

CHAPTER 14

EDUCATION - UNIVERSITIES AND COLLEGES

HOUSE BILL 98-1031

BY REPRESENTATIVES Allen, Dean, Schauer, K. Alexander, Arrington, and S. Williams;
also SENATORS B. Alexander, Arnold, Chlouber, and Pascoe.

AN ACT

CONCERNING THE PRIVATE OCCUPATIONAL SCHOOL DIVISION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 23-60-701, Colorado Revised Statutes, is amended to read:

23-60-701. Legislative declaration. The general assembly hereby finds and declares that, pursuant to article 59 of title 12, C.R.S., there is a demonstrated need for statewide administration of private occupational schools in order to provide standards for, foster improvements of, and protect the citizens of this state against fraudulent or substandard educational services in private occupational schools. Therefore, the general assembly has determined that the overall responsibility for such administration and for ensuring compliance with article 59 of title 12, C.R.S., should be placed with a division which has only this responsibility. ~~subject to the final review and approval of the executive director of the department of higher education, appointed pursuant to section 23-1-110 (2).~~

SECTION 2. 23-60-702 (1), Colorado Revised Statutes, is amended to read:

23-60-702. Definitions. As used in this part 7, unless the context otherwise requires:

(1) ~~"Advisory committee"~~ "BOARD" means the private occupational school ~~policy advisory committee~~ BOARD created in section 23-60-704.

SECTION 3. 23-60-704, Colorado Revised Statutes, is REPEALED AND

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

REENACTED, WITH AMENDMENTS, to read:

23-60-704. Private occupational school board - established - membership.

(1) EFFECTIVE JUNE 30, 1998, THE PRIVATE OCCUPATIONAL SCHOOL POLICY ADVISORY COMMITTEE IS ABOLISHED, AND THE TERMS OF MEMBERS OF THE ADVISORY COMMITTEE SERVING AS SUCH IMMEDIATELY PRIOR TO JUNE 30, 1998, ARE TERMINATED.

(2) EFFECTIVE JULY 1, 1998, THERE IS ESTABLISHED, IN THE PRIVATE OCCUPATIONAL SCHOOL DIVISION, THE PRIVATE OCCUPATIONAL SCHOOL BOARD WHICH SHALL ADVISE THE DIRECTOR ON THE ADMINISTRATION OF THIS PART 7 AND SHALL HAVE THE POWERS AND DUTIES SPECIFIED IN SECTION 23-60-704.5. THE BOARD SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AND FUNCTIONS SPECIFIED IN THIS PART 7 AS IF THE SAME WERE TRANSFERRED TO THE DEPARTMENT BY A **TYPE 1** TRANSFER, AS SUCH TRANSFER IS DEFINED IN THE "ADMINISTRATIVE ORGANIZATION ACT OF 1968", ARTICLE 1 OF TITLE 24, C.R.S.

(3) THE BOARD SHALL CONSIST OF SEVEN MEMBERS APPOINTED BY THE GOVERNOR, WITH THE CONSENT OF THE SENATE, AS FOLLOWS:

(a) THREE MEMBERS SHALL BE OWNERS OR OPERATORS OF PRIVATE OCCUPATIONAL SCHOOLS THAT RECEIVE TITLE IV FUNDS;

(b) FOUR MEMBERS SHALL BE REPRESENTATIVES OF THE GENERAL PUBLIC, AT LEAST ONE OF WHOM IS EMPLOYED BY A LENDING INSTITUTION LOCATED IN COLORADO AND IS FAMILIAR WITH THE COLORADO STUDENT LOAN PROGRAM AND AT LEAST TWO OF WHOM ARE OWNERS OR OPERATORS OF BUSINESSES WITHIN COLORADO THAT EMPLOY STUDENTS WHO ARE ENROLLED IN SCHOOLS THAT ARE SUBJECT TO ADMINISTRATION BY THE PRIVATE OCCUPATIONAL SCHOOL DIVISION.

(4) NO APPOINTED MEMBER SHALL BE AN EMPLOYEE OF ANY JUNIOR COLLEGE, COMMUNITY OR TECHNICAL COLLEGE, SCHOOL DISTRICT, OR PUBLIC AGENCY THAT RECEIVES VOCATIONAL FUNDS ALLOCATED BY ANY STATE AGENCY.

(5) THE BOARD MEMBERS SHALL SERVE FOUR-YEAR TERMS; EXCEPT THAT, OF THE MEMBERS FIRST APPOINTED TO THE BOARD, THREE MEMBERS TO BE SELECTED BY THE GOVERNOR SHALL SERVE TWO-YEAR TERMS. NO MEMBER SHALL SERVE MORE THAN TWO CONSECUTIVE FOUR-YEAR TERMS.

(6) THE BOARD SHALL HOLD REGULAR MEETINGS AT SUCH TIMES AS IT MAY DEEM APPROPRIATE, BUT IT SHALL NOT MEET LESS THAN FOUR TIMES PER YEAR.

(7) BOARD MEMBERS SHALL BE PAID A PER DIEM OF THIRTY-FIVE DOLLARS FOR EACH DAY ON WHICH THE BOARD MEETS AND THEIR ACTUAL AND NECESSARY EXPENSES INCURRED IN THE CONDUCT OF OFFICIAL BUSINESS.

(8) THE DIVISION SHALL PROVIDE ANY NECESSARY STAFF ASSISTANCE FOR THE BOARD.

SECTION 4. Part 7 of article 60 of title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

23-60-704.5. Duties and powers of the board. THE BOARD SHALL HAVE THE POWERS AND DUTIES SPECIFIED IN SECTION 12-59-105.3, C.R.S.

SECTION 5. 23-60-705, Colorado Revised Statutes, is amended to read:

23-60-705. Duties and powers of the division subject to the approval of the executive director. The division shall exercise all of the powers and duties set forth in section 12-59-105, C.R.S. ~~and shall be responsible for administering and scrutinizing all aspects of the private occupational schools in the state in accordance with article 59 of title 12, C.R.S.~~ The executive director shall review and approve, consistent with the institutional role and statewide needs, any action taken by the division pursuant to the powers and duties set forth in section 12-59-105, C.R.S.; ~~including but not limited to establishing minimum criteria for applicants for certificates of approval and agents' permits, granting accreditation to private occupational schools, promulgating rules and regulations, and granting or denying certificates of approval;~~ except that the participation of the executive director shall not be required in any notice of noncompliance proceeding where a denial of an application for or revocation of a certificate of approval or an agent's permit by the division is made pursuant to section 12-59-112 or 12-59-113, C.R.S. ACTION TAKEN BY THE BOARD.

SECTION 6. 12-59-102 (1) (d), Colorado Revised Statutes, is amended to read:

12-59-102. Legislative declaration. (1) It is the purpose of this article to provide standards for and to foster and improve private occupational schools and their educational services and to protect the citizens of this state against fraudulent or substandard private occupational schools by:

(d) Providing certain rights and remedies to the private occupational school division, THE PRIVATE OCCUPATIONAL SCHOOL BOARD CREATED IN SECTION 23-60-704, C.R.S., and the consuming public necessary to effectuate the purposes of this article;

SECTION 7. 12-59-103, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

12-59-103. Definitions. As used in this article, unless the context otherwise requires:

(2.6) "BOARD" MEANS THE PRIVATE OCCUPATIONAL SCHOOL BOARD CREATED IN SECTION 23-60-704, C.R.S.

SECTION 8. 12-59-105, Colorado Revised Statutes, is amended to read:

12-59-105. Powers and duties of division. (1) The division shall have, in addition to the powers and duties now vested therein by law, the following powers and duties:

(a) ~~To establish minimum criteria in conformity with section 12-59-106, including quality of education, ethical business practices, and fiscal responsibility, which an applicant for a certificate of approval shall meet before such certificate of approval~~

~~may be issued and continued in effect. The criteria to be developed under this section shall be such as will effectuate the purposes of this article.~~

~~(b) To establish minimum criteria in conformity with section 12-59-106 which an applicant for an agent's permit shall meet before such agent's permit may be issued and continued in effect. The criteria to be developed under this section shall be such as will effectuate the purposes of this article.~~

~~(c) To receive, investigate, and evaluate, as it deems necessary, and act upon applications for certificates of approval, agents' permits, and changes of ownership;~~

~~(d) To publish a list of schools and maintain a list of agents authorized to operate in this state under the provisions of this article;~~

~~(e) To receive or cause to be maintained as a permanent file, in conformity with section 12-59-119, copies of educational, financial, and other records;~~

~~(f) To require the posting of appropriate notices on the school premises notifying students of any school closure by operation of law or otherwise;~~

~~(g) To investigate, as it deems necessary, any entity subject to, or reasonably believed by the division to be subject to, the jurisdiction of this article and, in connection therewith, to subpoena any persons, books, records, or documents pertaining to such investigation, to require answers in writing, under oath, to questions propounded by the division, and to administer an oath or affirmation to any person in connection with any such investigation. Such investigation may include the physical inspection of school facilities and records. Said subpoena shall be enforceable by any court of record of this state.~~

~~(h) To deny or revoke permits of agents of any out-of-state school determined not to be in compliance with this article;~~

~~(i) To appoint administrative law judges to conduct hearings on any matter within the jurisdiction of the division, which shall include the conduct of hearings in aid of any investigation or inquiry pursuant to paragraph (g) of this subsection (1);~~

~~(j) To grant accreditation to schools which make application and which meet the standards of accreditation established by the division, which shall include at least the standards of accreditation required for recognition of an accrediting authority for private occupational schools by the United States office of education. Accreditation shall be voluntary and shall not affect, in any manner, a certificate of approval issued by the division as provided in this article. A school making application for accreditation shall pay all reasonable expenses incurred by the division, including any payments to evaluators, in the performance of the accreditation evaluation or in connection with the continuation of any accreditation received under this paragraph (j);~~

~~(k) To negotiate and enter into interstate reciprocity agreements with similar agencies in other states whenever, in the judgment of the division AND THE BOARD, such agreements are or will be helpful in effectuating the purposes of this article; except that nothing contained in any such reciprocity agreement shall be construed~~

as limiting the division's powers, duties, and responsibilities with respect to investigating or acting upon any application for a certificate of approval for a private occupational school or an application for issuance of or renewal of any agent's permit or with respect to the enforcement of any provision of this article or any of the rules or regulations promulgated under this article.

~~(l) To promulgate rules and regulations and to adopt procedures necessary or appropriate for the conduct of its work and the implementation of this article;~~

~~(m) To exercise other powers and duties implied, but not enumerated, in this section which, in the judgment of the division, are deemed necessary in order to carry out the provisions of this article;~~

~~(n) To establish educational standards and requirements for the awarding of appropriate educational credentials by private occupational schools; except that no private occupational school may award an associate degree unless it has met the total and general course hour standards established by the state board.~~

SECTION 9. Article 59 of title 12, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

12-59-105.3. Powers and duties of board. (1) THE BOARD SHALL HAVE THE FOLLOWING POWERS AND DUTIES:

(a) TO ESTABLISH MINIMUM CRITERIA IN CONFORMITY WITH SECTION 12-59-106, INCLUDING QUALITY OF EDUCATION, ETHICAL BUSINESS PRACTICES, AND FISCAL RESPONSIBILITY, WHICH AN APPLICANT FOR A CERTIFICATE OF APPROVAL SHALL MEET BEFORE SUCH CERTIFICATE OF APPROVAL MAY BE ISSUED AND CONTINUED IN EFFECT. THE CRITERIA TO BE DEVELOPED UNDER THIS SECTION SHALL BE SUCH AS WILL EFFECTUATE THE PURPOSES OF THIS ARTICLE.

(b) TO ESTABLISH MINIMUM CRITERIA IN CONFORMITY WITH SECTION 12-59-106 WHICH AN APPLICANT FOR AN AGENT'S PERMIT SHALL MEET BEFORE SUCH AGENT'S PERMIT MAY BE ISSUED AND CONTINUED IN EFFECT. THE CRITERIA TO BE DEVELOPED UNDER THIS SECTION SHALL BE SUCH AS WILL EFFECTUATE THE PURPOSES OF THIS ARTICLE.

(c) TO CONSULT WITH THE DIVISION REGARDING INTERSTATE RECIPROCITY AGREEMENTS;

(d) TO RECEIVE, INVESTIGATE, AND EVALUATE, AS IT DEEMS NECESSARY, AND ACT UPON APPLICATIONS FOR CERTIFICATES OF APPROVAL, AGENTS' PERMITS, AND CHANGES OF OWNERSHIP;

(e) TO REQUIRE THE POSTING OF APPROPRIATE NOTICES ON THE SCHOOL PREMISES NOTIFYING STUDENTS OF ANY SCHOOL CLOSURE BY OPERATION OF LAW OR OTHERWISE;

(f) TO INVESTIGATE, AS IT DEEMS NECESSARY, ANY ENTITY SUBJECT TO, OR REASONABLY BELIEVED BY THE BOARD TO BE SUBJECT TO, THE JURISDICTION OF THIS ARTICLE AND, IN CONNECTION THEREWITH, TO SUBPOENA ANY PERSONS, BOOKS,

RECORDS, OR DOCUMENTS PERTAINING TO SUCH INVESTIGATION, TO REQUIRE ANSWERS IN WRITING, UNDER OATH, TO QUESTIONS PROPOUNDED BY THE BOARD, AND TO ADMINISTER AN OATH OR AFFIRMATION TO ANY PERSON IN CONNECTION WITH ANY SUCH INVESTIGATION. SUCH INVESTIGATION MAY INCLUDE THE PHYSICAL INSPECTION OF SCHOOL FACILITIES AND RECORDS. SAID SUBPOENA SHALL BE ENFORCEABLE BY ANY COURT OF RECORD OF THIS STATE.

(g) TO DENY OR REVOKE THE AGENT'S PERMIT OF AN AGENT OF AN OUT-OF-STATE SCHOOL DETERMINED NOT TO BE IN COMPLIANCE WITH THIS ARTICLE;

(h) TO APPOINT ADMINISTRATIVE LAW JUDGES TO CONDUCT HEARINGS ON ANY MATTER WITHIN THE JURISDICTION OF THE BOARD, WHICH SHALL INCLUDE THE CONDUCT OF HEARINGS IN AID OF ANY INVESTIGATION OR INQUIRY PURSUANT TO PARAGRAPH (f) OF THIS SUBSECTION (1);

(i) TO GRANT ACCREDITATION TO SCHOOLS THAT MAKE APPLICATION AND THAT MEET THE STANDARDS OF ACCREDITATION ESTABLISHED BY THE BOARD, WHICH SHALL INCLUDE AT LEAST THE STANDARDS OF ACCREDITATION REQUIRED FOR RECOGNITION OF AN ACCREDITING AUTHORITY FOR PRIVATE OCCUPATIONAL SCHOOLS BY THE UNITED STATES OFFICE OF EDUCATION. ACCREDITATION SHALL BE VOLUNTARY AND SHALL NOT AFFECT, IN ANY MANNER, A CERTIFICATE OF APPROVAL ISSUED BY THE BOARD AS PROVIDED IN THIS ARTICLE. A SCHOOL MAKING APPLICATION FOR ACCREDITATION SHALL PAY ALL REASONABLE EXPENSES INCURRED BY THE BOARD, INCLUDING ANY PAYMENTS TO EVALUATORS, IN THE PERFORMANCE OF THE ACCREDITATION EVALUATION OR IN CONNECTION WITH THE CONTINUATION OF ANY ACCREDITATION RECEIVED UNDER THIS PARAGRAPH (i).

(j) TO PROMULGATE RULES AND TO ADOPT PROCEDURES NECESSARY OR APPROPRIATE FOR THE CONDUCT OF ITS WORK AND THE IMPLEMENTATION OF THIS ARTICLE;

(k) TO ESTABLISH EDUCATIONAL STANDARDS AND REQUIREMENTS FOR THE AWARDING OF APPROPRIATE EDUCATIONAL CREDENTIALS BY PRIVATE OCCUPATIONAL SCHOOLS;

(l) TO EXERCISE OTHER POWERS AND DUTIES IMPLIED, BUT NOT ENUMERATED, IN THIS SECTION WHICH, IN THE JUDGMENT OF THE BOARD, ARE NECESSARY IN ORDER TO CARRY OUT THE PROVISIONS OF THIS ARTICLE.

SECTION 10. 12-59-105.5, Colorado Revised Statutes, is amended to read:

12-59-105.5. Occupational credentials for instructors of barbering and cosmetology. The holder of a valid current Colorado license to practice as an instructor of barbering or cosmetology prior to November 1, 1990, shall be awarded a current occupational credential by the ~~state~~ board as prescribed by the rules ~~and regulations~~ concerning private occupational schools promulgated pursuant to ~~section 12-59-105 (1) (j)~~ SECTION 12-59-105.3 (1) (j). All persons awarded such occupational credential pursuant to this section shall meet the requirements of the ~~state~~ board for renewal of the credential.

SECTION 11. The introductory portion to 12-59-106 (1) and 12-59-106 (1) (f),

(1) (o), (1) (p), (1) (r), and (2), Colorado Revised Statutes, are amended to read:

12-59-106. Minimum standards. (1) In establishing the criteria required by ~~section 12-59-105 (1) (a), (1) (b), and (1) (n)~~ SECTION 12-59-105.3 (1) (a), (1) (b), AND (1) (k), the ~~division~~ BOARD shall observe and require compliance with at least the following minimum standards for all schools:

(f) That the school provides each prospective student with a school catalog and other printed information describing the educational services offered and describing entrance requirements, program objectives, length of programs, schedule of tuitions, fees, all other charges and expenses necessary for the completion of the program of study, cancellation and refund policies, and such other material facts concerning the school and the program of instruction that are likely to affect the decision of a student to enroll therein as required by the ~~division~~ BOARD and that such information is provided to a prospective student prior to the commencement of classes and the execution of any enrollment agreement or contract;

(o) That an out-of-state school shall maintain records which include, but are not limited to, a list of the name and address of each student enrolled from within this state and that such records shall be made available to the ~~division~~ BOARD upon request;

(p) That the school shall submit to the ~~division~~ BOARD the name and Colorado address of a designated agent upon whom any process, notice, or demand may be served and that such agent shall be maintained continuously. Nothing contained in this section shall limit or affect the right to serve any process, notice, or demand required or permitted by law to be served upon a foreign corporation in any other manner now or hereafter permitted by law.

(r) That an agent shall represent only a school ~~which~~ THAT meets the minimum standards set forth in this section and the criteria established pursuant to ~~section 12-59-105~~ SECTION 12-59-105.3;

(2) A school that is accredited by an accrediting association officially recognized by the United States education department or by the ~~division~~ BOARD may fulfill the requirements of paragraphs (c) to (o) and (s) of subsection (1) of this section by maintaining its accreditation with its appropriate accrediting association as long as the accrediting standards meet or exceed the minimum standards set forth in this article.

SECTION 12. 12-59-107 (1) (b) and (1) (e), Colorado Revised Statutes, are amended to read:

12-59-107. Prohibitions. (1) No entity of whatever kind, alone or in concert with others, shall:

(b) Offer educational services in or grant educational credentials from a school located within or without this state unless said agent holds a valid agent's permit issued pursuant to the provisions of this article; except that the ~~division~~ BOARD may promulgate rules ~~and regulations~~ to permit the rendering of legitimate public information services without such permit;

(e) ~~Award associate degrees unless such entity has met the total and general course hour standards established by the state board.~~

SECTION 13. The introductory portion to 12-59-108 (1) and 12-59-108 (1) (a), (3), and (5), Colorado Revised Statutes, are amended to read:

12-59-108. Application for certificate of approval. (1) Any entity desiring to operate a private occupational school in this state shall make application for a certificate of approval to the ~~division~~ BOARD upon forms to be provided by the ~~division~~ BOARD. Said application shall include at least the following:

(a) A catalog published or proposed to be published by the school containing the information specified in the criteria promulgated by the ~~division~~ BOARD;

(3) The ~~division~~ BOARD shall not be required to act upon an application until such time as an application is submitted as set forth in this section.

(5) The ~~division~~ BOARD shall not be required to act upon an application submitted by a school whose certificate of approval has been revoked or denied by a final nonappealable order of the ~~division~~ BOARD for a period of twelve months subsequent to said revocation or denial. Notwithstanding that an order of revocation or denial may be subject to judicial review, said school shall otherwise comply with and be subject to the provisions of this article; except that said school shall not be required to submit an application as required by this section.

SECTION 14. 12-59-109 (1) and (3), Colorado Revised Statutes, are amended to read:

12-59-109. Issuance of certificate of approval. (1) Following the review and evaluation of an application for a certificate of approval and any further information required by the ~~division~~ BOARD to be submitted by the applicant and such investigation and appraisal of the applicant as the ~~division~~ BOARD deems necessary or appropriate, the ~~division~~ BOARD shall either grant or deny a certificate of approval to the applicant. A certificate of approval shall be issued to the applicant in the name of the school and shall state in clear and conspicuous language the name and address of the school, the date of issuance, and the term of approval.

(3) At any time within the period of a certificate of approval, the ~~division~~ BOARD may require the school to submit supplementary documentation or information deemed necessary to enable the ~~division~~ BOARD to determine whether said school is continuing to be operated in compliance with the provisions of this article.

SECTION 15. 12-59-110 (1) and (2), Colorado Revised Statutes, are amended to read:

12-59-110. Application for change of ownership. (1) In the event of a change of ownership of a school, the seller, prior to the effective date of the change of ownership, shall notify the ~~division~~ BOARD in writing, and the buyer, prior to or within thirty days after the change of ownership, shall make application for approval of the change of ownership upon forms to be provided and in a manner prescribed by the ~~division~~ BOARD. In the event of a failure to do so, the school's certificate of

approval shall be suspended by operation of law until such application has been received and approved by the ~~division~~ BOARD as provided in this section.

(2) Following the review and evaluation of an application and any further information required by the ~~division~~ BOARD to be submitted by the applicant and such investigation and appraisal of an applicant as the ~~division~~ BOARD deems necessary or appropriate, the ~~division~~ BOARD shall either grant or deny the application. Denial of an application shall be in the same manner as set forth in section 12-59-112 for a denial of an application for a certificate of approval; except that the ~~division~~ BOARD shall not be required to submit a notice of noncompliance.

SECTION 16. The introductory portion to 12-59-111 (2) (a) and 12-59-111 (2) (b), (2) (d), (2) (h), and (2) (i), Colorado Revised Statutes, are amended to read:

12-59-111. Agent's permits. (2) Out-of-state schools. (a) Any person desiring to engage in the performance of the duties as an agent within this state, for a school located outside this state, shall make application through the school to the ~~division~~ BOARD upon forms to be provided by the division. Said application shall include the following:

(b) An application submitted by an applicant who intends to represent a school located outside this state shall not be acted upon until any information regarding said school which is required to be submitted by the ~~division~~ BOARD, including the name and Colorado address of a designated agent upon whom any process, notice, or demand may be served, has been received.

(d) Following the review and evaluation of an application and any further information required by the ~~division~~ BOARD to be submitted by the applicant and such investigation and appraisal of an applicant as the ~~division~~ BOARD deems necessary or appropriate, the ~~division~~ BOARD shall recommend to the executive director either a grant or denial of an agent's permit to the applicant.

(h) At least sixty days prior to the expiration of an agent's permit, the agent shall complete and file with the ~~division~~ BOARD an application form and fee for renewal of said permit. Said application shall be reviewed and acted upon as provided in this article. If such application is not submitted as set forth in this section, the agent's existing permit shall expire on July 1.

(i) The ~~division~~ BOARD shall not be required to act upon an application submitted by an agent whose permit has been revoked or denied by a final nonappealable order of the ~~division~~ BOARD for a period of twelve months subsequent to said revocation or denial. Notwithstanding that an order of revocation or denial shall be subject to judicial review, said agent shall otherwise comply with and be subject to the provisions of this article; except that said agent shall not be required to submit an application as required by this section.

SECTION 17. 12-59-112 (1), (2), and (3), Colorado Revised Statutes, are amended to read:

12-59-112. Denial of application for certificate of approval or agent's permit. (1) If the ~~division~~ BOARD, upon review of an application for a certificate of approval

or for an agent's permit, determines upon reasonable belief that the applicant fails to meet any one or more of the criteria established pursuant to this article, the ~~division~~ BOARD shall submit to the applicant a notice of noncompliance setting forth the reasons therefor in writing. The notice shall set forth a period of time within which the applicant may submit written data, arguments, views, or information with respect to the reasons set forth in the notice and during which time the applicant shall also be afforded the opportunity to eliminate the reason for said notice.

(2) The ~~division~~ BOARD shall consider such written data, arguments, views, or information submitted and the steps taken by the applicant to comply and shall thereafter determine upon reasonable belief whether a hearing shall be conducted for the purpose of denying said application.

(3) An application for a certificate of approval or an agent's permit may also be denied by the ~~division~~ BOARD if the applicant has furnished false or misleading written or oral statements, documents, or other representations to the ~~division~~ BOARD with the intent to mislead or conceal the truth of any matter to be considered by the ~~division~~ BOARD as a factor in approving the application.

SECTION 18. 12-59-113, Colorado Revised Statutes, is amended to read:

12-59-113. Revocation of certificate of approval and agent's permit. (1) If the ~~division~~ BOARD determines upon reasonable belief that the holder of a certificate of approval or an agent's permit has violated or is violating any one or more of the criteria established pursuant to this article, the ~~division~~ BOARD or its authorized designee shall submit to such holder or a school's designated agent for service of process a notice of noncompliance setting forth the reasons therefor in writing. The notice shall set forth a period of time within which the applicant may submit written data, views, arguments, or information with respect to the reasons set forth in the notice and during which time such holder shall also be afforded the opportunity to eliminate the reason for said notice.

(2) The ~~division~~ BOARD shall consider such written data, arguments, views, or information submitted and the steps taken by such holder to comply and shall thereafter determine upon reasonable belief whether a hearing shall be conducted for the purpose of revoking the certificate of approval or an agent's permit.

(3) If the ~~division~~ BOARD has reasonable grounds to believe and finds that such holder has willfully and deliberately violated the criteria established pursuant to this article or that the public health, safety, or welfare imperatively requires emergency action and incorporates such findings in its order, it may summarily suspend the certificate of approval or agent's permit pending a hearing which shall be promptly instituted and determined.

(4) A certificate of approval or an agent's permit may also be revoked by the ~~division~~ BOARD if the holder thereof has furnished false or misleading written or oral statements, documents, or other representations to the ~~division~~ BOARD with the intent to mislead or conceal the truth of any matter considered by the ~~division~~ BOARD as a factor in approving the application for a certificate of approval or an agent's permit or for continuing in effect the certificate of approval or an agent's permit.

(5) A certificate of approval may be revoked by the ~~division~~ BOARD if the holder thereof has had its surety bond cancelled and has not replaced it within fifteen days prior to the effective date of such bond termination.

SECTION 19. 12-59-114 (1) (d) and (3), Colorado Revised Statutes, are amended to read:

12-59-114. Refund policy. (1) As a condition for granting a certificate of approval or an agent's permit to represent a school located outside this state, a school shall maintain a policy for the refund of tuition and fees in the event, and within thirty days of the date, a student fails to enter the course, withdraws, or has been discontinued therefrom at any time prior to completion, and such policy shall provide for at least the following:

(d) That the school use a method of determining the official termination date of the student which complies with the ~~state board's~~ established criteria OF THE STATE BOARD FOR COMMUNITY COLLEGES AND OCCUPATIONAL EDUCATION;

(3) The ~~division~~ BOARD may require a school to submit to the ~~division~~ BOARD a notice of each tuition refund paid or contract cancelled in the manner and to the extent determined by the ~~division~~ BOARD.

SECTION 20. 12-59-115 (2), (6), (7) (a), (7) (b), (7) (e), (7) (f), (8), (9), (10), (11), (12), and (13), Colorado Revised Statutes, are amended to read:

12-59-115. Bonds. (2) At the time application is made for a certificate of approval, the ~~division~~ BOARD shall require an applicant to file with the division a surety bond in such sum as determined pursuant to subsection (3) of this section. Said bond shall be executed by the applicant as principal and by a surety company authorized to do business in this state. The bond shall be conditioned to provide indemnification to any student or enrollee or to any parent or guardian of such student or enrollee determined by the ~~division~~ BOARD to have suffered loss of tuition or any fees as a result of any act or practice ~~which~~ THAT is a violation of any minimum standard as set forth in this article or any criterion established pursuant thereto by a school or its agents and to provide train-out for students enrolled in an approved school ceasing operation as provided in subsection (7) of this section. The bond shall be continuous unless said surety is released as set forth in this section.

(6) (a) A student, enrollee, or parent or guardian of the student or enrollee claiming loss of tuition or fees may file a claim with the ~~division~~ BOARD if the claim results from an act or practice that violates a minimum standard or criterion established pursuant to section 12-59-106. Such claims that are filed with the ~~division~~ BOARD shall constitute public records and are subject to the provisions of article 72 of title 24, C.R.S.; except that no such claims records shall be made public if such release would violate any federal privacy law.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (6), the ~~division~~ BOARD shall not consider any claim that is filed more than two years after the date the student discontinues his or her training at the school.

(7) (a) In the event that a private occupational school ceases operation, the ~~division~~

BOARD shall be authorized to make demand on the surety of such school upon the demand for a refund by a student or the implementation of a train-out for the students of such school, and the surety shall pay the claim due in a timely manner. To the extent practicable, the ~~division~~ BOARD shall use the amount of the bond to provide train-out for students of the private occupational school ceasing operation through a contract with another approved private occupational school, a community college, an area vocational school, or any other training arrangement acceptable to the ~~division~~ BOARD. The train-out provided to a student shall replace the original enrollment agreement or contract between the student and the private occupational school ceasing operation; except that tuition and fee payments shall be made by the student as required by the original enrollment agreement or contract.

(b) Any student enrolled in a private occupational school ceasing operation who declines the train-out required to be offered pursuant to paragraph (a) of this subsection (7) may file a claim with the ~~division~~ BOARD for the student's prorated share of the prepaid, unearned tuition and fees paid by such student subject to the limitations of paragraph (c) of this subsection (7). No subsequent payment shall be made to a student, unless proof of satisfaction of any prior debt to a financial institution is submitted in accordance with the ~~department of higher education~~ BOARD rules and regulations concerning the administration of this section.

(e) The ~~division~~ BOARD shall be designated as the trustee for all prepaid, unearned tuition and fees, student loans, pell grants, and other student financial aid assistance in the event that an approved private occupational school ceases operation.

(f) The ~~division~~ BOARD shall determine whether the offering of a train-out for students enrolled in an approved private occupational school ceasing operation is practicable without federal government designation of the ~~division~~ BOARD as trustee for student loans, pell grants, and other student financial aid assistance pursuant to paragraph (e) of this subsection (7).

(8) At the time that application is made for an agent's permit to represent a school located outside this state, said application shall be accompanied by a surety bond in the sum of fifty thousand dollars. Said bond shall be executed by the applicant as principal and by a surety company authorized to do business in this state. The bond shall be conditioned to provide indemnification to any student, or enrollee, or his OR HER parent or guardian determined by the ~~division~~ BOARD to have suffered loss of tuition or any fees as a result of any act or practice ~~which~~ THAT is a violation of any deceptive trade or sales practice as set forth in this article or any criteria established pursuant thereto by said agent. Regardless of the number of years that said bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond. The bond shall be continuous, unless said surety is released as set forth in this section, and may be blanket in form. Any student or enrollee or his OR HER parent or guardian claiming loss of tuition or any fees as a result of any deceptive trade or sales practice shall file a notarized claim with the ~~division~~ BOARD. In no event, however, shall the ~~division~~ BOARD consider any such complaint filed one hundred eighty days after the date the student discontinued his OR HER training at said school.

(9) Except with respect to a claim for tuition and fees made by a student enrolled in an approved private occupational school ceasing operation, the ~~division~~ BOARD

shall conduct a hearing for the purpose of determining any loss of tuition or fees, and, if any claim is found to be correct and due the claimant, the ~~division~~ BOARD shall make demand upon the principal and the surety on the bond. If the principal or surety fails or refuses to pay the claim due, the ~~division~~ BOARD shall commence an action on such bond in any court of competent jurisdiction; except that no such action may be filed more than six years subsequent to the date of any violation ~~which~~ THAT gives rise to the right to file a claim pursuant to this section. A claim for tuition and fees made by a student enrolled in an approved private occupational school ceasing operation shall be handled in the manner provided in subsection (7) of this section.

(10) A certificate of approval or an agent's permit shall be suspended by operation of law when said school or agent is no longer covered by a surety bond as required by this section. The ~~division~~ BOARD shall give written notice to said school or agent, or both, at the last-known address, at least forty-five days prior to the release of said surety, to the effect that said certificate of approval or agent's permit shall be suspended by operation of law until another surety bond is filed in the same manner and like amount as the bond being released.

(11) A surety on any bond filed under the provisions of this section shall be released therefrom after such surety serves written notice thereof to the ~~division~~ BOARD at least sixty days prior to such release. Said release shall not discharge or otherwise affect any claim filed by any student or enrollee or his OR HER parent or guardian for loss of tuition or any fees ~~which~~ THAT occurred while said bond was in effect or which occurred under any note or contract executed during any period of time when said bond was in effect, except when another bond is filed in a like amount and provides indemnification for any such loss.

(12) (a) The ~~division~~ BOARD shall allow, at a reasonable price, alternate surety methods in lieu of the bonding requirements of this section. The alternate sureties shall be conditioned to provide indemnification to any student or enrollee or to any parent or guardian of such student or enrollee for any loss of tuition or any fees as a result of any act or practice ~~which~~ THAT is a violation of this article and to provide train-out for students enrolled in an approved school ceasing operation as provided in subsection (7) of this section. In the event that a school covered by an alternate surety ceases operation, the ~~division~~ BOARD shall act in the manner provided in subsection (7) of this section.

(b) Prior to September 1, 1991, and each year thereafter, any alternate surety allowed by the ~~division~~ BOARD shall be required to contract for an independent financial audit. Such audit shall be included in a report to the ~~division~~ BOARD due by January 1 of the following year. The ~~division~~ BOARD may disapprove an alternate surety if it deems that such surety is not able to provide students with the indemnification and train-out required by this section.

(13) For the purposes of this section, "school" and "private occupational school" shall include a for-profit private college or university, as defined in section 23-2-102 (3), C.R.S., in which the majority of students are enrolled in courses and programs ~~which~~ THAT are occupational in nature, as defined by the ~~division~~ BOARD.

SECTION 21. 12-59-116 (1), (2), (3) (a), and (3) (b), Colorado Revised Statutes, are amended to read:

12-59-116. Fees - private occupational schools fund - annual adjustment.

(1) The ~~division~~ BOARD by rule shall establish fees for the direct and indirect costs of the administration of this article, which fees shall accompany any application for a certificate of approval for a new school or for a school other than a new school, for an in-state or out-of-state agent's permit, or for a change of ownership. All fees collected shall be transmitted to the state treasurer, who shall credit the same to the private occupational schools fund, which fund is hereby created. The moneys in the fund shall be subject to annual appropriation by the general assembly for the direct and indirect costs of the administration of this article. All moneys credited to the fund shall be used for the direct and indirect costs of the administration of this article and shall not be deposited in or transferred to the general fund of this state or to any other fund.

(2) In addition to the fees specified in subsection (1) of this section, the ~~division~~ BOARD by rule shall establish and receive fees for reviewing the qualifications of and for issuing appropriate credentials to instructors and administrators pursuant to section 12-59-106 (1) (e). Such fees shall be collected and administered in the same manner as the fees specified in subsection (1) of this section.

(3) (a) The ~~division~~ BOARD shall propose, as part of ~~its~~ THE DIVISION'S annual budget request, an adjustment in the amount of the fees that it is authorized to collect pursuant to this section. The budget request and the adjusted fees shall reflect the direct and indirect costs of administering this article.

(b) Based upon the appropriation made and subject to the approval of the Colorado commission on higher education, the ~~division~~ BOARD shall adjust its fees so that the revenue generated from said fees approximates the direct and indirect costs of administering this article. The adjusted fees shall remain in effect for the fiscal year for which the budget request applies.

SECTION 22. 12-59-118, Colorado Revised Statutes, is amended to read:

12-59-118. Complaints of deceptive trade or sales practices. (1) A person claiming ~~loss of tuition or fees~~ PECUNIARY LOSS as a result of a deceptive trade or sales practice, pursuant to section 12-59-117, by a school or agent ~~may~~ SHALL file with the ~~division~~ BOARD a written complaint against the school or agent. The complaint shall set forth the alleged violation and other relevant information as may be required by the ~~division~~ BOARD. A complaint filed under this section is a public record subject to the provisions of article 72 of title 24, C.R.S., and shall be filed within two years after the student discontinues his or her training at the school or at any time prior to the commencement of training.

(2) The ~~division~~ BOARD shall investigate any such complaint and thereafter may consider such complaint at a hearing. If, upon all the evidence at a hearing, the ~~division~~ BOARD finds that a school or agent has engaged in or is engaging in any deceptive trade or sales practice, the ~~division~~ BOARD may issue and cause to be served upon such school, such agent, or the designated agent for service of process, notice, or demand an order requiring such school or agent to cease and desist from such practice. The ~~division~~ BOARD may obtain an order for enforcement of its order in the district court pursuant to section 24-4-106, C.R.S.

(3) If the ~~division~~ BOARD finds that the complainant or class of complainants has suffered ~~loss of tuition or fees~~ PECUNIARY LOSS as a result of such practice, the ~~division~~ BOARD, at its discretion, may award the complainant or class of complainants full restitution for such loss. The ~~division~~ BOARD may also commence a civil action against a school or agent believed by the ~~division~~ BOARD to have caused a complainant or class of complainants to suffer a ~~loss of tuition or fees~~ PECUNIARY LOSS as a result of any deceptive trade or sales practice. Upon a finding that such complainant or class of complainants has suffered a ~~loss of tuition or fees~~ PECUNIARY LOSS as a result of any deceptive trade or sales practice, the court shall order the school or agent to pay to the complainant or class of complainants full restitution for such loss.

(4) ANY PERSON FILING A COMPLAINT ALLEGING A DECEPTIVE TRADE OR SALES PRACTICE PURSUANT TO THIS SECTION SHALL EXHAUST THE REMEDIES PROVIDED IN THIS SECTION PRIOR TO FILING A COMPLAINT WITH THE DISTRICT COURT ALLEGING A DECEPTIVE TRADE OR SALES PRACTICE.

SECTION 23. 12-59-119 (2) and (3), Colorado Revised Statutes, are amended to read:

12-59-119. Preservation of records. (2) In the event that it appears to the ~~division~~ BOARD that any such records of a school ceasing operation are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the ~~division~~ BOARD, the ~~division~~ BOARD may seize and take possession of such records upon making application to any court of competent jurisdiction for an appropriate order. The ~~division~~ BOARD shall maintain or cause to be maintained in the department of personnel a permanent file of any such records.

(3) Any person desiring copies of any such records shall pay a fee as may be established by the ~~state~~ board.

SECTION 24. 12-59-121, Colorado Revised Statutes, is amended to read:

12-59-121. Violations - civil - penalty. The ~~division~~ BOARD may commence a civil action against any entity believed by the ~~division~~ BOARD to have violated the provisions of section 12-59-107 or who fails or refuses to deposit with the department of personnel the records required by section 12-59-119. Upon a finding that such entity has violated the provisions of section 12-59-107 or has failed or refused to deposit with the department of personnel the records required by section 12-59-119, the court shall order such entity to pay to the division a civil penalty not to exceed one hundred dollars for each violation. Each day's failure by an entity to comply with the provisions of said section shall be a separate violation.

SECTION 25. 12-59-123, Colorado Revised Statutes, is amended to read:

12-59-123. State administrative procedure act. Unless otherwise provided in this article, the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S., shall govern the giving of notices for and the conducting of any hearings on any matter within the authority of the ~~division~~ BOARD as set forth in this article.

SECTION 26. 12-59-125, Colorado Revised Statutes, is amended to read:

12-59-125. Enforcement - injunction. Whenever it appears to the ~~division~~ BOARD that any entity is or has been violating any of the provisions of this article or any of the lawful rules ~~and regulations~~ or orders of the ~~division~~ BOARD, the ~~division~~ BOARD, on its own motion or on the written complaint of any person, may apply for and obtain a temporary restraining order or injunction, or both, in the name of the ~~division~~ BOARD in any district court in this state against said entity for the purpose of restraining or enjoining such violation or for an order directing compliance with the provisions of this article and all rules ~~and regulations~~ and orders issued pursuant to this article. It shall not be necessary that the ~~division~~ BOARD allege or prove that it has no adequate remedy at law. The right of injunction provided in this section shall be in addition to any other legal remedy which the ~~division~~ BOARD has and shall be in addition to any right of criminal prosecution provided by law. The existence of ~~division~~ BOARD action with respect to alleged violations of this article shall not operate as a bar to any action for injunctive relief pursuant to this section.

SECTION 27. 12-59-127, Colorado Revised Statutes, is amended to read:

12-59-127. Transfer of governance of private occupational schools - provisions for transition - rules. (1) (a) Any powers, duties, and functions relating to the governance, jurisdiction, and control of private occupational schools ~~which~~ THAT were previously vested in the state board for community colleges and occupational education prior to July 1, 1990, are specifically transferred to the division on July 1, 1990.

(b) THE POWERS, DUTIES, AND FUNCTIONS SPECIFIED IN SECTION 12-59-105.3 RELATING TO THE GOVERNANCE, JURISDICTION, AND CONTROL OF PRIVATE OCCUPATIONAL SCHOOLS THAT WERE PREVIOUSLY VESTED IN THE DIVISION PRIOR TO JULY 1, 1998, ARE SPECIFICALLY TRANSFERRED TO THE BOARD ON JULY 1, 1998.

(2) (a) The certificate of approval of any school holding a valid certificate of approval prior to July 1, 1990, issued by the state board for community colleges and occupational education ~~which~~ THAT does not expire normally on said date shall extend to and expire on its normal date without approval of the division unless such certificate of approval is revoked or suspended by the division or unless the school ceases operation.

(b) THE CERTIFICATE OF APPROVAL OF ANY SCHOOL HOLDING A VALID CERTIFICATE OF APPROVAL PRIOR TO JULY 1, 1998, ISSUED BY THE DIVISION THAT DOES NOT EXPIRE NORMALLY ON SAID DATE SHALL EXTEND TO AND EXPIRE ON ITS NORMAL DATE WITHOUT APPROVAL OF THE BOARD UNLESS SUCH CERTIFICATE OF APPROVAL IS REVOKED OR SUSPENDED BY THE BOARD OR UNLESS THE SCHOOL CEASES OPERATION.

(3) (a) The permit of any agent holding a valid permit prior to July 1, 1990, issued by the state board for community colleges and occupational education ~~which~~ THAT does not expire normally on said date shall extend to and expire on its normal date without approval of the division unless such approval is revoked or suspended by the division or unless the school represented by the agent ceases operation.

(b) THE PERMIT OF ANY AGENT HOLDING A VALID PERMIT PRIOR TO JULY 1, 1998,

ISSUED BY THE DIVISION THAT DOES NOT EXPIRE NORMALLY ON SAID DATE SHALL EXTEND TO AND EXPIRE ON ITS NORMAL DATE WITHOUT APPROVAL OF THE BOARD UNLESS SUCH APPROVAL IS REVOKED OR SUSPENDED BY THE BOARD OR UNLESS THE SCHOOL REPRESENTED BY THE AGENT CEASES OPERATION.

(4) The ~~division~~ BOARD shall establish minimum criteria, promulgate other rules, ~~and regulations~~ and adopt procedures necessary for the conduct of its work and the implementation of this article pursuant to ~~section 12-59-105~~ SECTION 12-59-105.3.

SECTION 28. 24-1-114 (3) (d), Colorado Revised Statutes, is amended to read:

24-1-114. Department of higher education - creation. (3) The department of higher education shall include the following divisions:

(d) The private occupational school division, created by part 7 of article 60 of title 23, C.R.S. THE PRIVATE OCCUPATIONAL SCHOOL BOARD, CREATED BY SECTION 23-60-704, C.R.S., SHALL EXERCISE ITS POWERS AND PERFORM ITS DUTIES AND FUNCTIONS AS IF TRANSFERRED TO THE DEPARTMENT BY A **TYPE 1** TRANSFER. The division, EXCEPT FOR THE PRIVATE OCCUPATIONAL SCHOOL BOARD, and the ~~executive~~ director thereof shall exercise their powers and perform their duties and functions as if transferred to the department by a **type 2** transfer.

SECTION 29. No appropriation. The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

SECTION 30. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Became Law: March 17, 1998