

SENATE JUDICIARY COMMITTEE SUBSTITUTE FOR  
SENATE BILL 638

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

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

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1 educational institutions when those schools cease operation or  
2 fail to meet standards of quality established by the  
3 [~~commission~~] department."

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

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

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

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

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

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

24 D. "license" means a written acknowledgment by the  
25 [~~commission~~] department that a career school or nonregionally

1 accredited college or university has met the requirements of  
 2 the [~~commission~~] department for offering a formal educational  
 3 curriculum within New Mexico;

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

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

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

19 "21-23-4. EXCEPTIONS.--

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

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

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1 taxation;

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

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

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

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

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

16 ~~(7) proprietary schools as defined in Section~~  
17 ~~21-24-2 NMSA 1978;~~

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

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

25 ~~[(10)]~~ (8) an institution funded in full or in

1 part by an Indian tribe or pueblo in the state of New Mexico;  
2 and

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

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

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

13 "21-23-5. DUTIES OF THE [~~COMMISSION~~] DEPARTMENT.--

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

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

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

25 SECTION 5. Section 21-23-6 NMSA 1978 (being Laws 1994,

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1 Chapter 108, Section 7, as amended) is amended to read:

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

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

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

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

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

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

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

24 A. A career school or nonregionally accredited  
25 college or university operating in New Mexico shall be licensed

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1 by the [~~commission~~] department. It is unlawful to operate a  
 2 career school or nonregionally accredited college or university  
 3 without first obtaining a license from the [~~commission~~]  
 4 department.

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

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

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

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

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

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1 apply on forms approved by the [~~commission~~] department, shall  
2 supply all information requested by the [~~commission~~] department  
3 and shall pay an annual licensure fee set by the [~~commission~~]  
4 department.

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

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

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

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

21 (3) provide for a tuition refund policy;

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



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

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

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

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

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

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

24 (11) provide standards for the evaluation of  
25 the financial stability and ability to meet the commitments of

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1 career schools and nonregionally accredited colleges and  
2 universities;

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

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

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

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

18 "21-23-6.3. FEE AUTHORIZATION.--

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

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1 performing the review.

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

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

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

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

17 "21-23-7. CLAIMS--LIMITATIONS--APPEALS.--

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

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

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

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

23 D. Any person aggrieved by a [~~commission~~]  
24 department decision rendered subsequent to a claim hearing may  
25 appeal to the district court in the judicial district in which

1 the hearing was conducted. The appeal shall be based upon the  
2 record established at the claim hearing."

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

5 "21-23-7.1. SURETY BOND REQUIRED--ALTERNATIVE SURETY.--

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

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

25 C. Surety bonds may be canceled only following

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1 delivery of written notice to the [~~commission~~] department no  
2 less than ninety days prior to the date of cancellation. In  
3 case of cancellation, the college, university or career school  
4 shall provide the [~~commission~~] department with a like surety or  
5 acceptable alternative in order to maintain licensure.

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

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

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

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1 not revert at the end of the fiscal year. Disbursements from  
 2 the fund shall be made only upon warrant drawn by the secretary  
 3 of finance and administration pursuant to vouchers signed by  
 4 the ~~[executive director]~~ secretary of ~~[the commission on]~~  
 5 higher education or the secretary's authorized representative."

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

8 "21-23-10. DISCIPLINARY ACTIONS--CIVIL PENALTIES.--

9 A. A person shall not:

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

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

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

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

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

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

11                   (1) revoke a license;

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

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

17                   [~~(3)~~] (4) impose probation requirements."

18           SECTION 13. Section 21-23-10.1 NMSA 1978 (being Laws  
19 1994, Chapter 108, Section 14) is amended to read:

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

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

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

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

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

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

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1 "21-23-14. PROHIBITION.--The issuance of a license by the  
2 [~~commission~~] department does not constitute accreditation by it  
3 for any purpose. Any representation to the contrary is a  
4 misrepresentation for the purposes of Section 21-23-10 NMSA  
5 1978 and is prohibited."

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

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

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

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

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

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

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

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