

HOUSE BILL 467

51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013

INTRODUCED BY

Nate Gentry

AN ACT

RELATING TO HIGHER EDUCATION; 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

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1 fail to meet standards of quality established by the
2 [~~commission~~] department."

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

5 "21-23-3. DEFINITIONS.--As used in the Post-Secondary
6 Educational Institution Act:

7 [~~A.~~] ~~"commission" means the commission on higher~~
8 ~~education;~~

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

15 [~~G.~~] B. "college" or "university" means a private
16 post-secondary educational institution offering a formal
17 educational curriculum in New Mexico for a fee to members of
18 the general public beyond compulsory school age, terminating in
19 a baccalaureate, master's or doctoral degree or comparable
20 confirmation of completion of the curriculum;

21 C. "department" means the higher education
22 department;

23 D. "license" means a written acknowledgment by the
24 [~~commission~~] department that a career school or nonregionally
25 accredited college or university has met the requirements of

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1 the ~~[commission]~~ department for offering a formal educational
2 curriculum within New Mexico;

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

10 F. "registration" means a written acknowledgment by
11 the ~~[commission]~~ department that a regionally accredited
12 college or university has filed pertinent curriculum and
13 enrollment information, as required by the ~~[commission]~~
14 department, and is authorized to operate a private post-
15 secondary educational institution."

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

18 "21-23-4. EXCEPTIONS.--

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

21 (1) a post-secondary educational institution
22 that is established by name as an educational institution by
23 the state through a charter, constitutional provision or other
24 action and is supported in whole or in part by state or local
25 taxation;

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

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

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

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

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

15 ~~(7) proprietary schools as defined in Section~~
16 ~~21-24-2 NMSA 1978;~~

17 ~~(8)]~~ (6) chartered, nonprofit religious
18 institutions whose sole purpose is to train students in
19 religious disciplines to prepare them to assume a vocational
20 objective relating primarily to religion;

21 ~~[(9)]~~ (7) institutions that exclusively offer
22 instruction at any level from preschool through the twelfth
23 grade;

24 ~~[(10)]~~ (8) an institution funded in full or in
25 part by an Indian tribe or pueblo in the state of New Mexico;

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1 and

2 [~~(11)~~] (9) an organization that provides only
3 brief courses of instruction designed to teach specific skills
4 that may be applicable in a work setting but are not sufficient
5 in themselves to be a program of training in employment.

6 B. An institution, school or program described in
7 this section shall not be entitled to an exemption unless it
8 presents satisfactory evidence to the [~~commission~~] department
9 that it qualifies."

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

12 "21-23-5. DUTIES OF THE [~~COMMISSION~~] DEPARTMENT---

13 A. The [~~commission~~] department is charged with
14 oversight of all private post-secondary educational
15 institutions operating within the state.

16 B. The [~~commission~~] department shall provide for
17 the registration of all regionally accredited colleges and
18 universities operating in the state pursuant to the Post-
19 Secondary Educational Institution Act.

20 C. The [~~commission~~] department shall provide for
21 the licensure of all career schools and all nonregionally
22 accredited colleges and universities operating in the state
23 pursuant to the Post-Secondary Educational Institution Act."

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

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1 "21-23-6. REGISTRATION OF COLLEGES AND UNIVERSITIES--
2 SUBMISSION OF MATERIALS.--

3 A. Every college or university operating in New
4 Mexico that is regionally accredited or seeking regional
5 accreditation by an accrediting agency approved by the
6 [~~commission~~] department shall register with the [~~commission~~]
7 department.

8 B. A college or university registering with the
9 [~~commission~~] department pursuant to this section shall provide
10 curriculum and enrollment information, financial information
11 and all publication materials requested by the [~~commission~~]
12 department.

13 C. A college or university registering with the
14 department shall adopt a procedure for the resolution of
15 student complaints.

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

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

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

23 A. A career school or nonregionally accredited
24 college or university operating in New Mexico shall be licensed
25 by the [~~commission~~] department. It is unlawful to operate a

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1 career school or nonregionally accredited college or university
2 without first obtaining a license from the [~~commission~~]
3 department.

4 B. A college or university operating in New Mexico
5 that is not regionally accredited or is not seeking regional
6 accreditation by an accrediting agency approved by the
7 [~~commission~~] department shall be licensed by the [~~commission~~]
8 department in the manner provided for career schools or other
9 nonregionally accredited colleges or universities. It is
10 unlawful to operate a college or university that is not
11 accredited or seeking accreditation by an accrediting agency
12 approved by the [~~commission~~] department without first obtaining
13 a license from the [~~commission~~] department.

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

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

19 "21-23-6.2. LICENSURE STANDARDS--REQUIREMENTS--FEE
20 AUTHORIZATION.--

21 A. Every career school and nonregionally accredited
22 college and university operating in the state shall annually
23 apply to the [~~commission~~] department for licensure. The career
24 school and nonregionally accredited college or university shall
25 apply on forms approved by the [~~commission~~] department, shall

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1 supply all information requested by the [~~commission~~] department
2 and shall pay an annual licensure fee set by the [~~commission~~]
3 department.

4 B. The [~~commission~~] department or its designee
5 shall consider information submitted by the career school and
6 nonregionally accredited college or university, information
7 from independent accreditation bodies and information gathered
8 during visits to the career school and nonregionally accredited
9 college or university in determining eligibility for licensure.

10 C. The [~~commission~~] department shall promulgate and
11 file, in accordance with the State Rules Act, rules that:

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

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

20 (3) provide for a tuition refund policy;

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

25 (5) regulate the use of deceptive and

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1 misleading advertising and determine what information shall be
2 furnished each student prior to enrollment;

3 (6) assure that any career school or
4 nonregionally accredited college or university licensed
5 pursuant to the Post-Secondary Educational Institution Act has
6 entered into a teach-out agreement with at least one other
7 private or public institution operating in the state unless the
8 [~~commission~~] department determines that such an agreement is
9 not feasible;

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

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

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

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

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

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1 universities;

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

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

8 D. The [~~commission~~] department may solicit
9 information pertaining to the financial history and stability
10 of a career school or nonregionally accredited college or
11 university and its owners, including information pertaining to
12 actions of bankruptcy filed within the immediately preceding
13 five years. The [~~commission~~] department may consider such
14 information in determining eligibility for licensure."

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

17 "21-23-6.3. FEE AUTHORIZATION.--

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

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

8 C. The [~~commission~~] department may charge a
9 reasonable administrative fee not to exceed the actual cost of
10 providing the administrative service.

11 D. All fees imposed and collected by the
12 [~~commission~~] department shall be deposited in the post-
13 secondary educational institution fund."

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

16 "21-23-7. CLAIMS--LIMITATIONS--APPEALS.--

17 A. Any person having a claim against a college,
18 university or career school registered or licensed by the
19 [~~commission~~] department or that college's, university's or
20 career school's agents, instructors or other personnel shall
21 first seek resolution of the claim with the college, university
22 or career school; thereafter, a person may file a verified
23 complaint with the [~~commission~~] department, setting forth the
24 basis of the claim and the name and address of the college,
25 university or career school complained against and any other

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1 persons involved or having knowledge of the claim. All claims
2 shall be limited to the amount of tuition actually paid or to
3 any charge or fee received by the college, university or career
4 school or its agents or employees.

5 B. Upon the receipt of a verified complaint, the
6 [~~commission~~] department or its authorized employee shall
7 attempt to resolve the claim outlined in the complaint. The
8 [~~commission~~] department or its authorized employee may convene
9 a hearing and shall give written notice to the college,
10 university or career school and to all persons involved of the
11 hearing and its time, date and place. The notice shall state
12 that the hearing is an informal one for the purpose of
13 determining the facts surrounding the claim and, if the claim
14 is correct, to effect a settlement by persuasion and
15 conciliation.

16 C. In the event that the party complained against
17 refuses to attend the hearing or effect the settlement of any
18 claim determined by the [~~commission~~] department to be correct,
19 the [~~commission~~] department shall invoke its powers to take
20 such action as shall be necessary for the indemnification of
21 the claimant.

22 D. Any person aggrieved by a [~~commission~~]
23 department decision rendered subsequent to a claim hearing may
24 appeal to the district court in the judicial district in which
25 the hearing was conducted. The appeal shall be based upon the

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1 record established at the claim hearing."

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

4 "21-23-7.1. SURETY BOND REQUIRED--ALTERNATIVE SURETY.--

5 A. A college, university or career school
6 registered or licensed by the [~~commission~~] department shall
7 post with the [~~commission~~] department and maintain in effect a
8 surety bond. The bond shall be payable to the [~~commission~~]
9 department and shall be sufficient in amount to indemnify any
10 student damaged as a result of fraud or misrepresentation by a
11 registered or licensed college, university or career school or
12 as a result of the college, university or career school ceasing
13 operation prior to its students having completed the programs
14 for which they have contracted.

15 B. The [~~commission~~] department is authorized to
16 establish the amount of bond required on an individual basis,
17 taking into consideration factors such as the college's,
18 university's or career school's size, number of students and
19 total income and assets of the college, university or career
20 school in the state. In no case shall the bond be less than
21 five thousand dollars (\$5,000) nor shall it exceed twenty
22 percent of a college's, university's or career school's gross
23 annual tuition revenue in New Mexico.

24 C. Surety bonds may be canceled only following
25 delivery of written notice to the [~~commission~~] department no

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1 less than ninety days prior to the date of cancellation. In
2 case of cancellation, the college, university or career school
3 shall provide the [~~commission~~] department with a like surety or
4 acceptable alternative in order to maintain licensure.

5 D. As an alternative to a surety bond, a college,
6 university or career school may elect to and the [~~commission~~]
7 department may require that a college, university or career
8 school establish and maintain a cash deposit escrow account,
9 irrevocable letter of credit or alternative payable to the
10 [~~commission~~] department in an amount set by the [~~commission~~]
11 department and subject to [~~regulations~~] rules promulgated by
12 the [~~commission~~] department. In no case shall the deposit or
13 account required exceed twenty percent of the college's,
14 university's or career school's gross tuition annual revenue in
15 New Mexico."

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

18 "21-23-8. FUND CREATED.--There is created in the state
19 treasury the "post-secondary educational institution fund".
20 Money appropriated to this fund or accruing to it through
21 gifts, grants or bequests shall not be transferred to another
22 fund or encumbered or disbursed in any manner except for the
23 administration of the Post-Secondary Educational Institution
24 Act or the Out-of-State Proprietary School Act. The fund shall
25 not revert at the end of the fiscal year. Disbursements from

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1 the fund shall be made only upon warrant drawn by the secretary
2 of finance and administration pursuant to vouchers signed by
3 the ~~[executive director]~~ secretary of ~~[the commission on]~~
4 higher education or the secretary's authorized representative."

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

7 "21-23-10. DISCIPLINARY ACTIONS--CIVIL PENALTIES.--

8 A. A person shall not:

9 (1) operate a career school or nonregionally
10 accredited college or university within the state until that
11 school has been licensed by the ~~[commission]~~ department;

12 (2) operate a regionally accredited college or
13 university within the state until that college or university
14 has registered with the ~~[commission]~~ department;

15 (3) deny enrollment to or make any distinction
16 or classification of ~~[pupils]~~ students in the program or
17 practices of any post-secondary educational institution under
18 the jurisdiction of the ~~[commission]~~ department on account of
19 race, color, culture, ancestry, national origin, sex, age,
20 religion or disability; or

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

25 B. Whoever violates any provision of this section

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

5 C. After an investigation, the [~~commission~~]
6 department may take any one or a combination of the following
7 disciplinary actions against a post-secondary [~~education~~]
8 educational institution registered or licensed in accordance
9 with the Post-Secondary Educational Institution Act:

10 (1) revoke a license;

11 (2) revoke the registration, if the
12 institution has had its regional accreditation revoked by its
13 accrediting agency;

14 [~~2~~] (3) assess a civil penalty as provided
15 in Subsection B of this section; or

16 [~~3~~] (4) impose probation requirements."

17 SECTION 13. Section 21-23-10.1 NMSA 1978 (being Laws
18 1994, Chapter 108, Section 14) is amended to read:

19 "21-23-10.1. ENFORCEMENT.--The [~~commission~~] department or
20 any state or local prosecuting officer may, by request or on
21 [~~his~~] the officer's own motion, bring an appropriate action in
22 any court of competent jurisdiction to enforce the provisions
23 of the Post-Secondary Educational Institution Act."

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

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1 "21-23-12. COOPERATION.--The [~~commission~~] department
2 shall cooperate with federal and other state agencies in
3 administering the provisions of the Post-Secondary Educational
4 Institution Act. The [~~state corporation commission~~] secretary
5 of state shall cooperate with the [~~commission~~] department by
6 identifying post-secondary educational institutions that apply
7 for corporate charters. The [~~state department of~~] public
8 education department shall cooperate with the [~~commission~~]
9 department by providing the technical assistance necessary to
10 develop minimum standards that post-secondary educational
11 institutions shall meet and any other assistance that would be
12 of aid in the administration of the Post-Secondary Educational
13 Institution Act."

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

16 "21-23-13. PROCEDURE.--The [~~commission~~] department shall
17 follow the procedures set out in the Uniform Licensing Act in
18 administering the provisions of the Post-Secondary Educational
19 Institution Act. When the Uniform Licensing Act refers to the
20 process of examination, that process means the process of
21 application for the purposes of the administration of the
22 Post-Secondary Educational Institution Act."

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

25 "21-23-14. PROHIBITION.--The issuance of a license by the
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1 [commission] department does not constitute accreditation by it
2 for any purpose. Any representation to the contrary is a
3 misrepresentation for the purposes of Section 21-23-10 NMSA
4 1978 and is prohibited."

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

7 "21-23-15. POST-SECONDARY EDUCATIONAL INSTITUTIONS--
8 TERMINATION.--

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

11 (1) the institution has made reasonable
12 efforts with another public or private post-secondary
13 educational institution that provides a comparable education to
14 facilitate and provide for the transfer of the students, with a
15 minimum loss of credit;

16 (2) the post-secondary educational institution
17 has made contractual arrangements for the perpetual care,
18 maintenance and accessibility of all records, transcripts,
19 reports and evaluations of all students receiving credit from
20 the institution during the period of its existence; and

21 (3) the post-secondary educational institution
22 has met all [~~regulations~~] rules of the [~~commission~~] department
23 pertaining to the termination of operations by post-secondary
24 educational institutions.

25 B. Before any post-secondary educational

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1 institution terminates its services or sells, transfers or
2 disposes of substantially all of its assets, it shall submit to
3 the ~~[commission]~~ department a summary of all actions taken
4 pursuant to the requirements set forth in Subsection A of this
5 section."

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