



# LAWS OF ALASKA

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Source

CSHB 143 am S

Chapter No.

25

## AN ACT

Relating to the regulation of postsecondary educational institutions; and providing for an effective date.

### BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

\* Section 1. AS 14 is amended by adding a new chapter to read:

#### CHAPTER 48. REGULATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS.

Sec. 14.48.010. PURPOSES. (a) It is the purpose of this chapter to provide for the protection, education, and welfare of the citizens of the state, its postsecondary educational institutions, and its students, by

- (1) establishing minimum standards concerning quality of education, ethical and business practices, health and safety, and fiscal responsibility, to protect against substandard, transient, unethical, deceptive, or fraudulent institutions and practices;
- (2) prohibiting the granting of false or misleading educational credentials;
- (3) regulating the use of academic terminology in designating educational institutions;
- (4) prohibiting misleading literature, advertising, solicitation, or representation by educational institutions or their agents;
- (5) providing for the preservation of essential academic records; and
- (6) providing certain rights and remedies to the public and the commission necessary to carry out the

purposes of this chapter.

(b) This chapter may not be construed to preclude the development of innovative, alternative postsecondary educational delivery systems or programs if their purposes and their administration, operation or management are in the public interest and do not conflict with those purposes set out in (a) of this section.

Sec. 14.48.020. AUTHORIZATION AND PERMITS REQUIRED. No person may

(1) operate a postsecondary educational institution in the state unless the institution has a valid authorization to operate issued under this chapter or is exempt from the provisions of this chapter;

(2) offer itself or through an agent enrollment or instruction in, or the granting of educational credentials from, a postsecondary educational institution, whether the institution is in or outside the state, unless the agent is a natural person and has a currently valid agent's permit issued under this chapter or is exempt from the provisions of this chapter;

(3) accept contracts or enrollment applications of prospective students from an agent who does not have a current permit as required by this chapter; however, the commission may promulgate regulations to permit the rendering of legitimate public information services without the permit;

(4) instruct or educate, or offer to instruct or educate, enroll or offer to enroll, contract or offer to contract or award an educational credential, or contract with an institution or person to do so, in or outside the state, unless that person is in compliance with the minimum standards set out in sec. 60 of this chapter, the criteria established by the commission under sec. 50(1) of this chapter, and the regulations promulgated by the commission under sec. 50(7) of this chapter;

(5) use the term "university" or "college" without authorization to do so from the commission;

(6) grant, or offer to grant, educational credentials, without authorization to do so from the commission.

Sec. 14.48.030. EXEMPTIONS. The following educational programs or services and educational institutions are exempt from the provisions of this chapter:

(1) institutions exclusively offering instruction at one, some or all levels from pre-school through grade 12;

(2) education sponsored by a bona fide trade, business, labor, professional, or fraternal association or organization, recognized by the commission and conducted solely for that association's or organization's membership, or offered on a no-fee basis;

(3) education solely avocational or recreational in nature, as determined by the commission, and institutions

offering avocational or recreational education exclusively as determined by the commission;

(4) education offered by charitable organizations, recognized by the commission, provided the education is not advertised or promoted as leading toward educational credentials;

(5) nonprofit postsecondary educational institutions offering undergraduate or graduate educational programs conducted in the state, but not by correspondence, which are acceptable for credit toward an associate, bachelor's or graduate degree, as determined by the commission;

(6) postsecondary educational institutions established, operated, and governed by the United States, a state or its political subdivisions, as determined by the commission.

Sec. 14.48.040. COMMISSION TO ADMINISTER CHAPTER. The Alaska Commission on Postsecondary Education shall administer this chapter and may hire necessary personnel. The commission may obtain from departments, commissions and other state agencies information and assistance needed to carry out the provisions of this chapter.

Sec. 14.48.050. POWERS AND DUTIES OF COMMISSION. The commission shall

(1) establish minimum criteria consistent with sec. 60 of this chapter including quality of education, ethical and business practices, health and safety and fiscal responsibility which applicants for authorization to operate, or for an agent's permit, must meet before the authorization or permit is issued;

(2) receive, investigate and act upon applications for authorization to operate postsecondary educational institutions and applications for agent's permits;

(3) maintain a list of postsecondary educational institutions and agents authorized to operate in the state under this chapter;

(4) keep current and make available as public information the list of institutions and agents;

(5) enter into interstate reciprocity agreements with similar agencies in other states, if in the judgment of the commission the agreements will be helpful in carrying out the purposes of this chapter;

(6) receive and maintain as a permanent file, copies of academic records maintained in accordance with sec. 60(b)(6) of this chapter;

(7) promulgate regulations and procedures necessary or appropriate for the conduct of its work and the implementation of this chapter under the Administrative Procedure Act (AS 44.62);

(8) investigate on its own initiative or in response to a complaint lodged with it, persons subject to,

or reasonably believed by the commission to be subject to, the jurisdiction of this chapter; and in connection with the investigation subpoena persons, books, records, or documents related to the investigation; require answers in writing under oath to questions propounded by the commission and administer oaths or affirmations to persons in connection with the investigation; and, for the purpose of examination at all reasonable times, shall have access to, and the right to copy, documentary evidence of a corporation that is under investigation or being proceeded against;

(9) exercise other necessary powers and duties in conformity with the provisions of this chapter which, in the judgment of the commission are necessary to carry out the provisions of this chapter.

Sec. 14.48.060. MINIMUM STANDARDS. (a) In establishing the criteria required by sec. 50(1) of this chapter, the commission shall require compliance with the minimum standards set out in (b) of this section.

(b) A postsecondary educational institution must be maintained and operated, or, in the case of a new institution must demonstrate that it can be maintained and operated so that

(1) the quality and content of each course or program of instruction, training, or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered;

(2) the institution has or has access to adequate space, equipment, instructional materials, and personnel where applicable to achieve the stated objective of the course or program of study and to provide education of good quality;

(3) the education or experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive education consistent with the objectives of the course or program of study;

(4) the institution provides a catalog or brochure containing information describing the programs offered, program objectives, length of program, schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study, cancellation and refund policies, and other material facts concerning the institution and the program or course of instruction which are reasonably likely to affect the decision of the student to enroll, together with any other disclosures specified by the commission by regulation; and that this information is provided to prospective students before enrollment;

(5) upon satisfactory completion of training, the student is given appropriate educational credentials by the institution, indicating that the course of instruction or study has been satisfactorily completed by the student;

(6) adequate records are maintained by the institution to show attendance, progress, or grades, and that satisfactory standards are enforced relating to attendance,

progress and performance;

(7) the institution is maintained and operated in compliance with all pertinent ordinances and laws relating to the safety and health of persons upon the premises of the institution;

(8) the institution is financially sound and capable of fulfilling its commitments to students;

(9) neither the institution nor its agents engage in advertising, sales, collection, credit, or other practices which are false, deceptive, misleading, or unfair;

(10) the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, and instructors of the institution are of good reputation and character and have not been convicted of a violation of secs. 20 or 150 of this chapter or AS 45.50.471 - 45.50.551 or a comparable law in another state or province;

(11) the student housing owned, maintained, or approved by the institution is appropriate, safe, and adequate; and

(12) the institution has a fair and equitable cancellation and refund policy.

(c) Accreditation by national or regional accrediting agencies recognized by the commission may be accepted by the commission as evidence of compliance with the minimum standards established by this section and the criteria established under sec. 50(1) of this chapter. However, the commission may require further evidence and make further investigation as may be necessary. Accreditation by a recognized, specialized accrediting agency may be accepted as evidence of compliance only as to the portion or program of an institution accredited by the accrediting agency if the institution as a whole is not accredited.

Sec. 14.48.070. AUTHORIZATION TO OPERATE. (a) Each postsecondary educational institution desiring to operate in this state shall apply to the commission, upon forms provided by the commission. The application shall be accompanied by a catalog or brochure published, or proposed to be published by the institution, containing the information specified in sec. 60(b)(4) of this chapter. The application shall also be accompanied by evidence of a surety bond as required by sec. 100 of this chapter, and by the required fees.

(b) Following review of the application and after necessary investigation of the applicant the commission shall either grant or deny authorization to operate to the applicant. A grant of authorization to operate may be on those terms and conditions the commission may prescribe.

(c) The authorization to operate shall be in a form approved by the commission and shall include

(1) the date of issuance, effective date, and term of approval;

- (2) the name and address of the institution;
- (3) the authority for approval;
- (4) any condition or limitation of the authorization, as considered necessary by the commission.

(d) The term for which an initial authorization is given may not exceed two years, and may be issued for a lesser period of time. A subsequent authorization may be issued for a period up to five years.

(e) The authorization to operate shall be issued to the owner, or governing body, of the applicant institution, and shall be nontransferable. In the event of a change in ownership or management of the institution, a new owner or manager, or governing body, must, within 30 days after the change in ownership is effective, apply for a new authorization to operate, and if the new application is not made the institution's authorization to operate shall terminate. Application for a new authorization to operate by reason of change in ownership of the institution is considered an application for renewal under (f) of this section.

(f) At least 60 days before the expiration of an authorization to operate, the institution shall complete and file with the commission an application form for renewal of its authorization to operate. The renewal application shall be reviewed and acted upon as provided for an original application.

(g) An institution not yet in operation when its application for authorization to operate is filed may not begin operation until receipt of authorization. An institution in operation when its application for authorization to operate is filed may continue operation until its application is acted upon by the commission. The commission may issue provisional authorization to operate, containing limitations as to time, procedures, functions, or other conditions as the commission considers necessary.

Sec. 14.48.080. AGENT'S PERMIT. (a) A person desiring to solicit or perform the services of an agent, in this state, shall apply to the commission upon forms provided by the commission. The application shall be accompanied by evidence of the good reputation and character of the applicant and shall state the institution which the applicant intends to represent. An agent representing more than one institution must obtain a separate agent's permit for each institution represented. However, when an agent represents institutions having a common ownership, only one agent's permit is required. If an institution which the applicant intends to represent does not have authorization to operate in this state, the application shall be accompanied by the information required of institutions making application for authorization. The application for an agent's permit shall also be accompanied by evidence of a surety bond as required by sec. 100 of this chapter, and by payment of the required fees.

(b) An applicant for an agent's permit shall be an individual of good reputation and character and shall represent only a postsecondary educational institution or insti-

tutions which meet the minimum standards established in this section and the criteria established under sec. 50(1) of this chapter.

(c) Following review of the application and any further information submitted by the applicant, and investigation of the applicant as the commission considers necessary, the commission shall either grant or deny an agent's permit to the applicant.

(d) The agent's permit shall be in a form approved by the commission and shall include

- term;
- (1) the date of issuance, effective date, and
  - (2) the correct name and address of the agent;
  - (3) the institution or institutions which the agent is authorized to represent.

(e) The term for which an agent's permit is issued may not extend for more than two years, and may be issued for a lesser period of time.

(f) At least 60 days before the expiration of an agent's permit, the agent shall complete and file with the commission an application form for renewal. The renewal application shall be reviewed and acted upon as provided for an original application.

Sec. 14.48.090. FEES. (a) The following fees shall accompany an application for an authorization to operate or an application for an agent's permit and shall be collected by the commission:

- |                                          |       |
|------------------------------------------|-------|
| (1) authorization to operate             | \$100 |
| (2) renewal for authorization to operate | \$100 |
| (3) an agent's permit                    | \$ 50 |
| (4) renewal for an agent's permit        | \$ 50 |

(b) Fees collected under this chapter shall be deposited in the general fund.

Sec. 14.48.100. BONDS. (a) At the time application is made for authorization to operate, or for renewal of an authorization to operate the commission may require the postsecondary educational institution to file a surety bond in the amount determined by the commission. The amount shall be determined by the number of students the institution seeks to enroll. The amount of the surety bond shall be re-examined by the commission upon each renewal of the authorization to operate to determine if a larger or smaller bond would be appropriate to ensure adequate protection for the students or enrollees, or their parents or guardians, or classes thereof. The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state and shall be conditioned to provide indemnification to any student or enrollee, or his parent or guardian, or class thereof, determined

to have suffered loss or damage as a result of an act or practice which is a violation of this chapter by the post-secondary educational institution and that the bonding company shall pay a final nonappealable order of the commission or judgment of a court of this state having jurisdiction, upon receipt of written notification of the order or judgment. The aggregate liability of the surety for the bond of the institution or agent involved in the order or judgment may not, in any event, exceed the amount of the bond.

(b) An application for an agent's permit shall be accompanied by a surety bond in the minimum amount of \$10,000, or a larger amount if the commission determines that a larger amount is necessary for the protection of the students or enrollees, or their parents or guardians, or classes thereof, or because the bond should be increased to better reflect an institution's volume of business in the state. The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond shall be conditioned to provide indemnification to any student, enrollee, or his or her parents or guardian, or class thereof, determined to have suffered loss or damage as a result of an act or practice which is a violation of this chapter by the agent.

(c) The surety bond to be filed under this section shall cover the period of the authorization to operate or the agent's permit, as appropriate, except when a surety is released as provided in this subsection. A surety on a bond filed under this section may be released from that bond after the surety serves written notice of the release to the commission and to the bonded agent or institution 45 days before the release. However, the release does not discharge or otherwise affect a claim filed by a student or enrollee, or his parent or guardian, or class thereof, before or after the release for loss or damage resulting from an act or practice which is a violation of this chapter alleged to have occurred while the bond was in effect or for an institution's ceasing operations during the term for which tuition has been paid while the bond was in force.

(d) Authorization for an institution to operate and an agent's permit shall be suspended by operation of law when the institution or agent is no longer covered by a surety bond as required by this section. However, the commission shall give the institution or agent, or both, at least 30 days written notice before the release of the surety, to the effect that the authorization or permit shall be suspended by operation of law until another surety bond is filed in the same manner as, and in a like amount to, the bond being terminated.

Sec. 14.48.110. DENIAL. If the commission, upon review of an application for authorization to operate, or an application for an agent's permit determines that the application should be denied, the commission shall notify the applicant, setting out the reasons in writing. The Administrative Procedure Act (AS 44.62) governs the review of a denial under this section.

Sec. 14.48.120. REVOCATION. An authorization to operate or an agent's permit may be revoked or conditioned

if the commission has reasonable cause to believe that the holder of the authorization or permit is violating or has violated this chapter or AS 45.50.471 or regulations promulgated under this chapter or AS 45.50.491. The Administrative Procedure Act (AS 44.62) governs the procedure for a revocation, review of a revocation, or other action under this section.

Sec. 14.48.130. COMPLAINTS. (a) A person claiming damage or loss as a result of an act or practice by a postsecondary educational institution or its agent, or both, which is a violation of this chapter or of the regulations promulgated under this chapter may file with the commission a complaint against the institution or against its agent or both. The complaint shall set out the alleged violation and shall contain other information as may be required by the commission. A complaint may also be filed by the commission on its own motion or the attorney general. A complainant may file with the commission as a representative of a class of complainants.

(b) The commission shall investigate the complaint and may attempt to effect a settlement by persuasion and conciliation. The commission may consider a complaint after 30 days written notice by registered mail to the institution or agent, or both, giving notice of a time and place for hearing on the complaint. The hearing shall be conducted in accordance with the Administrative Procedure Act (AS 44.62).

(c) If, upon the evidence at a hearing, the commission finds that a postsecondary educational institution or its agent, or both, has engaged in or is engaging in, an act or practice which violates this chapter or the regulations promulgated under this chapter the commission shall serve upon the institution or agent or both, an order requiring the institution or agent or both to cease and desist from the act or practice. If the commission finds that the complainant, or class of complainants, has suffered loss or damage as a result of the act or practice, the commission may also award the complainant, or class of complainants, full or partial restitution for the damage or loss and may impose the penalties provided for in sec. 180 of this chapter. The commission may also, based on its own investigation and the evidence adduced at the hearing, begin an action to revoke an institution's authorization to operate or an agent's permit.

Sec. 14.48.140. JUDICIAL REVIEW. A final administrative order issued by the commission is subject to judicial review under the Administrative Procedure Act (AS 44.62.-560 - 44.62.570).

Sec. 14.48.150. PRESERVATION OF RECORDS. (a) If a postsecondary educational institution proposes to discontinue its operation, the chief administrative officer of the institution shall file with the commission the original or legible true copies of academic records of the institution as specified by the commission. The records shall include that academic information customarily required by colleges when considering students for transfer or advanced study and the academic record of each former student.

(b) If it appears to the commission that records of an institution discontinuing its operations are in danger of

being destroyed or otherwise made unavailable to the commission, the commission may seize the records, under an order of the superior court. The commission shall maintain a permanent file of records coming into its possession under this section.

Sec. 14.48.160. ENFORCEABILITY OF NOTES AND CONTRACTS.

(a) If a person to whom educational services are to be furnished by a postsecondary educational institution is a resident of this state at the time a contract relating to payment for the services, or a note, instrument, or other evidence of indebtedness relating to the services, is entered into, the provisions of this section govern the rights of the parties to the contract or evidence of indebtedness. The following agreements or provisions of an agreement entered into in connection with the contract or the giving of evidence of indebtedness are invalid:

(1) that the law of another state shall apply;

(2) that the maker or person liable on the contract or evidence of indebtedness consents to the jurisdiction of another state;

(3) that another person is authorized to confess judgment on the contract or evidence of indebtedness;

(4) that venue is fixed in a particular place.

(b) No note, instrument or other evidence of indebtedness, or contract relating to payment for education or educational services is enforceable in the courts of this state by (1) a postsecondary educational institution operating in this state unless the institution has authorization to operate under this chapter, or (2) a postsecondary educational institution having an agent in this state unless the agent had an agent's permit issued under this chapter authorizing the enrolling of or the seeking to enroll a person for educational services.

(c) A lending agency extending credit or loaning money to a person for tuition, fees, or other charges of a postsecondary educational institution for educational or other services or facilities to be rendered by the institution, shall conspicuously mark "student loan" on the face of a note, instrument, or other evidence of indebtedness taken in connection with the loan or extension of credit. If the lending agency fails to do so, it is liable for loss or damage suffered by a subsequent assignee, transferee, or holder of the evidence of indebtedness because of the absence of the notation. Notwithstanding the presence or absence of the notation, and notwithstanding an agreement to the contrary, the lending agency making the loan or extending the credit, and a transferee, assignee, or holder of the evidence of indebtedness is subject to all defenses and claims which could be asserted against the postsecondary educational institution which was to render the services or facilities, by any party to the evidence of indebtedness or by the person to whom the services or facilities were to be rendered, up to the amount remaining to be paid. For purposes of this section, "lending agency" means postsecondary educational institution, or a person controlling, controlled by, or held in common ownership with, a postsecondary

educational institution, or regularly loaning money to, or to students of, a postsecondary educational institution.

Sec. 14.48.170. JURISDICTION. A postsecondary educational institution that is not exempt from the provisions of this chapter, whether or not a resident of, or having a place of business in, this state, which instructs or educates, or offers to instruct or educate, enrolls or offers to enroll, contracts or offers to contract, to provide instructional or educational services in this state, whether the instruction or services are provided in person or by correspondence, to a resident of this state, or which offers to award or awards educational credentials to a person in or resident of this state, submits the institution, and, if a natural person his personal representative, to the jurisdiction of the courts of this state concerning a cause of action arising from these activities and for the purpose of enforcement of this chapter by injunction under sec. 180 of this chapter.

Sec. 14.48.180. ENFORCEMENT: INJUNCTION. (a) The attorney general at the request of the commission or on his own motion, may bring an action or proceeding in a court of competent jurisdiction for the enforcement of the provisions of this chapter.

(b) When it appears to the commission that a person is, is about to, or has violated a provision of this chapter or a regulation promulgated under this chapter, the commission may, on its own motion or on the written complaint of any person, file a petition for injunction in the name of the commission in a court of competent jurisdiction against the person for the purpose of enjoining the violation or for an order directing compliance with the provisions of this chapter. It is not necessary that the commission allege or prove that it has no adequate remedy at law. The right of injunction provided in this section is in addition to other legal remedies available to the commission and is in addition to the right of criminal prosecution. However, the commission may not obtain a temporary restraining order without notice to the person affected.

Sec. 14.48.190. VIOLATIONS: CIVIL PENALTY. A person who violates the provisions of sec. 20 of this chapter, or who fails or refuses to deposit with the commissioner the records required by sec. 150 of this chapter is subject to a civil penalty of not more than \$1,000 for each violation. Each day's failure to comply with the provisions of secs. 20 and 150 of this chapter constitutes a separate violation. The fine may be imposed by the commission in an administrative proceeding or by a court of competent jurisdiction.

Sec. 14.48.200. CRIMINAL VIOLATION. A person who wilfully violates the provisions of sec. 20 of this chapter or who wilfully fails or refuses to deposit with the commission the records required by sec. 150 of this chapter is guilty of a misdemeanor and, upon conviction, is punishable by a fine of not more than \$1,000 or by imprisonment for not more than six months, or by both. Each day's failure to comply is a separate violation.

Sec. 14.48.210. DEFINITIONS. In this chapter

(1) "agent" means a person owning an interest in, employed by, or representing for remuneration, a postsecondary educational institution in or outside the state who, by solicitation made in the state, enrolls or seeks to enroll a resident of the state for education offered by the institution, or offers to award educational credentials, for remuneration, on behalf of the institution, or who holds himself out to residents of the state as representing a postsecondary educational institution for any purpose;

(2) "agent's permit" means a nontransferable written authorization issued to a natural person by the commission which allows that person to solicit or enroll a resident of the state for education in a postsecondary educational institution.

(3) "authorization to operate" means approval of the commission to operate or to contract to operate a postsecondary educational institution in the state;

(4) "commission" means the Alaska Commission on Postsecondary Education;

(5) "education" or "educational program or services" or like term includes any class, course, or program of training, instruction, or study;

(6) "educational credentials" means degrees, diplomas, certificates, transcripts, reports, documents, or letters of designation, marks, appellations, series of letters, numbers, or words which signify, purport, or are generally taken to signify enrollment, attendance, progress, or satisfactory completion of the requirements or prerequisites for education at a postsecondary educational institution;

(7) "owner" means

(A) a person having at least a 10 per cent interest in the stock of a postsecondary educational institution that is a corporation;

(B) a partner of a postsecondary educational institution that is a partnership; or

(C) a person having a direct financial interest in, or title to, at least 10 per cent of the assets of a postsecondary educational institution which is neither a partnership nor a corporation; however,

(D) "owner" does not include a financial institution holding a mortgage on some or all of the real property or a security interest in some or all of the personal property of a postsecondary educational institution;

(8) "postsecondary educational institution" includes an academic, vocational, technical, home study, business, professional, or other school, college, or university, or other organization or person, offering educational credentials, or offering instruction or educational services primarily to persons who have completed or terminated their secondary education or who are beyond the age of

compulsory high school attendance for attainment of educational, professional, or vocational objectives;

(9) "to grant" includes awarding, selling, conferring, or giving;

(10) "to offer" includes, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging persons directly or indirectly to perform the act described;

(11) "to operate a postsecondary institution" means to establish, or maintain a facility or location in the state where education is offered or given, or educational credentials are offered or granted, and includes contracting with any person, group, or entity to operate an educational institution.

\* Sec. 2. AS 14.40.909(b)(5) is amended to read:

(5) administer the provisions of AS 14.48 (regulation of postsecondary educational institutions);

\* Sec. 3. AS 14.40 is amended by adding a new section to read:

Sec. 14.40.917. LEGAL COUNSEL. (a) The attorney general is legal counsel for the commission. He shall advise the commission in legal matters arising in the discharge of its duties and represent the commission in actions to which it is a party. If, in the opinion of the commission, the public interest is not adequately represented by counsel in a proceeding, the attorney general, upon request of the commission, shall represent the public interest.

(b) The commission may employ temporary legal counsel from time to time in matters in which the commission is involved.

\* Sec. 4. AS 44.62.330(a) is amended by adding a new paragraph to read:

(38) Alaska Commission on Postsecondary Education under AS 14.48 as to denial of applications and revocation of authorizations and permits.

\* Sec. 5. AS 14.47 is repealed.

\* Sec. 6. This Act takes effect immediately in accordance with AS 01.10.070(c).