

ACT 171

H.B. NO. 252

A Bill for an Act Relating to Degree Granting Institutions.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 446E, Hawaii Revised Statutes, is amended by adding three new sections to be appropriately designated and to read as follows:

“**§446E- Advisory board.** The state post-secondary education commission, as established by chapter 305H, shall serve as a resource to the director as needed regarding the requirements of this chapter.

§446E- Exceptions. This chapter shall not apply to the types of schools and courses of instruction that include:

- (1) Schools and educational programs conducted by firms, corporations, or persons for the training of their own employees;
- (2) Apprentice or other training programs provided by labor unions to union members or union applicants for membership;
- (3) Courses of instruction that do not lead to the conferring of a degree;
- (4) Seminars, refresher courses, and programs of instruction sponsored by professional, business, or farming organizations or associations for their members or employees of their members;
- (5) Courses of instruction conducted by a public school district or a combination of public school districts;
- (6) Colleges and universities that grant degrees pursuant to chapters 304 and 305;
- (7) Entities that are established under the jurisdiction of the board of regents of the University of Hawaii;
- (8) Schools, courses of instruction, or courses of training that are offered by a vendor to the purchaser or prospective purchaser of the vendor's product when the objective of the school or course is to enable the purchaser or the purchaser's employees to gain skills and knowledge which enable the purchaser to use the product;
- (9) Schools and educational programs conducted by religious organizations solely for the religious instruction of their members;
- (10) Nondegree granting post-secondary educational institutions licensed by the department of education or the real estate commission; and
- (11) Schools that are accredited by an agency or organization approved or recognized by the United States Department of Education or a successor agency, except as provided for in section 446E-5(b) and (c).

§446E- Powers and duties of the director. The director may adopt rules in accordance with chapter 91 to carry out the functions, powers, and duties set forth in this chapter.”

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

“**[[§446E-1]] Definitions.** As used in this chapter:

“Degree” means a post-secondary credential, earned or honorary, conferring on the recipient the title or designation of “associate”, “bachelor”, “baccalaureate”, “master”, “doctor”, or “doctorate”, or any designation, mark, appellation, series of letters or words, or other symbol which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic or professional program of study beyond the secondary school level.

“Degree granting institution” means a school, academy, institute, junior college, college, university, [or person or entity of whatever kind which furnishes or offers to furnish instruction leading toward or prerequisite to an academic or professional degree beyond the secondary school level.] agency, individual, partnership, company, firm, society, trust, association, corporation, or any combination thereof that meets the following criteria:

- (1) Provides a post-secondary instructional program or course leading to a degree;
- (2) Uses in its name the term “college”, “academy”, “institute”, “institution”, or “university” or a similar term which implies that the organization or person is primarily engaged in the education of students at the post-secondary level; and
- (3) Charges a fee for its services.

“Director” means the director of commerce and consumer affairs.

“Employee” means a person who is hired on an hourly or salaried basis for twenty or more hours per week.

“Office” means space within a structure that is leased, subleased, rented, or owned by the unaccredited institution or one or more of its officers or directors for the exclusive use by the unaccredited institution, as evidenced by a written lease agreement, sublease agreement, rental agreement, or conveyance document, and shall not include an arrangement for mail forwarding services or mailbox rental.

“Presence” means offering courses, programs, or degrees or maintaining a campus, or an administrative, corporate, or other address in this State.

“Student” means a person who enrolls in or seeks to enroll in a course of instruction offered or conducted by an unaccredited institution.

“Unaccredited institution” means a degree granting institution [which has not been] that is not accredited or [provisionally accredited] a candidate for accreditation by at least one nationally recognized accrediting agency [or association which] that is listed by the United States Secretary of Education.”

SECTION 3. Section 446E-2, Hawaii Revised Statutes, is amended to read as follows:

“§446E-2 Disclosures. (a) Any unaccredited institution shall disclose in all catalogs, promotional materials, and [written] contracts for instruction, the fact that the institution is not [fully] accredited by any nationally recognized accrediting agency [or association] listed by the United States Secretary of Education. [The unaccredited institution shall disclose whether it is a provisionally accredited, or is a candidate for accreditation. The accrediting agency or association shall be identified.] The disclosure shall be made in [boldface print and] a type size as large or larger than any other text in the catalog, promotional material, or contract for instruction, excluding the name of the unaccredited institution, and shall be presented in a manner reasonably calculated to draw the attention of the reader [and]. If the unaccredited institution includes in its catalogs, promotional materials, or contracts for instruction any other information relating in any manner to accreditation, or to accreditation by an agency not nationally recognized by the United States Secretary of Education, the disclosure required by this subsection shall be repeated on every page on which the information appears. Where the information is presented electronically, the disclosure shall be made directly preceding or following the information. The disclosure shall read [substantially] as follows:

(Name of Degree Granting Institution) IS NOT ACCREDITED
BY [A RECOGNIZED] AN ACCREDITING AGENCY [OR
ASSOCIATION] RECOGNIZED BY THE UNITED STATES
SECRETARY OF EDUCATION.

Note: In the United States, many licensing authorities require accredited degrees as the basis for eligibility for licensing. In some cases, accredited colleges may not accept for transfer courses and degrees completed at unaccredited colleges, and some employers may require an accredited degree as a basis for eligibility for employment.

(b) Every unaccredited institution subject to this chapter shall[, in accordance with the rules prescribed by the department,] keep true and accurate records of student enrollment, courses, fees, and matriculation rates. These records shall be retained for five years. Upon demand, these records, and any other information requested or subpoenaed by the director, shall be made available to the [department for inspection. Such records shall be retained for a period of five years.] director.”

SECTION 4. Section 446E-3, Hawaii Revised Statutes, is amended to read as follows:

“[**§446E-3**] **Sanction.** [Failure by any unaccredited institution to make the disclosure required by this section shall constitute an unfair or deceptive act or practice under section 480-2.] Any person who violates this chapter shall be deemed to have engaged in an unfair or deceptive act or practice pursuant to section 480-2.”

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

“[**§446E-4**] **Registration.] Service of process.** (a) Any unaccredited institution with a presence in the State shall [register with the department of commerce and consumer affairs in a manner established by rules adopted pursuant to chapter 91. The department may request, as part of the registration process, copies of any contracts, brochures, catalogues, or similar materials which are distributed to prospective students.] designate and continuously maintain an agent in this State authorized to accept service of process on behalf of the institution and shall transmit to the director the name, address, and telephone number of the agent so designated in a manner prescribed by the director. The designated agent shall be an agent of the unaccredited institution for service of any process, notice, or demand required or permitted by law to be served upon the unaccredited institution.

(b) If an unaccredited institution fails to appoint or maintain an agent for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the agent’s address, service of process may be made upon the unaccredited institution by registered or certified mail, return receipt requested, addressed to the unaccredited institution at the most recent address listed in the records of the director.

(c) Service by registered or certified mail shall be effected under subsection (b) at the earliest of:

- (1) The date the unaccredited institution receives the process, notice, or demand;
- (2) The date shown on the return receipt, if signed on behalf of the unaccredited institution; or
- (3) Five days after its deposit in the mail, if mailed postpaid and correctly addressed.

(d) This section shall not affect the right to serve process, notice, or demand in any other manner provided by law.”

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

“[**§446E-5**] **Prohibited practices.** (a) No unaccredited institution shall [refer to registration under this chapter, compliance with the requirements of this chapter, or to any agency or employee of the State in a manner which suggests] indicate or suggest that the State licenses, approves, or regulates its operations. Acceptance by the director of any documents from an unaccredited institution shall

not be construed as evidence that the director has determined the adequacy of any filing.

(b) Any institution that is not accredited by the American Bar Association shall not issue a juris doctor degree (J.D.), a master of laws degree (LL.M.), or any equivalent or comparable degree.

(c) Any institution that is not accredited by the Liaison Committee on Medical Education shall not issue a doctor of medicine degree (M.D.), or any equivalent or comparable degree.

(d) No unaccredited institution shall issue degrees unless the institution has an office located in Hawaii, at least one employee who resides in Hawaii, and at least twenty-five enrolled students in Hawaii, in each academic year of its operation for the purpose of performing course requirements that are part of the students' educational curriculum.

(e) No unaccredited institution that operates in or from the State or has a presence in this State shall accept or receive any tuition payment or other fee from or on behalf of a student unless the institution complies with all of the requirements of this chapter.

(f) No unaccredited institution shall disclose in any catalog, promotional material or written contract for instruction that it has applied for future accreditation."

SECTION 7. Notwithstanding section 446E-5(d)¹, Hawaii Revised Statutes, an unaccredited institution may issue degrees only for a period of no more than three consecutive years from the effective date of this Act; provided that:

- (1) The institution has, on the effective date of this Act and for as long thereafter as it issues degrees pursuant to this section of the Act, an office located in Hawaii, and at least one employee who resides in Hawaii; and
- (2) This period may be extended by two additional consecutive years if the institution has applied for and has been granted eligibility for candidacy or accreditation by an agency approved or recognized by the United States Department of Education or a successor agency prior to the expiration of the initial three-year period. Thereafter, the unaccredited institution shall be subject to section 446E-5(d)¹, Hawaii Revised Statutes.

SECTION 8. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 9. This Act shall take effect upon its approval.

(Approved July 1, 1999.)

Notes

1. "446E-5(d)" substituted for "445E-5(d)".
2. Edited pursuant to HRS §23G-16.5.