

HB0405S01 compared with HB0405

~~{deleted text}~~ shows text that was in HB0405 but was deleted in HB0405S01.

inserted text shows text that was not in HB0405 but was inserted into HB0405S01.

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Representative James A. Dunnigan proposes the following substitute bill:

POSTSECONDARY SCHOOL STATE AUTHORIZATION

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: James A. Dunnigan

Senate Sponsor: _____

LONG TITLE

General Description:

This bill enacts the Utah Postsecondary School State Authorization Act.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides that a postsecondary school may obtain state authorization for purposes of 34 C.F.R. Sec. 600.9 by obtaining a certificate of postsecondary state authorization;
- ▶ allows the Division of Consumer Protection to:
 - enter into ~~{a}~~an interstate reciprocity agreement~~{ with another state}~~; and
 - make rules consistent with the provisions of this bill;
- ▶ authorizes the State Board of Regents to make rules to implement an interstate reciprocity agreement if the agreement includes institutions that are part of the state

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system of higher education under Section 53B-1-102:

- ▶ establishes qualifications for and a procedure by which a postsecondary school may obtain a certificate of postsecondary state authorization from the Division of Consumer Protection;
- ▶ provides that, under certain circumstances, the Division of Consumer Protection may deny, suspend, or revoke a certificate of postsecondary state authorization;
- ▶ provides procedures to enforce compliance with the provisions of this bill; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

ENACTS:

13-34a-101, Utah Code Annotated 1953

13-34a-102, Utah Code Annotated 1953

13-34a-103, Utah Code Annotated 1953

13-34a-104, Utah Code Annotated 1953

13-34a-201, Utah Code Annotated 1953

13-34a-202, Utah Code Annotated 1953

13-34a-203, Utah Code Annotated 1953

13-34a-204, Utah Code Annotated 1953

13-34a-205, Utah Code Annotated 1953

13-34a-206, Utah Code Annotated 1953

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13-34a-207, Utah Code Annotated 1953
13-34a-301, Utah Code Annotated 1953
13-34a-302, Utah Code Annotated 1953
13-34a-303, Utah Code Annotated 1953
13-34a-304, Utah Code Annotated 1953
13-34a-305, Utah Code Annotated 1953
13-34a-306, Utah Code Annotated 1953

REPEALS:

13-34-107.5, as enacted by Laws of Utah 2011, Chapter 221
13-34-107.6, as enacted by Laws of Utah 2011, Chapter 221

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:

- (a) Chapter 5, Unfair Practices Act;
- (b) Chapter 10a, Music Licensing Practices Act;
- (c) Chapter 11, Utah Consumer Sales Practices Act;
- (d) Chapter 15, Business Opportunity Disclosure Act;
- (e) Chapter 20, New Motor Vehicle Warranties Act;
- (f) Chapter 21, Credit Services Organizations Act;
- (g) Chapter 22, Charitable Solicitations Act;
- (h) Chapter 23, Health Spa Services Protection Act;
- (i) Chapter 25a, Telephone and Facsimile Solicitation Act;
- (j) Chapter 26, Telephone Fraud Prevention Act;
- (k) Chapter 28, Prize Notices Regulation Act;
- (l) Chapter 32a, Pawnshop and Secondhand Merchandise Transaction Information Act;
- (m) Chapter 34, Utah Postsecondary Proprietary School Act;
- (n) Chapter 34a, Utah Postsecondary School State Authorization Act;

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~~(n)~~ (o) Chapter 41, Price Controls During Emergencies Act;

~~(o)~~ (p) Chapter 42, Uniform Debt-Management Services Act; and

~~(p)~~ (q) Chapter 49, Immigration Consultants Registration Act.

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

13-34-103. Definitions.

As used in this chapter:

(1) "Agent" means any person who:

(a) owns an interest in or is employed by a proprietary school ~~[and who:]; and~~

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

~~(b)~~ (ii) offers to award educational credentials for remuneration on behalf of a

proprietary school; or

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

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

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

(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:

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

(b) solicit business in the state;

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

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

(8) "Ownership" means:

(a) the controlling interest in a school, institution, or college~~[-H]; or~~

(b) if an entity holds the controlling interest in 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]~~ that holds the controlling interest in the school, institution, or college.

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

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

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

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

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

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

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

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

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

(a) offers postsecondary education; and

(b) is headquartered or primarily operates in Utah.

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

13-34-105. Exempted institutions.

(1) This chapter does not apply to:

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

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- (i) the state;
- (ii) a local school district; or
- (iii) other Utah governmental subdivision;
- (b) an institution that offers instruction exclusively at or below the 12th grade level;
- (c) a lawful enterprise that offers only professional review programs, [~~such as~~ including C.P.A. and bar examination review and preparation courses;
- (d) a private~~[-postsecondary educational]~~ institution that:
 - (i) provides postsecondary education; and
 - (ii) is owned, controlled, operated, or maintained by a bona fide church or religious denomination, [~~which~~ that] is exempted from property taxation under the laws of this state;
- (e) [~~subject to Subsection (3) and Section 13-34-107.5,~~] a school or institution that is accredited by a regional or national accrediting agency recognized by the United States Department of Education;
- (f) subject to Subsection (4), a business organization, trade or professional association, fraternal society, or labor union that:
 - (i) sponsors or conducts courses of instruction or study predominantly for bona fide employees or members; and
 - (ii) does not~~[-in advertising, describe itself]~~ advertise as a school;
- (g) an institution that:
 - (i) (A) exclusively offers general education courses or instruction [~~solely~~ that are] remedial, avocational, nonvocational, or recreational in nature; and
 - (B) does not advertise occupation objectives or grant educational credentials; or
 - (ii) exclusively prepares individuals to teach courses or instruction described in Subsection (1)(g)(i)(A);
- (h) an institution that offers only workshops or seminars:
 - (i) lasting no longer than three calendar days; and
 - (ii) for which academic credit is not awarded;
- (i) an institution that offers programs:
 - (i) in barbering, cosmetology, real estate, or insurance; and
 - (ii) that are regulated and approved by a state or federal governmental agency;
- (j) an education provider certified by the Division of Real Estate under Section

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61-2c-204.1;

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

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

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

and

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

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

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

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

(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.

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

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

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

(b) apply for employment with that same entity.

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

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

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

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

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

Section 4. 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:]~~

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

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

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

(3) receive, investigate, and make available for public inspection ~~[the] a~~ registration ~~[statements] statement~~ filed by a proprietary ~~[schools] school~~ 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) on the division's own initiative or in response to a complaint filed with the division, do any of the following with respect to ~~[any] an~~ institution subject to, or reasonably believed by the division to be subject to, this chapter:

(a) investigate;

(b) audit;

(c) review;

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

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division; ~~and~~ or

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

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

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

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

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

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

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

(1) A proprietary school ~~[shall be unable to]~~ may not enforce in the courts of this state ~~[any]~~ a contract or agreement relating to postsecondary education services in this state unless, at the time the contract or agreement was ~~[entered into]~~ executed, 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]~~ the proprietary school's agent:

(a) fails to file an effective registration statement;

(b) willfully omits from a registration statement provided under Section 13-34-107 ~~[or an application under Section 13-34-107.5 for an exemption certificate any]~~ a material statement of fact required by this chapter ~~and~~ or 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 knew or should have known 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

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

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

Limitations.

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

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

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

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

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

(A) violated any provision of:

(I) this chapter;

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

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

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

(I) this chapter;

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

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

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

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

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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

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

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

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

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

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

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

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

~~[(D) the cost of fingerprinting.]~~

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

(3) (a) The division may require an individual described in Subsection 13-34-107(2)(a)(ii)(B) to:

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

(ii) consent to a criminal background check by:

(A) the Federal Bureau of Investigation;

(B) the Utah Bureau of Criminal Identification; or

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

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

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

(ii) the criminal background check.

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

CHAPTER 34a. UTAH POSTSECONDARY SCHOOL 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;

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

(8) "Operate" means to:

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

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

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

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

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

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

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

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

(i) places a postsecondary school on probation;

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

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

(10) "Ownership" means:

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

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

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

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

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

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

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

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

(b) "Postsecondary school" does not include an institution that is part of the state system of higher education under Section 53B-1-102.

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

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

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

(b) substantially supported with government funds.

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

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

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

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

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

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

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

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

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

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

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

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

(v) enforcement of the provisions of this chapter.

Section 10. Section 13-34a-104 is enacted to read:

13-34a-104. Authority to execute interstate reciprocity agreement -- Rulemaking.

(~~f3~~)(a)1) The division may execute an interstate reciprocity agreement that:

(a) is for purposes of state authorization under 34 C.F.R. Sec. 600.9; and

(b) is for the benefit of:

(i) postsecondary schools in the state; or

(ii) (A) postsecondary schools in the state; and

(B) institutions that are part of the state system of higher education under Section 53B-1-102.

(~~fb~~2) If the division executes an interstate reciprocity agreement described in Subsection (~~f3~~)(a)1):

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

(~~fi~~b) the division may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules relating to:

(~~fA~~i) the standards for granting a postsecondary school state authorization under a reciprocity agreement;

(~~fB~~ii) any filing, ~~{documentation}~~ document, or fee required for a postsecondary school to obtain ~~{state}~~ authorization under a reciprocity agreement; and

(~~fC~~iii) penalties if a postsecondary school ~~{ that obtains state authorization under a reciprocity agreement }~~ fails to comply with the rules that the division makes under this

Subsection (~~f3~~):

~~Section 10}2).~~

(3) If the division executes an interstate reciprocity agreement described in Subsection (1) that includes institutions that are part of the state system of higher education under Section

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53B-1-102, the State Board of Regents may, in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules that:

(a) implement the reciprocity agreement; and

(b) relate to institutions that are part of the state system of higher education under

Section 53B-1-102.

Section 11. Section **13-34a-201** is enacted to read:

Part 2. State Authorization Procedures

13-34a-201. Title.

This part is known as "State Authorization Procedures."

Section ~~{11}~~12. Section **13-34a-202** is enacted to read:

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

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

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

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

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

Section ~~{12}~~13. Section **13-34a-203** is enacted to read:

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

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

(a) is a nonprofit postsecondary school; and

(b) has operated as a nonprofit for at least 20 years.

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

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

(i) for a nonprofit, private postsecondary school, includes:

(A) a copy of the private postsecondary school's articles of incorporation;

(B) documentation from the United States Internal Revenue Service that demonstrates that the private postsecondary school has nonprofit status, and that the private postsecondary school has had nonprofit status for at least 20 consecutive years from the day on which the private postsecondary school submits the completed registration form; and

(C) satisfactory documentation that the private postsecondary school has complied with the complaint process requirements described in Section 13-34a-206; or

(ii) for a nonprofit, public postsecondary school, includes:

(A) documentation sufficient to demonstrate that the public postsecondary school has operated as a nonprofit for at least 20 consecutive years from the day on which the public postsecondary school submits the completed registration form; and

(B) satisfactory documentation that the public postsecondary school has complied with the complaint process requirements described in Section 13-34a-206; and

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

(3) The division shall develop and make available to the public:

(a) a registration form for nonprofit, private postsecondary schools, as described in Subsection (2)(a)(i); and

(b) a registration form for nonprofit, public postsecondary schools, as described in Subsection (2)(a)(ii).

(4) The division shall deposit money that the division receives under Subsection (2)(b) into the Commerce Service Account, created in Section 13-1-2.

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

(6) A certificate of postsecondary state authorization issued under this section:

(a) establishes a postsecondary school by name as an educational institution, as described in 34 C.F.R. Sec. 600.9(a)(1)(i);

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(b) makes a postsecondary school independent of the state system of higher education;
and

(c) authorizes a postsecondary school to operate educational programs in the state that are beyond secondary education, including programs that lead to a degree or certificate.

Section ~~{13}~~14. Section **13-34a-204** is enacted to read:

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

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

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

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

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

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

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

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

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

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

(iv) the postsecondary school's operating history with the postsecondary school's accrediting agency since the postsecondary school's last registration with the division under this chapter or within the 12 months before the day on which the postsecondary school submits a

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completed registration form under this section, whichever is longer;

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

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

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

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

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

(A) convicted of a crime;

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

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

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

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

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

(4) The division shall deposit money that the division receives under Subsection (2)(b) into the Commerce Service Account, created in Section 13-1-2.

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

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state.

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

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

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

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

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

Section ~~{14}~~15. Section **13-34a-205** is enacted to read:

13-34a-205. Background checks.

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

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

(b) consent to a criminal background check by:

(i) the Federal Bureau of Investigation;

(ii) the Utah Bureau of Criminal Identification; or

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

(2) The postsecondary school or the postsecondary school's owner, officer, director, administrator, faculty member, staff member, or other agent who is subject to the background check shall pay the cost of:

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

(b) the criminal background check.

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Section ~~{15}~~16. Section 13-34a-206 is enacted to read:

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

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

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

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

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

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

Section ~~{16}~~17. Section 13-34a-207 is enacted to read:

13-34a-207. Discontinuance of operations.

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

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

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

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

Section ~~{17}~~18. Section 13-34a-301 is enacted to read:

Part 3. Enforcement

13-34a-301. Title.

This part is known as "Enforcement."

Section ~~{18}~~19. Section 13-34a-302 is enacted to read:

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

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

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

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

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

or

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

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

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

(ii) the postsecondary school:

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

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

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

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

(E) is the subject of an order issued by a court or an administrative agency that includes a finding or admission of fraud, breach of fiduciary duty, or misrepresentation, or behavior that lacked moral integrity, truthfulness, or mental competence;

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

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

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

(2) For a postsecondary school that obtains a certificate of postsecondary state authorization under Section 13-34a-204, the division may place reasonable requirements on the postsecondary school if:

(a) the requirement protects student interests; and

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

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(1)(b)(ii).

Section ~~{19}~~20. Section **13-34a-303** is enacted to read:

13-34a-303. Right to rescind.

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

Section ~~{20}~~21. Section **13-34a-304** is enacted to read:

13-34a-304. Violations.

A postsecondary school violates this chapter if:

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

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

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

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

Section ~~{21}~~22. Section **13-34a-305** is enacted to read:

13-34a-305. Enforcement.

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

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

(b) initiate an adjudicative proceeding to enforce compliance with the provisions of this chapter.

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

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

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

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

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

Section ~~{22}~~23. Section **13-34a-306** is enacted to read:

13-34a-306. Penalties.

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

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

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

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

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

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

Section ~~{23}~~24. **Repealer.**

This bill repeals:

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

Section **13-34-107.6, Confirmation of private nonprofit educational institution --**

Effect of confirmation -- Fees.

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Legislative Review Note

as of ~~2-24-14~~ **6:52 PM**

Office of Legislative Research and General Counsel