

1 HOUSE BILL NO. 57

2 INTRODUCED BY EWER

3 BY REQUEST OF THE DEPARTMENT OF COMMERCE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT TRANSFERRING THE ADMINISTRATION OF POSTSECONDARY
6 EDUCATION INSTITUTIONS FROM THE DEPARTMENT OF COMMERCE TO THE COMMISSIONER OF
7 HIGHER EDUCATION; AMENDING SECTIONS 20-30-101, 20-30-103, 20-30-105, 20-30-201, 20-30-202,
8 20-30-203, 20-30-301, 20-30-302, 20-30-303, 20-30-304, 20-30-305, 20-30-306, 20-30-401,
9 20-30-403, AND 20-30-405, MCA; REPEALING SECTIONS 2-15-1804 AND 20-30-104, MCA; AND
10 PROVIDING AN EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 20-30-101, MCA, is amended to read:

15 **"20-30-101. Legislative purpose and definitions.** (1) It is the policy of this state to encourage and
16 enable its citizens to obtain and receive an education commensurate with their abilities and desires. It is
17 recognized that institutions offering postsecondary educational, vocational, and professional instruction
18 perform a useful and necessary service to the citizens of the state in achieving this objective. It is found
19 that certain institutions have either by unscrupulous, unfair, and deceptive practices or through substandard
20 instruction deprived the citizens of this state of educational opportunity and subjected them to financial
21 loss. The actions of ~~such~~ these institutions also reflect unfavorably upon the reputable postsecondary
22 institutions ~~which that~~ are in the great majority. Thus it is the purpose of this chapter to provide for the
23 protection, education, and welfare of the citizens of this state.

24 (2) As used in this chapter, unless the context clearly indicates otherwise, the following definitions
25 apply:

26 ~~(a) "Advisory council" or "council" means the advisory council created by 2-15-1804.~~

27 ~~(b)~~(a) "Agent" means any person owning any interest in, employed by, or representing a
28 postsecondary educational institution in this or another state who:

29 (i) by solicitation in any form made in this state, seeks to enroll or enrolls a resident of this state
30 in ~~such a~~ postsecondary institution or ~~who~~ offers to award educational credentials on behalf of ~~such a~~

1 postsecondary institution for remuneration; ~~who holds himself out~~

2 (ii) represents to the residents of this state ~~as representing~~ that the person represents a
3 postsecondary institution for any ~~such~~ purpose.

4 ~~(e)~~(b) "Application" means ~~either~~ an application either for the initial issuance of a license or permit
5 or for the renewal of a license or permit.

6 ~~(d)~~ ~~"Department"~~ (c) "Commissioner" means the ~~department of commerce~~ commissioner of higher
7 education provided for in 2-15-1506.

8 ~~(e)~~(d) "Education or educational services" means a class, course, or program of training,
9 instruction, or study.

10 ~~(f)~~(e) "Educational credential" means a degree, diploma, certificate, transcript, report, document,
11 letters of designation, marks, appellations, series of letters, numbers, or words, all of which signify, purport,
12 or are generally taken to mean enrollment, attendance, progress, or satisfactory completion of the
13 requirements or prerequisites for education through a postsecondary educational institution.

14 ~~(g)~~(f) "Grant" means sell, award, confer, bestow, or give.

15 ~~(h)~~(g) "Institution" means an academic, vocational, technical, home study, business, professional,
16 or other school, college, or university or any person, association, or corporation offering educational
17 credentials or educational services ~~but~~. The term does not include ~~any~~ an institution established and
18 maintained under the laws of this state.

19 ~~(i)~~(h) "License" means written approval issued by the ~~department~~ commissioner to operate or to
20 contract to operate a postsecondary institution in this state.

21 ~~(j)~~(i) "Offer" means, in addition to its usual meaning, to advertise, publicize, solicit, or encourage
22 ~~any~~ a person, directly or indirectly, in any form, to perform the act described.

23 ~~(k)~~(j) "Operate" means to establish and maintain any facility in this state for the purpose described
24 ~~and~~. The term includes a contract with any person, association, or corporation to establish and maintain
25 ~~such~~ the facility.

26 ~~(l)~~(k) "Permit" means written approval issued by the ~~department~~ commissioner to ~~any~~ a person to
27 act as an agent for a postsecondary educational institution.

28 ~~(m)~~(l) "Postsecondary education" means the education or educational services offered to persons
29 who have completed or terminated their secondary education or who are beyond the age of compulsory
30 school attendance, for the attainment of academic, professional, or vocational objectives."

1 **Section 2.** Section 20-30-103, MCA, is amended to read:

2 "**20-30-103. Administration.** The ~~department~~ commissioner shall administer this chapter. To effect
3 the purposes of this chapter, the ~~department~~ commissioner may request from any agency of the state and
4 ~~every~~ each agency shall provide ~~such~~ the information ~~as will~~ necessary to enable the ~~department~~
5 commissioner to exercise ~~properly its~~ the commissioner's powers and perform ~~its~~ the commissioner's
6 duties. Nothing ~~herein shall~~ in this section may be construed to interfere with the purpose and function
7 of ~~any~~ an agency of the state."

8

9 **Section 3.** Section 20-30-105, MCA, is amended to read:

10 "**20-30-105. Preservation of records.** (1) In the event ~~any~~ that a postsecondary educational
11 institution ~~now or hereafter located~~ in this state proposes to discontinue its operation, the chief
12 administrative officer, by whatever title designated, of ~~such~~ the institution shall ~~cause to be filed~~ file with
13 the ~~department~~ commissioner the original or ~~legible true~~ copies of all ~~such~~ academic records of ~~such~~ the
14 institution ~~as~~ that may be specified by the ~~department~~ commissioner. ~~Such~~ The records ~~shall~~ must include,
15 at a minimum, ~~such~~ academic information ~~as~~ that is customarily required by colleges when considering
16 students for transfer or advanced study and, as a separate document, the academic record of each former
17 student.

18 (2) ~~In the event it appears to the department~~ If the commissioner determines that ~~any~~ such the
19 records of an institution discontinuing its operations are in danger of being destroyed, secreted, mislaid,
20 or otherwise made unavailable, the ~~department~~ commissioner may seize ~~and take possession of~~ such the
21 records ~~on its own motion and~~ without order of court. The ~~department~~ commissioner shall maintain or
22 cause to be maintained a permanent file of ~~such~~ the records coming into ~~its~~ the commissioner's
23 possession."

24

25 **Section 4.** Section 20-30-201, MCA, is amended to read:

26 "**20-30-201. Powers and duties of department commissioner.** To administer this chapter, the
27 ~~department shall have~~ commissioner has the following powers and duties:

28 (1) to establish minimum criteria, ~~in consultation with the commissioner of higher education,~~
29 conforming to the minimum standards that are contained in 20-30-202, ~~which and that~~ applicants for a
30 license or permit ~~shall~~ are required to satisfy before a license or permit ~~shall~~ may be issued, ~~provided the~~

1 ~~requirements of the Administrative Procedure Act for rulemaking procedures have been complied with;~~

2 (2) to receive, to investigate as ~~it may deem~~ the commissioner considers necessary, and to act
3 upon applications for a license or permit;

4 (3) to maintain a list of licensed institutions, of persons possessing permits, and of accrediting
5 agencies recognized under 20-30-102(1), provided that an institution and its agent exempt from this
6 chapter may be included in ~~such~~ the list upon the filing of an affidavit of exemption;

7 (4) to negotiate and enter into reciprocal interstate agreements with ~~like~~ officers or agencies in
8 other states if ~~such~~ the agreements are or will affect the purposes of this chapter, ~~provided that. However,~~
9 nothing contained in ~~such~~ the agreement ~~shall~~ may be construed as limiting the powers and duties of the
10 ~~department with respect to investigating or acting~~ commissioner to investigate or act upon any application
11 for a license or for a permit or with respect to the enforcement of any provision of this chapter or
12 regulations adopted ~~hereunder~~ under this chapter;

13 (5) to receive and ~~cause to be maintained~~ maintain for a reasonable length of time, not less than
14 10 years, copies of academic records pursuant to 20-30-105;

15 (6) to establish, ~~with the advice of the advisory council,~~ rules and procedures that are necessary
16 for the implementation of this chapter ~~which shall~~ and that have the force of law, ~~provided the requirements~~
17 ~~of the Montana Administrative Procedure Act for rulemaking procedures have been complied with,~~ and to
18 hold hearings as ~~it may deem~~ the commissioner considers advisable in developing ~~such~~ the rules and
19 procedures or to aid in any investigation or inquiry; ~~and~~

20 (7) to investigate as ~~it may deem~~ the commissioner considers necessary, on ~~its own~~ motion by the
21 commissioner or on the filing of a verified complaint filed with ~~it~~ the commissioner, any institution or person
22 subject to or reasonably believed by the ~~department~~ commissioner to be subject to the provisions of this
23 chapter;

24 (8) to ~~subpoena~~ issue subpoenas, enforceable in a district court of this state, to any persons or
25 documents pertaining to ~~such~~ the investigation, ~~which subpoenas shall be enforceable in a district court~~
26 ~~of this state;~~

27 (9) to require answers in writing under oath to questions or interrogatories propounded by the
28 ~~department~~ commissioner; and

29 (10) to administer an oath or affirmation to any person in connection with any investigation."
30

1 **Section 5.** Section 20-30-202, MCA, is amended to read:

2 **"20-30-202. Minimum standards.** (1) In establishing the criteria required by 20-30-201, the
3 ~~department~~ commissioner shall observe and ~~shall~~ require compliance with the following minimum standards:

4 (a) A postsecondary educational institution must be maintained and operated or, in the case of a
5 new institution, it must demonstrate that it can be maintained and operated in compliance with the
6 following minimum standards:

7 (i) that the quality and content of each course or program of instruction, training, or study ~~are such~~
8 ~~as~~ may reasonably and adequately achieve the stated objective for which the course or program is offered;

9 (ii) that the institution has adequate space, equipment, instructional materials, and personnel to
10 provide education of good quality;

11 (iii) that the education and experience qualifications of directors, administrators, supervisors, and
12 instructors ~~are such as~~ may reasonably ~~insure~~ ensure that the students will receive education consistent
13 with the objectives of the course or program of study;

14 (iv) that the institution provides students and other interested persons with a catalog or brochure
15 containing information describing the programs offered; program objectives; length of program; schedule
16 of tuition, fees, and all other charges and expenses necessary for completion of the course of study;
17 cancellation and refund policies; and ~~such~~ other material facts concerning the institution and program or
18 course of instruction ~~as that~~ are reasonably likely to affect the decision of the student to enroll ~~therein~~,
19 together with any other disclosures required by the ~~department~~ commissioner, and that ~~such~~ the
20 information is provided to prospective students prior to enrollment;

21 (v) that upon satisfactory completion of training, the student is given appropriate educational
22 credentials by the institution, indicating that the course or courses of instruction or study have been
23 satisfactorily completed;

24 (vi) that adequate records are maintained by the institution to show attendance, programs, or grades
25 and that satisfactory standards are enforced relating to attendance, progress, and performance;

26 (vii) that the institution is maintained and operated in compliance with all pertinent ordinances and
27 laws relating to the safety and health of all persons upon the premises;

28 (viii) that the institution is financially sound and capable of fulfilling its commitments to students;

29 (ix) that neither the institution nor its agents engage in advertising, sales, collection, credit, or other
30 practices of any kind ~~which~~ that are false, deceptive, misleading, or unfair;

1 (x) that the chief executive officer, trustees, directors, owners, administrators, supervisors, staff,
2 and instructors are of good reputation and character; and

3 (xi) that the institution has a fair and equitable cancellation and refund policy.

4 (b) An applicant for a permit to act as agent ~~shall~~ must be an individual of good reputation and
5 character and shall represent only a postsecondary educational institution ~~which~~ that meets the minimum
6 standards established in this section and the criteria established under 20-30-201.

7 (c) ~~No~~ A postsecondary educational institution may not use the term "university" or "college"
8 without authorization to do so from the ~~department in consultation with the~~ commissioner of higher
9 education; ~~provided that any institution subject to this chapter located within this state which used either~~
10 ~~term on January 1, 1974, may continue to do so by filing an affidavit to that effect with the department~~
11 ~~prior to January 1, 1975.~~

12 (2) Accreditation by national or regional accrediting agencies recognized by the United States office
13 of education may be accepted by the ~~department~~ commissioner as evidence of compliance with the
14 minimum standards established ~~hereunder~~ in this section and the criteria established under 20-30-201,
15 ~~provided the department, after conferring with the~~ However, the commissioner of higher education, may
16 require ~~such~~ further evidence and make ~~such~~ further investigation ~~as in its judgment may be~~ that the
17 commissioner considers necessary. Accreditation by a recognized, specialized accrediting agency may be
18 accepted as evidence of ~~such~~ compliance only as to the portion or program of an institution accredited by
19 ~~such~~ the agency if the institution as a whole is not accredited."
20

21 **Section 6.** Section 20-30-203, MCA, is amended to read:

22 **"20-30-203. Acts prohibited without permit or license.** ~~No~~ A person, group, association, or
23 corporation, alone or in concert with others, ~~shall~~ may not:

24 (1) operate in this state a postsecondary educational institution unless the institution is exempt
25 from the provisions of this chapter or is licensed by the ~~department~~ commissioner;

26 (2) offer instruction in, enrollment in, or grant of educational credentials as or through an agent by
27 a postsecondary educational institution not exempted from this chapter, whether within or without the
28 state, unless the agent possesses a currently valid permit as required by this chapter;

29 (3) accept or receive contracts or applications for enrollment from an agent unless the agent
30 possesses a currently valid permit as required by this chapter;

1 (4) offer education or educational services or educate or provide educational service, offer to enroll
 2 or enroll, contract or offer to contract with any person for ~~such~~ that purpose or offer to grant, grant, or
 3 contract with any person for that purpose in this state unless the person, group, association, or corporation
 4 complies with the minimum standards in 20-30-202, the criteria established by the ~~department~~
 5 commissioner, and the rules adopted by the ~~department~~ commissioner;

6 (5) act as an agent for a postsecondary educational institution unless currently possessing a valid
 7 permit from the department."

8
 9 **Section 7.** Section 20-30-301, MCA, is amended to read:

10 "**20-30-301. License to operate institution.** (1) Each postsecondary educational institution that
 11 is not exempted from this chapter ~~intending~~ and that intends to operate or is presently operating in this
 12 state shall apply to the ~~department~~ commissioner for a license to operate. Application ~~shall~~ must be made
 13 on forms prescribed by the ~~department~~ commissioner. Each application ~~shall~~ must be accompanied by the
 14 most recent catalog or brochure published or intended to be published by the institution. The application
 15 also ~~shall~~ must be accompanied by evidence of payment of the fees required by this chapter.

16 (2) After review of the application and any further information required by the ~~department~~
 17 commissioner, any investigation of the application ~~which~~ that the ~~department may deem~~ commissioner
 18 considers necessary or appropriate, and evidence of a surety bond as required by this chapter, the
 19 ~~department~~ commissioner shall either issue or not issue a license to operate a postsecondary educational
 20 institution. The license ~~shall be~~ is nontransferable and may be upon ~~such~~ the terms and conditions ~~as~~ that
 21 the ~~department~~ commissioner may require.

22 (3) The license ~~shall~~ must be in a form prescribed by the ~~department~~ commissioner and ~~shall~~ must
 23 state in a clear and conspicuous manner at least the following information:

- 24 (a) date of issuance, effective date, and date of expiration;
 25 (b) the name and address of the institution licensed;
 26 (c) the authority for and conditions of approval; and
 27 (d) any terms or conditions required by the ~~department~~ commissioner.

28 (4) ~~No~~ A license ~~shall be~~ is not valid for more than 2 years and may be valid for a lesser period of
 29 time."
 30

1 **Section 8.** Section 20-30-302, MCA, is amended to read:

2 **"20-30-302. Permit to act as agent.** (1) Each person intending to act in this state as an agent for
3 a postsecondary institution not exempt from the provisions of this chapter shall make application to the
4 ~~department commissioner~~. Application ~~shall~~ must be made on forms prescribed by the ~~department~~
5 commissioner. Each application ~~shall~~ must be accompanied by evidence of payment of the fees required
6 by this chapter and the sworn affidavits of three residents of this state as to the good character and
7 reputation of the applicant and ~~shall~~ must show the name and address of the institution ~~which~~ that the
8 applicant intends to represent.

9 (2) In the event that the applicant intends to represent an institution not licensed to operate in this
10 state, the application ~~shall~~ must be accompanied by the information required of institutions applying for
11 ~~such~~ a license.

12 (3) After review of the application and any further information required by the ~~department~~
13 commissioner, any investigation ~~deemed~~ considered necessary or appropriate, and evidence of a surety
14 bond required by this chapter, the ~~department commissioner~~ shall issue or not issue the permit to the
15 applicant. The permit ~~shall be nontransferable~~ may not be transferred and may be ~~upon such~~ subject to
16 any terms and conditions as the department set by the commissioner may require.

17 (4) The permit ~~shall~~ must be in the form prescribed by the ~~department commissioner~~ and ~~shall~~ must
18 state in a clear and conspicuous manner at least the following information:

19 (a) the date of issuance, effective date, and date of expiration;

20 (b) the name and address of the agent;

21 (c) the name and address of the institution or institutions the agent may represent;

22 (d) the authority for and conditions of approval; and

23 (e) any terms or conditions required by the ~~department commissioner~~.

24 (5) ~~No~~ A permit ~~shall be~~ is not valid for more than 2 years and may be valid for a lesser period of
25 time."

26

27 **Section 9.** Section 20-30-303, MCA, is amended to read:

28 **"20-30-303. Denial of application for license or permit.** (1) If the ~~department commissioner~~
29 determines that an application is deficient under the criteria established for the issuance of a license or
30 permit, the ~~department commissioner~~ shall notify the applicant in writing of that determination and the

1 deficiencies.

2 (2) If the applicant requests and the request demonstrates to the ~~department~~ commissioner the
3 applicant's intention and ability to remedy the deficiencies causing the denial of the license or permit, the
4 ~~department~~ commissioner may grant the applicant a reasonable period of time to take ~~such~~ remedial action.

5 (3) If a request under subsection (2) ~~above~~ is not made ~~or, if~~ a request is made and is denied, or
6 if the period of time granted expires without remedy of the deficiencies, the application ~~shall~~ must be
7 denied. The ~~department~~ commissioner shall notify the applicant of the denial, the reasons ~~therefor~~ for the
8 denial, and the opportunity of the applicant for a hearing before the ~~department~~ commissioner.

9 (4) ~~In the event~~ if an application for a permit is denied, the ~~department~~ commissioner shall notify
10 in writing the institution or institutions represented or to be represented by the applicant."

11

12 **Section 10.** Section 20-30-304, MCA, is amended to read:

13 **"20-30-304. Revocation of license or permit.** (1) If the ~~department~~ commissioner has reasonable
14 cause to believe that a holder of a license or permit issued under any provision of this chapter has violated
15 or is in violation of this chapter or criteria established under this chapter, the ~~department~~ commissioner may
16 revoke the license or permit as provided.

17 (2) A decision respecting revocation of a license or permit ~~shall~~ must be made after opportunity
18 for hearing before the ~~department~~ commissioner. ~~Matters concerning the revocation of licenses or permits,~~
19 ~~hearings, and judicial review will be handled as contested cases under the Administrative Procedure Act."~~

20

21 **Section 11.** Section 20-30-305, MCA, is amended to read:

22 **"20-30-305. Bond required.** (1) At the time application is made for license, the ~~department~~
23 commissioner may require the postsecondary educational institution making the application to file with the
24 ~~department~~ commissioner a good and sufficient surety bond in ~~such a sum as may be~~ determined by the
25 ~~department~~ commissioner. The bond ~~shall~~ must be executed by the applicant as principal and by a surety
26 company qualified and authorized to do business in this state. The bond ~~shall~~ must be conditioned to
27 provide indemnification to any student or enrollee or ~~his~~ the parent or guardian, ~~or class thereof, of a~~
28 student or enrollee who was determined to have suffered loss or damage as a result of any act or practice
29 ~~which that~~ is a violation of this chapter by the postsecondary educational institution ~~and that~~. The bond
30 must also be conditioned to provide that the bonding company shall pay any final nonappealable judgment

1 rendered by any court of this state having jurisdiction upon receipt of written notification ~~thereof~~ of the
 2 judgment. Regardless of the number of years that the bond is in force, the aggregate liability of the surety
 3 ~~thereon shall in no event~~ on the bond may not exceed the penal sum of the bond. The bond ~~shall~~ must be
 4 for 2 years or coterminous with the license.

5 (2) An application for a permit ~~shall~~ must be accompanied by a ~~good and sufficient~~ surety bond
 6 in a penal sum of \$1,000. The bond ~~shall~~ must be executed by the applicant as principal and by a surety
 7 company qualified and authorized to do business in this state. The bond may be in blanket form to cover
 8 more than one agent for a postsecondary educational institution, but it ~~shall~~ must cover each agent for the
 9 institution in a penal sum of \$1,000. The bond ~~shall~~ must be conditioned to provide indemnification to any
 10 student, or enrollee, or the parents parent or guardian, or class thereof, of a student or enrollee who was
 11 determined to have suffered loss or damage as a result of any act or practice which that is a violation of
 12 this chapter by the agent ~~and~~. The bond must also be conditioned to provide that the bonding company
 13 shall pay any final nonappealable judgment rendered by any court of this state having jurisdiction upon
 14 receipt of written notification ~~thereof~~ of the judgment. Regardless of the number of years that the bond
 15 is in force, the aggregate liability of the surety ~~thereon shall in no event~~ on the bond may not exceed the
 16 penal sum ~~thereof~~ of the bond. The bond ~~shall~~ must be for 2 years or coterminous with the permit.

17 (3) The surety bond to be filed ~~hereunder~~ shall must cover the period of the license or the permit
 18 except when a surety is released. A surety on any bond filed under the provisions of this section may be
 19 released after the surety has served written notice to the ~~department~~ commissioner 40 days prior to the
 20 release. The release does not discharge or otherwise affect any claim filed by a student or enrollee or ~~his~~
 21 the parent or guardian of a student or enrollee for loss or damage resulting from any act or practice ~~which~~
 22 that is a violation of this act alleged to have occurred while the bond was in effect or from an institution's
 23 ceasing operations during the term for which tuition has been paid while the bond was in force.

24 (4) A license for an institution to operate or a permit to an agent ~~shall~~ must be suspended by
 25 operation of law when the institution or agent is no longer covered by a surety bond as required by this
 26 section; ~~but the department~~. However, the commissioner shall cause the institution or an agent, or both,
 27 to receive at least 30 days' written notice prior to the release of the surety to the effect that the license
 28 or permit ~~shall~~ must be suspended by operation of law until another surety bond is filed in the same manner
 29 and like amount as the bond being terminated."
 30

1 **Section 12.** Section 20-30-306, MCA, is amended to read:

2 "**20-30-306. Fees.** All fees collected pursuant to the provisions of this chapter ~~shall~~ must be
3 deposited in the general fund, and ~~no~~ fees collected under the provisions of this chapter ~~shall be~~ are not
4 subject to refund. The fees to be collected by the ~~department shall~~ commissioner must accompany an
5 application for authorization to operate or for an agent's permit, in accordance with the following schedule:

6 (1) The initial application fee for a license ~~shall be~~ is \$50.

7 (2) The renewal fee for a license ~~shall be~~ is \$25.

8 (3) The initial fee for permit ~~shall be~~ is \$25.

9 (4) The renewal fee for permit ~~shall be~~ is \$10."

10

11 **Section 13.** Section 20-30-401, MCA, is amended to read:

12 "**20-30-401. Civil relief.** ~~Any~~ A person claiming loss or damage as a result of any act or practice
13 that is committed by a postsecondary institution or its agent, or both, ~~which act or practice~~ and that
14 violates the criteria established by the ~~department~~ commissioner under 20-30-201 or the prohibitions in
15 20-30-203, may sue in a court of proper jurisdiction of this state the institution or the agent, or both, and
16 their sureties for the amount of the damage or loss ~~and if~~. If successful, ~~shall~~ the person must be awarded,
17 in addition to damages, court costs and reasonable ~~attorney's~~ attorney fees."

18

19 **Section 14.** Section 20-30-403, MCA, is amended to read:

20 "**20-30-403. Violations -- criminal -- penalty.** ~~Any~~ A person, group, or entity or ~~any~~ an owner,
21 officer, agent, or employee thereof who ~~shall~~ willfully ~~violate~~ violates the provisions of 20-30-203 or who
22 ~~shall~~ willfully ~~fail or refuse~~ fails or refuses to deposit with the ~~department~~ commissioner the records required
23 by 20-30-105 ~~shall be~~ is guilty of a misdemeanor and upon conviction shall be punished by a fine not to
24 exceed \$1,000 or by imprisonment in the county jail not to exceed 6 months, ~~or by both such fine and~~
25 ~~imprisonment~~. Each day's failure to comply with the provisions of ~~said~~ these sections ~~shall be~~ is a separate
26 violation. ~~Such criminal~~ Criminal sanctions may be imposed by a court of competent jurisdiction in an
27 action brought by the county attorney."

28

29 **Section 15.** Section 20-30-405, MCA, is amended to read:

30 "**20-30-405. Enforcement -- injunction.** (1) The county attorney of ~~any~~ a county in which a

1 postsecondary educational institution or an agent ~~thereof~~ of the institution is found may, at the request of
2 the ~~department~~ commissioner or on ~~his own~~ a motion by the commissioner, ~~may~~ bring any appropriate
3 action or proceeding (including injunctive proceedings or criminal proceedings pursuant to 20-30-403) in
4 any court of competent jurisdiction for the enforcement of the provisions of this chapter.

5 (2) Whenever ~~it shall appear to the department~~ commissioner determines that any person, agent,
6 group, or entity is, is about to, or has been violating any of the provisions of this chapter or any of the
7 lawful rules or orders of the ~~department~~, it commissioner, the commissioner may, ~~on its own~~ by motion or
8 on the written complaint of any person, file a petition for injunction in any court of competent jurisdiction
9 against ~~such~~ the person, group, or entity for the purpose of enjoining ~~such~~ the violation or for an order
10 directing compliance with the provisions of this chapter and all rules and orders issued by the ~~department~~
11 commissioner."

12
13 **NEW SECTION. Section 16. Name change -- directions to code commissioner.** Wherever the name
14 "department of commerce" or "department", meaning the department of commerce established in
15 2-15-1801, appears in Title 20, chapter 30, or in legislation enacted by the 1995 legislature that is codified
16 in Title 20, chapter 30, the code commissioner is directed to change the name to "commissioner of higher
17 education" or "commissioner".

18
19 **NEW SECTION. Section 17. Repealer.** Sections 2-15-1804 and 20-30-104, MCA, are repealed.

20
21 **NEW SECTION. Section 18. Effective date.** [This act] is effective July 1, 1995.

22 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0057, as introduced

DESCRIPTION OF PROPOSED LEGISLATION: An act transferring the administration of postsecondary education institutions from the Department of Commerce to the Commissioner of Higher Education; amending various sections; and providing an effective date.

ASSUMPTIONS:

1. The Department of Commerce does not currently have the staff or skills to enforce this statute.
2. The Office of the Commissioner of Higher Education (OCHE) staff possesses the necessary knowledge, skills, abilities, and expertise to administer the postsecondary education program. The OCHE does not have sufficient staff to administer this program.
3. The number of postsecondary educational institutions annually seeking licensure will remain static.

FISCAL IMPACT:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Reduction at Dept. of Commerce:		
FTE	0	0
Operating	(1,670)	(1,670)
Increase at OCHE:		
FTE	.40	.40
Personal Services		
.25 FTE academic professional	13,750	13,750
.10 FTE administrative support	1,800	1,800
.05 FTE legal counsel	<u>3,250</u>	<u>3,250</u>
Total	17,130	17,130

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

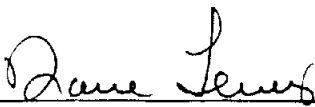
None.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

None.

TECHNICAL NOTES:

None.

 1-4-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


DAVID EWER, PRIMARY SPONSOR DATE

Fiscal Note for HB0057, as introduced

HB 57