

§ 116-15. Licensing of certain nonpublic post-secondary educational institutions.

(a1) The General Assembly of North Carolina in recognition of the importance of higher education and of the particular significance attached to the personal credentials accessible through higher education and in consonance with statutory law of this State making unlawful any "unfair or deceptive acts or practices in the conduct of any trade or commerce," hereby declares it the policy of this State that all institutions conducting post-secondary degree activity in this State that are not subject to Chapter 115 or 115D of the General Statutes, nor some other section of Chapter 116 of the General Statutes shall be subject to licensure under this section except as the institution or a particular activity of the institution may be exempt from licensure by one or another provision of this section.

(a2) Definitions. – As used in this section the following terms are defined as set forth in this subsection:

- (1) "Post-secondary degree". – A credential conferring on the recipient thereof the title of "Associate", "Bachelor", "Master", or "Doctor", or an equivalent title, signifying educational attainment based on (i) study, (ii) a substitute for study in the form of equivalent experience or achievement testing, or (iii) a combination of the foregoing; provided, that "post-secondary degree" shall not include any honorary degree or other so-called "unearned" degree.
- (2) "Institution". – Any sole proprietorship, group, partnership, venture, society, company, corporation, school, college, or university that engages in, purports to engage in, or intends to engage in any type of post-secondary degree activity.
- (3) "Post-secondary degree activity". – Any of the following is "post-secondary degree activity":
 - a. Awarding a post-secondary degree.
 - b. Conducting or offering study, experience, or testing for an individual or certifying prior successful completion by an individual of study, experience, or testing, under the representation that the individual successfully completing the study, experience, or testing will be awarded therefor, at least in part, a post-secondary degree.
- (4) "Publicly registered name". – The name of any sole proprietorship, group, partnership, venture, society, company, corporation, school, college, or institution that appears as the subject of any Articles of Incorporation, Articles of Amendment, or Certificate of Authority to Transact Business or to Conduct Affairs, properly filed with the Secretary of State of North Carolina and currently in force.
- (5) "Board". – The Board of Governors of The University of North Carolina.

(b) Required License. – No institution subject to this section shall undertake post-secondary degree activity in this State, whether through itself or through an agent, unless the institution is licensed as provided in this section to conduct post-secondary degree activity or is exempt from licensure under this section as hereinafter provided.

(c) Exemption from Licensure. – Any institution that has been continuously conducting post-secondary degree activity in this State under the same publicly registered name or series of publicly registered names since July 1, 1972, shall be exempt from the provisions for licensure under this section upon presentation to the Board of information acceptable to the Board to substantiate such post-secondary degree activity and public registration of the institution's names. Any institution that, pursuant to a predecessor statute to this subsection, had presented to the Board proof of activity and registration such that the Board granted exemption from licensure, shall continue to enjoy such exemption without further action by the Board.

(d) Exemption of Institutions Relative to Religious Education. – Notwithstanding any other provision of this section, no institution shall be subject to licensure under this section with respect to post-secondary degree activity based upon a program of study, equivalent experience, or achievement testing the institutionally planned objective of which is the attainment of a degree in theology, divinity, or religious education or in any other program of study, equivalent experience, or achievement testing that is designed by the institution primarily for career preparation in a religious vocation. This exemption shall be extended to any institution with respect to each program of study, equivalent experience, and achievement test that the institution demonstrates to the satisfaction of the Board should be exempt under this subsection.

(e) Post-secondary Degree Activity within the Armed Forces of the United States. – To the extent that an institution undertakes post-secondary degree activity on the premises of military posts or reservations located in this State for military personnel stationed on active duty there, or their dependents, the institution shall be exempt from the licensure requirements of this section.

(f) Standards for Licensure. – To receive a license to conduct post-secondary degree activity in this State, an institution shall satisfy the Board that the institution has met the following standards:

- (1) That the institution is State-chartered. If chartered by a state or sovereignty other than North Carolina, the institution shall also obtain a Certificate of Authority to Transact Business or to Conduct Affairs in North Carolina issued by the Secretary of State of North Carolina;
- (2) That the institution has been conducting post-secondary degree activity in a state or sovereignty other than North Carolina during consecutive, regular-term, academic semesters, exclusive of summer sessions, for at least the two years immediately prior to submitting an application for licensure under this section, or has been conducting with enrolled students, for a like period in this State or some other state or sovereignty, post-secondary educational activity not related to a post-secondary degree; provided, that an institution may be temporarily relieved of this standard under the conditions set forth in subsection (i), below;
- (3) That the substance of each course or program of study, equivalent experience, or achievement test is such as may reasonably and adequately achieve the stated objective for which the study, experience, or test is offered or to be certified as successfully completed;
- (4) That the institution has adequate space, equipment, instructional materials, and personnel available to it to provide education of good quality;
- (5) That the education, experience, and other qualifications of directors, administrators, supervisors, and instructors are such as may reasonably insure that the students will receive, or will be reliably certified to have received, education consistent with the stated objectives of any course or program of study, equivalent experience, or achievement test offered by the institution;
- (6) That the institution provides students and other interested persons with a catalog or brochure containing information describing the substance, objectives, and duration of the study, equivalent experience, and achievement testing offered, a schedule of related tuition, fees, and all other necessary charges and expenses, cancellation and refund policies, and such other material facts concerning the institution and the program or course of

study, equivalent experience, and achievement testing as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures that may be specified by the Board; and that such information is provided to prospective students prior to enrollment;

- (7) That upon satisfactory completion of study, equivalent experience, or achievement test, the student is given appropriate educational credentials by the institution, indicating that the relevant study, equivalent experience, or achievement testing has been satisfactorily completed by the students;
 - (8) That records are maintained by the institution adequate to reflect the application of relevant performance or grading standards to each enrolled student;
 - (9) That the institution is maintained and operated in compliance with all pertinent ordinances and laws, including rules and regulations adopted pursuant thereto, relative to the safety and health of all persons upon the premises of the institution;
 - (10) That the institution is financially sound and capable of fulfilling its commitments to students and that the institution has provided a bond as provided in subsection (f1) of this section;
 - (11) That the institution, through itself or those with whom it may contract, does not engage in promotion, sales, collection, credit, or other practices of any type which are false, deceptive, misleading, or unfair;
 - (12) That the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, instructors, and employees of the institution have no record of unprofessional conduct or incompetence that would reasonably call into question the overall quality of the institution;
 - (13) That the student housing owned, maintained, or approved by the institution, if any, is appropriate, safe, and adequate;
 - (14) That the institution has a fair and equitable cancellation and refund policy; and
 - (15) That no person or agency with whom the institution contracts has a record of unprofessional conduct or incompetence that would reasonably call into question the overall quality of the institution.
- (f1) (1) A guaranty bond is required for each institution that is licensed. The Board may revoke the license of an institution that fails to maintain a bond pursuant to this subsection.

If the institution has provided a bond pursuant to G.S. 115D-95, the Board may waive the bond requirement under this subsection. The Board may not waive the bond requirement under this subsection if the applicant has provided an alternative to a guaranty bond under G.S. 115D-95(c).

- (2) When application is made for a license or license renewal, the applicant shall file a guaranty bond with the clerk of the superior court of the county in which the institution will be located. The bond shall be in favor of the students. The bond shall be executed by the applicant as principal and by a bonding company authorized to do business in this State. The bond shall be conditioned to provide indemnification to any student, or his parent or guardian, who has suffered a loss of tuition or any fees by reason of the failure of the institution to offer or complete student instruction, academic services, or other goods and services related to course enrollment for any reason, including the suspension, revocation, or nonrenewal of an

institution's license, bankruptcy, foreclosure, or the institution ceasing to operate.

The bond shall be in an amount determined by the Board to be adequate to provide indemnification to any student, or his parent or guardian, under the terms of the bond. The bond amount for an institution shall be at least equal to the maximum amount of prepaid tuition held at any time during the last fiscal year by the institution. The bond amount shall also be at least ten thousand dollars (\$10,000).

Each application for a license shall include a letter signed by an authorized representative of the institution showing in detail the calculations made and the method of computing the amount of the bond, pursuant to this subdivision and the rules of the Board. If the Board finds that the calculations made and the method of computing the amount of the bond are inaccurate or that the amount of the bond is otherwise inadequate to provide indemnification under the terms of the bond, the Board may require the applicant to provide an additional bond.

The bond shall remain in force and effect until cancelled by the guarantor. The guarantor may cancel the bond upon 30 days notice to the Board. Cancellation of the bond shall not affect any liability incurred or accrued prior to the termination of the notice period.

(g) Review of Licensure. – Any institution that acquires licensure under this section shall be subject to review by the Board to determine that the institution continues to meet the standard for licensure of subsection (f), above. Review of such licensure by the Board shall always occur if the institution is legally reconstituted, or if ownership of a preponderance of all the assets of the institution changes pursuant to a single transaction or agreement or a recognizable sequence of transactions or agreements, or if two years has elapsed since licensure of the institution was granted by the Board.

Notwithstanding the foregoing paragraph, if an institution has continued to be licensed under this section and continuously conducted post-secondary degree activity in this State under the same publicly registered name or series of publicly registered names since July 1, 1979, or for six consecutive years, whichever is the shorter period, and is accredited by an accrediting commission recognized by the Council on Post-Secondary Accreditation, such institution shall be subject to licensure review by the Board every six years to determine that the institution continues to meet the standard for licensure of subsection (f), above. However, should such an institution cease to maintain the specified accreditation, become legally reconstituted, have ownership of a preponderance of all its assets transferred pursuant to a single transaction or agreement or a recognizable sequence of transactions or agreements to a person or organization not licensed under this section, or fail to meet the standard for licensure of subsection (f), above, then the institution shall be subject to licensure review by the Board every two years until a license to conduct post-secondary degree activity and the requisite accreditation have been restored for six consecutive years.

(h) Denial and Revocation of Licensure. – Any institution seeking licensure under the provisions of this section that fails to meet the licensure requirements of this section shall be denied a license to conduct post-secondary degree activity in this State. Any institution holding a license to conduct post-secondary degree activity in this State that is found by the Board of Governors not to satisfy the licensure requirements of this section shall have its license to conduct post-secondary degree activity in this State revoked by the Board; provided, that the Board of Governors may continue in force the license of an institution deemed by the Board to be making substantial and expeditious progress toward remedying its licensure deficiencies.

(i) Regulatory Authority in the Board. – The Board shall have authority to establish such rules, regulations, and procedures as it may deem necessary or appropriate to effect the provisions of this section. Such rules, regulations, and procedures may include provision for the granting of an interim permit to conduct post-secondary degree activity in this State to an institution seeking licensure but lacking the two-year period of activity prescribed by subsection (f)(2), above.

(j) Enforcement Authority in the Attorney General. – The Board shall call to the attention of the Attorney General, for such action as he may deem appropriate, any institution failing to comply with the requirements of this section.

(k) Severability. – The provisions of this section are severable, and, if any provision of this section is declared unconstitutional or invalid by the courts, such declaration shall not affect the validity of the section as a whole or any provision other than the provision so declared to be unconstitutional or invalid. (1971, c. 1244, s. 1; 1973, c. 1331, s. 3; 1975, c. 268; 1977, c. 563, ss. 1-4; 1979, c. 896, s. 13; 1979, 2nd Sess., c. 1130, s. 1; 1983 (Reg. Sess., 1984), c. 1006; 1989 (Reg. Sess., 1990), c. 824, s. 2; 1997-456, s. 27; 2011-183, s. 81.)