

CHAMBER ACTION

1 The Colleges & Universities Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to independent postsecondary education;
7 amending s. 1005.31, F.S.; providing requirements of
8 independent postsecondary educational institutions
9 licensed by the Commission for Independent Education;
10 providing requirements for an investigative process for
11 licensure of applicants; revising provisions relating to
12 applicant status; providing for inspections; creating s.
13 1005.375, F.S.; specifying acts that constitute violations
14 and providing penalties therefor; amending s. 1005.38,
15 F.S.; providing requirements for investigation of a
16 suspected violation of the chapter or rules; providing
17 additional grounds for disciplinary actions; providing for
18 a final order to dismiss a complaint or impose specified
19 penalties; providing for imposition and collection of an
20 assessment relating to investigation and prosecution of a
21 case; providing for an emergency suspension or restriction
22 order; creating s. 1005.385, F.S.; requiring the
23 commission to adopt rules relating to issuance of a

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24 citation to an institution and violations for which a
 25 citation may be issued; specifying requirements for
 26 issuance; amending s. 1010.83, F.S.; providing for the
 27 inclusion in the Institutional Assessment Trust Fund of
 28 fees and fines imposed on institutions; specifying
 29 separate accounts; revising uses of funds in the trust
 30 fund; providing an effective date.

31

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

33

34 Section 1. Subsections (1) and (4) of section 1005.31,
 35 Florida Statutes, are amended, subsections (6) through (13) are
 36 renumbered as subsections (7) through (14), respectively, and
 37 new subsections (6) and (15) are added to said section, to read:

38 1005.31 Licensure of institutions.--

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

43 (b) Each licensee is solely responsible for notifying the
 44 commission in writing of the licensee's current mailing address
 45 and the location of the institution. A licensee's failure to
 46 notify the commission of a change of address constitutes a
 47 violation of this paragraph, and the licensee may be disciplined
 48 by the commission. Notwithstanding any other provision of law,
 49 service by regular mail to a licensee's last known address of
 50 record with the commission constitutes adequate and sufficient

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51 notice to the licensee for any official communication to the
52 licensee by the commission.

53 (4) Approved-applicant status shall be extended to all
54 institutions that have submitted a complete application, as
55 defined in rule, for provisional licensure and paid all
56 attendant fees. An incomplete application shall expire 1 year
57 after initial filing. In granting approved-applicant status, the
58 commission shall provide to commission staff and the institution
59 a list of specific omissions or deficiencies. Institutions
60 granted approved-applicant status may not advertise, offer
61 programs of study, collect tuition or fees, or engage in any
62 other activities not specifically approved by the commission. If
63 the commission, or the commission staff if specifically directed
64 by the commission, determines that identified ~~the~~ omissions or
65 deficiencies have been provided for or corrected, the
66 institution may be awarded a provisional license.

67 (6) The commission shall ensure through an investigative
68 process that applicants for licensure meet the standards as
69 defined in rule. When the investigative process is not completed
70 within the time set out in s. 120.60(1) and the commission has
71 reason to believe that the applicant does not meet licensure
72 standards, the commission or the executive director of the
73 commission may issue a 90-day licensure delay, which shall be in
74 writing and sufficient to notify the applicant of the reason for
75 the delay. The provisions of this subsection shall control over
76 any conflicting provisions of s. 120.60(1).

77 (15) Duly authorized agents and employees of the
78 commission shall have the power to inspect, in a lawful manner

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79 | at all reasonable hours, any applicant for licensure or licensed
80 | independent postsecondary educational institution.

81 | Section 2. Section 1005.375, Florida Statutes, is created
82 | to read:

83 | 1005.375 Violations; penalties.--

84 | (1) Each of the following acts constitutes a felony of the
85 | third degree, punishable as provided in s. 775.082, s. 775.083,
86 | or s. 775.084:

87 | (a) Operating an independent postsecondary educational
88 | institution without a valid, active license issued pursuant to
89 | this chapter.

90 | (b) Obtaining or attempting to obtain a license to operate
91 | an institution by fraudulent misrepresentation.

92 | (c) Using or attempting to use a license that has been
93 | suspended or revoked.

94 | (2) Each of the following acts constitutes a misdemeanor
95 | of the second degree, punishable as provided in s. 775.082 or s.
96 | 775.083:

97 | (a) Knowingly concealing information relating to
98 | violations of this chapter.

99 | (b) Willfully making any false oath or affirmation when
100 | required to make an oath or affirmation pursuant to this
101 | chapter.

102 | Section 3. Subsections (6) and (8) of section 1005.38,
103 | Florida Statutes, are amended, and subsections (9) through (12)
104 | are added to said section, to read:

105 | 1005.38 Actions against a licensee and other penalties.--

106 (6) The commission may conduct disciplinary proceedings
107 through an investigation of any suspected violation of this
108 chapter or any rule of the commission, including a finding of
109 probable cause and making reports to any law enforcement agency
110 or regulatory agency.

111 (a) The commission shall cause to be investigated a
112 suspected violation of any provision of this chapter or any rule
113 of the commission. Regardless of the source of information
114 regarding the suspected violation, an investigation may be
115 continued until it is completed and an investigative report is
116 presented to a probable cause panel of the commission.

117 (b)~~(a)~~ The commission shall notify an institution or
118 individual of the substance of any complaint that is under
119 investigation unless the executive director and chairperson of
120 the commission ~~board~~ concur that notification would impede the
121 investigation. The commission may also withhold notification to
122 a person under investigation for an act that constitutes a
123 criminal offense.

124 (c)~~(b)~~ The determination of probable cause shall be made
125 by a majority vote of the probable cause ~~probable-cause~~ panel,
126 the membership of which shall be provided by rule. After the
127 panel declares a finding of probable cause, the commission may
128 issue an administrative complaint and prosecute such complaint
129 under chapter 120.

130 (d)~~(e)~~ A privilege against civil liability is granted to
131 any informant or any witness who provides information in good
132 faith for an investigation or proceeding conducted under this
133 section.

134 (e) Upon written request by an informant, the commission
 135 shall notify the informant of the status of an investigation,
 136 civil action, or administrative proceeding.

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

141 (a) Attempting to obtain action from the commission by
 142 fraudulent misrepresentation, bribery, or through an error of
 143 the commission.

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

146 (c) Delegating professional responsibilities to a person
 147 who is not qualified by training, experience, or licensure to
 148 perform the responsibilities.

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

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

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

154 (g) Operating with a revoked, suspended, or inactive
 155 license.

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

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

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161 penalties for any violation of this chapter or any rule of the
162 commission:

163 (a) Denial of an application for licensure.

164 (b) Revocation or suspension of a license.

165 (c) Imposition of an administrative fine of no less than
166 \$100 and no more than \$5,000 for each count or separate
167 violation. Such fine shall be deposited in the Institutional
168 Assessment Trust Fund pursuant to s. 1010.83.

169 (d) Placement of a licensee on probation for a period of
170 time and subject to such conditions as the commission may
171 specify.

172 (e) Issuance of a written reprimand to an institution.
173 Such reprimand shall be posted in a prominent place at the
174 institution for such period of time as the commission may
175 specify.

176 (10) In addition to any discipline imposed through final
177 order entered for a violation of this chapter or commission
178 rule, the commission shall assess costs related to the
179 investigation and prosecution of the case. Such costs include,
180 but are not limited to, salaries and benefits of personnel,
181 costs related to time spent by an attorney and other personnel
182 working on the case, and any other expenses incurred by the
183 commission in relation to the case. The commission shall
184 determine the amount of costs to be assessed after its
185 consideration of an affidavit of itemized costs and any written
186 objections thereto.

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

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189 within a reasonable time, such reasonable time to be prescribed
 190 in commission rule or in the order assessing such fine or
 191 assessment, the commission or the Department of Legal Affairs
 192 may contract for the collection of, or bring a civil action to
 193 recover, the fine or assessment.

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

199 (13) The commission shall issue an emergency order
 200 suspending or limiting the license of an institution if there is
 201 a finding that an immediate danger to the public health, safety,
 202 or welfare requires emergency action. The executive director of
 203 the commission shall review the matter to determine if the
 204 emergency suspension or restriction order is warranted. Nothing
 205 in this subsection shall be construed to limit the authority of
 206 the executive director to issue an emergency order.

207 Section 4. Section 1005.385, Florida Statutes, is created
 208 to read:

209 1005.385 Authority to issue citations.--

210 (1) The commission shall adopt rules to permit the
 211 issuance of citations. A citation shall be issued to an
 212 independent postsecondary educational institution and shall
 213 contain the institution's name and address, the institution's
 214 license number if applicable, a brief factual statement, the
 215 sections of law allegedly violated, and the penalty imposed. A
 216 citation must clearly state that the subject may choose, in lieu

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217 of accepting the citation, to dispute the matter in the citation
 218 and must provide the subject all rights for either an informal
 219 hearing to dispute the facts before the commission or a formal
 220 hearing to dispute the facts before an administrative law judge
 221 from the Division of Administrative Hearings pursuant to chapter
 222 120. However, if the subject does not dispute the matter in the
 223 citation within 30 days after the citation is served, the
 224 citation becomes a final order and constitutes discipline. The
 225 penalty shall be a fine or other conditions as established by
 226 rule.

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

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

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

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

239 Section 5. Section 1010.83, Florida Statutes, is amended
 240 to read:

241 1010.83 Institutional Assessment Trust Fund.--

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

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245 the State Board of Education. The trust fund shall consist of
 246 all fees and fines imposed upon nonpublic colleges and schools
 247 pursuant to this chapter and chapter 1005, including all fees
 248 collected from nonpublic colleges and schools for participation
 249 in the Student Protection Fund and the statewide ~~common~~ course
 250 ~~designation and~~ numbering system. The department shall maintain
 251 separate ~~revenue~~ accounts for the operation of the Commission
 252 for Independent Education ~~independent colleges and universities;~~
 253 the Student Protection Fund ~~nonpublic career education;~~ and the
 254 Department of Education.

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

257 (a) Authorized expenses of the Commission for Independent
 258 Education ~~respective boards~~ in carrying out its ~~their~~ required
 259 duties.

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

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

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

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

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273 | enrolled or to facilitate the retrieval or safekeeping of
 274 | records from a closed institution.

275 | (3) The Commission for Independent Education ~~board~~ may
 276 | utilize other individuals or entities to administer the programs
 277 | authorized in subsection (2).

278 | Section 6. This act shall take effect July 1, 2005.