

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Higher Education Committee

BILL: CS/SB 260

INTRODUCER: Higher Education Committee and Senator Ring

SUBJECT: Nonpublic Postsecondary Education Institutions

DATE: April 5, 2011

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Harkey	Matthews	HE BC	Fav/CS
2.			
3.			
4.			
5.			
6.			

Please see Section VIII. for Additional Information:

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The bill requires institutions licensed by the Commission for Independent Education (CIE) or exempt from licensure under certain circumstances to disclose the institution's accreditation status to each prospective student. Additionally, the bill requires an institution offering postsecondary education through correspondence or distance learning to students in Florida to be licensed by the CIE.

This bill amends ss. 744.1083, 1005.02, 1005.04, and 1005.31 Florida Statutes.

II. Present Situation:

The Commission for Independent Education (CIE)

Every private college or postsecondary school operating in Florida must be licensed by the CIE unless it is exempt from licensure under s. 1005.06, F.S.¹ Accreditation is not a requirement of

¹ Institutions that are exempt from licensure include those operated by the state or federal government; nursing, dentistry, real estate schools and any others requiring licensing under other chapters of the Florida Statutes; nonprofit independent colleges accredited by the Southern Association of Colleges and Schools; religious institutions; schools regulated by the Federal Aviation Administration; and institutions that were exempt from licensure prior to 2001.

licensure, but licensed institutions are required to inform the CIE of changes to accreditation status. The CIE maintains information on its website about the accreditation of each institution. According to the Department of Education, fewer than 40 (approximately 22 percent) of the licensed degree-granting institutions are not accredited.

Section 1005.02(7), F.S., defines “degree” for purposes of licensure by the CIE to mean any educational credential that is generally taken to signify satisfactory completion of the requirements of an undergraduate, graduate, academic, educational, or professional program of study or any honorary credential conferred for meritorious recognition. At the undergraduate level, an institution may not award a degree for a program unless it includes a general education component as established by rule and at least 60 semester hours or 90 quarter hours of study or the equivalent.” There is currently no statutory definition for “academic degree” or “occupational associate degree.” Both of those terms are currently defined in State Board of Education rule.²

Florida does not license postsecondary distance learning programs or correspondence courses and does not gather information about residents who take such courses.

III. Effect of Proposed Changes:

The bill defines academic degree to mean a degree titled as an associate, bachelor’s, master’s, or doctoral degree, but not an occupational associate degree. The bill:

- Requires each licensed institution and those private institutions that are exempt from licensure because they are eligible to participate in FRAG grants or because they are religious institutions to disclose its accreditation status to each prospective student;
- Requires a licensed institution that is not accredited by an agency recognized by the U.S. Department of Education (USDOE) to disclose that fact to prospective students;
- Prohibits a licensed private postsecondary institution from advertising that it is accredited unless it is accredited by an accrediting agency recognized by the USDOE;
- Requires an institution offering postsecondary education through correspondence or distance learning to students in Florida to be licensed by the CIE unless the institution is exempt from licensure under s. 1005.06, F.S.;
- Requires a licensed institution to notify the CIE in writing of any changes in its accreditation status;
- Requires the CIE to maintain a list of licensed and accredited institutions on its website and to specify whether the institution is accredited by an entity that is recognized by the USDOE; and
- Requires an institution to notify the CIE of its current address and removes the commission’s authority to discipline an institution for failure to do so.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

² See Rule 6E-2.004(4)(n), F.A.C., and Rule 6E-2.004(4)(o), F.A.C.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

This bill requires institutions offering postsecondary education through correspondence or distance learning courses to students in Florida to be licensed by the CIE regardless of where the institution is physically located unless it is exempt under s. 1005.06, F.S. This requirement could affect every private and public postsecondary education institution outside Florida that provides distance learning to in-state students. This requirement may be challenged under the Commerce Clause of the U.S. Constitution.³

The dormant Commerce Clause doctrine distinguishes between state regulations that “affirmatively discriminate” against interstate commerce and evenhanded regulations that “burden interstate transactions only incidentally.”⁴ Regulations that clearly discriminate against interstate commerce are facially unconstitutional,⁵ while those that incidentally burden interstate commerce will be struck down only if the burden is excessive in comparison to the putative local benefits.⁶

Conversely, where a statute imposed a licensing requirement and an annual fee upon a retail installment seller that solicited and sold to Florida residents but was not physically present in-state, the court upheld the statute as permissible under the state’s regulatory police power authority.⁷ The court found persuasive the hearing officer’s classification of these requirements as consumer protection-oriented. In so doing, the court asserted that laws designed to protect the public from fraud and misrepresentation are subject to lower scrutiny than those that operate as a revenue-raising scheme, such as through imposition of taxes.⁸ Therefore, an initial determination is required regarding whether a statute functions as a general revenue tax, or whether it is regulatory in nature, and therefore properly a measure of a state’s police power to protect the public.⁹ As stated by the court:

³ Art. I, s. 8, U.S. Constitution.

⁴ *Maine v. Taylor*, 477 U.S. 131, 138 (1986).

⁵ *National Electric Manufacturers Association v. Sorrell*, 272 F.3d 104, 108 (2d Cir.2001) *National Electric Manufacturers Association v. Sorrell*, 272 F.3d 104, 108 (2d Cir.2001).

⁶ *Pike v. Bruce Church, Inc.*, 397 U.S. 137, 142 (1970).

⁷ *Department of Banking and Finance, State of Florida v. Credicorp, Inc.*, 684 So.2d 746 (1996).

⁸ *Id.* at 750.

⁹ *Id.*

Where a regulation is not essentially economic in purpose and effect, however, but is a social regulation designed to protect local interests, different considerations apply.¹⁰

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Private postsecondary institutions outside of Florida would be required to be licensed by the CIE if they provided correspondence courses or distance learning courses to students in Florida and would have to pay the licensure fees.

C. Government Sector Impact:

The CIE would incur the administrative cost of licensing out-of-state institutions that provided distance learning to students in Florida.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Higher Education on April 4, 2011:

The committee substitute removes the requirement that licensed institutions must be accredited within five years or lose their authority to operate in the state. Instead, the committee substitute requires disclosure of an institution's accreditation status. Finally, the committee substitute requires an institution that offers postsecondary distance learning or correspondence courses to Florida residents to be licensed by the Commission for Independent Education.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

¹⁰ *Id.* at 751.