
A BILL FOR AN ACT

RELATING TO EDUCATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

PART I

1
2 SECTION 1. In October 2010, the United States Department
3 of Education issued new regulations for programs authorized
4 under Title IV of the Higher Education Act of 1965, as amended,
5 to hold programs accountable for preparing students for gainful
6 employment, protect students from misleading recruiting
7 practices, ensure that only eligible students receive financial
8 aid, and strengthen federal student aid programs at for-profit,
9 non-profit, and public institutions. The regulations also
10 include requirements for state authorization of institutions
11 that offer educational programs beyond secondary education for
12 purposes of federal program eligibility. Federal expectations
13 have major implications for the State and post-secondary
14 institutions, as there is now a clear federal requirement that
15 post-secondary institutions receive authorization from the State
16 to operate.

17 The state post-secondary education commission, established
18 under section 304A-3151, Hawaii Revised Statutes, qualifies the



1 State to receive funds made available under the Higher Education
2 Act of 1965, as amended, and may serve as the state agency for
3 the receipt of federal funds when necessary. However, the
4 commission does not authorize institutions to operate
5 educational programs beyond secondary education, as may be
6 required under new federal regulations. Further, the commission
7 is established under the University of Hawaii for administrative
8 purposes. The legislature finds that reconstituting the post-
9 secondary commission and placing it under the department of
10 commerce and consumer affairs will result in an entity that is
11 more broadly representative of post-secondary education in the
12 State and more appropriate to serve as the authorizing state
13 agency for the diverse institutions that operate educational
14 programs beyond secondary education. In addition, the
15 department of commerce and consumer affairs is the most
16 appropriate entity to deal with consumer complaints by students
17 at post-secondary institutions, which is a crux of the federal
18 requirements.

19 The State was unable to satisfy all of the requirements of
20 the Higher Education Act of 1965, as amended, relating to state
21 authorization by the July 1, 2011, deadline. However, the
22 United States Department of Education provided the opportunity



1 for states and institutions to receive an extension to July 1,
2 2013, for certain regulations. In the meantime, it is the
3 intent of the legislature to proactively seek solutions by
4 determining what actions and changes are required for the State
5 to come into compliance with the new regulations.

6 It is imperative that Hawaii does not jeopardize the
7 receipt of federal funds under Title IV of the Higher Education
8 Act of 1965, as amended. According to the auditor's 2012 Study
9 of the Higher Education Act, "[r]oughly 63,000 students in
10 Hawaii received more than \$283,000,000 in Title IV funds in
11 F[iscal] Y[ear] 2011 - about \$4,500 per student."

12 The purpose of this Act is to bring Hawaii into compliance
13 with Title IV of the Higher Education Act of 1965, as amended,
14 by establishing the post-secondary education commission within
15 the department of commerce and consumer affairs and creating the
16 framework for authorizing private post-secondary educational
17 institutions in the State.

18 **PART II**

19 SECTION 2. The Hawaii Revised Statutes is amended by
20 adding a new chapter to be appropriately designated and to read
21 as follows:

22 **"CHAPTER**



1 **POST-SECONDARY EDUCATION AUTHORIZATION**

2 § -1 **Definitions.** Whenever used in this chapter, unless
3 the context otherwise requires:

4 "Accredited" means the status of public recognition that a
5 nationally recognized accrediting agency grants to an
6 institution or educational program that meets the agency's
7 established requirements.

8 "Alternative enrollment" means the opportunity for a
9 student enrolled in a private college or university that ceases
10 operation to meet the student's educational objectives through
11 education provided by another authorized private college or
12 university, the University of Hawaii system, an area vocational
13 school, or any other educational arrangement acceptable to the
14 department and the commission.

15 "Authorization" means the authorization granted to a
16 private college, university, seminary, or religious training
17 institution by the commission as provided in this chapter and
18 any applicable rules and policies. Authorization is not an
19 endorsement by either the commission or the department.

20 "Commission" means the state post-secondary education
21 commission created pursuant to section -3.

1 "Degree" means a statement, diploma, certificate, or other
2 writing in any language that indicates or represents, or is
3 intended to indicate or represent, that the person named thereon
4 is learned in or has satisfactorily completed a prescribed
5 course of study in a particular field of endeavor or that the
6 person named thereon has demonstrated proficiency in a field of
7 endeavor as a result of formal preparation or training.

8 "Department" means the department of commerce and consumer
9 affairs.

10 "Director" means the director of commerce and consumer
11 affairs.

12 "Enrollment agreement" means the contract prepared by a
13 private college, university, seminary, or religious training
14 institution that a student signs to indicate agreement to the
15 terms of admission, delivery of instruction, and monetary terms
16 as outlined in the private college, university, seminary, or
17 religious training institution's student handbook or catalog.

18 "Governing board" means the elected or appointed group of
19 persons that oversees and controls a private college,
20 university, seminary, or religious training institution.

21 "Home state" means the state where the institution holds
22 its principal accreditation.



1 "Honorary degree" means a statement, diploma, certificate,
2 or other writing in any language that indicates or represents,
3 or that is intended to indicate or represent, that the person
4 named thereon is learned in a field of public service or has
5 performed outstanding public service or that the person named
6 thereon has demonstrated proficiency in a field of endeavor
7 without having completed formal courses of instruction or study
8 or formal preparation or training.

9 "Nationally recognized accrediting agency" means an agency
10 or association that the Secretary of the United States
11 Department of Education recognizes as a reliable authority to
12 determine the quality of education or training offered by an
13 institution.

14 "Out-of-state public institution" means an institution of
15 higher education that is established by a government entity in a
16 state other than Hawaii.

17 "Owner" means:

18 (1) An individual, if a private for-profit college or
19 university is structured as a sole proprietorship;

20 (2) Partners, if a private for-profit college or
21 university is structured as a partnership;



1 (3) Members in a limited liability company, if a private
2 for-profit college or university is structured as a
3 limited liability company; and

4 (4) Shareholders in a corporation that hold a controlling
5 interest, if a private for-profit college or
6 university is structured as a corporation.

7 "Physical presence" means having an established physical
8 location within the State and includes but is not limited to:

9 (1) Having a physical location in the State where students
10 receive synchronous or asynchronous instruction; and

11 (2) Establishing an administrative office in the State in
12 order to:

13 (A) Provide information to prospective students,
14 enrolling students, or the general public about
15 the institution;

16 (B) Provide services to enrolled students;

17 (C) Provide office space for instructional or non-
18 instructional staff; and

19 (D) Maintain an institutional mailing address, street
20 address, or phone number in the State.

21 "Private college" or "university" means a non-public post-
22 secondary education institution having a physical presence in



1 the State that enrolls students in an associate, baccalaureate,
2 or postgraduate degree program. For purposes of the
3 requirements of this chapter, an out-of-state public institution
4 shall be considered as a private college or university.

5 "Seminary" or "religious training institution" means a bona
6 fide religious post-secondary educational institution that has a
7 physical presence in the State, that is exempt from property
8 taxation under the laws of the State, and that offers
9 baccalaureate, master's, or doctoral degrees or diplomas.

10 "Unaccredited post-secondary educational institution" means
11 a degree granting institution that is not accredited or a
12 candidate for accreditation by at least one accrediting agency
13 recognized by the United States Department of Education.

14 "University of Hawaii system" means the post-secondary
15 educational institution, including all campuses and community
16 colleges, established and existing pursuant to article X,
17 section 5, of the Hawaii State Constitution and chapter 304A.

18 § -2 **Applicability of this chapter; exceptions.** (a)

19 This chapter shall apply to private colleges, universities,
20 seminaries, and religious training institutions.

21 (b) This chapter shall not apply to:



- 1 (1) The University of Hawaii system, except with regard to
- 2 complaints pursuant to section -16;
- 3 (2) Private colleges or universities, including
- 4 occupational or vocational schools, that enroll their
- 5 students only at the certificate level in order to
- 6 engage in a profession or vocation that is regulated
- 7 under another chapter;
- 8 (3) Schools or educational programs conducted by firms,
- 9 corporations, or persons for the training of their own
- 10 employees;
- 11 (4) Apprentice or other training programs provided by
- 12 labor unions to labor members or union applicants for
- 13 membership;
- 14 (5) Schools or educational programs that provide courses
- 15 of instruction that do not lead to the conferring of a
- 16 degree;
- 17 (6) Schools or educational programs that offer seminars,
- 18 refresher courses, and programs of instruction
- 19 sponsored by professional, business, or farming
- 20 organizations or associations for their members or the
- 21 employees of their members;



1 (7) Schools or educational programs that offer courses of
2 instruction conducted by public school complex areas;

3 (8) Schools, courses of instruction, or courses of
4 training that are offered by a vendor or the purchaser
5 or prospective purchaser of the vendor's product when
6 the objective of the school or course is to enable the
7 purchaser or the purchaser's employees to gain the
8 skills and knowledge necessary to use the product;

9 (9) Schools and educational programs conducted by
10 religious entities that are owned, controlled,
11 operated, and maintained by a religious organization
12 lawfully operating as a nonprofit religious
13 corporation and awards only religious degrees or
14 certificates, including a certificate of Talmudic
15 studies, an associate of Biblical studies, a bachelor
16 of religious studies, a master of divinity, or a
17 doctor of divinity;

18 (10) Non degree granting post-secondary educational
19 institutions licensed by any state entity or governed
20 by any other chapter of the Hawaii Revised Statutes;
21 and

1 (11) Unaccredited post-secondary educational institutions
2 governed by chapter 446E.

3 (c) Nothing in this subsection shall prohibit an entity
4 listed in subsection (b) from applying for authorization;
5 provided that the entity shall meet the criteria for and comply
6 with all authorization requirements under this chapter.

7 § -3 **Establishment of the state post-secondary education**
8 **commission; membership; administration.** (a) There is
9 established a state post-secondary education commission. The
10 commission shall be placed within the department for
11 administrative purposes.

12 (b) The commission shall consist of five members, of whom
13 three shall be representative of the general public and two
14 shall be representative of public and private nonprofit and for-
15 profit institutions of post-secondary education in the State.
16 Commission members shall be appointed by the governor, without
17 regard to sections 26-34 and 78-4; provided that the
18 appointments shall be subject to the advice and consent of the
19 senate.

20 (c) Upon the appointment of the initial members and by
21 July 1 of each year thereafter, the commission shall elect a
22 chairperson and vice chairperson. If neither the chairperson



1 nor vice chairperson is present to preside over a meeting of the
2 commission, the members present shall select a chairperson pro
3 tempore.

4 (d) Three members of the commission shall constitute a
5 quorum to do business and a concurrence of at least three
6 members shall be necessary to make any action of the commission
7 valid.

8 (e) Commission members shall not serve more than three
9 consecutive three-year terms, not including the member's initial
10 term, with each term starting on July 1; provided that the
11 initial terms that commence after June 30, 2013, shall be
12 staggered as follows:

13 (1) Two members, including the chairperson, to serve
14 three-year terms;

15 (2) Two members to serve two-year terms; and

16 (3) One member to serve a one-year term.

17 (f) Notwithstanding the terms of the members, the governor
18 may fill vacancies on the commission at any time when a vacancy
19 occurs due to resignation, non-participation, the request of a
20 majority of the commission members, or termination by the
21 governor for cause.



1 (g) Commission members shall receive no compensation.
2 When commission duties require that a commission member take
3 leave of the member's duties as a state employee, the
4 appropriate state department shall allow the commission member
5 to be placed on administrative leave with pay and shall provide
6 substitutes, when necessary, to fulfill that member's
7 departmental duties. Members shall be reimbursed for necessary
8 travel expenses incurred in the conduct of official commission
9 business.

10 (h) The commission shall establish operating procedures
11 that shall include conflict of interest procedures for any
12 member whose school of employment or governing board is before
13 the commission.

14 (i) The commission shall operate with dedicated resources
15 and staff qualified to execute the day-to-day responsibilities
16 of the commission pursuant to this chapter.

17 § -4 **Commission's powers and authority.** (a) The
18 commission shall:

19 (1) Unless otherwise provided by law, adopt, amend, and
20 repeal rules pursuant to chapter 91 to carry out the
21 purposes of this chapter;



- 1 (2) Issue declaratory rulings or informal, non-binding
2 interpretations and conduct contested case proceedings
3 pursuant to chapter 91;
- 4 (3) Grant, deny, confirm, forfeit, renew, reinstate, or
5 restore authorizations, including conditional,
6 probationary, or qualified authorizations;
- 7 (4) Revoke, suspend, condition, or otherwise limit the
8 authorization of an institution for any violation of
9 this chapter, applicable rules, or the Higher
10 Education Act of 1965, as amended;
- 11 (5) Establish requirements for authorization in accordance
12 with this chapter;
- 13 (6) Investigate and conduct hearings regarding any
14 violation of this chapter, applicable rules, or the
15 Higher Education Act of 1965, as amended;
- 16 (7) Create fact-finding committees, which may make
17 recommendations to the commission for its
18 consideration;
- 19 (8) Contract with qualified persons, including
20 investigative and legal staff, who may be exempt from
21 chapter 76, to assist the commission in exercising its
22 powers and duties;



- 1 (9) Subpoena witnesses and documents, administer oaths,
2 and receive affidavits and oral testimony, including
3 communications through electronic media;
- 4 (10) Establish the types and amounts of fees that a private
5 college, university, seminary, or religious training
6 institution shall pay pursuant to section -17;
- 7 (11) Establish policies to require authorized institutions,
8 upon request, to submit to the commission, data that
9 is directly related to student enrollment and degree
10 completion and, if applicable, student financial aid
11 and educator preparation programs, which policies
12 shall include a determination as to whether data
13 received may be disclosed to the public;
- 14 (12) Establish policies and procedures for the handling of
15 proprietary information;
- 16 (13) Enter into any post-secondary education authorization
17 reciprocity agreement with other post-secondary
18 educational authorizers of schools whose home state is
19 not Hawaii; provided that the authorization standards
20 of the reciprocity agreement shall be substantially
21 comparable to or exceed the authorization requirements



1 of this chapter and applicable administrative rules;
2 and

3 (14) Do any and all things necessary or incidental to the
4 exercise of the commission's powers and duties.

5 (b) The commission may cooperate with the federal
6 government to qualify the State to receive funds made available
7 under the Higher Education Act of 1965, P.L. 89-329, as amended
8 from time to time, and in addition may serve as the state agency
9 for the receipt of federal funds when federal legislation
10 dealing with higher education or post-secondary education
11 requires, as a condition of the receipt of federal funds, the
12 designation of a state agency that is broadly representative of
13 the general public and of post-secondary education in the State
14 and when agencies other than the commission may not qualify.

15 (c) No funds appropriated by the legislature may be used
16 to aid a person attending an institution not owned or
17 exclusively controlled by the State or a department of the State
18 or to pay for any staff work distributing federal or private
19 funds to students attending such schools. The maximum amount of
20 any grant awarded under the Hawaii state incentive grant program
21 shall be equal to the maximum allowed by federal law.



1 (d) The commission, when appropriate and necessary, may be
2 assisted by other state agencies, including but not limited to
3 the University of Hawaii system and the department of education.

4 § -5 Department's powers and authority. (a) The
5 department shall administer the provisions of this chapter and
6 any administrative rules, policies, and procedures adopted by
7 the commission.

8 (b) To administer this chapter, the commission shall
9 delegate to the department the following authority:

- 10 (1) Maintaining a list of the private colleges,
11 universities, seminaries, and religious training
12 institutions that have been authorized by the
13 commission and making the list available to the
14 public;
- 15 (2) Maintaining a list of the states with which the
16 commission has entered into a post-secondary education
17 authorization reciprocity agreement and making the
18 list available to the public; and
- 19 (3) Appropriately acting on a complaint, concern, or
20 violation concerning a private college, university,
21 seminary, or religious training institution.



1 (c) The commission may also delegate to the department any
2 of its powers or duties as it deems reasonable and proper for
3 the administration of this chapter. These delegated powers and
4 duties may be exercised by the department in the name of the
5 commission; provided that the commission shall not delegate the
6 authority to adopt, amend, or repeal rules or to take final
7 disciplinary action against an institution.

8 § -6 **Awarding degrees.** Notwithstanding any law to the
9 contrary, a person, partnership, corporation, company, society,
10 or association doing business in the State shall not award,
11 bestow, confer, give, grant, convey, or sell to any other person
12 a degree or honorary degree upon which is inscribed, in any
13 language, the word "associate", "bachelor", "baccalaureate",
14 "master", or "doctor", or any abbreviation thereof, or offer
15 courses of instruction or credits purporting to lead to any such
16 degree, unless the person, partnership, corporation, company,
17 society, or association is:

18 (1) A private college, university, seminary, or religious
19 training institution that is authorized pursuant to
20 this chapter; or

21 (2) A part of the University of Hawaii system.



1 § -7 **Authorization to operate in the State; private**
2 **college or university.** (a) To operate in the State, a private
3 college or university shall:

4 (1) Be party to a reciprocity agreement to which the State
5 is a member; or

6 (2) Apply for, on a form prescribed by the department, and
7 receive authorization from the commission; provided
8 that a private college or university shall apply for
9 and obtain a separate authorization for each campus,
10 branch, or site that is separately accredited. A
11 separate authorization shall not be required for
12 additional professional accreditations. A private,
13 nonprofit college or university shall submit
14 verification of its nonprofit status with its
15 application.

16 (b) Upon receiving an application for authorization, the
17 department shall review the application to determine whether the
18 private college or university is institutionally accredited by a
19 regional or national accrediting body recognized by the United
20 States Department of Education. The department shall not
21 recommend, and the commission shall not approve, an application



1 from a private college or university that, in the two years
2 preceding submission of the application, has:

- 3 (1) Had its accreditation suspended or withdrawn;
- 4 (2) Been prohibited from operating in another state; or
- 5 (3) Substantially the same owners, governing board, or
6 principal officers as a private college or university
7 that has:

8 (A) Had its accreditation suspended or withdrawn; or

9 (B) Been prohibited from operating in another state.

10 (c) To operate in the State, a private college or
11 university shall be institutionally accredited on the basis of
12 an on-site review by a regional or national accrediting body
13 recognized by the United States Department of Education;
14 provided that a private college or university may operate for an
15 initial period of _____ without accreditation if the
16 commission determines, in accordance with standards established
17 by the commission, that the private college or university is
18 likely to become accredited in a reasonable period of time or is
19 making progress toward accreditation in accordance with the
20 accrediting body's policies; provided further that the private
21 college or university shall annually renew its provisional



1 authorization and report annually to the commission concerning
2 the institution's progress in obtaining accreditation.

3 (d) A private college or university shall notify the
4 department within thirty days of any material information
5 related to an action by the institution's accrediting body
6 concerning the institution's accreditation status, including but
7 not limited to reaffirmation or loss of accreditation, approval
8 of a request for change, a campus evaluation visit, a focused
9 visit, or approval of additional locations. In addition, the
10 institution shall immediately notify the department if the
11 institution's accrediting body is no longer recognized by the
12 United States Department of Education.

13 (e) A private college or university authorized pursuant to
14 this chapter shall pay any and all fees established pursuant to
15 section -17.

16 § -8 **Authorization to operate in the State; seminary or**
17 **religious training institutions.** (a) To operate in the State,
18 a seminary or religious training institution shall:

19 (1) Be party to a reciprocity agreement to which the State
20 is a member; or

21 (2) Apply for, on a form prescribed by the department, and
22 receive authorization from the commission; provided



1 that the institution shall establish that it qualifies
2 as a bona fide religious training institution and as
3 an institution of post-secondary education.

4 (b) Nothing in this section shall preclude a seminary or
5 religious training institution from seeking accreditation.

6 § -9 **Reauthorization.** (a) A private college or
7 university that is authorized pursuant to section -7 and
8 maintains its accreditation shall apply to the department for
9 reauthorization in accordance with its schedule for
10 reaccreditation or every three years, whichever is longer. A
11 private college or university that has its accreditation
12 reaffirmed without sanction, continues to demonstrate its
13 continued compliance with section -13, and is not subject to
14 investigation pursuant to section -10, shall otherwise be
15 presumed to be qualified for reauthorization under this chapter,
16 and the department shall recommend reauthorization for a period
17 of three years or the length of the private college or
18 university's accreditation, whichever is longer.

19 (b) A seminary or religious training institution
20 authorized pursuant to section -8 shall apply to the
21 department for reauthorization every three years. A seminary or
22 religious training institution that continues to meet the

1 minimum operating standards imposed upon it by this chapter and
2 is not subject to investigation pursuant to section -10,
3 shall otherwise be presumed to be qualified for reauthorization
4 under this chapter, and the department shall recommend
5 reauthorization for a period of three years.

6 (c) By June 30, 2014, the commission shall adopt policies
7 and procedures, without regard to chapter 91, for
8 reauthorization under this section.

9 (d) Private colleges, universities, seminaries, and
10 religious training institutions applying for reauthorization
11 under this section shall pay the fees required pursuant to
12 section -17.

13 (e) If a private college, university, seminary, or
14 religious training institution cannot demonstrate that it meets
15 the minimum operating standards imposed upon it by this chapter,
16 the department shall recommend that the commission deny the
17 application for reauthorization. The department shall provide
18 the private college, university, seminary, or religious training
19 institution with written notification of the denial of the
20 application for reauthorization and the basis for the denial.
21 If, within six months of receiving notice that its application
22 for reauthorization has been denied, the private college,



1 university, seminary, or religious training institution corrects
2 the action or condition upon which the denial was based, it may
3 reapply for reauthorization. If the private college,
4 university, seminary, or religious training institution does not
5 correct the action or condition upon which the denial was based,
6 it may submit a new application for authorization pursuant to
7 section -7 or -8, whichever is applicable, once the action
8 or condition has been corrected.

9 (f) If a private college or university is under a sanction
10 from its accrediting body at the time it submits its application
11 for reauthorization, the department may recommend that the
12 commission:

- 13 (1) Approve the private college or university's
14 reauthorization; or
15 (2) Grant probationary approval of the private college or
16 university's reauthorization; provided that if the
17 private college or university is granted probationary
18 reauthorization:

19 (A) The department shall provide the private college
20 or university with written notice of its
21 probationary status;



1 (B) The private college or university shall reapply
2 for reauthorization on an annual basis until the
3 accrediting body lifts its sanction; and

4 (C) The private college or university shall provide
5 the commission with an annual report on its
6 progress in removing the sanction.

7 § -10 **Revocation; probationary status.** (a) The
8 commission may revoke a private college or university's
9 authorization if the private college or university loses its
10 accreditation.

11 (b) The commission may revoke a private college or
12 university's authorization or place a private college or
13 university on probationary status if:

14 (1) The private college or university fails to meet any of
15 the minimum operating standards set forth in this
16 chapter or in any administrative rule adopted pursuant
17 to this chapter;

18 (2) The private college or university fails to
19 substantially comply with the applicable laws or rules
20 of any other state board or agency that has
21 jurisdiction over the private college or university;



1 (3) The private college or university violates any
2 criminal law of this State, the federal government, or
3 any other state in which it operates; or

4 (4) The United States Department of Education ceases to
5 recognize the private college or university's
6 accrediting body.

7 (c) The commission shall place a private college or
8 university on probationary status if the private college or
9 university's accrediting body places it on probationary status.

10 (d) The commission shall place a seminary or religious
11 training institution on probationary status if the seminary or
12 religious training institution no longer meets the definition of
13 a seminary or religious training institution under this chapter.

14 (e) The commission may revoke a seminary or religious
15 training institution's authorization or place the seminary or
16 religious training institution on probationary status if the
17 seminary or religious training institution:

18 (1) Fails to meet any of the minimum operating standards
19 imposed upon it by this chapter or in administrative
20 rules adopted pursuant to this chapter; or

21 (2) Violates any criminal law of this State, the federal
22 government, or any other state in which it operates.



1 (f) If the commission has reason to believe that a private
2 college, university, seminary, or religious training institution
3 meets one or more of the grounds specified in subsections (a)
4 through (e), as applicable, the commission may order the
5 department to investigate and make a recommendation concerning
6 whether to revoke its authorization or place it on probation.

7 (g) In conducting an investigation, the department may
8 physically inspect the private college, university, seminary, or
9 religious training institution's facilities and records.

10 (h) Upon the conclusion of any investigation pursuant to
11 subsections (f) and (g), the department shall make a
12 recommendation to the commission as to whether or not the
13 commission should revoke the private college, university,
14 seminary, or religious training institution's authorization or
15 place it on probation; provided that if the department
16 recommends revocation or probation, it shall identify the
17 applicable grounds for revocation or probation as specified in
18 subsections (a) through (e).

19 (i) If the commission revokes a private college,
20 university, seminary, or religious training institution's
21 authorization or places it on probationary status pursuant to
22 this section, the commission shall accord the private college,



1 university, seminary, or religious training institution the
2 right to contest the decision pursuant to chapter 91.

3 § -11 **Deposit of records upon discontinuance.** (a) If a
4 private college, university, seminary, or religious training
5 institution ceases operating within the State, its owner or the
6 owner's designee shall deposit with the department the original
7 or legible copies of all of its educational records.

8 (b) If the commission determines that the records of a
9 private college, university, seminary, or religious training
10 institution that ceases operating within the State are in danger
11 of being destroyed, secreted, mislaid, or otherwise made
12 unavailable to the department, the commission may seek a court
13 order authorizing the department to seize or take possession of
14 the records.

15 (c) Upon the request of the commission, the department or
16 the attorney general may enforce this section by filing a
17 request for an injunction with a court of competent
18 jurisdiction.

19 (d) The department shall permanently retain any student
20 transcripts received pursuant to this section. The department
21 shall retain any other records obtained pursuant to this section
22 for ten years; provided that after this period, the department



1 shall dispose of the records in a manner that will adequately
2 protect the privacy of any personal information included in the
3 records.

4 § -12 **Authorized educational institutions;**

5 **responsibilities.** (a) A private college, university, seminary,
6 or religious training institution that is authorized pursuant to
7 this chapter shall:

- 8 (1) Not make or cause to be made any oral, written, or
9 visual statement or representation that violates
10 section -16(h);
- 11 (2) In accordance with its reauthorization schedule,
12 provide the department with a copy of its enrollment
13 agreement, if applicable;
- 14 (3) Provide bona fide instruction, in accordance with the
15 standards and criteria set by its accrediting body;
16 and
- 17 (4) If its ownership changes, provide the department with
18 any material information concerning the transaction
19 within thirty days of the transaction.
- 20 (b) If a private college, university, seminary, or
21 religious training institution violates any of the requirements



1 of subsection (a), the department may recommend that it be
2 placed on probation or that its authorization be revoked.

3 § -13 **Financial integrity; surety bond.** (a) A private
4 college or university shall provide evidence of financial
5 integrity at the time of its application for authorization. A
6 private college or university may demonstrate financial
7 integrity by meeting the criteria specified in subsection (b) or
8 (c).

9 (b) A private college or university may demonstrate
10 financial integrity if it:

- 11 (1) Has been accredited for at least ten years by an
12 accrediting agency that is recognized by the United
13 States Department of Education;
- 14 (2) Has operated continuously in the State for at least
15 ten years;
- 16 (3) Has not filed for bankruptcy protection pursuant to
17 title 11 of the United States Code;
- 18 (4) Maintains a composite score of at least 1.5 on its
19 equity, primary reserve, and net income ratios, as
20 required in title 34 Code of Federal Regulations
21 section 668.172; and



1 (5) Meets or exceeds the pro rata refund policies required
2 by the United States Department of Education in title
3 34 Code of Federal Regulations part 668; provided that
4 if it does not participate in federal financial aid
5 programs, its refund and termination procedures comply
6 with the requirements of its accrediting body;
7 provided that a private college or university is not required to
8 meet the criteria specified in paragraphs (1) and (2) if the
9 private college or university is part of a group of private
10 colleges or universities that is owned and operated by a common
11 owner and the other private colleges and universities meet the
12 specified criteria in paragraphs (1) and (2).

13 (c) A private college or university may demonstrate
14 financial integrity if it:

15 (1) Has received and maintains full accreditation without
16 sanction from an accrediting body that is recognized
17 by the United States Department of Education, and
18 which accrediting body requires the private college or
19 university to maintain a surety bond or an escrow
20 account or has affirmatively waived or otherwise
21 removed that requirement for the private college or
22 university;



- 1 (2) Owns and operates a permanent instructional facility
2 in the State;
- 3 (3) Annually provides to the commission audited financial
4 statements for the most recent fiscal year that
5 demonstrate that the private college or university
6 maintains positive equity and profitability;
- 7 (4) Maintains a composite score of at least 1.5 on its
8 equity, primary reserve, and net income ratios, as
9 required in title 34 Code of Federal Regulations
10 section 668.172; and
- 11 (5) Meets or exceeds the pro rata refund policies required
12 by the United States Department of Education in title
13 34 Code of Federal Regulations part 668; provided that
14 if it does not participate in federal financial aid
15 programs, its refund and termination procedures comply
16 with the requirements of its accrediting body.
- 17 (d) If a private college or university cannot demonstrate
18 financial integrity as provided in subsections (b) and (c), the
19 private college or university shall file with the director a
20 surety bond in favor of the State in an amount calculated
21 pursuant to subsection (f) prior to receiving authorization
22 under this chapter. The surety bond shall be executed by the



1 private college or university as the principal and by a surety
2 company authorized to do business in the State.

3 (e) The surety bond under subsection (d) shall be
4 conditioned to provide indemnification to any student or
5 enrollee, to any parent or legal guardian of a student or
6 enrollee, that the commission finds to have suffered a loss of
7 tuition or any fees as a result of any act or practice that is a
8 violation of this chapter and to provide alternative enrollment
9 as provided in section -14 for students enrolled in a private
10 college or university that ceases operation.

11 (f) The amount of the surety bond under subsection (d)
12 that a private college or university submits pursuant to
13 subsection (d) shall be the greater of \$5,000 or an amount equal
14 to a reasonable estimate of the maximum prepaid, unearned
15 tuition and fees of the private college or university for the
16 period or term during the applicable academic year for which
17 programs of instruction are offered, including but not limited
18 to programs offered on a semester, quarter, monthly, or class
19 basis; provided that the private college or university shall use
20 the period or term of greatest duration and expense in
21 determining this amount if its academic year consists of one or
22 more periods or terms. Following the initial filing of the



1 surety bond with the department, the private college or
2 university shall recalculate the amount of the surety bond
3 annually based on a reasonable estimate of the maximum prepaid,
4 unearned tuition and fees received by the institution for the
5 applicable period or term.

6 (g) The commission may disapprove a surety bond if it
7 finds that the surety bond is not sufficient to provide students
8 with indemnification and alternative enrollment as required by
9 this section.

10 (h) The authorization for a private college or university
11 shall be suspended by operation of law when it is no longer
12 covered by a surety bond as required by this section. The
13 department shall give written notice to the private college or
14 university at its last-known address, at least forty-five days
15 before the release of the surety bond, to the effect that the
16 private college or university's authorization is suspended by
17 operation of law until it files evidence of a surety bond in a
18 like amount as the surety bond being released.

19 (i) The principal on a surety bond filed under the
20 provisions of this section is released from the surety bond
21 after the principal serves written notice thereof to the
22 commission at least sixty days before the release. The release



1 does not discharge or otherwise affect a claim filed by a
2 student or enrollee or the student or enrollee's parent or legal
3 guardian pursuant to section -14 for loss of tuition or fees
4 that occurred while the surety bond was in effect or that
5 occurred under any note or contract executed during any period
6 of time when the surety bond was in effect, except when another
7 surety bond is filed in a like amount and provides
8 indemnification for any such loss.

9 (j) Each private college or university that files a surety
10 bond pursuant to this section shall provide annual verification
11 of continued coverage as required by this section in a report to
12 the commission no later than January 1 of each year.

13 (k) A seminary or religious training institution shall not
14 be subject to the requirements of this section.

15 § -14 **Claims against a private college or university;**
16 **cessation of operation; alternative enrollment.** (a) A student
17 or enrollee, or a parent or guardian of the student or enrollee,
18 who claims loss of tuition or fees may file a claim with the
19 commission if the claim results from an act or practice that
20 violates a provision of this chapter. The claims that are filed
21 with the commission shall be public records and subject to the
22 provisions of chapter 92F; provided that the department shall



1 not make the records public if the release would violate a
2 federal privacy law.

3 (b) Notwithstanding subsection (a), the commission shall
4 not consider a claim that is filed more than two years after the
5 date the student discontinues enrollment with the private
6 college or university.

7 (c) If a private college or university ceases operation,
8 the commission may make demand on the surety bond upon the
9 demand for a refund by a student or the implementation of
10 alternate enrollment for the students enrolled in the
11 institution, and the principal on the surety bond filed under
12 section -13(d) shall pay the claim due in a timely manner.
13 To the extent practicable, the commission shall use the amount
14 of the surety bond to provide alternate enrollment for students
15 of the institution that ceases operation through a contract with
16 another authorized private college or university, the University
17 of Hawaii system, an area vocational school, or any other
18 arrangement that is acceptable to the department. The alternate
19 enrollment provided to a student shall replace the original
20 enrollment agreement, if any, between the student and the
21 private college or university; provided that the student shall



1 make the tuition and fee payments as required by the original
2 enrollment agreement, if any.

3 (d) A student who is enrolled in a private college or
4 university that ceases operation and who declines the alternate
5 enrollment required to be offered pursuant to subsection (c) may
6 file a claim with the commission for the student's prorated
7 share of the prepaid, unearned tuition and fees that the student
8 paid, subject to the limitations of subsection (e). The
9 commission shall not make a subsequent payment to a student
10 unless the student submits proof of satisfaction of any prior
11 debt to a financial institution in accordance with rules adopted
12 by the commission.

13 (e) If the amount of the surety bond filed under section
14 -13(d) is less than the total prepaid, unearned tuition and
15 fees that have been paid by students at the time the private
16 college or university ceases operation, the department shall
17 prorate the amount of the surety bond among the students.

18 (f) The provisions of this section are applicable only to
19 those students enrolled in the private college or university at
20 the time it ceases operation, and once a private college or
21 university ceases operation, no new students shall be enrolled
22 therein.



1 (g) The commission shall be the trustee for all prepaid,
2 unearned tuition and fees, student loans, Pell grants, and other
3 student financial aid assistance if an authorized private
4 college or university ceases operation.

5 (h) The commission shall determine whether offering
6 alternate enrollment for students enrolled in an authorized
7 private college or university that ceases operation is
8 practicable without federal government designation of the
9 commission as trustee for student loans, Pell grants, and other
10 student financial aid assistance pursuant to subsection (g).

11 (i) For claims made pursuant to this section that do not
12 involve a private college or university that ceases operation,
13 the commission shall conduct a public hearing, without regard to
14 chapter 91, to determine whether there is loss of tuition or
15 fees, and if the commission finds that a claim is valid and due
16 the claimant, the commission shall make demand upon the surety
17 bond filed under section -13(d). If the principal on the
18 surety bond fails or refuses to pay the claim due, the
19 commission shall commence an action on the surety bond in a
20 court of competent jurisdiction; provided that the commission
21 shall not file an action more than six years after the date of



1 the violation that gives rise to the right to file a claim
2 pursuant to this section.

3 (j) If a private college or university that is exempt from
4 the provisions of, or that demonstrates financial integrity
5 pursuant to, section -13, ceases to operate in the State, the
6 attorney general may file a claim against the private college or
7 university on behalf of students enrolled in the private college
8 or university at the time it ceases operation to recover any
9 amount of unearned, prepaid tuition that may be owed to the
10 students.

11 (k) A seminary or religious training institution shall not
12 be subject to the requirements of this section.

13 § -15 **Reciprocity.** The commission may enter into any
14 post-secondary education authorization reciprocity agreement;
15 provided that the authorization standards of the reciprocity
16 agreement shall be comparable to or exceed the authorization
17 requirements of this chapter and any applicable administrative
18 rules.

19 § -16 **Complaints; injunctive proceedings.** (a) By
20 July 1, 2014, the commission shall establish procedures, without
21 regard to chapter 91, by which a student or former student of
22 the University of Hawaii system, a private college, university,

1 seminary, or religious training institution may file a complaint
2 with the department concerning the institution in which the
3 student is or was enrolled; provided that if a former student
4 files a complaint, the complaint shall be filed within two years
5 after the former student discontinued enrollment at the
6 institution.

7 (b) The department may investigate complaints based on a
8 claim of a deceptive trade practice as described in subsection
9 (h).

10 (c) Nothing in this section shall give the commission or
11 department jurisdiction to consider complaints that infringe on
12 the academic or religious freedom of, or question the curriculum
13 content of, a private college, university, seminary, or
14 religious training institution.

15 (d) Upon receipt of a complaint, the department shall
16 verify that the complaint was properly filed under the
17 procedures established pursuant to subsection (a). The
18 complaint shall warrant investigation only after the student or
19 former student has exhausted all administrative remedies
20 available at the University of Hawaii system, private college,
21 university, seminary, or religious training institution;
22 provided that if the complaint involves a violation of state or



1 federal criminal law, this requirement shall not apply. If a
2 complaint warrants investigation, the department shall forward
3 the complaint to the University of Hawaii system, private
4 college, university, seminary, or religious training
5 institution. The University of Hawaii system, private college,
6 university, seminary, or religious training institution shall
7 have thirty days to respond in writing to the complaint. During
8 the thirty day period, the University of Hawaii system, private
9 college, university, seminary, or religious training
10 institution, with the department's assistance, may attempt to
11 resolve the complaint with the student. If the department
12 determines at any time that the complaint no longer warrants
13 investigation, the department shall dismiss the complaint.

14 (e) If a complaint is not resolved within the thirty day
15 period, the department may:

16 (1) Dismiss the complaint based on the University of
17 Hawaii system, private college, university, seminary,
18 or religious training institution's response;

19 (2) Investigate and, where appropriate, take disciplinary
20 action in a manner consistent with chapter 91.

21 (f) If the University of Hawaii system, private college,
22 university, seminary, or religious training institution does not



1 take the action recommended by the commission, the commission
2 may forward the complaint and any of the commission's findings
3 to the attorney general.

4 (g) The commission, acting through the attorney general,
5 may proceed by injunction against any violation of this chapter,
6 but an injunction proceeding or an order issued therein or as a
7 result thereof shall not bar the imposition of any other penalty
8 for a violation of this chapter.

9 (h) It shall be a deceptive trade practice for a private
10 college, university, seminary, or religious training institution
11 or its agent to:

12 (1) Make or cause to be made any statement or
13 representation, oral, written, or visual, in
14 connection with the offering of educational services
15 if the private college, university, seminary, or
16 religious training institution or its agent knows or
17 reasonably should have known the statement or
18 representation to be materially false, substantially
19 inaccurate, or materially misleading;

20 (2) Falsely represent or deceptively conceal, directly or
21 by implication, through the use of a trade or business
22 name, the fact that the institution is a private



- 1 college, university, seminary, or religious training
2 institution;
- 3 (3) Adopt a name, trade name, or trademark that represents
4 falsely, directly or by implication, the quality,
5 scope, nature, size, or integrity of the private
6 college, university, seminary, or religious training
7 institution or its educational services;
- 8 (4) Intentionally and materially represent falsely,
9 directly or by implication, that students who
10 successfully complete a course or program of
11 instruction may transfer the credits earned to any
12 institution of higher education;
- 13 (5) Intentionally and materially represent falsely,
14 directly or by implication, in its promotional
15 materials or in any other manner:
- 16 (A) Its size, location, facilities, or equipment;
17 (B) The number, educational experience, or
18 qualifications of its faculty;
- 19 (C) The extent or nature of any approval received
20 from any state agency; or



- 1 (D) The extent or nature of any accreditation
- 2 received from any accrediting agency, body, or
- 3 association;
- 4 (6) Provide prospective students with testimonials,
- 5 endorsements, or other information that has the
- 6 tendency to materially mislead or deceive prospective
- 7 students or the public regarding its current
- 8 practices;
- 9 (7) To designate or refer to its sales representatives by
- 10 titles that imply that the sale representatives have
- 11 training in academic counseling or advising if they do
- 12 not; and
- 13 (8) Represent, directly or by implication, that it is
- 14 authorized by the State or approved or accredited by
- 15 an accrediting agency or body when it has not been
- 16 authorized, approved, or accredited.
- 17 (i) Any private college, university, seminary, or
- 18 religious training institution or its agent that violates
- 19 subsection (h) shall be fined a sum of not less than \$500 nor
- 20 more than \$10,000 for each violation, which sum shall be
- 21 collected in a civil action brought by the attorney general or
- 22 the department on behalf of the State. The penalties provided



1 in this subsection are cumulative to the remedies or penalties
2 available under all other laws of this State. Each day that a
3 violation of subsection (h) occurs shall be a separate
4 violation.

5 § -17 Fees; public hearing. (a) A private college,
6 university, seminary, or religious training institution shall
7 pay \$ to the department for authorization under this
8 chapter; provided that the commission may change the amount of
9 the fees required by this section at any time without regard to
10 chapter 91, if the commission:

- 11 (1) Holds at least one public hearing to discuss and take
12 testimony on the changing of the fees; and
13 (2) Provides public notice at least thirty days prior to
14 the date of the public hearing.

15 (b) Fees collected pursuant to this section shall be
16 deposited into the post-secondary education authorization
17 subaccount established pursuant to section 26-9(o).

18 § -18 Post-secondary education authorization special
19 subaccount. (a) All moneys collected pursuant to section
20 -17 shall be deposited into the post-secondary education
21 authorization special subaccount of the compliance resolution
22 fund established pursuant to section 26-9(o).



1 (b) Any law to the contrary notwithstanding, the moneys in
2 the special subaccount shall be used to fund the operations of
3 the department in carrying out its duties under this chapter.
4 Any law to the contrary notwithstanding, the director may use
5 the moneys in the special subaccount to employ, in accordance
6 with chapter 76, personnel to carry out the department's duties
7 under this chapter. The moneys in the special subaccount may be
8 used to train personnel as the director deems necessary and for
9 any other activity related to this chapter."

10 **PART III**

11 SECTION 3. Section 26-9, Hawaii Revised Statutes, is
12 amended by amending subsection (o) to read as follows:

13 "(o) Every person licensed under any chapter within the
14 jurisdiction of the department of commerce and consumer affairs
15 and every person licensed subject to chapter 485A or registered
16 under chapter 467B shall pay upon issuance of a license, permit,
17 certificate, or registration a fee and a subsequent annual fee
18 to be determined by the director and adjusted from time to time
19 to ensure that the proceeds, together with all other fines,
20 income, and penalties collected under this section, do not
21 surpass the annual operating costs of conducting compliance
22 resolution activities required under this section. The fees may



1 be collected biennially or pursuant to rules adopted under
2 chapter 91, and shall be deposited into the special fund
3 established under this subsection. Every filing pursuant to
4 chapter 514E or section 485A-202(a)(26) shall be assessed, upon
5 initial filing and at each renewal period in which a renewal is
6 required, a fee that shall be prescribed by rules adopted under
7 chapter 91, and that shall be deposited into the special fund
8 established under this subsection. Any unpaid fee shall be paid
9 by the licensed person, upon application for renewal,
10 restoration, reactivation, or reinstatement of a license, and by
11 the person responsible for the renewal, restoration,
12 reactivation, or reinstatement of a license, upon the
13 application for renewal, restoration, reactivation, or
14 reinstatement of the license. If the fees are not paid, the
15 director may deny renewal, restoration, reactivation, or
16 reinstatement of the license. The director may establish,
17 increase, decrease, or repeal the fees when necessary pursuant
18 to rules adopted under chapter 91. The director may also
19 increase or decrease the fees pursuant to section 92-28.

20 There is created in the state treasury a special fund to be
21 known as the compliance resolution fund to be expended by the
22 director's designated representatives as provided by this



1 subsection. Notwithstanding any law to the contrary, all
2 revenues, fees, and fines collected by the department shall be
3 deposited into the compliance resolution fund. Unencumbered
4 balances existing on June 30, 1999, in the cable television fund
5 under chapter 440G, the division of consumer advocacy fund under
6 chapter 269, the financial institution examiners' revolving
7 fund, section 412:2-109, the special handling fund, section
8 414-13, and unencumbered balances existing on June 30, 2002, in
9 the insurance regulation fund, section 431:2-215, shall be
10 deposited into the compliance resolution fund. This provision
11 shall not apply to the drivers education fund underwriters fee,
12 sections 431:10C-115 and 431:10G-107, insurance premium taxes
13 and revenues, revenues of the workers' compensation special
14 compensation fund, section 386-151, the captive insurance
15 administrative fund, section 431:19-101.8, the insurance
16 commissioner's education and training fund, section 431:2-214,
17 the medical malpractice patients' compensation fund as
18 administered under section 5 of Act 232, Session Laws of Hawaii
19 1984, and fees collected for deposit in the office of consumer
20 protection restitution fund, section 487-14, the real estate
21 appraisers fund, section 466K-1, the real estate recovery fund,
22 section 467-16, the real estate education fund, section 467-19,



1 the contractors recovery fund, section 444-26, the contractors
2 education fund, section 444-29, the condominium education trust
3 fund, section 514B-71, and the mortgage foreclosure dispute
4 resolution special fund, section 667-86. Any law to the
5 contrary notwithstanding, the director may use the moneys in the
6 fund to employ, without regard to chapter 76, hearings officers
7 and attorneys. All other employees may be employed in
8 accordance with chapter 76. Any law to the contrary
9 notwithstanding, the moneys in the fund shall be used to fund
10 the operations of the department. The moneys in the fund may be
11 used to train personnel as the director deems necessary and for
12 any other activity related to compliance resolution.

13 A separate special subaccount of the compliance resolution
14 fund shall be established for fees collected by the state post-
15 secondary education commission established pursuant to section
16 -3, which shall be called the post-secondary education
17 authorization special subaccount. The special subaccount shall
18 be governed by section -18.

19 As used in this subsection, unless otherwise required by
20 the context, "compliance resolution" means a determination of
21 whether:



- 1 (1) Any licensee or applicant under any chapter subject to
2 the jurisdiction of the department of commerce and
3 consumer affairs has complied with that chapter;
- 4 (2) Any person subject to chapter 485A has complied with
5 that chapter;
- 6 (3) Any person submitting any filing required by chapter
7 514E or section 485A-202(a)(26) has complied with
8 chapter 514E or section 485A-202(a)(26);
- 9 (4) Any person has complied with the prohibitions against
10 unfair and deceptive acts or practices in trade or
11 commerce; or
- 12 (5) Any person subject to chapter 467B has complied with
13 that chapter;
- 14 and includes work involved in or supporting the above functions,
15 licensing, or registration of individuals or companies regulated
16 by the department, consumer protection, and other activities of
17 the department.
- 18 The director shall prepare and submit an annual report to
19 the governor and the legislature on the use of the compliance
20 resolution fund. The report shall describe expenditures made
21 from the fund including non-payroll operating expenses."



1 SECTION 4. Section 446E-1.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "§446E-1.5 **Advisory board.** The state post-secondary
4 education commission, as established by chapter [304A, part VII,
5 subpart C,] _____, shall serve as a resource to the director as
6 needed regarding the requirements of this chapter."

7 SECTION 5. Section 304A-3151, Hawaii Revised Statutes, is
8 repealed.

9 [~~["§304A-3151] Establishment of the state post-secondary
10 education commission; membership, administration.—There is
11 established a state post secondary education commission. The
12 commission shall consist of the members of the board of regents
13 of the university, the provisions of section 78-4
14 notwithstanding, and four other members who shall be broadly and
15 equitably representative of the general public and public and
16 private nonprofit and proprietary institutions of post secondary
17 education in the State and who shall be appointed in accordance
18 with section 26-34. The commission shall be placed within the
19 university for administrative purposes, and its administrative
20 officer shall be the president of the university. The
21 commission may appoint necessary staff members in accordance
22 with applicable policies and procedures of the university."]~~



1 SECTION 6. Section 304A-3152, Hawaii Revised Statutes, is
2 repealed.

3 ~~["~~§304A-3152~~] Commission's powers and authority. (a)~~

4 ~~The commission may cooperate with the federal government to~~
5 ~~qualify the State to receive funds made available under the~~
6 ~~Higher Education Act of 1965, Public Law 89-329, as amended from~~
7 ~~time to time, and in addition may serve as the state agency for~~
8 ~~the receipt of federal funds when federal legislation dealing~~
9 ~~with higher education or post-secondary education requires, as a~~
10 ~~condition of state receipt of such funds, the designation of a~~
11 ~~state agency that is broadly representative of the general~~
12 ~~public and of post-secondary education in the State and when~~
13 ~~agencies other than the commission created by this subpart may~~
14 ~~not qualify. The commission shall adopt appropriate rules not~~
15 ~~inconsistent with this subpart as may be required to administer~~
16 ~~this subpart. The rules shall be adopted in accordance with~~
17 ~~chapter 91.~~

18 ~~(b) No funds appropriated by the legislature may be used~~
19 ~~to aid a person attending an institution not owned or~~
20 ~~exclusively controlled by the State or a department of the State~~
21 ~~or to pay for any staff work distributing federal or private~~
22 ~~funds to students attending such schools. The maximum amount of~~



1 ~~any grant awarded under the Hawaii state incentive grant program~~
2 ~~shall be equal to the maximum allowed by federal law."]~~

3 SECTION 7. Section 304A-3153, Hawaii Revised Statutes, is
4 repealed.

5 ~~["~~§304A-3153~~ Procedures for complaints concerning~~
6 ~~institutions of higher education. In consultation with~~
7 ~~institutions of higher education in the State, the commission is~~
8 ~~authorized to establish and administer procedures for receiving~~
9 ~~and responding to complaints from students, faculty, staff, and~~
10 ~~others concerning institutions of higher education in the~~
11 ~~State."]~~

12 SECTION 8. Section 304A-3154, Hawaii Revised Statutes, is
13 repealed.

14 ~~["~~§304A-3154~~ Cooperation with other state agencies. The~~
15 ~~commission may be assisted by other state agencies, including~~
16 ~~but not limited to the university, the department of education,~~
17 ~~and the department of commerce and consumer affairs."]~~

18 PART IV

19 SECTION 9. To ensure that the post-secondary education
20 commission established by this Act is formed in time to meet the
21 July 1, 2013, federal deadline, the governor shall immediately
22 appoint, without regard to chapter 78, Hawaii Revised Statutes,

1 and section 26-34, Hawaii Revised Statutes, five interim
2 commissioners, of whom three shall be representative of the
3 general public and two shall be representative of public and
4 private nonprofit and for-profit institutions of post-secondary
5 education in the State. The interim commissioners shall be
6 authorized to exercise all duties and responsibilities accorded
7 the post-secondary education commission under this Act and shall
8 serve until the appointment and confirmation of all members of
9 the post-secondary education commission pursuant to this Act, at
10 which time the interim commissioners shall be discharged and the
11 confirmed members shall begin their service.

12 SECTION 10. The post-secondary education commission shall
13 report to the legislature no later than twenty days prior to the
14 convening of the 2014 regular session on such matters including
15 but not limited to:

- 16 (1) The status of any rulemaking the commission has
17 undertaken;
- 18 (2) The number of private colleges, universities,
19 seminaries, and religious training institutions that
20 have applied for authorization under chapter ;
21 and
- 22 (3) Any proposed legislation.



PART V

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SECTION 11. There is appropriated out of the general revenues of the State of Hawaii the sum of \$ or so much thereof as may be necessary for fiscal year 2013-2014 and the same sum or so much thereof as may be necessary for fiscal year 2014-2015 to be paid into the post-secondary education authorization subaccount of the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes.

The sums appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

SECTION 12. There is appropriated out of the post-secondary education authorization subaccount of the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes, the sum of \$ or so much thereof as may be necessary for fiscal year 2013-2014 and the same sum or so much thereof as may be necessary for fiscal year 2014-2015 for full-time equivalent (.0 FTE) permanent positions at the department of commerce and consumer affairs to implement the provisions of this Act.

The sums appropriated shall be expended by the department of commerce and consumer affairs for the purposes of this Act.

PART VI

SECTION 13. (a) To ensure that the post-secondary education commission established in this Act is able to comply in a timely manner with the requirements of the Higher Education Act of 1965, as amended, the department of commerce and consumer affairs shall contract for an implementation coordinator or team to assist with the implementation of this Act.

(b) The minimum qualifications for the implementation coordinator or team shall be the following:

- (1) Knowledge and understanding of the United States Department of Education regulations for programs authorized under Title IV of the Higher Education Act of 1965, as amended;
- (2) Experience and familiarity with post-secondary educational institutions and related accreditation processes; and
- (3) Demonstrated strong written and oral communication skills.

(c) The scope of work developed pursuant to subsection (a) shall require at a minimum the implementation coordinator or team to:

1 (1) Develop a comprehensive plan for the implementation of
2 this Act;

3 (2) Assist in developing any policies and procedures,
4 including administrative rules, required for the
5 implementation of this Act;

6 (3) Assist the post-secondary education commission to meet
7 the reporting requirements of section 10 of this Act.

8 (c) The department of commerce and consumer affairs shall
9 be responsible for awarding and overseeing the contract for the
10 implementation coordinator or team. The term of the contract
11 shall be for one year; provided that the department of commerce
12 and consumer affairs and the implementation coordinator or team
13 may enter into supplemental contracts as the department of
14 commerce and consumer affairs deems necessary to carry out the
15 purposes of this Act.

16 (d) Chapter 103D, Hawaii Revised Statutes, shall not apply
17 to the contracting of the implementation coordinator or team.

18 SECTION 14. There is appropriated out of the general
19 revenues of the State of Hawaii the sum of \$ or so
20 much thereof as may be necessary for fiscal year 2013-2014 for
21 the department of commerce and consumer affairs to contract for
22 an implementation coordinator or team.



1 The sum appropriated shall be expended by the department of
2 commerce and consumer affairs for the purposes of this Act.

3 SECTION 15. All rights, powers, functions, and duties of
4 the University of Hawaii are transferred to the department of
5 commerce and consumer affairs with regard to the state post-
6 secondary education commission.

7 All officers and employees whose functions are transferred
8 by this Act shall be transferred with their functions and shall
9 continue to perform their regular duties upon their transfer,
10 subject to the state personnel laws and this Act.

11 No officer or employee of the State having tenure shall
12 suffer any loss of salary, seniority, prior service credit,
13 vacation, sick leave, or other employee benefit or privilege as
14 a consequence of this Act, and such officer or employee may be
15 transferred or appointed to a civil service position without the
16 necessity of examination; provided that the officer or employee
17 possesses the minimum qualifications for the position to which
18 transferred or appointed; and provided that subsequent changes
19 in status may be made pursuant to applicable civil service and
20 compensation laws.

21 An officer or employee of the State who does not have
22 tenure and who may be transferred or appointed to a civil

1 service position as a consequence of this Act shall become a
2 civil service employee without the loss of salary, seniority,
3 prior service credit, vacation, sick leave, or other employee
4 benefits or privileges and without the necessity of examination;
5 provided that such officer or employee possesses the minimum
6 qualifications for the position to which transferred or
7 appointed.

8 If an office or position held by an officer or employee
9 having tenure is abolished, the officer or employee shall not
10 thereby be separated from public employment, but shall remain in
11 the employment of the State with the same pay and classification
12 and shall be transferred to some other office or position for
13 which the officer or employee is eligible under the personnel
14 laws of the State as determined by the head of the department or
15 the governor.

16 SECTION 16. All appropriations, records, equipment,
17 machines, files, supplies, contracts, books, papers, documents,
18 maps, and other personal property heretofore made, used,
19 acquired, or held by the University of Hawaii relating to the
20 functions transferred to the department of commerce and consumer
21 affairs shall be transferred with the functions to which they
22 relate.



1 SECTION 17. All rules, policies, procedures, guidelines,
2 and other material adopted or developed by the University of
3 Hawaii to implement provisions of the Hawaii Revised Statutes
4 that are reenacted or made applicable to the department of
5 commerce and consumer affairs by this Act, shall remain in full
6 force and effect until amended or repealed by the department of
7 commerce and consumer affairs pursuant to chapter 91, Hawaii
8 Revised Statutes. In the interim, every reference to the
9 University of Hawaii or president of the University of Hawaii in
10 those rules, policies, procedures, guidelines, and other
11 material is amended to refer to the department of commerce and
12 consumer affairs or director of commerce and consumer affairs as
13 appropriate.

14 **PART VII**

15 SECTION 18. If any provision of this Act, or the
16 application thereof to any person or circumstance, is held
17 invalid, the invalidity does not affect other provisions or
18 applications of the Act that can be given effect without the
19 invalid provision or application, and to this end the provisions
20 of this Act are severable.

21 SECTION 19. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.



1 SECTION 20. This Act shall take effect on July 1, 2050.



Report Title:

Post-secondary Education; Department of Commerce and Consumer Affairs; Appropriation

Description:

Establishes the post-secondary education commission within the department of commerce and consumer affairs. Creates the framework for authorizing private post-secondary educational institutions in the State. Repeals sections 304A-3151, 304A-3152, 304A-3153, and 304A-3154, relating to the establishment of the post-secondary education commission within the University of Hawaii. Creates the post-secondary education authorization subaccount of the compliance resolution fund established pursuant to section 26-9(o), Hawaii Revised Statutes. Requires the post-secondary education commission to report to the legislature. Requires the department of commerce and consumer affairs to hire an implementation coordinator or team to assist with the implementation of this Act. Makes an appropriation for an implementation coordinator or team. Makes an appropriation for an unspecified number of full-time equivalent permanent positions at the department of commerce and consumer affairs. Effective 7/1/2050. (SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

