

ENROLLED

HB 1089, Engrossed 1

2005 Legislature

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.

27
28 Be It Enacted by the Legislature of the State of Florida:

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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29
 30 Section 1. Subsections (1) and (4) of section 1005.31,
 31 Florida Statutes, are amended, subsections (6) through (13) are
 32 renumbered as subsections (7) through (14), respectively, and
 33 new subsections (6) and (15) are added to said section, to read:

34 1005.31 Licensure of institutions.--

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

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

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

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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:

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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

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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:

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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.

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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.

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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.

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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.~~

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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.