

1 A bill to be entitled

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

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

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

1005.31 Licensure of institutions.--

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

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

(4) Approved-applicant status shall be extended to all institutions that have submitted a complete application, as defined in rule, for provisional licensure and paid all attendant fees. An incomplete application shall expire 1 year after initial filing. ~~In granting approved-applicant status, the commission shall provide to commission staff and the institution a list of specific omissions or deficiencies.~~ Institutions granted approved-applicant status may not advertise, offer

57 | programs of study, collect tuition or fees, or engage in any  
58 | other activities not specifically approved by the commission. If  
59 | the commission, or the commission staff if specifically directed  
60 | by the commission, determines that identified ~~the~~ omissions or  
61 | deficiencies have been provided for or corrected, the  
62 | institution may be awarded a provisional license.

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

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

77 | Section 2. Section 1005.375, Florida Statutes, is created  
78 | to read:

79 | 1005.375 Violations; penalties.--

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

83        (a) Operating an independent postsecondary educational  
 84 institution without a valid, active license issued pursuant to  
 85 this chapter.

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

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

90        (2) Each of the following acts constitutes a misdemeanor  
 91 of the second degree, punishable as provided in s. 775.082 or s.  
 92 775.083:

93        (a) Knowingly concealing information relating to  
 94 violations of this chapter.

95        (b) Willfully making any false oath or affirmation when  
 96 required to make an oath or affirmation pursuant to this  
 97 chapter.

98        Section 3. Subsections (6) and (8) of section 1005.38,  
 99 Florida Statutes, are amended, and subsections (9) through (12)  
 100 are added to said section, to read:

101        1005.38 Actions against a licensee and other penalties.--

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

107        (a) The commission shall cause to be investigated a  
 108 suspected violation of any provision of this chapter or any rule  
 109 of the commission. Regardless of the source of information  
 110 regarding the suspected violation, an investigation may be

111 continued until it is completed and an investigative report is  
 112 presented to a probable cause panel of the commission.

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

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

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

130 (e) Upon written request by an informant, the commission  
 131 shall notify the informant of the status of an investigation,  
 132 civil action, or administrative proceeding.

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

137 (a) Attempting to obtain action from the commission by  
 138 fraudulent misrepresentation, bribery, or through an error of  
 139 the commission.

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

142 (c) Delegating professional responsibilities to a person  
 143 who is not qualified by training, experience, or licensure to  
 144 perform the responsibilities.

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

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

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

150 (g) Operating with a revoked, suspended, or inactive  
 151 license.

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

155 (9) The commission shall enter a final order either  
 156 dismissing a complaint or imposing one or more of the following  
 157 penalties for any violation of this chapter or any rule of the  
 158 commission:

159 (a) Denial of an application for licensure.

160 (b) Revocation or suspension of a license.

161 (c) Imposition of an administrative fine of no less than  
 162 \$100 and no more than \$5,000 for each count or separate  
 163 violation. Such fine shall be deposited in the Institutional  
 164 Assessment Trust Fund pursuant to s. 1010.83.

165        (d) Placement of a licensee on probation for a period of  
 166 time and subject to such conditions as the commission may  
 167 specify.

168        (e) Issuance of a written reprimand to an institution.  
 169 Such reprimand shall be posted in a prominent place at the  
 170 institution for such period of time as the commission may  
 171 specify.

172        (10) In any case in which the commission imposes a fine or  
 173 an assessment of costs and the fine or assessment is not paid  
 174 within a reasonable time, such reasonable time to be prescribed  
 175 in commission rule or in the order assessing such fine or  
 176 assessment, the commission or the Department of Legal Affairs  
 177 may contract for the collection of, or bring a civil action to  
 178 recover, the fine or assessment.

179        (11) The commission shall not reinstate the license of an  
 180 institution, or cause a license to be issued to an institution  
 181 it has deemed unqualified, until such time as it is satisfied  
 182 that the institution has complied with all the terms and  
 183 conditions set forth in the final order.

184        (12) The commission shall issue an emergency order  
 185 suspending or limiting the license of an institution if there is  
 186 a finding that an immediate danger to the public health, safety,  
 187 or welfare requires emergency action. The executive director of  
 188 the commission shall review the matter to determine if the  
 189 emergency suspension or restriction order is warranted. Nothing  
 190 in this subsection shall be construed to limit the authority of  
 191 the executive director to issue an emergency order.

192 Section 4. Section 1005.385, Florida Statutes, is created  
 193 to read:

194 1005.385 Authority to issue citations.--

195 (1) The commission shall adopt rules to permit the  
 196 issuance of citations. A citation shall be issued to an  
 197 independent postsecondary educational institution and shall  
 198 contain the institution's name and address, the institution's  
 199 license number if applicable, a brief factual statement, the  
 200 sections of law allegedly violated, and the penalty imposed. A  
 201 citation must clearly state that the subject may choose, in lieu  
 202 of accepting the citation, to dispute the matter in the citation  
 203 and must provide the subject all rights for either an informal  
 204 hearing to dispute the facts before the commission or a formal  
 205 hearing to dispute the facts before an administrative law judge  
 206 from the Division of Administrative Hearings pursuant to chapter  
 207 120. However, if the subject does not dispute the matter in the  
 208 citation within 30 days after the citation is served, the  
 209 citation becomes a final order and constitutes discipline. The  
 210 penalty shall be a fine or other conditions as established by  
 211 rule.

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

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



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

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

224        Section 5. Section 1010.83, Florida Statutes, is amended  
 225 to read:

226        1010.83 Institutional Assessment Trust Fund.--

227        (1) Chapter 99-32, Laws of Florida, re-created the  
 228 Institutional Assessment Trust Fund to be administered by the  
 229 Department of Education pursuant to this section and rules of  
 230 the State Board of Education. The trust fund shall consist of  
 231 all fees and fines imposed upon nonpublic colleges and schools  
 232 pursuant to this chapter and chapter 1005, including all fees  
 233 collected from nonpublic colleges and schools for participation  
 234 in the Student Protection Fund and the statewide ~~common~~ course  
 235 ~~designation and~~ numbering system. The department shall maintain  
 236 separate ~~revenue~~ accounts for the operation of the Commission  
 237 for Independent Education ~~independent colleges and universities;~~  
 238 the Student Protection Fund ~~nonpublic career education;~~ and the  
 239 Department of Education.

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

242        (a) Authorized expenses of the Commission for Independent  
 243 Education ~~respective boards~~ in carrying out its ~~their~~ required  
 244 duties.

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

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

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

254 (c) Expenses authorized by the Commission for Independent  
255 Education from the Student Protection Fund account to complete  
256 the training of students enrolled in an institution that  
257 terminates a program or ceases operation while the student is  
258 enrolled or to facilitate the retrieval or safekeeping of  
259 records from a closed institution.

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

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