

HIGHER EDUCATION AUTHORIZATION & DISTANCE LEARNING ACT

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Senate Bill 221 (S-2) as passed by the Senate
Sponsor: Sen. Tonya Schuitmaker
House Committee: Education
Senate Committee: Regulatory Reform
Complete to 4-28-15

Analysis available at
<http://www.legislature.mi.gov>

SUMMARY:

The bill would enact a new statute to be known as the "Higher Education Authorization and Distance Education Reciprocal Exchange Act." The new act would do the following:

- Permit the Department of Licensing and Regulatory Affairs (LARA), on behalf of the state, to enter into reciprocal arrangements with public educational agencies in other states or a higher education compact.
- Require the department to authorize a college or university in Michigan to participate in a reciprocal agreement to which LARA was a party, if the college or university met certain conditions.
- Allow an out-of-state college or university that was not a party to a reciprocal agreement to provide distance education to Michigan residents if it obtained authorization from LARA.
- Prescribe application fees, initial authorization fees, and annual renewal fees of \$2,000 each for an in-state college or university, and \$5,000 each for an out-of-state college and university.
- Require participating and authorized colleges and universities to assure that students enrolled in a distance education program received the services they paid for; protect student records; adopt a policy allowing students to file a complaint; and meet standards of practice contained in interregional guidelines for the evaluation of distance education (published by the Council of Regional Accrediting Commissions in July of 2009).
- Require LARA to impose certain sanctions if a participating college or university violated the proposed act, or rules promulgated or an order issued under it.
- Permit LARA to promulgate rules it considered necessary to implement, administer, and enforce the proposed Act.
- Repeal this proposed act on September 30, 2017.

A more detailed description of the bill follows.

College or University Participation/Authorization

Under the bill, and with regard to in-state colleges or universities, the Department of Licensing and Regulatory Affairs would be required to authorize a college or university located in Michigan to participate in a reciprocal agreement to which LARA was a party, if the college or university first entered into an agreement with LARA to do so. The

document would have to provide the name of the college or university; its business address in the state; the name of an individual designated for contact; proof of accreditation; proof of financial responsibility in the form of proof of certification of compliance, under federal regulations (34 CFR 668.13), with the financial responsibility standards of 34 CFR, Part 668, subpart L; and any other relevant information requested by LARA.

(Note: These federal regulations establish financial responsibility requirements for institutions of higher education that participate in federal student financial aid programs under the Higher Education Act.)

The college or university also would have to pay an application fee of \$2,000 and an initial authorization fee of \$2,000.

In addition, under the bill, and with regard to out-of-state colleges or universities, a college or university that was located outside of Michigan, and that was not a party to a reciprocal agreement to provide distance education to Michigan residents, could elect to obtain authorization from LARA to provide distance learning. The college or university would have to enter into an agreement with LARA and meet the requirements of the proposed act. It also would have to submit an application for authorization containing the same information required of an in-state college or university.

The out-of-state college or university would have to pay an application fee of \$5,000 and an initial authorization fee of \$5,000.

Renewal

All authorizations to provide distance learning would expire on December 31. A college or university could renew an authorization for one or more calendar years by submitting a renewal application, and paying an annual renewal fee of \$5,000 by December 1 of each year.

Use of Fees

Fees collected under the proposed act would have to be used solely for administrative expenses incurred under the act, and would not be refundable.

College & University Responsibilities/Consumer Protection

Each participating college (in-state and out-of-state) would have to assure that every student enrolled in a distance education program at that college or university (1) received the services paid for, or (2) received reasonable financial compensation, if a course in which the student was enrolled were terminated before its expected completion date. This assurance would have to be in writing and could include tuition assurance funds, surety bonds, teach-out provisions, or other practices LARA considered sufficient to protect consumers.

Each participating college or university also would have to protect the student records of the students enrolled in their distance education programs, including compliance with any rules promulgated by LARA concerning the protection of those records.

Each participating college or university also would have to meet the standards of practice contained in the inter-regional guidelines for the evaluation of distance education published by the Council of Regional Accrediting Commissions in July 2009, which would be incorporated by reference in the proposed act.

LARA Complaint Process

In addition, each participating college or university would have to adopt and publish a written policy that allowed students enrolled in their distance education program to file a complaint with LARA, for any violation of the proposed act or rules promulgated under it. Under the bill, the department would have to establish a complaint process for those students.

Sanctions

After notice and an opportunity for a hearing under the Administrative Procedures Act, LARA would have to do one or more of the following if it determined that a participating college or an authorized out-of-state college or university had violated the proposed act, a rule promulgated under it, or an order issued under it:

- Place a limitation on the authorization.
- Suspend the authorization.
- Deny an authorization or renewal of the authorization.
- Revoke the authorization.
- Assess an administrative fine (described below).
- Order restitution to an aggrieved student who participated or was participating in a distance education program.
- Impose any sanction LARA established by rule.

The department could assess an administrative fine of up to \$1,000, plus LARA's actual costs of the investigation, for a violation of the act or rules promulgated under it. The department could not assess administrative fines against a college or university if the fines in the aggregate were more than \$5,000 for multiple violations that arose from the same transaction.

Definitions

The bill defines the following terms. "*Reciprocal agreement*" would mean an agreement between this state and a higher education compact or one or more other states that allows participating colleges to provide distance education to residents of Michigan and other member states under the proposed act.

"*Distance education*" would mean education that uses one or more technologies to deliver instruction to students who are separated from the instructor, and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. These technologies could include any of the following: the internet; one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices; audio

conferencing; and video cassettes, DVDs, and CD-ROMs, if they were used in a course in conjunction with any of the technologies listed above.

"*College or university*" would mean a degree- or certificate-granting public or private college or university, junior college, or community college.

FISCAL IMPACT:

Senate Bill 221, as passed by the Senate, would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs (LARA), dependent on the number of colleges and universities located outside of Michigan that would opt to enter into reciprocal agreements with LARA or obtain authorization to provide distance education, and the number of colleges and universities located within Michigan that would opt to participate in a reciprocal agreement, and whether the fees established in statute would be sufficient to adequately offset the costs of administering, implementing, and enforcing the requirements within SB 221.

The bill would have an indeterminate fiscal impact on Michigan colleges and universities. Any fiscal impact would depend on the degree and circumstances of student participation – such as the number of out-of-district or out-of-state students who participated a distance learning course offered by a Michigan postsecondary institution – and the degree to which Michigan institutions experienced administrative savings as a result of a centralized state reciprocity program.

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■ This analysis was prepared by nonpartisan House Fiscal Agency staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.