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AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
REQUIRING REGISTRATION BY THE HIGHER EDUCATION DEPARTMENT OF
PRIVATE COLLEGES AND UNIVERSITIES THAT ARE REGIONALLY
ACCREDITED; COMPLYING WITH UNITED STATES DEPARTMENT OF
EDUCATION REQUIREMENTS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

SECTION 1. Section 21-23-2 NMSA 1978 (being Laws 1971,
Chapter 303, Section 2, as amended) is amended to read:

"21-23-2. PURPOSE OF ACT.--The purpose of the
Post-Secondary Educational Institution Act is to improve the
quality of private post-secondary education, to prevent
misrepresentation, fraud and collusion in offering
educational programs to persons over the compulsory school
attendance age and to protect consumers enrolled in private
post-secondary educational institutions when those schools
cease operation or fail to meet standards of quality
established by the department."

SECTION 2. Section 21-23-3 NMSA 1978 (being Laws 1971,
Chapter 303, Section 3, as amended) is amended to read:

"21-23-3. DEFINITIONS.--As used in the Post-Secondary
Educational Institution Act:

A. "career school" means a private post-secondary
educational institution offering a formal educational

1 curriculum in New Mexico for a fee to members of the general
2 public beyond compulsory school age, terminating in a
3 certificate, diploma, associate degree or comparable
4 confirmation of completion of the curriculum;

5 B. "college" or "university" means a private
6 post-secondary educational institution offering a formal
7 educational curriculum in New Mexico for a fee to members of
8 the general public beyond compulsory school age, terminating
9 in a baccalaureate, master's or doctoral degree or comparable
10 confirmation of completion of the curriculum;

11 C. "department" means the higher education
12 department;

13 D. "license" means a written acknowledgment by the
14 department that a career school or nonregionally accredited
15 college or university has met the requirements of the
16 department for offering a formal educational curriculum
17 within New Mexico;

18 E. "post-secondary educational institution"
19 includes an academic, vocational, technical, business,
20 professional or other school, college or university or other
21 organization or person offering or purporting to offer
22 courses, instruction, training or education from a physical
23 site in New Mexico, through distance education,
24 correspondence or in person; and

25 F. "registration" means a written acknowledgment

1 by the department that a regionally accredited college or
2 university has filed pertinent curriculum and enrollment
3 information, as required by the department, and is authorized
4 to operate a private post-secondary educational institution."

5 SECTION 3. Section 21-23-4 NMSA 1978 (being Laws 1971,
6 Chapter 303, Section 4, as amended) is amended to read:

7 "21-23-4. EXCEPTIONS.--

8 A. The Post-Secondary Educational Institution Act
9 does not apply to or affect:

10 (1) a post-secondary educational institution
11 that is established by name as an educational institution by
12 the state through a charter, constitutional provision or
13 other action and is supported in whole or in part by state or
14 local taxation;

15 (2) an occupational, trade or professional
16 school operating pursuant to any New Mexico occupational
17 licensing law;

18 (3) a course of instruction provided by an
19 employer to its own employees for training purposes;

20 (4) institutions that exclusively offer
21 education that is solely avocational or recreational in
22 nature;

23 (5) a course of instruction or study
24 sponsored by a recognized fraternal, trade, business or
25 professional organization or labor union for the instruction

1 of its members;

2 (6) chartered, nonprofit religious
3 institutions whose sole purpose is to train students in
4 religious disciplines to prepare them to assume a vocational
5 objective relating primarily to religion;

6 (7) institutions that exclusively offer
7 instruction at any level from preschool through the twelfth
8 grade;

9 (8) an institution funded in full or in part
10 by an Indian tribe or pueblo in the state of New Mexico; and

11 (9) an organization that provides only brief
12 courses of instruction designed to teach specific skills that
13 may be applicable in a work setting but are not sufficient in
14 themselves to be a program of training in employment.

15 B. An institution, school or program described in
16 this section shall not be entitled to an exemption unless it
17 presents satisfactory evidence to the department that it
18 qualifies."

19 SECTION 4. Section 21-23-5 NMSA 1978 (being Laws 1994,
20 Chapter 108, Section 6, as amended) is amended to read:

21 "21-23-5. DUTIES OF THE DEPARTMENT.--

22 A. The department is charged with oversight of all
23 private post-secondary educational institutions operating
24 within the state.

25 B. The department shall provide for the

1 registration of all regionally accredited colleges and
2 universities operating in the state pursuant to the
3 Post-Secondary Educational Institution Act.

4 C. The department shall provide for the licensure
5 of all career schools and all nonregionally accredited
6 colleges and universities operating in the state pursuant to
7 the Post-Secondary Educational Institution Act."

8 SECTION 5. Section 21-23-6 NMSA 1978 (being Laws 1994,
9 Chapter 108, Section 7, as amended) is amended to read:

10 "21-23-6. REGISTRATION OF COLLEGES AND UNIVERSITIES--
11 SUBMISSION OF MATERIALS.--

12 A. Every college or university operating in New
13 Mexico that is regionally accredited or seeking regional
14 accreditation by an accrediting agency approved by the
15 department shall register with the department.

16 B. A college or university registering with the
17 department pursuant to this section shall provide curriculum
18 and enrollment information, financial information and all
19 publication materials requested by the department.

20 C. A college or university registering with the
21 department shall adopt a procedure for the resolution of
22 student complaints.

23 D. A college's or university's registration is
24 valid for the same period as its grant of regional
25 accreditation from its accrediting agency."

1 SECTION 6. Section 21-23-6.1 NMSA 1978 (being Laws
2 1994, Chapter 108, Section 8, as amended) is amended to read:

3 "21-23-6.1. LICENSURE OF CAREER SCHOOLS--LICENSURE OF
4 CERTAIN COLLEGES AND UNIVERSITIES.--

5 A. A career school or nonregionally accredited
6 college or university operating in New Mexico shall be
7 licensed by the department. It is unlawful to operate a
8 career school or nonregionally accredited college or
9 university without first obtaining a license from the
10 department.

11 B. A college or university operating in New Mexico
12 that is not regionally accredited or is not seeking regional
13 accreditation by an accrediting agency approved by the
14 department shall be licensed by the department in the manner
15 provided for career schools or other nonregionally accredited
16 colleges or universities. It is unlawful to operate a
17 college or university that is not accredited or seeking
18 accreditation by an accrediting agency approved by the
19 department without first obtaining a license from the
20 department.

21 C. No person other than an employee of an
22 institution licensed pursuant to this section shall, for a
23 salary or fee, solicit attendance at that institution."

24 SECTION 7. Section 21-23-6.2 NMSA 1978 (being Laws
25 1994, Chapter 108, Section 9, as amended) is amended to read:

1 "21-23-6.2. LICENSURE STANDARDS--REQUIREMENTS--FEE
2 AUTHORIZATION.--

3 A. Every career school and nonregionally
4 accredited college and university operating in the state
5 shall annually apply to the department for licensure. The
6 career school and nonregionally accredited college or
7 university shall apply on forms approved by the department,
8 shall supply all information requested by the department and
9 shall pay an annual licensure fee set by the department.

10 B. The department or its designee shall consider
11 information submitted by the career school and nonregionally
12 accredited college or university, information from
13 independent accreditation bodies and information gathered
14 during visits to the career school and nonregionally
15 accredited college or university in determining eligibility
16 for licensure.

17 C. The department shall promulgate and file, in
18 accordance with the State Rules Act, rules that:

19 (1) require each career school and
20 nonregionally accredited college and university to supply
21 annually information regarding enrollment, program completion
22 by students, employment and other educational placements of
23 students and operating revenue budgets;

24 (2) provide standards and methods for the
25 evaluation and appraisal of career schools and nonregionally

1 accredited colleges and universities;

2 (3) provide for a tuition refund policy;

3 (4) require maintenance of adequate records
4 by each career school and nonregionally accredited college
5 and university and provide reasonable availability of records
6 for inspection;

7 (5) regulate the use of deceptive and
8 misleading advertising and determine what information shall
9 be furnished each student prior to enrollment;

10 (6) assure that any career school or
11 nonregionally accredited college or university licensed
12 pursuant to the Post-Secondary Educational Institution Act
13 has entered into a teach-out agreement with at least one
14 other private or public institution operating in the state
15 unless the department determines that such an agreement is
16 not feasible;

17 (7) provide standards for the award of
18 associate, baccalaureate, master's and doctoral degrees;

19 (8) require all degree-granting schools to
20 seek appropriate external accreditation by an agency
21 recognized by the federal department of education as a means
22 of assuring quality instruction;

23 (9) name an advisory committee of education
24 providers and consumers, including owners and operators of
25 career schools and nonregionally accredited colleges and

1 universities;

2 (10) provide for the maintenance of records
3 for career schools and nonregionally accredited colleges and
4 universities no longer in operation;

5 (11) provide standards for the evaluation of
6 the financial stability and ability to meet the commitments
7 of career schools and nonregionally accredited colleges and
8 universities;

9 (12) require each career school and
10 nonregionally accredited college and university to adopt a
11 procedure for the resolution of student complaints; and

12 (13) establish other requirements necessary
13 to carry out the provisions of the Post-Secondary Educational
14 Institution Act.

15 D. The department may solicit information
16 pertaining to the financial history and stability of a career
17 school or nonregionally accredited college or university and
18 its owners, including information pertaining to actions of
19 bankruptcy filed within the immediately preceding five years.
20 The department may consider such information in determining
21 eligibility for licensure."

22 SECTION 8. Section 21-23-6.3 NMSA 1978 (being Laws
23 1994, Chapter 108, Section 10, as amended) is amended to
24 read:

25 "21-23-6.3. FEE AUTHORIZATION.--

1 A. The department may establish initial
2 application fees for all colleges, universities or career
3 schools seeking to operate in New Mexico. The initial
4 application fee shall be not less than two hundred dollars
5 (\$200) or more than five thousand dollars (\$5,000). In
6 setting the fee, the department shall consider the projected
7 revenue of the institution and the projected cost of
8 performing the review.

9 B. The department may establish an annual
10 licensing fee for all career schools or nonregionally
11 accredited colleges or universities licensed by the
12 department. The licensing fee shall be proportionate to each
13 school's gross annual tuition revenue; provided the fee shall
14 be not less than two hundred dollars (\$200) or more than five
15 thousand dollars (\$5,000).

16 C. The department may charge a reasonable
17 administrative fee not to exceed the actual cost of providing
18 the administrative service.

19 D. All fees imposed and collected by the
20 department shall be deposited in the post-secondary
21 educational institution fund."

22 SECTION 9. Section 21-23-7 NMSA 1978 (being Laws 1971,
23 Chapter 303, Section 7, as amended) is amended to read:

24 "21-23-7. CLAIMS--LIMITATIONS--APPEALS.--

25 A. Any person having a claim against a college,

1 university or career school registered or licensed by the
2 department or that college's, university's or career school's
3 agents, instructors or other personnel shall first seek
4 resolution of the claim with the college, university or
5 career school; thereafter, a person may file a verified
6 complaint with the department, setting forth the basis of the
7 claim and the name and address of the college, university or
8 career school complained against and any other persons
9 involved or having knowledge of the claim. All claims shall
10 be limited to the amount of tuition actually paid or to any
11 charge or fee received by the college, university or career
12 school or its agents or employees.

13 B. Upon the receipt of a verified complaint, the
14 department or its authorized employee shall attempt to
15 resolve the claim outlined in the complaint. The department
16 or its authorized employee may convene a hearing and shall
17 give written notice to the college, university or career
18 school and to all persons involved of the hearing and its
19 time, date and place. The notice shall state that the
20 hearing is an informal one for the purpose of determining the
21 facts surrounding the claim and, if the claim is correct, to
22 effect a settlement by persuasion and conciliation.

23 C. In the event that the party complained against
24 refuses to attend the hearing or effect the settlement of any
25 claim determined by the department to be correct, the

1 department shall invoke its powers to take such action as
2 shall be necessary for the indemnification of the claimant.

3 D. Any person aggrieved by a department decision
4 rendered subsequent to a claim hearing may appeal to the
5 district court in the judicial district in which the hearing
6 was conducted. The appeal shall be based upon the record
7 established at the claim hearing."

8 SECTION 10. Section 21-23-7.1 NMSA 1978 (being Laws
9 1994, Chapter 108, Section 12) is amended to read:

10 "21-23-7.1. SURETY BOND REQUIRED--ALTERNATIVE SURETY.--

11 A. A college, university or career school
12 registered or licensed by the department shall post with the
13 department and maintain in effect a surety bond. The bond
14 shall be payable to the department and shall be sufficient in
15 amount to indemnify any student damaged as a result of fraud
16 or misrepresentation by a registered or licensed college,
17 university or career school or as a result of the college,
18 university or career school ceasing operation prior to its
19 students having completed the programs for which they have
20 contracted.

21 B. The department is authorized to establish the
22 amount of bond required on an individual basis, taking into
23 consideration factors such as the college's, university's or
24 career school's size, number of students and total income and
25 assets of the college, university or career school in the

1 state. In no case shall the bond be less than five thousand
2 dollars (\$5,000) nor shall it exceed twenty percent of a
3 college's, university's or career school's gross annual
4 tuition revenue in New Mexico.

5 C. Surety bonds may be canceled only following
6 delivery of written notice to the department no less than
7 ninety days prior to the date of cancellation. In case of
8 cancellation, the college, university or career school shall
9 provide the department with a like surety or acceptable
10 alternative in order to maintain licensure.

11 D. As an alternative to a surety bond, a college,
12 university or career school may elect to and the department
13 may require that a college, university or career school
14 establish and maintain a cash deposit escrow account,
15 irrevocable letter of credit or alternative payable to the
16 department in an amount set by the department and subject to
17 rules promulgated by the department. In no case shall the
18 deposit or account required exceed twenty percent of the
19 college's, university's or career school's gross tuition
20 annual revenue in New Mexico."

21 SECTION 11. Section 21-23-8 NMSA 1978 (being Laws 1975,
22 Chapter 148, Section 8, as amended) is amended to read:

23 "21-23-8. FUND CREATED.--There is created in the state
24 treasury the "post-secondary educational institution fund".

25 Money appropriated to this fund or accruing to it through

1 gifts, grants or bequests shall not be transferred to another
2 fund or encumbered or disbursed in any manner except for the
3 administration of the Post-Secondary Educational Institution
4 Act or the Out-of-State Proprietary School Act. The fund
5 shall not revert at the end of the fiscal year.

6 Disbursements from the fund shall be made only upon warrant
7 drawn by the secretary of finance and administration pursuant
8 to vouchers signed by the secretary of higher education or
9 the secretary's authorized representative."

10 SECTION 12. Section 21-23-10 NMSA 1978 (being Laws
11 1971, Chapter 303, Section 9, as amended) is amended to read:

12 "21-23-10. DISCIPLINARY ACTIONS--CIVIL PENALTIES.--

13 A. A person shall not:

14 (1) operate a career school or nonregionally
15 accredited college or university within the state until that
16 school has been licensed by the department;

17 (2) operate a regionally accredited college
18 or university within the state until that college or
19 university has registered with the department;

20 (3) deny enrollment to or make any
21 distinction or classification of students in the program or
22 practices of any post-secondary educational institution under
23 the jurisdiction of the department on account of race, color,
24 culture, ancestry, national origin, sex, age, religion or
25 disability; or

1 (4) solicit, directly or through an agent or
2 employee, the enrollment of any person in a post-secondary
3 educational institution within the state by the use of fraud,
4 misrepresentation or collusion.

5 B. Whoever violates any provision of this section
6 may be assessed a civil penalty not to exceed five hundred
7 dollars (\$500) per day per violation. Civil penalties shall
8 be credited to the current school fund as provided in Article
9 12, Section 4 of the constitution of New Mexico.

10 C. After an investigation, the department may take
11 any one or a combination of the following disciplinary
12 actions against a post-secondary educational institution
13 registered or licensed in accordance with the Post-Secondary
14 Educational Institution Act:

15 (1) revoke a license;

16 (2) revoke the registration, if the
17 institution has had its regional accreditation revoked by its
18 accrediting agency;

19 (3) assess a civil penalty as provided in
20 Subsection B of this section; or

21 (4) impose probation requirements."

22 SECTION 13. Section 21-23-10.1 NMSA 1978 (being Laws
23 1994, Chapter 108, Section 14) is amended to read:

24 "21-23-10.1. ENFORCEMENT.--The department or any state
25 or local prosecuting officer may, by request or on the

1 officer's own motion, bring an appropriate action in any
2 court of competent jurisdiction to enforce the provisions of
3 the Post-Secondary Educational Institution Act."

4 SECTION 14. Section 21-23-12 NMSA 1978 (being Laws
5 1975, Chapter 148, Section 12, as amended) is amended to
6 read:

7 "21-23-12. COOPERATION.--The department shall cooperate
8 with federal and other state agencies in administering the
9 provisions of the Post-Secondary Educational Institution Act.
10 The secretary of state shall cooperate with the department by
11 identifying post-secondary educational institutions that
12 apply for corporate charters. The public education
13 department shall cooperate with the department by providing
14 the technical assistance necessary to develop minimum
15 standards that post-secondary educational institutions shall
16 meet and any other assistance that would be of aid in the
17 administration of the Post-Secondary Educational Institution
18 Act."

19 SECTION 15. Section 21-23-13 NMSA 1978 (being Laws
20 1975, Chapter 148, Section 13, as amended) is amended to
21 read:

22 "21-23-13. PROCEDURE.--The department shall follow the
23 procedures set out in the Uniform Licensing Act in
24 administering the provisions of the Post-Secondary
25 Educational Institution Act. When the Uniform Licensing Act

1 refers to the process of examination, that process means the
2 process of application for the purposes of the administration
3 of the Post-Secondary Educational Institution Act."

4 SECTION 16. Section 21-23-14 NMSA 1978 (being Laws
5 1975, Chapter 148, Section 14, as amended) is amended to
6 read:

7 "21-23-14. PROHIBITION.--The issuance of a license by
8 the department does not constitute accreditation by it for
9 any purpose. Any representation to the contrary is a
10 misrepresentation for the purposes of Section 21-23-10 NMSA
11 1978 and is prohibited."

12 SECTION 17. Section 21-23-15 NMSA 1978 (being Laws
13 1979, Chapter 355, Section 1, as amended) is amended to read:

14 "21-23-15. POST-SECONDARY EDUCATIONAL INSTITUTIONS--
15 TERMINATION.--

16 A. No post-secondary educational institution shall
17 terminate its operation within the state until:

18 (1) the institution has made reasonable
19 efforts with another public or private post-secondary
20 educational institution that provides a comparable education
21 to facilitate and provide for the transfer of the students,
22 with a minimum loss of credit;

23 (2) the post-secondary educational
24 institution has made contractual arrangements for the
25 perpetual care, maintenance and accessibility of all records,

1 transcripts, reports and evaluations of all students
2 receiving credit from the institution during the period of
3 its existence; and

4 (3) the post-secondary educational
5 institution has met all rules of the department pertaining to
6 the termination of operations by post-secondary educational
7 institutions.

8 B. Before any post-secondary educational
9 institution terminates its services or sells, transfers or
10 disposes of substantially all of its assets, it shall submit
11 to the department a summary of all actions taken pursuant to
12 the requirements set forth in Subsection A of this
13 section."

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