

LAWS OF DELAWARE
VOLUME 83
CHAPTER 401
151st GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 481

AN ACT TO AMEND TITLE 14 OF THE DELAWARE CODE RELATING TO THE DELAWARE HIGHER EDUCATION OFFICE AND APPROVAL OF POSTSECONDARY INSTITUTIONS.

WHEREAS, the higher education industry has expanded substantially to online and for-profit programs, leaving residents with little access to resources to evaluate the quality and validity of programs compared to traditional programs at postsecondary institutions; and

WHEREAS, institutional closure is on the rise across the country, leaving students without options to complete their credentials or obtain refunds for financial aid; and

WHEREAS, persons may choose to offer courses without incorporating in Delaware, leaving Delaware residents without a path to monitor quality and student protections; and

WHEREAS, the Delaware Higher Education Office has integrated into the Department of Education and aligned its priorities to support students in the transition into post-secondary education such that several of the Office's previous responsibilities are no longer under its purview; and

WHEREAS, students enrolled in postsecondary education want a transparent system that offers high quality courses and protections in the event of school closure; and

WHEREAS, Delaware has seen a rise of persons opening postsecondary institutions without incorporating and without the Department's authorization, thereby exposing students to predatory practices and loan servicing.

NOW, THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 1, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter II. Powers and Duties

§ 121. General powers of the Department of Education.

(a) The Department shall exercise general control and supervision over the public schools of the State, including:

~~(16) Determining criteria to be met and procedures to be followed by institutions of postsecondary education that offer courses, programs of courses, or degrees within the State but that are not institutions either incorporated in Delaware or located in Delaware except for the purpose of offering the particular courses, programs of courses, or degrees referred to above. The administration of the authority herein granted shall be carried out according to rules and regulations of the Department as authorized in § 122 of this title; and~~ Establishing the criteria for and approving the operation of postsecondary institutions in the State that are not established by law and authorizing postsecondary institutions that are not established by law to confer degrees;

(17) Collecting, ~~integrating~~ integrating, and reporting longitudinal student and educator data for such purposes as implementing federal- or state-required education performance accountability measures; conducting research and evaluation regarding federal, state and local ~~education~~ education, and training programs; and conducting audits and ensuring compliance of those programs with applicable federal and state ~~requirements~~ requirements; and

(18) Approving Delaware colleges for Veteran's Administration programs.

§ 122. Rules and regulations.

(b) The Department shall prescribe rules and regulations:

~~(8) Providing for the licensing of any institution of higher education, public or private, which is not incorporated in the State or which is not established according to Delaware law, whether the main office of that institution is located within the State or in any state of the United States or in any nation of the world, if that institution offers any course, program of courses, or degree at a location within the State or by correspondence to residents of the State. Regulations on this subject shall include provisions for the identification and licensing of any agent of such an institution who contacts persons within the State, in person or by correspondence, for the purpose of soliciting enrollment by a permanent or temporary resident of the State in any such course, program of courses, or degree. The Department shall also determine the minimum requirements~~

~~for the presentation of any course or program of courses and for the issuing of academic, normal school, collegiate, professional or university degrees of any level by such institutions as are not otherwise authorized by Delaware law to determine such requirements. Rules and regulations pursuant to this paragraph shall be proposed by the Secretary subject to approval by the State Board of Education; Implementing the Delaware Higher Education Office's purpose and responsibilities, governing postsecondary institutions that are not established according to Delaware law, and administering student assistance programs. Rules and regulations adopted pursuant to this subsection are subject to the approval of the State Board of Education;~~

Subchapter V. Delaware Higher Education Office

§ 181. Responsibilities.

The Office ~~shall~~:shall do all of the following:

(1) Ensure that state resources for higher education are targeted ~~on~~to state priorities serving ~~Delawareans;~~
Delawareans.

(2) Ensure that higher education is accessible and affordable ~~to~~ for all Delaware students who qualify for admission by providing financial assistance and guidance ~~services;~~ services.

(3) Strengthen the role and impact of higher education in elementary and secondary education reform, achievement of student performance ~~expectations~~expectations, and teacher professional ~~development;~~development.

(4) ~~Ensure that higher education curricula and student achievement standards are aligned with Delaware's workforce development needs; [Repealed.]~~

(5) ~~Ensure that higher education and elementary and secondary education curricula and student achievement standards are aligned to facilitate student readiness to enter college; [Repealed.]~~

(6) Enhance the capacity for quality data collection and reporting to meet federal mandates, regional and interstate contractual agreements, and national data sharing ~~requirements;~~requirements.

(7) In cooperation with the Department of Education, identify and implement methods to ensure a seamless transition for Delaware residents from elementary and secondary education to postsecondary ~~education;~~education.

(8) Ensure that higher education services reflect changing needs and capabilities by exploring regional and national trends, and recommending implementation as ~~appropriate;~~appropriate.

(9) Promote student academic preparation for higher education and ~~facilitate families help educate Delawareans on saving for college;~~college.

(10) Expand education opportunities available through interstate ~~agreements~~agreements, such as the Southern Regional Education Board (SREB), ~~the American Education Services (AES) and the State University of New York (SUNY) Maritime College, (SREB) and the State Higher Education Executive Officers Association (SHEEO),~~ and publicize and promote their ~~use;~~use.

(11) ~~Expand and promote use of quality technology opportunities in higher education, including distance learning and Internet-based options; [Repealed.]~~

(12) Monitor and assist in resolution of consumer complaints related to student financial assistance, academic ~~credit~~credit, and credit transfer; coordinate efforts as appropriate with the Department of Justice and private consumer protection ~~agencies;~~agencies.

(13) ~~Promote and help focus private sector giving for student financial assistance; [Repealed.]~~

(14) ~~Provide administrative support to the Delaware College Investment Plan Board of Trustees and coordinate marketing and promotion of the Delaware College Investment Plan; [Repealed.]~~

(15) Administer specific programs relating to higher education and others as may be established or assigned by the General ~~Assembly~~Assembly, ~~the State Board of Education and the Department of Education;~~Education.

(16) ~~Approve Delaware colleges for Veteran's Administration programs. [Repealed.]~~

§ 183. Regulations.

~~Acting in cooperation with the Delaware Higher Education Office, the Department of Education, with the consent of the State Board, is authorized to promulgate rules and regulations to implement the purposes of this subchapter. The Department of Education, through the Delaware Higher Education Office, is authorized to adopt rules and regulations to implement this subchapter, subject to the State Board of Education's approval.~~

Section 2. Amend Chapter 1, Title 14 of the Delaware Code by creating a new Subchapter VI before § 200 by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter VI. Institutions of Higher Education

§ 185. Definitions.

For purposes of this subchapter:

(1) “Accrediting agency” means an accrediting agency that is recognized by the United States Secretary of Education as a reliable authority concerning the quality of education or training offered by the postsecondary institutions or programs the agency accredits.

(2) “Department” means the Department of Education.

(3) “Institution” means a postsecondary institution as defined in this section or a private business and trade school as defined in Chapter 85 of this title.

(4) “Postsecondary institution” means a person, as defined in § 302 of Title 1, that offers postsecondary courses, postsecondary programs of courses, or postsecondary programs that lead to a certificate or degree in the State. The term does not include institutions that are established by Delaware law, or private business and trade schools under Chapter 85 of this title, except as otherwise provided in this subchapter.

(5) “Secretary” means the Secretary of Education.

(6) “Teach-out plan” means a written plan developed by an institution that provides for the equitable treatment of students if the institution ceases to operate before all students have completed their program of study. Such plan may include, if required by the institution’s accrediting agency, a teach-out agreement between institutions.

§ 186. Certificate of approval to operate a postsecondary institution.

(a) No person may operate a postsecondary institution without having obtained a certificate of approval from the Department. In order for the Department to issue a certificate of approval, a person must have the power to confer degrees from another state or territory, meet all of the statutory requirements in this subchapter, meet all of the regulatory requirements set forth in the Department’s regulations adopted pursuant to this subchapter, and pay the application fee. Notwithstanding the foregoing, the Department may issue a certificate of approval to a person who has the power to confer degrees from another state or territory and meets the requirements of a reciprocity agreement to which the Department is a party. A certificate of approval is not transferrable.

(1) If a person does not have approval to confer degrees from another state or territory and the person wishes to confer degrees, the person must obtain approval to confer degrees from the Department as provided in § 125 of Title 8.

(2) Postsecondary institutions located outside of the United States and its territories may be considered for approval to confer degrees from the Department only upon accreditation from an accrediting agency.

(b) The person’s certificate of approval must be displayed on the person’s website and made available to students upon request.

(c) A certificate of approval is issued for a five-year period. A person must submit an application to renew a certificate of approval prior to the certificate of approval expiring.

§ 187. Application requirements and procedures.

(a) A person desiring to obtain a certificate of approval must submit a verified application to the Department setting forth all of the following information:

(1) The name of the postsecondary institution and ownership and controlling officers’ information.

(2) The specific courses, programs of courses, or certificates or degrees that will be offered.

(3) The facility or facilities where instruction will be given, including all websites, applications, or technology through which courses will be offered.

(4) The educational and teaching qualifications of instructors and administrators.

(5) The defined mission with goals and objectives.

(6) The financial resources and records.

(7) The need to establish operations in the State.

(8) Insurance to maintain the postsecondary institution’s solvency in case of loss by fire, fraud, or other causes to protect the postsecondary institution in liability matters, and to assure the postsecondary institution’s continuity of operation.

(9) Funding in the event of closure.

(10) Accrediting agency.

(11) Organizational pattern and administrative structure.

(12) Student services.

(13) Admission, retention, and graduation standards.

(14) Evaluation of faculty, program, and facilities and resources.

(15) Learning resources.

(16) Catalog.

(17) The address of the person's registered office and the name and address of the person's registered agent for service of process in the State.

(18) The disclosure of any criminal history and violations of local, state, or federal law.

(b) The application must also contain all of the following commitments:

(1) The person will conduct the postsecondary institution in accordance with federal, state, and local law, and the rules and regulations established by the Department.

(2) The person has appointed and will maintain a registered office and registered agent for service of process in the State.

(3) The person has and will maintain sufficient funds or a surety bond issued by a company authorized to do business in the State in the amount required by the Department in its rules and regulations that will protect the contractual rights of students.

(4) The person has and will maintain a teach-out plan that includes any information required by the Department and states all of the following:

a. The postsecondary institution will make all reasonable efforts to ensure that any closure of the postsecondary institution complies with the requirements of § 192 of this title.

b. Any institutional financial aid agreement offered to a student must contain language stating that, in the event of a closure that is not in compliance with § 192 of this title, the institutional debt will be void and will not be recovered, collected, or enforced.

(5) The person has and will maintain a cancellation policy which must provide a full refund of moneys paid by a student if the student's enrollment was procured as a result of any misrepresentation in advertising, promotional materials of the postsecondary institution, or representations by the person or a representative of the postsecondary institution or other violation of § 193 of this title.

(6) The person will permit the Department to inspect the postsecondary institution and to make available to the Department information pertaining to the activities required for the administration of this subchapter.

(7) All advertising and solicitation, whether direct or indirect, will be free from misrepresentation, deception, or fraud, and no fraudulent or deceptive statements will be made as to possible future employment opportunities or wage expectations.

(c) The application must be signed by the person under oath.

(d) The application must be submitted to the Department with the applicable fee.

(e) The Department's regulations shall provide the criteria to be met for approval and the procedures to be followed by an applicant for a certificate of approval.

§ 188. Restriction of certificate to fields indicated in application; supplementary applications.

A person's certificate of approval is restricted to the courses, programs of courses, and programs that lead to a certificate or degree that are specified in the person's application for the certificate of approval. The holder of a certificate of approval must submit a supplemental application to the Department for approval of additional courses, programs of courses, and programs that lead to a certificate or degree it desires to offer during the effective period of the certificate of approval.

§ 189. Fees.

The Department may establish application fees for approval and renewal of a certificate of approval. The Department shall set the fees in an amount that approximately and reasonably reflect the costs of administering this subchapter. An application fee may not be refunded in the event that the certificate of approval is denied or revoked. Fees must be deposited in the General Fund of the State.

§ 190. Denial of certificates of approval.

(a) The Department may deny an application for a certificate of approval or an application to renew a certificate of approval for any of the following causes:

(1) Violating this subchapter or any rule or regulation made by the Department.

(2) Furnishing false, misleading, or incomplete information to the Department or failure to furnish information requested by the Department.

(3) Any person, who signed an application, entered a plea of nolo contendere to, or was found guilty of any crime involving moral turpitude.

(4) Any person who signed an application, is found by competent medical authority to be addicted to the use of any narcotic drug, other than a drug currently prescribed for treatment, or is found mentally incompetent.

(5) Violating any commitment made in the application for a certificate of approval.

(6) Presenting or causing to be presented to prospective students information that is false, misleading, or fraudulent.

(7) Failing to provide or maintain premises or equipment in a safe and sanitary condition as required by laws, regulations, or ordinances applicable to the location of the postsecondary institution.

(8) Failing to maintain financial resources adequate for the satisfactory conduct of the courses or programs offered or to retain sufficient and qualified instructional and administrative staff.

(9) Offering a course, program of courses, or program that leads to a certificate or degree that has not been approved by the Department.

(10) Failing to meet the criteria for approval.

(11) Failing to maintain state licensing requirements for applicable offerings.

(12) An act or practice by a person or an agent of the person that violates local, state, or federal law.

(b) Whenever the Department proposes to deny an application for a certificate of approval or an application for the renewal of a certificate of approval, it shall first give written notice to the applicant of the reasons for denial and the opportunity for a hearing before the Secretary. The applicant must be afforded at least 20 calendar days from the date the notice is mailed to request a hearing. If no written request for a hearing is received by the Secretary, the applicant's application is deemed denied as set forth in the notice and the Department shall notify the applicant the application is denied.

(c) Any hearing before the Secretary must be held within 90 calendar days of the date the Secretary receives a request for a hearing. Notice of the hearing must be given at least 20 calendar days before the day it is held.

(d) All hearings must be conducted by the Secretary or the Secretary's designee, who must prepare a proposed order for the Secretary's consideration. In connection with such hearings, the Secretary or the Secretary's designee has the power to administer oaths; issue subpoenas for witnesses and the production of books, accounts, papers, records, and documents; exclude plainly irrelevant, immaterial, insubstantial, cumulative, and privileged evidence; and limit unduly repetitive proof, rebuttal, and cross-examination.

(e) The burden of proof in a certificate of approval denial action is on the applicant to show by a preponderance of evidence that the applicant should not be denied a certificate of approval because the applicant meets the requirements to be issued a certificate of approval.

§ 191. Revocation of Certificates of Approval.

(a) The Department may revoke a certificate of approval that has been issued to a person for any of the following causes:

(1) Violating this subchapter or any rule or regulation made by the Department.

(2) Furnishing false, misleading, or incomplete information to the Department or failure to furnish information requested by the Department.

(3) Violating any commitment made in the application for a certificate of approval.

(4) Presenting or causing to be presented to prospective students information that is false, misleading, or fraudulent.

(5) Failing to provide or maintain premises or equipment in a safe and sanitary condition as required by laws, regulations, or ordinances applicable to the location of the postsecondary institution.

(6) Failing to maintain financial resources adequate for the satisfactory conduct of the courses or programs offered or to retain sufficient and qualified instructional and administrative staff.

(7) Offering a course, program of courses, or program that leads to a certificate or degree that has not been approved by the Department.

(8) Failing to meet the criteria for approval.

(9) Failing to maintain state licensing requirements for applicable offerings.

(10) An act or practice by a person or an agent of the person that violates local, state, or federal law.

(b) Whenever the Department proposes to revoke a certificate of approval, it shall first give written notice to the certificate holder of the reasons for revocation and the opportunity for a hearing before the Secretary. The applicant must be afforded at least 20 calendar days from the date the notice is mailed to request a hearing. If no written request for a hearing is received by the Secretary, the certificate holder's certificate is revoked as set forth in the notice and the Department shall notify the holder the holder's certificate is deemed revoked.

(c) Any hearing before the Secretary must be held within 90 calendar days of the date the Secretary receives a request for a hearing. Notice of the hearing must be given at least 20 calendar days before the day it is held.

(d) All hearings must be conducted by the Secretary or the Secretary's designee who must prepare a proposed order for the Secretary's consideration. In connection with such hearings, the Secretary or the Secretary's designee has the power to administer oaths; issue subpoenas for witnesses and the production of books, accounts, papers, records, and documents; exclude plainly irrelevant, immaterial, insubstantial, cumulative, and privileged evidence; and limit unduly repetitive proof, rebuttal, and cross-examination.

(e) The burden of proof in a certificate of approval revocation action is on the Department to show by a preponderance of evidence that there is cause for revoking a certificate of approval.

§ 192. Ceasing operation.

(a) All postsecondary institutions that have been approved to confer degrees under this subchapter or private business and trade schools that have been approved to operate under Chapter 85 of this title shall perform all of the following duties prior to ceasing operation:

(1) Promptly notify the Department, in writing, of any known financial liabilities or risks that will likely result in the imminent closure of the institution or otherwise adversely affect the institution's ability to fulfill its obligations to admitted and currently enrolled students within 45 days of obtaining knowledge of any financial liability or risk.

(2) Promptly notify the Department and all admitted and currently enrolled students, in writing, of any decision to cease operation within 45 days of the institution's governing body deciding to close the institution.

(3) Provide the Department with monthly progress reports on the status of communications to students, faculty, and stakeholders as well as the development of arrangements for currently enrolled students via teach-out plan or articulation agreement, beginning 30 days after notifying the Department of the decision to cease operation and continuing every 30 days thereafter until the institution is closed.

(4) Notify all currently enrolled students and students enrolled during the five prior years, in writing, of the process for obtaining student records after the institution's closure and points of contact for transferring credits, financial aid, information about students' rights and responsibilities as student loan borrowers, athletics, and support services three months before the institution ceases operation.

(5) Notify all currently enrolled students of the potential to discharge any federal student loans under the federal Closed School Discharge program or other applicable federal law three months before the institution ceases operation.

(6) Identify a custodian of student records and notify the Department of the custodian and point of contact for student records three months before the institution ceases operation.

(7) Provide the Department with the institution's plan for providing monetary refunds to students and, if applicable, a copy of the institution's current surety bond three months before the institution ceases operation.

(8) Provide the Department with the institution's teach-out plan, report, and responses to the institution's accrediting agency upon submission to or receipt from the accrediting agency three months before the institution ceases operation.

(9) In the event of a merger with another institution that is authorized to operate under this subchapter, both institutions will coordinate with the Department to submit an application for a certificate of approval for the newly created institution.

(b) As used in this section, "student records" means all those documents that are necessary to provide a meaningful record of student performance and financial aid, including all of the following:

(1) Academic records, including written evaluations and competency assessments.

(2) Catalogues.

(3) Change of grade forms.

- (4) Class lists, including original grade sheets.
- (5) Commencement programs/graduation lists.
- (6) Schedules of classes.
- (7) Financial aid transcripts and supporting documents.

§ 193. Consumer fair practices and complaints.

(a) This section applies to all postsecondary institutions and private business and trade schools as defined in Chapter 85 of this title.

(b) All postsecondary institutions and private business and trade schools and their representatives are subject to the Consumer Fraud Act of subchapter II of Chapter 25 of Title 6. Recruitment, admissions, contractual agreements, student financial assistance, obligations to repay student loans, placement assistance, job placement rates, advertising, refund policies, accreditation, and transferability of credits are within the definition of “merchandise” in § 2511 of Title 6.

(c) A statement offering a program of study printed in the institutional catalog at the time of a student’s enrollment in the program is deemed to constitute a representation that the student has a reasonable expectation of completion of the program within the timeframe specified by the Department in regulation.

(d) No person, directly or through an agent, may use the terms “approval,” “approved,” “authorized,” “approved to operate,” “approval to operate,” “authorized to operate,” “approved to confer degrees,” “approval to confer degrees,” “authorized to confer degrees,” “certificate,” “certificate of approval,” “certified,” or similar language without having been issued a certificate of approval by the Department and, if applicable, approval to confer degrees from the Department as provided in § 125 of Title 8.

(e) No person, directly or through an agent, may make a statement that a postsecondary institution or its courses of instruction have been accredited unless the accrediting agency is identified.

(f) No person, directly or through an agent, may make a statement that a postsecondary institution or its courses of instruction have been approved by a state or the federal government unless the approval can be substantiated by a certificate or letter of approval issued by the approving agency of the state or federal government.

(g) A violation of subsection (c), (d), (e), or (f) of this section is an unlawful practice under § 2513 of Title 6 and a violation of subchapter II of Chapter 25 of Title 6.

(h) If a student enters into a financial agreement with an institution at a time the institution was not compliant with the requirements of § 186 or Chapter 85 of this title, the financial agreement is void. Any moneys paid to the institution under the agreement must be refunded to the student.

(i) Any written complaints alleging a violation of this subchapter that the Department receives will be reviewed by the Department. The Department will provide information on potential violations of this subsection or the Consumer Fraud Act to the Department of Justice.

(j) The Department’s authority to act under this subsection is independent of a determination by the Department of Justice or a court that a person violated this subsection or the Consumer Fraud Act.

§ 194. Regulations.

The Department of Education is authorized to adopt rules and regulations to implement this subchapter, subject to the State Board of Education’s approval.

Section 3. Amend Chapter 85, Title 14 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 8501. Definitions.

As used in this chapter, unless the context otherwise requires For purposes of this chapter:

(1) “Agent” means a person employed by a school as defined herein, whether such school is located within or outside Delaware, to act as an agent, solicitor, ~~broker~~ broker, or independent contractor to directly procure students or enrollees for such school by solicitation in any form made at any place in this State other than the office or place of business of the school.

~~(2) “Board” means the State Board of Education. [Repealed.]~~

§ 8526. Penalty.

(a) Any person ~~or corporation~~ found to be violating this chapter shall, if a ~~person~~, an individual, be punished by a fine ~~not to exceed of a minimum of \$500 for each offense~~, or by imprisonment for a period not to exceed 1 year, or ~~both~~ both; ~~such fine and imprisonment~~; and, if a ~~corporation~~, an artificial entity, shall be punished by a fine ~~not to exceed of a minimum of \$1,000~~

~~for each offense. Any officer or agent of a corporation or member or agent of a copartnership or association, organization or representative of an organization shall be is~~ subject to the penalties herein prescribed for ~~individuals; individuals.~~ and the State's attorney for the county where such offense is committed shall prosecute all persons violating this chapter upon proper complaint being made.

§ 8530. Disposition of student records by postsecondary institutions Ceasing operation.

~~(a) Notwithstanding any exemptions to the contrary in this chapter, all postsecondary institutions authorized, approved or licensed by the Department of Education to operate in the State under this chapter or under § 125 of Title 8 prior to discontinuing operation shall perform the following duties:~~

~~(1) Notify in writing the Department of Education and all currently enrolled students of the decision to cease operation;~~

~~(2) Notify in writing all currently enrolled students, and students enrolled during the 5 prior years, that information concerning student records may be obtained from the Department of Education;~~

~~(3) Convey all student records to the Department of Education, or to another location designated by the Department, for safekeeping and for reproduction as requested by the students.~~

~~(b) As used in this section, "student records" shall mean all those documents that are necessary to provide a meaningful record of student performance and financial aid and shall include, but not be limited to, the following:~~

~~(1) Academic records, including written evaluations, competency assessments, etc.;~~

~~(2) Catalogues;~~

~~(3) Change of grade forms;~~

~~(4) Class lists, including original grade sheets;~~

~~(5) Commencement programs/graduation lists;~~

~~(6) Schedules of classes;~~

~~(7) Financial aid transcripts and supporting documents.~~

~~All schools that have been approved to operate under this chapter shall perform the duties set forth in § 192 of this title prior to ceasing operation.~~

Approved August 4, 2022