

Postsecondary education, particularly proprietary postsecondary education, has become a product-driven industry. As such, the law must apply the same accountability standards on these schools that it requires of other proprietary entities. Because the states are best positioned to regulate the institutions within their own borders, they must seize the opportunity to regulate any industry that has proliferated at the expense of its consumers because of a business model that eschews disclosures about its operations. As the cases regarding the deceptive trade practices of proprietary education institutions continue to funnel through our nation's courts, the argument for legislation requiring these institutions to disclose vital investment information to potential consumers must be given due consideration. This article examines the history of and distinction between proprietary schools and traditional postsecondary schools, the modern reality of the educational marketplace, and the organizational structure of proprietary schools, positing that the regulation of the proprietary education industry is more akin to regulating a traditional corporation than regulating a traditional postsecondary school. Ultimately, this article concludes that a fiduciary duty, existing between proprietary education institutions and their students, must supplant the academic abstention doctrine, which has long been a fixture in the court system, and finds that historical causes of action against proprietary schools are inadequate in the modern context. This article also contends that the states are better positioned to regulate harmful trade practices of proprietary schools than the federal government and makes a realistic and modern recommendation for the regulation of proprietary educational institutions.