

ARTICLE 59
PRIVATE OCCUPATIONAL SCHOOLS

Editor's note: This article was numbered as article 3 of chapter 146 in C.R.S. 1963. The substantive provisions of this article were repealed and reenacted in 1975, causing some addition, relocation, and elimination of sections as well as subject matter. For prior amendments, consult the red book table distributed with the session laws; the original volume of C.R.S. 1973 and annual supplements to that volume; the comparative tables located in the back of the index; and C.R.S. 1963 and subsequent cumulative supplements thereto.

Cross references: For state assistance for vocational education, compare article [8](#) of title [23](#).

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12-59-101. Short title.

This article shall be known and may be cited as the "Private Occupational Education Act of 1981".

Source: L. 75: Entire article R&RE, p. 491, § 1, effective January 1, 1976. **L. 81:** Entire section amended, p. 840, § 1, effective July 1.

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:

(a) Prohibiting the use of false or misleading literature, advertising, or representations by private occupational schools or their agents;

(b) Establishing accountability for private occupational schools and their agents through the setting of standards relative to the quality of educational services, fiscal responsibility, and ethical business practices;

(c) Providing for the preservation of essential records;

(d) Providing certain rights and remedies to the private occupational school division, the private occupational school board created in section [12-59-105.1](#), and the consuming public necessary to effectuate the purposes of this article;

(e) Providing for the authorization of appropriate educational credentials by approved schools including, but not limited to, certificates, diplomas, and associate degrees; and

(f) Providing train-out for students of private occupational schools ceasing operation.

(2) To these ends, this article shall be liberally construed.

Source: L. 75: Entire article R&RE, p. 491, § 1, effective January 1, 1976. **L. 81:** (1) amended, p. 840, § 2, effective July 1. **L. 90:** (1)(d) amended, p. 1161, § 9, effective July 1. **L. 91:** (1)(f) added, p. 1593, § 1, effective March 27. **L. 98:** (1)(d) amended, p. 36, § 6, effective March 17. **L. 2008:** (1)(d) amended, p. 1480, § 23, effective May 28.

12-59-103. Definitions.

As used in this article, unless the context otherwise requires:

- (1) "Administrative law judge" means a person, appointed by the authority from a list provided by the attorney general, who shall conduct hearings on any matter which is within the jurisdiction of the division and which is referred to such administrative law judge by the division.
- (1.5) "Agent" means any person owning any interest in, employed by, or representing for remuneration or other consideration a private occupational school located within or without this state who enrolls or who, in places other than the principal school premises, offers or attempts to secure the enrollment of any person within this state for education in a school.
- (2) "Agent's permit" means a nontransferable written authorization issued to an agent pursuant to the provisions of this article by the division upon approval by the executive director.
- (2.5) "Associate degree" means a degree offered by a school on the successful completion of the degree requirements as established by the division.
- (2.6) "Board" means the private occupational school board created in section [12-59-105.1](#).
- (2.7) "Ceasing operation" means the voluntary discontinuation of operation by a private occupational school or the discontinuation of operation by a private occupational school due to the denial, expiration, revocation, or suspension of such school's certificate of approval by the division.
- (2.8) "Certificate" means an award for the successful completion of a specific course or program objective.
- (3) "Certificate of approval" means a written authorization issued by the division, upon approval by the executive director, to the principal owners of a school in the name of such school, pursuant to the provisions of this article, to operate a school in this state.
- (3.5) "Diploma" means an award for the successful completion of an approved prescribed program of study in a particular field of endeavor.
- (3.6) "Director" means the director of the private occupational school division created pursuant to section [12-59-104.1](#).
- (3.7) "Division" means the private occupational school division created pursuant to section [12-59-104.1](#).
- (4) "Educational credentials" means certificates, diplomas, associate degrees, transcripts, reports, numbers, or words which signify or are generally taken to signify enrollment, attendance, progress, or satisfactory completion of the requirements for education at a school.
- (5) "Educational services" or "education" includes, but is not limited to, any class, course, or program of training, instruction, or study which is designed or is purported to meet all or part of

the requirements for employment in an agricultural, trade, industrial, technical, business, office, sales, service, or health occupation and which constitutes occupational education.

(6) "Entity" includes, but is not limited to, any person, society, association, partnership, corporation, or trust.

(7) "Executive director" means the executive director of the department of higher education appointed pursuant to section [23-1-110](#) (2), C.R.S.

(8) "New school" means a private occupational school that does not hold an existing certificate of approval as of June 30, 1981, or a school holding an existing certificate of approval as of June 30, 1981, which subsequently expires pursuant to the provisions of section [12-59-108](#) (4) or is revoked or denied pursuant to the provisions of this article.

(8.5) "Occupational education" means any education designed to facilitate the vocational, technical, or occupational development of individual persons including, but not limited to, vocational or technical training or retraining which is given in schools or classes, including field or laboratory work incident thereto, which is conducted as a part of a program designed to fit individuals for gainful employment as semiskilled or skilled workers or technicians in recognized occupations requiring less than a four-year baccalaureate degree. The term also includes instruction related to the occupation for which the person is being trained or which is necessary for him to benefit from such training.

(9) "Offer" or "offering" includes, in addition to its usual meaning, advertising, publicizing, soliciting, or encouraging any person in any manner to perform the act described.

(10) "Operate" or "operating", when used with respect to a school, means to establish, keep, or maintain any facility or location in this state where, from, or through which educational services are offered or educational credentials are offered or granted.

(11) "Private occupational school" or "school" means any entity or institution for profit or not for profit located within or without this state which offers educational credentials or educational services that constitute occupational education in this state and which is not specifically exempt from the provisions of this article.

(12) Repealed.

(13) "Train-out" means the opportunity for a student of a private occupational school ceasing operation to meet such student's educational objectives through training provided by another approved private occupational school, a community college, an area vocational school, or any other training arrangement acceptable to the division.

Source: L. 75: Entire article R&RE, p. 492, § 1, effective January 1, 1976. **L. 81:** (1), (4), (5), (8), and (11) amended and (2.5), (2.8), (3.5), and (8.5) added, p. 841, § 3, effective July 1. **L. 87:** (7) amended, p. 951, § 49, effective March 13. **L. 90:** (1) and (7) R&RE, (1.5), (3.6), and (3.7) added, (2), (2.5), and (3) amended, and (12) repealed, pp. 1161, 1172, §§ 10, 11, 33, effective July 1. **L. 91:** (2.7) and (13) added, p. 1593, § 2, effective March 27. **L. 98:** (2.6) added, p. 36, § 7, effective March 17. **L. 2008:** (2.6), (3.6), and (3.7) amended, p. 1480, § 24, effective May 28.

12-59-104. Exemptions.

(1) The following educational institutions and educational services are exempt from the provisions of this article:

(a) A public school or public educational institution funded wholly or in part by a local school district or school districts or by direct appropriation from the state to a school, public educational institution, or board;

(b) A nonprofit school owned, controlled, operated, and maintained by a bona fide parochial or denominational institution exempt from general property taxation under the laws of this state;

(c) A school offering education solely avocational, supplementary, or ancillary in nature;

(d) A college or university which:

(I) Confers four-year baccalaureate or higher degrees; and

(II) Offers programs or courses in this state, the majority of which are not occupational in nature, as defined by the division, or are at the graduate level;

(e) Repealed.

(f) A private school providing a basic academic education comparable to that provided in public elementary and secondary schools of this state;

(g) A school offering only educational services for which no money or other consideration is paid;

(h) A school offering only educational services to an employer for the training of its employees;

(i) Education offered by a bona fide trade, business, professional, or fraternal organization solely for that organization's membership;

(j) Educational services offered by an employer for the training of its own employees;

(k) Apprenticeship training registered pursuant to state or federal law;

(l) Educational services offered by an approved school which:

(I) Do not require the payment of money or other consideration;

(II) Are avocational, supplementary, or ancillary in nature; or

(III) Are offered only to an employer for the training and preparation of his employees;

(m) Nurse aide training programs approved pursuant to section [12-38.1-108](#) (1);

(n) Flight schools that are approved and regulated by the federal aviation administration;

(o) (Deleted by amendment, L. 2009, (HB [09-1032](#)), ch. 17, p. 93, § 1, effective August 5, 2009.)

(p) Educational programs, continuing education programs, and training programs offered or conducted by an organization which is listed as an exempt organization in 26 U.S.C. sec. 501 (c) of the federal "Internal Revenue Code of 1986", as amended. Any such program, in order to qualify for the exemption created in this paragraph (p), shall be consistent with the purposes or requirements of the organization offering or conducting the program.

(q) A private educational institution that is accredited by an agency recognized by the United States department of education, that confers post-graduate degrees, and that offers programs or courses that are not defined as occupational education pursuant to section [12-59-103](#) (8.5).

Source: **L. 75:** Entire article R&RE, p. 493, § 1, effective January 1, 1976. **L. 81:** Entire section R&RE, p. 842, § 4, effective July 1. **L. 87:** (1)(d)(II) amended and (1)(e) repealed, pp. 529, 530, §§ 1, 4, effective July 1. **L. 89, 1st Ex. Sess.:** (1)(m) added, p. 13, § 2, effective July 7. **L. 90:** (1)(d)(II) amended, p. 1162, § 12, effective July 1. **L. 95:** (1)(n) and (1)(o) added, p. 43, § 1, effective March 17. **L. 2000:** (1)(p) added, p. 275, § 1, effective March 31. **L. 2005:** (1)(q) added, p. 308, § 1, effective August 8. **L. 2009:** (1)(n) and (1)(o) amended, (HB [09-1032](#)), ch. 17, p. 93, § 1, effective August 5.

Editor's note: Subsections (1)(n) and (1)(o) were amended in a 2009 act that was passed without a safety clause. The act, or portions thereof, may not take effect if the people exercise their right to petition under article V, section 1 (3) of the state constitution. For further explanation concerning the effective date, see page ix of this volume.

[12-59-104.1. Private occupational school division - creation.](#)

There is hereby created the private occupational school division in the department of higher education and the office of director of the division. The division and the director shall exercise their powers and perform their duties and functions specified in this article under the department of higher education and the executive director thereof as if the same were transferred to the department by a **type 2** transfer as such transfer is defined in the "Administrative Organization Act of 1968", article [1](#) of title [24](#), C.R.S. The director shall be appointed by the executive director. The director, with the approval of the executive director, shall employ such professional and clerical personnel as deemed necessary to carry out the duties and function of the division. The director and professional personnel are declared to hold educational offices and to be exempt from the state personnel system.

Source: **L. 2008:** Entire section added, p. 1481, § 25, effective May 28.

Editor's note: Prior to its relocation in 2008, this section was formerly numbered as § [23-60-703](#).

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 (c) (Deleted by amendment, L. 98, p. 36, § 8, effective March 17, 1998.)

(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 (j) (Deleted by amendment, L. 98, p. 36, § 8, effective March 17, 1998.)

(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 promulgated under this article.

(l) to (n) (Deleted by amendment, L. 98, p. 36, § 8, effective March 17, 1998.)

Source: **L. 75:** Entire article R&RE, p. 493, § 1, effective January 1, 1976. **L. 81:** (1)(g), (1)(j), and (1)(k) amended and (1)(n) added, p. 843, § 5, effective July 1. **L. 87:** (1)(i) amended, p. 951, § 50, effective March 13. **L. 90:** IP(1), (1)(g), (1)(i), (1)(j), (1)(k), (1)(m), and (1)(n) amended, p. 1162, § 13, effective July 1. **L. 98:** Entire section amended, p. 36, § 8, effective March 17.

12-59-105.1. 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 that shall advise the director on the administration of this article and shall have the powers and duties specified in section [12-59-105.3](#). The board shall exercise its powers and perform its duties and functions specified in this article as if the same were transferred to the department of higher education 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 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.

Source: L. 2008: Entire section added, p. 1481, § 25, effective May 28.

Editor's note: Prior to its relocation in 2008, this section was formerly numbered as § [23-60-704](#).

[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;
- (m) To designate, by category of instruction, those schools that teach students under sixteen years of age for which instructional staff and prospective instructional staff, as defined by board rule, shall be required to submit a complete set of fingerprints pursuant to section [12-59-105.7](#);
- (n) To prescribe uniform academic reporting policies and procedures to which a private occupational school shall adhere.

Source: L. 98: Entire section added, p. 38, § 9, effective March 17. **L. 2006:** (1)(m) and (1)(n) added, p. 940, § 1, effective May 17.

12-59-105.4. Duties of private occupational schools.

A private occupational school shall provide the division with such data as the board deems necessary upon written request of the board. Data pertaining to individual students or personnel shall not be divulged or made known in any way by a member of the board, by the director, or by any division or school employee, except in accordance with judicial order or as otherwise provided by law. A person who violates this section commits a class 1 misdemeanor and shall be punished as provided in section [18-1.3-501](#), C.R.S. In addition, such person shall be subject to removal or dismissal from public service on grounds of malfeasance in office.

Source: L. 2006: Entire section added, p. 940, § 2, effective May 17.

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 board as prescribed by the rules concerning private occupational schools promulgated pursuant to section [12-59-105.3](#) (1) (j). All persons awarded such occupational credential pursuant to this section shall meet the requirements of the board for renewal of the credential.

Source: L. 90: Entire section added, p. 770, § 28, effective July 1. **L. 98:** Entire section amended, p. 39, § 10, effective March 17.

12-59-105.7. Submittal of fingerprints for persons teaching at designated schools - criminal history record check - prerequisite for commencing or continuing employment.

(1) (a) Instructional staff or prospective instructional staff who may be teaching students in a school designated by the board pursuant to section [12-59-105.3](#) (1) (m) shall, beginning July 1, 2006, in order to commence or continue employment at a designated school, submit a set of his

or her fingerprints to the Colorado bureau of investigation for the purpose of conducting a state and national fingerprint-based criminal history record check utilizing records of the Colorado bureau of investigation and the federal bureau of investigation. Nothing in this section shall preclude the board from making further inquiries into the background of instructional staff or prospective instructional staff. Instructional staff or prospective instructional staff shall pay the fee established by the Colorado bureau of investigation for conducting the fingerprint-based criminal history record check. Upon completion of the criminal history record check, the bureau shall forward the results to the board. The board shall conduct a review of the results of the criminal history record check forwarded by the bureau and consider the results in assessing whether instructional staff or prospective instructional staff meet minimum standards of qualification, as established by the board pursuant to section [12-59-106](#), necessary to commence or continue employment at the designated school.

(b) Instructional staff or prospective instructional staff shall be required to resubmit a set of his or her fingerprints pursuant to paragraph (a) of this subsection (1) even if he or she previously submitted his or her fingerprints pursuant to paragraph (a) of this subsection (1).

(2) In addition to any other requirements established by the board for the necessary qualifications of instructional staff or prospective instructional staff, the submittal of fingerprints pursuant to subsection (1) of this section and results consistent with the minimum standards of qualification established by the board pursuant to section [12-59-106](#) shall be a prerequisite to commencing or continuing employment as instructional staff who may be teaching students in a school designated by the board pursuant to section [12-59-105.3](#) (1) (m).

Source: L. 2006: Entire section added, p. 940, § 2, effective May 17.

[12-59-105.9. Duties and powers of the division subject to approval of the executive director.](#)

The division shall exercise all of the powers and duties set forth in section [12-59-105](#). 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](#); except that the participation of the executive director shall not be required in any action taken by the board.

Source: L. 2008: Entire section added, p. 1481, § 25, effective May 28.

Editor's note: Prior to its relocation in 2008, this section was formerly numbered as § [23-60-705](#).

12-59-106. Minimum standards.

(1) In establishing the criteria required by section [12-59-105.3](#) (1) (a), (1) (b), and (1) (k), the board shall observe and require compliance with at least the following minimum standards for all schools:

(a) That the school can demonstrate that it has sufficient financial resources to:

(I) Fulfill its commitments to students;

(II) Make refunds of tuition and fees to the extent and in the manner set forth in this article; and

(III) Meet the school's financial obligations;

(b) That the school shall furnish and maintain surety bonds as required by this article;

(c) That the educational services are such as will adequately achieve the stated objectives for which the educational services are offered;

(I) to (V) (Deleted by amendment, L. 81, p. 844, § 6, effective July 1, 1981.)

(d) That the school has adequate facilities, equipment, instructional materials, instructional staff, and other personnel to provide educational services necessary to meet the stated objectives for which the educational services are offered;

(e) That the education and experience qualifications of administrators, instructional staff, and other personnel are such as will adequately ensure that the students will receive educational services consistent with the stated objectives for which the educational services are offered;

(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 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;

(g) That, upon satisfactory completion of training, the student is given appropriate educational credentials by said school; except that the school may require the payment of all tuition and fees due at the time of completion;

(h) That adequate educational, financial, and other records are maintained by the school;

(i) That the school adheres to procedures, standards, and policies set forth in the school catalog and other printed materials;

(j) That the school is maintained and operated in compliance with all pertinent ordinances and laws, including rules and regulations adopted pursuant thereto, relative to the health and safety

of all persons upon the premises;

(k) That neither the school nor its agents have violated the prohibitions as set forth in section [12-59-107](#) or have engaged in deceptive trade or sales practices as set forth in section [12-59-117](#);

(l) That the principal owners, officers, agents, administrators, and instructors are of good reputation and free from moral turpitude;

(m) That the school provides the student with a copy of the executed enrollment agreement or contract, at the time of enrollment, which complies with this article;

(n) That the school adheres to a policy for the cancellation, settlement, and refund of tuition and fees which complies with this article;

(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 board upon request;

(p) That the school shall submit to the 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.

(q) That the school or agent shall have paid any restitution required by section [12-59-118](#) and any civil penalties assessed pursuant to section [12-59-121](#);

(r) That an agent shall represent only a school that meets the minimum standards set forth in this section and the criteria established pursuant to section [12-59-105.3](#);

(s) That the school shall not deny enrollment of a student or make any distinction or classification of students on account of race, color, creed, religion, national origin, ancestry, sex, sexual orientation, or marital status.

(2) A school that is accredited by an accrediting association officially recognized by the United States education department or by the 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.

Source: **L. 75:** Entire article R&RE, p. 495, § 1, effective January 1, 1976. **L. 81:** IP(1), (1)(c), and (1)(l), amended and (2) added, p. 843, § 6, effective July 1. **L. 90:** IP(1), (1)(f), (1)(o), (1)(p), and (2) amended, p. 1163, § 14, effective July 1. **L. 98:** IP(1), (1)(f), (1)(o), (1)(p), (1)(r), and (2) amended, p. 40, § 11, effective March 17. **L. 2008:** (1)(s) amended, p. 1600, § 19, effective May 29.

Cross references: For the legislative declaration contained in the 2008 act amending subsection (1)(s), see section 1 of chapter 341, Session Laws of Colorado 2008.

ANNOTATION

There is no claim for relief based upon educational malpractice. Tolman v. Cencore Career Colleges, Inc., 851 P.2d 203 (Colo. App. 1992).

12-59-107. Prohibitions.

(1) No entity of whatever kind, alone or in concert with others, shall:

(a) Operate in this state a school not exempt from the provisions of this article unless said school holds a valid certificate of approval issued pursuant to the provisions of this article;

(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 board may promulgate rules to permit the rendering of legitimate public information services without such permit;

(c) Accept contracts or enrollment agreements from an agent who does not hold a valid agent's permit issued pursuant to the provisions of this article;

(d) Award educational credentials without requiring the completion of any education.

(e) (Deleted by amendment, L. 98, p. 41, § 12, effective March 17, 1998.)

Source: L. 75: Entire article R&RE, p. 497, § 1, effective January 1, 1976. **L. 90:** (1)(b) amended and (1)(e) added, p. 1164, § 15, effective July 1. **L. 98:** (1)(b) and (1)(e) amended, p. 41, § 12, effective March 17.

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 board upon forms to be provided by the 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 board;

(b) A description of the school's placement assistance, if any;

(c) A current balance sheet, income and expense statement, and other supportive financial documentation incidental thereto, prepared by an independent public accountant or certified public accountant using a format which reflects accepted accounting principles and procedures;

- (d) Copies of media advertising and promotional literature;
 - (e) Copies of all student enrollment agreement or contract forms and instruments evidencing indebtedness;
 - (f) A surety bond as required by this article;
 - (g) A fee as required by this article;
 - (h) The name and Colorado address of a designated agent upon whom any process, notice, or demand may be served.
- (2) Each application shall be signed and certified to under oath by the owner or his authorized designee.
- (3) The board shall not be required to act upon an application until such time as an application is submitted as set forth in this section.
- (4) An application submitted by a school which holds a valid certificate of approval shall be submitted on or before February 15 immediately prior to the expiration of said certificate of approval. If such application as set forth in subsection (1) of this section is not submitted as set forth in this section, the school's existing certificate of approval shall expire on June 30 by operation of law, and any such application submitted after February 15 shall be treated as an application submitted by a new school.
- (5) The 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 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.

Source: **L. 75:** Entire article R&RE, p. 497, § 1, effective January 1, 1976. **L. 81:** IP(1) amended, p. 844, § 7, effective July 1. **L. 90:** IP(1), (1)(a), (3), and (5) amended, p. 1164, § 16, effective July 1. **L. 98:** IP(1), (1)(a), (3), and (5) amended, p. 41, § 13, effective March 17.

ANNOTATION

No opportunity for a hearing prior to the expiration of private occupational school's certificate of approval was required by a plain reading of the statute where school's financial documents remained inadequate. Nat'l Camera, Inc. v. Sanchez, 832 P.2d 960 (Colo. App. 1991).

[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 board to be submitted by the applicant and such investigation and appraisal of the applicant as the board deems necessary or appropriate, the 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.

(2) The term for which a certificate of approval is issued shall be for three years commencing on July 1 and expiring on June 30 of the third year thereafter or upon the cessation of operation of the school. New schools shall be issued a provisional certificate of approval which shall expire on June 30 of the second year following the date of issuance or upon the cessation of operation of the school.

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

Source: L. 75: Entire article R&RE, p. 498, § 1, effective January 1, 1976. **L. 90:** (1) and (3) amended, p. 1164, § 17, effective July 1. **L. 98:** (1) and (3) amended, p. 41, § 14, effective March 17.

[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 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 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 board as provided in this section.

(2) Following the review and evaluation of an application and any further information required by the board to be submitted by the applicant and such investigation and appraisal of an applicant as the board deems necessary or appropriate, the 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 board shall not be required to submit a notice of noncompliance.

(3) "Ownership", for the purpose of this section, means ownership of a controlling interest in the school or, in the event the school is owned or controlled by a corporation or other legal entity other than a natural person, ownership of a controlling interest in the legal entity owning or controlling such school.

Source: L. 75: Entire article R&RE, p. 498, § 1, effective January 1, 1976. **L. 81:** (1) amended, p. 844, § 8, effective July 1. **L. 90:** (1) and (2) amended, p. 1165, § 18, effective July 1. **L. 98:**

(1) and (2) amended, p. 42, § 15, effective March 17.

12-59-111. Agent's permits.

(1) **In-state schools.** (a) Any person desiring to engage in the performance of the duties of an agent for a school located within this state shall be registered by the school upon forms to be provided by the division. Said registration shall include the following:

(I) A statement signed by said applicant that he has read the provisions of the "Private Occupational Education Act of 1981" and the rules and regulations promulgated pursuant thereto;

(II) A fee as required by this article.

(b) An agent representing more than one school must obtain a separate agent's permit for each school represented; except that an agent holding a valid agent's permit to represent a school shall not be required to obtain a separate permit to represent another school owned by the same entity to the same extent and having the same name as the first school.

(c) An agent's permit shall be issued to the agent and shall state in a clear and conspicuous manner the name of the agent, the name and location of the school he represents, and the date of issuance and term of such permit.

(d) An agent's permit shall expire on the same date as the certificate of approval for the school which such agent represents expires.

(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 board upon forms to be provided by the division. Said application shall include the following:

(I) A statement signed by said applicant that he has read the provisions of the "Private Occupational Education Act of 1981" and the rules and regulations promulgated pursuant thereto;

(II) A surety bond as required in this article;

(III) A fee as required by this article.

(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 board, including the name and Colorado address of a designated agent upon whom any process, notice, or demand may be served, has been received.

(c) An agent representing more than one school must obtain a separate agent's permit for each school represented; except that an agent holding a valid agent's permit to represent a school shall

not be required to obtain a separate permit to represent another school owned by the same entity to the same extent and having the same name as the first school.

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

(e) An agent's permit shall be issued to the agent and shall state in a clear and conspicuous manner the name of the agent, the name and location of the school he represents, and the date of issuance and term of such permit.

(f) An agent's permit shall expire annually on June 30. An agent's permit shall also expire upon termination of his employment with the school named on said permit.

(g) An agent's permit issued for the purpose of representing a school located outside this state shall be suspended by operation of law when said school fails to maintain in this state an agent upon whom any process, notice, or demand may be served.

(h) At least sixty days prior to the expiration of an agent's permit, the agent shall complete and file with the 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 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 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.

Source: L. 75: Entire article R&RE, p. 499, § 1, effective January 1, 1976. **L. 81:** Entire section R&RE, p. 844, § 9, effective July 1. **L. 90:** IP(1)(a), IP(2)(a), (2)(b), (2)(d), (2)(h), and (2)(i) amended, p. 1165, § 19, effective July 1. **L. 98:** IP(2)(a), (2)(b), (2)(d), (2)(h), and (2)(i) amended, p. 42, § 16, effective March 17.

12-59-112. Denial of application for certificate of approval or agent's permit.

(1) If the 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 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 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 board if the applicant has furnished false or misleading written or oral statements, documents, or other representations to the board with the intent to mislead or conceal the truth of any matter to be considered by the board as a factor in approving the application.

(4) Notwithstanding the provisions of subsections (1), (2), and (3) of this section, the provisions of the "State Administrative Procedure Act", article [4](#) of title [24](#), C.R.S., shall apply to the denial of an application for a certificate of approval submitted by a new school and to the denial of an initial application for an agent's permit.

Source: L. 75: Entire article R&RE, p. 500, § 1, effective January 1, 1976. **L. 90:** (1) to (3) amended, p. 1166, § 20, effective July 1. **L. 98:** (1) to (3) amended, p. 43, § 17, effective March 17.

[12-59-113. Revocation of certificate of approval and agent's permit.](#)

(1) If the 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 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 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 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 board if the holder thereof has furnished false or misleading written or oral statements, documents, or other representations to the board with the intent to mislead or conceal the truth of any matter

considered by the 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 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.

Source: L. 75: Entire article R&RE, p. 500, § 1, effective January 1, 1976. **L. 81:** (5) added, p. 846, § 10, effective July 1. **L. 90:** Entire section amended, p. 1166, § 21, effective July 1. **L. 98:** Entire section amended, p. 43, § 18, effective March 17.

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:

(a) A full refund of all moneys paid if the applicant is not accepted by the school;

(b) A full refund of tuition and fees paid if the applicant withdraws within three days after signing the contract or making an initial payment if the applicant has not commenced training;

(c) A full refund of tuition and fees paid in the event that the school discontinues a course or program of education during a period of time within which a student could have reasonably completed the same; except that this provision shall not apply in the event that the school ceases operation;

(d) That the school use a method of determining the official termination date of the student which complies with the established criteria of the state board for community colleges and occupational education;

(e) That except for retention of a cancellation charge not to exceed one hundred fifty dollars or twenty-five percent of the contract price, whichever is less, the policy for cancellation, settlement, and refund of tuition and fees provides for at least the following:

(I) For a student terminating his training within the first ten percent of his program, the student shall be entitled to a refund of ninety percent of the contract price of the program exclusive of books, tools, and supplies.

(II) For a student terminating his training after ten percent but within the first twenty-five percent of his program, the student shall be entitled to a refund of seventy-five percent of the contract price of the program exclusive of books, tools, and supplies.

(III) For a student terminating his training after twenty-five percent but within the first fifty percent of his program, the student shall be entitled to a refund of fifty percent of the contract price of the program exclusive of books, tools, and supplies.

(IV) For a student terminating his training after fifty percent but within the first seventy-five percent of his program, the student shall be entitled to a refund of twenty-five percent of the contract price of the program exclusive of books, tools, and supplies.

(V) (Deleted by amendment, L. 81, p. 847, § 11, effective July 1, 1981.)

(VI) A student who has completed seventy-five percent of his program and has entered the final twenty-five percent shall not be entitled to any refund and shall be obligated for the full price of the program, which constitutes the maximum obligation.

(2) (a) A school offering education using an individualized instruction method shall:

(I) Establish a time period during which a student should complete the training;

(II) Outline school policies relative to satisfactory progress including an average rate of assignment completion;

(III) Establish a policy for termination in the event that a student does not maintain said rate of assignment completion.

(b) Under these conditions, a refund of tuition and fees required by this section may be computed based on said time period or on assignments completed in accordance with the policy previously adopted by the school.

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

Source: L. 75: Entire article R&RE, p. 501, § 1, effective January 1, 1976. **L. 81:** (1)(e) amended, p. 846, § 11, effective July 1. **L. 90:** (3) amended, p. 1167, § 22, effective July 1. **L. 98:** (1)(d) and (3) amended, p. 44, § 19, effective March 17.

12-59-115. Bonds.

(1) Schools located within this state shall file as a part of their application for a certificate of approval evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section [11-35-101](#), C.R.S., or one bond as set forth in this section covering said school and its agents. Schools located outside this state shall file evidence of a savings account, deposit, or certificate of deposit meeting the requirements of section [11-35-101](#), C.R.S., or bonds as set forth in this section covering said school's agents.

(2) At the time application is made for a certificate of approval, the 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 board to have suffered loss of tuition or any fees as a result of any act or practice 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.

(3) The amount of the bond to be submitted with an application for a certificate of approval shall be equal to a reasonable estimate of the maximum prepaid, unearned tuition and fees of the school for a period or term during the applicable school training year for which programs of instruction are offered including, but not limited to, on a semester, quarter, monthly, or class basis; except that the period or term of greatest duration and expense shall be utilized for this computation where a school's training year consists of one or more such periods or terms. Following the initial filing of the surety bond with the division, the amount of the bond shall be recalculated annually based upon a reasonable estimate of the maximum prepaid, unearned tuition and fees received by the school for such period or term. In no case shall the amount of the bond be less than five thousand dollars.

(4) (Deleted by amendment, L. 91, p. 1594, § 3, effective March 27, 1991.)

(5) Repealed.

(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 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 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 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 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 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 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 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 board rules concerning the administration of this section.

(c) If the amount of the bond is less than the total prepaid, unearned tuition and fees which have been paid by students at the time the private occupational school ceased operation, the amount of the bond shall be prorated among such students.

(d) The provisions of this subsection (7) shall be applicable only to those students enrolled in the private occupational school at the time it ceases operation, and, once a school ceases operation, no new students shall be enrolled therein.

(e) The 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 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 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 board to have suffered loss of tuition or any fees as a result of any act or practice 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 board. In no event, however, shall the 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 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 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 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 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 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 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 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 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 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 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 board shall be required to contract for an independent financial audit. Such audit shall be included in a report to the board due by January 1 of the following year. The 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 that are occupational in nature, as defined by the board.

Source: **L. 75:** Entire article R&RE, p. 502, § 1, effective January 1, 1976. **L. 79:** (1) amended, p. 423, § 11, effective July 1. **L. 81:** IP(3) and (8) amended and (12) added, p. 847, § 12, and (5) repealed, p. 853, § 30, effective July 1. **L. 90:** (2), (6), (7), (9) to (12) amended, p. 1167, § 23, effective July 1. **L. 91:** (2) to (4), (7), (9), and (12) amended and (13) added, p. 1594, § 3, effective March 27; (7)(b) amended, p. 1911, § 19, effective June 1. **L. 94:** (6) amended, p. 490, § 1, effective March 31. **L. 98:** (2), (6), (7)(a), (7)(b), (7)(e), (7)(f), and (8) to (13) amended, p. 44, § 20, effective March 17.

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

(1) The 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 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 board shall propose, as part of 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 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.

(c) Beginning July 1, 1995, and each July 1 thereafter, whenever moneys appropriated to the division for its activities for the prior fiscal year are unexpended, said moneys shall be made a part of the appropriation to the division for the next fiscal year, and such amount shall not be raised from fees collected by the division. If a supplemental appropriation is made to the division for its activities, the division's fees shall be adjusted in the following fiscal year by an additional amount that is sufficient to compensate for the supplemental appropriation. Funds appropriated to the division in the annual general appropriations bill shall be designated as cash funds and shall not exceed the amount anticipated to be raised from fees collected by the division.

Source: L. 75: Entire article R&RE, p. 505, § 1, effective January 1, 1976. **L. 81:** IP(1) and (1)(c) amended and (1)(d), (1)(e), and (2) added, p. 848, §§ 13, 14, effective July 1. **L. 87:** (1) R&RE and (2) amended, pp. 529, 530, §§ 2, 3, effective July 1. **L. 90:** Entire section amended, p. 1169, § 24, effective July 1. **L. 95:** (1) amended and (3) added, p. 541, § 1, effective May 22. **L. 98:** (1), (2), (3)(a), and (3)(b) amended, p. 47, § 21, effective March 17.

12-59-117. Deceptive trade or sales practices.

(1) It is a deceptive trade or sales practice for:

(a) A school or agent to make or cause to be made any statement or representation, oral, written, or visual, in connection with the offering of educational services if such school or agent knows or reasonably should have known the statement or representation to be false, substantially inaccurate, or misleading;

(b) A school or agent to represent falsely, directly or by implication, through the use of a trade or business name or in any other manner, including the use of "help wanted" or other employment columns in a newspaper or other publication, that it is an employment agency or agent or authorized training facility for another industry or member of such industry or to otherwise deceptively conceal the fact that it is a school;

(c) A school or agent to represent falsely, directly or by implication, that any of its educational services have been approved by a particular industry or that successful completion thereof qualifies a student for admission to a labor union or similar organization or for the receipt of a state license to perform certain functions;

(d) A school or agent to represent falsely, directly or by implication, that the lack of a high school education, prior training, or experience is not a handicap or impediment to completing successfully a course or program of study or for gaining employment in the field for which the educational services were designed;

(e) A school or agent to adopt a name, trade name, or trademark which represents falsely, directly or by implication, the quality, scope, nature, size, or integrity of the school or its educational services;

(f) A school or agent to represent falsely, directly or by implication, that students completing a course or program of instruction successfully may transfer credit therefor to any institution of higher education;

(g) A school or agent to represent falsely, directly or by implication, in its advertising or promotional materials or in any other manner, the size, location, facilities, or equipment of the school, the number or educational experience qualifications of its faculty, the extent or nature of any approval received from any state agency, or the extent or nature of any accreditation received from any accrediting agency or association;

(h) A school or agent to provide prospective students with any testimonials, endorsements, or other information which has the tendency to mislead or deceive prospective students or the public regarding current practices of the school, current conditions for employment opportunities, or probable earnings in the industry or occupation for which the educational services were designed or as a result of the completion of any such educational service;

(i) A school or agent to enroll a student when it is reasonably obvious that the student is unlikely to complete successfully a program of study or is unlikely to qualify for employment in the field for which the education is designed, unless this fact is affirmatively disclosed to the student;

(j) An agent representing an out-of-state school to represent directly or by implication that said school is approved or accredited by the state of Colorado;

(k) A school or agent to designate or refer to its sales representatives as "counselors" or "advisors" or to use words of similar import which have the tendency to mislead or deceive prospective students or the public regarding the authority or qualifications of such sales representatives or agents.

Source: L. 75: Entire article R&RE, p. 505, § 1, effective January 1, 1976.

ANNOTATION

There is no claim for relief based upon educational malpractice. Tolman v. Cencore Career Colleges, Inc., 851 P.2d 203 (Colo. App. 1992).

[12-59-118. Complaints of deceptive trade or sales practices.](#)

(1) A person claiming pecuniary loss as a result of a deceptive trade or sales practice, pursuant to section [12-59-117](#), by a school or agent shall file with the 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 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 board shall investigate any such complaint and thereafter may consider such complaint at a hearing. If, upon all the evidence at a hearing, the board finds that a school or agent has engaged in or is engaging in any deceptive trade or sales practice, the 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 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 board finds that the complainant or class of complainants has suffered pecuniary loss as a result of such practice, the board, at its discretion, may award the complainant or class of complainants full restitution for such loss. The board may also commence a civil action against a school or agent believed by the board to have caused a complainant or class of complainants to suffer pecuniary loss as a result of any deceptive trade or sales practice. Upon a finding that such complainant or class of complainants has suffered 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.

Source: L. 75: Entire article R&RE, p. 506, § 1, effective January 1, 1976. **L. 90:** Entire section amended, p. 1170, § 25, effective July 1. **L. 94:** Entire section amended, p. 490, § 2, effective March 31. **L. 98:** Entire section amended, p. 48, § 22, effective March 17.

ANNOTATION

There is no claim for relief based upon educational malpractice. Tolman v. Cencore Career Colleges, Inc., 851 P.2d 203 (Colo. App. 1992).

12-59-119. Preservation of records.

(1) In the event that a school located within this state ceases operation, the owner or such owner's authorized designee shall deposit with the department of personnel the original or legible true copies of all educational, financial, or other records of said school.

(2) In the event that it appears to the board that any such records of a school ceasing operation are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the board, the board may seize and take possession of such records upon making application to any court of competent jurisdiction for an appropriate order. The 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 board.

Source: L. 75: Entire article R&RE, p. 506, § 1, effective January 1, 1976. **L. 81:** (1) and (2) amended, p. 848, § 15, effective July 1. **L. 90:** (2) amended, p. 1170, § 26, effective July 1. **L. 91:** (1) and (2) amended, p. 1597, § 4, effective March 27. **L. 96:** (1) and (2) amended, p. 1513, § 41, effective June 1. **L. 98:** (2) and (3) amended, p. 48, § 23, effective March 17.

12-59-120. Enforceability of notes, contracts, and other evidence of indebtedness.

(1) No note, other instrument of indebtedness, or contract relating to payment for educational services shall be enforceable in the courts of this state by any school located within this state unless said school, at the time of execution of such note, other instrument of indebtedness, or contract, holds a valid certificate of approval nor by any school having an agent in this state

unless such agent, who enrolled persons to whom educational services were to be rendered or to whom educational credentials were to be granted, held a valid agent's permit at the time of the execution of the note, other instrument of indebtedness, or contract.

(2) and (3) Repealed.

(4) The enforceability of notes, contracts, and other evidence of indebtedness relating to payment for educational services shall be in compliance with applicable state and federal laws and regulations, as amended.

Source: L. 75: Entire article R&RE, p. 507, § 1, effective January 1, 1976. **L. 81:** (2) and (3) repealed and (4) added, pp. 853, 849, §§ 30, 16, effective July 1.

12-59-121. Violations - civil - penalty.

The board may commence a civil action against any entity believed by the 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.

Source: L. 75: Entire article R&RE, p. 507, § 1, effective January 1, 1976. **L. 81:** Entire section amended, p. 849, § 17, effective July 1. **L. 90:** Entire section amended, p. 1171, § 27, effective July 1. **L. 96:** Entire section amended, p. 1513, § 42, effective June 1. **L. 98:** Entire section amended, p. 49, § 24, effective March 17.

12-59-122. Violations - criminal - penalty.

Any person, group, or entity, or any owner, officer, agent, or employee thereof, who willfully violates the provisions of section [12-59-107](#) or who willfully fails or refuses to deposit with the department of personnel the records required by section [12-59-119](#) is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. It is the duty of the district attorney to prosecute all violations of this section occurring within his or her district.

Source: L. 75: Entire article R&RE, p. 508, § 1, effective January 1, 1976. **L. 81:** Entire section

amended, p. 849, § 18, effective July 1. **L. 96:** Entire section amended, p. 1514, § 43, effective June 1.

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 board as set forth in this article.

Source: **L. 75:** Entire article R&RE, p. 508, § 1, effective January 1, 1976. **L. 90:** Entire section amended, p. 1171, § 28, effective July 1. **L. 98:** Entire section amended, p. 49, § 25, effective March 17.

ANNOTATION

It is less than certain that the APA requires the state board for community colleges and occupational education to conduct a predeprivation hearing since it is not clear that a revocation results when an existing certificate merely expires because the renewal application is not sufficient in form or substance as prescribed by section [12-59-108](#), C.R.S. *Nat'l Camera, Inc. v. Sanchez*, 832 P.2d 960 (Colo. App. 1991) (decided under law in effect prior to 1990 amendment).

12-59-124. Jurisdiction of courts - service of process.

Any school located within or without this state which offers to provide educational services to any person in this state, whether such educational services are provided in person or by correspondence, or which offers to award any educational credentials to any person in this state submits such school to the jurisdiction of the courts of this state concerning any cause of action arising therefrom and for the purpose of enforcement of this article by injunction pursuant to section [12-59-125](#). Service of process upon any such school subject to the jurisdiction of the courts of this state may be made by personally serving the summons upon the defendant within or without this state in the manner prescribed by the Colorado rules of civil procedure, which shall have the same force and effect as if the summons had been personally served within this state. Nothing contained in this section shall limit or affect the right to serve any process as prescribed by the Colorado rules of civil procedure.

Source: **L. 75:** Entire article R&RE, p. 508, § 1, effective January 1, 1976.

Cross references: For the Colorado rule of civil procedure concerning service of process, see C.R.C.P. [4](#).

12-59-125. Enforcement - injunction - fines.

(1) Whenever it appears to the board that any entity is or has been violating any of the provisions of this article or any of the lawful rules or orders of the board, the 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 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 orders issued pursuant to this article. It shall not be necessary that the 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 board has and shall be in addition to any right of criminal prosecution provided by law. The existence of 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.

(2) The board shall have the authority to promulgate rules and adopt procedures to establish, impose, and collect fines from an entity that is in violation of the provisions of this article or the lawful rules or orders of the board. The board may impose a fine, pursuant to said rules, in addition to or in lieu of seeking a temporary restraining order or an injunction pursuant to subsection (1) of this section. All fines collected pursuant to this subsection (2) shall be transferred to the state treasurer, who shall credit the same to the state general fund.

(3) In determining whether to impose a fine or to seek a temporary restraining order or an injunction, the board shall consider whether the entity has engaged in a pattern of noncompliance.

Source: **L. 75:** Entire article R&RE, p. 508, § 1, effective January 1, 1976. **L. 90:** Entire section amended, p. 1171, § 29, effective July 1. **L. 98:** Entire section amended, p. 49, § 26, effective March 17. **L. 2006:** Entire section amended, p. 941, § 3, effective May 17.

12-59-126. Advisory committee - sunset review. (Repealed)

Source: **L. 75:** Entire article R&RE, p. 508, § 1, effective January 1, 1976. **L. 81:** (1)(a), (1)(c), and (2) amended, p. 849, § 19, effective July 1. **L. 86:** (3) added, p. 410, § 9, effective May 16. **L. 90:** Entire section repealed, p. 1172, § 33, effective July 1.

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 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) and (3) Repealed.

(4) The board shall establish minimum criteria, promulgate other rules, and adopt procedures necessary for the conduct of its work and the implementation of this article pursuant to section [12-59-105.3](#).

Source: L. 75: Entire article R&RE, p. 509, § 1, effective January 1, 1976. **L. 78:** (1) and (2) repealed, p. 260, § 34, effective May 23. **L. 81:** Entire section R&RE, p. 850, § 20, effective July 1. **L. 90:** Entire section R&RE, p. 1160, § 4, effective July 1. **L. 98:** Entire section amended, p. 49, § 27, effective March 17. **L. 2004:** (2) and (3) repealed, p. 191, § 2, effective August 4.
