

AN ACT

RELATING TO HIGHER EDUCATION; AMENDING THE POST-SECONDARY EDUCATIONAL INSTITUTION ACT; PROVIDING FOR LICENSURE AND REGULATION OF NONREGIONALLY ACCREDITED COLLEGES AND UNIVERSITIES; EXEMPTING ORGANIZATIONS THAT OFFER BRIEF COURSES OF INSTRUCTION IN SPECIFIC SKILLS TRAINING; PROVIDING FOR ADMINISTRATIVE FEES; PRESCRIBING PENALTIES.

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

Section 1. 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. "commission" means the commission on higher education;

B. "career school" means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating in a certificate, diploma, associate degree or comparable confirmation of completion of the curriculum;

C. "college" or "university" means a private post-secondary educational institution offering a formal educational curriculum in New Mexico for a fee to members of the general public beyond compulsory school age, terminating

in a baccalaureate, master's or doctoral degree or comparable confirmation of completion of the curriculum;

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

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

F. "registration" means a written acknowledgment by the commission that a regionally accredited college or university has filed pertinent curriculum and enrollment information as required by the commission."

Section 2. Section 21-23-4 NMSA 1978 (being Laws 1971, Chapter 303, Section 4, as amended) is amended to read:

"21-23-4. EXCEPTIONS.--

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

(1) a post-secondary educational institution supported in whole or in part by state or local taxation;

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

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

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

(5) a course of instruction or study sponsored by a recognized fraternal, trade, business or professional organization or labor union for the instruction of its members;

(6) a regionally accredited college or university that is a private institution that provides an academic education comparable to that provided by public colleges or universities;

(7) proprietary schools as defined in Section 21-24-2 NMSA 1978;

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

(9) institutions that exclusively offer instruction at any level from pre-school through the twelfth grade;

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

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

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

Section 3. Section 21-23-5 NMSA 1978 (being Laws 1994, Chapter 108, Section 6) is amended to read:

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

A. The commission is charged with oversight of all private post-secondary educational institutions operating within the state.

B. The commission shall provide for the registration of all regionally accredited colleges and universities operating in the state pursuant to the Post-Secondary Educational Institution Act.

C. The commission shall provide for the licensure of all career schools and all nonregionally accredited colleges and universities operating in the state pursuant to

the Post-Secondary Educational Institution Act."

Section 4. Section 21-23-6 NMSA 1978 (being Laws 1994, Chapter 108, Section 7) is amended to read:

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

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

B. A college or university registering with the commission pursuant to this section shall provide curriculum and enrollment information, financial information and all publication materials requested by the commission."

Section 5. Section 21-23-6.1 NMSA 1978 (being Laws 1994, Chapter 108, Section 8) is amended to read:

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

A. A career school or nonregionally accredited college or university operating in New Mexico shall be licensed by the commission. It is unlawful to operate a career school or nonregionally accredited college or university without first obtaining a license from the commission.

B. A college or university operating in New Mexico that is not regionally accredited or seeking regional

accreditation by an accrediting agency approved by the commission shall be licensed by the commission in the manner provided for career schools or nonregionally accredited colleges or universities. It is unlawful to operate a college or university that is not accredited or seeking accreditation by an accrediting agency approved by the commission without first obtaining a license from the commission.

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

Section 6. Section 21-23-6.2 NMSA 1978 (being Laws 1994, Chapter 108, Section 9) is amended to read:

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

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

B. The commission or its designee shall consider information submitted by the career school and nonregionally accredited college or university, information from independent accreditation bodies and information gathered during visits to

the career school and nonregionally accredited college or university in determining eligibility for licensure.

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

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

(2) provide standards and methods for the evaluation and appraisal of career schools and nonregionally accredited colleges and universities;

(3) provide for a tuition refund policy;

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

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

(6) assure that any career school or nonregionally accredited college or university licensed pursuant to the Post-Secondary Educational Institution Act has entered into a teach-out agreement with at least one other private or public institution operating in the state unless

the commission determines that such an agreement is not feasible;

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

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

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

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

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

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

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



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

Section 7. Section 21-23-6.3 NMSA 1978 (being Laws 1994, Chapter 108, Section 10) is amended to read:

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

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

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

C. The commission may charge a reasonable administrative fee not to exceed the actual cost of providing the administrative service.

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

Section 8. Section 21-23-10 NMSA 1978 (being Laws 1971, Chapter 303, Section 9, as amended) is amended to read:

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

A. A person shall not:

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

(2) operate a regionally accredited college or university within the state until that college or university has registered with the commission;

(3) deny enrollment to or make any distinction or classification of pupils in the program or practices of any post-secondary educational institution under the jurisdiction of the commission on account of race, color, culture, ancestry, national origin, sex, age, religion or disability; or

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

misrepresentation or collusion.

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

C. After an investigation, the commission may take any one or a combination of the following disciplinary actions against a post-secondary education institution licensed in accordance with the Post-Secondary Educational Institution Act:

- (1) revoke a license;
- (2) assess a civil penalty as provided in Subsection B of this section; or
- (3) impose probation requirements."