

CONSUMER PROTECTION AMENDMENTS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis S. Bramble

House Sponsor: Val L. Peterson

LONG TITLE

General Description:

This bill modifies provisions related to consumer protection.

Highlighted Provisions:

This bill:

- ▶ clarifies and amends certain requirements related to the Division of Consumer Protection's enforcement powers;
- ▶ modifies the definition of "educational credentials";
- ▶ addresses institutions that are exempt from the Utah Postsecondary Proprietary School Act; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-2-6, as last amended by Laws of Utah 2010, Chapter 378

13-34-103, as last amended by Laws of Utah 2014, Chapter 360

13-34-105, as last amended by Laws of Utah 2014, Chapter 360



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

29 Section 1. Section 13-2-6 is amended to read:

30 **13-2-6. Enforcement powers.**

31 (1) In accordance with Title 63G, Chapter 4, Administrative Procedures Act, the
32 division shall have authority to convene administrative hearings, issue cease and desist orders,
33 and impose fines under all the chapters identified in Section 13-2-1.

34 (2) Any person who intentionally violates a final cease and desist order entered by the
35 division of which the person has notice is guilty of a third degree felony.

36 (3) If the division has reasonable cause to believe that any person [~~is engaged in~~] has
37 violated or is violating any chapter listed in Section 13-2-1, the division may promptly issue the
38 alleged violator a citation signed by the division's director or the director's designee.

39 (a) Each citation shall be in writing and shall:

40 (i) set forth with particularity the nature of the violation, including a reference to the
41 statutory or administrative rule provision [~~being~~] violated;

42 (ii) state that any request for review of the citation shall be made in writing and be
43 received by the division no more than [~~10~~] 20 calendar days following issuance;

44 (iii) state the consequences of failing to make a timely request for review; and

45 (iv) state all other information required by Subsection 63G-4-201(2).

46 (b) In computing any time period prescribed by this section, the following days may
47 not be included:

48 (i) the day on which the division issues a citation [~~is issued by the division~~]; and

49 (ii) the day on which the division [~~received~~] receives a request for review of a
50 citation[;].

51 [~~(iii) Saturdays and Sundays; and~~]

52 [~~(iv) a legal holiday set forth in Subsection 63G-1-301(1)(a).~~]

53 (c) If the recipient of a citation makes a timely request for review, within [~~10~~] 20

54 calendar days [~~of~~] after receiving the request, the division shall [~~convene~~] initiate an
55 adjudicative proceeding in accordance with Title 63G, Chapter 4, Administrative Procedures
56 Act.

57 (d) (i) If the presiding officer finds that there is not substantial evidence that the
58 recipient violated a chapter listed in Section 13-2-1 [~~at the time the citation was issued~~], the

59 citation may not become final, and the division shall immediately vacate the citation and
60 promptly notify the recipient in writing.

61 (ii) If the presiding officer finds that there is substantial evidence that the recipient
62 violated a chapter listed in Section 13-2-1 [~~at the time the citation was issued~~], the citation
63 shall become final and the division may enter a cease and desist order against the recipient.

64 (e) A citation issued under this chapter may be personally served upon any person upon
65 whom a summons may be served in accordance with the Utah Rules of Civil Procedure. A
66 citation also may be served by first-class mail, postage prepaid.

67 (f) If the recipient fails to make a timely request for review, the citation shall become
68 the final order of the division. The period to contest the citation may be extended by the
69 director for good cause shown.

70 (g) If the chapter violated allows for an administrative fine, after a citation becomes
71 final, the director may impose the administrative fine.

72 (4) (a) A person [~~violating~~] who has violated, is violating, or has attempted to violate a
73 chapter identified in Section 13-2-1 is subject to the division's jurisdiction if:

74 (i) the violation or attempted violation is committed [~~either~~] wholly or partly within the
75 state;

76 (ii) conduct committed outside the state constitutes an attempt to commit a violation
77 within the state; or

78 (iii) transactional resources located within the state are used by the offender to directly
79 or indirectly facilitate a violation or attempted violation.

80 (b) As used in this section, "transactional resources" means:

81 (i) any mail drop or mail box, regardless of whether [~~or not~~] the mail drop or mail box
82 is located on the premises of a United States Post Office;

83 (ii) any telephone or facsimile transmission device;

84 (iii) any Internet connection by a resident or inhabitant of this state with [~~either~~] a
85 resident_ or nonresident_maintained internet site;

86 (iv) any business office or private residence used for a business-related purpose;

87 (v) any account with or services of a financial institution;

88 (vi) the services of a common or private carrier; or

89 (vii) the use of any city, county, or state asset or facility, including any road or

90 highway.

91 (5) The director or the director's designee, for the purposes outlined in any chapter
92 administered by the division, may administer oaths, issue subpoenas, compel the attendance of
93 witnesses, [~~and~~] or compel the production of papers, books, accounts, documents, [~~and~~] or
94 evidence.

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

96 **13-34-103. Definitions.**

97 As used in this chapter:

98 (1) "Agent" means any person who:

99 (a) owns an interest in or is employed by a proprietary school; and

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

101 (ii) offers to award educational credentials for remuneration on behalf of a proprietary
102 school; or

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

105 (2) (a) "Certificate of registration" means approval from the division to operate a
106 school or institution in compliance with this chapter and rules adopted under this chapter.

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

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

110 (4) "Educational credentials" means degrees, diplomas, certificates, transcripts, reports,
111 documents, or letters of designation, marks, appellations, series of letters, numbers, or words
112 [~~which~~] that signify or appear to signify [~~enrollment, attendance, progress, or~~] satisfactory
113 completion of [~~the requirements or prerequisites~~] any requirement or prerequisite for any
114 educational program.

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

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

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

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

121 (b) solicit business in the state;
122 (c) conduct significant educational activities within the state; or
123 (d) offer or provide postsecondary instruction leading to a postsecondary degree or
124 certificate to any number of Utah residents from a location outside the state by correspondence
125 or any telecommunications or electronic media technology.

126 (8) "Ownership" means:

127 (a) the controlling interest in a school, institution, or college; or

128 (b) if an entity holds the controlling interest in the school, institution, or college, the
129 controlling interest in the entity that holds the controlling interest in the school, institution, or
130 college.

131 (9) "Postsecondary education" means education or educational services offered
132 primarily to individuals who:

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

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

135 (10) (a) "Proprietary school" means a private institution, including a business,
136 modeling, paramedical, tax preparation, or trade or technical school, that offers postsecondary
137 education:

138 (i) in consideration of the payment of tuition or fees; and

139 (ii) for the attainment of educational, professional, or vocational objectives.

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

142 (11) "Utah institution" means a school or institution that:

143 (a) offers postsecondary education; and

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

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

146 **13-34-105. Exempted institutions.**

147 [~~(1) This chapter does not apply to:~~]

148 (1) The following institutions are exempt from the provisions of this chapter, if the
149 institution establishes an exemption with the division in accordance with Subsection
150 [13-34-107\(1\)\(b\)\(ii\)](#):

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

152 by:

153 (i) the state;

154 (ii) a local school district; or

155 (iii) any other Utah governmental subdivision;

156 [~~(b) an institution that offers instruction exclusively at or below the 12th grade level;~~]

157 [~~(c)~~] (b) a lawful enterprise that offers only professional review programs, including

158 C.P.A. and bar examination review and preparation courses;

159 [~~(d)~~] (c) a private institution that:

160 (i) provides postsecondary education; and

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

162 denomination, that is exempted from property taxation under the laws of this state;

163 [~~(e)~~] (d) [~~a school or~~] an institution that is accredited by a regional or national

164 accrediting agency recognized by the United States Department of Education;

165 [~~(f)~~] (e) subject to Subsection (4), a business organization, trade or professional

166 association, fraternal society, or labor union that:

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

168 employees or members; and

169 (ii) does not advertise as a school;

170 [~~(g)~~] (f) an institution that exclusively offers one or more of the following:

171 (i) [~~(A) exclusively offers~~] general education [courses or instruction that are]:

172 (A) that is remedial, avocational, nonvocational, or recreational in nature; and

173 (B) for which the institution does not advertise occupation objectives or grant

174 [educational credentials; or] a degree, diploma, or other educational credential commensurate

175 with a degree or diploma;

176 (ii) [~~exclusively prepares~~] preparation for individuals to teach courses or instruction

177 described in Subsection (1)[~~(g)~~](f)(i)(A);

178 (iii) courses in English as a second language;

179 (iv) instruction at or below the 12th grade level;

180 (v) nurse aide training programs that are approved by:

181 (A) the Bureau of Health Facility Licensing and Certification; or

182 (B) an entity authorized by the Bureau of Health Facility Licensing and Certification to

183 approve nurse aide certification programs; or

184 (vi) content:

185 (A) that is exclusively available on the Internet;

186 (B) for which the institution charges \$1,000 or less in a 12-month period; and

187 (C) for which the institution does not grant educational credentials other than a

188 certificate that indicates completion and that does not represent achievement or proficiency;

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

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

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

192 ~~[(i)]~~ (h) an institution that offers programs:

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

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

195 ~~[(j)]~~ (i) an education provider certified by the Division of Real Estate under Section

196 [61-2c-204.1](#);

197 ~~[(k)]~~ (j) an institution that offers aviation training if the institution:

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

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

200 and

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

203 (ii) does not collect tuition, fees, membership dues, or other payment more than 24
204 hours before the student receives the aviation training; and

205 ~~[(l)]~~ (k) an institution that provides emergency medical services training if all of the
206 institution's instructors, course coordinators, and courses are approved by the Department of
207 Health~~;~~ ~~and~~].

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

211 ~~[(2) If available evidence suggests that an exempt institution under this section is not in~~
212 ~~compliance with the standards of registration under this chapter and applicable division rules,~~
213 ~~the division shall contact the institution and, if appropriate, the state or federal government~~

214 agency to request corrective action.]

215 (2) An institution that no longer qualifies for an exemption that the institution
216 established with the division under Subsection 13-34-107(1)(b)(ii) shall comply with the other
217 provisions of Section 13-34-107.

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

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

226 (a) successfully complete [~~its~~] the course of instruction or study with a reasonable
227 degree of proficiency; and

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

229 (5) If the United States Department of Education no longer recognizes an institution's
230 accrediting agency, the institution remains exempt under Subsection (1)(d):

231 (a) during any grace period provided by the United States Department of Education for
232 obtaining new accreditation, if the institution demonstrates to the division that the institution is
233 within the grace period; or

234 (b) if the institution demonstrates to the division that the United States Department of
235 Education otherwise considers the institution to have recognized accreditation.

Legislative Review Note
Office of Legislative Research and General Counsel