

HOUSE BILL 2573

By McCormick

AN ACT to amend Tennessee Code Annotated, Title 49,
relative to postsecondary education.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 49-7-2001, is amended by deleting the section in its entirety and substituting instead:

This part shall be known and cited as the "Tennessee Higher Education Authorization Act of 2016."

SECTION 2. Tennessee Code Annotated, Section 49-7-2002, is amended by deleting the section in its entirety and substituting instead:

(a)

(1) It is the purpose of this part to provide for the protection, education, and welfare of the citizens of this state, its postsecondary educational institutions, and its students, through regulatory oversight to ensure consumer protections are appropriately maintained, while also acknowledging the heightened standards institutions may achieve and maintain through academic accreditors.

(2) The commission shall accomplish the provisions of this part by:

(A) Authorizing the granting of degrees, diplomas, certificates, or other educational credentials by postsecondary educational institutions and prohibiting the granting of false or misleading educational credentials;

(B) Establishing minimum standards concerning quality of education, ethical business practices, and fiscal responsibility, to protect against substandard, transient, unethical, deceptive, or fraudulent institutions and practices;

(C) Providing certain rights and remedies to the consuming public and the commission necessary to effectuate the purposes of this part;

(D) Prohibiting misleading literature, advertising, solicitation, or representation by educational institutions or their agents; and

(E) Providing formal authorization to institutions of higher education in good standing and operating lawfully in compliance with this part.

(b) The executive director of the Tennessee higher education commission is directed to reexamine this regulatory function of the higher education commission and its structure, considering specifically, efficiency, adequacy, and overall effectiveness. The executive director is also encouraged to review the current operations, scope of regulation, personnel, and agency resources necessary to effectuate the purposes of this part. Upon completion of this review, the executive director and the commission shall adopt new agency policies that reflect the results of the examination.

SECTION 3. Tennessee Code Annotated, Title 49, Chapter 7, Part 20, is amended by adding the following language as a new section:

(a) No entity shall operate in this state a postsecondary educational institution, not exempted from this part, unless the institution has a current and valid authorization from the commission to operate.

(b) Degree-granting postsecondary educational institutions accredited by a regional or national institutional accrediting agency recognized by the United States department of education may apply annually for an eligibility review and an optional expedited authorization by the commission.

(c) Eligibility for optional expedited authorization is available annually to degree-granting postsecondary educational institutions that submit the following documentation to the commission:

(1) Evidence of good-standing and valid institutional accreditation from a regional or national institutional accrediting agency recognized by the United States department of education;

(2) Documentation evidencing an established, clearly articulated, and comprehensive process for the resolution of consumer complaints;

(3) Documents demonstrating the institution is operating lawfully in the state, and, at a minimum, currently maintaining financial standards and institutional stability deemed acceptable for eligibility in Title IV student federal financial aid programs; and

(4) A signed and notarized application for optional expedited authorization on a form provided by the commission.

(d) Upon receipt of an institution's application, the commission shall conduct a detailed review and verification and, upon satisfactory examination of all submitted documentation, shall issue this annual optional expedited authorization subject to this section.

(e) If the commission, upon review and consideration of the application, determines the applicant is not eligible and fails to meet the optional expedited authorization criteria established in this section, the commission shall notify the applicant of its decision to deny the application and set forth the reasons for the denial in writing.

(f) Issuance of an annual optional expedited authorization shall demonstrate full compliance with the minimum standards established under this part and fulfill all requirements for the institution's state authorization.

(g) Institutions satisfying the requirements of this section and receiving optional expedited authorization shall not be subject to any other authorization requirements

under this part, but shall remain subject to §§ 49-7-2012, 49-7-2014, 49-7-2015, 49-7-2016, and 49-7-2018.

(h) To assist the commission with its duty of consumer protection, any institution receiving optional expedited authorization under this section shall:

(1) Timely report to the commission any illegal or unethical conduct by employees, agents, contractors, or third-party service providers related to the delivery of educational programs and services to students, including any corrective action and remedies taken by the institution;

(2) Notify the commission, within five (5) business days, of the following:

(A) Action by an accrediting agency in regard to the institution's accreditation status, including revocation, suspension, probation, warning, or similar action;

(B) Notice of legal action involving the institution, or its parent entity if applicable, and Tennessee students, including class action lawsuits;

(C) Utilization by the institution of a letter of credit or a cash management agreement with the United States department of education;
or

(D) Public announcement of investigation by any governmental agency. The institution shall notify the commission whether the investigation is related to the institution's academic quality, financial stability, or student or consumer practices;

(3) Provide any information requested by the commission necessary to monitor the institution's eligibility for optional expedited authorization;

(4) Provide complaint resolution policies and procedures to the institution's students and cooperate with the commission in the investigation or resolution of student complaints; and

(5) Provide the following data, subject to the commission's requirements:

(A) Graduation rates and statistics on credential attainment;

(B) Gainful employment data;

(C) Costs of attendance;

(D) Executed articulation and transfer of credit agreements with other institutions operating in Tennessee; and

(E) Student default rates.

(i) Optional expedited authorization shall remain available only to those institutions maintaining the eligibility standards required under this section, as submitted in the documentation accompanying the institution's annual optional expedited authorization application.

(j) The commission shall review an issued optional expedited authorization for revocation upon the occurrence of any of the following events:

(1) Loss or failure to meet any of the listed criteria for authorization in subsection (c); or

(2) Failure to fulfill the requirements in subsection (h).

(k) The commission may revoke optional expedited authorization for just cause.

Upon the commission's revocation of any institution's optional expedited authorization, the institution shall then immediately be subject to all remaining provisions of this part, applicable administrative rules and regulations, and procedures for issuance of authorization and shall reapply for commission authorization under § 49-7-2008.

Further, any institution whose optional expedited authorization is revoked by the

commission shall be ineligible to reapply for optional expedited authorization for no less than twenty-four (24) months from the date of revocation.

(l) The commission may investigate any signed student complaint involving institutions authorized under this section; however, initial responsibility for the investigation and resolution of complaints shall reside with the institution against which the complaint is made. For complaints not resolved at the institutional level, the commission may investigate and coordinate resolution of any student complaint with the assistance of other government agencies, as necessary.

(m) Institutions receiving optional expedited authorization are subject to the provisions and requirements of the tuition guaranty fund, under § 49-7-2018.

(n) Institutions receiving optional expedited authorization shall be subject to a flat annual fee, as established by the commission. Institutions receiving optional expedited authorization shall not be subject to any other authorization fees under this part.

(o) The commission may develop agency policies and promulgate administrative rules and regulations, as necessary, to effectuate the provisions of this section.

(p) To aid consumers, the commission shall develop and make available to the public on the commission's web site, no later than June 30, 2017, the following information for institutions authorized under this section:

- (1) Graduation rates and statistics on credential attainment;
- (2) Gainful employment data;
- (3) Costs of attendance;
- (4) Information as to whether academic credits attained are transferable to other institutions operating in Tennessee; and
- (5) Student default rates.

SECTION 4. Tennessee Code Annotated, Section 49-7-207, is amended by adding the following language as a new subsection:

() Institutions issued annual optional expedited authorization from the commission under part 20 of this chapter shall be exempt from subsections (e) and (f).

SECTION 5. Tennessee Code Annotated, Title 49, Chapter 7, Part 20, is amended by adding the following language as a new section:

The Tennessee higher education commission is directed to promulgate rules to effectuate the purposes of this part. During the rulemaking process, the Tennessee higher education commission shall seek input from institutions not pursuing optional expedited authorization. The rules shall be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 6. Tennessee Code Annotated, Section 49-7-2014, is amended by deleting subsection (c) in its entirety, and substituting instead:

(c) The fees to be collected by the commission shall accompany an application for authorization to operate an institution or an application for an agent's permit, or other application or request in accordance with the schedule set out in the administrative rules under this chapter. All fees shall be stated as a flat fee.

SECTION 7. Tennessee Code Annotated, Section 49-7-2014, is further amended by adding the following language as a new subsection:

() Eligible institutions pursuing optional expedited authorization from the commission shall be subject to a flat annual fee collected by the commission and shall be exempt from all other fees under this part.

SECTION 8. Tennessee Code Annotated, Section 49-7-2006(a)(1), is amended by deleting the subdivisions (J) and (K) in their entireties and redesignating the remaining subdivisions accordingly.

SECTION 9. Tennessee Code Annotated, Section 49-7-2006(a)(2), is amended by deleting the subdivision in its entirety and substituting instead:

(2) An applicant for an agent's permit shall represent only postsecondary educational institutions lawfully authorized by the commission to operate in the state.

SECTION 10. Tennessee Code Annotated, Section 49-7-2005, is amended by deleting subdivision (a)(9) in its entirety, adding the following language as a subsection (b), and redesignating subsequent subsections accordingly:

(b) May require as part of the application for initial authorization of a postsecondary educational institution criminal background checks for all owners and directors of institutions not accredited by an accrediting agency recognized by the United States department of education. The results of the background checks under this section shall be confidential and not open to public inspection.

SECTION 11. Tennessee Code Annotated, Section 49-7-2004(a)(5), is amended by deleting the subdivision in its entirety and substituting instead:

(5) Postsecondary educational institutions established, operated, and governed by this state or its political subdivisions, including approved postsecondary training schools, academies, or facilities established, operated, and governed by this state or its political subdivisions and the colleges of applied technology under the exclusive control and jurisdiction of the board of regents;

SECTION 12. Tennessee Code Annotated, Section 49-7-2003(11), is amended by deleting the subdivision in its entirety and substituting instead:

(11) "Non-degree-granting postsecondary educational institution" includes all postsecondary educational institutions that do not meet the definition of a degree-granting postsecondary educational institution. Non-degree granting postsecondary institutions are frequently referred to as "career", "vocational", or

"technical" schools. Non-degree granting postsecondary educational institutions are institutions offering programs designed primarily for job entry or upgrading of skills and usually measured in "clock" or "contact" hours. These programs typically prepare individuals for employment and do not require courses beyond those specific to the job or its field with program length sufficient to affect outcomes;

SECTION 13. Tennessee Code Annotated, Section 49-7-2003, is amended by deleting subdivision (1) in its entirety and substituting instead:

(1) "Agent" means any person representing a postsecondary educational institution for payment, who solicits in any form and enrolls, or seeks to enroll, a student for education offered by an authorized institution, or offers to award educational credentials, for remuneration, on behalf of any such institution. Persons owning an interest in an institution and the institution's full-time employees and directors shall not be considered agents under this part;

SECTION 14. Tennessee Code Annotated, Section 49-7-2003, is amended by adding the following as new subdivisions:

() "Certificate program" means, generally, one (1) or more technical courses usually completed in one (1) to twenty-six (26) weeks, or up to and including five hundred (500) contact hours normally with a single skill objective;

() "Optional expedited authorization" means the alternative optional authorization available under this part to accredited degree-granting institutions;

SECTION 15. Tennessee Code Annotated, Section 49-7-1505, is amended by deleting subsection (b) and substituting instead:

(b) All fees collected pursuant to this part shall be deposited in the state treasury and credited to a dedicated commission account for the administration of this part.

SECTION 16. Tennessee Code Annotated, Section 49-7-207(a), is amended by deleting the language "the executive director of the Tennessee student assistance corporation".

SECTION 17. For purposes of promulgating rules under Section 5, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect on July 1, 2016, the public welfare requiring it.