



A BILL FOR AN ACT

RELATING TO EDUCATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

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PART I

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SECTION 1. In October 2010, the United States Department

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of Education issued new regulations for programs authorized

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under Title IV of the Higher Education Act of 1965, as amended,

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to hold programs accountable for preparing students for gainful

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employment, protect students from misleading recruiting

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practices, ensure that only eligible students receive financial

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aid, and strengthen federal student aid programs at for-profit,

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non-profit, and public institutions. The regulations also

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include requirements for state authorization of institutions

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that offer educational programs beyond secondary education for

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purposes of federal program eligibility. Federal expectations

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have major implications for the State and post-secondary

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institutions, as there is now a clear federal requirement that

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post-secondary institutions receive authorization from the State

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to operate.

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The state post-secondary education commission, established

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under section 304A-3151, Hawaii Revised Statutes, qualifies the



1 State to receive funds made available under the Higher Education
2 Act of 1965, as amended, and may serve as the state agency for
3 the receipt of federal funds when necessary. However, the
4 commission does not authorize institutions to operate
5 educational programs beyond secondary education, as may be
6 required under new federal regulations. Further, the commission
7 is established under the University of Hawaii for administrative
8 purposes. The legislature finds that establishing a post-
9 secondary education authorization program under the department
10 of commerce and consumer affairs will result in a system of
11 authorization that is more appropriate to serve the diverse
12 institutions that operate educational programs beyond secondary
13 education in the State. In addition, the department of commerce
14 and consumer affairs is the most appropriate entity to deal with
15 consumer complaints by students at post-secondary institutions,
16 which is a crux of the federal requirements.

17 The State was unable to satisfy all of the requirements of
18 the Higher Education Act of 1965, as amended, relating to state
19 authorization by the July 1, 2011, deadline. However, the
20 United States Department of Education afforded states and
21 institutions the opportunity to receive an extension to July 1,
22 2013, for certain regulations. In the meantime, it is the



1 intent of the legislature to proactively seek solutions by
2 determining what actions and changes are required for the State
3 to come into compliance with the new regulations.

4 It is imperative that Hawaii not jeopardize the receipt of
5 federal funds under Title IV of the Higher Education Act of
6 1965, as amended. According to the auditor's 2012 Study of the
7 Higher Education Act, "[r]oughly 63,000 students in Hawaii
8 received more than \$283,000,000 in Title IV funds in F[iscal]
9 Y[ear] 2011 - about \$4,500 per student."

10 Accordingly, the purpose of this Act is to bring Hawaii
11 into compliance with Title IV of the Higher Education Act of
12 1965, as amended, by establishing a post-secondary education
13 authorization program within the department of commerce and
14 consumer affairs and creating the framework for authorizing
15 private post-secondary educational institutions in the State.

16 **PART II**

17 SECTION 2. The Hawaii Revised Statutes is amended by
18 adding a new chapter to be appropriately designated and to read
19 as follows:

20 **"CHAPTER**

21 **POST-SECONDARY EDUCATION AUTHORIZATION**



1 **§ -1 Post-secondary education authorization program;**
2 **establishment.** There is established a post-secondary education
3 authorization program within the department of commerce and
4 consumer affairs, to be administered by the director of commerce
5 and consumer affairs.

6 **§ -2 Definitions.** Whenever used in this chapter, unless
7 the context otherwise requires:

8 "Accredited" means holding an institutional accreditation
9 by name to offer post-secondary education as a United States-
10 based institution from a regional or national accrediting agency
11 recognized by the United States Department of Education.

12 "Alternative enrollment" means the opportunity for a
13 student enrolled in a private college or university that ceases
14 operation to meet the student's educational objectives through
15 education provided by another authorized private college or
16 university, the University of Hawaii system, an area vocational
17 school, or any other educational arrangement acceptable to the
18 director.

19 "Authorization" means the authorization granted to a
20 private college or university, seminary, or religious training
21 institution as provided in this chapter and any applicable rules



1 and policies. Authorization is not an endorsement by the
2 department.

3 "Degree" means a statement, diploma, certificate, or other
4 writing in any language that indicates or represents, or is
5 intended to indicate or represent, that the person named thereon
6 is learned in or has satisfactorily completed a prescribed
7 course of study in a particular field of endeavor or that the
8 person named thereon has demonstrated proficiency in a field of
9 endeavor as a result of formal preparation or training.

10 "Department" means the department of commerce and consumer
11 affairs.

12 "Director" means the director of commerce and consumer
13 affairs.

14 "Enrollment agreement" means the contract prepared by a
15 private college or university, seminary, or religious training
16 institution that a student signs to indicate agreement to the
17 terms of admission, delivery of instruction, and monetary terms
18 as outlined in the private college, university, seminary, or
19 religious training institution's student handbook or catalog.

20 "Governing board" means the elected or appointed group of
21 persons that oversees and controls a private college or
22 university, seminary, or religious training institution.



1 "Home state" means the state in which the institution holds
2 its principal accreditation.

3 "Honorary degree" means a statement, diploma, certificate,
4 or other writing in any language that indicates or represents,
5 or that is intended to indicate or represent, that the person
6 named thereon is learned in a field of public service or has
7 performed outstanding public service or that the person named
8 thereon has demonstrated proficiency in a field of endeavor
9 without having completed formal courses of instruction or study
10 or formal preparation or training.

11 "Out-of-state public institution" means an institution of
12 higher education that is established by a government entity in a
13 state other than Hawaii.

14 "Owner" means:

- 15 (1) An individual, if a private for-profit college or
16 university is structured as a sole proprietorship;
- 17 (2) Partners, if a private for-profit college or
18 university is structured as a partnership;
- 19 (3) Members in a limited liability company, if a private
20 for-profit college or university is structured as a
21 limited liability company; and



1 (4) Shareholders in a corporation that hold a controlling
2 interest, if a private for-profit college or
3 university is structured as a corporation.

4 "Physical presence" means:

5 (1) Having a physical location in the State, where
6 students receive synchronous or asynchronous
7 instruction; or

8 (2) Establishing an administrative office in the State in
9 order to:

10 (A) Provide information to prospective students,
11 enrolling students, or the general public about
12 the institution;

13 (B) Provide services to enrolled students;

14 (C) Provide office space for instructional or non-
15 instructional staff; and

16 (D) Maintain an institutional mailing address, street
17 address, or telephone number in the State.

18 "Private college or university" means a non-public post-
19 secondary education institution having a physical presence in
20 the State that offers associate, baccalaureate, post-
21 baccalaureate, master's, or doctoral degrees or diplomas. For
22 purposes of the requirements of this chapter, an out-of-state



1 public institution shall be considered as a private college or
2 university.

3 "Seminary" or "religious training institution" means a bona
4 fide religious post-secondary educational institution that has a
5 physical presence in the State, that is exempt from property
6 taxation under the laws of the State, and that offers associate,
7 baccalaureate, post-baccalaureate, master's, or doctoral degrees
8 or diplomas.

9 "Unaccredited post-secondary educational institution" means
10 a degree-granting institution that is not accredited or a
11 candidate for accreditation by at least one accrediting agency
12 recognized by the United States Department of Education.

13 "University of Hawaii system" means the post-secondary
14 educational institution, including all campuses and community
15 colleges, established and existing pursuant to article X,
16 section 5, of the Hawaii state constitution and chapter 304A.

17 **§ -3 Applicability of chapter; exceptions.** (a) This
18 chapter shall not apply to:

19 (1) Schools or educational programs conducted by firms,
20 corporations, or persons for the training of their own
21 employees;



- 1 (2) Apprenticeship or other training programs provided by
- 2 labor unions to union members or applicants for union
- 3 membership;
- 4 (3) Schools or educational programs that provide courses
- 5 of instruction that do not lead to the conferring of a
- 6 degree;
- 7 (4) Schools or educational programs that offer seminars,
- 8 refresher courses, and programs of instruction
- 9 sponsored by professional, business, or farming
- 10 organizations or associations for their members or the
- 11 employees of their members;
- 12 (5) Schools or educational programs that offer courses of
- 13 instruction conducted by public school complex areas;
- 14 (6) Schools, courses of instruction, or courses of
- 15 training that are offered by a vendor or the purchaser
- 16 or prospective purchaser of the vendor's product when
- 17 the objective of the school or course is to enable the
- 18 purchaser or the purchaser's employees to gain the
- 19 skills and knowledge necessary to use the product;
- 20 (7) Schools and educational programs conducted by
- 21 religious entities that are owned, controlled,
- 22 operated, and maintained by a religious organization



1 lawfully operating as a nonprofit religious
2 corporation and that award only religious degrees or
3 certificates, including but not limited to a
4 certificate of Talmudic studies, an associate of
5 Biblical studies, a bachelor of religious studies, a
6 master of divinity, or a doctor of divinity;

7 (8) Non-degree-granting post-secondary educational
8 institutions licensed by any entity of the State or
9 governed by any other chapter of the Hawaii Revised
10 Statutes;

11 (9) Schools and educational programs that offer courses of
12 instruction exclusively through online and distance
13 education; and

14 (10) Unaccredited post-secondary educational institutions
15 governed by chapter 446E.

16 (b) Nothing in this subsection shall prohibit an entity
17 listed in subsection (a) or section -4 from applying for
18 authorization; provided that the entity shall meet the criteria
19 for and comply with all authorization requirements under this
20 chapter.

21 **§ -4 Authorization of the University of Hawaii system.**

22 The University of Hawaii system, established as an educational



1 institution pursuant to Article X, section 5, of the Hawaii
2 state constitution, is hereby authorized by the State to provide
3 educational programs in and from this State. The University of
4 Hawaii system shall be subject to section -17. The
5 department may impose sanctions pursuant to section -11 on
6 the University of Hawaii system in accordance with the
7 requirements of this chapter.

8 **§ -5 Powers and duties of the director.** (a) The
9 director shall:

- 10 (1) Unless otherwise provided by law, adopt, amend, and
11 repeal rules pursuant to chapter 91 to carry out the
12 purposes of this chapter;
- 13 (2) Adopt policies and procedures as necessary, without
14 regard to chapter 91, for reauthorization pursuant to
15 section -10;
- 16 (3) Issue declaratory rulings or informal, non-binding
17 interpretations and conduct contested case proceedings
18 pursuant to chapter 91;
- 19 (4) Grant, deny, confirm, forfeit, renew, reinstate, or
20 restore authorizations, including conditional,
21 probationary, or qualified authorizations;



- 1 (5) Revoke, suspend, condition, or otherwise limit the
2 authorization of an institution for any violation of
3 this chapter, applicable rules, or the Higher
4 Education Act of 1965, as amended;
- 5 (6) Establish requirements for authorization in accordance
6 with this chapter;
- 7 (7) Investigate and conduct hearings regarding any
8 violation of this chapter, applicable rules, or the
9 Higher Education Act of 1965, as amended;
- 10 (8) Create fact-finding committees, including the
11 appointment of one or more advisory committees, which
12 may assist the department and make recommendations for
13 consideration;
- 14 (9) Contract with qualified persons, including
15 investigative and legal staff, who may be exempt from
16 chapter 76, to assist the director in exercising the
17 director's powers and duties;
- 18 (10) Subpoena witnesses and documents, administer oaths,
19 and receive affidavits and oral testimony, including
20 communications through electronic media;



- 1 (11) Establish the types and amounts of fees that the
- 2 department may assess in order to carry out the
- 3 purposes of this chapter;
- 4 (12) Establish policies to require authorized institutions
- 5 to submit to the department, upon request, data that
- 6 is directly related to student enrollment and degree
- 7 completion and, if applicable, student financial aid
- 8 and educator preparation programs, which policies
- 9 shall include a determination as to whether data
- 10 received may be disclosed to the public;
- 11 (13) Establish policies and procedures for the handling of
- 12 proprietary information;
- 13 (14) Enter into any post-secondary education authorization
- 14 reciprocity agreement with other post-secondary
- 15 educational authorizers of schools whose home state is
- 16 not Hawaii pursuant to section -16; and
- 17 (15) Do any and all things necessary or incidental to the
- 18 exercise of the director's powers and duties.
- 19 (b) The director may cooperate with the federal government
- 20 to qualify the State to receive funds made available under the
- 21 Higher Education Act of 1965, P.L. 89-329, as amended from time
- 22 to time. In addition, the department may serve as the state

1 agency for the receipt of federal funds when federal legislation
2 dealing with higher education or post-secondary education
3 requires, as a condition of the receipt of federal funds, the
4 designation of a state agency that is broadly representative of
5 the general public and of post-secondary education in the State
6 and when agencies other than the department may not qualify.

7 (c) No funds appropriated by the legislature may be used
8 to aid a person attending an institution not owned or
9 exclusively controlled by the State or a department of the State
10 or to pay for any staff work distributing federal or private
11 funds to students attending such schools. The maximum amount of
12 any grant awarded under the Hawaii state incentive grant program
13 shall be equal to the maximum allowed by federal law.

14 (d) The department, when appropriate and necessary, may be
15 assisted by other state agencies, including but not limited to
16 the University of Hawaii system and the department of education.

17 (e) The director, acting through the department of the
18 attorney general, may proceed by injunction against any
19 violation of this chapter, but an injunction proceeding or an
20 order issued therein or as a result thereof shall not bar the
21 imposition of any other penalty for a violation of this chapter.



1 § -6 Department's powers and authority. (a) The
2 department shall administer the provisions of this chapter and
3 any administrative rules, policies, and procedures adopted by
4 the director.

5 (b) To administer this chapter, the department shall:

- 6 (1) Maintain a list of the private colleges or
7 universities, seminaries, and religious training
8 institutions that have been authorized and make this
9 list available to the public;
- 10 (2) Maintain a list of the states with which the director
11 has entered into a post-secondary education
12 authorization reciprocity agreement and make this list
13 available to the public; and
- 14 (3) Receive, arbitrate, investigate, and process
15 complaints.

16 (c) In conducting an investigation, the department may
17 physically inspect the private college or university, seminary,
18 or religious training institution's facilities and records, and
19 the institution shall have an affirmative duty to cooperate with
20 requests from the department for information regarding any
21 investigation or inspection.



1 (d) In administering its responsibilities, the department
2 may assess fees sufficient to provide for the self-sufficiency
3 of the program pursuant to section 26-9(o).

4 § -7 **Awarding degrees.** (a) A person, partnership,
5 corporation, company, society, or association with a physical
6 presence in the State shall not award, bestow, confer, give,
7 grant, convey, or sell to any other person a degree or honorary
8 degree upon which is inscribed, in any language, the word
9 "associate", "bachelor", "baccalaureate", "post-baccalaureate",
10 "master", or "doctor", or any abbreviation thereof, or offer
11 courses of instruction or credits purporting to lead to any such
12 degree, unless the person, partnership, corporation, company,
13 society, or association is:

- 14 (1) A private college or university, seminary, or
15 religious training institution that is authorized
16 pursuant to this chapter;
- 17 (2) A school or educational program conducted by a
18 religious entity that is owned, controlled, operated,
19 and maintained by a religious organization lawfully
20 operating as a nonprofit religious corporation and
21 that awards only religious degrees or certificates,
22 including but not limited to a certificate of Talmudic



1 studies, associate of Biblical studies, a bachelor of
2 religious studies, a master of divinity, or a doctor
3 of divinity;

4 (3) An unaccredited post-secondary educational institution
5 governed under chapter 446E; or

6 (4) A part of the University of Hawaii system.

7 (b) Notwithstanding subsection (a), in order to award
8 degrees in the State, all private colleges and universities,
9 seminaries, and religious training institutions operating in the
10 State on the effective date of this chapter shall be authorized
11 no later than July 1, 2014.

12 **§ -8 Authorization to operate in the State; private**
13 **college or university.** (a) To operate in the State, a private
14 college or university shall:

15 (1) Be party to a reciprocity agreement to which the State
16 is a member; or

17 (2) Apply for, on a form prescribed by the department, and
18 receive authorization from the director; provided that
19 the private college or university meets the
20 requirements of section -14; provided further that
21 a private college or university shall apply for and
22 obtain a separate authorization for each campus,



1 branch, or site that is separately accredited. A
2 separate authorization shall not be required for
3 additional professional accreditations. A private,
4 nonprofit college or university shall submit
5 verification of its nonprofit status with its
6 application.

7 (b) Upon receiving an application for authorization, the
8 director shall review the application to confirm that the
9 private college or university is accredited. The director shall
10 not approve an application from a private college or university
11 that, in the two years preceding submission of the application,
12 has:

- 13 (1) Had its accreditation suspended or withdrawn;
- 14 (2) Been prohibited from operating in another state; or
- 15 (3) Substantially the same owners, governing board, or
16 principal officers as a private college or university
17 that has:

- 18 (A) Had its accreditation suspended or withdrawn; or
- 19 (B) Been prohibited from operating in another state.

20 (c) To operate in the State, a private college or
21 university shall be accredited on the basis of an on-site
22 review.



1 (d) A private college or university shall notify the
2 department within thirty days of any material information
3 related to an action by the institution's accrediting body
4 concerning the institution's accreditation status, including but
5 not limited to reaffirmation or loss of accreditation, approval
6 of a request for change, a campus evaluation visit, a focused
7 visit, or approval of additional locations. In addition, the
8 institution shall immediately notify the department if the
9 institution's accrediting body is no longer recognized by the
10 United States Department of Education.

11 (e) A private college or university under the jurisdiction
12 of the department shall notify the department at least one year
13 prior to its ceasing of operations in the State.

14 (f) A private college or university authorized pursuant to
15 this chapter shall pay any and all fees established pursuant to
16 section -18.

17 § -9 Authorization to operate in the State; seminary or
18 religious training institutions. (a) To operate in the State,
19 a seminary or religious training institution shall:

20 (1) Be party to a reciprocity agreement to which the State
21 is a member; or



1 (2) Apply for, on a form prescribed by the department, and
2 receive authorization from the director; provided that
3 the institution shall establish that it qualifies as a
4 bona fide religious training institution and as an
5 institution of post-secondary education.

6 (b) Nothing in this section shall preclude a seminary or
7 religious training institution from seeking accreditation.

8 § -10 Reauthorization. (a) A private college or
9 university that is authorized pursuant to section -8 and
10 maintains its accreditation shall apply to the department for
11 reauthorization every two years. A private college or
12 university that has its accreditation reaffirmed without
13 sanction and continues to demonstrate its compliance with
14 section -14, shall otherwise be presumed to be qualified for
15 reauthorization under this chapter for a period of two years.

16 (b) A seminary or religious training institution
17 authorized pursuant to section -9 shall apply to the
18 department for reauthorization every two years. A seminary or
19 religious training institution that continues to meet the
20 authorization requirements of this chapter shall otherwise be
21 presumed to be qualified for reauthorization under this chapter
22 for a period of two years.



1 (c) Private colleges or universities, seminaries, and
2 religious training institutions applying for reauthorization
3 under this section shall pay the fees required pursuant to
4 section -18.

5 (d) If a private college or university, seminary, or
6 religious training institution cannot demonstrate that it meets
7 the authorization requirements of this chapter, the director
8 shall deny the application for reauthorization. The director
9 shall provide the private college or university, seminary, or
10 religious training institution with written notification of the
11 denial of the application for reauthorization and the basis for
12 the denial. If, within six months of receiving notice that its
13 application for reauthorization has been denied, the private
14 college or university, seminary, or religious training
15 institution corrects the action or condition upon which the
16 denial was based, it may reapply for reauthorization. If the
17 private college or university, seminary, or religious training
18 institution does not correct the action or condition upon which
19 the denial was based, it may submit a new application for
20 authorization pursuant to section -8 or -9, whichever is
21 applicable, once the action or condition has been corrected.



1 (e) If a private college or university is under a sanction
2 from its accrediting body at the time that it submits its
3 application for reauthorization, the director may:

4 (1) Approve the private college or university's
5 reauthorization; or

6 (2) Grant probationary approval of the private college or
7 university's reauthorization; provided that if the
8 private college or university is granted probationary
9 reauthorization:

10 (A) The department shall provide the private college
11 or university with written notice of its
12 probationary status;

13 (B) The private college or university shall reapply
14 for reauthorization on an annual basis until the
15 accrediting body lifts its sanction; and

16 (C) The private college or university shall provide
17 the department with an annual report on its
18 progress toward removing the sanction.

19 § -11 Grounds for refusal to reauthorize, reinstate, or
20 restore and for revocation, suspension, probation, or denial;
21 condition of authorization or sanctions. (a) In addition to
22 any other acts or conditions provided by law, the director may



1 refuse to reauthorize, reinstate or restore, or may deny,
2 revoke, suspend, or condition in any manner, including but not
3 limited to placement on probation, any authorization for any one
4 or more of the following acts or conditions on the part of the
5 institution or applicant:

- 6 (1) Failure to meet or maintain the conditions and
7 requirements necessary to qualify for or maintain an
8 authorization;
- 9 (2) Failure to maintain accreditation as required by this
10 chapter;
- 11 (3) Engaging in false, fraudulent, or deceptive
12 advertising, or making untruthful or improbable
13 statements;
- 14 (4) Procuring an authorization, reauthorization, or
15 certification through fraud, misrepresentation,
16 material omission, or deceit;
- 17 (5) Misconduct, incompetence, gross negligence, or
18 manifest incapacity in the operation of the
19 institution;
- 20 (6) Revocation, suspension, deauthorization, or other
21 disciplinary action by another state or federal agency



1 against an institution or applicant for any reason
2 provided by this chapter or rules adopted hereunder;
3 (7) Criminal conviction, whether by nolo contendere or
4 otherwise, of a penal crime directly related to the
5 qualifications, functions, or duties of the
6 institution or applicant in any jurisdiction in which
7 the institution operates;
8 (8) Failure to report in writing to the department any
9 disciplinary decision issued against the institution
10 or the applicant in another jurisdiction within thirty
11 days of the disciplinary decision;
12 (9) Failure to report in writing to the department any
13 change in accreditation status by any accrediting
14 agency;
15 (10) Failure to demonstrate or maintain a record of
16 financial integrity; or
17 (11) Violating any provision of this chapter or rules
18 adopted hereunder.
19 (b) It shall be a violation of this chapter for a private
20 college or university, seminary, or religious training
21 institution or its agent to:



- 1 (1) Make or cause to be made any statement or
2 representation, oral, written, or visual, in
3 connection with the offering of educational services
4 if the private college or university, seminary, or
5 religious training institution or its agent knows or
6 reasonably should have known the statement or
7 representation to be false, inaccurate, or materially
8 misleading;
- 9 (2) Falsely represent or deceptively conceal, directly or
10 by implication, through the use of a trade or business
11 name, the fact that the institution is a private
12 college or university, seminary, or religious training
13 institution;
- 14 (3) Adopt a name, trade name, or trademark that represents
15 falsely, directly or by implication, the quality,
16 scope, nature, size, or integrity of the private
17 college or university, seminary, or religious training
18 institution or its educational services;
- 19 (4) Intentionally and materially represent falsely,
20 directly or by implication, that students who
21 successfully complete a course or program of



- 1 instruction may transfer the credits earned to any
2 institution of higher education;
- 3 (5) Intentionally and materially represent falsely,
4 directly or by implication, in its promotional
5 materials or in any other manner:
- 6 (A) Its size, location, facilities, or equipment;
7 (B) The number, educational experience, or
8 qualifications of its faculty;
- 9 (C) The extent or nature of any approval received
10 from any state agency; or
- 11 (D) The extent or nature of any accreditation
12 received from any accrediting agency, body, or
13 association;
- 14 (6) Provide prospective students with testimonials,
15 endorsements, or other information that has the
16 tendency to mislead or deceive prospective students or
17 the public regarding its current practices;
- 18 (7) Designate or refer to its sales representatives by
19 titles that imply that the sales representatives have
20 training in academic counseling or advising if they do
21 not; and



1 (8) Represent, directly or by implication, that it is
2 authorized by the State or approved or accredited by
3 an accrediting agency or body when it has not been
4 authorized, approved, or accredited.

5 (c) Any private college or university, seminary, or
6 religious training institution or its agent that violates this
7 chapter may be subject to one or more of the following
8 sanctions:

9 (1) A fine equal to a sum of not less than \$500 or more
10 than \$10,000 for each violation. The penalties
11 provided in this subsection are cumulative to the
12 remedies or penalties available under all other laws
13 of this State. Each day that a violation occurs shall
14 be considered a separate violation;

15 (2) An order directing corrective action on the part of
16 the institution;

17 (3) An order of restitution to one or more affected
18 students;

19 (4) Revocation, suspension, probation, or conditions on
20 the institution's authorization;

21 (5) An order relating to cessation of operations or
22 alternate enrollment; or



1 (6) The payment of costs of investigation and legal
2 action, irrespective of the outcome.

3 § -12 **Requirements to maintain authorization.** (a)
4 Authorization by the director shall be conditioned on the
5 maintenance of accreditation by the institution and compliance
6 with section -14. Authorization shall be automatically
7 suspended effective as of the date of the cancellation or
8 expiration of accreditation or the cancellation or expiration of
9 the surety bond if a surety bond was filed with the department.
10 The director shall not reinstate the affected institution until
11 satisfactory proof of compliance is submitted to the department.
12 Failure to reinstate a suspended authorization within sixty days
13 of suspension shall result in the termination of the
14 authorization, and the institution shall forfeit all fees and
15 shall be required to apply for authorization as a new applicant.

16 (b) An institution's authorization shall be placed on
17 probationary status without further action by the department in
18 the event that:

19 (1) The institution is placed on probationary status by
20 its accrediting agency, contemporaneous with the
21 action of such agency;



1 (2) The institution's accrediting agency ceases to be
2 recognized by the United States Department of
3 Education; or

4 (3) In the case of a seminary or religious training
5 institution, the seminary or religious training
6 institution no longer meets the definition of such
7 under this chapter.

8 (c) An institution may, within fifteen days of the receipt
9 of the notification of probation under this section, request an
10 administrative hearing for review pursuant to chapter 91.

11 (d) If an institution's authorization is revoked due to
12 the institution's loss of accreditation, the institution shall
13 provide written notice to all students within thirty days
14 following the date of revocation.

15 (e) A private college or university, seminary, or
16 religious training institution that is authorized pursuant to
17 this chapter shall:

18 (1) Not make or cause to be made any oral, written, or
19 visual statement or representation that violates
20 section -11(b);



1 (2) Provide the department with a copy of its enrollment
2 agreement, if applicable, in accordance with its
3 reauthorization schedule;

4 (3) Provide bona fide instruction, in accordance with the
5 standards and criteria set by its accrediting body;
6 and

7 (4) If its ownership changes, provide the department with
8 any material information concerning the transaction at
9 least thirty days prior to the transaction.

10 § -13 Deposit of records upon discontinuance. (a) If a
11 private college or university, seminary, or religious training
12 institution under the jurisdiction of the department ceases
13 operating within the State, the institution, its owner, or the
14 owner's designee, and its governing board shall be jointly and
15 severally liable to deposit with the department the
16 institution's educational records in a form to be prescribed by
17 the director.

18 (b) If the director determines that the records of a
19 private college or university, seminary, or religious training
20 institution that ceases operating within the State are in danger
21 of being destroyed, secreted, mislaid, or otherwise made
22 unavailable to the department, the director may seek a court

1 order authorizing the department to seize or take possession of
2 the records and seek additional relief as may be appropriate.

3 (c) The director or the department of the attorney general
4 may enforce this section by filing a request for an injunction
5 with a court of competent jurisdiction.

6 (d) The department shall permanently retain any student
7 transcripts received pursuant to this section. The department
8 shall retain any other records obtained pursuant to this section
9 for ten years; provided that after this period, the department
10 shall dispose of the records in a manner that will adequately
11 protect the privacy of any personal information included in the
12 records.

13 (e) For the purposes of this section, "private college or
14 university" shall not include public, out-of-state institutions.

15 (f) Nothing in this section shall prohibit the department
16 from contracting with any third party for the storage and
17 maintenance of any records required to be deposited with the
18 department pursuant to this section.

19 § -14 **Financial integrity; surety bond.** (a) A private
20 college or university shall provide evidence of financial
21 integrity at the time of its application for authorization. A
22 private college or university may demonstrate financial



1 integrity by meeting the criteria specified in subsections (b),
2 (c), or (d).

3 (b) A private college or university may demonstrate
4 financial integrity if it:

5 (1) Has been accredited for at least ten years;

6 (2) Has operated continuously in the State for at least
7 ten years;

8 (3) Has not filed for bankruptcy protection pursuant to
9 title 11 of the United States Code;

10 (4) Maintains a composite score of at least 1.5 on its
11 equity, primary reserve, and net income ratios, as
12 required in title 34 Code of Federal Regulations
13 section 668.172; and

14 (5) Meets or exceeds the pro rata refund policies required
15 by the United States Department of Education in title
16 34 Code of Federal Regulations part 668; provided that
17 if it does not participate in federal financial aid
18 programs, its refund and termination procedures shall
19 comply with the requirements of its accrediting body;

20 provided that a private college or university is not required to
21 meet the criteria specified in paragraphs (1) and (2) if the
22 private college or university is part of a group of private



1 colleges or universities that is owned and operated by a common
2 owner and the other private colleges and universities meet the
3 criteria specified in paragraphs (1) and (2).

4 (c) A private college or university may also demonstrate
5 financial integrity if it:

6 (1) Has received and maintains full accreditation without
7 sanction from an accrediting body that is recognized
8 by the United States Department of Education, and
9 which accrediting body requires the private college or
10 university to maintain a surety bond or an escrow
11 account or has affirmatively waived or otherwise
12 removed that requirement for the private college or
13 university;

14 (2) Operates an instructional facility in the State;

15 (3) Annually provides to the department audited financial
16 statements for the most recent fiscal year that
17 demonstrate that the private college or university
18 maintains positive equity and profitability;

19 (4) Maintains a composite score of at least 1.5 on its
20 equity, primary reserve, and net income ratios, as
21 required in title 34 Code of Federal Regulations
22 section 668.172; and



1 (5) Meets or exceeds the pro rata refund policies required
2 by the United States Department of Education in title
3 34 Code of Federal Regulations part 668; provided that
4 if it does not participate in federal financial aid
5 programs, its refund and termination procedures shall
6 comply with the requirements of its accrediting body.

7 (d) If a private college or university cannot demonstrate
8 financial integrity as provided in subsections (b) and (c), the
9 private college or university shall file with the director a
10 surety bond in favor of the State in an amount described under
11 subsection (f) prior to receiving authorization under this
12 chapter. The surety bond shall be executed by the private
13 college or university as the principal by a surety company
14 authorized to do business in the State and shall run
15 concurrently with the authorization period and any period of
16 reauthorization, unless terminated or cancelled by the surety
17 company.

18 (e) The surety bond under subsection (d) shall be
19 conditioned to provide indemnification to any student or
20 enrollee, or to any parent or legal guardian of a student or
21 enrollee, whom the director finds to have suffered a loss of
22 tuition or fees as a result of any act or practice that is a



1 violation of this chapter and to provide alternative enrollment
2 as provided in section -15 for students enrolled in a private
3 college or university that ceases operation.

4 (f) The amount of the surety bond that a private college
5 or university submits pursuant to subsection (d) shall be the
6 greater of \$50,000 or an amount equal to a reasonable estimate
7 of the maximum prepaid, unearned tuition and fees of the private
8 college or university, excluding prepaid tuition revenue that
9 consists of government grants or federal student loans and
10 grants authorized under title IV of the Higher Education Act of
11 1965, 20 United States Code 1070 et seq. for the period or term
12 during the applicable academic year for which programs of
13 instruction are offered, including but not limited to programs
14 offered on a semester, quarter, monthly, or class basis;
15 provided that the private college or university shall use the
16 period or term of greatest duration and expense in determining
17 this amount if its academic year consists of one or more periods
18 or terms. Following the initial filing of the surety bond with
19 the department, the private college or university shall
20 recalculate the amount of the surety bond annually based on a
21 reasonable estimate of the maximum prepaid, unearned tuition and



1 fees received by the institution for the applicable period or
2 term.

3 (g) The authorization for a private college or university
4 shall be suspended by operation of law when it is no longer
5 covered by a surety bond as required by this section. After
6 receipt of a notice of cancellation from the surety, the
7 department shall give written notice to the private college or
8 university at its last-known address, at least forty-five days
9 prior to the release of the surety bond, to the effect that the
10 private college or university's authorization is suspended by
11 operation of law until it files evidence of a surety bond in a
12 like amount as the surety bond being released.

13 (h) The principal on a surety bond filed under the
14 provisions of this section shall be released from the surety
15 bond after the principal serves written notice thereof to the
16 department at least sixty days prior to the release. The
17 release shall not discharge or otherwise affect a claim filed by
18 a student or enrollee or the student or enrollee's parent or
19 legal guardian pursuant to section -15 for a loss of tuition
20 or fees that occurred while the surety bond was in effect or
21 that occurred under any note or contract executed during any
22 period of time when the surety bond was in effect, except when



1 another surety bond is filed in a like amount and provides
2 indemnification for any such loss.

3 (i) Each private college or university that files a surety
4 bond pursuant to this section shall provide in a report to the
5 department annual verification of continued coverage as required
6 by this section no later than January 1 of each year.

7 (j) A seminary or religious training institution shall not
8 be subject to the requirements of this section.

9 **§ -15 Claims against a private college or university;**
10 **cessation of operation; alternative enrollment.** (a) A student
11 or enrollee, or a parent or legal guardian of the student or
12 enrollee, who claims loss of tuition or fees as a result of
13 cessation of operations may file a claim with the department if
14 the claim results from an act or practice that violates a
15 provision of this chapter. Claims that are filed with the
16 department shall be public records and subject to the provisions
17 of chapter 92F; provided that the department shall not make the
18 records public if the release would violate a federal privacy
19 law.

20 (b) If a private college or university ceases operation,
21 the director may make demand on the surety bond upon the demand
22 for a refund by a student or the parent or legal guardian of a



1 student or the implementation of alternative enrollment for the
2 students enrolled in the institution, and the principal on the
3 surety bond filed pursuant to section -14(d) shall pay the
4 claim due in a timely manner. To the extent practicable, the
5 director shall use the amount of the surety bond to provide
6 alternative enrollment for students of the institution that
7 ceases operation through a contract with another authorized
8 private college or university, the University of Hawaii system,
9 an area vocational school, or any other arrangement that is
10 acceptable to the department. The alternative enrollment
11 provided to a student shall replace the original enrollment
12 agreement, if any, between the student and the private college
13 or university; provided that the student shall make tuition and
14 fee payments as required by the original enrollment agreement,
15 if any.

16 (c) A student who is enrolled in a private college or
17 university that ceases operation and who declines the
18 alternative enrollment required to be offered pursuant to
19 subsection (b) may file a claim with the department for the
20 student's prorated share of the prepaid, unearned tuition and
21 fees that the student paid, subject to the limitations of
22 subsection (d). The department shall not make a subsequent



1 payment to a student, unless the student submits proof of
2 satisfaction of any prior debt to a financial institution in
3 accordance with rules adopted by the director.

4 (d) If the amount of the surety bond filed under section
5 -14(d) is less than the total prepaid, unearned tuition and
6 fees that have been paid by students at the time that the
7 private college or university ceases operation, the department
8 shall prorate the amount of the surety bond among the students.

9 (e) This section shall apply only to those students
10 enrolled in the private college or university at the time it
11 ceases operation, and once a private college or university
12 ceases operation, no new students shall be enrolled therein.

13 (f) The director shall determine whether offering
14 alternative enrollment for students enrolled in an authorized
15 private college or university that ceases operation is
16 practicable without the federal government's designation of the
17 department as trustee for student loans, Pell grants, and other
18 student financial aid assistance.

19 (g) If a private college or university ceases to operate
20 in the State, the department of the attorney general may file a
21 claim against the private college or university to recover



1 restitution for the enrolled students of the private college or
2 university.

3 (h) A seminary or religious training institution shall not
4 be subject to the requirements of this section.

5 § -16 Reciprocity. The director may enter into any
6 post-secondary education authorization reciprocity agreement;
7 provided that the authorization standards of the reciprocity
8 agreement shall be comparable to or exceed the authorization
9 requirements of this chapter and any applicable administrative
10 rules.

11 § -17 Complaints; injunctive proceedings. (a) A
12 student or former student of the University of Hawaii system, a
13 private college or university, seminary, or religious training
14 institution may file a complaint with the department concerning
15 the institution at which the student is or was enrolled;
16 provided that if a former student files a complaint, the
17 complaint shall be filed within two years after the former
18 student discontinued enrollment at the institution; provided
19 that the two year restriction on complaints shall not apply to
20 complaints related to obtaining transcripts.

21 (b) The department may investigate complaints based on
22 possible violations of this chapter or rules adopted hereunder.



1 The department may initiate and investigate complaints based on
2 information the department receives concerning possible
3 violations of this chapter or rules adopted hereunder.

4 (c) Nothing in this section shall give the department
5 jurisdiction to consider complaints that infringe on the
6 academic or religious freedom of, or question the curriculum
7 content of, a private college or university, seminary, or
8 religious training institution.

9 (d) Upon receipt of a complaint pursuant to subsections
10 (a) or (b), the department shall determine whether the complaint
11 was properly filed. The complaint shall warrant investigation
12 only after the student or former student has exhausted all
13 administrative remedies available at the University of Hawaii
14 system, private college or university, seminary, or religious
15 training institution; provided that if the complaint involves a
16 violation of state or federal criminal law, this requirement
17 shall not apply. If a complaint warrants investigation, the
18 department shall forward the complaint to the University of
19 Hawaii system, private college or university, seminary, or
20 religious training institution. The University of Hawaii
21 system, private college or university, seminary, or religious
22 training institution shall have thirty days to respond in



1 writing to the complaint. During the thirty-day period, the
2 University of Hawaii system, private college or university,
3 seminary, or religious training institution, with the
4 department's assistance, may attempt to resolve the complaint
5 with the student. If the department determines at any time that
6 the complaint no longer warrants investigation, the department
7 shall dismiss the complaint.

8 (e) If a complaint is not resolved within the thirty-day
9 period, the department may:

10 (1) Dismiss the complaint based on the response of the
11 University of Hawaii system, private college or
12 university, seminary, or religious training
13 institution;

14 (2) Investigate and, where appropriate, take disciplinary
15 action in a manner consistent with chapter 91.

16 **§ -18 Fees; public hearing.** (a) An institution
17 applying for authorization shall pay \$10,000 to the department
18 upon application for authorization under this chapter and every
19 two years thereafter upon application for reauthorization.

20 (b) The director may assess fees as provided in this
21 chapter and, notwithstanding any other law to the contrary, may



1 change the amount of the fees required by this section at any
2 time without regard to chapter 91, if the director:

3 (1) Holds at least one public hearing to discuss and take
4 testimony on the proposed fee change; and

5 (2) Provides public notice at least thirty days prior to
6 the date of the public hearing.

7 (c) Fees collected pursuant to this section shall be
8 deposited into the post-secondary education authorization
9 subaccount established pursuant to section 26-9(o).

10 **§ -19 Post-secondary education authorization special**

11 **subaccount.** (a) All moneys collected pursuant to section
12 -18 shall be deposited into the post-secondary education
13 authorization special subaccount of the compliance resolution
14 fund established pursuant to section 26-9(o).

15 (b) Any law to the contrary notwithstanding, the moneys in
16 the special subaccount shall be used to fund the operations of
17 the department to carry out its duties under this chapter. Any
18 law to the contrary notwithstanding, the director may use the
19 moneys in the special subaccount to employ personnel to carry
20 out the department's duties under this chapter. The moneys in
21 the special subaccount may be used to train personnel as the
22 director deems necessary and for any other activity related to



1 this chapter."

2 **PART III**

3 SECTION 3. The department of commerce and consumer affairs
4 may adopt interim rules to carry out the purposes of this Act
5 without regard to chapter 91 or 201M, Hawaii Revised Statutes;
6 provided that:

7 (1) The department shall hold at least one public hearing
8 prior to the adoption of interim rules; and

9 (2) The interim rules shall be effective for no more than
10 one year after their adoption.

11 SECTION 4. Section 26-9, Hawaii Revised Statutes, is
12 amended by amending subsection (o) to read as follows:

13 "(o) Every person licensed under any chapter within the
14 jurisdiction of the department of commerce and consumer affairs
15 and every person licensed subject to chapter 485A or registered
16 under chapter 467B shall pay upon issuance of a license, permit,
17 certificate, or registration a fee and a subsequent annual fee
18 to be determined by the director and adjusted from time to time
19 to ensure that the proceeds, together with all other fines,
20 income, and penalties collected under this section, do not
21 surpass the annual operating costs of conducting compliance
22 resolution activities required under this section. The fees may



1 be collected biennially or pursuant to rules adopted under
2 chapter 91, and shall be deposited into the special fund
3 established under this subsection. Every filing pursuant to
4 chapter 514E or section 485A-202(a)(26) shall be assessed, upon
5 initial filing and at each renewal period in which a renewal is
6 required, a fee that shall be prescribed by rules adopted under
7 chapter 91, and that shall be deposited into the special fund
8 established under this subsection. Any unpaid fee shall be paid
9 by the licensed person, upon application for renewal,
10 restoration, reactivation, or reinstatement of a license, and by
11 the person responsible for the renewal, restoration,
12 reactivation, or reinstatement of a license, upon the
13 application for renewal, restoration, reactivation, or
14 reinstatement of the license. If the fees are not paid, the
15 director may deny renewal, restoration, reactivation, or
16 reinstatement of the license. The director may establish,
17 increase, decrease, or repeal the fees when necessary pursuant
18 to rules adopted under chapter 91. The director may also
19 increase or decrease the fees pursuant to section 92-28.

20 There is created in the state treasury a special fund to be
21 known as the compliance resolution fund to be expended by the
22 director's designated representatives as provided by this



1 subsection. Notwithstanding any law to the contrary, all
2 revenues, fees, and fines collected by the department shall be
3 deposited into the compliance resolution fund. Unencumbered
4 balances existing on June 30, 1999, in the cable television fund
5 under chapter 440G, the division of consumer advocacy fund under
6 chapter 269, the financial institution examiners' revolving
7 fund, section 412:2-109, the special handling fund, section
8 414-13, and unencumbered balances existing on June 30, 2002, in
9 the insurance regulation fund, section 431:2-215, shall be
10 deposited into the compliance resolution fund. This provision
11 shall not apply to the drivers education fund underwriters fee,
12 sections 431:10C-115 and 431:10G-107, insurance premium taxes
13 and revenues, revenues of the workers' compensation special
14 compensation fund, section 386-151, the captive insurance
15 administrative fund, section 431:19-101.8, the insurance
16 commissioner's education and training fund, section 431:2-214,
17 the medical malpractice patients' compensation fund as
18 administered under section 5 of Act 232, Session Laws of Hawaii
19 1984, and fees collected for deposit in the office of consumer
20 protection restitution fund, section 487-14, the real estate
21 appraisers fund, section 466K-1, the real estate recovery fund,
22 section 467-16, the real estate education fund, section 467-19,



1 the contractors recovery fund, section 444-26, the contractors
2 education fund, section 444-29, the condominium education trust
3 fund, section 514B-71, and the mortgage foreclosure dispute
4 resolution special fund, section 667-86. Any law to the
5 contrary notwithstanding, the director may use the moneys in the
6 fund to employ, without regard to chapter 76, hearings officers
7 and attorneys. All other employees may be employed in
8 accordance with chapter 76. Any law to the contrary
9 notwithstanding, the moneys in the fund shall be used to fund
10 the operations of the department. The moneys in the fund may be
11 used to train personnel as the director deems necessary and for
12 any other activity related to compliance resolution.

13 A separate special subaccount of the compliance resolution
14 fund, to be known as the post-secondary education authorization
15 special subaccount, shall be established for fees collected by
16 the department of commerce and consumer affairs pursuant to
17 chapter . The special subaccount shall be governed by
18 section -19.

19 As used in this subsection, unless otherwise required by
20 the context, "compliance resolution" means a determination of
21 whether:



- 1 (1) Any licensee or applicant under any chapter subject to
2 the jurisdiction of the department of commerce and
3 consumer affairs has complied with that chapter;
- 4 (2) Any person subject to chapter 485A has complied with
5 that chapter;
- 6 (3) Any person submitting any filing required by chapter
7 514E or section 485A-202(a)(26) has complied with
8 chapter 514E or section 485A-202(a)(26);
- 9 (4) Any person has complied with the prohibitions against
10 unfair and deceptive acts or practices in trade or
11 commerce; or
- 12 (5) Any person subject to chapter 467B has complied with
13 that chapter;
- 14 and includes work involved in or supporting the above functions,
15 licensing, or registration of individuals or companies regulated
16 by the department, consumer protection, and other activities of
17 the department.
- 18 The director shall prepare and submit an annual report to
19 the governor and the legislature on the use of the compliance
20 resolution fund. The report shall describe expenditures made
21 from the fund including non-payroll operating expenses."



1 SECTION 5. Section 446E-1.5, Hawaii Revised Statutes, is
2 repealed.

3 [~~"§446E-1.5 Advisory board. The state post secondary
4 education commission, as established by chapter 304A, part VII,
5 subpart C, shall serve as a resource to the director as needed
6 regarding the requirements of this chapter."~~]

7 PART IV

8 SECTION 6. (a) To ensure that the post-secondary
9 education authorization program is in compliance, in a timely
10 manner, with the requirements of the Higher Education Act of
11 1965, as amended, the department of commerce and consumer
12 affairs may contract for an implementation coordinator or team
13 to assist with the implementation of this Act.

14 (b) The minimum qualifications for the implementation
15 coordinator or team shall be the following:

16 (1) Knowledge and understanding of the United States
17 Department of Education regulations for programs
18 authorized under title IV of the Higher Education Act
19 of 1965, as amended;

20 (2) Experience and familiarity with post-secondary
21 educational institutions and related accreditation
22 processes; and



1 (3) Demonstrated strong written and oral communication
2 skills.

3 (c) The scope of work developed pursuant to subsection (a)
4 shall require, at a minimum, the implementation coordinator or
5 team to:

6 (1) Develop a comprehensive plan for the implementation of
7 this Act, including consideration of an appropriate
8 authorization fee structure;

9 (2) Assist in developing any policies and procedures,
10 including administrative rules, required for the
11 implementation of this Act;

12 (3) Assist the director of commerce and consumer affairs
13 to meet the reporting requirements of section 9 of
14 this Act; and

15 (4) Assist the director of commerce and consumer affairs
16 in establishing a staffing structure and recruiting of
17 staff to carry out the purposes of this Act.

18 (d) The department of commerce and consumer affairs shall
19 be responsible for awarding and overseeing the contract for the
20 implementation coordinator or team. The term of the contract
21 shall be for one year; provided that the department of commerce
22 and consumer affairs and the implementation coordinator or team



1 may enter into supplemental contracts as the department of
2 commerce and consumer affairs deems necessary to carry out the
3 purposes of this Act.

4 (e) Chapter 103D, Hawaii Revised Statutes, shall not apply
5 to the contracting of the implementation coordinator or team.

6 SECTION 7. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$400,000 or so much
8 thereof as may be necessary for fiscal year 2013-2014 to be paid
9 into the post-secondary education authorization special
10 subaccount of the compliance resolution fund established
11 pursuant to section 26-9(o), Hawaii Revised Statutes.

12 SECTION 8. There is appropriated out of the post-secondary
13 education authorization special subaccount of the compliance
14 resolution fund established pursuant to section 26-9(o), Hawaii
15 Revised Statutes, the sum of \$400,000 or so much thereof as may
16 be necessary for fiscal year 2013-2014 for the contracting of an
17 implementation coordinator or team pursuant to section 6 of this
18 Act.

19 The sum appropriated shall be expended by the department of
20 commerce and consumer affairs for the purposes of this part.

21 SECTION 9. The director of commerce and consumer affairs
22 shall report to the legislature no later than twenty days prior



1 to the convening of the regular sessions of 2014 and 2015 on
2 such matters including but not limited to:

3 (1) The status of any rulemaking, including interim rules,
4 the department of commerce and consumer affairs has
5 undertaken;

6 (2) The number of private colleges or universities,
7 seminaries, and religious training institutions that
8 have applied for authorization under this Act;

9 (3) A summary of all complaints, if any, received by the
10 department of commerce and consumer affairs against
11 any private college or university, seminary, and
12 religious training institution authorized pursuant to
13 this Act;

14 (4) A summary of all investigations, if any, conducted by
15 the department of commerce and consumer affairs
16 pursuant to this Act;

17 (5) The number of private colleges or universities,
18 seminaries, and religious training institutions, if
19 any, that have closed during the reporting period;

20 (6) An update on the department of commerce and consumer
21 affairs' efforts in implementing the provisions of
22 this Act;



S.B. NO. 46
S.D. 2
H.D. 3
C.D. 1

Report Title:

Post-secondary Education Authorization Program; Department of
Commerce and Consumer Affairs; Appropriation

Description:

Establishes the Post-secondary Education Authorization Program
within the Department of Commerce and Consumer Affairs. Creates
the Post-secondary Education Authorization Special Subaccount of
the Compliance Resolution Fund. Includes provisions for
transition and implementation. Makes an appropriation. (CD1)

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not legislation or evidence of legislative intent.*

