

IN THE SENATE

SENATE BILL NO. 1012

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO THE STATE BOARD OF EDUCATION AND PROPRIETARY SCHOOLS;
2 AMENDING THE HEADING FOR CHAPTER 24, TITLE 33, IDAHO CODE, TO
3 INCLUDE POSTSECONDARY SCHOOLS; AMENDING SECTION 33-2401, IDAHO
4 CODE, TO REVISE DEFINITIONS; AMENDING SECTION 33-2402, IDAHO
5 CODE, TO PROVIDE CORRECT TERMINOLOGY AND TO REVISE PROVISIONS
6 RELATING TO CERTAIN ANNUAL REGISTRATION FEES; AMENDING SECTION
7 33-2403, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO REVISE
8 PROVISIONS RELATING TO EXEMPTIONS AND TO REVISE PROVISIONS
9 RELATING TO CERTAIN ANNUAL REGISTRATION FEES; AMENDING SECTION
10 33-2404, IDAHO CODE, TO PROVIDE CORRECT TERMINOLOGY, TO REVISE
11 PROVISIONS RELATING TO ISSUANCE OF CERTAIN CERTIFICATES, TO REVISE
12 PROVISIONS RELATING TO REISSUE OF CERTAIN CERTIFICATES, TO PROVIDE
13 FOR INFORMATION ON CERTIFICATES OF IDENTIFICATION, TO PROVIDE
14 FOR CRIMINAL HISTORY CHECKS PRIOR TO ISSUANCE OF CERTIFICATES
15 OF IDENTIFICATION, TO REVISE PROVISIONS RELATING TO VALIDITY OF
16 CERTIFICATES OF IDENTIFICATION, TO PROVIDE THAT CERTAIN AGENTS
17 CARRY CERTIFICATES OF CERTIFICATION FOR IDENTIFICATION PURPOSES
18 IN CERTAIN CIRCUMSTANCES, TO PROVIDE THAT PROPRIETARY SCHOOLS
19 MAINTAIN CERTAIN RECORDS, TO PROVIDE THAT PROPRIETARY SCHOOLS
20 PROVIDE CERTAIN CRIMINAL HISTORY CHECK INFORMATION FOR CERTAIN
21 AGENTS AS PART OF THE ANNUAL REGISTRATION PROCESS AND TO MAKE
22 CODIFIER'S CORRECTIONS; AMENDING SECTION 33-2405, IDAHO CODE,
23 TO REVISE TERMS OF A PURCHASE STATEMENT; AMENDING SECTION
24 33-2406, IDAHO CODE, TO PROVIDE THAT PROPRIETARY SCHOOLS OBTAIN A
25 SURETY BOND AS A CONDITION OF REGISTRATION, TO REVISE PROVISIONS
26 RELATING TO THE INDEMNIFICATION OF CERTAIN STUDENTS, TO REVISE
27 TERMS OF SUCH BOND AND TO REVISE PROVISIONS RELATING TO A
28 DEMAND UPON THE SURETY SUBMITTED BY THE BOARD OR ITS DESIGNEE;
29 REPEALING SECTION 33-2407, IDAHO CODE, RELATING TO THE STUDENT
30 TUITION RECOVERY ACCOUNT; AND REPEALING SECTION 33-2408, IDAHO
31 CODE, RELATING TO ASSESSMENT OF THE STUDENT TUITION RECOVERY
32 ACCOUNT.
33

34 Be It Enacted by the Legislature of the State of Idaho:

35 SECTION 1. That the Heading for Chapter 24, Title 33, Idaho Code, be, and the same is
36 hereby amended to read as follows:

37 CHAPTER 24
38 POSTSECONDARY AND PROPRIETARY SCHOOLS

1 SECTION 2. That Section 33-2401, Idaho Code, be, and the same is hereby amended to
2 read as follows:

3 33-2401. DEFINITIONS. For the purposes of chapter 24, title 33, Idaho Code, the
4 following words have the following meanings:

5 (1) "Accredited" means that a postsecondary educational institution has been recognized
6 or approved as meeting the standards established by an accrediting agency recognized by the
7 board.

8 (2) "Agent" means any individual within the state of Idaho who solicits students for or
9 on behalf of a proprietary school.

10 (3) ~~"Agent's permit" means a nontransferable written document issued to an agent by the~~
11 ~~board~~ certificate of identification" means a nontransferable written document issued to an agent
12 by the proprietary school that the agent represents.

13 (4) "Board" means the state board of education.

14 (5) "Course" means instruction imparted in a series of lessons or class meetings to meet
15 an educational objective.

16 (6) "Course or courses of study" means either a single course or a set of related courses
17 for which a student enrolls, either for academic credit or otherwise.

18 (7) "Degree" means any written or any academic, vocational, professional technical or
19 honorary title or designation, mark, appellation, series of letters, numbers or words such as,
20 but not limited to, "bachelor's," "master's," "doctorate," or "fellow," which signifies, purports,
21 or is generally taken to signify satisfactory completion of the requirements of an academic,
22 vocational, professional technical, educational or professional program of study beyond the
23 secondary school level or for a recognized title conferred for meritorious recognition and an
24 associate of arts or associate of science degree awarded by a community college or other public
25 or private postsecondary educational institution or other entity which may be used for any
26 purpose whatsoever title which contains, in any language, the word "associate," "bachelor,"
27 "baccalaureate," "master" or "doctor," or any abbreviation thereof, and which indicates or
28 represents, or which is intended to indicate or represent, that the person named thereon, in
29 the case of any writing, or the person it is awarded thereto, in the case of any academic title,
30 is learned in or has satisfactorily completed a prescribed course of study in a particular field
31 or that the person has demonstrated proficiency in any field of endeavor as a result of formal
32 preparation or training.

33 (8) "Postsecondary educational institution" means an individual, or educational, business
34 or other entity, whether legally constituted or otherwise, which maintains a presence within, or
35 which operates or purports to operate, from a location within the state of Idaho, and which
36 provides a course or courses ~~or programs~~ of study that lead to a degree, or which provides,
37 offers or sells degrees.

38 (9) "Proprietary school" means an individual, or educational, business or other entity,
39 whether legally constituted or otherwise, which maintains a presence within, or which operates
40 or purports to operate, from a location within the state of Idaho and which conducts, provides,
41 offers or sells a course or courses of study, but which does not provide, offer or sell degrees.

42 SECTION 3. That Section 33-2402, Idaho Code, be, and the same is hereby amended to
43 read as follows:

1 33-2402. REGISTRATION OF POSTSECONDARY EDUCATIONAL
 2 INSTITUTIONS. (1) Unless exempted as provided herein, each postsecondary educational
 3 institution which maintains a presence within the state of Idaho, or which operates or purports
 4 to operate from a location within the state of Idaho, shall register annually with and hold
 5 a valid certificate of registration issued by the board. A public postsecondary educational
 6 institution or agency supported primarily by taxation from either the state of Idaho or a
 7 local source in Idaho shall not be required to register under this section. The board may
 8 exempt a nonprofit postsecondary educational institution from the registration requirement in
 9 accordance with standards and criteria established in rule by the board. The board may permit
 10 a postsecondary educational institution required to register under this section to instead register
 11 as a proprietary school under section 33-2403, Idaho Code, in accordance with standards and
 12 criteria established in rule by the board.

13 (2) The board shall prescribe by rule the procedure for registration, which shall include,
 14 but is not limited to, a description of each degree, course or ~~program~~ courses of study, for
 15 academic credit or otherwise, that a postsecondary educational institution intends to conduct,
 16 provide, offer or sell. Such rule shall also prescribe the standards and criteria to be utilized by
 17 the board for recognition of accreditation organizations.

18 (3) The board may deny the registration of a postsecondary educational institution that
 19 does not meet accreditation requirements or other standards and criteria established in rule by
 20 the board. The administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to
 21 any denial of registration under this section.

22 (4) The board shall assess an annual registration fee on each postsecondary educational
 23 institution required to be registered under this section ~~based on the respective degrees, courses~~
 24 ~~or programs that each such postsecondary educational institution intends to conduct, provide,~~
 25 ~~offer or sell, not to exceed one hundred dollars (\$100) for each degree, course or program as~~
 26 established in rule by the board. Such annual registration fee shall not exceed five thousand
 27 dollars (\$5,000) and shall be collected by the board and shall be dedicated for use by the board
 28 in connection with its responsibilities under this chapter.

29 SECTION 4. That Section 33-2403, Idaho Code, be, and the same is hereby amended to
 30 read as follows:

31 33-2403. REGISTRATION OF PROPRIETARY SCHOOLS. (1) Unless exempted as
 32 provided in subsection (4) of this section, each proprietary school which maintains a presence
 33 within the state of Idaho, or which operates or purports to operate from a location within the
 34 state of Idaho, shall register annually with and hold a valid certificate of registration issued by
 35 the board or its designee.

36 (2) The board shall prescribe by rule the procedure for registration, which shall include,
 37 but is not limited to, a description of each course or ~~program~~ courses of study, for academic
 38 credit or otherwise, that a proprietary school intends to conduct, provide, offer or sell.

39 (3) The board may deny the registration of a proprietary school that does not meet the
 40 standards or criteria established in rule by the board. The administrative procedure act, chapter
 41 52, title 67, Idaho Code, shall apply to any denial of registration under this section.

42 (4) The following individuals or entities are specifically exempt from the registration
 43 provisions required by this section:

44 (a) An individual or entity that offers instruction or training solely avocational or
 45 recreational in nature, as determined by the board.

1 (b) An individual or entity that offers courses recognized by the board which comply in
2 whole or in part with the compulsory education law.

3 (c) An individual or entity that offers a course or courses of study sponsored by an
4 employer for the training and preparation of its own employees, and for which no tuition
5 fee is charged to the student.

6 (d) An individual or entity which is otherwise regulated, licensed or registered with
7 another state agency pursuant to title 54, Idaho Code.

8 ~~(e) Aviation school or instructors approved by and under the supervision of the federal
9 aviation administration.~~

10 ~~(f)~~ (f) An individual or entity that offers intensive review courses designed to prepare
11 students for certified public accountancy tests, public accountancy tests, law school
12 aptitude tests, bar examinations or medical college admissions tests, or similar instruction
13 for test preparation.

14 ~~(g)~~ (g) An individual or entity offering only workshops or seminars lasting no longer than
15 three (3) calendar days.

16 ~~(h)~~ (h) A parochial or denominational institution providing instruction or training relating
17 solely to religion and for which degrees are not granted.

18 ~~(i)~~ (i) An individual or entity that offers postsecondary credit through a consortium of
19 public and private colleges and universities under the auspices of the western governors.

20 (5) The board shall assess an annual registration fee on each proprietary school required
21 to be registered under this section as established in rule by the board. ~~Such annual registration
22 fee shall be composed of a fixed portion in an amount not to exceed one hundred dollars (\$100)
23 for each proprietary school, and a variable portion based on the respective course or courses of
24 study that each such proprietary school intends to conduct, provide, offer or sell, not to exceed
25 one hundred dollars (\$100) for each course or courses of study.~~ Such annual registration
26 fee shall not exceed five thousand dollars (\$5,000) and shall be collected by the board or its
27 designee, and shall be dedicated for use by the board in connection with its responsibilities
28 under this chapter.

29 SECTION 5. That Section 33-2404, Idaho Code, be, and the same is hereby amended to
30 read as follows:

31 33-2404. AGENT'S PERMIT. (1) No individual may act as an agent of a proprietary
32 school required to be registered under the provisions of this chapter unless that individual holds
33 a valid agent's permit certificate of identification issued by the ~~board and maintains at all times~~
34 ~~a surety bond as described in section 33-2406, Idaho Code~~ proprietary school that the agent
35 represents.

36 ~~The application for an agent's permit shall be furnished by the board and shall include the
37 following:~~

38 ~~(1) A statement signed by the applicant that he or she has read the provisions of this
39 chapter and the rules promulgated pursuant thereto.~~

40 ~~(2) An annual fee for each permit not to exceed fifty dollars (\$50.00). The board shall
41 set by rule the amount of such annual agent's permit fee.~~

42 ~~All agent's permits shall be renewed annually upon reapplication and proper qualifications~~
43 Each agent's certificate of identification shall be reissued annually by the proprietary school that
44 the agent represents on the first day of July. If courses are solicited or sold by more than one
45 (1) agent, a separate permit certificate of identification is required for each agent.

1 (3) The agent's permit certificate of identification shall consist of a pocket card and shall
2 bear:

3 (a) ~~The~~ name and address of the agent;

4 (b) ~~The~~ name and address of the proprietary school, ~~and that the agent represents;~~

5 (c) ~~A~~ ~~a~~ statement that the bearer is an authorized agent of the proprietary school; and
6 may solicit ~~and sell courses~~ students for the proprietary school.

7 (4) The agent shall surrender the agent's permit certificate of identification to the
8 proprietary school upon termination of employment or agency relationship.

9 (5) An agent representing more than one (1) proprietary school shall obtain a separate
10 agent's permit certificate of identification for each proprietary school represented.

11 (6) ~~No individual shall be issued an agent's permit~~ For every agent who will have
12 unsupervised contact with minors, prior to issuing the agent a certificate of identification the
13 proprietary school shall complete a criminal history check on the agent for particular criminal
14 offenses, and in accordance with other guidelines, established in rule by the board. No
15 agent shall be issued an agent's certificate of identification if he or she is found to have been
16 convicted of any of the offenses identified in board rule, or if he or she has been previously
17 found in any judicial or administrative proceeding to have violated this chapter.

18 (7) An agent's permit certificate of identification shall be valid for the state's fiscal
19 year in which it is issued, unless sooner revoked or suspended ~~by the board for fraud or~~
20 ~~misrepresentation in connection with the solicitation for the sale of any course of study, for~~
21 ~~any violation of the provisions of this chapter or rules promulgated pursuant to this chapter, or~~
22 ~~for the existence of any condition in respect to the agent or the proprietary school he or she~~
23 ~~represents, which if in existence at the time the agent's permit was issued, would have been~~
24 ~~grounds for denial for the agent's permit.~~

25 (8) The agent shall carry the agent's permit certificate of identification with him or
26 her for identification purposes when engaged in the solicitation ~~for the sale and the selling~~
27 ~~of courses of study~~ of students away from the premises of the proprietary school; and shall
28 produce the agent's permit certificate of identification for inspection upon request.

29 ~~The administrative procedure act, chapter 52, title 67, Idaho Code, shall apply to any~~
30 ~~denial of an agent's permit or proceeding to revoke or suspend an agent's permit of the board~~
31 ~~conducted pursuant to this section.~~

32 (9) The issuance of an agent's permit certificate of identification pursuant to this section
33 shall not be interpreted as, and it shall be unlawful for any individual holding any agent's
34 permit certificate of identification to expressly or impliedly represent by any means ~~whatever~~
35 whatsoever, that the board has made any evaluation, recognition, accreditation or endorsement
36 of any proprietary school or of any course of study being offered ~~for sale~~ by the agent of any
37 such proprietary school. Any oral or written statement, advertisement or solicitation by any
38 proprietary school or agent which refers to the board shall state:

39 "(Name of school) is registered with the State Board of Education in accordance with
40 Section 33-2403, Idaho Code."

41 (10) It shall be unlawful for any agent holding an agent's permit certificate of
42 identification under the provisions of this section to expressly or impliedly represent, by
43 any means whatsoever, that the issuance of the agent's permit certificate of identification
44 constitutes an assurance by the board that any course of study being offered ~~for sale~~ by the
45 agent or proprietary school will provide and require of the student a course of education or
46 training necessary to reach a professional, educational, or vocational objective, or will result

1 in employment or personal earning for the student, or that the board has made any evaluation,
 2 recognition, accreditation, or endorsement of any course of study being offered ~~for sale~~ by the
 3 agent or proprietary school.

4 (11) No agent shall make any untrue or misleading statement or engage in sales,
 5 collection, credit, or other practices of any type that are illegal, false, deceptive, misleading or
 6 unfair.

7 (12) The ~~board~~ proprietary school shall maintain records for five (5) years of each
 8 application for an agent's ~~permit, each bond~~ certificate of identification, and each issuance,
 9 denial, termination, suspension and revocation of an agent's ~~permit~~ certificate of identification.

10 (13) The proprietary school shall provide as part of the annual registration process
 11 the names and results of the criminal history check for each agent to whom it has issued a
 12 certificate of identification. The criminal history check will be valid for five (5) years.

13 (14) The board or a student may bring an action pursuant to the Idaho rules of civil
 14 procedure for an agent's violation of the provisions of this chapter or any rule promulgated
 15 pursuant to this chapter, or any fraud or misrepresentation. The court shall determine which
 16 party is the "prevailing party" and the prevailing party shall be entitled to the recovery of
 17 damages, reasonable attorney's fees and costs both at trial and on appeal.

18 (15) ~~Additionally, a~~ Any agent who violates the provisions of this section is also guilty of
 19 a misdemeanor punishable by imprisonment in the county jail not exceeding six (6) months, or
 20 by a fine not exceeding five thousand dollars (\$5,000), or both.

21 SECTION 6. That Section 33-2405, Idaho Code, be, and the same is hereby amended to
 22 read as follows:

23 33-2405. PURCHASE STATEMENT. At the time of depositing any moneys to purchase
 24 the product of any proprietary school, the proprietary school shall require the student to execute
 25 the following statement on an appropriate form which shall be maintained on record by the
 26 proprietary school in the individual student's file:

27 "I understand that (Name of proprietary school) is registered with the State Board of
 28 Education in accordance with Section 33-2403, Idaho Code. I also understand that the
 29 State Board of Education has not accredited or endorsed any course of study being
 30 offered by (Name of proprietary school), and that these courses ~~will~~ may not be accepted
 31 for transfer into any Idaho public postsecondary institution."

32 SECTION 7. That Section 33-2406, Idaho Code, be, and the same is hereby amended to
 33 read as follows:

34 33-2406. SURETY BOND. As a condition of registration, a proprietary school shall
 35 obtain a surety bond issued by an insurer duly authorized to do business in this state in favor
 36 of the state of Idaho for the indemnification of any student for any loss suffered as a result
 37 of the occurrence, during the period of coverage, of any fraud or misrepresentation used in
 38 connection with the solicitation for the sale or the sale of any course of study a failure by such
 39 proprietary school to satisfy its obligations pursuant to the terms and conditions of any contract
 40 for tuition or other instructional fees entered into between the propriety school and a student,
 41 or as a result of any violation of this chapter or the rules promulgated pursuant to this chapter
 42 ~~shall be required of an agent.~~ The term of the bond shall extend over the period of ~~the permit.~~

1 ~~The bond shall be supplied by the proprietary school registration, and shall be in such amount~~
2 ~~as is established in rule by the board.~~

3 ~~The bond shall provide for liability in the penal sum of one hundred thousand dollars~~
4 ~~(\$100,000) for a proprietary school with one hundred (100) or more students; fifty thousand~~
5 ~~dollars (\$50,000) for a proprietary school with fifty (50) to ninety nine (99) students;~~
6 ~~twenty five thousand dollars (\$25,000) for a proprietary school with less than fifty (50)~~
7 ~~students. Notwithstanding the above, for a proprietary school that submits evidence acceptable~~
8 ~~to the board that the total unearned tuition of the proprietary school will not exceed ten~~
9 ~~thousand dollars (\$10,000) at any given time during the period of registration, a bond in the~~
10 ~~penal sum of ten thousand dollars (\$10,000) may be provided, regardless of the number of~~
11 ~~students.~~

12 ~~The board or its designee may submit a demand upon the surety on the bond on behalf~~
13 ~~of a student or students when it is reasonably believed that a loss has occurred due to fraud or~~
14 ~~misrepresentation used in connection with the solicitation for the sale or the sale of any course~~
15 ~~of study a failure by such proprietary school to satisfy its obligations pursuant to the terms~~
16 ~~and conditions of any contract for tuition or other instructional fees entered into between the~~
17 ~~proprietary school and a student, or as a result of any violation of the provisions of this chapter~~
18 ~~or the rules promulgated pursuant to this chapter.~~

19 ~~Neither the principal nor surety on the bond may terminate the coverage of the bond,~~
20 ~~except upon giving one hundred twenty (120) days' prior written notice to the board, and~~
21 ~~contemporaneously surrendering all agents' permits.~~

22 ~~Each proprietary school shall certify, at the time of registration, the number of students~~
23 ~~presently enrolled at the proprietary school and shall make available, upon request of the board,~~
24 ~~proof of enrollment numbers.~~

25 SECTION 8. That Sections [33-2407](#) and [33-2408](#), Idaho Code, be, and the same are
26 hereby repealed.