

South Carolina Commission on Higher Education
“Nonpublic Postsecondary Institution License Act”

Nonpublic Postsecondary Institution Licensing

- This document includes the amendments to the Statute ratified 5/22/2002; Act No. A284
- This document includes the amendments to Sections 20, 30, and 80 ratified 5/9/2007, Act No. R40
- [Bracketed text is added for clarification; updated 11/7/2012.]

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CHAPTER 58
Nonpublic Post-Secondary Institution Licensing

SECTION 59-58-10. Short Title.

This Chapter may be cited as "Nonpublic Post-secondary Institution License Act."

SECTION 59-58-20. Definitions.

As used in this Chapter:

- (1) "Commission" means the South Carolina Commission on Higher Education.
- (2) "Agency" means the South Carolina Commission on Higher Education.
- (3) "Commissioner" means the Chief Executive Officer of the South Carolina Commission on Higher Education, or a person designated by the Commissioner to administer the provisions of this Chapter.
- (4) "Nonpublic educational institution" includes, but is not limited to, any educational entity operating or soliciting in South Carolina and is not owned or operated in whole or in part by the State of South Carolina offering resident or correspondence courses beyond the secondary school level to students upon the payment of tuition or fees.
- (5) "Program" means an organized unit of subject matter in which instruction is offered within a given time and for which credit is given toward completion of training toward a predetermined occupational or academic credential.
- (6) "Degree" includes, but is not limited to, any academic credential or designation not less than, but including associate, bachelor, master, doctor or fellow, whether earned or honorary, which signifies, purports or is generally taken to signify partial or satisfactory completion of the requirements of an academic, occupational, business or other program of study beyond the secondary school level.
- (7) "Occupational objective" includes a certificate or diploma without any academic designation that may be used to signify partial or satisfactory completion of educational training oriented toward a specific occupation or skill taught in a course or program of study beyond the secondary school level.

- (8) "Degree granting institution" includes, but is not limited to, any nonpublic educational institution awarding, selling, conferring, bestowing, or giving, or purporting to award, sell, confer, bestow or give a degree as defined in this Chapter.
- (9) "License" means an agency permit, approval or some similar form of written permission.
- (10) "Salesman," "agent," or "solicitor" means any person who, for remuneration, enrolls or seeks to enroll, away from the nonpublic educational institution's premises, a resident of South Carolina in courses or programs of instruction or study offered by the nonpublic educational institution. Administrators and faculty who make informational public appearances to include appearances at high school recruiting fairs, but whose primary task does not include service as a paid recruiter, are exempted from this definition.
- (11) "Agent permit" means a nontransferable written authorization issued to a natural person, pursuant to the provisions of this Chapter, to solicit persons residing in South Carolina to enroll in courses or programs of instruction offered by nonpublic educational institutions.
- (12) "Revoke" means to rescind, cancel or withdraw. Upon revocation of an institution's license, the institution must immediately cease operation.
- (13) "Suspend" means to stop. During a period of suspension, the institution must immediately cease operation for a specified period.
- (14) "Probation" means a specified period during which an institution cannot enroll, solicit or recruit new students.
- (15) "Person" means any individual, firm, partnership, association, organization, corporation, trust or other legal entity or combination of the above.
- (16) "Entity" includes, but is not limited to, any person or group of persons.
- (17) "Operating or soliciting" refers to having actual presence¹ within the State of South Carolina and includes for the purposes of application of this Chapter:

¹ [The Commission does not require licensing of institutions that enroll residents of South Carolina into online or distance programs unless the institution operates or solicits in South Carolina in such a way that creates a physical presence.] SC is a member of the State Authorization Reciprocity Agreement (SARA) as of 6/9/2016. The participation of an institution in SARA does not supplant the requirement for licensure to operate or solicit in SC.

- (a) an instructional or administrative site within South Carolina whether owned, leased, rented, or provided without charge;
 - (b) instruction whether theory or clinical² [~~within or (strikethrough)~~] originating from South Carolina utilizing teachers³, trainers, counselors, advisors, sponsors, or mentors⁴;
 - (c) an agent, recruiter, in-state liaison personnel, institution, or business that solicits for enrollment or credits or for the award of an educational or occupational credential; and
 - (d) advertising, promotional material, or public solicitation in any form that targets South Carolina residents through distribution or advertising in the state.⁵
- (18) "Religious or theological training" is the awarding of nonacademic degrees, diplomas, or certificates with a specific theological, biblical, divinity, or other religious designation.

SECTION 59-58-30. Exclusions.

The definition of "nonpublic educational institution" does not include the following:

- (1) Any degree-granting school, institute, college, junior college, university or entity that was chartered by the Secretary of State before 1953;
- (2) Institutions that:
 - (a) are independent or church-related,

2 [The Commission does not require licensing of institutions where the sole activity is a practicum, internship, or clinical experience in South Carolina or where the institution pays the hosting preceptor/mentor. However, the SC Board of Nursing requires approval of programs that lead to initial licensure www.llr.sc.gov.]

3 [The Commission does not require licensing of institutions that offer programs online or at a distance where the sole activity is employment of and payment to faculty members who are residents of South Carolina.]

4 [The Commission does not require licensing of institutions where an in-state proctor administers exams for courses delivered by distance learning or where the institution pays the proctor.]

5 [The Commission does not require licensing of institutions that use search engine marketing (Yahoo, Bing, Google) or web site advertisements that originate outside the borders of South Carolina.]

- (b) are two or four-year degree granting,
 - (c) have their primary emphasis on liberal arts,
 - (d) are accredited by the Southern Association of Colleges and Schools,
 - (e) are nonprofit, **and**
 - (f) have their primary place of business in South Carolina;
- (3) Institutions offering courses of instruction only at the kindergarten through high school level;
 - (4) Institutions whose sole purpose is religious or theological training⁶;
 - (5) Institutions offering noncredit bearing courses exclusively for avocational purposes, as determined by the Commissioner;⁷
 - (6) Institutions directly supported, entirely or partly, by the State of South Carolina;
 - (7) Aviation institutions or instructors that offer flight training with the statement or implication that their primary objective is to train persons for personal or recreational purposes and not for gainful employment;
 - (8) Courses or programs regulated and licensed or approved under an occupational licensing law of the State of South Carolina;
 - (9) Noncredit bearing courses or programs sponsored by employers solely for the training of their employees if;
 - (a) the training is conducted by an employee of the sponsoring employer or if the sponsoring employer contracts with a provider to conduct the training;

6 [Where an institution offers programs that require licensing by CHE also offers nonacademic credentials in theology, Bible, divinity, or ministry, those programs are exempt from oversight of CHE.]

7 [CHE does not license programs that train teachers or participants where the programs are primarily personal development, recreational, and non-vocational such as dance, music, art, or yoga.]

- (b) the sponsoring employer bears the expense of providing the training by paying the training provider directly, and this provision does not mean paying the employee after the employee pays; and
 - (c) the sponsoring employer allows employees to attend the training on company time if the training takes place during regular work hours.
- (10) Noncredit bearing courses or programs that do not prepare or qualify individuals for employment in any occupation or trade sponsored by recognized trade, business or professional organizations solely for the instruction of their members;
 - (11) Institutions that offer only noncredit bearing intensive review courses such as those designed to prepare students for certified public accountancy tests, law school aptitude tests, bar examinations, medical college admissions tests, and other license preparation tests.
 - (12) Out-of-state institutions that formally collaborate with public South Carolina institutions in offering distance education coursework in South Carolina and where the South Carolina institution offers the degree.
 - (13) Institutions that offer programs and courses on federal military installations, and
 - (14) Degree-granting institutions accredited by an accrediting agency recognized by the United States Department of Education that conduct occasional or incidental recruiting activities to include activities at high school recruiting fairs or through seasonal recruitment advertising rather than continuing and regular activities that would otherwise establish an actual presence in South Carolina as defined in this chapter.

SECTION 59-58-40. Authority.

The Commission is the sole authority for licensing nonpublic educational institutions established in South Carolina and for those established elsewhere which want to operate in or confer degrees in this State. The Commission may promulgate those regulations as may be necessary for the administration and enforcement of this Chapter.

- (1) The Commission may license nonpublic educational institutions meeting the necessary standards and shall administer and enforce the provisions of this Chapter. These standards must include, but are not limited to, course or program offerings, adequate facilities, financial stability, competent personnel, educational resources, refund policies, and legitimate operating practices.

- (2) The Commission shall formulate the criteria and standards for the approval of nonpublic educational institutions. Only those institutions meeting such standards may be licensed. The Commissioner shall maintain a list of institutions that have been licensed according to this Chapter.
- (3) The Commission shall formulate the standards for the approval of salesmen, agents or representatives of institutions and issue permits to those applicants meeting such standards.
- (4) The Commissioner shall enforce all rules and regulations for licensing nonpublic educational institutions. The Commissioner may place an institution on probation. The Commission shall revoke or suspend the license of any institution failing to comply with the minimum requirements for licensure.

SECTION 59-58-50. License requirements.

- (A) No nonpublic educational institution established in South Carolina or offering a course or program in South Carolina has the authority to operate, to solicit students for enrollment, or to confer degrees or other educational credentials unless a license is first secured from the Commission. The Commission shall approve through licensure the location of and programs offered by the institution. The Commission shall promulgate regulations to amend a license for and changes in location and for additional or amended courses or programs. The Commission shall not license any institution to offer a degree if the Commission determines that the degree adversely affects the goals of the Commission's plan to improve access and equity minority affairs programs in public institutions of higher education. The Commission shall promulgate regulations to make the determination.
- (B) After a license is issued, it is the institution's responsibility to notify immediately the Commissioner of significant changes in the course or program offerings, facilities, finances, or personnel.
- (C) In the event of the sale of an institution, the license shall not be transferable. The new owner must comply with all the requirements of this Chapter.
- (D) Applications for licenses shall be filed in the manner prescribed by the Commission. The applications are to be signed by the applicants and must contain that information as may be required.
- (E) Licenses are restricted to the courses or programs of instruction specifically indicated on the license. Additional courses or programs of instruction may be

approved during the effective period of the license if a supplementary approval application is submitted and the license is amended.

- (F) Licenses for nondegree-granting institutions shall normally be granted for twelve months, renewable annually from date of issue, or other date in excess of twelve months set by the commission to stagger the renewal dates of all institutions. The Commission may issue licenses to non-degree granting institutions for less than twelve months as circumstances justify. Licenses and renewal of licenses for degree-granting institutions may be granted for periods not to exceed five years. Renewal is contingent upon filing appropriate applications for renewal with the Commissioner. The institution and its courses or programs, facilities, faculty, and all other operations must meet the requirements for an original license at the effective date of the renewal.

SECTION 59-58-60. Approval of name.

No individual, school, board, association, corporation, business, institution, or other entity may use the term "college" or "university" or use any other name, title, literature, catalogs, pamphlets or descriptive matter which implies that it is an institution of higher learning or that it may grant educational credentials or credit or academic or professional degrees, except as follows:

- (A) An institution may use the term "college" in its name only if it offers at least one program leading to an associate or higher degree.
- (B) An institution may use the term "university" in its name if the institution is:
- (1) Operating and licensed in South Carolina and using the term "university" in its name before enactment of this Chapter, or
 - (2) An out-of-state institution that is chartered or licensed in its home state using the term "university" in its name.

Any other institution must petition the Commission for approval to use the term "university" in its name.

SECTION 59-58-70. Fees.

The Commission may set reasonable fees for administration of this Chapter, including, but not limited to, licenses, agent permits, renewals; penalties for late renewals, penalties for failure to provide information as required, penalties for repeat violations; consultants, complaint investigations, and supplementary applications for amendments

of the license.

SECTION 59-58-80. Student tuition protection.

- (A) Before an institution is licensed under this Chapter, the Commission may require that a surety bond shall be provided by the institution in an amount in compliance with the regulations prescribed by the Commission. The obligation of the bond is that the institution, its officers, agents, and employees shall faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students. The bond shall be issued by a company authorized to do business in the State of South Carolina. The bond must be to the Commission, in that form as approved by the Commission, and is to be used for the benefit of students who suffer financial losses of tuition and fees prepaid to an institution as a result of the closing of the institution. The Commission may use the funds for these purposes to pay refunds to these students for unearned tuition and fees, to pay for or subsidize the cost of providing facilities and instruction for these students to complete their programs, or to pay expenses to store and maintain student records of these students.
- (B) The bond company may not be relieved of liability on the bond unless it gives the institution and the Commission 90 day's written notice of the company's intent to cancel the bond. If at any time the company that issued the bond cancels or discontinues the coverage, the institution's license is revoked as a matter of law on the effective date of the cancellation or discontinuance of bond coverage, unless a replacement bond is obtained and provided to the Commissioner.
- (C) Instead of the surety bond required in Subsection (A), the institution may pledge other means of collateral acceptable to the State Treasurer, in an aggregate market value of the required bond. The Commission shall deliver a safekeeping receipt of collateral to the State Treasurer to be held until the Commission serves notice for its release to the Commission.
- (D) The Commission may promulgate regulations establishing a student tuition guaranty fund for nonpublic educational institutions. The fund must be used to reimburse students because an institution has failed to perform faithfully its contractual obligations for tuition and instructional fees in the event of an institution closing. The Commission may use the funds for these purposes: to pay refunds to these students for unearned tuition and prepaid fees, to pay for or subsidize the cost of providing facilities and instruction for these students to complete their programs, or to pay expenses to store and maintain student records of these students.

SECTION 59-58-90. Agent permits.

- (A) No person representing a nonpublic educational institution shall solicit students or sell any course or program of instruction unless he first secures a permit from the Commission. The application for a permit shall be accompanied by a non-refundable fee as determined by the Commission.
- (B) The permit will be valid for one year, and may be renewed by filing an application for renewal accompanied by a nonrefundable fee as determined by the Commission.
- (C) The Commission may refuse to issue a permit to the applicant if he has pleaded guilty to or been convicted of a felony or a crime of moral turpitude under the laws of this or any other state.

SECTION 59-58-100. Contracts void.

All enrollment agreements, contracts, and promissory notes or other evidence of indebtedness entered into by nonpublic educational institutions with students or prospective students are void unless the institution holds a valid license, and the agent enrolling the student holds a valid permit as required by this Chapter.

SECTION 59-58-110. Denial, revocation or suspension of license or permit; probation.

- (A) Before a final proceeding to deny, revoke or suspend a license or permit, the Commission shall give to the person to be affected by the decision notice of facts and conduct which warrant the intended action and an opportunity to show compliance with the minimum requirements for a license or permit. If the Commission determines that the violations are habitual, willful, and therefore likely to reoccur, the Commission may proceed with denial or revocation though the institution agrees to comply with the standards for licensure.
- (B) In any final agency proceeding to deny a license or permit to any person properly applying for one, or to revoke or suspend the license or permit of any licensee or permit holder, the Commission shall give the person to be affected by the intended action notice and an opportunity for a hearing as provided in the Administrative Procedures Act.
- (C) The Commission may give the institution a period of probation if in its judgment any unsatisfactory condition can reasonably be corrected within such time. The Commission may also require that an institution delay matriculation of new

students into a new class term.

SECTION 59-58-120. Judicial review of denial, revocation or suspension.

Any person aggrieved by the final decision of the Commission in refusing to issue a license or permit, or revoking or suspending a license or permit previously granted, is entitled to the same judicial review under this Chapter as provided in the Administrative Procedures Act concerning contested cases.

SECTION 59-58-130. Restraining violations of Chapter or rules and regulations; civil penalties.

- (A) Whenever it shall appear to the Commission that any person is or has been violating any provisions of this Chapter or the regulations promulgated hereunder, the Commission shall request the Attorney General, the solicitor or any appropriate official having jurisdiction in the county in which the nonpublic educational institution or its agent is located, to bring a civil action to restrain that person from violation, and for other appropriate relief. The action may be brought in the court of common pleas in the county in which the person resides, has his principal place of business, or conducts or transacts business. The courts may issue orders and injunctions to restrain and prevent violations of this Chapter, and these orders and injunctions must be issued without bond.
- (B) If a court finds that any person is willfully violating or has willfully violated this Chapter, the Commission, upon petitioning the court, may recover a civil penalty of not exceeding five thousand dollars for each violation. Each degree, diploma, or certificate granted by an institution without the required license is a separate violation and each student enrolled by an agent is a separate violation for purposes of this section.
- (C) The Commission may bring a civil action against a person who violates the terms of an injunction issued under this section for a civil penalty of not more than fifteen thousand dollars. For purposes of this section, the court of common pleas issuing an injunction shall retain jurisdiction, and the cause may be continued and in these cases the Commission may petition for recovery of civil penalties.
- (D) For purposes of this section, a willful violation occurs when the person committing the violation knew or should have known that his conduct was a violation of this Chapter.

SECTION 59-58-140. Severability of provisions.

If any provision of this Chapter is declared to be invalid or unconstitutional, the declaration shall not invalidate the remaining provisions of this Chapter.

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