

**REGULATING PROPRIETARY
POSTSECONDARY SCHOOLS**

2005 GENERAL SESSION

STATE OF UTAH

Sponsor: Dan R. Eastman

LONG TITLE

General Description:

This bill modifies the Utah Postsecondary Proprietary School Act.

Highlighted Provisions:

This bill:

- ▶ modifies provisions related to what constitutes a prohibited act;
- ▶ clarifies rulemaking authority;
- ▶ adds to the list of exemptions education providers certified by the Division of Real

Estate;

- ▶ authorizes the division to conduct audits;
- ▶ addresses registration statements, exemptions, and certificates of registration;
- ▶ modifies the information that must be made available to applicants and the division;
- ▶ provides for additional penalties;
- ▶ addresses denial, suspension, or revocation of a certificate for registration including

conducting criminal background checks; and

- ▶ makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

Section 1. Section **13-34-104** is amended 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 proprietary school's catalogue.

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

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

(b) certificates and awards by ~~[schools that offer]~~ a proprietary school that offers 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 proprietary school has made a good-faith determination that the student has the ability to benefit from the program.

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

(a) false;

- (b) deceptive;
- (c) substantially inaccurate; or
- (d) misleading.

~~[(5)] (6)~~ The division shall establish standards and criteria by rule made in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, 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 2. Section **13-34-105** is amended to read:

13-34-105. Exempted institutions.

- (1) This chapter does not apply to the following institutions:
 - (a) a Utah institution directly supported, to a substantial degree, with funds provided by:
 - (i) the state~~;~~;
 - (ii) a local school district~~;~~; or
 - (iii) other Utah governmental subdivision;
 - (b) an institution ~~[which]~~ that offers instruction exclusively at or below the 12th grade level;
 - (c) a lawful enterprise ~~[which]~~ that 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) subject to Subsection (3), a Utah school or institution ~~[which]~~ that 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) subject to Subsection (4), a business organization, trade or professional association,

fraternal society, or labor union that:

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

(ii) does not, in advertising, describe itself as a school; [~~for purposes of this Subsection (1)(f), 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~~] that does not:

(i) advertise occupation objectives; or

(ii) grant educational credentials;

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

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

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

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

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

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

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

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

Subsection (1)(e).

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

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

(b) apply for employment with that same entity.

Section 3. Section **13-34-106** is amended 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 and audit, on [its] the division's own initiative or in response to a complaint filed with [it] the division, 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 4. Section **13-34-107** is amended to read:

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

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

- ~~(i) advertise[;] a proprietary school;~~
- ~~(ii) recruit students for[;] a proprietary school; or~~
- ~~(iii) operate a proprietary school [in this state].~~

~~(b) An institution may not engage in an activity described in Subsection (1)(a) unless [it has] the institution:~~

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

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

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

~~(B) obtains a certificate of registration; or~~

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

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

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

(A) the proprietary school; or

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

(I) an owner;

(II) an officer;

(III) a director;

(IV) an administrator;

(V) a faculty member;

(VI) a staff member; or

(VII) an agent.

~~(b)~~ (b) The proprietary school shall:

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

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

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

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

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

(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:

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

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

(A) is financially sound; and

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

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

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

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

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

(i) a surety bond~~[-];~~

(ii) a certificate of deposit~~[-];~~ or

(iii) an irrevocable letter of credit ~~[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 proprietary 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]~~ Except as provided in Section 13-34-113, the division ~~[cannot]~~ may not refuse acceptance of a registration statement that is:

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

(ii) accompanied by:

(A) the required fee[;]; and

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

(I) surety bond;

(II) certificate of deposit; or

(III) irrevocable letter of credit.

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

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

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

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

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

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

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

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

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

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

- ~~[(1) it]~~ (a) the institution or proprietary school makes available:
 - (i) in writing;
 - (ii) to all applicants[-];
 - (iii) prior to:
 - (A) enrollment[-] of the applicant; or

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

(iv) information that includes the following:

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

(B) the address~~[-and]~~ of the proprietary school;

(C) the location of the proprietary school;

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

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

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

~~[(d)]~~ (G) tuition, fees, and other charges and expenses~~[-as well as]~~;

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

(I) a surety bond~~[-]~~;

(II) a certificate of credit~~[-]~~; or

(III) an irrevocable letter of credit;

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

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

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

(I) graduation rates; and

(II) employment rates; and

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

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

~~[(3)]~~ (c) all agents or sales representatives of the proprietary school are required by the

proprietary school to comply with ethical practices prescribed by the division[-]; and

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

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

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

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

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

Section 6. Section **13-34-111** is amended 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~~] made 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 described in Subsection (1) shall investigate the complaint and immediately prosecute or bring suit to enjoin an act determined to be a violation of the chapter or [~~regulations~~] rules.

(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:

(i) issue a cease and desist order; and

(ii) impose an administrative fine of up to:

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

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

(I) described in Subsection (3)(a)(ii)(A); or

(II) an intentional violation; or

(C) \$5,000 for each intentional 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]~~ An intentional violation of this chapter is a class B misdemeanor, except as otherwise provided in Subsection 13-34-201(2).

(5) A person intentionally violates this chapter if:

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

(i) the division;

(ii) the attorney general; or

(iii) a district or county attorney; and

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

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

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

Limitations.

~~[(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]~~

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

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

(b) (i) the registration statement or renewal statement is incomplete, false, or misleading in any respect;

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

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

(A) violated any provision of:

(I) this chapter;

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

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

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

(I) this chapter;

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

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

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

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

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

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

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

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

(I) this chapter; or

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

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

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

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

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

(b) 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).]~~

(3) The division may:

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

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