

1 A bill to be entitled
2 An act relating to independent postsecondary education;
3 amending s. 1005.22, F.S.; revising a duty of the
4 Commission for Independent Education relating to
5 rulemaking; amending s. 1005.31, F.S.; providing
6 requirements of independent postsecondary educational
7 institutions licensed by the commission; providing
8 requirements for an investigative process for licensure of
9 applicants; revising provisions relating to applicant
10 status; providing for inspections; creating s. 1005.375,
11 F.S.; specifying acts that constitute violations and
12 providing penalties therefor; amending s. 1005.38, F.S.;
13 providing requirements for investigation of a suspected
14 violation of the chapter or rules; providing for denial of
15 licensure; providing additional grounds for disciplinary
16 actions; providing for a final order to dismiss a
17 complaint or impose specified penalties; providing for
18 imposition of an assessment relating to investigation and
19 prosecution of a case; providing for an emergency
20 suspension or restriction order; creating s. 1005.385,
21 F.S.; requiring the commission to adopt rules relating to
22 issuance of a citation to an institution and violations
23 for which a citation may be issued; specifying
24 requirements for issuance; amending s. 1010.83, F.S.;
25 providing for the inclusion in the Institutional
26 Assessment Trust Fund of fees and fines imposed on
27 institutions; specifying separate accounts; revising uses
28 of funds in the trust fund; providing an effective date.

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Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (e) of subsection (1) of section 1005.22, Florida Statutes, is amended to read:

1005.22 Powers and duties of commission.--

(1) The commission shall:

(e) Administer the provisions of this chapter. To this end, the commission has the following administrative powers and responsibilities:

1. The commission shall adopt rules pursuant to ss. 120.536(1) and 120.54 for the operation and establishment of independent postsecondary educational institutions. ~~The commission shall submit the rules to the State Board of Education for approval or disapproval. If the state board does not act on a rule within 60 days after receiving it, the rule shall be filed immediately with the Department of State.~~

2. The commission shall submit an annual budget to the State Board of Education.

3. The commission shall transmit all fees, donations, and other receipts of money to the Institutional Assessment Trust Fund.

4. The commission shall expend funds as necessary to assist in the application and enforcement of its powers and duties. The Chief Financial Officer shall pay out all moneys and funds as directed under this chapter upon vouchers approved by the Department of Education for all lawful purposes necessary to administering this chapter. The commission shall make annual

57 reports to the State Board of Education showing in detail
 58 amounts received and all expenditures. The commission shall
 59 include in its annual report to the State Board of Education a
 60 statement of its major activities during the period covered by
 61 the report.

62 Section 2. Subsections (1) and (4) of section 1005.31,
 63 Florida Statutes, are amended, subsections (6) through (13) are
 64 renumbered as subsections (7) through (14), respectively, and
 65 new subsections (6) and (15) are added to said section, to read:

66 1005.31 Licensure of institutions.--

67 (1)(a) Each college or school operating within this state
 68 must obtain licensure from the commission unless the institution
 69 is not under the commission's purview or jurisdiction as
 70 provided in s. 1005.06.

71 (b) Each licensee is solely responsible for notifying the
 72 commission in writing of the licensee's current mailing address
 73 and the location of the institution. A licensee's failure to
 74 notify the commission of a change of address constitutes a
 75 violation of this paragraph, and the licensee may be disciplined
 76 by the commission. Notwithstanding any other provision of law,
 77 service by regular mail to a licensee's last known address of
 78 record with the commission constitutes adequate and sufficient
 79 notice to the licensee for any official communication to the
 80 licensee by the commission.

81 (4) Approved-applicant status shall be extended to all
 82 institutions that have submitted a complete application, as
 83 defined in rule, for provisional licensure and paid all
 84 attendant fees. An incomplete application shall expire 1 year

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85 ~~after initial filing. In granting approved applicant status, the~~
86 ~~commission shall provide to commission staff and the institution~~
87 ~~a list of specific omissions or deficiencies.~~ Institutions
88 granted approved-applicant status may not advertise, offer
89 programs of study, collect tuition or fees, or engage in any
90 other activities not specifically approved by the commission. If
91 the commission, or the commission staff if specifically directed
92 by the commission, determines that identified ~~the~~ omissions or
93 deficiencies have been provided for or corrected, the
94 institution may be awarded a provisional license.

95 (6) The commission shall ensure through an investigative
96 process that applicants for licensure meet the standards as
97 defined in rule. When the investigative process is not completed
98 within the time set out in s. 120.60(1) and the commission has
99 reason to believe that the applicant does not meet licensure
100 standards, the commission or the executive director of the
101 commission may issue a 90-day licensure delay, which shall be in
102 writing and sufficient to notify the applicant of the reason for
103 the delay. The provisions of this subsection shall control over
104 any conflicting provisions of s. 120.60(1).

105 (15) Duly authorized agents and employees of the
106 commission shall have the power to inspect, in a lawful manner
107 at all reasonable hours, any applicant for licensure or licensed
108 independent postsecondary educational institution.

109 Section 3. Section 1005.375, Florida Statutes, is created
110 to read:

111 1005.375 Violations; penalties.--

112 (1) Each of the following acts constitutes a felony of the
 113 third degree, punishable as provided in s. 775.082, s. 775.083,
 114 or s. 775.084:

115 (a) Operating an independent postsecondary educational
 116 institution without a valid, active license issued pursuant to
 117 this chapter.

118 (b) Obtaining or attempting to obtain a license to operate
 119 an institution by fraudulent misrepresentation.

120 (c) Using or attempting to use a license that has been
 121 suspended or revoked.

122 (2) Each of the following acts constitutes a misdemeanor
 123 of the second degree, punishable as provided in s. 775.082 or s.
 124 775.083:

125 (a) Knowingly concealing information relating to
 126 violations of this chapter.

127 (b) Willfully making any false oath or affirmation when
 128 required to make an oath or affirmation pursuant to this
 129 chapter.

130 Section 4. Subsections (6) and (8) of section 1005.38,
 131 Florida Statutes, are amended, and subsections (9) through (12)
 132 are added to said section, to read:

133 1005.38 Actions against a licensee and other penalties.--

134 (6) The commission may conduct disciplinary proceedings
 135 through an investigation of any suspected violation of this
 136 chapter or any rule of the commission, including a finding of
 137 probable cause and making reports to any law enforcement agency
 138 or regulatory agency.

139 (a) The commission shall cause to be investigated a
 140 suspected violation of any provision of this chapter or any rule
 141 of the commission. Regardless of the source of information
 142 regarding the suspected violation, an investigation may be
 143 continued until it is completed and an investigative report is
 144 presented to a probable cause panel of the commission.

145 (b)(a) The commission shall notify an institution or
 146 individual of the substance of any complaint that is under
 147 investigation unless the executive director and chairperson of
 148 the commission ~~board~~ concur that notification would impede the
 149 investigation. The commission may also withhold notification to
 150 a person under investigation for an act that constitutes a
 151 criminal offense.

152 (c)(b) The determination of probable cause shall be made
 153 by a majority vote of the probable cause ~~probable-cause~~ panel,
 154 the membership of which shall be provided by rule. After the
 155 panel declares a finding of probable cause, the commission may
 156 issue an administrative complaint and prosecute such complaint
 157 under chapter 120.

158 (d)(e) A privilege against civil liability is granted to
 159 any informant or any witness who provides information in good
 160 faith for an investigation or proceeding conducted under this
 161 section.

162 (e) Upon written request by an informant, the commission
 163 shall notify the informant of the status of an investigation,
 164 civil action, or administrative proceeding.

165 (f) The commission may deny initial licensure, renewal
 166 licensure, or amended licensure on the basis of all information

167 available to the commission. Such actions shall not be
 168 considered disciplinary and shall not require probable cause
 169 proceedings.

170 (8) The commission shall adopt rules to identify grounds
 171 for imposing disciplinary actions for violations of this chapter
 172 or rules of the commission or for denial of a license, which
 173 must include at least the following grounds:

174 (a) Attempting to obtain action from the commission by
 175 fraudulent misrepresentation, bribery, or through an error of
 176 the commission.

177 (b) Action against a license or operation imposed under
 178 the authority of another state, territory, or country.

179 (c) Delegating professional responsibilities to a person
 180 who is not qualified by training, experience, or licensure to
 181 perform the responsibilities.

182 (d) False, deceptive, or misleading advertising.

183 (e) Conspiring to coerce, intimidate, or preclude another
 184 licensee from lawfully advertising his or her services.

185 (f) Violating or repeatedly violating any provision of
 186 this chapter or any rule adopted pursuant thereto.

187 (g) Operating with a revoked, suspended, or inactive
 188 license.

189 (h) Violating any lawful order of the commission
 190 previously entered in a disciplinary hearing or failing to
 191 comply with a lawfully issued subpoena.

192 (9) The commission shall enter a final order either
 193 dismissing a complaint or imposing one or more of the following

194 penalties for any violation of this chapter or any rule of the
 195 commission:

196 (a) Denial of an application for licensure.

197 (b) Revocation or suspension of a license.

198 (c) Imposition of an administrative fine of no less than
 199 \$100 and no more than \$5,000 for each count or separate
 200 violation. Such fine shall be deposited in the Institutional
 201 Assessment Trust Fund pursuant to s. 1010.83.

202 (d) Placement of a licensee on probation for a period of
 203 time and subject to such conditions as the commission may
 204 specify.

205 (e) Issuance of a written reprimand to an institution.
 206 Such reprimand shall be posted in a prominent place at the
 207 institution for such period of time as the commission may
 208 specify.

209 (10) In addition to any discipline imposed through final
 210 order entered for a violation of this chapter or commission
 211 rule, the commission shall assess costs related to the
 212 investigation and prosecution of the case. Such costs include,
 213 but are not limited to, salaries and benefits of personnel,
 214 costs related to time spent by an attorney and other personnel
 215 working on the case, and any other expenses incurred by the
 216 commission in relation to the case. The commission shall
 217 determine the amount of costs to be assessed after its
 218 consideration of an affidavit of itemized costs and any written
 219 objections thereto.

220 (11) In any case in which the commission imposes a fine or
 221 an assessment of costs and the fine or assessment is not paid

222 within a reasonable time, such reasonable time to be prescribed
 223 in commission rule or in the order assessing such fine or
 224 assessment, the commission or the Department of Legal Affairs
 225 may contract for the collection of, or bring a civil action to
 226 recover, the fine or assessment.

227 (12) The commission shall not reinstate the license of an
 228 institution, or cause a license to be issued to an institution
 229 it has deemed unqualified, until such time as it is satisfied
 230 that the institution has complied with all the terms and
 231 conditions set forth in the final order.

232 (13) The commission shall issue an emergency order
 233 suspending or limiting the license of an institution if there is
 234 a finding that an immediate danger to the public health, safety,
 235 or welfare requires emergency action. The executive director of
 236 the commission shall review the matter to determine if the
 237 emergency suspension or restriction order is warranted. Nothing
 238 in this subsection shall be construed to limit the authority of
 239 the executive director to issue an emergency order.

240 Section 5. Section 1005.385, Florida Statutes, is created
 241 to read:

242 1005.385 Authority to issue citations.--

243 (1) The commission shall adopt rules to permit the
 244 issuance of citations. A citation shall be issued to an
 245 independent postsecondary educational institution and shall
 246 contain the institution's name and address, the institution's
 247 license number if applicable, a brief factual statement, the
 248 sections of law allegedly violated, and the penalty imposed. A
 249 citation must clearly state that the subject may choose, in lieu

250 of accepting the citation, to dispute the matter in the citation
 251 and must provide the subject all rights for either an informal
 252 hearing to dispute the facts before the commission or a formal
 253 hearing to dispute the facts before an administrative law judge
 254 from the Division of Administrative Hearings pursuant to chapter
 255 120. However, if the subject does not dispute the matter in the
 256 citation within 30 days after the citation is served, the
 257 citation becomes a final order and constitutes discipline. The
 258 penalty shall be a fine or other conditions as established by
 259 rule.

260 (2) The commission shall adopt rules designating
 261 violations for which a citation may be issued. A violation so
 262 designated shall be a violation for which there is no
 263 substantial threat to the public health, safety, or welfare.

264 (3) The commission shall be entitled to recover the costs
 265 of investigation, in addition to any penalty provided according
 266 to rule, as part of the penalty levied pursuant to a citation.

267 (4) A citation must be issued within 6 months after the
 268 filing of a complaint that is the basis for the citation.

269 (5) Service of a citation may be made by personal service
 270 or certified mail, restricted delivery, to the subject at the
 271 subject's last known address of record.

272 Section 6. Section 1010.83, Florida Statutes, is amended
 273 to read:

274 1010.83 Institutional Assessment Trust Fund.--

275 (1) Chapter 99-32, Laws of Florida, re-created the
 276 Institutional Assessment Trust Fund to be administered by the
 277 Department of Education pursuant to this section and rules of

278 the State Board of Education. The trust fund shall consist of
 279 all fees and fines imposed upon nonpublic colleges and schools
 280 pursuant to this chapter and chapter 1005, including all fees
 281 collected from nonpublic colleges and schools for participation
 282 in the Student Protection Fund and the statewide ~~common~~ course
 283 ~~designation and~~ numbering system. The department shall maintain
 284 separate ~~revenue~~ accounts for the operation of the Commission
 285 for Independent Education ~~independent colleges and universities;~~
 286 the Student Protection Fund ~~nonpublic career education;~~ and the
 287 Department of Education.

288 (2) Funds from the trust fund shall be used for purposes
 289 including, but not limited to, the following:

290 (a) Authorized expenses of the Commission for Independent
 291 Education ~~respective boards~~ in carrying out its ~~their~~ required
 292 duties.

293 ~~(b) Financial assistance programs for students who attend~~
 294 ~~nonpublic institutions licensed by the board.~~

295 ~~(c) Educational programs for the benefit of current and~~
 296 ~~prospective owners, administrators, agents, authorized groups of~~
 297 ~~individuals, and faculty of institutions receiving a license, a~~
 298 ~~certificate of exemption, or an authorization by the board.~~

299 (b)(d) Authorized expenses from ~~of~~ the Department of
 300 Education account incurred as a result of the inclusion of
 301 nonpublic colleges in the statewide course numbering system.

302 (c) Expenses authorized by the Commission for Independent
 303 Education from the Student Protection Fund account to complete
 304 the training of students enrolled in an institution that
 305 terminates a program or ceases operation while the student is

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306 enrolled or to facilitate the retrieval or safekeeping of
307 records from a closed institution.

308 (3) The Commission for Independent Education ~~board~~ may
309 utilize other individuals or entities to administer the programs
310 authorized in subsection (2).

311 Section 7. This act shall take effect July 1, 2005.