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# A BILL FOR AN ACT

RELATING TO EDUCATION.

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

**PART I**

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

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



- 1           (7) Schools, courses of instruction, or courses of  
2           training that are offered by a vendor or the purchaser  
3           or prospective purchaser of the vendor's product when  
4           the objective of the school or course is to enable the  
5           purchaser or the purchaser's employees to gain the  
6           skills and knowledge necessary to use the product;
- 7           (8) Schools and educational programs conducted by  
8           religious entities that are owned, controlled,  
9           operated, and maintained by a religious organization  
10          lawfully operating as a nonprofit religious  
11          corporation and awards only religious degrees or  
12          certificates, including a certificate of Talmudic  
13          studies, an associate of Biblical studies, a bachelor  
14          of religious studies, a master of divinity, or a  
15          doctor of divinity;
- 16          (9) Non degree-granting post-secondary educational  
17          institutions licensed by any state of Hawaii entity or  
18          governed by any other chapter of the Hawaii Revised  
19          Statutes;
- 20          (10) Schools and educational programs that offer courses of  
21          instruction exclusively through online and distance  
22          education; 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 initial member's  
10 initial term, with each term starting on July 1; provided that  
11 the initial terms that commence after June 30, 2013, shall be  
12 staggered as follows:

13 (1) Two members to serve three-year terms;

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

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

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

21 (g) Commission members shall receive no compensation.

22 When commission duties require that a commission member take



1 leave of the member's duties as a state employee, the  
2 appropriate state department shall allow the commission member  
3 to be placed on administrative leave with pay and shall provide  
4 substitutes, when necessary, to fulfill that member's  
5 departmental duties. Members shall be reimbursed for necessary  
6 travel expenses incurred in the conduct of official commission  
7 business.

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

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

15 **§ -4 Authorization of the University of Hawaii system.**

16 The University of Hawaii system is established as an educational  
17 institution pursuant to Article X, section 4 of the Hawaii state  
18 constitution and is hereby authorized by the State to provide  
19 educational programs in and from this State. The University of  
20 Hawaii system shall be subject to section -18.

21 **§ -5 Commission's powers and authority. (a) The**

22 commission shall:



- 1 (1) Unless otherwise provided by law, adopt, amend, and  
2 repeal rules pursuant to chapter 91 to carry out the  
3 purposes of this chapter;
- 4 (2) Issue declaratory rulings or informal, non-binding  
5 interpretations and conduct contested case proceedings  
6 pursuant to chapter 91;
- 7 (3) Grant, deny, confirm, forfeit, renew, reinstate, or  
8 restore authorizations, including conditional,  
9 probationary, or qualified authorizations;
- 10 (4) Revoke, suspend, condition, or otherwise limit the  
11 authorization of an institution for any violation of  
12 this chapter, applicable rules, or the Higher  
13 Education Act of 1965, as amended;
- 14 (5) Establish requirements for authorization in accordance  
15 with this chapter;
- 16 (6) Investigate and conduct hearings regarding any  
17 violation of this chapter, applicable rules, or the  
18 Higher Education Act of 1965, as amended;
- 19 (7) Create fact-finding committees, which may make  
20 recommendations to the commission for its  
21 consideration;



- 1       (8) Contract with qualified persons, including
- 2             investigative and legal staff, who may be exempt from
- 3             chapter 76, to assist the commission in exercising its
- 4             powers and duties;
- 5       (9) Subpoena witnesses and documents, administer oaths,
- 6             and receive affidavits and oral testimony, including
- 7             communications through electronic media;
- 8       (10) Establish the types and amounts of fees that a private
- 9             college, university, seminary, or religious training
- 10            institution shall pay pursuant to section     -19;
- 11       (11) Establish policies to require authorized institutions,
- 12            upon request, to submit to the commission, data that
- 13            is directly related to student enrollment and degree
- 14            completion and, if applicable, student financial aid
- 15            and educator preparation programs, which policies
- 16            shall include a determination as to whether data
- 17            received may be disclosed to the public;
- 18       (12) Establish policies and procedures for the handling of
- 19            proprietary information;
- 20       (13) Enter into any post-secondary education authorization
- 21            reciprocity agreement with other post-secondary
- 22            educational authorizers of schools whose home state is



1 not Hawaii; provided that the authorization standards  
2 of the reciprocity agreement shall be substantially  
3 comparable to or exceed the authorization requirements  
4 of this chapter and applicable administrative rules;  
5 and

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

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

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

6 **§ -6 Department's powers and authority; delegated**

7 **authority.** (a) The department shall administer the provisions  
8 of this chapter and any administrative rules, policies, and  
9 procedures adopted by the commission.

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

12 (1) Maintaining a list of the private colleges,  
13 universities, seminaries, and religious training  
14 institutions that have been authorized by the  
15 commission and making the list available to the  
16 public;

17 (2) Maintaining a list of the states with which the  
18 commission has entered into a post-secondary education  
19 authorization reciprocity agreement and making the  
20 list available to the public; and



1 (3) Appropriately acting on a complaint, concern, or  
2 violation concerning a private college, university,  
3 seminary, or religious training institution.

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

11 (d) In administering responsibilities delegated to it by  
12 the commission, the department may assess fees sufficient to  
13 provide for the self-sufficiency of the program pursuant to  
14 section 26-9.

15 **§ -7 Awarding degrees.** Notwithstanding any law to the  
16 contrary, a person, partnership, corporation, company, society,  
17 or association with a physical presence in the State shall not  
18 award, bestow, confer, give, grant, convey, or sell to any other  
19 person a degree or honorary degree upon which is inscribed, in  
20 any language, the word "associate", "bachelor", "baccalaureate",  
21 "master", or "doctor", or any abbreviation thereof, or offer  
22 courses of instruction or credits purporting to lead to any such



1 degree, unless the person, partnership, corporation, company,  
2 society, or association is:

3 (1) A private college, university, seminary, or religious  
4 training institution that is authorized pursuant to  
5 this chapter; or

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

7 **§ -8 Authorization to operate in the State; private**

8 **college or university.** (a) To operate in the State, a private  
9 college or university shall:

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

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



1 (b) Upon receiving an application for authorization, the  
2 commission shall review the application to determine whether the  
3 private college or university is institutionally accredited by a  
4 regional or national accrediting body recognized by the United  
5 States Department of Education. The commission shall not  
6 approve an application from a private college or university  
7 that, in the two years preceding submission of the application,  
8 has:

- 9 (1) Had its accreditation suspended or withdrawn;  
10 (2) Been prohibited from operating in another state; or  
11 (3) Substantially the same owners, governing board, or  
12 principal officers as a private college or university  
13 that has:  
14 (A) Had its accreditation suspended or withdrawn; or  
15 (B) Been prohibited from operating in another state.

16 (c) To operate in the State, a private college or  
17 university shall be institutionally accredited on the basis of  
18 an on-site review by a regional or national accrediting body  
19 recognized by the United States Department of Education.

20 (d) A private college or university shall notify the  
21 department within thirty days of any material information  
22 related to an action by the institution's accrediting body



1 concerning the institution's accreditation status, including but  
2 not limited to reaffirmation or loss of accreditation, approval  
3 of a request for change, a campus evaluation visit, a focused  
4 visit, or approval of additional locations. In addition, the  
5 institution shall immediately notify the department if the  
6 institution's accrediting body is no longer recognized by the  
7 United States Department of Education.

8 (e) A private college or university authorized pursuant to  
9 this chapter shall pay any and all fees established pursuant to  
10 section -19.

11 **§ -9 Authorization to operate in the State; seminary or**  
12 **religious training institutions.** (a) To operate in the State,  
13 a seminary or religious training institution shall:

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

16 (2) Apply for, on a form prescribed by the department, and  
17 receive authorization from the commission; provided  
18 that the institution shall establish that it qualifies  
19 as a bona fide religious training institution and as  
20 an institution of post-secondary education.

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



1           **§ -10 Confirmation of authorization.** Upon the request  
2 of an institution to confirm authorization, the commission shall  
3 consider whether an authorization shall be issued. The  
4 commission shall issue written findings and if appropriate, a  
5 certificate of authorization. The certificate of authorization  
6 shall have the effect of establishing that the institution is  
7 legally authorized by the State, as contemplated by 34 Code of  
8 Federal Regulations section 600.9.

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

21           (b) A seminary or religious training institution  
22 authorized pursuant to section -9 shall apply to the



1 department for reauthorization every three years. A seminary or  
2 religious training institution that continues to meet the  
3 minimum operating standards imposed upon it by this chapter and  
4 is not subject to investigation pursuant to section -13,  
5 shall otherwise be presumed to be qualified for reauthorization  
6 under this chapter for a period of three years.

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

10 (d) Private colleges, universities, seminaries, and  
11 religious training institutions applying for reauthorization  
12 under this section shall pay the fees required pursuant to  
13 section -19.

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



1 college, university, seminary, or religious training institution  
2 corrects the action or condition upon which the denial was  
3 based, it may reapply for reauthorization. If the private  
4 college, university, seminary, or religious training institution  
5 does not correct the action or condition upon which the denial  
6 was based, it may submit a new application for authorization  
7 pursuant to section -8 or -9, whichever is applicable,  
8 once the action 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 commission may:

12 (1) Approve the private college or university's  
13 reauthorization; or

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

18 (A) The commission shall provide the private college  
19 or university with written notice of its  
20 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 § -12 **Grounds for refusal to reauthorize, reinstate, or**  
8 **restore and for revocation, suspension, probation, or denial;**  
9 **condition of authorization or sanctions.** (a) In addition to  
10 any other acts or conditions provided by law, the commission may  
11 refuse to reauthorize, reinstate or restore, or may deny,  
12 revoke, suspend, or condition in any manner, including but not  
13 limited to probation, any authorization for any one or more of  
14 the following acts or conditions on the part of the institution  
15 or applicant:

16 (1) Failure to meet or maintain the conditions and  
17 requirements necessary to qualify for or maintain an  
18 authorization;

19 (2) Engaging in false, fraudulent, or deceptive  
20 advertising, or making untruthful or improbable  
21 statements;



- 1           (3) Procuring an authorization, reauthorization, or  
2           certification through fraud, misrepresentation,  
3           material omission, or deceit;
- 4           (4) Misconduct, incompetence, gross negligence, or  
5           manifest incapacity in the operation of the  
6           institution;
- 7           (5) Failure to maintain a record or history of competency,  
8           trustworthiness, fair dealing, and financial  
9           integrity;
- 10          (6) Conduct or practice contrary to recognized standards  
11          of ethics for the industry;
- 12          (7) Engaging in business under a past or present  
13          authorization issued pursuant to this chapter in a  
14          manner causing injury to one or more members of the  
15          public;
- 16          (8) Failure to comply with, observe, or adhere to any law  
17          in a manner such that the commission deems the  
18          applicant or holder to be an unfit or improper  
19          institution for authorization;
- 20          (9) Revocation, suspension, deauthorization, or other  
21          disciplinary action by another state or federal agency



1           against an institution or applicant for any reason  
2           provided by this chapter or rules adopted hereunder;

3           (10) Criminal conviction, whether by nolo contendere or  
4           otherwise, of a penal crime directly related to the  
5           qualifications, functions, or duties of the  
6           institution or applicant in any jurisdiction in which  
7           the institution operates;

8           (11) Failure to report in writing to the commission any  
9           disciplinary decision issued against the institution or  
10          the applicant in another jurisdiction within thirty  
11          days of the disciplinary decision;

12          (12) Failure to report in writing to the commission any  
13          change in accreditation status by any accrediting  
14          agency; or

15          (13) Violating any provision of this chapter or rules  
16          adopted hereunder.

17   The department may issue sanctions for any violation of this  
18   subsection.

19          (b) It shall be a violation of this chapter for a private  
20   college or university, seminary, or religious training  
21   institution or its agent to:



- 1           (1) Make or cause to be made any statement or  
2           representation, oral, written, or visual, in  
3           connection with the offering of educational services  
4           if the private college or university, seminary, or  
5           religious training institution or its agent knows or  
6           reasonably should have known the statement or  
7           representation to be false, inaccurate, or materially  
8           misleading;
- 9           (2) Falsely represent or deceptively conceal, directly or  
10          by implication, through the use of a trade or business  
11          name, the fact that the institution is a private  
12          college or university, seminary, or religious training  
13          institution;
- 14          (3) Adopt a name, trade name, or trademark that represents  
15          falsely, directly or by implication, the quality,  
16          scope, nature, size, or integrity of the private  
17          college or university, seminary, or religious training  
18          institution or its educational services;
- 19          (4) Intentionally and materially represent falsely,  
20          directly or by implication, that students who  
21          successfully complete a course or program of



- 1 instruction may transfer the credits earned to any  
2 institution of higher education;
- 3 (5) Intentionally and materially represent falsely,  
4 directly or by implication, in its promotional  
5 materials or in any other manner:
- 6 (A) Its size, location, facilities, or equipment;  
7 (B) The number, educational experience, or  
8 qualifications of its faculty;  
9 (C) The extent or nature of any approval received  
10 from any state agency; or  
11 (D) The extent or nature of any accreditation  
12 received from any accrediting agency, body, or  
13 association;
- 14 (6) Provide prospective students with testimonials,  
15 endorsements, or other information that has the  
16 tendency to mislead or deceive prospective students or  
17 the public regarding its current practices;
- 18 (7) Designate or refer to its sales representatives by  
19 titles that imply that the sales representatives have  
20 training in academic counseling or advising if they do  
21 not; and



1 (8) Represent, directly or by implication, that it is  
2 authorized by the State or approved or accredited by  
3 an accrediting agency or body when it has not been  
4 authorized, approved, or accredited.

5 (c) Any private college or university, seminary, or  
6 religious training institution or its agent that violates this  
7 chapter may be subject to one or more of the following  
8 sanctions:

9 (1) A fine equal to a sum of not less than \$500 or more  
10 than \$10,000 for each violation. The penalties  
11 provided in this subsection are cumulative to the  
12 remedies or penalties available under all other laws  
13 of this State. Each day that a violation occurs shall  
14 be considered a separate violation;

15 (2) An order directing corrective action on the part of  
16 the institution;

17 (3) An order of restitution to one or more affected  
18 students;

19 (4) Revocation, suspension, probation, or conditions on  
20 the institution's authorization;

21 (5) An order relating to cessation of operations or  
22 alternate enrollment; or



1           (6) The payment of costs of investigation and legal  
2           action, irrespective of the outcome.

3           **§ -13 Requirements to maintain authorization. (a)**

4           Authorization by the commission shall be conditioned on the  
5           maintenance of national accreditation by the institution and a  
6           valid surety bond as provided for in section -15.  
7           Authorization shall be automatically suspended effective as of  
8           the date of the cancellation or expiration of accreditation or  
9           the cancellation or expiration of the surety bond. The  
10          commission shall not reinstate the affected institution until  
11          satisfactory proof of compliance is submitted to the commission.  
12          Failure to reinstate a suspended authorization within sixty days  
13          of suspension shall result in the termination of the  
14          authorization and the institution shall forfeit all fees and  
15          shall be required to apply for authorization as a new applicant.

16          (b) An institution's authorization shall be placed on  
17          probationary status without further action by the commission or  
18          department in the event that:

19               (1) The institution is placed on probationary status by  
20               its nationally recognized accrediting agency,  
21               contemporaneous with the action of such agency; or



1           (2) The institution's nationally recognized accrediting  
2           agency ceases to be recognized by the United States  
3           Department of Education.

4           (c) An institution may, within fifteen days of the receipt  
5 of the notification of probation under this section, request an  
6 administrative hearing for review pursuant to chapter 91.

7           (d) The commission may revoke a private college or  
8 university's authorization or place a private college or  
9 university on probationary status if:

10           (1) The private college or university fails to  
11           substantially comply with the applicable laws or rules  
12           of any other state board or agency that has  
13           jurisdiction over the private college or university;  
14           or

15           (2) The private college or university violates any  
16           criminal law of this State, the federal government, or  
17           any other state in which it operates, that is directly  
18           relevant to the institution's authorization status.

19           (e) The commission shall place a seminary or religious  
20 training institution on probationary status if the seminary or  
21 religious training institution no longer meets the definition of  
22 a seminary or religious training institution under this chapter.





1 (f) The commission may revoke a seminary or religious  
2 training institution's authorization or place the seminary or  
3 religious training institution on probationary status if the  
4 seminary or religious training institution:

5 (1) No longer meets the definition of a seminary or  
6 religious training institution under this chapter;

7 (2) Fails to meet any of the minimum standards set forth  
8 in this chapter or in administrative rules adopted  
9 pursuant to this chapter; or

10 (3) Violates any criminal law of this State, the federal  
11 government, or any other state in which it operates,  
12 that is directly relevant to the institution's  
13 authorization status.

14 (g) If the commission has reason to believe that a private  
15 college or university, seminary, or religious training  
16 institution meets one or more of the grounds specified in  
17 subsections (a), (b), (d), (e), or section -12, as  
18 applicable, the commission may order the department to  
19 investigate whether to revoke its authorization or place it on  
20 probation.

21 (h) In conducting an investigation, the department may  
22 physically inspect the private college or university, seminary,



1 or religious training institution's facilities and records, and  
2 the institution shall have an affirmative duty to cooperate with  
3 requests from the department for information regarding any  
4 investigation or inspection.

5 (i) Upon the conclusion of any investigation pursuant to  
6 subsections (g) and (h), the department shall make available the  
7 results of the investigation to the commission so the commission  
8 may decide whether or not to revoke the private college or  
9 university, seminary, or religious training institution's  
10 authorization or place it on probation; provided that the  
11 department shall identify the applicable grounds for revocation  
12 or probation as specified in subsections (a), (b), (d), (e), or  
13 section -12.

14 (j) If the commission revokes a private college or  
15 university, seminary, or religious training institution's  
16 authorization or places it on probationary status pursuant to  
17 this section, the commission shall accord the private college or  
18 university, seminary, or religious training institution the  
19 right to contest the decision pursuant to chapter 91.

20 (k) If an institution's authorization is revoked due to  
21 the institution's loss of accreditation, the institution shall  
22 provide written notice to all students within thirty days.



1 (1) A private college or university, seminary, or  
2 religious training institution that is authorized pursuant to  
3 this chapter shall:

4 (1) Not make or cause to be made any oral, written, or  
5 visual statement or representation that violates  
6 section -12(b);

7 (2) Provide the department with a copy of its enrollment  
8 agreement, if applicable, in accordance with its  
9 reauthorization schedule;

10 (3) Provide bona fide instruction, in accordance with the  
11 standards and criteria set by its accrediting body;  
12 and

13 (4) If its ownership changes, provide the department with  
14 any material information concerning the transaction at  
15 least thirty days prior to the transaction.

16 (m) If a private college or university, seminary, or  
17 religious training institution violates any of the requirements  
18 of subsection (1), the commission shall determine whether the  
19 institution shall be placed on probation or have its  
20 authorization revoked.

21 § -14 Deposit of records upon discontinuance. (a) If a  
22 private college, university, seminary, or religious training



1 institution ceases operating within the State, its owner or the  
2 owner's designee shall deposit with the department the original  
3 or legible copies of all of its educational records.

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

11 (c) Upon the request of the commission, the department or  
12 the department of the attorney general may enforce this section  
13 by filing a request for an injunction with a court of competent  
14 jurisdiction.

15 (d) The department shall permanently retain any student  
16 transcripts received pursuant to this section. The department  
17 shall retain any other records obtained pursuant to this section  
18 for ten years; provided that after this period, the department  
19 shall dispose of the records in a manner that will adequately  
20 protect the privacy of any personal information included in the  
21 records.



1           **§ -15 Financial integrity; surety bond.** (a) A private  
2 college or university shall provide evidence of financial  
3 integrity at the time of its application for authorization. A  
4 private college or university may demonstrate financial  
5 integrity by meeting the criteria specified in subsection (b) or  
6 (c).

7           (b) A private college or university may demonstrate  
8 financial integrity if it:

- 9           (1) Has been accredited for at least ten years by an  
10           accrediting agency that is recognized by the United  
11           States Department of Education;
- 12           (2) Has operated continuously in the State for at least  
13           ten years;
- 14           (3) Has not filed for bankruptcy protection pursuant to  
15           title 11 of the United States Code;
- 16           (4) Maintains a composite score of at least 1.5 on its  
17           equity, primary reserve, and net income ratios, as  
18           required in title 34 Code of Federal Regulations  
19           section 668.172; and
- 20           (5) Meets or exceeds the pro rata refund policies required  
21           by the United States Department of Education in title  
22           34 Code of Federal Regulations part 668; provided that



1 if it does not participate in federal financial aid  
2 programs, its refund and termination procedures comply  
3 with the requirements of its accrediting body;  
4 provided that a private college or university is not required to  
5 meet the criteria specified in paragraphs (1) and (2) if the  
6 private college or university is part of a group of private  
7 colleges or universities that is owned and operated by a common  
8 owner and the other private colleges and universities meet the  
9 specified criteria in paragraphs (1) and (2).

10 (c) A private college or university may demonstrate  
11 financial integrity if it:

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

20 (2) Owns and operates a permanent instructional facility  
21 in the State;



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



1 (e) The surety bond under subsection (d) shall be  
2 conditioned to provide indemnification to any student or  
3 enrollee, to any parent or legal guardian of a student or  
4 enrollee, that the commission finds to have suffered a loss of  
5 tuition or any fees as a result of any act or practice that is a  
6 violation of this chapter and to provide alternative enrollment  
7 as provided in section -16 for students enrolled in a private  
8 college or university that ceases operation.

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





1 annually based on a reasonable estimate of the maximum prepaid,  
2 unearned tuition and fees received by the institution for the  
3 applicable period or term.

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

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

17 (i) The principal on a surety bond filed under the  
18 provisions of this section is released from the surety bond  
19 after the principal serves written notice thereof to the  
20 commission at least sixty days before the release. The release  
21 does not discharge or otherwise affect a claim filed by a  
22 student or enrollee or the student or enrollee's parent or legal



1 guardian pursuant to section -16 for loss of tuition or fees  
2 that occurred while the surety bond was in effect or that  
3 occurred under any note or contract executed during any period  
4 of time when the surety bond was in effect, except when another  
5 surety bond is filed in a like amount and provides  
6 indemnification for any such loss.

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

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

13 **§ -16 Claims against a private college or university;**  
14 **cessation of operation; alternative enrollment.** (a) A student  
15 or enrollee, or a parent or guardian of the student or enrollee,  
16 who claims loss of tuition or fees as a result of cessation of  
17 operations may file a claim with the commission if the claim  
18 results from an act or practice that violates a provision of  
19 this chapter. The claims that are filed with the commission  
20 shall be public records and subject to the provisions of chapter  
21 92F; provided that the department shall not make the records  
22 public if the release would violate a federal privacy law.



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

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



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

11 (e) If the amount of the surety bond filed under section  
12 -15(d) is less than the total prepaid, unearned tuition and  
13 fees that have been paid by students at the time the private  
14 college or university ceases operation, the department shall  
15 prorate the amount of the surety bond among the students.

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

21 (g) The commission shall be responsible for all prepaid,  
22 unearned tuition and fees, student loans, Pell grants, and other



1 student financial aid assistance if an authorized private  
2 college or university ceases operation.

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

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



1 (j) If a private college or university that is exempt from  
2 the provisions of, or that demonstrates financial integrity  
3 pursuant to, section -15, ceases to operate in the State, the  
4 department of the attorney general may file a claim against the  
5 private college or university on behalf of students enrolled in  
6 the private college or university at the time it ceases  
7 operation to recover any amount of unearned, prepaid tuition  
8 that may be owed to the students.

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

11 **§ -17 Reciprocity.** The commission may enter into any  
12 post-secondary education authorization reciprocity agreement;  
13 provided that the authorization standards of the reciprocity  
14 agreement shall be comparable to or exceed the authorization  
15 requirements of this chapter and any applicable administrative  
16 rules.

17 **§ -18 Complaints; injunctive proceedings.** (a) By  
18 July 1, 2014, the commission shall establish procedures, without  
19 regard to chapter 91, by which a student or former student of  
20 the University of Hawaii system, a private college, university,  
21 seminary, or religious training institution may file a complaint  
22 with the department concerning the institution in which the



1 student is or was enrolled; provided that if a former student  
2 files a complaint, the complaint shall be filed within two years  
3 after the former student discontinued enrollment at the  
4 institution.

5 (b) The commission and the department may initiate  
6 complaints based on information received by the commission for  
7 possible violations of this chapter or rules adopted hereunder.  
8 The department may investigate complaints based on possible  
9 violations of this chapter or rules adopted hereunder.

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 department of the attorney general.

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

9 **§ -19 Fees; public hearing.** (a) A private college,  
10 university, seminary, or religious training institution shall  
11 pay \$ to the department for authorization under this  
12 chapter; provided that the commission may change the amount of  
13 the fees required by this section at any time without regard to  
14 chapter 91, if the commission:

15 (1) Holds at least one public hearing to discuss and take  
16 testimony on the changing of the fees; and

17 (2) Provides public notice at least thirty days prior to  
18 the date of the public hearing.

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





1 to be determined by the director and adjusted from time to time  
2 to ensure that the proceeds, together with all other fines,  
3 income, and penalties collected under this section, do not  
4 surpass the annual operating costs of conducting compliance  
5 resolution activities required under this section. The fees may  
6 be collected biennially or pursuant to rules adopted under  
7 chapter 91, and shall be deposited into the special fund  
8 established under this subsection. Every filing pursuant to  
9 chapter 514E or section 485A-202(a)(26) shall be assessed, upon  
10 initial filing and at each renewal period in which a renewal is  
11 required, a fee that shall be prescribed by rules adopted under  
12 chapter 91, and that shall be deposited into the special fund  
13 established under this subsection. Any unpaid fee shall be paid  
14 by the licensed person, upon application for renewal,  
15 restoration, reactivation, or reinstatement of a license, and by  
16 the person responsible for the renewal, restoration,  
17 reactivation, or reinstatement of a license, upon the  
18 application for renewal, restoration, reactivation, or  
19 reinstatement of the license. If the fees are not paid, the  
20 director may deny renewal, restoration, reactivation, or  
21 reinstatement of the license. The director may establish,  
22 increase, decrease, or repeal the fees when necessary pursuant



1 to rules adopted under chapter 91. The director may also  
2 increase or decrease the fees pursuant to section 92-28.

3 There is created in the state treasury a special fund to be  
4 known as the compliance resolution fund to be expended by the  
5 director's designated representatives as provided by this  
6 subsection. Notwithstanding any law to the contrary, all  
7 revenues, fees, and fines collected by the department shall be  
8 deposited into the compliance resolution fund. Unencumbered  
9 balances existing on June 30, 1999, in the cable television fund  
10 under chapter 440G, the division of consumer advocacy fund under  
11 chapter 269, the financial institution examiners' revolving  
12 fund, section 412:2-109, the special handling fund, section  
13 414-13, and unencumbered balances existing on June 30, 2002, in  
14 the insurance regulation fund, section 431:2-215, shall be  
15 deposited into the compliance resolution fund. This provision  
16 shall not apply to the drivers education fund underwriters fee,  
17 sections 431:10C-115 and 431:10G-107, insurance premium taxes  
18 and revenues, revenues of the workers' compensation special  
19 compensation fund, section 386-151, the captive insurance  
20 administrative fund, section 431:19-101.8, the insurance  
21 commissioner's education and training fund, section 431:2-214,  
22 the medical malpractice patients' compensation fund as



1 administered under section 5 of Act 232, Session Laws of Hawaii  
2 1984, and fees collected for deposit in the office of consumer  
3 protection restitution fund, section 487-14, the real estate  
4 appraisers fund, section 466K-1, the real estate recovery fund,  
5 section 467-16, the real estate education fund, section 467-19,  
6 the contractors recovery fund, section 444-26, the contractors  
7 education fund, section 444-29, the condominium education trust  
8 fund, section 514B-71, and the mortgage foreclosure dispute  
9 resolution special fund, section 667-86. Any law to the  
10 contrary notwithstanding, the director may use the moneys in the  
11 fund to employ, without regard to chapter 76, hearings officers  
12 and attorneys. All other employees may be employed in  
13 accordance with chapter 76. Any law to the contrary  
14 notwithstanding, the moneys in the fund shall be used to fund  
15 the operations of the department. The moneys in the fund may be  
16 used to train personnel as the director deems necessary and for  
17 any other activity related to compliance resolution.

18 A separate special subaccount of the compliance resolution  
19 fund shall be established for fees collected by the state post-  
20 secondary education commission established pursuant to section  
21 -3, which shall be called the post-secondary education



1 authorization special subaccount. The special subaccount shall  
2 be governed by section -20.

3 As used in this subsection, unless otherwise required by  
4 the context, "compliance resolution" means a determination of  
5 whether:

6 (1) Any licensee or applicant under any chapter subject to  
7 the jurisdiction of the department of commerce and  
8 consumer affairs has complied with that chapter;

9 (2) Any person subject to chapter 485A has complied with  
10 that chapter;

11 (3) Any person submitting any filing required by chapter  
12 514E or section 485A-202(a)(26) has complied with  
13 chapter 514E or section 485A-202(a)(26);

14 (4) Any person has complied with the prohibitions against  
15 unfair and deceptive acts or practices in trade or  
16 commerce; or

17 (5) Any person subject to chapter 467B has complied with  
18 that chapter;

19 and includes work involved in or supporting the above functions,  
20 licensing, or registration of individuals or companies regulated  
21 by the department, consumer protection, and other activities of  
22 the department.



1 The director shall prepare and submit an annual report to  
2 the governor and the legislature on the use of the compliance  
3 resolution fund. The report shall describe expenditures made  
4 from the fund including non-payroll operating expenses."

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

7 "**§446E-1.5 Advisory board.** The state post-secondary  
8 education commission, as established by chapter [~~304A, part VII,~~  
9 ~~subpart C,~~] \_\_\_\_\_, shall serve as a resource to the director as  
10 needed regarding the requirements of this chapter."

11 SECTION 5. Chapter 304A, part VII, subpart C, Hawaii  
12 Revised Statutes, is repealed.

13 **PART IV**

14 SECTION 6. To ensure that the post-secondary education  
15 commission established by this Act is formed in time to meet the  
16 July 1, 2013, federal deadline, the governor shall immediately  
17 appoint, without regard to chapter 78, Hawaii Revised Statutes,  
18 and section 26-34, Hawaii Revised Statutes, five interim  
19 commissioners, of whom three shall be representative of the  
20 general public and two shall be representative of public and  
21 private nonprofit and for-profit institutions of post-secondary  
22 education in the State. The interim commissioners shall be



1 authorized to exercise all duties and responsibilities accorded  
2 the post-secondary education commission under this Act and shall  
3 serve until the appointment and confirmation of all members of  
4 the post-secondary education commission pursuant to this Act, at  
5 which time the interim commissioners shall be discharged and the  
6 confirmed members shall begin their service.

7 SECTION 7. The post-secondary education commission shall  
8 report to the legislature no later than twenty days prior to the  
9 convening of the 2014 regular session on such matters including  
10 but not limited to:

- 11 (1) The status of any rulemaking the commission has  
12 undertaken;
- 13 (2) The number of private colleges, universities,  
14 seminaries, and religious training institutions that  
15 have applied for authorization under chapter ;  
16 and
- 17 (3) Any proposed legislation.

18 PART V

19 SECTION 8. There is appropriated out of the general  
20 revenues of the State of Hawaii the sum of \$ or so  
21 much thereof as may be necessary for fiscal year 2013-2014 and  
22 the same sum or so much thereof as may be necessary for fiscal





1 year 2014-2015 to be paid into the post-secondary education  
2 authorization special subaccount of the compliance resolution  
3 fund established pursuant to section 26-9(o), Hawaii Revised  
4 Statutes.

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

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

#### 16 PART VI

17 SECTION 10. (a) To ensure that the post-secondary  
18 education commission established in this Act is able to comply  
19 in a timely manner with the requirements of the Higher Education  
20 Act of 1965, as amended, the department of commerce and consumer  
21 affairs shall contract for an implementation coordinator or team  
22 to assist with the implementation of this Act.



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

3 (1) Knowledge and understanding of the United States  
4 Department of Education regulations for programs  
5 authorized under Title IV of the Higher Education Act  
6 of 1965, as amended;

7 (2) Experience and familiarity with post-secondary  
8 educational institutions and related accreditation  
9 processes; and

10 (3) Demonstrated strong written and oral communication  
11 skills.

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

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

17 (2) Assist in developing any policies and procedures,  
18 including administrative rules, required for the  
19 implementation of this Act;

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



1 (c) The department of commerce and consumer affairs shall  
 2 be responsible for awarding and overseeing the contract for the  
 3 implementation coordinator or team. The term of the contract  
 4 shall be for one year; provided that the department of commerce  
 5 and consumer affairs and the implementation coordinator or team  
 6 may enter into supplemental contracts as the department of  
 7 commerce and consumer affairs deems necessary to carry out the  
 8 purposes of this Act.

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

11 SECTION 11. There is appropriated out of the general  
 12 revenues of the State of Hawaii the sum of \$ or so  
 13 much thereof as may be necessary for fiscal year 2013-2014 for  
 14 the department of commerce and consumer affairs to contract for  
 15 an implementation coordinator or team.

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

18 SECTION 12. All rights, powers, functions, and duties of  
 19 the University of Hawaii are transferred to the department of  
 20 commerce and consumer affairs with regard to the state post-  
 21 secondary education commission.



1 All officers and employees whose functions are transferred  
2 by this Act shall be transferred with their functions and shall  
3 continue to perform their regular duties upon their transfer,  
4 subject to the state personnel laws and this Act.

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

15 An officer or employee of the State who does not have  
16 tenure and who may be transferred or appointed to a civil  
17 service position as a consequence of this Act shall become a  
18 civil service employee without the loss of salary, seniority,  
19 prior service credit, vacation, sick leave, or other employee  
20 benefits or privileges and without the necessity of examination;  
21 provided that such officer or employee possesses the minimum



1 qualifications for the position to which transferred or  
2 appointed.

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

11 SECTION 13. All appropriations, records, equipment,  
12 machines, files, supplies, contracts, books, papers, documents,  
13 maps, and other personal property heretofore made, used,  
14 acquired, or held by the University of Hawaii relating to the  
15 functions transferred to the department of commerce and consumer  
16 affairs shall be transferred with the functions to which they  
17 relate.

18 **PART VII**

19 SECTION 14. If any provision of this Act, or the  
20 application thereof to any person or circumstance, is held  
21 invalid, the invalidity does not affect other provisions or  
22 applications of the Act that can be given effect without the



1 invalid provision or application, and to this end the provisions  
2 of this Act are severable.

3 SECTION 15. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 16. This Act shall take effect on July 1, 2013.



**Report Title:**

Post-secondary Education Commission; 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 the Post-secondary Education Commission within the University of Hawaii. Creates the post-secondary education authorization subaccount of the compliance resolution fund. Includes provisions for transition and implementation. Effective July 1, 2013. (SB46 HD1)

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

