

Act No. 36
Public Acts of 2002
Approved by the Governor
March 7, 2002
Filed with the Secretary of State
March 7, 2002
EFFECTIVE DATE: March 7, 2002

**STATE OF MICHIGAN
91ST LEGISLATURE
REGULAR SESSION OF 2002**

Introduced by Reps. Allen, Bishop, Kuipers, Faunce, Woronchak, Howell, Gilbert, Patterson, Bisbee, Vander Roest, Van Woerkom, Stamas, Birkholz, Koetje, Shackleton, Ruth Johnson, Vear, Richardville, Rivet, Lipsey, DeRossett, Kolb and Toy

ENROLLED HOUSE BILL No. 5482

AN ACT 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:

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

Sec. 2. As used in this act:

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

(b) “Community college” means a community college organized under the community college act of 1966, 1966 PA 331, MCL 389.1 to 389.195, or a federal tribally controlled community college that is recognized under the tribally controlled community college assistance act of 1978, Public Law 95-471, and is determined by the department of education to meet the requirements for accreditation by a recognized regional accrediting body.

(c) “Director” means the director of the department of career development or his or her designee.

(d) “Nonprofit act” means the nonprofit corporation act, 1982 PA 162, MCL 450.2101 to 450.3192.

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

(f) “Registered distance learning corporation” means a distance learning corporation incorporated under the nonprofit act and registered under this act.

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

Sec. 3. (1) A registered distance learning corporation is subject to the laws of this state applicable to nonprofit corporations, except as provided in this act.

(2) A registered distance learning corporation is a charitable and benevolent institution, and its funds and property are exempt from taxation by this state or any political subdivision of this state.

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

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

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

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

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

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

(iv) To support and encourage various collaborative efforts among educational institutions, businesses, nonprofit organizations, and government agencies to meet the training and educational needs of the state's workforce.

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

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

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

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

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

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

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

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

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

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

(v) At least 1 board member representing independent nonprofit degree-granting colleges and universities located in this state.

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

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

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

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

(a) A fee of \$100.00 to the attorney general for the examination described in subsection (2).

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

Sec. 5. (1) To apply for registration as a registered distance learning corporation, a corporation shall file all of the following with the director:

(a) A copy of the articles of incorporation of the corporation, certified by the administrator.

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

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

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

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

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

(3) The director shall register a corporation as a registered distance learning corporation if all of the following are met:

- (a) The documents filed under subsection (1) are in proper form.
 - (b) The articles of incorporation of the corporation contain the provisions required under section 4.
 - (c) The corporation has been in existence for distance learning purposes for 3 years or more at the time it applies for registration.
 - (d) The internal revenue service has determined that the corporation is exempt from taxation under section 501(c)(3) of the internal revenue code of 1986.
- (4) If the director registers a corporation as a registered distance learning corporation under subsection (3), the director shall do both of the following:
- (a) Return to the corporation 1 copy of the articles of incorporation, certified that the corporation is a registered distance learning corporation.
 - (b) Deliver to the administrator a certificate that the corporation is a registered distance learning corporation.

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

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

- (a) Engage in experimental distance learning projects.
 - (b) Provide training and distance learning services and professional development programs to government employees.
 - (c) Accept gifts, grants, appropriations, donations, fees for services, royalties, or other payments or property from any source.
 - (d) In administering any publicly supported distance learning plan, contract or subcontract with any organization that administers or furnishes distance learning services to any federal, state, or local government, agency, or political subdivision.
 - (e) Make grants for the public welfare.
 - (f) Participate with any other public or private entity in any transaction the corporation has the power to conduct by itself.
 - (g) Obtain, hold, and dispose of patents, trademarks, copyrights, or other intellectual property rights in any invention, idea, good, service, or other tangible or intangible property subject to protection under any applicable intellectual property law, including, but not limited to, property created or developed by an employee of or a person under contract with the corporation.
 - (h) Offer educators opportunities to learn new knowledge, skills, and strategies for developing and delivering instructional services.
 - (i) Grant credits, degrees, or high school diplomas only through dual enrollment programs with educational institutions that are authorized to grant credits, degrees, or high school diplomas in this state.
- (2) If an act of a registered distance learning corporation is otherwise legal, it is not invalid because the corporation was without capacity or power to do the act. However, the lack of capacity or power may be asserted in any of the following actions:
- (a) An action by a board member against the corporation to enjoin an act.
 - (b) An action by or in the right of the corporation to procure a judgment in its favor against an incumbent or former officer or board member of the corporation for loss or damage due to an unauthorized act of that officer or board member.
 - (c) An action or special proceeding by the attorney general to enjoin the corporation from the transacting of unauthorized business, to set aside an unauthorized transaction, or to obtain other equitable relief.
- (3) A registered distance learning corporation is not and shall not act in this state as a public school or postsecondary degree-granting institution and shall not independently grant degrees or high school diplomas.

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

(2) If the director after a hearing determines that the registered distance learning corporation is violating or has violated this act, the director shall reduce his or her findings and decision to writing and shall issue and serve upon the corporation a copy of the findings and an order requiring the corporation to cease and desist from engaging in the prohibited activity.

(3) If a registered distance learning corporation violates a cease and desist order of the director issued under subsection (2), the director after notice and an opportunity for a hearing may by order revoke the registration of the corporation under this act. However, if the corporation shows by a preponderance of the evidence that the prohibited activity described in the cease and desist order resulted from a bona fide error that violated a policy or procedure of the corporation intended to prevent that error, the director shall not revoke the registration but may require that the corporation take specified remedial action. The corporation shall comply with any remedial action that the director requires.

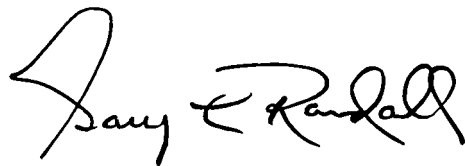
(4) After notice and an opportunity for hearing, the director at any time may by order reopen and alter, modify, or set aside, all or part of an order issued by him or her under this section, if in his or her opinion conditions of fact or of law have so changed as to require that action or if the public interest requires that action.

Sec. 9. (1) To ensure the confidentiality of records containing personal data associated with identifiable individuals, a registered distance learning corporation shall use reasonable care to secure these records from unauthorized access and to collect only personal data that is necessary for the proper operation of the corporation.

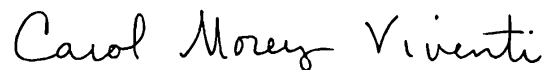
(2) A registered distance learning corporation shall adopt appropriate practices and procedures concerning confidential information in compliance with applicable law.

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

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.