

**Unofficial Draft Copy**

As of: August 29, 2000 (9:51AM)

LC0007

\*\*\*\* Bill No. \*\*\*\*

Introduced By \*\*\*\*\*

By Request of the Business, Labor, and Agriculture Interim  
Committee

A Bill for an Act entitled: "An Act Requiring A Proprietary Institution that Maintains or Operates Within the State or That Solicits Business Within the State of Montana to Register with the Department of Commerce; requiring an agent representing an proprietary institution to obtain a permit; providing exemptions from the registration requirement; imposing a \$200 registration fee and a \$50 annual renewal fee on each proprietary institution; requiring each proprietary institution to post a \$50,000 surety bond; providing for civil and criminal penalties; repealing section 2-15-1804, MCA; and providing an immediate effective date and an applicability date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 10], the following definitions apply:

(1) "Accredited" means a school that has been recognized or approved as meeting the standards established by an accrediting agency recognized by the board or the United States department of education.

(2) "Agent" means a person owning any interest in, employed by, or representing a proprietary institution in this or another

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state who, by solicitation in any form made in this state, seeks to enroll or enrolls a resident of this state in a proprietary institution for remuneration or who represents to the public that the person is representing a proprietary institution.

(3) "Board" means the board of regents of higher education created by Article X, section 9, subsection (2), of the Montana constitution and 2-15-1505.

(4) "Course of study" means either a single course or a set of related courses for which a student enrolls.

(5) "Degree" means any academic, vocational, or honorary title or designation, mark, series of letters, or numbers or words such as but not limited to "bachelor's", "master's", "doctorate", or "fellow", which signify or are generally understood to signify satisfactory completion of the requirements of a course of study beyond the secondary school level.

(6) "Department" means the department of commerce established in 2-15-1801.

(7) "Educational credential" means a degree, diploma, certificate, transcript, report, document, or other letters of designation generally understood to mean enrollment in, attendance at, progress in, or satisfactory completion of the requirements or prerequisites for education through a proprietary institution.

(8) "Permit" means a nontransferable written approval issued by the department to an agent to operate or to contract to operate a proprietary institution in this state.

(9) "Proprietary institution" means any postsecondary or

vocational educational school operated for profit, or on a nonprofit basis, that maintains a place of business within the state of Montana or solicits business within or outside the state of Montana, and offers educational credentials. The term does not include an institution established and maintained by the board, the board of public education, or a home school operated under 20-5-109.

NEW SECTION. **Section 2. Exemptions.** The following schools or courses of study are exempt from the provisions of [sections 1 through 9]:

(1) any program or course of instruction of an institution accredited by a national or regional accrediting agency recognized by the board, with notification of that recognition provided to the department by the board;

(2) education sponsored by a trade, business, professional, or fraternal organization principally for the membership of the organization or offered without payment of fees, unless the education is offered as leading toward educational credentials;

(3) avocational or recreational education and institutions offering the education exclusively;

(4) education offered by charitable or religious institutions, organizations, or agencies, unless the education is offered as leading toward educational credentials;

(5) institutions possessing a valid certificate issued by the federal aviation agency;

(6) a school or course of study that is otherwise

regulated, licensed, or registered with the state under Title 37.

NEW SECTION. **Section 3. Federal requirements --- proprietary institution review.** To protect the interest of students and the federal accounts that support them, the department is designated as the state proprietary institution review entity.

NEW SECTION. **Section 4. Registration.** (1) A person or principal representing a proprietary institution operating from within or outside Montana, may not sell, offer for sale, or distribute, or cause to be sold, offered for sale, or distributed, any course of study in this state unless the person or principal obtains a valid certificate of registration issued by the department.

(2) A certificate of registration expires on June 30 of each year.

NEW SECTION. **Section 5. Agent's permit.** (1) A person, group, association, or corporation, alone or in concert with others, may not:

(a) act as an agent unless the person, group, association, or corporation holds a permit issued by the department and maintains a surety bond prescribed in [section 7];

(b) operate in this state a proprietary institution unless the proprietary institution is exempt from the provisions of

[sections 1 through 9] or has received a permit issued by the department;

(c) offer instruction at, enrollment in, or grant educational credentials as or through an agent of a proprietary institution that is not exempt from [sections 1 through 9], whether within or without the state, unless the agent possesses a valid permit as required by this section;

(d) accept or receive contracts or applications for enrollment from an agent unless the agent possesses a valid permit as required by [sections 1 through 9].

(2) An application for a permit, furnished by the department, must include:

(a) a statement signed by the applicant that the applicant has read the provisions of [sections 1 through 9];

(b) an initial annual fee of \$200 for each permit. A permit is valid for the state's fiscal year in which it is issued, unless revoked or suspended by the department for fraud or misrepresentation in connection with the solicitation for the sale of any course of study or for any violation of [sections 1 through 9]. Each permit must be renewed annually on July 1 at a cost of \$50. The provisions of the Montana Administrative Procedure Act apply to the denial of a permit or to a proceeding conducted by the department to revoke or suspend a permit pursuant to [sections 1 through 9].

(3) The issuance of a permit pursuant to this section may not be interpreted to mean, and it is unlawful for a person holding a permit to expressly or impliedly represent by any

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means, that the department has made any evaluation, recognition, accreditation, or endorsement of any course of study being offered for sale by the agent or the proprietary institution.

(4) An agent holding a permit under the provisions of this section may not expressly or impliedly represent that:

(a) the issuance of a permit constitutes an assurance by the department that any course of study being offered for sale by the agent or the proprietary institution will provide and require of the student a course of education or training necessary to reach a professional, educational, or vocational objective or will result in employment or personal earnings for the student; or

(b) the department has made any evaluation, recognition, accreditation, or endorsement of any course of study being offered for sale by the agent or the proprietary institution.

(5) Any oral or written statement, advertisement, or solicitation by an agent that refers to the department must state:

"[Name of proprietary institution] is registered with the Department of Commerce pursuant to [section 4], Montana Code Annotated."

(6) An agent may not make any untrue or misleading statement or engage in sales, collection, credit, or other practices of any type that are illegal, false, deceptive, misleading, or unfair.

(7) The department shall maintain records for 5 years of each application for a permit, each bond, and each issuance,

denial, termination, suspension, and revocation of a permit.

(8) Fees collected under this section must be deposited in a state special revenue fund to be used by the department for the purpose of administering the provisions of [sections 1 through 9].

NEW SECTION. **Section 6. Student purchase statement.** Prior to accepting money from a student to purchase a course of study or to enroll in a course of study at a proprietary institution, the proprietary institution shall explain and obtain a signature below the following statement on a form that must be maintained by the institution in the student's file:

"I understand that [name of the proprietary institution] is registered with the department of commerce in accordance with [section 4], Montana Code Annotated. I also understand that the Board of Regents of Higher education has not accredited or endorsed any course of study being offered by [name of proprietary institution] and that credits for courses of study received may not be transferable to a unit of the Montana University System."

NEW SECTION. **Section 7. Surety bond.** (1) At the time that an application is made with the department for a permit, the agent of a proprietary institution shall file a \$50,000 surety bond with the department.

(2) The bond required under this section must be executed by the applicant as principal and be issued by an insurer

authorized to do business in this state in favor of the state of Montana to indemnify any person for loss suffered as a result of the occurrence, during the period of coverage, of any violation of [sections 1 through 9].

**NEW SECTION. Section 8. Civil Relief -- Criminal Penalties -- enforcement -- injunctive relief.** (1) A person claiming loss or damage as a result a violation of [sections 1 through 9] by a proprietary institution or its agent, or both, may file an action in a court of proper jurisdiction of this state against the proprietary institution or its agent, or both, and their sureties for the amount of damage or loss and, if successful, may receive court costs, and reasonable attorney fees.

(2) A person, group, association, or corporation, or an agent acting on behalf of another person, group, association, or corporation who violates the provisions of [section 1 through 8] is guilty of a misdemeanor and shall be punished by a fine not to exceed \$1,000, by imprisonment not to exceed 6 months, or both. Each day's failure to comply with the provisions of [sections 1 through 9] is a separate violation and criminal actions may be imposed by a court of competent jurisdiction in an action brought by the county attorney.

(3) The county attorney of any county in which a proprietary institution or its agent is located or soliciting business may acting alone or at the request of the department initiate appropriate action, including injunctive or criminal proceedings, in a court of competent jurisdiction to enforce the

provisions of [sections 1 through 9].

(4) Whenever it appears to the department that a person, agent, group, or entity violates any of the provisions of [sections 1 through 8] or violates an order issued by the department, the department may file a petition for an injunction in any court of competent jurisdiction against the person, group, or entity to enjoin the violation or for an order directing compliance with the provisions of [sections 1 through 9].

**NEW SECTION. Section 9. Rulemaking authority.** (1) The department shall adopt rules to implement [sections 1 through 8], including but not limited to the:

(a) establishment of policies and procedures for the registration of proprietary institutions; and

(b) development of a registration form and recordkeeping.

**NEW SECTION. Section 10. {standard} Repealer.** Section 2-15-1804, MCA, is repealed.

{Internal References to 2-15-1804: None.}

**NEW SECTION. Section 11. {standard} Codification instruction.** [Sections 1 through 9] are intended to be codified as an integral part of Title 20, and the provisions of Title 20 apply to [sections 1 through 9].

**NEW SECTION. Section 12. {standard} Effective date --**

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**applicability.** [This act] is effective on passage and approval and applies to proprietary institutions operating from within or without the state of Montana on [the effective date of this act].

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