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BILL ANALYSIS



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Senate Bill 221 (as enacted)
Sponsor: Senator Tonya Schuitmaker
Senate Committee: Regulatory Reform
House Committee: Education

PUBLIC ACT 45 of 2015

Date Completed: 7-21-15

CONTENT

The bill enacted the "Higher Education Authorization and Distance Education Reciprocal Exchange Act" to 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 is a party, if the college or university meets certain conditions.**
- **Allow an out-of-State college or university that is not a party to a reciprocal agreement to provide distance education to Michigan residents if it obtains 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 receive the services they pay for; protect student records; adopt a policy allowing students to file a complaint; and meet standards of practice contained in interregional guidelines.**
- **Require LARA to impose certain sanctions if a participating college or university violates the Act, or rules promulgated or an order issued under it.**
- **Permit LARA to promulgate rules it considers necessary to implement, administer, and enforce the Act.**

The Act took effect on June 9, 2015, and will be repealed on September 30, 2017.

Definitions

"Reciprocal agreement" means 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 Act.

"Distance education" means 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 may 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.
- Video cassettes, DVDs, and CD-ROMs, if they are used in a course in conjunction with any of the technologies listed above.

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

College or University Participation/Authorization

In-State College or University. The Act requires the Department to authorize a college or university located in Michigan to participate in a reciprocal agreement to which LARA is a party if the college or university enters into an agreement with LARA to participate in the reciprocal agreement, on a form and with accompanying documentation prescribed by the Department. The application must 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, under 34 CFR 668.13, of compliance with the financial responsibility standards of 34 CFR, Part 668, subpart L; and any other relevant information requested by LARA.

(Those 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 must pay an application fee of \$2,000 and an initial authorization fee of \$2,000.

Out-of-State College or University. A college or university that is located outside of this State and that is not a party to a reciprocal agreement to provide distance education to Michigan residents may elect to obtain authorization from LARA to provide that distance learning. The college or university must enter into an agreement with LARA to subject itself to requirements of the Act. It also must submit an application for authorization containing the same information required of an in-State college or university.

The out-of-State college or university must pay an application fee of \$5,000 and an initial authorization fee of \$5,000.

Renewal. An in-State college's or university's authorization to participate, and an out-of-State college's or university's authorization to provide distance education, expire on December 31. In either case, the college or university may renew its authorization for one or more additional calendar years by submitting a renewal application and paying an annual renewal fee by December 1 of each year. The renewal fee for a "participating college" (an in-State college or university meeting the requirements) is \$2,000. The renewal fee for an authorized out-of-State college or university is \$5,000.

Use of Fee. Fees collected under the Act must be used solely for administrative expenses incurred under the Act, and are not refundable.

College & University Responsibilities

Each participating college and each out-of-State college or university holding an authorization from LARA must assure that every student enrolled in a distance education program at that college or university receives the services for which he or she has paid, or receives reasonable financial compensation for those services the student has not received if a course in which the student is enrolled is terminated before its expected completion date. This assurance must be in writing and may include tuition assurance funds, surety bonds, teach-out provisions, or other practices LARA considers sufficient to protect consumers.

Each participating college and each authorized out-of-State college or university also must provide for the protection of student records for students enrolled in a distance education program at that college or university, and comply with any rules promulgated by LARA concerning the protection of those records.

In addition, each participating college and each authorized out-of-State college or university must adopt and publish a written policy allowing students enrolled in a distance education program at that college or university to file a complaint with LARA for any violation of the Act or rules promulgated under it. The Department must establish a complaint process for those students.

Each participating college and each authorized out-of-State college or university also must meet the standards of practice contained in the interregional guidelines for the evaluation of distance education published by the Council of Regional Accrediting Commissions in July 2009, which the Act incorporates by reference.

Sanctions

After notice and an opportunity for a hearing under the Administrative Procedures Act, LARA must do one or more of the following if it determines that a participating college or an authorized out-of-State college or university has violated the new 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 is participating in a distance education program.
- Impose any sanction LARA established by rule.

The Department may 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 may not assess administrative fines against a college or university if the fines in the aggregate are more than \$5,000 for multiple violations that arise from the same transaction.

MCL 390.1691-390.1697

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill will have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs, Michigan community colleges, and Michigan universities. The bill allows LARA to enter into reciprocal agreements with public educational agencies in other states or a higher education compact. The Department will collect an application fee of \$2,000, an initial authorization fee of \$2,000, and an annual \$2,000 renewal fee. It also will collect an application fee of \$5,000, an initial authorization fee of \$5,000, and an annual \$5,000 renewal fee from out-of-State colleges and universities that are not part of a compact, but that wish to provide distance education to residents of Michigan. The Department will face some increased costs from administration of compacts and distance education agreements as well as rule promulgation. It is unknown at this time how much LARA will collect from these fees, and whether new revenue will be less than or greater than the new costs, so the fiscal impact of the bill on LARA is indeterminate. The revenue from Michigan institutions in the first year could generate between \$200,000 and \$375,000, depending on the number of institutions

participating in reciprocal agreements. Revenue in subsequent years will range from \$100,000 to \$200,000.

The impact on community colleges and universities will vary by institution depending on the number of students generated through State Authorization Reciprocity Agreements and administrative savings realized through a state-level streamlined reciprocity process.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.