

HOUSE BILL NO. 1128

Introduced by

Education Committee

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

1 A BILL for an Act to create and enact sections 15-20.4-01.1 and 15-20.4-01.2 of the North
2 Dakota Century Code, relating to a commission on private postsecondary education; and to
3 amend and reenact sections 15-20.4-01, 15-20.4-02, 15-20.4-02.1, 15-20.4-03, 15-20.4-03.1,
4 and 15-20.4-04, subsections 2, 3, and 4 of section 15-20.4-05, sections 15-20.4-10, 15-20.4-11,
5 15-20.4-12, and 15-20.4-14, subsection 4 of section 15-20.4-15, section 15-20.4-17,
6 subsection 2 of section 15-20.4-18, and subsection 1 of section 54-07-01.2 of the North Dakota
7 Century Code, relating to authorizations to operate private postsecondary educational
8 institutions in this state and resignation of commission members at the beginning of a
9 governor's four-year term.

10 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

13 **15-20.4-01. Definitions.**

14 As used in this chapter:

- 15 1. "Authorization to operate" or like term means approval of the ~~board~~commission to
16 operate or to contract to operate a private postsecondary educational institution in this
17 state.
- 18 2. "~~Board~~Commission" means the ~~state board for career and technical~~
19 ~~education~~commission on private postsecondary education.
- 20 3. "Education" or "educational services" or like term includes any class, course, or
21 program of training, instruction, or study.
- 22 4. "Educational credentials" means degrees, diplomas, certificates, transcripts, reports,
23 documents, or letters of designation, marks, appellations, series of letters, numbers, or
24 words which signify, purport, or are generally taken to signify enrollment, attendance,

1 progress, or satisfactory completion of the requirements or prerequisites for education
2 at a postsecondary educational institution operating in this state.

3 5. "Entity" includes any company, firm, society, association, partnership, corporation,
4 limited liability company, and trust.

5 6. ~~"Executive officer" means the director of career and technical education.~~

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

13 ~~8-7.~~ "To grant" includes awarding, selling, conferring, bestowing, or giving.

14 ~~9-8.~~ "To offer" includes, in addition to its usual meanings, advertising, publicizing, soliciting,
15 or encouraging any person, directly or indirectly, in any form, to perform the act
16 described.

17 ~~10-9.~~ "To operate" an educational institution, or like term, means to establish, keep, or
18 maintain any facility or location in this state where, from, or through which, education
19 is offered or given, or educational credentials are offered or granted, and includes
20 contracting with any person, group, or entity to perform any such act.

21 **SECTION 2.** Section 15-20.4-01.1 of the North Dakota Century Code is created and
22 enacted as follows:

23 **15-20.4-01.1. Commission on private postsecondary education - Composition.**

24 1. The commission on private postsecondary education consists of:

25 a. Two individuals representing business and industry in this state, recommended
26 by the North Dakota chamber of commerce and appointed by the governor.

27 b. One individual representing the state's public universities offering four-year
28 degrees and graduate degrees, recommended by the state board of higher
29 education and appointed by the governor.

- 1 c. One individual representing the state's public colleges offering two-year degrees.
2 recommended by the state board of higher education and appointed by the
3 governor.
- 4 d. One individual representing the department of career and technical education,
5 recommended by the state board for career and technical education and
6 appointed by the governor.
- 7 e. One individual representing job service North Dakota, recommended by the
8 executive director of job service North Dakota and appointed by the governor.
- 9 f. One individual representing the private, nonprofit colleges and universities in this
10 state, recommended by the private, nonprofit college or university whose turn it is
11 to make the recommendation, and appointed by the governor. The private,
12 nonprofit colleges and universities shall take turns, in alphabetical order, in
13 recommending individuals to the governor.
- 14 g. One individual representing the private, for-profit colleges and schools in this
15 state, recommended by the private, for-profit college or school whose turn it is to
16 make the recommendation, and appointed by the governor. The private, for-profit
17 colleges and schools shall take turns, in alphabetical order, in recommending
18 individuals to the governor.
- 19 2. Appointees serve for six-year terms, staggered so that the terms of two or three
20 members expire on June thirtieth of each odd-numbered year. This results in the initial
21 terms of two members being two years, and the initial terms of three other members
22 being four years. If a vacancy occurs, the governor shall appoint an individual to serve
23 for the duration of the unexpired term, in the same manner as the individual whose
24 unexpired term is being filled, was appointed.
- 25 3. Commission members are entitled to receive compensation at the rate of sixty-two
26 dollars and fifty cents per day and reimbursement for expenses, from the biennial
27 appropriation for the North Dakota university system, as provided by law for state
28 officers, if they are attending commission meetings or performing duties directed by
29 the commission. However, no compensation may be paid under this section to a
30 member who receives compensation or salary as a state employee or official.
- 31 4. The commission shall annually elect one member to serve as the chairman.

1 **SECTION 3.** Section 15-20.4-01.2 of the North Dakota Century Code is created and
2 enacted as follows:

3 **15-20.4-01.2. Commission on private postsecondary education - Staff.**

4 The North Dakota university system shall employ and compensate personnel necessary to
5 enable the commission to carry out its duties under this chapter. The commission shall be
6 administered by and housed within the North Dakota university system, facilitating access to
7 consultation and expertise possessed by the North Dakota university system with regard to
8 higher education administration and instruction.

9 **SECTION 4. AMENDMENT.** Section 15-20.4-02 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **15-20.4-02. Exemptions.**

12 The following education and educational institutions are exempted from the provisions of
13 this chapter:

- 14 1. Institutions exclusively offering instruction at any or all levels from preschool through
15 the twelfth grade.
- 16 2. Education sponsored by a bona fide trade, business, professional, or fraternal
17 organization, so recognized by the ~~board~~commission, solely for that organization's
18 membership, or offered on a no-fee basis.
- 19 3. Education solely avocational or recreational in nature, as determined by the
20 ~~board~~commission, and institutions offering such education exclusively.
- 21 4. Certain education provided through short-term programs as determined by the
22 ~~board~~commission.
- 23 5. Education offered by charitable institutions, organizations, or agencies, so recognized
24 by the ~~board~~commission, provided the education is not advertised or promoted as
25 leading toward educational credentials.
- 26 6. Postsecondary educational institutions established, operated, and governed by this or
27 any other state or its political subdivisions, as determined by the ~~board~~commission
28 and any educational consortium that includes one or more of the institutions.
- 29 7. Private four-year institutions chartered or incorporated and operating in the state prior
30 to July 1, 1977, so long as the institutions retain accreditation by national or regional
31 accrediting agencies recognized by the United States office of education.

- 1 8. Schools of barbering regulated under chapter 43-04.
- 2 ~~9.8.~~ Schools of cosmetology regulated under chapter 43-11.
- 3 ~~10.9.~~ Schools of nursing regulated under chapter 43-12.1.
- 4 ~~11.10.~~ Native American colleges operating in this state, established by federally recognized
- 5 Indian tribes.
- 6 ~~12.11.~~ Postsecondary educational institutions not operating in this state.

7 **SECTION 5. AMENDMENT.** Section 15-20.4-02.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **15-20.4-02.1. Voluntary application for authorization to operate.**

10 Although a postsecondary educational institution not operating in this state is exempt from
11 this chapter by section 15-20.4-02, the institution may subject itself to the requirements of this
12 chapter by applying for and being awarded an authorization to operate by the
13 ~~board~~commission. An authorization to operate, as applied to a postsecondary educational
14 institution not operating in this state, means approval of the ~~board~~commission to offer to
15 students in this state educational services leading to educational credentials.

16 **SECTION 6. AMENDMENT.** Section 15-20.4-03 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **15-20.4-03. BoardCommission powers and duties.**

19 The ~~board~~commission has, in addition to the powers and duties now vested in it by law, the
20 following powers and duties to:

21 1. Establish and require compliance with minimum standards and criteria for
22 postsecondary educational institutions under this chapter. The standards and criteria
23 must include quality of education, ethical and business practices, health and safety
24 and fiscal responsibility, which applicants for authorization to operate shall meet:

- 25 a. Before such authorization may be issued; and
- 26 b. To continue such authorization in effect.

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

29 2. Prescribe forms and conditions for, receive, investigate as it may deem necessary, and
30 act upon applications for authorization to operate postsecondary educational
31 institutions.

- 1 3. Maintain a list of postsecondary educational institutions authorized to operate in this
2 state under the provisions of this chapter. The list must be available for the information
3 of the public.
- 4 4. Negotiate and enter into interstate reciprocity agreements with similar agencies in
5 other states, if in the judgment of the boardcommission such agreements are or will be
6 helpful in effectuating the purposes of this chapter; provided, however, that nothing
7 contained in any such reciprocity agreement may be construed as limiting the
8 board'scommission's powers, duties, and responsibilities with respect to independently
9 investigating or acting upon any application for authorization to operate, or any
10 application for renewal of such authorization to operate, a postsecondary educational
11 institution, or with respect to the enforcement of any provision of this chapter, or any of
12 the rules or regulations promulgated hereunder.
- 13 5. Receive and cause to be maintained as a permanent file, copies of academic records
14 specified by the boardcommission in the event any postsecondary educational
15 institution required to have an authorization to operate under this chapter proposes to
16 discontinue its operation.
- 17 6. Promulgate such rules, regulations, and procedures necessary or appropriate for the
18 conduct of its work and the implementation of this chapter, and to hold such hearings
19 as it may deem advisable in accordance with chapter 28-32 or as required by law in
20 developing such rules, regulations, and procedures, or in aid of any investigation or
21 inquiry.
- 22 7. Investigate as it may deem necessary, on its own initiative or in response to any
23 complaint lodged with it, any person, group, or entity subject to, or reasonably believed
24 by the boardcommission to be subject to, the jurisdiction of this chapter; and in
25 connection therewith to subpoena any persons, books, records, or documents
26 pertaining to such investigation. The boardcommission may require answers in writing
27 under oath to questions propounded by the boardcommission and may administer an
28 oath or affirmation to any person in connection with any investigation. The
29 boardcommission may, after hearing, revoke or suspend authorizations to operate.
30 Subpoenas issued by the boardcommission are enforceable by any district court.

1 8. Require fees and bonds from postsecondary educational institutions in such sums and
2 under such conditions as it may establish; provided, that fees established may not
3 exceed the reasonable cost of the service being provided.

4 9. Exercise other powers and duties implied but not enumerated in this section but in
5 conformity with the provisions of this chapter which, in the judgment of the
6 ~~board~~commission, are necessary in order to carry out the provisions of this chapter.

7 **SECTION 7. AMENDMENT.** Section 15-20.4-03.1 of the North Dakota Century Code is
8 amended and reenacted as follows:

9 **15-20.4-03.1. Authorization fee fund.**

10 There is created an authorization fee fund into which fees provided to the ~~board~~commission
11 upon application for authorization to operate a postsecondary educational institution under
12 section 15-20.4-03 must be deposited. The fund and interest earned on the fund may be spent
13 by the ~~board~~commission pursuant to legislative appropriation exclusively to carry out the intent
14 and purpose of this chapter. This fund is not subject to section 54-44.1-11.

15 **SECTION 8. AMENDMENT.** Section 15-20.4-04 of the North Dakota Century Code is
16 amended and reenacted as follows:

17 **15-20.4-04. Minimum standards - Exceptions.**

- 18 1. All postsecondary educational institutions must be accredited by national or regional
19 accrediting agencies recognized by the United States department of education. The
20 ~~board~~commission may additionally require such further evidence and make such
21 further investigation as in its judgment may be necessary. Any postsecondary
22 educational institution operating in this state seeking its first authorization to operate
23 may be issued a provisional authorization to operate on an annual basis until the
24 institution becomes eligible for accreditation by a recognized accrediting agency.
25 Institutions issued a provisional authorization to operate must demonstrate a
26 substantial good-faith showing of progress toward such status. Only upon
27 accreditation shall an institution become eligible for a regular authorization to operate.
- 28 2. This section does not apply to postsecondary educational institutions operating in this
29 state that do not grant degrees and that offer mainly hands-on training in low census
30 occupations, as determined by the ~~board~~commission. "Degree" as used in this
31 subsection means a document that provides evidence or demonstrates completion of

1 a course of instruction that results in the attainment of a rank or level of associate or
2 higher.

3 **SECTION 9. AMENDMENT.** Subsections 2, 3 and 4 of section 15-20.4-05 of the North
4 Dakota Century Code are amended and reenacted as follows:

5 2. Instruct or educate, or offer to instruct or educate, including advertising or soliciting for
6 such purpose, enroll or offer to enroll, contract or offer to contract with any person for
7 such purpose, or award any educational credential, or contract with any institution or
8 party to perform any such act, at a facility or location in this state unless such person,
9 group, or entity observes and is in compliance with the minimum standards and criteria
10 established by the ~~board~~commission pursuant to subsection 1 of section 15-20.4-03,
11 and the rules and regulations adopted by the ~~board~~commission pursuant to subsection
12 6 of section 15-20.4-03.

13 3. Use the term "university", "institute", or "college" without authorization to do so from
14 the ~~board~~commission.

15 4. Grant, or offer to grant, educational credentials, without authorization to do so from the
16 ~~board~~commission.

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

19 **15-20.4-10. BoardCommission review.**

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

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

27 **15-20.4-11. Violations - Civil penalty.**

28 Any person, group, or entity, or any owner, officer, or employee thereof, who violates the
29 provisions of section 15-20.4-05, or who fails or refuses to deposit with the ~~board~~commission
30 the records required by the ~~board~~commission under this chapter, is subject to a civil penalty not
31 to exceed one hundred dollars for each violation. Each day's failure to comply with the

1 provisions of said sections is a separate violation. Such fine may be imposed by the
2 ~~board~~commission in an administrative proceeding or by any court of competent jurisdiction.

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

5 **15-20.4-12. Violations - Criminal penalty.**

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

12 **SECTION 13. AMENDMENT.** Section 15-20.4-14 of the North Dakota Century Code is
13 amended and reenacted as follows:

14 **15-20.4-14. Enforcement - Injunction.**

- 15 1. The attorney general of this state, or the state's attorney of any county in which a
16 postsecondary educational institution is found, at the request of the ~~board~~commission
17 or on the attorney general's own motion, may bring any appropriate action or
18 proceeding, (including injunctive proceedings, or criminal proceedings pursuant to
19 section 15-20.4-12), in any court of competent jurisdiction for the enforcement of the
20 provisions of this chapter.
- 21 2. Whenever it appears to the ~~board~~commission that any person, group, or entity is, is
22 about to, or has been violating any of the provisions of this chapter or any of the lawful
23 rules, regulations, or orders of the ~~board~~commission, the ~~board~~commission may, on its
24 own motion or on the written complaint of any person, file a petition for injunction in the
25 name of the ~~board~~commission in any court of competent jurisdiction in this state
26 against such person, group, or entity, for the purpose of enjoining such violation or for
27 an order directing compliance with the provisions of this chapter, and all rules,
28 regulations, and orders issued hereunder. It is not necessary that the
29 ~~board~~commission allege or prove that it has no adequate remedy at law. The right of
30 injunction provided in this section is in addition to any other legal remedy which the
31 ~~board~~commission has, and is in addition to any right of criminal prosecution provided

1 by law; provided, however, the ~~board~~commission may not obtain a temporary
2 restraining order without notice to the person, group, or entity affected. The existence
3 of ~~board~~commission action with respect to alleged violations of this chapter does not
4 operate as a bar to an action for injunctive relief pursuant to this section.

5 **SECTION 14. AMENDMENT.** Subsection 4 of section 15-20.4-15 of the North Dakota
6 Century Code is amended and reenacted as follows:

- 7 4. As used in this section, "duly authorized institution of higher learning" means an
8 institution that:
- 9 a. Has accreditation recognized by the United States secretary of education or has
10 the foreign equivalent of such accreditation;
 - 11 b. Has an authorization to operate under this chapter;
 - 12 c. Operates in this state and is exempt from this chapter under section 15-20.4-02;
 - 13 d. Does not operate in this state and is:
 - 14 (1) Licensed by the appropriate state agency; and
 - 15 (2) An active applicant for accreditation by an accrediting body recognized by
16 the United States secretary of education; or
 - 17 e. Has been found by the ~~state board for career and technical education~~commission
18 to meet standards of academic quality comparable to those of an institution
19 located in the United States that has accreditation recognized by the United
20 States secretary of education to offer degrees of the type and level claimed.

21 **SECTION 15. AMENDMENT.** Section 15-20.4-17 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **15-20.4-17. Consumer protection - False academic degrees.**

24 The ~~state board for career and technical education, in collaboration with the North Dakota~~
25 ~~university system,~~commission shall provide via internet web sites, information to protect
26 students, businesses, and others from persons that issue, manufacture, or use false academic
27 degrees.

28 **SECTION 16. AMENDMENT.** Subsection 2 of section 15-20.4-18 of the North Dakota
29 Century Code is amended and reenacted as follows:

- 30 2. As used in this section:

- 1 a. "Accreditation mill" means an accrediting entity that is not recognized by the
2 United States department of education or the ~~state board for career and technical~~
3 ~~education~~commission.
- 4 b. "Operate" includes to use an address, telephone number, facsimile number, or
5 other contact point located in North Dakota.

6 **SECTION 17. AMENDMENT.** Subsection 1 of section 54-07-01.2 of the North Dakota
7 Century Code is amended and reenacted as follows:

- 8 1. Notwithstanding sections 2-05-01, 4-18.1-04, 4.1-05-02, 6-01-03, 6-09-02.1,
9 12-55.1-02, 12-59-01, 15-20.4-01.1, 15-39.1-05.1, 15.1-01-01, 15.1-13-02, 20.1-02-23,
10 23-01-02, 23-25-02, 36-01-01, 37-18.1-01, 50-06-05.6, 50-06.1-16, 54-34.3-10,
11 54-54-02, 55-01-01, 55-06-01, 61-02-04, and 61-28-03, all members of the following
12 boards and commissions must, subject to the limitations of this section, be considered
13 to have resigned from such boards and commissions effective January first of the first
14 year of each four-year term of the governor:
- 15 a. The aeronautics commission.
- 16 b. The milk marketing board.
- 17 c. The dairy promotion commission.
- 18 d. The state banking board.
- 19 e. The state credit union board.
- 20 f. The advisory board of directors to the Bank of North Dakota.
- 21 g. The pardon advisory board.
- 22 h. The state parole board.
- 23 i. The commission on private postsecondary education.
- 24 j. The state board of public school education.
- 25 j-k. The education standards and practices board.
- 26 k-l. The board of trustees for the teachers' fund for retirement.
- 27 l-m. The state game and fish advisory board.
- 28 m-n. The health council.
- 29 n-o. The air pollution control advisory council.
- 30 o-p. The board of animal health.
- 31 p-q. The administrative committee on veterans' affairs.

Sixty-second
Legislative Assembly

- 1 q-r. The committee on aging.
- 2 r-s. The committee on employment of people with disabilities.
- 3 s-t. The commission on the status of women.
- 4 t-u. The North Dakota council on the arts.
- 5 u-v. The state historical board.
- 6 v-w. The Yellowstone-Missouri Rivers confluence commission.
- 7 w-x. The state water commission.
- 8 x-y. The state water pollution control board.