pursuant to the laws of this state.

(3) A corporation may use the name of another domestic or foreign corporation that is used in this state if:

- (a) the other corporation is incorporated or authorized to conduct affairs in this state; and
- (b) the proposed user corporation:

- (i) has merged with the other corporation;
- (ii) has been formed by reorganization of the other corporation; or
- (iii) has acquired all or substantially all of the assets, including the corporate name, of the other corporation.

(4) (a) A nonprofit corporation may apply to the division for authorization to file its articles of incorporation under, or to register or reserve, a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (1).

(b) The division shall approve the application filed under Subsection (4)(a) if:

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file, or which the applicant desires to register or reserve:

(A) consents to the filing, registration, or reservation in writing; and

(B) submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable from the name of the applicant; or

(ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to make the requested filing in this state under the name applied for.

(5) Only names of corporations may contain the:

(a) words "corporation," or "incorporated"; or

(b) abbreviation "corp." or "inc."

(6) The division may not issue a certificate of incorporation to any association violating the provisions of this section.

Section 18. Section **16-10a-401** is amended to read:

16-10a-401. Corporate name.

(1) The name of a corporation:

(a) except for the name of a depository institution as defined in Section 7-1-103, must contain:

(i) the word:

(A) "corporation";

- (B) "incorporated"; or
- (C) "company";
- (ii) the abbreviation:
 - (A) "corp.";
 - (B) "inc."; or
 - (C) "co."; or
- (iii) words or abbreviations of like import to the words or abbreviations listed in Subsections (1)(a)(i) and (ii) in another language;
 - (b) may not contain language stating or implying that the corporation is organized for a purpose other than that permitted by:
 - (i) Section 16-10a-301; and
 - (ii) the corporation's articles of incorporation;
 - (c) without the written consent of the United States Olympic Committee, may not contain the words:
 - (i) "Olympic";
 - (ii) "Olympiad"; or
 - (iii) "Citius Altius Fortius"; and
 - (d) without the written consent of the ~~[State Board of Regents]~~ Division of Consumer Protection issued in accordance with Section ~~[53B-5-114]~~ 13-34-114, may not contain the words:
 - (i) "university";
 - (ii) "college"; or
 - (iii) "institute."
- (2) Except as authorized by Subsections (3) and (4), the name of a corporation must be distinguishable, as defined in Subsection (5), upon the records of the division from:
 - (a) the name of any domestic corporation incorporated in or foreign corporation authorized to transact business in this state;
 - (b) the name of any domestic or foreign nonprofit corporation incorporated or authorized to transact business in this state;

(c) the name of any domestic or foreign limited liability company formed or authorized to transact business in this state;

(d) the name of any limited partnership formed or authorized to transact business in this state;

(e) any name reserved or registered with the division for a corporation, limited liability company, or general or limited partnership, under the laws of this state; and

(f) any business name, fictitious name, assumed name, trademark, or service mark registered by the division.

(3) (a) A corporation may apply to the division for authorization to file its articles of incorporation under, or to register or reserve, a name that is not distinguishable upon its records from one or more of the names described in Subsection (2).

(b) The division shall approve the application filed under Subsection (3)(a) if:

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file, or which the applicant desires to register or reserve:

(A) consents to the filing, registration, or reservation in writing; and

(B) submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable from the name of the applicant; or

(ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to make the requested filing in this state under the name applied for.

(4) A corporation may make a filing under the name, including the fictitious name, of another domestic or foreign corporation that is used or registered in this state if:

(a) the other corporation is incorporated or authorized to transact business in this state; and

(b) the filing corporation:

(i) has merged with the other corporation; or

(ii) has been formed by reorganization of the other corporation.

(5) (a) A name is distinguishable from other names, trademarks, and service marks on the records of the division if it:

- (i) contains one or more different letters or numerals; or
 - (ii) has a different sequence of letters or numerals from the other names on the division's records.
- (b) Differences which are not distinguishing are:
- (i) the words or abbreviations of the words:
 - (A) "corporation";
 - (B) "company";
 - (C) "incorporated";
 - (D) "limited partnership";
 - (E) "L.P.";
 - (F) "limited";
 - (G) "ltd.";
 - (H) "limited liability company";
 - (I) "limited company";
 - (J) "L.C."; or
 - (K) "L.L.C.";
 - (ii) the presence or absence of the words or symbols of the words "the," "and," or "a";
 - (iii) differences in punctuation and special characters;
 - (iv) differences in capitalization;
 - (v) differences between singular and plural forms of words for a corporation:
 - (A) incorporated in or authorized to do business in this state on or after May 4, 1998; or
 - (B) that changes its name on or after May 4, 1998;
 - (vi) differences in whether the letters or numbers immediately follow each other or are separated by one or more spaces if:
 - (A) the sequence of letters or numbers is identical; and
 - (B) the corporation:
 - (I) is incorporated in or authorized to do business in this state on or after May 3, 1999; or
 - (II) changes its name on or after May 3, 1999; or

(vii) differences in abbreviations, for a corporation:

(A) incorporated in or authorized to do business in this state on or after May 1, 2000; or

(B) that changes its name on or after May 1, 2000.

(c) The director of the division has the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed on the division by this section.

(6) A name that implies that the corporation is an agency of this state or of any of its political subdivisions, if it is not actually such a legally established agency or subdivision, may not be approved for filing by the division.

(7) (a) The requirements of Subsection (1)(d) do not apply to a corporation incorporated in or authorized to do business in this state on or before May 4, 1998, until December 31, 1998.

(b) On or after January 1, 1999, any corporation incorporated in or authorized to do business in this state shall comply with the requirements of Subsection (1)(d).

Section 19. Section **16-11-16** is amended to read:

16-11-16. Corporate name.

(1) The name of each professional corporation as set forth in its articles of incorporation:

(a) shall contain the terms:

(i) "professional corporation"; or

(ii) "P.C.";

(b) may not contain the words:

(i) "incorporated"; or

(ii) "inc.";

(c) may not contain language stating or implying that the professional corporation is organized for a purpose other than that permitted by:

(i) Section 16-11-6; and

(ii) the professional corporation's articles of incorporation;

(d) without the written consent of the United States Olympic Committee, may not contain the words:

- (i) "Olympic";
- (ii) "Olympiad"; or
- (iii) "Citius Altius Fortius"; and

(e) without the written consent of the [~~State Board of Regents~~] Division of Consumer Protection in accordance with Section [~~53B-5-114~~] 13-34-114, may not contain the words:

- (i) "university";
- (ii) "college"; or
- (iii) "institute."

(2) The professional corporation may not imply by any word in the name that it is an agency of the state or of any of its political subdivisions.

(3) A person, other than a professional corporation formed or registered under this chapter, may not use in its name in this state any of the terms:

- (a) "professional corporation"; or
- (b) "P.C."

(4) Except as authorized by Subsection (5), the name of the professional corporation must be distinguishable, as defined in Subsection (6), upon the records of the division from:

(a) the name of any domestic corporation incorporated in or foreign corporation authorized to transact business in this state;

(b) the name of any domestic or foreign nonprofit corporation incorporated or authorized to transact business in this state;

(c) the name of any domestic or foreign limited liability company formed or authorized to transact business in this state;

(d) the name of any limited partnership formed or authorized to transact business in this state;

(e) any name reserved or registered with the division for a corporation, limited liability company, or general or limited partnership, under the laws of this state; and

(f) any business name, fictitious name, assumed name, trademark, or service mark registered by the division.

(5) (a) A professional corporation may apply to the division for authorization to file its articles of incorporation under, or to register or reserve, a name that is not distinguishable upon its records from one or more of the names described in Subsection (4).

(b) The division shall approve the application filed under Subsection (5)(a) if:

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file, or which the applicant desires to register or reserve:

(A) consents to the filing, registration, or reservation in writing; and

(B) submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable from the name of the applicant; or

(ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to make the requested filing in this state under the name applied for.

(6) (a) A name is distinguishable from other names, trademarks, and service marks registered with the division if it:

(i) contains one or more different letters or numerals from other names upon the division's records; or

(ii) has a different sequence of letter or numerals from the other names on the division's records.

(b) The following differences are not distinguishable:

(i) the words or abbreviations of the words:

(A) "corporation";

(B) "incorporated";

(C) "company";

(D) "limited partnership";

(E) "limited";

(F) "L.P.";

(G) "Ltd.";

(H) "limited liability company";

- (I) "limited company";
- (J) "L.C."; or
- (K) "L.L.C.";
- (ii) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";
- (iii) differences in punctuation and special characters;
- (iv) differences in capitalization; or
- (v) differences in abbreviations.

(7) The director of the division shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed upon the division by this section.

Section 20. Section **42-2-6.6** is amended to read:

42-2-6.6. Assumed name.

- (1) The assumed name:
 - (a) may not contain any word or phrase that indicates or implies that the business is organized for any purpose other than one or more of the purposes contained in its application;
 - (b) shall be distinguishable from any registered name or trademark of record in the offices of the Division of Corporations and Commercial Code, as defined in Subsection 16-10a-401(5), except as authorized by the Division of Corporations and Commercial Code pursuant to Subsection (2);
 - (c) without the written consent of the United States Olympic Committee, may not contain the words:
 - (i) "Olympic";
 - (ii) "Olympiad"; or
 - (iii) "Citius Altius Fortius";
 - (d) without the written consent of the [~~State Board of Regents~~] Division of Consumer Protection issued in accordance with Section [~~53B-5-114~~] 13-34-114, may not contain the words:
 - (i) "university";
 - (ii) "college"; or

(iii) "institute"; and

(e) an assumed name authorized for use in this state on or after May 1, 2000, may not contain the words:

(i) "incorporated";

(ii) "inc."; or

(iii) a variation of "incorporated" or "inc."

(2) Notwithstanding Subsection (1)(e), an assumed name may contain a word listed in Subsection (1)(e) if the Division of Corporations and Commercial Code authorizes the use of the name by a corporation as defined in:

(a) Subsection 16-6a-102(26);

(b) Subsection 16-6a-102(33);

(c) Subsection 16-10a-102(11); or

(d) Subsection 16-10a-102(20).

(3) The Division of Corporations and Commercial Code shall authorize the use of the name applied for if:

(a) the name is distinguishable from one or more of the names and trademarks that are on the division's records; or

(b) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name applied for in this state.

(4) The assumed name, for purposes of recordation, shall be either translated into English or transliterated into letters of the English alphabet if it is not in English.

(5) The Division of Corporations and Commercial Code may not approve an application for an assumed name to any person violating this section.

(6) The director of the Division of Corporations and Commercial Code shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed on the division by this section.

(7) A name that implies by any word in the name that it is an agency of the state or of any of its political subdivisions, if it is not actually such a legally established agency, may not be

approved for filing by the Division of Corporations and Commercial Code.

(8) Section 16-10a-403 applies to this chapter.

(9) (a) The requirements of Subsection (1)(d) do not apply to a person who filed a certificate of assumed and of true name with the Division of Corporations and Commercial Code on or before May 4, 1998, until December 31, 1998.

(b) On or after January 1, 1999, any person who carries on, conducts, or transacts business in this state under an assumed name shall comply with the requirements of Subsection (1)(d).

Section 21. Section **48-2a-102** is amended to read:

48-2a-102. Name.

(1) The name of each limited partnership as set forth in its certificate of limited partnership:

(a) shall contain the terms:

(i) "limited partnership";

(ii) "limited";

(iii) "L.P."; or

(iv) "Ltd.";

(b) may not contain the name of a limited partner unless:

(i) it is the name of a general partner;

(ii) it is the corporate name of a corporate general partner; or

(iii) the business of the limited partnership had been carried on under that name before the admission of that limited partner;

(c) may not contain:

(i) the words:

(A) "association";

(B) "corporation"; or

(C) "incorporated";

(ii) any abbreviation of a word listed in this Subsection (1)(c); or

(iii) any word or abbreviation that is of like import to the words listed in Subsection (1)(c)(i) in any other language;

(d) without the written consent of the United States Olympic Committee, may not contain the words:

- (i) "Olympic";
- (ii) "Olympiad"; or
- (iii) "Citius Altius Fortius"; and

(e) without the written consent of the ~~[State Board of Regents]~~ Division of Consumer Protection issued in accordance with Section ~~[53B-5-114]~~ 13-34-114 , may not contain the words:

- (i) "university";
- (ii) "college"; or
- (iii) "institute."

(2) (a) A person or entity other than a limited partnership formed or registered under this title may not use in its name in this state any of the terms:

- (i) "limited";
- (ii) "limited partnership";
- (iii) "Ltd."; or
- (iv) "L.P."

(b) Notwithstanding Subsection (2)(a):

(i) a foreign corporation whose actual name includes the word "limited" or "Ltd." may use its actual name in this state if it also uses:

- (A) "corporation";
- (B) "incorporated"; or
- (C) any abbreviation of a word listed in this Subsection (2)(b)(i);
- (ii) a limited liability company may use in its name in this state the terms:
 - (A) "limited";
 - (B) "limited company";
 - (C) "L.C.";
 - (D) "L.L.C.";
 - (E) "LC"; or

(F) "LLC"; and

(iii) a limited liability partnership may use the terms "limited liability partnership," "L.L.P.," or "LLP" in the manner allowed in Section 48-1-45.

(3) Except as authorized by Subsection (4), the name of a limited partnership must be distinguishable as defined in Subsection (5) upon the records of the division from:

(a) the name of any limited partnership formed or authorized to transact business in this state;

(b) the corporate name of any corporation incorporated or authorized to transact business in this state;

(c) any limited partnership name reserved under this chapter;

(d) any corporate name reserved under Title 16, Chapter 10a, Utah Revised Business Corporation Act;

(e) any fictitious name adopted by a foreign corporation or limited partnership authorized to transact business in this state because its real name is unavailable;

(f) any corporate name of a not-for-profit corporation incorporated or authorized to transact business in this state; and

(g) any assumed business name, trademark, or service mark registered by the division.

(4) (a) A limited partnership may apply to the division for approval to file its certificate under, or to reserve, a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (3).

(b) The division shall approve of the name for which application is made under Subsection (4)(a) if:

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file:

(A) consents to the filing in writing; and

(B) submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable from the name of the applicant; or

(ii) the applicant delivers to the division a certified copy of the final judgment of a court of

competent jurisdiction establishing the applicant's right to use in this state the name for which the application is made.

(5) A name is distinguishable from other names, trademarks, and service marks registered with the division if it contains one or more different letters or numerals from other names upon the division's records.

(6) The following differences are not distinguishing:

(a) the terms:

(i) "corporation";

(ii) "incorporated";

(iii) "company";

(iv) "limited partnership";

(v) "limited";

(vi) "L.P."; or

(vii) "Ltd.";

(b) an abbreviation of a word listed in Subsection (6)(a);

(c) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";

(d) differences in punctuation and special characters;

(e) differences in capitalization;

(f) differences between singular and plural forms of words for a limited partnership:

(i) formed in or registered as a foreign limited partnership in this state on or after May 4, 1998; or

(ii) that changes its name on or after May 4, 1998;

(g) differences in whether the letters or numbers immediately follow each other or are separated by one or more spaces if:

(i) the sequence of letters or numbers is identical; and

(ii) the limited partnership:

(A) is formed in or registered as a foreign limited partnership in this state on or after May 3, 1999; or

- (B) changes its name on or after May 3, 1999; or
- (h) differences in abbreviations, for a limited partnership:
 - (i) formed in or registered as a foreign limited partnership in this state on or after May 1, 2000; or
 - (ii) that changes its name on or after May 1, 2000.
- (7) The director of the division shall have the power and authority reasonably necessary to interpret and efficiently administer this section and to perform the duties imposed upon the division by this section.

(8) A name that implies that the limited partnership is an agency of this state or any of its political subdivisions, if it is not actually such a legally established agency or subdivision, may not be approved for filing by the division.

(9) (a) The requirements of Subsection (1)(e) do not apply to a limited partnership that is formed in or registered as a foreign limited partnership in this state on or before May 4, 1998, until December 31, 1998.

(b) On or after January 1, 1999, any limited partnership formed in or registered as a foreign limited partnership in this state shall comply with the requirements of Subsection (1)(e).

Section 22. Section **48-2c-106** is amended to read:

48-2c-106. Name -- Exclusive right.

- (1) The name of each company as set forth in the articles of organization:
 - (a) shall contain the terms:
 - (i) "limited company";
 - (ii) "limited liability company";
 - (iii) "L.C." or "LC"; or
 - (iv) "L.L.C." or "LLC";
 - (b) may not contain:
 - (i) the terms:
 - (A) "association";
 - (B) "corporation";

- (C) "incorporated";
- (D) "limited partnership";
- (E) "limited";
- (F) "L.P."; or
- (G) "Ltd."; or
- (ii) words or any abbreviation with a similar meaning in any other language;
- (c) without the written consent of the United States Olympic Committee, may not contain

the words:

- (i) "Olympic";
- (ii) "Olympiad"; or
- (iii) "Citius Altius Fortius"; and
- (d) without the written consent of the ~~[State Board of Regents]~~ Division of Consumer

Protection in accordance with Section ~~[53B-5-114]~~ 13-34-114, may not contain the words:

- (i) "university";
- (ii) "college"; or
- (iii) "institute".

(2) (a) A person, other than a company formed under this chapter or a foreign company authorized to transact business in this state, may not use in its name in this state any of the terms:

- (i) "limited liability company";
- (ii) "limited company";
- (iii) "L.L.C.";
- (iv) "L.C.";
- (v) "LLC"; or
- (vi) "LC".

(b) Notwithstanding Subsection (2)(a):

(i) a foreign corporation whose actual name includes the word "limited" or "Ltd." may use its actual name in this state if it also uses:

- (A) "corporation" or "corp."; or

- (B) "incorporated" or "inc."; and
- (ii) a limited liability partnership may use in its name the terms:
 - (A) "limited liability partnership";
 - (B) "L.L.P."; or
 - (C) "LLP".

(3) Except as authorized by Subsection (4), the name of a company must be distinguishable as defined in Subsection (5) upon the records of the division from:

- (a) the actual name, reserved name, or fictitious or assumed name of any entity registered with the division; or
- (b) any tradename, trademark, or service mark registered with the division.

(4) (a) A company may apply to the division for approval to file its articles of organization under or to reserve a name that is not distinguishable upon the division's records from one or more of the names described in Subsection (3).

(b) The division shall approve the name for which the company applies under Subsection (4)(a) if:

(i) the other person whose name is not distinguishable from the name under which the applicant desires to file:

- (A) consents to the filing in writing; and
- (B) submits an undertaking in a form satisfactory to the division to change its name to a name that is distinguishable from the name of the applicant; or

(ii) the applicant delivers to the division a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use the name in this state.

(5) A name is distinguishable from other names, trademarks, and service marks registered with the division if it contains one or more different words, letters, or numerals from other names upon the division's records.

- (6) The following differences are not distinguishing:
- (a) the terms:
 - (i) "corporation";

- (ii) "incorporated";
 - (iii) "company";
 - (iv) "limited partnership";
 - (v) "limited";
 - (vi) "L.P." or "LP";
 - (vii) "Ltd.";
 - (viii) "limited liability company";
 - (ix) "limited company";
 - (x) "L.C." or "LC"; or
 - (xi) "L.L.C." or "LLC";
- (b) an abbreviation of a word listed in Subsection (6)(a);
- (c) the presence or absence of the words or symbols of the words "the," "and," "a," or "plus";
- (d) differences in punctuation and special characters;
- (e) differences in capitalization; or
- (f) for a company that is formed in this state on or after May 4, 1998, or registered as a foreign company in this state on or after May 4, 1998, differences between singular and plural forms of words.

(7) A name that implies that a company is an agency of this state or any of its political subdivisions, if it is not actually a legally established agency or political subdivision, may not be approved for filing by the division.

Section 23. Repealer.

This act repeals:

Section 53B-5-101, Short title.

Section 53B-5-102, Legislative intent.

Section 53B-5-103, Definitions.

Section 53B-5-104, Prohibited acts -- Exceptions -- Responsibilities of proprietary schools.

Section 53B-5-105, Exempted institutions.

Section 53B-5-106, Responsibilities of Board of Regents.

Section 53B-5-107, Operation of proprietary schools -- Required registration statement -- Fee -- Denial of registration -- Registration does not constitute endorsement.

Section 53B-5-108, Information required to be available -- Fair and ethical practices.

Section 53B-5-109, Discontinuance of operations -- Filing of transcripts.

Section 53B-5-110, Enforcement of contracts or agreements -- Rescission based on defective registration statement.

Section 53B-5-111, Referral of suspected violations -- Penalty.

Section 53B-5-112, Limitation of authority.

Section 53B-5-113, Suspension, termination, or refusal to register.

Section 53B-5-114, Consent to use of educational terms in business names.

Section 53B-5-201, Fraudulent education credentials.

Section 24. Effective date.

This act takes effect on July 1, 2002.