

Introduced: 4/4/74
Referred: Health, Education &
Social Services and Judiciary

BY THE HEALTH, EDUCATION AND
SOCIAL SERVICES COMMITTEE BY
REQUEST OF THE INTERIM
COMMITTEE ON HIGHER EDUCATION

1 IN THE HOUSE

2 CS HOUSE BILL NO. 836

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 EIGHTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the regulation of postsecondary
7 educational institutions; and providing for an effective
8 date."

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

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

11 CHAPTER 48. REGULATION OF POSTSECONDARY
12 EDUCATIONAL INSTITUTIONS.

13 Sec. 14.48.010. PURPOSES. It is the purpose of this chapter to
14 provide for the protection, education, and welfare of the citizens of
15 the state, its postsecondary educational institutions, and its students,
16 by

17 (1) establishing minimum standards concerning quality of
18 education, ethical and business practices, health and safety, and fiscal
19 responsibility, to protect against substandard, transient, unethical,
20 deceptive, or fraudulent institutions and practices;

21 (2) prohibiting the granting of false or misleading educa-
22 tional credentials;

23 (3) regulating the use of academic terminology in designating
24 educational institutions;

25 (4) prohibiting misleading literature, advertising, solici-
26 tation, or representation by educational institutions or their agents;

27 (5) providing for the preservation of essential academic
28 records; and

29 (6) providing certain rights and remedies to the public and

1 the commission necessary to carry out the purposes of this chapter.

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

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

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

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

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

24 (5) use the term "university" or "college" without authoriza-
25 tion to do so from the commission;

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

28 Sec. 14.48.030. EXEMPTIONS. The following educational programs or
29 services and educational institutions are exempt from the provisions of

1 this chapter:

2 (1) institutions exclusively offering instruction from pre-
3 school through grade 12;

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

8 (3) education solely avocational or recreational in nature,
9 as determined by the commission, and institutions offering avocational
10 or recreational education exclusively as determined by the commission;

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

14 (5) postsecondary educational institutions established,
15 operated, and governed by the United States, the state or its political
16 subdivisions, as determined by the commission.

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

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

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

29 (2) receive, investigate and act upon applications for

1 authorization to operate postsecondary educational institutions and
2 applications for agent's permits;

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

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

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

10 (6) receive and maintain as a permanent file, copies of
11 academic records consistent with sec. 60(b)(6) of this chapter;

12 (7) promulgate regulations and procedures necessary or appro-
13 priate for the conduct of its work and the implementation of this chapter
14 under the Administrative Procedure Act (AS 44.62);

15 (8) investigate on its own initiative or in response to a
16 complaint lodged with it, persons subject to, or reasonably believed by
17 the commission to be subject to, the jurisdiction of this chapter; and
18 in connection with the investigation subpoena persons, books, records,
19 or documents related to the investigation; and require answers in writing
20 under oath to questions propounded by the commission and administer
21 oaths or affirmations to persons in connection with the investigation;

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

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

29 (b) A postsecondary educational institution must be maintained and

1 operated, or, in the case of a new institution must demonstrate that it
2 can be maintained and operated so that

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

6 (2) the institution has adequate space, equipment, instruc-
7 tional materials, and personnel to provide education of good quality;

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

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

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

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

28 (7) the institution is maintained and operated in compliance
29 with all pertinent ordinances and laws relating to the safety and health

1 of persons upon the premises of the institution;

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

4 (9) neither the institution nor its agents engage in adver-
5 tising, sales, collection, credit, or other practices which are false,
6 deceptive, misleading, or unfair;

7 (10) the chief executive officer, trustees, directors, owners,
8 administrators, supervisors, staff, and instructors of the institution
9 are of good reputation and character;

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

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

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

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

1 by the required fees.

2 (b) Following review of the application and after necessary investi-
3 gation of the applicant the commission shall either grant or deny autho-
4 rization to operate to the applicant.

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

- 7 (1) the date of issuance, effective date, and term of approval;
8 (2) the name and address of the institution;
9 (3) any limitation of the authorization, as considered
10 necessary by the commission;

11 (d) The term for which authorization is given may not exceed two
12 years, and may be issued for a lesser period of time.

13 (e) The authorization to operate shall be issued to the owner, or
14 governing body, of the applicant institution, and shall be nontrans-
15 ferable. In the event of a change in ownership of the institution, a
16 new owner, or governing body, must, within 10 days after the change in
17 ownership, apply for a new authorization to operate, and if the new
18 application is not made the institution's authorization to operate shall
19 terminate. Application for a new authorization to operate by reason of
20 change in ownership of the institution is considered an application for
21 renewal under (f) of this section.

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

27 (g) An institution not yet in operation when its application for
28 authorization to operate is filed may not begin operation until receipt
29 of authorization. An institution in operation when its application for

1 authorization to operate is filed may continue operation until its
2 application is acted upon by the commission. The commission may issue
3 provisional authorization to operate, containing limitations as to
4 time, procedures, functions, or other conditions as the commission
5 considers necessary.

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

21 (b) An applicant for an agent's permit shall be an individual of
22 good reputation and character and shall represent only a postsecondary
23 educational institution or institutions which meet the minimum standards
24 established in this section and the criteria established under sec. 50(1)
25 of this chapter.

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

1 (d) The agent's permit shall be in a form approved by the com-
2 mission and shall include

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

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

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

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

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

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

22 Sec. 14.48.100. BONDS. (a) At the time application is made for
23 authorization to operate, or for renewal of an authorization to operate
24 the commission may require the postsecondary educational institution to
25 file a surety bond in the amount determined by the commission. The bond
26 shall be executed by the applicant as principal and by a surety company
27 qualified and authorized to do business in this state and shall be con-
28 ditioned to provide indemnification to any student or enrollee or his
29 parent or guardian, determined to have suffered loss or damage as a

1 result of any act or practice which is a violation of this chapter by
2 the postsecondary educational institution.

3 (b) An application for an agent's permit shall be accompanied by a
4 surety bond in the amount of \$10,000. The bond shall be executed by the
5 applicant as principal and by a surety company qualified and authorized
6 to do business in this state. The bond shall be conditioned to provide
7 indemnification to any student, enrollee, or his or her parents or
8 guardian, determined to have suffered loss or damage as a result of an
9 act or practice which is a violation of this chapter by the agent.

10 (c) A surety bond filed under this section shall cover the period
11 of the authorization to operate or the agent's permit, as appropriate.

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

18 Sec. 14.48.120. REVOCATION. An authorization to operate or an
19 agent's permit may be revoked or conditioned if the commission has
20 reasonable cause to believe that the holder of the authorization or
21 permit is violating this chapter or regulations promulgated under this
22 chapter. The Administrative Procedure Act (AS 44.62) governs the review
23 of a revocation or other action under this section.

24 Sec. 14.48.130. COMPLAINTS. (a) A person claiming damage or loss
25 as a result of an act or practice by a postsecondary educational insti-
26 tution or its agent, or both, which is a violation of this chapter or of
27 the regulations promulgated under this chapter may file with the
28 commission a complaint against the institution or against its agent or
29 both. The complaint shall set out the alleged violation and shall

1 contain other information as may be required by the commission. A
2 complaint may also be filed by the commission on its own motion or the
3 attorney general. A complainant may file with the commission as a
4 representative of a class of complainants.

5 (b) The commission shall investigate the complaint and may attempt
6 to effect a settlement by persuasion and conciliation. The commission
7 may consider a complaint after 10 days written notice by registered mail
8 to the institution or agent, or both, giving notice of a time and place
9 for hearing on the complaint. The hearing shall be conducted in ac-
10 cordance with the Administrative Procedure Act (AS 44.62).

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

25 Sec. 14.48.140. JUDICIAL REVIEW. A final administrative order
26 issued by the commission is subject to judicial review under the
27 Administrative Procedure Act (AS 44.62.560 - 44.62.570).

28 Sec. 14.48.150. PRESERVATION OF RECORDS. (a) If a postsecondary
29 educational institution proposes to discontinue its operation, the

1 chief administrative officer of the institution shall file with the
2 commission the original or legible true copies of academic records of
3 the institution as specified by the commission. The records shall
4 include that academic information customarily required by colleges when
5 considering students for transfer or advanced study and the academic
6 record of each former student.

7 (b) If it appears to the commission that records of an institu-
8 tion discontinuing its operations are in danger of being destroyed or
9 otherwise made unavailable to the commission, the commission may take
10 the records, on its own motion, without order of court. The commission
11 shall maintain a permanent file of records coming into its possession
12 under this section.

13 Sec. 14.48.160. ENFORCEABILITY OF NOTES AND CONTRACTS. (a) If
14 a person to whom educational services are to be furnished by a post-
15 secondary educational institution is a resident of this state at the
16 time a contract relating to payment for the services, or a note, instru-
17 ment, or other evidence of indebtedness relating to the services, is
18 entered into, the provisions of this section govern the rights of the
19 parties to the contract or evidence of indebtedness. The following
20 agreements or provisions of an agreement entered into in connection with
21 the contract or the giving of evidence of indebtedness are invalid:

- 22 (1) that the law of another state shall apply;
23 (2) that the maker or person liable on the contract or
24 evidence of indebtedness consents to the jurisdiction of another state;
25 (3) that another person is authorized to confess judgment on
26 the contract or evidence of indebtedness;
27 (4) that venue is fixed in a particular place.

28 (b) No note, instrument or other evidence of indebtedness, or
29 contract relating to payment for education or educational services is

1 enforceable in the courts of this state by (1) a postsecondary educa-
2 tional institution operating in this state unless the institution has
3 authorization to operate under this chapter, or (2) a postsecondary
4 educational institution having an agent in this state unless the agent
5 had an agent's permit issued under this chapter authorizing the enrolling
6 of or the seeking to enroll a person for educational services.

7 (c) A lending agency extending credit or loaning money to a person
8 for tuition, fees, or other charges of a postsecondary educational
9 institution for educational or other services or facilities to be
10 rendered by the institution, shall conspicuously mark "student loan" on
11 the face of a note, instrument, or other evidence of indebtedness taken
12 in connection with the loan or extension of credit. If the lending
13 agency fails to do so, it is liable for loss or damage suffered by a
14 subsequent assignee, transferee, or holder of the evidence of indebted-
15 ness because of the absence of the notation. Notwithstanding the
16 presence or absence of the notation, and notwithstanding an agreement to
17 the contrary, the lending agency making the loan or extending the credit,
18 and a transferee, assignee, or holder of the evidence of indebtedness is
19 subject to all defenses and claims which could be asserted against the
20 postsecondary educational institution which was to render the services
21 or facilities, by any party to the evidence of indebtedness or by the
22 person to whom the services or facilities were to be rendered, up to
23 the amount remaining to be paid. For purposes of this section, "lending
24 agency" means postsecondary educational institution, or a person
25 controlling, controlled by, or held in common ownership with, a post-
26 secondary educational institution, or regularly loaning money to, or to
27 students of, a postsecondary educational institution.

28 Sec. 14.48.170. JURISDICTION. A postsecondary educational
29 institution that is not exempt from the provisions of this chapter,

1 whether or not a resident of, or having a place of business in, this
2 state, which offers services or credentials in this state submits the
3 institution to the jurisdiction of the courts of this state concerning
4 any cause of action and for the purpose of enforcement of this chapter
5 by injunction.

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

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

23 Sec. 14.48.190. VIOLATIONS: CIVIL PENALTY. A person who violates
24 the provisions of sec. 20 of this chapter, or who fails or refuses to
25 deposit with the commissioner the records required by sec. 150 of this
26 chapter is subject to a civil penalty of not more than \$1,000 for each
27 violation. The fine may be imposed by the commission in an administra-
28 tive proceeding or by a court of competent jurisdiction.

29 Sec. 14.48.200. CRIMINAL VIOLATION. A person who wilfully violates

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

7 Sec. 14.48.210. DEFINITIONS. In this chapter

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

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

20 (3) "authorization to operate" means approval of the commis-
21 sion to operate or to contract to operate a postsecondary educational
22 institution in the state;

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

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

28 (6) "educational credentials" means degrees, diplomas, cer-
29 tificates, transcripts, reports, documents, or letters of designation,

1 marks, appellations, series of letters, numbers, or words which signify,
2 purport, or are generally taken to signify enrollment, attendance,
3 progress, or satisfactory completion of the requirements or prerequisites
4 for education at a postsecondary educational institution;

5 (7) "postsecondary educational institution" includes an
6 academic, vocational, technical, home study, business, professional, or
7 other school, college, or university, or other organization or person,
8 offering educational credentials, or offering instruction or educational
9 services primarily to persons who have completed or terminated their
10 secondary education or who are beyond the age of compulsory high school
11 attendance for attainment of educational, professional, or vocational
12 objectives;

13 (8) "to grant" includes awarding, selling, conferring, or
14 giving;

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

18 (10) "to operate a postsecondary institution" means to estab-
19 lish, or maintain a facility or location in the state where education is
20 offered or given, or educational credentials are offered or granted, and
21 includes contracting with any person, group, or entity to operate an
22 educational institution.

23 * Sec. 2. AS 44.62.330(a) is amended by adding a new paragraph to read:

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

27 * Sec. 3. AS 14.47 is repealed.

28 * Sec. 4. This Act takes effect July 1, 1974.