

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 5482

(As passed the House, December 13, 2001)

A bill to provide for the formation, regulation, and registration of distance learning corporations; to prescribe their duties, rights, powers, immunities, and liabilities; and to provide for the powers and duties of certain state officers and entities.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "career development and distance learning act".

3 Sec. 2. As used in this act:

4 (a) "Administrator" means that term as defined in section
5 105 of the nonprofit act, MCL 450.2105.

6 (b) "Community college" means a community college organized
7 under the community college act of 1966, 1966 PA 331, MCL 389.1
8 to 389.195, or a federal tribally controlled community college
9 that is recognized under the tribally controlled community

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1 college assistance act of 1978, Public Law 95-471, and is
2 determined by the department of education to meet the require-
3 ments for accreditation by a recognized regional accrediting
4 body.

5 (c) "Director" means the director of the department of
6 career development or his or her designee.

7 (d) "Nonprofit act" means the nonprofit corporation act,
8 1982 PA 162, MCL 450.2101 to 450.3192.

9 (e) "Public school" means a local school district, a local
10 act school district, a public school academy, a university
11 school, or an intermediate school district established under the
12 revised school code, 1976 PA 451, MCL 380.1 to 380.1852.

13 (f) "Registered distance learning corporation" means a dis-
14 tance learning corporation incorporated under the nonprofit act
15 and registered under this act.

16 (g) "State public university" means a university described
17 in section 4, 5, or 6 of article VIII of the state constitution
18 of 1963.

19 Sec. 3. (1) A registered distance learning corporation is
20 subject to the laws of this state applicable to nonprofit corpo-
21 rations, except as provided in this act.

22 (2) A registered distance learning corporation is a charita-
23 ble and benevolent institution, and its funds and property are
24 exempt from taxation by this state or any political subdivision
25 of this state.

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1 (3) A corporation shall not act as a registered distance
2 learning corporation except as authorized by and pursuant to a
3 registration issued by the director under this act.

4 Sec. 4. (1) The articles of incorporation of a registered
5 distance learning corporation shall contain all of the
6 following:

7 (a) The purposes of the corporation, which shall include at
8 least all of the following:

9 (i) To help promote the use of education technology to
10 accelerate career and workforce development by improving the
11 learning environment, stimulating innovative teaching methods,
12 achieving accountability, and providing residents of this state
13 with greater technology-based educational choices.

14 (ii) To promote technology-based education and training to
15 public and private sector organizations, including, but not
16 limited to, alternative models of education that emphasize part-
17 nerships between public education and the business sector.

18 (iii) To provide technology-based services that will enable
19 distance learning education and training to flourish and prosper,
20 including, but not limited to, providing selected industries with
21 business and financial operations, human resource administration,
22 resource development, research, marketing, technology coordina-
23 tion, digital library support, faculty training and development,
24 and other student and academic support operations.

25 (iv) To support and encourage various collaborative efforts
26 among educational institutions, businesses, nonprofit

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1 organizations, and government agencies to meet the training and
2 educational needs of the state's workforce.

3 (v) To establish, acquire, or participate in or with other
4 persons that further the purposes of the registered distance
5 learning corporation.

6 (b) A provision that the board shall include 4 members who
7 are appointed as follows:

8 (i) Two board members appointed by the governor with the
9 advice and consent of the senate.

10 (ii) One board member appointed by the governor from a list
11 of 5 names submitted by the majority leader of the senate.

12 (iii) One board member appointed by the governor from a list
13 of 5 names submitted by the speaker of the house of
14 representatives.

15 (c) A provision that the board of directors shall consist of
16 the following individuals:

17 (i) The 4 appointed board members described in subdivision
18 (b).

19 (ii) At least 1 board member representing state public
20 universities.

21 (iii) At least 1 board member representing community
22 colleges.

23 (iv) At least 1 board member representing public schools.

24 (v) At least 1 board member representing independent non-
25 profit degree-granting colleges and universities located in this
26 state.

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1 (vi) At least 5 board members representing the private
2 sector.

3 (d) A provision that the corporation is not an educational
4 corporation for purposes of sections 170 to 177 of 1931 PA 327,
5 MCL 450.170 to 450.177.

6 (2) A corporation applying for registration as a registered
7 distance learning corporation shall submit its articles of incor-
8 poration and any amendments to its articles of incorporation or
9 restated articles of incorporation to the attorney general for
10 examination. The attorney general shall review the articles or
11 amendments within 60 days, and if the attorney general finds that
12 the articles or amendments comply with this act, the attorney
13 general shall certify this finding to the director.

14 (3) In addition to any fee required in the nonprofit act, a
15 corporation applying for registration as a registered distance
16 learning corporation shall pay the following fees, which shall be
17 deposited in the state treasury:

18 (a) A fee of \$100.00 to the attorney general for the exami-
19 nation described in subsection (2).

20 (b) A fee of \$500.00 to the director for the examination and
21 registration described in section 5.

22 Sec. 5. (1) To apply for registration as a registered dis-
23 tance learning corporation, a corporation shall file all of the
24 following with the director:

25 (a) A copy of the articles of incorporation of the corpora-
26 tion, certified by the administrator.

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1 (b) The certificate of the attorney general required under
2 section 4(2). This requirement is waived if the corporation
3 submitted the articles of incorporation under section 4(2) and
4 the attorney general does not act under section 4(2) to certify
5 the articles within 60 days.

6 (c) A general plan of the proposed activities of the
7 corporation.

8 (d) A copy of the financial statements of the corporation.

9 (e) A copy of the bylaws of the corporation.

10 (2) The director shall examine the documents filed under
11 subsection (1), may conduct any investigation which he or she
12 considers necessary, may request additional oral and written
13 information from the corporation, and may examine under oath any
14 persons interested in or connected with the distance learning
15 corporation seeking registration.

16 (3) The director shall register a corporation as a regis-
17 tered distance learning corporation if all of the following are
18 met:

19 (a) The documents filed under subsection (1) are in proper
20 form.

21 (b) The articles of incorporation of the corporation contain
22 the provisions required under section 4.

23 (c) The corporation has been in existence for distance
24 learning purposes for 3 years or more at the time it applies for
25 registration.

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1 (d) The internal revenue service has determined that the
2 corporation is exempt from taxation under section 501(c)(3) of
3 the internal revenue code of 1986.

4 (4) If the director registers a corporation as a registered
5 distance learning corporation under subsection (3), the director
6 shall do both of the following:

7 (a) Return to the corporation 1 copy of the articles of
8 incorporation, certified that the corporation is a registered
9 distance learning corporation.

10 (b) Deliver to the administrator a certificate that the cor-
11 poration is a registered distance learning corporation.

12 Sec. 6. A registered distance learning corporation shall
13 acquire, hold, and dispose of its funds and property only for the
14 lawful purposes of the corporation and for the benefit of the
15 public. A registered distance learning corporation shall conduct
16 its activities, including acquiring, holding, and disposing of
17 funds and property, in a manner within the scope of the purposes
18 of the corporation as specifically set forth in its articles and
19 consistent with this act.

20 Sec. 7. (1) Subject to the limits contained in this act,
21 the nonprofit act, any other law of this state, or in its arti-
22 cles of incorporation, a registered distance learning corporation
23 may do any act consistent with 1 or more of the purposes of the
24 corporation, including, but not limited to, 1 or more of the
25 following:

26 (a) Engage in experimental distance learning projects.

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1 (b) Provide training and distance learning services and
2 professional development programs to government employees.

3 (c) Accept gifts, grants, appropriations, donations, fees
4 for services, royalties, or other payments or property from any
5 source.

6 (d) In administering any publicly supported distance learn-
7 ing plan, contract or subcontract with any organization that
8 administers or furnishes distance learning services to any feder-
9 al, state, or local government, agency, or political
10 subdivision.

11 (e) Make grants for the public welfare.

12 (f) Participate with any other public or private entity in
13 any transaction the corporation has the power to conduct by
14 itself.

15 (g) Obtain, hold, and dispose of patents, trademarks, copy-
16 rights, or other intellectual property rights in any invention,
17 idea, good, service, or other tangible or intangible property
18 subject to protection under any applicable intellectual property
19 law, including, but not limited to, property created or developed
20 by an employee of or a person under contract with the
21 corporation.

22 (h) Offer educators opportunities to learn new knowledge,
23 skills, and strategies for developing and delivering instruc-
24 tional services.

25 (i) Grant credits, degrees, or high school diplomas only
26 through dual enrollment programs with educational institutions

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1 that are authorized to grant credits, degrees, or high school
2 diplomas in this state.

3 (2) If an act of a registered distance learning corporation
4 is otherwise legal, it is not invalid because the corporation was
5 without capacity or power to do the act. However, the lack of
6 capacity or power may be asserted in any of the following
7 actions:

8 (a) An action by a board member against the corporation to
9 enjoin an act.

10 (b) An action by or in the right of the corporation to pro-
11 cure a judgment in its favor against an incumbent or former offi-
12 cer or board member of the corporation for loss or damage due to
13 an unauthorized act of that officer or board member.

14 (c) An action or special proceeding by the attorney general
15 to enjoin the corporation from the transacting of unauthorized
16 business, to set aside an unauthorized transaction, or to obtain
17 other equitable relief.

18 (3) A registered distance learning corporation is not and
19 shall not act in this state as a public school or postsecondary
20 degree-granting institution and shall not independently grant
21 degrees or high school diplomas.

22 Sec. 8. (1) If a sworn complaint alleging a violation of
23 this act by a registered distance learning corporation is filed
24 with the director, the director may hold a hearing to consider
25 the alleged violation of this act.

26 (2) If the director after a hearing determines that the
27 registered distance learning corporation is violating or has

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1 violated this act, the director shall reduce his or her findings
2 and decision to writing and shall issue and serve upon the corpo-
3 ration a copy of the findings and an order requiring the corpora-
4 tion to cease and desist from engaging in the prohibited
5 activity.

6 (3) If a registered distance learning corporation violates a
7 cease and desist order of the director issued under subsection
8 (2), the director after notice and an opportunity for a hearing
9 may by order revoke the registration of the corporation under
10 this act. However, if the corporation shows by a preponderance
11 of the evidence that the prohibited activity described in the
12 cease and desist order resulted from a bona fide error that vio-
13 lated a policy or procedure of the corporation intended to pre-
14 vent that error, the director shall not revoke the registration
15 but may require that the corporation take specified remedial
16 action. The corporation shall comply with any remedial action
17 that the director requires.

18 (4) After notice and an opportunity for hearing, the direc-
19 tor at any time may by order reopen and alter, modify, or set
20 aside, all or part of an order issued by him or her under this
21 section, if in his or her opinion conditions of fact or of law
22 have so changed as to require that action or if the public inter-
23 est requires that action.

24 Sec. 9. (1) To ensure the confidentiality of records con-
25 taining personal data associated with identifiable individuals, a
26 registered distance learning corporation shall use reasonable
27 care to secure these records from unauthorized access and to

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1 collect only personal data that is necessary for the proper
2 operation of the corporation.

3 (2) A registered distance learning corporation shall adopt
4 appropriate practices and procedures concerning confidential
5 information in compliance with applicable law.

6 (3) A registered distance learning corporation may enter
7 into agreements with public and private persons to protect trade
8 secrets, tests and test scores, proprietary information, and
9 other information the disclosure of which would jeopardize the
10 privacy or property rights of another person. Information
11 subject to an agreement under this subsection in the possession
12 of a public body is not subject to disclosure under the freedom
13 of information act, 1976 PA 442, MCL 15.231 to 15.246.