

1 **UTAH POSTSECONDARY PROPRIETARY SCHOOL ACT**

2 **AMENDMENTS**

3 2011 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Curtis S. Bramble**

6 House Sponsor: _____

7

LONG TITLE

8 **General Description:**

9 This bill modifies the Utah Postsecondary Proprietary School Act.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▶ modifies definitions;
- 13 ▶ modifies institutions that are exempt from the act;
- 14 ▶ provides for the Division of Consumer Protection to issue certificates of exemption
- 15 to specified institutions and establishes a process for issuing an exemption
- 16 certificate and renewals;
- 17 ▶ modifies the division's authority with respect to complaints against institutions
- 18 subject to the act;
- 19 ▶ requires institutions to file separate registration and exempt applications for each
- 20 campus that the institution operates;
- 21 ▶ requires a proprietary school to submit a review of its continued qualification for
- 22 certification;
- 23 ▶ specifies information that a proprietary school is required to submit to demonstrate
- 24 that it is financially sound;
- 25 ▶ modifies a provision relating to division inspections of a proprietary school; and
- 26 ▶ modifies a provision relating to criminal background checks that the division may
- 27



28 require.

29 **Money Appropriated in this Bill:**

30 None

31 **Other Special Clauses:**

32 None

33 **Utah Code Sections Affected:**

34 AMENDS:

35 **13-34-103**, as enacted by Laws of Utah 2002, Chapter 222

36 **13-34-105**, as last amended by Laws of Utah 2010, Chapters 218 and 378

37 **13-34-106**, as last amended by Laws of Utah 2005, Chapter 242

38 **13-34-107**, as last amended by Laws of Utah 2010, Chapters 278 and 378

39 **13-34-108**, as last amended by Laws of Utah 2005, Chapter 242

40 **13-34-110**, as enacted by Laws of Utah 2002, Chapter 222

41 **13-34-113**, as last amended by Laws of Utah 2008, Chapter 382

42 ENACTS:

43 **13-34-107.5**, Utah Code Annotated 1953



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

46 Section 1. Section **13-34-103** is amended to read:

47 **13-34-103. Definitions.**

48 As used in this chapter:

49 (1) "Agent" means any person who owns an interest in or is employed by a proprietary
50 school and who:

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

52 (b) offers to award educational credentials for remuneration on behalf of a proprietary
53 school; or

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

56 (2) "Certificate of registration" means approval of the division to operate a school or
57 institution in compliance with this chapter and rules adopted under this chapter. The
58 registration is not an endorsement of the school or institution by either the division or the state

59 [of Utah].

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

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

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

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

69 (7) "Operate" in this state means to ~~[have a significant presence within]:~~

70 (a) maintain a place of business in the state~~[-to];~~

71 (b) solicit business in the state;

72 (c) conduct significant educational activities within the state~~[-];~~ or ~~[to]~~

73 (d) offer or provide postsecondary instruction leading to a postsecondary degree or
74 certificate to any number of Utah residents ~~[assembled at a receiving site in Utah]~~ from a
75 location outside the state by correspondence or any telecommunications or electronic media
76 technology.

77 (8) "Ownership" means the controlling interest in a school, institution, or college. If
78 the school, institution, or college is owned or controlled by other than a natural person,
79 "ownership" refers to the controlling interest in the legal entity which controls the school,
80 institution, or college.

81 (9) "Postsecondary education" means education or educational services offered
82 primarily to persons who have completed or terminated their secondary or high school
83 education or who are beyond the age of compulsory school attendance.

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

87 (a) in consideration of the payment of tuition or fees; and

88 (b) for the attainment of educational, professional, or vocational objectives~~[-, other than~~
89 ~~those schools exempted under this chapter].~~

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

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

94 Section 2. Section **13-34-105** is amended to read:

95 **13-34-105. Exempted institutions.**

96 (1) This chapter does not apply to [~~the following institutions~~]:

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

99 (i) the state;

100 (ii) a local school district; or

101 (iii) other Utah governmental subdivision;

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

103 (c) a lawful enterprise that offers only professional review programs, such as C.P.A.
104 and bar examination review and preparation courses;

105 (d) a private, postsecondary educational institution that is owned, controlled, operated,
106 or maintained by a bona fide church or religious denomination, which is exempted from
107 property taxation under the laws of this state;

108 (e) subject to Subsection (3) and Section 13-34-107.5, a school or institution that is
109 accredited by a regional or national accrediting agency recognized by the United States
110 Department of Education;

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

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

115 (ii) does not, in advertising, describe itself as a school;

116 (g) an institution that:

117 (i) (A) exclusively offers general education courses or instruction solely remedial,
118 avocational, nonvocational, or recreational in nature[~~that~~]; and

119 (B) does not[~~it~~] advertise occupation objectives[;] or [~~it~~] grant educational
120 credentials; or

- 121 (ii) exclusively prepares individuals to teach courses or instruction described in
 122 Subsection (1)(g)(i)(A);
- 123 (h) an institution that offers only workshops or seminars:
 124 (i) lasting no longer than three calendar days; and
 125 (ii) for which academic credit is not awarded;
- 126 (i) an institution that offers programs:
 127 (i) in barbering, cosmetology, real estate, or insurance; and
 128 (ii) that are regulated and approved by a state or federal governmental agency;
 129 (j) an education provider certified by the Division of Real Estate under Section
 130 61-2c-204.1;
- 131 (k) an institution that offers aviation training if the institution:
 132 (i) (A) is approved under Federal Aviation Regulations, 14 C.F.R. Part 141; or
 133 (B) provides aviation training under Federal Aviation Regulations, 14 C.F.R. Part 61;
 134 and
- 135 (ii) exclusively offers aviation training that a student fully receives within 24 hours
 136 after the student pays any tuition, fee, or other charge for the aviation training; ~~[and]~~
- 137 (l) an institution that provides emergency medical services training if all of the
 138 institution's instructors, course coordinators, and courses are approved by the Department of
 139 Health[-]; and
- 140 (m) an institution that exclusively conducts nurse aide training programs that are
 141 approved by the State Office of Vocational Education and are subject to the Nurse Aide
 142 Registry.
- 143 (2) ~~[(a)]~~ If available evidence suggests that an exempt institution under this section is
 144 not in compliance with the standards of registration under this chapter and applicable division
 145 rules, the division shall contact the institution and, if appropriate, the state or federal
 146 government agency to request corrective action.
- 147 ~~[(b) Subsection (2)(a) does not apply to an institution exempted under Subsection~~
 148 ~~(1)(e).]~~
- 149 (3) An institution, branch, extension, or facility operating within the state that is
 150 affiliated with an institution operating in another state shall be separately approved by the
 151 affiliate's regional or national accrediting agency to qualify for the exemption described in

152 Subsection (1)(e).

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

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

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

159 Section 3. Section **13-34-106** is amended to read:

160 **13-34-106. Responsibilities of division.**

161 The division is responsible for the administration of this chapter, and shall do the
162 following:

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

165 (2) issue:

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

168 (b) a certificate of exemption under Section 13-34-107.5 upon receipt and approval of
169 an application and verification that the requirements of Subsection 13-34-105(1)(e) and Section
170 13-34-107.5 are met;

171 (3) receive, investigate, and make available for public inspection the registration
172 statements filed by proprietary schools operating or intending to operate in the state;

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

175 (5) [~~investigate and audit,~~] on the division's own initiative or in response to a complaint
176 filed with the division, do any of the following with respect to any institution subject to, or
177 reasonably believed by the division to be subject to, this chapter[;];

178 (a) investigate;

179 (b) audit;

180 (c) review;

181 (d) appropriately act, including enforcing this chapter or any other law enforced by the
182 division; and

183 (e) refer a matter to:

184 (i) another governmental entity; or

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

187 (6) negotiate and enter into interstate reciprocity agreements with other states, if in the
188 judgment of the division, the agreements are or will help to effectuate the purposes of this
189 chapter; and

190 (7) consent to the use of educational terms in business names in accordance with
191 Section 13-34-114.

192 Section 4. Section **13-34-107** is amended to read:

193 **13-34-107. Advertising, recruiting, or operating a proprietary school -- Required**
194 **registration statement or exemption -- Certificate of registration -- Registration does not**
195 **constitute endorsement.**

196 (1) (a) Unless an institution complies with Subsection (1)(b), the institution may not do
197 any of the following in this state:

198 (i) advertise a proprietary school;

199 (ii) recruit students for a proprietary school; or

200 (iii) operate a proprietary school.

201 (b) An institution may not engage in an activity described in Subsection (1)(a) unless
202 the institution:

203 (i) (A) files with the division a registration statement relating to the proprietary school
204 that is in compliance with:

205 (I) applicable rules made by the division; and

206 (II) the requirements set forth in this chapter; and

207 (B) obtains a certificate of registration; or

208 (ii) establishes an exemption with the division.

209 (c) (i) Except as provided in Subsection (1)(c)(ii), an institution that files a registration
210 statement under this section shall file a separate registration statement and pay a separate fee
211 for each physical campus that the institution operates as a proprietary school.

212 (ii) An institution that registered with the division before May 10, 2011 is not required
213 to comply with Subsection (1)(c)(i) until the institution's next regular renewal date.

214 (2) (a) The registration statement or exemption described in Subsection (1) shall be:

215 (i) verified by the oath or affirmation of the owner or a responsible officer of the
216 proprietary school filing the registration statement or exemption; and

217 (ii) include a certification as to whether any of the following has violated laws, federal
218 regulations, or state rules as determined in a criminal, civil, or administrative proceeding:

219 (A) the proprietary school; or

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

221 (I) an owner;

222 (II) an officer;

223 (III) a director;

224 (IV) an administrator;

225 (V) a faculty member;

226 (VI) a staff member; or

227 (VII) an agent.

228 (b) The proprietary school shall:

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

231 (ii) display the certificate of registration obtained from the division in a conspicuous
232 place on the proprietary school's premises.

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

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

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

241 (b) No later than one year after the issuance or renewal of a certificate of registration to
242 a proprietary school, the proprietary school shall:

243 (i) submit a review of the proprietary school's continued qualification for a certificate
244 of registration, on a form approved by the division; and

245 (ii) pay a fee established under this section and Section 63J-1-504.

246 (5) (a) The division shall establish a graduated fee structure for the filing of registration
247 statements by various classifications of institutions pursuant to Section 63J-1-504.

248 (b) Fees are not refundable.

249 (c) Fees shall be deposited in the Commerce Service Account created by Section
250 13-1-2.

251 (6) (a) Each proprietary school shall:

252 (i) demonstrate fiscal responsibility at the time the proprietary school files its
253 registration statement as prescribed by rules of the division; and

254 (ii) as provided in Subsection (6)(b), provide evidence to the division that the
255 proprietary school:

256 (A) is financially sound; and

257 (B) can reasonably fulfill commitments to and obligations the proprietary school has
258 incurred with students and creditors.

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

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

264 (b) The evidence that a propriety school is required to provide under Subsection

265 (6)(a)(ii) includes:

266 (i) for a proprietary school that has not operated long enough to complete a fiscal year:

267 (A) pro forma financial statements until the information described in Subsection

268 (6)(b)(ii) is available; and

269 (B) a commercial credit report for the proprietary school and a consumer credit report
270 for each individual with an ownership interest in the proprietary school; and

271 (ii) for a proprietary school that has completed a fiscal year or as soon as a proprietary
272 school completes its first fiscal year:

273 (A) a current financial statement, with all applicable footnotes, for the most recent
274 fiscal year, including a balance sheet, a statement of income, a statement of retained earnings,
275 and a statement of cash flow; and

276 (B) a certified fiscal audit of the proprietary school's financial statement, performed by
277 a certified or licensed public accountant, or a commercial credit report for the proprietary
278 school and a consumer credit report for each individual with an ownership interest in the
279 proprietary school.

280 (c) In evaluating a proprietary school's fiscal responsibility under this Subsection (6),
281 the division may consider:

282 (i) any judgment, tax lien, collection action, bankruptcy schedule, or history of late
283 payments to creditors;

284 (ii) documentation showing the resolution of any matter listed in Subsection (6)(c)(i);

285 (iii) the proprietary school's explanation for any of the matters listed in Subsection
286 (6)(c)(i);

287 (iv) any guarantee agreement provided for the proprietary school; and

288 (v) any history of a prior entity that:

289 (A) is owned or operated by any individual with an ownership interest in the
290 proprietary school; and

291 (B) has failed to maintain fiscal responsibility.

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

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

296 (i) a surety bond;

297 (ii) a certificate of deposit; or

298 (iii) an irrevocable letter of credit.

299 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
300 division may make rules providing for:

301 (i) the amount of the bond, certificate, or letter of credit required under Subsection
302 (7)(a), not to exceed in amount the anticipated tuition and fees to be received by the proprietary
303 school during a school year;

304 (ii) the execution of the bond, certificate, or letter of credit;

305 (iii) cancellation of the bond, certificate, or letter of credit during or at the end of the
306 registration term; and

307 (iv) any other matters related to providing the bond, certificate, or letter of credit
308 required under Subsection (7)(a).

309 (c) The bond, certificate, or letter of credit shall be used as a protection against loss of
310 advanced tuition, book fees, supply fees, or equipment fees:

311 (i) collected by the proprietary school from a student or a student's parent, guardian, or
312 sponsor prior to the completion of the program or courses for which it was collected; or

313 (ii) for which the student is liable.

314 (8) (a) Except as provided in Section 13-34-113, the division may not refuse
315 acceptance of a registration statement that is:

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

318 (ii) accompanied by:

319 (A) the required fee; and

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

321 (I) surety bond;

322 (II) certificate of deposit; or

323 (III) irrevocable letter of credit.

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

325 (c) The responsibility of compliance is upon the proprietary school and not upon the
326 division.

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

330 (ii) After a proprietary school has been notified of a deficiency under Subsection
331 (8)(d)(i), a new or amended statement may be presented for filing by the proprietary school,
332 accompanied by:

333 (A) the required fee; and

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

335 (I) surety bond;

336 (II) certificate of deposit; or

337 (III) irrevocable letter of credit.

338 (9) The following does not constitute and may not be represented by any person to
339 constitute, an endorsement or approval of the proprietary school by either the division or the
340 state:

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

346 Section 5. Section **13-34-107.5** is enacted to read:

347 **13-34-107.5. Exemption certificate -- Application and renewal process.**

348 (1) As used in this section:

349 (a) "Exemption certificate" means an accredited institution certificate of exemption that
350 complies with:

351 (i) applicable rules made by the division under Title 63G, Chapter 3, Utah

352 Administrative Rulemaking Act; and

353 (ii) this section.

354 (b) "Exempt institution" means an institution that is exempt from this chapter under
355 Subsection 13-34-105(1)(e) but required under 34 C.F.R. 600.9 to be legally authorized by a
356 state.

357 (2) (a) An institution wishing to be acknowledged as an exempt institution shall:

358 (i) file with the division an application for an exemption certificate; and

359 (ii) pay the division a fee established by the division.

360 (b) An institution filing an application for an exemption certificate shall file a separate
361 application and pay a separate fee for each physical campus that the institution operates.

362 (3) An application under Subsection (2) shall:

363 (a) be on a form approved by the division;

364 (b) include proof of current accreditation from a regional or national accrediting agency
365 recognized by the United States Department of Education;

366 (c) include an identical copy of each financial statement the institution provides to its
367 accrediting agency;

368 (d) be verified by the oath or affirmation of the owner or a responsible officer of the

369 institution filing the application; and

370 (e) include a certification as to whether the institution or an owner, officer, director, or
371 administrator of the institution has violated a law, federal regulation, or state rule as determined
372 in a criminal, civil, or administrative proceeding.

373 (4) (a) An exemption certificate is not transferrable.

374 (b) If there is a change, as defined by the United States Department of Education, in the
375 ownership or the governing body of an institution that, before the change, is an exempt
376 institution, the institution shall file a new application under Subsection (2) within 30 days after
377 the change.

378 (5) (a) Except as provided in Subsections (4)(b) and (5)(b), an exemption certificate is
379 effective for two years after its issuance.

380 (b) For an exemption certificate that the division issues pursuant to an application the
381 division receives during 2011, the division may extend the period for which the exemption
382 certificate is effective by up to 11 months in order to ensure that renewal dates are
383 appropriately staggered to allow the division to manage resources and work load.

384 (6) No later than one year after the division's issuance or renewal of an exemption
385 certificate to an institution, the institution shall:

386 (a) submit a review, on a form approved by the division, of the institution's continued
387 qualification for an exemption certificate; and

388 (b) pay a fee that the division establishes under this section and Section 63J-1-504.

389 (7) (a) The division shall, as provided in Section 63J-1-504, establish a graduated fee
390 structure for the filing of an application for an exemption certificate under this section based on
391 various classifications of institutions seeking to be an exempt institution.

392 (b) A fee paid under this section is not refundable.

393 (c) Fees paid under this section shall be deposited in the Commerce Service Account
394 created in Section 13-1-2.

395 (8) Except as provided in Section 13-34-113, the division may not refuse acceptance of
396 an application under Subsection (2) that:

397 (a) is tendered for filing and, based on the division's preliminary review, appears to
398 comply with this section; and

399 (b) is accompanied by the required fee.

400 (9) (a) An exemption certificate is effective on the date it is issued.

401 (b) The responsibility for compliance with the requirements for issuance of an
402 exemption certificate is upon the institution and not upon the division.

403 (10) (a) If it appears to the division that an institution is not in compliance with
404 requirements to qualify for an exemption certificate, the division may advise the institution as
405 to the apparent deficiencies.

406 (b) After receiving notification from the division under Subsection (10)(a), an
407 institution may file a new or amended application for an exemption certificate, accompanied by
408 the required fee.

409 (11) A person may not represent that the division's acceptance of any application for an
410 exemption certificate under this section or the division's issuance of an exemption certificate
411 constitutes an endorsement or approval of the institution by the division or the state.

412 Section 6. Section **13-34-108** is amended to read:

413 **13-34-108. Information required to be available -- Documents to be fair and**
414 **accurate -- Fair and ethical practices.**

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

418 (a) the institution or proprietary school makes available:

419 (i) in writing;

420 (ii) to all applicants;

421 (iii) prior to:

422 (A) enrollment of the applicant; or

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

424 (iv) information that includes the following:

425 (A) the proprietary school name, which shall be representative of the programs offered
426 at the proprietary school;

427 (B) the address of the proprietary school;

428 (C) the location of the proprietary school;

429 (D) the facilities, faculty, training equipment, and instructional programs of the
430 proprietary school;

- 431 (E) enrollment qualifications;
- 432 (F) accurate information regarding the relationship of the program of the institution or
433 proprietary school to state licensure requirements for practicing a related occupation and
434 profession in Utah;
- 435 (G) tuition, fees, and other charges and expenses;
- 436 (H) financial assistance, cancellation, and tuition refund policies, including the posting
437 of:
- 438 (I) a surety bond;
- 439 (II) a certificate of credit; or
- 440 (III) an irrevocable letter of credit;
- 441 (I) length of programs;
- 442 (J) graduation requirements;
- 443 (K) subject to Subsection (2), for each of the immediately preceding three years:
- 444 (I) graduation rates; and
- 445 (II) employment rates; and
- 446 (L) awarding of appropriate educational credentials to indicate satisfactory course
447 completions;
- 448 (b) all recruiting documents, advertising, solicitations, publicity releases, and other
449 public statements regarding the proprietary school are fair and accurate;
- 450 (c) all agents or sales representatives of the proprietary school are required by the
451 proprietary school to comply with ethical practices prescribed by the division; and
- 452 (d) the institution or proprietary school makes available to the division for inspection
453 during normal business hours, whether or not the inspection is scheduled or announced, all
454 records relevant to:
- 455 (i) the operation of the institution or proprietary school; and
- 456 (ii) the efforts of the institution or proprietary school to comply with this chapter.
- 457 (2) (a) Beginning on May 2, 2005, an institution or proprietary school shall collect and
458 maintain the information necessary to comply with Subsection (1)(a)(iv)(K).
- 459 (b) Prior to May 2, 2008, if an institution or proprietary school has the information
460 described in Subsection (1)(a)(iv)(K) for a time period of three years or less, the institution or
461 proprietary school shall provide the information for the time period the institution or

462 proprietary school has the information.

463 Section 7. Section **13-34-110** is amended to read:

464 **13-34-110. Enforcement of contracts or agreements -- Rescission based on**
465 **defective registration statement.**

466 (1) A proprietary school shall be unable to enforce in the courts of this state any
467 contract or agreement relating to postsecondary education services in this state unless, at the
468 time the contract or agreement was entered into, an effective registration statement was on file
469 with the division and made accessible to every applicant at the time of admission to the school.

470 (2) It is a violation of this chapter if a proprietary school or its agent:

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

472 (b) willfully omits from a registration statement provided under Section 13-34-107 or
473 an application under Section 13-34-107.5 for an exemption certificate any material statement of
474 fact required by this chapter and applicable regulations; or

475 (c) includes in a registration statement any material statement of fact that was known,
476 or should have been known, to the proprietary school to be false, deceptive, inaccurate, or
477 misleading.

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

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

483 Section 8. Section **13-34-113** is amended to read:

484 **13-34-113. Denial, suspension, or revocation of a certificate of registration or**
485 **exemption certificate -- Limitations.**

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

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

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

- 493 (ii) the division determines that the educational credential associated with the
494 proprietary school or accredited institution represents the undertaking or completion of
495 educational achievement that has not been undertaken and earned; or
- 496 (iii) the proprietary school ~~[or]~~, accredited institution, or an individual described in
497 Subsection 13-34-107(2)(a)(ii)(B) has:
- 498 (A) violated any provision of:
- 499 (I) this chapter;
- 500 (II) the rules made by the division pursuant to this chapter; or
- 501 (III) a commitment made in a registration statement for a certificate of registration to
502 operate the proprietary school or in an application for an exemption certificate;
- 503 (B) caused or allowed to occur a violation of any provision of:
- 504 (I) this chapter;
- 505 (II) the rules made by the division pursuant to this chapter; or
- 506 (III) a commitment made in a registration statement for a certificate of registration to
507 operate the proprietary school;
- 508 (C) been enjoined by any court, or is the subject of an administrative or judicial order
509 issued in this or another state, if the injunction or order:
- 510 (I) includes a finding or admission of fraud, breach of fiduciary duty, or material
511 misrepresentation; or
- 512 (II) was based on a finding of lack of integrity, truthfulness, or mental competence;
- 513 (D) been convicted of a crime involving moral turpitude;
- 514 (E) obtained or attempted to obtain a certificate of registration under this chapter by
515 misrepresentation;
- 516 (F) failed to timely file with the division any report required by:
- 517 (I) this chapter; or
- 518 (II) rules made by the division pursuant to this chapter;
- 519 (G) failed to furnish information requested by the division; or
- 520 (H) failed to pay an administrative fine imposed by the division in accordance with this
521 chapter.
- 522 (2) Division staff may place reasonable limits upon a proprietary school's continued
523 certificate of registration to operate if:

524 (a) there are serious concerns about the proprietary school's ability to provide the
525 training in the manner approved by the division; and
526 (b) limitation is warranted to protect the students' interests.
527 (3) (a) The division may:
528 [~~(a)~~] (i) conduct a criminal background check on an individual described in Subsection
529 13-34-107(2)(a)(ii)(B); and
530 [~~(b)~~] (ii) require a proprietary school to provide to the division any information and to
531 cover any costs necessary to conduct a criminal background check on an individual described
532 in Subsection 13-34-107(2)(a)(ii)(B)~~[(I through (IV), including:~~
533 (A) a fingerprint card in a form acceptable to the division;
534 (B) consent to a criminal background check by the Utah Bureau of Criminal
535 Identification and the Federal Bureau of Investigation;
536 (C) the cost of a criminal background check; and
537 (D) the cost of fingerprinting.
538 (b) Money paid to the division for the cost of a criminal background check is
539 nonlapsing.

Legislative Review Note
as of **2-16-11 9:13 AM**

Office of Legislative Research and General Counsel