

**Fifty-sixth Legislative Assembly, State of North Dakota, begun in the
Capitol in the City of Bismarck, on Tuesday, the fifth day of January,
one thousand nine hundred and ninety-nine**

HOUSE BILL NO. 1151
(Education Committee)

(At the request of the State Board for Vocational and Technical Education)

AN ACT to create and enact a new section to chapter 15-20.4 of the North Dakota Century Code, relating to a voluntary application for an authorization to operate a postsecondary educational institution; to amend and reenact sections 15-20.4-01, 15-20.4-02, 15-20.4-03, 15-20.4-04, 15-20.4-05, 15-20.4-09, 15-20.4-10, 15-20.4-11, 15-20.4-12, 15-20.4-13, and 15-20.4-14 of the North Dakota Century Code, relating to authorization to operate postsecondary educational institutions and approval of agent permits; and to declare an emergency.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 15-20.4-01 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-01. Definitions. As used in this chapter:

1. ~~"Agent" means any person owning any interest in, employed by, or representing for remuneration, a postsecondary educational institution within or outside this state, who, by solicitation in any form made in this state, enrolls or seeks to enroll a resident of this state for education offered by such institution, or offers to award educational credentials, for remuneration, on behalf of any such institution, or who holds himself out to residents of this state as representing a postsecondary educational institution for any such purpose.~~
2. ~~"Agent's permit" means a nontransferable written authorization issued to a natural person by the board which allows that person to solicit or enroll any resident of this state for education in a postsecondary educational institution.~~
3. ~~"Authorization to operate" or like term means approval of the board to operate or to contract to operate a postsecondary educational institution in this state.~~
4. 2. "Board" means the state board for vocational and technical education.
5. 3. "Education" or "educational services" or like term includes, ~~but is not limited to,~~ any class, course, or program of training, instruction, or study.
6. 4. "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 operating in this state.
7. 5. "Entity" includes, ~~but is not limited to,~~ any company, firm, society, association, partnership, corporation, limited liability company, and trust.
8. 6. "Executive officer" means the director of vocational and technical education.
9. 7. "Postsecondary educational institution" includes, ~~but is not limited to,~~ an academic, vocational, technical, home study, business, professional, or other school, college, or university, or other organization or person, operating in this state, 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.

- ~~40.~~ 8. "To grant" includes awarding, selling, conferring, bestowing, or giving.
- ~~44.~~ 9. "To offer" includes, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form, to perform the act described.
- ~~42.~~ 10. "To operate" an educational institution, or like term, means to establish, keep, or maintain any facility or location in this state where, from, or through which, education is offered or given, or educational credentials are offered or granted, and includes contracting with any person, group, or entity to perform any such act.

SECTION 2. AMENDMENT. Section 15-20.4-02 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-02. Exemptions. The following education and educational institutions are exempted from the provisions of this chapter:

1. Institutions exclusively offering instruction at any or all levels from preschool through the twelfth grade.
2. Education sponsored by a bona fide trade, business, professional, or fraternal organization, so recognized by the board, solely for that organization's membership, or offered on a no-fee basis.
3. Education solely avocational or recreational in nature, as determined by the board, and institutions offering such education exclusively.
4. Certain education provided through short-term programs as determined by the board.
5. Education offered by charitable institutions, organizations, or agencies, so recognized by the board, provided the education is not advertised or promoted as leading toward educational credentials.
6. Postsecondary educational institutions established, operated, and governed by this or any other state or its political subdivisions, as determined by the board and any educational consortium that includes one or more of the institutions.
7. Private four-year institutions chartered or incorporated and operating in the state prior to July 1, 1977, so long as the institutions retain accreditation by national or regional accrediting agencies recognized by the United States office of education.
8. Schools of barbering regulated under chapter 43-04.
9. Schools of cosmetology regulated under chapter 43-11.
10. Schools of nursing regulated under chapter 43-12.1.
11. Schools instructing on the manner of conducting games of chance which are regulated under chapter 53-06.1.
12. Schools instructing on the manner of conducting auction sales which are regulated under chapter 51-05.1.
13. Postsecondary educational institutions not operating in this state.

SECTION 3. AMENDMENT. Section 15-20.4-03 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-03. Board powers and duties. The board has, in addition to the powers and duties now vested in it by law, the following powers and duties to:

1. Establish and require compliance with minimum standards and criteria for postsecondary educational institutions under this chapter. The standards and criteria must include 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~~, shall meet:
 - a. Before such authorization ~~or permit~~ may be issued; and
 - b. To continue such authorization ~~or permit~~ in effect.

The criteria and standards developed will effectuate the purposes of this chapter, but will not unreasonably hinder legitimate educational innovation.

2. Prescribe forms and conditions for, receive, investigate as it may deem necessary, and act upon applications for authorization to operate postsecondary educational institutions ~~and applications for agent's permits. Authorization to operate an academic or professional postsecondary educational institution offering educational credentials shall be issued only upon approval of the executive officer and the commissioner of the board of higher education or his designee.~~
3. Maintain a list of postsecondary educational institutions ~~and agents~~ authorized to operate in this state under the provisions of this chapter. The list must be available for the information of the public, and must be sent to the superintendents of all school districts, to county superintendents of schools, and to guidance counselors certified by the department of public instruction.
4. Negotiate and enter into interstate reciprocity agreements with similar agencies in other states, if in the judgment of the board such agreements are or will be helpful in effectuating the purposes of this chapter; provided, however, that nothing contained in any such reciprocity agreement may be construed as limiting the board's powers, duties, and responsibilities with respect to independently investigating or acting upon any application for authorization to operate, or any application for renewal of such authorization to operate, a postsecondary educational institution, ~~or an application for issuance or renewal of any agent's permit~~, or with respect to the enforcement of any provision of this chapter, or any of the rules or regulations promulgated hereunder.
5. Receive and cause to be maintained as a permanent file, copies of academic records specified by the board in the event any postsecondary educational institution now or hereafter operating in this state proposes to discontinue its operation.
6. Promulgate such rules, regulations, and procedures necessary or appropriate for the conduct of its work and the implementation of this chapter, and to hold such hearings as it may deem advisable in accordance with chapter 28-32 or as required by law in developing such rules, regulations, and procedures, or in aid of any investigation or inquiry.
7. Investigate as it may deem necessary, on its own initiative or in response to any complaint lodged with it, any person, group, or entity subject to, or reasonably believed by the board to be subject to, the jurisdiction of this chapter; and in connection therewith to subpoena any persons, books, records, or documents pertaining to such investigation. The board may require answers in writing under oath to questions propounded by the board, and may administer an oath or affirmation to any person in connection with any investigation. The board may, after hearing, revoke or suspend authorizations to operate ~~and agent permits~~. Subpoenas issued by the board are enforceable by any district court.
8. Require fees and bonds from postsecondary educational institutions ~~and agents~~ in such sums and under such conditions as it may establish; provided, that fees established may not exceed the reasonable cost of the service being provided.
9. Exercise other powers and duties implied but not enumerated in this section but in conformity with the provisions of this chapter which, in the judgment of the board, are necessary in order to carry out the provisions of this chapter.

SECTION 4. AMENDMENT. Section 15-20.4-04 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-04. Minimum standards - Exceptions. All postsecondary educational institutions must be accredited by national or regional accrediting agencies recognized by the United States department of education. The board may additionally require such further evidence and make such further investigation as in its judgment may be necessary. Any postsecondary educational institution ~~domiciled~~ operating in this state seeking its first authorization to operate may be issued a provisional authorization to operate on an annual basis until the institution becomes eligible for accreditation by a recognized accrediting agency. Upon completion of the accreditation process, the institution shall submit evidence of accreditation, or a substantial good faith showing of progress toward such status. Only upon accreditation shall an institution become eligible for a regular authorization to operate. This section does not apply to ~~nonacademic or nonprofessional~~ postsecondary educational institutions ~~domiciled~~ operating in this state and enrolling a ~~limited number of~~ ten or fewer students ~~as determined by the board.~~

SECTION 5. AMENDMENT. Section 15-20.4-05 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-05. Prohibition. ~~No~~ A person, ~~agent,~~ group, or entity of whatever kind, alone or in concert with others, may not:

1. Operate, in this state, a postsecondary educational institution not exempted from the provisions of this chapter, unless said institution has a currently valid authorization to operate issued pursuant to the provisions of this chapter.
2. ~~Offer, as or through an agent, enrollment or instruction in, or the granting of educational credentials from, a postsecondary educational institution not exempted from the provisions of this chapter, whether such institution is within or outside this state, unless such agent is a natural person and has a currently valid agent's permit issued pursuant to the provisions of this chapter.~~
3. ~~Accept contracts or enrollment applications from an agent who does not have a current permit as required by this chapter.~~
4. Instruct or educate, or offer to instruct or educate, including advertising or soliciting for such purpose, enroll or offer to enroll, contract or offer to contract with any person for such purpose, or award any educational credential, or contract with any institution or party to perform any such act, at a facility or location in this state, ~~whether such person, agent, group, or entity is located within or without this state,~~ unless such person, ~~agent,~~ group, or entity observes and is in compliance with the minimum standards and criteria established by the board pursuant to subsection 1 of section 15-20.4-03, and the rules and regulations adopted by the board pursuant to subsection 6 of section 15-20.4-03.
5. ~~3.~~ Use the term "university", "institute", or "college" without authorization to do so from the board.
6. ~~4.~~ Grant, or offer to grant, educational credentials, without authorization to do so from the board.
7. ~~5.~~ Seek to incorporate within the state as a postsecondary educational institution without first obtaining a currently valid authorization to operate from the board, which authorization must be presented to the secretary of state upon application for articles of incorporation.

SECTION 6. A new section to chapter 15-20.4 of the North Dakota Century Code is created and enacted as follows:

Voluntary application for authorization to operate. Although a postsecondary educational institution not operating in this state is exempt from this chapter by section 15-20.4-02, the institution may subject itself to the requirements of this chapter by applying for and being awarded an authorization to operate by the board. An authorization to operate, as applied to a postsecondary

educational institution not operating in this state, means approval of the board to offer to students in this state educational services leading to educational credentials.

SECTION 7. AMENDMENT. Section 15-20.4-09 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-09. Remedy of defrauded student - Treble damages. Any person defrauded by a ~~misrepresentation made by an agent of a postsecondary educational institution, by~~ any advertisement or circular issued by ~~the a postsecondary educational institution or agent,~~ or by any person who sells textbooks to the institution or to the pupils thereof, may recover from such institution, ~~agent,~~ or person three times the amount paid.

SECTION 8. AMENDMENT. Section 15-20.4-10 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-10. Board review. Any person aggrieved by a decision of the board respecting denial or revocation of an authorization to operate, ~~or of an agent's permit,~~ or the placing of conditions thereon, whether on initial application or on application for renewal, and any person aggrieved by the imposition of a penalty by the board under section 15-20.4-12, has the right to a hearing and review of such decision by the board and to judicial review in accordance with chapter 28-32.

SECTION 9. AMENDMENT. Section 15-20.4-11 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-11. Violations - Civil penalty. Any person, group, or entity, or any owner, officer, ~~agent,~~ or employee thereof, who violates the provisions of section 15-20.4-05, or who fails or refuses to deposit with the board the records required by the board under this chapter, is subject to a civil penalty not to exceed one hundred dollars for each violation. Each day's failure to comply with the provisions of said sections is a separate violation. Such fine may be imposed by the board in an administrative proceeding or by any court of competent jurisdiction.

SECTION 10. AMENDMENT. Section 15-20.4-12 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-12. Violations - Criminal penalty. Any person, group, or entity, or any owner, officer, ~~agent,~~ or employee thereof, who willfully violates the provisions of section 15-20.4-05, or who willfully fails or refuses to deposit with the board the records required by the board under this chapter, is guilty of a class B misdemeanor. The criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the attorney general of this state or a state's attorney pursuant to section 15-20.4-14.

SECTION 11. AMENDMENT. Section 15-20.4-13 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-13. Jurisdiction of courts - Service of process. Any postsecondary educational institution not exempt from this chapter, ~~whether or not a resident of or having~~ which has a place of business in this state, and which instructs or educates, or offers to instruct or educate, enrolls or offers to enroll, or contracts or offers to contract, to provide instructional or educational services in this state, whether such instruction or services are provided in person or by correspondence, to a resident of this state, or which offers to award or awards any educational credentials to a resident of this state, submits such institution, and if a natural person his, the person's personal representative, to the jurisdiction of the courts of this state, concerning any claim for relief arising therefrom, and for the purpose of enforcement of this chapter by injunction pursuant to section 15-20.4-14. Service of process upon any such institution subject to the jurisdiction of the courts of this state may be made by personally serving the summons upon the defendant within or outside this state, in the manner prescribed by the North Dakota Rules of Civil Procedure, with the same force and effect as if the summons had been personally served within this state. Nothing contained in this section limits or affects the right to serve any process as prescribed by the North Dakota Rules of Civil Procedure.

SECTION 12. AMENDMENT. Section 15-20.4-14 of the North Dakota Century Code is amended and reenacted as follows:

15-20.4-14. Enforcement - Injunction.

1. The attorney general of this state, or the state's attorney of any county in which a postsecondary educational institution ~~or an agent thereof~~ is found, at the request of the board or on ~~his~~ the attorney general's own motion, may bring any appropriate action or proceeding (including injunctive proceedings, or criminal proceedings pursuant to section 15-20.4-12) in any court of competent jurisdiction for the enforcement of the provisions of this chapter.
2. Whenever it appears to the board that any person, ~~agent~~, group, or entity is, is about to, or has been violating any of the provisions of this chapter or any of the lawful rules, regulations, or orders of the board, the board may, on its own motion or on the written complaint of any person, file a petition for injunction in the name of the board in any court of competent jurisdiction in this state against such person, group, or entity, for the purpose of enjoining such violation or for an order directing compliance with the provisions of this chapter, and all rules, regulations, and orders issued hereunder. It is not necessary that the board allege or prove that it has no adequate remedy at law. The right of injunction provided in this section is in addition to any other legal remedy which the board has, and is in addition to any right of criminal prosecution provided by law; provided, however, the board may not obtain a temporary restraining order without notice to the person, group, or entity affected. The existence of board action with respect to alleged violations of this chapter does not operate as a bar to an action for injunctive relief pursuant to this section.

SECTION 13. EMERGENCY. This Act is declared to be an emergency measure.

Speaker of the House

President of the Senate

Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Fifty-sixth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1151 and that two-thirds of the members-elect of the House of Representatives voted in favor of said law.

Vote: Yeas 94 Nays 0 Absent 4

Speaker of the House

Chief Clerk of the House

This certifies that two-thirds of the members-elect of the Senate voted in favor of said law.

Vote: Yeas 47 Nays 0 Absent 2

President of the Senate

Secretary of the Senate

Received by the Governor at _____ M. on _____, 1999.

Approved at _____ M. on _____, 1999.

Governor

Filed in this office this _____ day of _____, 1999,
at _____ o'clock _____ M.

Secretary of State