

Sixty-ninth  
Legislative Assembly  
of North Dakota

## PROPOSED AMENDMENTS TO

### HOUSE BILL NO. 1064

Introduced by

Education Committee

(At the request of the State Board of Higher Education)

1 A BILL for an Act to create and enact a new section to chapter 15-18.1 of the North Dakota  
2 Century Code, relating to the national council for state authorization reciprocity agreements  
3 membership; to amend and reenact sections 15-18.1-01, 15-18.1-02, 15-18.1-05, 15-18.1-06,  
4 and 15-18.1-10, and subsection 4 of section 15-18.1-13 of the North Dakota Century Code,  
5 relating to postsecondary education institution standards; and to repeal section 15-18.1-03 of  
6 the North Dakota Century Code, relating to the authorization of a postsecondary educational  
7 institution not operating in this state.

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

9 **SECTION 1. AMENDMENT.** Section 15-18.1-01 of the North Dakota Century Code is  
10 amended and reenacted as follows:

11 **15-18.1-01. Definitions.**

12 As used in this chapter:

- 13 1. "Accredited" means approved by an accrediting body recognized by the United States  
14 department of education.
- 15 2. "Authorization to operate" or like term means approval of the board or North Dakota  
16 university system office, as applicable, to operate or to contract to operate a  
17 postsecondary educational institution in this state.
- 18 ~~2-3.~~ "Board" means the state board of higher education.
- 19 4. "Distance education" is education using one or more types of technology to deliver  
20 instruction to a student who is separated from the instructor and to support regular and

1 substantive interaction between the student and the instructor synchronously or  
2 asynchronously.

3 ~~3.5.~~ "Education" or "educational services" or like term includes any class, course, or  
4 program of training, instruction, or study.

5 ~~4.6.~~ "Educational credentials" means ~~degrees, diplomas, certificates, transcripts, reports,~~  
6 ~~documents, or letters of designation, marks, appellations, series of letters, numbers, or~~  
7 ~~words which signify, purport, or are generally taken to signify enrollment, attendance,~~  
8 ~~progress, or satisfactory completion of the requirements or prerequisites for education~~  
9 ~~at a postsecondary educational institution operating in this state~~ postsecondary  
10 credential leading to a diploma; certificate; or an associate, bachelor, master, or  
11 doctorate degree. This term does not include a postsecondary credential leading to an  
12 honorary degree or other unearned degree.

13 7. "Person" means an individual, organization, government, political subdivision, or  
14 government agency or instrumentality. The term does not include environmental  
15 elements, artificial intelligence, an animal, or an inanimate object.

16 ~~5.8.~~ "Physical presence" means a presence established by:

17 a. Maintaining a physical location in the state where students receive instruction or  
18 providing instruction to students at a designated location and time in the state;

19 b. Maintaining an administrative office in the state for students receiving in-person  
20 instruction or distance education;

21 c. Maintaining a mailing address in the state and a local telephone number;

22 d. Providing office space in the state for instructional or noninstructional staff; and

23 e. Providing student support services at a physical location in the state, whether  
24 operated by or on behalf of the institution.

25 9. "Postsecondary educational institution" means an academic, technical, home study,  
26 business, professional or other school, college, or university, or other person,  
27 operating in this state, offering educational credentials or offering instruction or  
28 educational services, primarily to any individual who has completed or terminated  
29 secondary education or who is beyond the age of compulsory high school attendance,  
30 for attainment of educational, or professional objectives at the associate in arts level or

- 1            higher agency or political subdivision of the state, individual, partnership, company,  
2            firm, society, trust, association, corporation, or any combination that:  
3            a. Is, owns, or operates a postsecondary educational institution.  
4            b. Provides a postsecondary course of instruction leading to a degree.  
5            c. Uses in its name the term "college", "academy", "institute", or "university" or a  
6            similar term to imply the person is primarily engaged in the education of students  
7            at the postsecondary level, and charges for its services.

8            ~~9. "Presence" means a location in North Dakota where a student may participate in a~~  
9            ~~structured activity that is not a proctored examination, which is related to a school's~~  
10           ~~distance education course of instruction.~~

11        ~~6.10.~~ "To grant" includes awarding, selling, conferring, bestowing, or giving.

12        ~~7.11.~~ "To offer" includes, in addition to its usual meanings, advertising, publicizing, soliciting,  
13           or encouraging any individual, directly or indirectly, in any form, to perform the act  
14           described.

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

19           **SECTION 2. AMENDMENT.** Section 15-18.1-02 of the North Dakota Century Code is  
20           amended and reenacted as follows:

21           **15-18.1-02. Exemptions.**

22           The following education and educational schools or institutions are exempted from the  
23           provisions of this chapter:

- 24           1. ~~Education sponsored by a bona fide~~ Educational programs conducted by a trade,  
25           business, professional, or fraternal organization, so recognized by the board, solely for  
26           that organization's membership, or offered on a no-fee basis.  
27           2. Education offered by charitable institutions, organizations, or agencies, so recognized  
28           by the board, provided the education is not advertised or promoted as leading toward  
29           educational credentials.

- 1        3. ~~Postsecondary educational institutions established, operated, and governed by this or~~  
2        ~~any other state or its political subdivisions, as determined by the board and any~~  
3        ~~educational consortium that includes one or more of the institutions.~~
- 4        4. Private four-year institutions chartered or incorporated and operating in the state prior  
5        to July 1, 1977, so long as the institutions retain accreditation ~~by national or regional~~  
6        ~~accrediting agencies and are~~ recognized by the United States ~~office~~department of  
7        education.
- 8        5. Schools of nursing regulated under chapter 43-12.1.
- 9        6. Native American colleges operating in this state, established by federally recognized  
10       Indian tribes.
- 11       7. ~~Postsecondary educational institutions not operating in this state.~~
- 12       ~~8-7.~~ Institutions whose only physical presence in this state consists of students enrolled in  
13       practicums, internships, clinicals, or student teaching in this state.
- 14       ~~9-8.~~ Postsecondary career schools regulated under chapter 15-20.4.

15        **SECTION 3. AMENDMENT.** Section 15-18.1-05 of the North Dakota Century Code is  
16        amended and reenacted as follows:

17        **15-18.1-05. Minimum standards to operate with a physical presence in North Dakota.**

18        All postsecondary educational institutions with a physical presence in the state must be  
19        ~~accredited by national or regional accrediting agencies recognized by the United States~~  
20        ~~department of education, have a federal financial responsibility composite score greater than~~  
21        one and one-half, and provide students with institutional public disclosures as defined by the  
22        board. The board additionally may ~~additionally~~ require ~~such~~ further evidence and make ~~such~~  
23        further investigation as in its judgment may be necessary. ~~Any postsecondary educational~~  
24        ~~institution operating in this state seeking its first authorization to operate may be issued a~~  
25        ~~provisional authorization to operate on an annual basis until the institution becomes eligible for~~  
26        ~~accreditation by a recognized accrediting agency. Institutions issued a provisional authorization~~  
27        ~~to operate must demonstrate a substantial good-faith showing of progress toward such status.~~  
28        ~~Only upon~~Upon accreditation may an institution may become eligible for a regular state  
29        authorization to operate. An institution shall give written notification to the board within thirty  
30        days of any change to the institution's accreditation status, change of ownership, or change in  
31        federal financial responsibility composite score.

1       **SECTION 4. AMENDMENT.** Section 15-18.1-06 of the North Dakota Century Code is  
2 amended and reenacted as follows:

3       **15-18.1-06. Prohibition - Penalty.**

4       1. A person may not:

5           a. Operate, in this state, a postsecondary educational institution not exempted from  
6 the provisions of this chapter, unless the institution has a currently valid  
7 authorization to operate issued under this chapter.

8           b. Instruct or educate, or offer to instruct or educate, including advertising or  
9 soliciting for such purpose, enroll or offer to enroll, contract or offer to contract  
10 with any person for such purpose, or award any educational credential, or  
11 contract with any institution or party to perform any such act, at a facility or  
12 location in this state unless ~~such~~the person, group, or entity observes and is in-  
13 ~~compliance~~complies with the minimum standards and criteria established by the  
14 board and the policies adopted by the board.

15           c. Use the term "university", "institute", or "college" without authorization to do so  
16 from the board.

17           d. Grant, or offer to grant, educational credentials, without authorization to do so  
18 from the board.

19       2. A person who violates this section, or who fails or refuses to deposit with the board the  
20 records required by the board under this chapter, is subject to a civil penalty not to  
21 exceed ~~one hundred~~one thousand five hundred dollars for each violation. Each day's  
22 failure to comply with these provisions is a separate violation. The fine may be  
23 imposed by the board ~~in an administrative proceeding or by any court of competent~~  
24 ~~jurisdiction~~consistent with board policy and procedure.

25       3. A person who willfully violates this section, or who willfully fails or refuses to deposit  
26 with the board the records required by the board under this chapter, is guilty of a  
27 class B misdemeanor. The criminal sanctions may be imposed by a court of  
28 competent jurisdiction in an action brought by the attorney general of this state or a  
29 state's attorney pursuant to section 15-18.1-12.

30       4. The board may suspend or revoke a person's authorization to offer distance education  
31 to North Dakota residents until the person complies with the national council for state

1            authorization reciprocity agreements membership requirements, unless the person is  
2            exempt under section 7 of this Act.

3            5. The North Dakota university system office will notify in writing a person found to be out  
4            of compliance and the person will have thirty days to remedy the deficiency. If the  
5            deficiency is not remedied within the thirty-day period, penalties may be assessed  
6            under subsection 2.

7            **SECTION 5. AMENDMENT.** Section 15-18.1-10 of the North Dakota Century Code is  
8 amended and reenacted as follows:

9            **15-18.1-10. Board review.**

10           A person aggrieved by a decision of the boardNorth Dakota university system respecting  
11 denial or revocation of an authorization to operate, or the placing of conditions thereon, whether  
12 on initial application or on application for renewal may appeal to the board in the manner  
13 provided by the board. Appeals must be filed with the North Dakota university system within  
14 thirty days of receiving the notice of noncompliance. The board shall review the appeal and  
15 issue a final decision.

16           **SECTION 6. AMENDMENT.** Subsection 4 of section 15-18.1-13 of the North Dakota  
17 Century Code is amended and reenacted as follows:

18           4. As used in this section, "duly authorized institution of higher learning" means an  
19 institution that:

- 20           a. Has accreditation recognized by the United States secretarydepartment of  
21           education or has the foreign equivalent of such accreditation;
- 22           b. Has an authorization to operate under this chapter or under chapter 15-20.4;
- 23           c. Operates in this state, and is exempt from this chapter under section 15-18.1-02  
24           or is exempt from chapter 15-20.4 under section 15-20.4-02;
- 25           d. Does not operate in this state and is:
- 26           (1) Licensed by the appropriate state agency; and
- 27           (2) An active applicant for accreditation by an accrediting body recognized by  
28           the United States secretarydepartment of education; or
- 29           e. Has been found by the state board of higher education or the state board for  
30           career and technical education to meet standards of academic quality  
31           comparable to those of an institution located in the United States that has

1 accreditation recognized by the United States ~~secretary~~department of education  
2 to offer degrees of the type and level claimed.

3 **SECTION 7.** A new section to chapter 15-18.1 of the North Dakota Century Code is created  
4 and enacted as follows:

5 **Required national council for state authorization reciprocity agreements membership**

6 **- Exemption.**

7 1. A postsecondary educational institution offering distance education programs to  
8 students in North Dakota must be a member of the national council for state  
9 authorization reciprocity agreements and comply with the requirements of the council.  
10 Institutions must adhere to all standards, policies, and fees established by the national  
11 council for state authorization reciprocity agreements for membership and  
12 participation, including reporting requirements, quality standards, and consumer  
13 protection measures.

14 2. A postsecondary educational institution that is ineligible to participate in national  
15 council for state authorization reciprocity agreements due to composite score  
16 requirements is exempt from the requirements under subsection 1 if the  
17 postsecondary educational institution:

18 a. Is an eligible participant in student financial aid programs under title IV of the  
19 Higher Education Act of 1965 [Pub. L. 89-329; 79 Stat. 1219; 20 U.S.C. 1001  
20 et seq.]; and

21 b. At the institution level, has a financial responsibility score calculated by an  
22 independent auditor using the methodology prescribed by the United States  
23 department of education greater than one and one-half.

24 3. The state board of higher education shall adopt a policy to implement this section,  
25 which may include a fee.

26 **SECTION 8. REPEAL.** Section 15-18.1-03 of the North Dakota Century Code is repealed.