

By Senator Wise

5-908-05

See HB

1 A bill to be entitled

2 An act relating to independent postsecondary

3 education; amending s. 1005.22, F.S.; revising

4 a duty of the Commission for Independent

5 Education relating to rulemaking; amending s.

6 1005.31, F.S.; providing requirements of

7 independent postsecondary educational

8 institutions licensed by the commission;

9 providing requirements for an investigative

10 process for licensure of applicants; revising

11 provisions relating to applicant status;

12 providing for inspections; creating s.

13 1005.375, F.S.; specifying acts that constitute

14 violations and providing penalties therefor;

15 amending s. 1005.38, F.S.; providing

16 requirements for investigation of a suspected

17 violation of the chapter or rules; providing

18 for denial of licensure; providing additional

19 grounds for disciplinary actions; providing for

20 a final order to dismiss a complaint or impose

21 specified penalties; providing for imposition

22 of an assessment relating to investigation and

23 prosecution of a case; providing for an

24 emergency suspension or restriction order;

25 creating s. 1005.385, F.S.; requiring the

26 commission to adopt rules relating to issuance

27 of a citation to an institution and violations

28 for which a citation may be issued; specifying

29 requirements for issuance; amending s. 1010.83,

30 F.S.; providing for the inclusion in the

31 Institutional Assessment Trust Fund of fees and

1 fines imposed on institutions; specifying
2 separate accounts; revising uses of funds in
3 the trust fund; providing an effective date.
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5 Be It Enacted by the Legislature of the State of Florida:
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7 Section 1. Paragraph (e) of subsection (1) of section
8 1005.22, Florida Statutes, is amended to read:

9 1005.22 Powers and duties of commission.--

10 (1) The commission shall:

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

14 1. The commission shall adopt rules pursuant to ss.
15 120.536(1) and 120.54 for the operation and establishment of
16 independent postsecondary educational institutions. ~~The~~
17 ~~commission shall submit the rules to the State Board of~~
18 ~~Education for approval or disapproval. If the state board does~~
19 ~~not act on a rule within 60 days after receiving it, the rule~~
20 ~~shall be filed immediately with the Department of State.~~

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

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

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

1 | commission shall make annual reports to the State Board of
2 | Education showing in detail amounts received and all
3 | expenditures. The commission shall include in its annual
4 | report to the State Board of Education a statement of its
5 | major activities during the period covered by the report.

6 | Section 2. Subsections (1) and (4) of section 1005.31,
7 | Florida Statutes, are amended, subsections (6) through (13)
8 | are renumbered as subsections (7) through (14), respectively,
9 | and new subsections (6) and (15) are added to that section, to
10 | read:

11 | 1005.31 Licensure of institutions.--

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

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

26 | (4) Approved-applicant status shall be extended to all
27 | institutions that have submitted a complete application, as
28 | defined in rule, for provisional licensure and paid all
29 | attendant fees. An incomplete application shall expire 1 year
30 | after initial filing. In granting approved applicant status,
31 | the commission shall provide to commission staff and the

1 ~~institution a list of specific omissions or deficiencies.~~
2 Institutions granted approved-applicant status may not
3 advertise, offer programs of study, collect tuition or fees,
4 or engage in any other activities not specifically approved by
5 the commission. If the commission, or the commission staff if
6 specifically directed by the commission, determines that
7 identified ~~the~~ omissions or deficiencies have been provided
8 for or corrected, the institution may be awarded a provisional
9 license.

10 (6) The commission shall ensure through an
11 investigative process that applicants for licensure meet the
12 standards as defined in rule. When the investigative process
13 is not completed within the time set out in s. 120.60(1) and
14 the commission has reason to believe that the applicant does
15 not meet licensure standards, the commission or the executive
16 director of the commission may issue a 90-day licensure delay,
17 which shall be in writing and sufficient to notify the
18 applicant of the reason for the delay. The provisions of this
19 subsection shall control over any conflicting provisions of s.
20 120.60(1).

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

25 Section 3. Section 1005.375, Florida Statutes, is
26 created to read:

27 1005.375 Violations; penalties.--

28 (1) Each of the following acts constitutes a felony of
29 the third degree, punishable as provided in s. 775.082, s.
30 775.083, or s. 775.084:
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1 (a) Operating an independent postsecondary educational
2 institution without a valid, active license issued pursuant to
3 this chapter.

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

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

8 (2) Each of the following acts constitutes a
9 misdemeanor of the second degree, punishable as provided in s.
10 775.082 or s. 775.083:

11 (a) Knowingly concealing information relating to
12 violations of this chapter.

13 (b) Willfully making any false oath or affirmation
14 when required to make an oath or affirmation pursuant to this
15 chapter.

16 Section 4. Subsections (6) and (8) of section 1005.38,
17 Florida Statutes, are amended, and subsections (9) through
18 (12) are added to that section, to read:

19 1005.38 Actions against a licensee and other
20 penalties.--

21 (6) The commission may conduct disciplinary
22 proceedings through an investigation of any suspected
23 violation of this chapter or any rule of the commission,
24 including a finding of probable cause and making reports to
25 any law enforcement agency or regulatory agency.

26 (a) The commission shall cause to be investigated a
27 suspected violation of any provision of this chapter or any
28 rule of the commission. Regardless of the source of
29 information regarding the suspected violation, an
30 investigation may be continued until it is completed and an
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1 investigative report is presented to a probable cause panel of
2 the commission.

3 ~~(b)(a)~~ The commission shall notify an institution or
4 individual of the substance of any complaint that is under
5 investigation unless the executive director and chairperson of
6 the commission ~~board~~ concur that notification would impede the
7 investigation. The commission may also withhold notification
8 to a person under investigation for an act that constitutes a
9 criminal offense.

10 ~~(c)(b)~~ The determination of probable cause shall be
11 made by a majority vote of the probable cause ~~probable cause~~
12 panel, the membership of which shall be provided by rule.
13 After the panel declares a finding of probable cause, the
14 commission may issue an administrative complaint and prosecute
15 such complaint under chapter 120.

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

20 (e) Upon written request by an informant, the
21 commission shall notify the informant of the status of an
22 investigation, civil action, or administrative proceeding.

23 (f) The commission may deny initial licensure, renewal
24 licensure, or amended licensure on the basis of all
25 information available to the commission. Such actions shall
26 not be considered disciplinary and shall not require probable
27 cause proceedings.

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

1 (a) Attempting to obtain action from the commission by
2 fraudulent misrepresentation, bribery, or through an error of
3 the commission.

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

6 (c) Delegating professional responsibilities to a
7 person who is not qualified by training, experience, or
8 licensure to perform the responsibilities.

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

10 (e) Conspiring to coerce, intimidate, or preclude
11 another licensee from lawfully advertising his or her
12 services.

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

15 (g) Operating with a revoked, suspended, or inactive
16 license.

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

20 (9) The commission shall enter a final order either
21 dismissing a complaint or imposing one or more of the
22 following penalties for any violation of this chapter or any
23 rule of the commission:

24 (a) Denial of an application for licensure.

25 (b) Revocation or suspension of a license.

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

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1 (d) Placement of a licensee on probation for a period
2 of time and subject to such conditions as the commission may
3 specify.

4 (e) Issuance of a written reprimand to an institution.
5 Such reprimand shall be posted in a prominent place at the
6 institution for such period of time as the commission may
7 specify.

8 (10) In addition to any discipline imposed through
9 final order entered for a violation of this chapter or
10 commission rule, the commission shall assess costs related to
11 the investigation and prosecution of the case. Such costs
12 include, but are not limited to, salaries and benefits of
13 personnel, costs related to time spent by an attorney and
14 other personnel working on the case, and any other expenses
15 incurred by the commission in relation to the case. The
16 commission shall determine the amount of costs to be assessed
17 after its consideration of an affidavit of itemized costs and
18 any written objections thereto.

19 (11) In any case in which the commission imposes a
20 fine or an assessment of costs and the fine or assessment is
21 not paid within a reasonable time, such reasonable time to be
22 prescribed in commission rule or in the order assessing such
23 fine or assessment, the commission or the Department of Legal
24 Affairs may contract for the collection of, or bring a civil
25 action to recover, the fine or assessment.

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

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1 (13) The commission shall issue an emergency order
2 suspending or limiting the license of an institution if there
3 is a finding that an immediate danger to the public health,
4 safety, or welfare requires emergency action. The executive
5 director of the commission shall review the matter to
6 determine if the emergency suspension or restriction order is
7 warranted. Nothing in this subsection shall be construed to
8 limit the authority of the executive director to issue an
9 emergency order.

10 Section 5. Section 1005.385, Florida Statutes, is
11 created to read:

12 1005.385 Authority to issue citations.--

13 (1) The commission shall adopt rules to permit the
14 issuance of citations. A citation shall be issued to an
15 independent postsecondary educational institution and shall
16 contain the institution's name and address, the institution's
17 license number if applicable, a brief factual statement, the
18 sections of law allegedly violated, and the penalty imposed. A
19 citation must clearly state that the subject may choose, in
20 lieu of accepting the citation, to dispute the matter in the
21 citation and must provide the subject all rights for either an
22 informal hearing to dispute the facts before the commission or
23 a formal hearing to dispute the facts before an administrative
24 law judge from the Division of Administrative Hearings
25 pursuant to chapter 120. However, if the subject does not
26 dispute the matter in the citation within 30 days after the
27 citation is served, the citation becomes a final order and
28 constitutes discipline. The penalty shall be a fine or other
29 conditions as established by rule.

30 (2) The commission shall adopt rules designating
31 violations for which a citation may be issued. A violation so

1 designated shall be a violation for which there is no
2 substantial threat to the public health, safety, or welfare.

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

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

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

12 Section 6. Section 1010.83, Florida Statutes, is
13 amended to read:

14 1010.83 Institutional Assessment Trust Fund.--

15 (1) Chapter 99-32, Laws of Florida, re-created the
16 Institutional Assessment Trust Fund to be administered by the
17 Department of Education pursuant to this section and rules of
18 the State Board of Education. The trust fund shall consist of
19 all fees and fines imposed upon nonpublic colleges and schools
20 pursuant to this chapter and chapter 1005, including all fees
21 collected from nonpublic colleges and schools for
22 participation in the Student Protection Fund and the statewide
23 ~~common~~ ~~course designation and~~ numbering system. The department
24 shall maintain separate ~~revenue~~ accounts for the operation of
25 the Commission for Independent Education ~~independent colleges~~
26 ~~and universities~~; the Student Protection Fund ~~nonpublic career~~
27 ~~education~~; and the Department of Education.

28 (2) Funds from the trust fund shall be used for
29 purposes including, but not limited to, the following:
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1 (a) Authorized expenses of the Commission for
2 Independent Education ~~respective boards~~ in carrying out its
3 ~~their~~ required duties.

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

6 ~~(c) Educational programs for the benefit of current~~
7 ~~and prospective owners, administrators, agents, authorized~~
8 ~~groups of individuals, and faculty of institutions receiving a~~
9 ~~license, a certificate of exemption, or an authorization by~~
10 ~~the board.~~

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

14 (c) Expenses authorized by the Commission for
15 Independent Education from the Student Protection Fund account
16 to complete the training of students enrolled in an
17 institution that terminates a program or ceases operation
18 while the student is enrolled or to facilitate the retrieval
19 or safekeeping of records from a closed institution.

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

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