

House Bill No. 1089

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

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

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

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

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

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

1005.375 Violations; penalties.—

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

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

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

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

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

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

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

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

1005.38 Actions against a licensee and other penalties.—

(6) The commission may conduct disciplinary proceedings through an investigation of any suspected violation of this chapter or any rule of the

commission, including a finding of probable cause and making reports to any law enforcement agency or regulatory agency.

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

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

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

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

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

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

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

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

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

(d) False, deceptive, or misleading advertising.

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

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

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

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

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

(a) Denial of an application for licensure.

(b) Revocation or suspension of a license.

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

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

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

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

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

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

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

1005.385 Authority to issue citations.—

(1) The commission shall adopt rules to permit the issuance of citations. A citation shall be issued to an independent postsecondary educational institution and shall contain the institution's name and address, the institution's license number if applicable, a brief factual statement, the sections of law allegedly violated, and the penalty imposed. A citation must clearly state that the subject may choose, in lieu of accepting the citation, to dispute the matter in the citation and must provide the subject all rights for either an informal hearing to dispute the facts before the commission or a formal hearing to dispute the facts before an administrative law judge from the Division of Administrative Hearings pursuant to chapter 120. However, if

the subject does not dispute the matter in the citation within 30 days after the citation is served, the citation becomes a final order and constitutes discipline. The penalty shall be a fine or other conditions as established by rule.

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

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

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

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

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

1010.83 Institutional Assessment Trust Fund.—

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

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

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

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

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

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

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

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

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

Approved by the Governor June 10, 2005.

Filed in Office Secretary of State June 10, 2005.