

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 36

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO EDUCATION; AMENDING SECTION 33-2401, IDAHO CODE, TO REVISE DEF-  
2 INITIONS; AMENDING SECTION 33-2402, IDAHO CODE, TO REVISE PROVISIONS  
3 RELATING TO THE REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITU-  
4 TIONS; AMENDING SECTION 33-2403, IDAHO CODE, TO REVISE PROVISIONS  
5 RELATING TO THE REGISTRATION OF PROPRIETARY SCHOOLS AND TO REVISE PRO-  
6 VISIONS RELATING TO EXEMPTIONS; AMENDING SECTION 33-2404, IDAHO CODE,  
7 TO PROVIDE THAT A STUDENT MAY BRING AN ACTION; AMENDING SECTION 33-2406,  
8 IDAHO CODE, TO PROVIDE THAT THE BOARD MAY PERMIT THE DIRECTOR TO ACCEPT  
9 FROM CERTAIN PROPRIETARY SCHOOLS CERTAIN BONDS AND TO PROVIDE THAT THE  
10 DIRECTOR MAY SUBMIT A DEMAND UPON THE SURETY ON THE BOND ON BEHALF OF A  
11 STUDENT OR STUDENTS IN CERTAIN SITUATIONS; AMENDING CHAPTER 24, TITLE  
12 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2407, IDAHO CODE,  
13 TO PROVIDE FOR POWERS AND DUTIES OF THE DIRECTOR; AMENDING CHAPTER 24,  
14 TITLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-2408, IDAHO  
15 CODE, TO PROVIDE FOR REMEDIES, TO PROVIDE FOR A HEARING, TO PROVIDE FOR  
16 CIVIL PENALTIES AND TO PROVIDE THAT A COURT MAY ENTER AN ORDER TO RECOVER  
17 COSTS; AND AMENDING SECTION 33-2409, IDAHO CODE, TO PROVIDE FOR CRIMI-  
18 NAL PENALTIES.  
19

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

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

23 33-2401. DEFINITIONS. For the purposes of chapter 24, title 33, Idaho  
24 Code, the following words have the following meanings:

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

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

30 (3) "Agent's certificate of identification" means a nontransferable  
31 written document issued to an agent by the proprietary school that the agent  
32 represents.

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

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

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

39 (7) "Degree" means any written or any academic title which contains, in  
40 any language, the word "associate," "bachelor," "baccalaureate," "master"  
41 or "doctor," or any abbreviation thereof, and which indicates or represents,  
42 or which is intended to indicate or represent, that the person named thereon,

1 in the case of any writing, or the person it is awarded thereto, in the case  
 2 of any academic title, is learned in or has satisfactorily completed a pre-  
 3 scribed course of study in a particular field or that the person has demon-  
 4 strated proficiency in any field of endeavor as a result of formal prepara-  
 5 tion or training.

6 (8) "Director" means the executive officer of the state board of educa-  
 7 tion or his designee.

8 (9) "Person" means an individual, sole proprietorship, partnership,  
 9 corporation or other association of individuals, however organized.

10 (10) "Postsecondary educational institution" means an individual  
 11 person, or educational, business or other entity, whether legally consti-  
 12 tuted or otherwise, which maintains a presence within, or which operates or  
 13 purports to operate, from a location within the state of Idaho, and which  
 14 provides a course or courses of study that lead to a degree, or which pro-  
 15 vides, offers or sells degrees.

16 (11) "Proprietary school" means an individual person, or educational,  
 17 business or other entity, whether legally constituted or otherwise, which  
 18 maintains a presence within, or which operates or purports to operate, from  
 19 a location within the state of Idaho and which conducts, provides, offers or  
 20 sells a course or courses of study, but which does not provide, offer or sell  
 21 degrees.

22 SECTION 2. That Section 33-2402, Idaho Code, be, and the same is hereby  
 23 amended to read as follows:

24 33-2402. REGISTRATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS. (1)  
 25 Unless exempted as provided herein, each postsecondary educational institu-  
 26 tion which maintains a presence within the state of Idaho, or which operates  
 27 or purports to operate from a location within the state of Idaho, shall  
 28 register annually with and hold a valid certificate of registration issued  
 29 by the board director. A public postsecondary educational institution or  
 30 agency supported primarily by taxation from either the state of Idaho or a  
 31 local source in Idaho shall not be required to register under this section.  
 32 The board director may exempt a nonprofit postsecondary educational insti-  
 33 tution from the registration requirement in accordance with standards and  
 34 criteria established in rule by the board. The board director may permit  
 35 a postsecondary educational institution required to register under this  
 36 section to instead register as a proprietary school under section 33-2403,  
 37 Idaho Code, in accordance with standards and criteria established in rule by  
 38 the board.

39 (2) The board shall prescribe by rule the procedure for registration,  
 40 which shall include, but is not limited to, a description of each degree,  
 41 course or courses of study, for academic credit or otherwise, that a postsec-  
 42 ondary educational institution intends to conduct, provide, offer or sell.  
 43 Such rule shall also prescribe the standards and criteria to be utilized by  
 44 the board director for recognition of accreditation organizations.

45 (3) The board director may deny the registration of a postsecondary  
 46 educational institution that does not meet accreditation requirements or  
 47 other standards and criteria established in rule by the board. The adminis-  
 48 trative procedure act, chapter 52, title 67, Idaho Code, shall apply to any  
 49 denial of registration under this section.

1           (4) The ~~board~~ director shall assess an annual registration fee on each  
 2 postsecondary educational institution required to be registered under this  
 3 section as established in rule by the board. Such annual registration fee  
 4 shall not exceed five thousand dollars (\$5,000) and shall be collected by the  
 5 ~~board~~ director and shall be dedicated for use by the ~~board~~ director in con-  
 6 nection with ~~its~~ his responsibilities under this chapter.

7           SECTION 3. That Section 33-2403, Idaho Code, be, and the same is hereby  
 8 amended to read as follows:

9           33-2403. REGISTRATION OF PROPRIETARY SCHOOLS. (1) Unless exempted as  
 10 provided in subsection (4) of this section, each proprietary school which  
 11 maintains a presence within the state of Idaho, or which operates or purports  
 12 to operate from a location within the state of Idaho, shall register annually  
 13 with and hold a valid certificate of registration issued by the ~~board or its~~  
 14 ~~designee~~ director.

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

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

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

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

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

29           (c) An individual or entity that offers a course or courses of study  
 30 sponsored by an employer for the training and preparation of its own em-  
 31 ployees, and for which no tuition fee is charged to the student.

32           (d) An individual or entity ~~which is that conducts or engages in ac-~~  
 33 ~~tivities that would otherwise regulated, licensed or registered with~~  
 34 ~~another state agency~~ require registration under chapter 24, title 33,  
 35 Idaho Code, if another state agency, commission or board regulates such  
 36 activities pursuant to title 54, Idaho Code.

37           (e) An individual or entity that offers intensive review courses de-  
 38 signed to prepare students for certified public accountancy tests,  
 39 public accountancy tests, law school aptitude tests, bar examinations  
 40 or medical college admissions tests, or similar instruction for test  
 41 preparation.

42           (f) An individual or entity offering only workshops or seminars lasting  
 43 no longer than three (3) calendar days and offered no more than four (4)  
 44 times per year.

45           (g) A parochial or denominational institution providing instruction  
 46 or training relating solely to religion and for which degrees are not  
 47 granted.

1 (h) An individual or entity that offers postsecondary credit through  
2 a consortium of public and private colleges and universities under the  
3 auspices of the western governors.

4 (i) An individual that offers flight instruction and that accepts  
5 payment for services for such training on a per-flight basis after the  
6 training occurs, or that accepts advance payment or a deposit for such  
7 training in a de minimus amount, as established by the board in rule.

8 (5) The ~~board~~ director shall assess an annual registration fee on each  
9 proprietary school required to be registered under this section as estab-  
10 lished in rule by the board. Such annual registration fee shall not exceed  
11 five thousand dollars (\$5,000) and shall be collected by the ~~board or its de-~~  
12 ~~signee~~ director, and shall be dedicated for use by the ~~board~~ director in con-  
13 nection with ~~its~~ his responsibilities under this chapter.

14 SECTION 4. That Section 33-2404, Idaho Code, be, and the same is hereby  
15 amended to read as follows:

16 33-2404. AGENT'S PERMIT. (1) No individual may act as an agent of a  
17 proprietary school required to be registered under the provisions of this  
18 chapter unless that individual holds a valid agent's certificate of identi-  
19 fication issued by the proprietary school that the agent represents.

20 (2) Each agent's certificate of identification shall be reissued annu-  
21 ally by the proprietary school that the agent represents on the first day of  
22 July. If courses are solicited or sold by more than one (1) agent, a separate  
23 certificate of identification is required for each agent.

24 (3) The agent's certificate of identification shall consist of a pocket  
25 card and shall bear:

26 (a) The name and address of the agent;

27 (b) The name and address of the proprietary school that the agent repre-  
28 sents;

29 (c) A statement that the bearer is an authorized agent of the propri-  
30 etary school and may solicit students for the proprietary school.

31 (4) The agent shall surrender the agent's certificate of identifica-  
32 tion to the proprietary school upon termination of employment or agency re-  
33 lationship.

34 (5) An agent representing more than one (1) proprietary school shall  
35 obtain a separate agent's certificate of identification for each propri-  
36 etary school represented.

37 (6) For every agent who will have unsupervised contact with minors,  
38 prior to issuing the agent a certificate of identification the proprietary  
39 school shall complete a criminal history check on the agent for particular  
40 criminal offenses, and in accordance with other guidelines, established in  
41 rule by the board. No agent shall be issued an agent's certificate of identi-  
42 fication if he or she is found to have been convicted of any of the offenses  
43 identified in board rule, or if he or she has been previously found in any  
44 judicial or administrative proceeding to have violated this chapter.

45 (7) An agent's certificate of identification shall be valid for the  
46 state's fiscal year in which it is issued, unless sooner revoked or sus-  
47 pended.

48 (8) The agent shall carry the agent's certificate of identification  
49 with him or her for identification purposes when engaged in the solicitation

1 of students away from the premises of the proprietary school and shall pro-  
2 duce the agent's certificate of identification for inspection upon request.

3 (9) The issuance of an agent's certificate of identification pursuant  
4 to this section shall not be interpreted as, and it shall be unlawful for any  
5 individual holding any agent's certificate of identification to expressly  
6 or impliedly represent by any means whatsoever, that the board has made any  
7 evaluation, recognition, accreditation or endorsement of any proprietary  
8 school or of any course of study being offered by the agent of any such pro-  
9 prietary school. Any oral or written statement, advertisement or solici-  
10 tation by any proprietary school or agent which refers to the board shall  
11 state:

12 " (Name of school) is registered with the State Board of Education in ac-  
13 cordance with Section 33-2403, Idaho Code."

14 (10) It shall be unlawful for any agent holding an agent's certificate  
15 of identification under the provisions of this section to expressly or im-  
16 pliedly represent, by any means whatsoever, that the issuance of the agent's  
17 certificate of identification constitutes an assurance by the board that any  
18 course of study being offered by the agent or proprietary school will provide  
19 and require of the student a course of education or training necessary to  
20 reach a professional, educational, or vocational objective, or will result  
21 in employment or personal earning for the student, or that the board has made  
22 any evaluation, recognition, accreditation, or endorsement of any course of  
23 study being offered by the agent or proprietary school.

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

27 (12) The proprietary school shall maintain records for five (5) years  
28 of each application for an agent's certificate of identification, and each  
29 issuance, denial, termination, suspension and revocation of an agent's cer-  
30 tificate of identification.

31 (13) The proprietary school shall provide as part of the annual regis-  
32 tration process the names and results of the criminal history check for each  
33 agent to whom it has issued a certificate of identification. The criminal  
34 history check will be valid for five (5) years.

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

41 ~~(15) Any agent who violates the provisions of this section is also~~  
42 ~~guilty of a misdemeanor punishable by imprisonment in the county jail not~~  
43 ~~exceeding six (6) months, or by a fine not exceeding five thousand dollars~~  
44 ~~(\$5,000), or both.~~

45 SECTION 5. That Section 33-2406, Idaho Code, be, and the same is hereby  
46 amended to read as follows:

47 33-2406. SURETY BOND. As a condition of registration, a proprietary  
48 school shall obtain a surety bond issued by an insurer duly authorized to  
49 do business in this state in favor of the state of Idaho for the indemnifi-

1 cation of any student for any loss suffered as a result of a failure by such  
 2 proprietary school to satisfy its obligations pursuant to the terms and con-  
 3 ditions of any contract for tuition or other instructional fees entered into  
 4 between the proprietary school and a student, or as a result of any violation  
 5 of this chapter or the rules promulgated pursuant to this chapter. The term  
 6 of the bond shall extend over the period of registration, and shall be in such  
 7 amount as is established in rule by the board. The board may permit the di-  
 8 rector to accept from a newly registered proprietary school, for a period not  
 9 to exceed five (5) years, a bond in a lesser amount that is supplemented by  
 10 other financial instruments deemed acceptable by the director.

11 ~~The board or its designee~~ director may submit a demand upon the surety  
 12 on the bond on behalf of a student or students when it is reasonably believed  
 13 that a loss has occurred due to a failure by such proprietary school to sat-  
 14 isfy its obligations pursuant to the terms and conditions of any contract  
 15 for tuition or other instructional fees entered into between the proprietary  
 16 school and a student, or as a result of any violation of the provisions of  
 17 this chapter or the rules promulgated pursuant to this chapter.

18 Neither the principal nor surety on the bond may terminate the coverage  
 19 of the bond, except upon giving one hundred twenty (120) days' prior written  
 20 notice to the ~~board~~ director.

21 SECTION 6. That Chapter 24, Title 33, Idaho Code, be, and the same is  
 22 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 23 ignated as Section 33-2407, Idaho Code, and to read as follows:

24 33-2407. POWERS AND DUTIES OF DIRECTOR. (1) In addition to the other  
 25 duties imposed upon the director by law, the director, either personally or  
 26 by designee, shall be permitted to:

27 (a) Administer and enforce the provisions and requirements of this  
 28 chapter or rules promulgated under authority of this chapter.

29 (b) Conduct investigations and issue subpoenas as necessary to deter-  
 30 mine whether any person or any agent has violated or is violating any  
 31 provision of this chapter or rules promulgated under authority of this  
 32 chapter.

33 (c) Conduct examinations of the books and records of postsecondary  
 34 educational institutions and proprietary schools, and investigations  
 35 of any person or any agent, wherever located, and as may be necessary  
 36 and proper for the enforcement of the provisions of this chapter and the  
 37 rules promulgated under the authority of this chapter.

38 For these purposes, the director or his designated representative shall  
 39 have free access to the offices and places of business or operations, books,  
 40 accounts, papers, documents, other information, records, files, safes and  
 41 vaults of all such persons or agents.

42 (2) The director may issue orders and the board may promulgate rules  
 43 that, in the opinion of the director and board respectively, are necessary to  
 44 execute, enforce and effectuate the purposes of this chapter.

45 SECTION 7. That Chapter 24, Title 33, Idaho Code, be, and the same is  
 46 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
 47 ignated as Section 33-2408, Idaho Code, and to read as follows:

1 33-2408. REMEDIES -- CIVIL PENALTIES. (1) Whenever there is suffi-  
2 cient evidence that causes the director to conclude that any person or any  
3 agent has engaged in or is about to engage in any act or practice constituting  
4 a violation of any provisions of this chapter or any rule or order thereun-  
5 der, the director may:

6 (a) Issue a cease and desist order ordering such person or agent to  
7 cease and desist violating or continuing to violate any provision of  
8 this chapter or any rule or order issued in accordance with this chap-  
9 ter; or

10 (b) Apply to the district court for an order enjoining such person or  
11 agent from violating or continuing to violate any provision of this  
12 chapter or any rule or order and for injunctive or such other relief as  
13 the nature of the case may require.

14 (2) Within thirty (30) days after an order is issued under subsection  
15 (1) (a) of this section, the person or agent to whom the order is directed may  
16 file with the director a request for a hearing on the order. The provisions  
17 of the Idaho administrative procedure act, chapter 52, title 67, Idaho Code,  
18 shall apply to such hearing and to judicial review of such order.

19 (3) Upon showing in any court of competent jurisdiction that a person or  
20 agent has violated the provisions of this chapter or rule adopted pursuant to  
21 the provisions of this chapter, in addition to any other remedies, such court  
22 may order the person or agent to pay civil penalties in an amount established  
23 by the court for each violation. Such court may also enter an order entitling  
24 the director to recover costs, which in the discretion of the court may in-  
25 clude an amount representing reasonable attorney's fees and reimbursement  
26 for investigative efforts.

27 SECTION 8. That Section 33-2409, Idaho Code, be, and the same is hereby  
28 amended to read as follows:

29 33-2409. ~~ENFORCEMENT~~ CRIMINAL PENALTIES. (1) Any violation of the  
30 provisions of this chapter shall be referred to the attorney general by the  
31 board for appropriate action including, but not limited to, injunctive re-  
32 lief person who violates the provisions of section 33-2404, Idaho Code, is  
33 guilty of a misdemeanor punishable by imprisonment in the county jail not  
34 exceeding six (6) months, or by a fine not exceeding five thousand dollars  
35 (\$5,000), or both.

36 (2) Any person who knowingly or willfully violates any other provi-  
37 sion of this chapter is guilty of a felony punishable by imprisonment in the  
38 county jail not exceeding twelve (12) months, or by a fine not exceeding ten  
39 thousand dollars (\$10,000), or both.