ARIZONA STATE BOARD FOR PRIVATE POSTSECONDARY EDUCATION

LAWS

Revised effective 7/18/2011

ARIZONA REVISED STATUTES ANNOTATED
VOLUME 10A
Titles 32-1401 to 32 – end

CHAPTER 30

PRIVATE POSTSECONDARY EDUCATION

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ARTICLE 1. GENERAL PROVISIONS

§ 32-3001. Definitions

In this chapter, unless the context otherwise requires:

1. "Accredited" means accredited by an accrediting agency recognized by the United States Department of Education.

2. "Board" means the state Board for private postsecondary education.

3. "Degree" means an academic degree or honorary degree or the title of any designation, mark, appellation, series of letters or words including associate, bachelor, master, doctor or fellow which signifies, purports to signify or is generally taken to signify satisfactory completion of the requirements of an educational program of study beyond the secondary school level or which is an honorary title conferred for recognition of some meritorious achievement.

4. "Grant" means award, bestow, confer, convey or sell.

5. "Operate" means to establish, keep, maintain or utilize a physical facility, location or mailing address in this state where, from which or through which students are procured for private vocational or private degree programs, private vocational or private degree programs are offered or private vocational credentials or private degrees are offered or granted and includes contracting for the performance of any of these acts.

6. "Private vocational program" means an instructional program which includes a course or group of courses as defined in 15-101 for which a student does not earn a degree and which is designed to provide or is advertised as providing a student with sufficient skills for entry into a paid occupation and which is not conducted solely by a public school, public community college or public university except as provided in section 15-1424.

§ 32-3002. State Board for private postsecondary education; qualifications; terms; organization; duties; expenses

A. A state Board for private postsecondary education is established consisting of the following seven members appointed by the governor pursuant to §38-211:

   1. Two members who hold executive or managerial positions in a private educational institution offering private vocational programs in this state.

   2. One member who holds an executive or managerial position in a private educational institution offering an associate degree.

3. Two members who hold executive or managerial positions in a private educational institution offering a baccalaureate or higher degree, or both.

4. Two members who are citizens of this state and have been occupied in commerce or industry in this state for at least three years.

B. Board Members serve at the pleasure of the Governor. Terms of office of Board members are four years to begin and end on the third Monday in January unless removed by the Governor. The Governor shall appoint a member for the unexpired portion of a term to fill a vacancy occurring during a term of office.

C. Four Board members constitute a quorum for the transaction of business. The vote of a majority of the Board members transacting business constitutes authority for the Board to act.

D. Members of the Board are eligible to receive compensation as determined pursuant to §38-611 or fifty dollars, whichever is more, for each day actually spent in the performance of their duties and reimbursement for all expenses necessary and properly incurred in attending meetings or hearings of the Board.

E. Members, employees, committee members and agents of the Board and members of citizen advisory committees are immune from personal liability with respect to acts done and actions taken in good faith without wanton disregard of their statutory duties pursuant to this chapter.

F. The chairman may establish committees from the board membership necessary to carry out the functions of the board.

§ 32-3003. Powers and duties

A. The Board shall:

1. Annually select a chairman from among its members.

2. Meet at least four times a year.

3. Adopt rules, which are necessary or proper for the administration of this chapter.

4. Administer and enforce this chapter and rules adopted pursuant to this chapter.

5. Establish minimum standards for private vocational program licensure requirements.

6. Adopt an official seal for attestation of licenses or other official papers and documents.

7. Consider and pass upon applications for private vocational program licenses and licenses to grant degrees.

8. Hear and pass upon complaints or charges.

9. Compel attendance of witnesses, administer oaths and take testimony concerning all matters coming within its jurisdiction.

10. Keep a record of its proceedings.

11. Keep a register, which shows the date of each application for a private vocational program license, qualifications and place of business of the applicant and disposition of the application.

12. Keep a register, which shows the date of each application for a license to grant degrees, qualifications and place of business of the applicant and disposition of the application.

13. Maintain a list of institutions licensed pursuant to this chapter, which is open to public inspection at all reasonable times. The Board shall give a copy of the list to any person who requests it.

14. Engage in full exchange of information with other regulatory boards, governmental agencies, accrediting agencies and the United States Department of Education.

15. Do other things necessary to carry out the purposes of this chapter.

B. The Board may:

1. Employ temporary or permanent personnel it deems necessary to carry out the purposes of this chapter and designate their duties. These duties may include considering and passing on license applications, considering and passing on complaints or charges, making investigations, compelling attendance of witnesses and issuing official papers and documents.

2. Make investigations, hold hearings and make decisions to enforce this chapter.

3. Issue subpoenas to compel the attendance of witnesses and the production of documents and administer oaths, take testimony, hear proof and receive exhibits in evidence.

4. Accept and spend federal monies and private grants, gifts, contributions and devices to assist in carrying out the purpose of this chapter. These monies do not revert to the state general fund at the end of a fiscal year.

§ 32-3004 Board for private postsecondary education fund

A. The Board shall transmit to the state treasurer all fees or other revenues received by the Board. The state treasurer shall place ten percent of all fees and revenues to the credit of the general fund of the state and the balance in a separate fund known as the Board for private postsecondary education fund.

B. Monies deposited in the Board for private postsecondary education fund are subject to the provisions of §35-143.01.

ARTICLE 2. LICENSURE

§ 32-3021. Private vocational program license; qualifications; provision of information; exemptions

A. A person shall not operate a private vocational program unless the person holds a private vocational program license issued pursuant to this chapter. Each program offered by a private vocational program licensee shall be authorized on a private vocational program license. The Board shall prescribe the manner in which the programs shall be identified on the license.

B. An applicant for a private vocational program license shall meet all of the following requirements:

1. Furnish a letter of credit, surety bond or cash deposit as provided in § 32-3023.

2. Make specific information concerning educational programs, including statements of purpose, objectives, course of study, policies, fees and other pertinent information, available to prospective students and the general public.

3. Be financially responsible and have management capability.

4. Maintain a qualified faculty.

5. Maintain facilities, equipment and materials, which are appropriate for the stated program. All facilities shall meet applicable state and local health and safety laws.

6. Maintain appropriate records as the Board prescribes which are properly safeguarded and preserved.

7. Use only advertisements, which are consistent with the information, made available as provided in paragraph 2 of this subsection.

8. Provide courses of instruction, which meet, stated objectives.

9. Provide a grievance procedure for students.

10. Comply with all federal and state laws and regulations relating to the operation of a private postsecondary educational institution.

11. Other requirements the Board deems necessary.

C. An applicant for a private vocational program license shall submit evidence of meeting the requirements prescribed in subsection B of this section to the Board. The Board shall verify the evidence submitted. Verification shall include on-site verification.

D. The filing of an application grants the board the authority to obtain information from any of the following:

1. A licensing board or agency in any state, district, territory or county of the United States or another country.

2. The Arizona criminal justice information system as defined in Section 41-1750.

3. The federal bureau of investigation.

E. The Board may, on application, issue a private vocational program license to a new educational institution as provided in this section, except that the Board shall establish separate minimum standards for licensure requirements of new educational institutions. These minimum standards may include the modification of licensure requirements as provided in subsection B, paragraphs 3, 5, 6, 7,-and 8 of this section to meet the circumstances of new educational institutions. The Board shall monitor the new educational institution to ensure compliance with the licensure requirements. The Board shall issue a private vocational program license as provided in this subsection one time only to new educational institutions.

F. This section does not apply to any of the following

1. A school licensed pursuant to Chapter 3 or 5 of this title.

2. An instructional program or course sponsored by a bona fide trade association solely for its members.

3. Privately owned academic schools engaged in the process of general education which is designed to produce a level of development equivalent to that necessary to meet the requirements for entrance into a public community college or public university in this state and which may incidentally offer technical and vocational courses as part of the curriculum.

4. School or private instruction conducted by any person engaged in training, tutoring or teaching individuals or groups, if the instruction is related to hobbies, avocations, academic improvement or recreation and may only incidentally lead to gainful employment and if the instruction is for a period of under forty hours and costs less than one thousand dollars.

5. Schools conducted by any person solely for training his own employees.

6. An instructional program or course offered solely for employees and for the purpose of improving the employees in their employment if both of the following apply:

   (a) The employee is not charged a fee.
   (b) The employer provides or funds the program or course pursuant to a valid written contract between the employee and the program or course provider.

7. Training conducted pursuant to 14 Code of Federal Regulations Part 141.

8. A school that solely provides an instructional program for certified nursing assistants and is licensed by the nursing board pursuant to section 32-1606, subsection B, paragraph 11.

9. A professional driving school licensed by the department of transportation pursuant to chapter 23, articles 1, 2 and 3 of this title.

10. A training program approved by the board of examiners of nursing care institution administrators and assisted living facility managers that solely provides training for managers and caregivers of assisted living facilities.

§ 32-3022. License to grant degrees

A. A person doing business for profit or not for profit in this state, except a public community college or public university, shall not grant or offer to grant a degree to any person or operate an institution which grants or offers to grant a degree to any person unless the person doing business holds a license to grant degrees issued pursuant to this chapter. Each degree program offered by a holder of a license to grant degrees shall be authorized on the license. The Board shall prescribe the manner in which the degrees, including level and subject area, shall be identified on the license.

B. An applicant for a license to grant degrees shall have each degree program it offers accredited or has institutional accreditation with an accrediting agency recognized by the United States Department of Education. The Board shall prescribe appropriate evidence of accreditation, which each applicant shall submit, and the manner in which degree programs shall be identified for institutional accreditation.

C. Notwithstanding subsection B of this section, an applicant for a license to grant degrees that offer a degree program, which is not accredited, shall meet all of the following requirements:

1. Application or commitment to apply for accreditation with an accrediting agency recognized by the United States Department of Education. The Board shall prescribe the manner in which the applicant shall demonstrate application or commitment to apply for accreditation and the time period in which the various stages of accreditation shall be met.

2. Demonstration in the manner prescribed by the Board, including on-site verification, that the applicant meets the requirements prescribed in 32-3021, subsections B and C if the applicant has not met the requirements in its application for accreditation.

3. Demonstration in the matter prescribed by the Board that the applicant who offers the degree provides actual instruction relating to each degree.

D. The Board may, on application, issue a license to grant degrees to a new educational institution as provided in this section, except that the Board shall establish separate minimum standards for licensure of new educational institutions. The minimum standards may include the modification of licensure requirements as provided in § 32-3021, subsection B, paragraphs 3, 5, 6, 7, and 8 to meet the circumstances of new educational institutions. The Board shall monitor the new educational institution to ensure compliance with the licensure requirements. The Board shall issue a license to grant degrees as provided in this subsection one time only to new educational institutions.

E. This section does not apply to religious degrees, which are used solely for religious purposes within a religious organization, which has tax-exempt status from the internal revenue service.

§ 32-3023. Letters of Credits, Bonds or cash deposits; fund

A. Before granting a private vocational program license or license to grant degrees the Board shall require of the applicant a letter of credit, surety bond in a form acceptable to the Board or a cash deposit pursuant to this section if the program or institution is not accredited.

B. Before granting or renewing a private vocational program license or license to grant degrees, the Board may require of the applicant a letter of credit, surety bond in a form acceptable to the Board or a cash deposit pursuant to this section if the program or institution is accredited.

C. The surety bond or deposit required by this section shall not be less than fifteen thousand dollars. The Board may require a bond or a deposit required by this section in an amount of more than fifteen thousand dollars and may consider the following:
   1. The Applicant's gross tuition revenue.
   2. The length of time the applicant has been in operation and the applicant's financial position.

D. Surety bonds shall be executed by the applicant as principal with a corporation authorized to transact surety business in this state. Evidence of a surety bond shall be submitted to the Board in a form prescribed by the Board. Surety Bonds issued by a Surety company must be rated "A" or better by Moody's Investor Service or Stand and Poor's Rating Service or their successors.

E. As an alternative to a surety bond, the applicant may submit a confirmed, irrevocable letter of credit acceptable and payable to the board.

F. As an alternative to a surety bond, an applicant may establish a cash deposit in the amount of the bond with the state treasurer pursuant to rules adopted by the Board. The treasurer shall deposit the monies in a special account to be known as the private postsecondary education cash bond fund. The monies shall be invested by the treasurer pursuant to laws governing such deposits. The accrued interest from investments shall be held by the treasurer for the payment of current claims. Cash deposits plus accrued interest may be withdrawn, if there are no outstanding claims against them one year after the termination of the license in connection with which the monies are deposited. The deposit may be withdrawn one year after the filing of a surety bond as a replacement to the cash deposit.

G. The letter of credit, bonds, or cash deposits required by this section shall be in favor of this state for the benefit of any person covered by this section. The bond, letter of credit or deposit is subject to claims by the Board for failure to pay any amount required pursuant to this chapter or by any person who is damaged by the failure of the principal to provide educational services pursuant to its published catalogs, brochures or other publications.

H. A person claiming against the letter of credit, bond or cash deposit may maintain an action against the principal and the surety or depository. The principal's letter of credit, surety bond or deposit may be sued upon in successive actions until the full amount is exhausted. A suit shall not be commenced on the letter of credit, bond or cash deposit after the expiration of one year following the commission or omission of the act on which the suit is based, except that time for purposes of claims for fraud shall be measured pursuant to § 12-543.

I. The letter of credit, bond or deposit shall be continuous in form and shall be conditioned that the total aggregate liability of the letter of credit, surety or depository for all claims shall be limited to the face amount of the bond irrespective of the number of years the bond or deposit is in force. If a corporate surety desires to make payment without waiting for court action, the amount of any bond filed pursuant to this chapter shall be reduced to the extent of any good faith payments made by the corporate surety. These payments shall be based on priority of written claims received by the corporate surety before court action.

J. On receipt by the Board of notice of intent to cancel a bond by a corporate surety, the Board shall immediately notify the principal on the bond of the effective date of cancellation and that the principal must furnish a like bond or a letter of credit or make a cash deposit before the cancellation date or within thirty days after mailing of the notice by the Board or its license shall be suspended. Notice to the principal shall be certified mail in a sealed envelope with postage prepaid addressed to the principal's latest address of record in the Board's office. A license is automatically suspended on the date the bond is cancelled unless a replacement bond or a letter of credit or cash deposit in lieu of bond is on file with the Board. Operation while the license is suspended is a violation of this chapter. The license shall not be reinstated until a replacement bond, letter of credit or cash deposit is on file with the Board.

§ 32-3025. Application for license; nontransferability; display

A. Each applicant for a private vocational program license to grant degrees shall make a verified application to the Board upon forms prepared and furnished by the Board. Any license issued shall be restricted to vocational programs or degree programs and locations of programs specifically indicated on the applications. The holder of a license shall present a supplementary application as may be directed by the Board for approval of additional vocational programs or degree programs or locations.

B. Each original application for a license shall be accompanied by the prescribed fee. A supplementary application for the approval of additional vocational programs or degree programs or locations shall be accompanied by the prescribed fee. Fees shall not be refunded if a license is refused or revoked.

C. The Board may grant a private vocational program license or license to grant degrees for programs with variable locations. Private vocational program licenses and licenses to grant degrees are not transferable to another location in this state except as specified on the license.

D. A private vocational program license or license to grant degrees shall be prominently displayed at a place on the premises of the educational institution which is open to the inspection of all interested persons.

§32-3027. Fees

A. The Board shall establish and collect the following nonrefundable fees:

1. Filing fee for an original private vocational program license or license to grant degrees, not more than eight hundred dollars

2. Annual renewal fee for an applicant holding one or more private vocational program and degree granting licenses, based on the aggregate annual gross tuition revenues from all programs licensed in this state, but not exceeding the following amounts for an applicant with the following annual gross tuition revenue:
   a. Less than fifty thousand dollars annual gross tuition revenue, six hundred dollars. ($600)
   b. Fifty thousand to two hundred forty-nine thousand nine hundred ninety-nine dollars annual gross tuition revenue, seven hundred fifty dollars. ($750)
   c. Two hundred fifty thousand to four hundred ninety-nine thousand nine hundred ninety-nine dollars annual gross tuition revenue, one thousand dollars. ($1,000)
   d. Five hundred thousand to nine hundred ninety-nine thousand nine hundred ninety-nine dollars annual gross tuition revenue, one thousand three hundred dollars. ($1,300)
   e. One million to two million four hundred ninety-nine thousand nine hundred ninety nine dollars annual gross tuition revenue, one thousand six hundred fifty dollars. ($1,650)
   f. Two million five hundred thousand to six million nine hundred ninety-nine thousand nine hundred ninety-nine dollars annual gross tuition revenue, two thousand dollars. ($2,000)
   g. Seven million dollars or more annual gross tuition revenue, two thousand three hundred dollars. ($2,300)

3. Supplemental application fee for licensure of a new or an additional Vocational program or degree program, five hundred dollars. ($500)

4. Supplemental application fee for licensure of an additional location or a change of location, five hundred dollars. ($500)

5. Supplemental application fee for a change in ownership of an educational institution offering private vocational programs or granting degrees, five hundred dollars. ($500)

6. Fee for an on-site verification, inspection, or investigation that equals the actual cost incurred or five hundred dollars, whichever is less.

7. Late renewal fee, one hundred dollars per day. ($100/day)

B. For a student records request, the Board may change ten dollars processing fee and a twenty-five cent per page copying charge.

ARTICLE 3. REGULATION

§ 32-3051. Grounds for disciplinary action

The Board may take disciplinary action against any person licensed pursuant to this chapter for any one or a combination of the following reasons:

1. Violation of this chapter or rules adopted pursuant to this chapter.

2. Conviction of a felony or any crime related to the operation of an educational institution.

3. Engaging in fraudulent advertising.

4. Failure to reapply as prescribed by the Board for a license issued under this chapter if the licensee is continuing in business.

5 Engaging in false or misleading advertising, solicitation or recruitment practices.

6. Unprofessional or dishonorable conduct by the Licensee or any employee, administrator, owner, member, officer, director or agent of the licensee, whether occurring in this state or elsewhere, including:
   (a) Engaging in sexual conduct with a student who is not the person's spouse at the time of the conduct. For the purposes of this subdivision, "sexual conduct" means either of the following:

(i). Engaging in or soliciting a sexual relationship, whether consensual or nonconsensual;

(ii). Making sexual advances, requesting sexual favors or engaging in any other verbal or physical contact of a sexual nature.

(b). Verbally abusing a student or employee.

(c). Threatening or intimidating by word or conduct causing physical injury to a student.

(d). Intentionally, knowingly or recklessly causing any physical injury to a student.

(e). Knowingly touching a student with the intent to injure, insult or provoke the student.

7 Failure to comply with all state and federal laws relating to the operation of a private postsecondary educational institution.

8. Failure to comply with applicable standards of accreditation as determined by the Board.

9. Failure to be financially responsible as determined by the Board.

10. Failure to have adequate management capability as determined by the Board.

11. Failure to provide the approved program as determined by the Board.

12. Failure to provide faculty who meet the minimum qualifications as determined by the Board.

13. Failure to provide the facility, equipment and other resources to operate the program.

14. Failure to follow published administrative policies, procedures and fees of the educational institution.

15. Failure to offer published student services.

16. Failure to maintain records as prescribed by rule.

17. Failure to provide a safe learning environment.

18. Failure to comply with a Board order, consent agreement, stipulation, subpoena or investigative request.

§32-3052. Types of disciplinary action

A. On its own motion the Board may investigate any evidence indicating that any person may be guilty of violating this chapter or rules adopted pursuant to this

chapter. Any person may report to the Board any information, which shows that a person licensed pursuant to this chapter constitutes a threat to the public health, safety and welfare. On a showing of a threat to the public health, safety and welfare, the Board, before conducting a hearing pursuant to Title 41, Chapter 6, Article 10, may impose probation requirements best adapted to protect the public health, safety and welfare.

B. On the filing of a sworn complaint with the Board charging any person with any reasons for disciplinary action specified in § 32-3051, the Board shall conduct an investigation of the complaint. The Board may employ investigators to conduct the investigation. Evidence may be taken by deposition or affidavit.

C. A person who reports or provides information to the Board in good faith is not subject to an action for civil damages as a result of reporting or providing the information. The name of the person who reported or provided information shall not be disclosed unless disclosure is necessary to the proceedings conducted under this section.

D. The chairman of the board shall appoint a complaint committee of not less than three members of the board. The complaint committee is subject to open meeting requirements pursuant to Title 38, Chapter 3, Article 3.1.

E. After the Board staff investigates the complaint, the complaint committee shall review all complaints. Based upon the information provided pursuant to subsection A or B of this section, the Complaint Committee may do any of the following:
   1. Dismiss the complaint if the committee determines that the complaint is without merit.
   2. File a Letter of Concern.
   3. Refer the complaint to the full Board for further review and action.

F. Based on information provided pursuant to subsection A or B of this section, if the Board finds that the complaint lacks sufficient seriousness to merit direct action against the licensee, the Board may take any of the following actions:
   1. Dismiss the complaint if the Board believes the information is without merit.
   2. File a letter of concern.
   3. Enter into an agreement with the licensee to restrict or limit the licensee's activities;
   4. Require restitution to a student.
   5. Impose a civil penalty in an amount not to exceed one thousand dollars for each violation of this chapter or rules adopted pursuant to the chapter. The Board may impose an additional penalty in an amount not to exceed one thousand dollars for each day the civil penalty is not paid, beginning on the day after the penalty has been imposed.

G. Based on information provided pursuant to subsection A or B of this section, if the Board finds the complaint has or may have sufficient seriousness to merit direct action against the licensee, the Board may request an informal interview with the licensee.

H. The Board shall issue a complaint and hold a hearing pursuant to Title 41, Chapter 6, Article 10 if either:
   1. The licensee refuses to be interviewed.
   2. Pursuant to an interview, the Board determines that cause may exist to revoke or suspend the license.

I. Based on the result of the informal interview or hearing, if the Board determines that the facts do not warrant revocation or suspension of the license, it may take any of the following actions:
   1. Dismiss the complaint if the Board finds the information is without merit.
   2. File a letter of concern.
   3. Issue a decree of censure.
   4. Fix a period and terms for probation to protect the public health, safety and welfare. The probation may include a restriction on the license. If a licensee fails to comply with the terms of probation, the Board may file a complaint and notice of hearing pursuant to Title 41, Chapter 6, Article 10 and take further disciplinary action.
   5. Enter into an agreement with the licensee to restrict or limit the licensee's activities.
   6. Require restitution to the student.
   7. Impose a civil penalty in an amount not to exceed one thousand dollars for each violation of this chapter or rules adopted pursuant to this chapter. The Board may impose an additional penalty in an amount not to exceed one thousand dollars for each day the civil penalty is not paid, beginning on the day after the penalty has been imposed.

J. If the Board finds that the information provided pursuant to subsection A or B of this section warrants suspension or revocation of a license, the Board shall hold a hearing pursuant to Title 41, Chapter 6, Article 10.

K. Except as provided in section 41-1092.08, subsection H, a person may appeal a final decision made pursuant to this section to the Superior Court pursuant to Title 12, Chapter 7, Article 6.

L. If the Board determines after a hearing that the Licensee has violated this chapter or rules adopted pursuant to this chapter, the Board may take any of the following actions:
   1. Suspend or revoke the license.
   2. Issue an order of censure. For the purposes of this paragraph, an order of censure is an official action against the licensee and may include a requirement for restitution to the student.

3. Place the licensee on probation.
4. Impose a civil penalty in an amount not to exceed one thousand dollars for each violation of this chapter or rules adopted pursuant to this chapter. The Board may impose an additional penalty in an amount not to exceed one thousand dollars for each day the civil penalty is not paid, beginning on the day after the penalty has been imposed

M. On its determination that any person has violated this chapter or rules adopted pursuant to this chapter, the Board may assess the person with the Board's reasonable costs and expenses, including attorney fees, incurred in conducting the investigation, informal interviews, committee meetings, board meetings or administrative hearings. All monies collected pursuant to these sections 35-146 and 35-147, in the Board for Private Postsecondary Education Fund established by section 32-3004.

N. All monies derived from the imposition of civil penalties pursuant to this section shall be deposited, pursuant to sections 35-146 and 35-147, in the State General Fund.

O. For the purposes of this section, "Letter of Concern" means an advisory letter that notifies the licensee that while there is insufficient evidence to support disciplinary action, the Board believes the licensee should modify or eliminate certain activities or practices and that continuation of the activities or practices may result in disciplinary action against the licensee.

§ 32-3053. Persons doing business without a license

The Board may make investigations as provided in § 32-3003, subsection B in order to determine whether a person doing business in this state is required to hold a license as prescribed in this chapter. If the Board determines that a person is doing business without holding a license required by this chapter, the Board may bring an action as provided in § 32-3057.

§ 32-3054. Service of findings; rehearing; surrender of license

A. In any case involving the refusal to issue or renew a license or disciplinary action, the applicant or licensee may request a hearing or rile a motion for hearing or review pursuant to Title 41, Chapter 6, Article 10.

B. Upon the revocation of a license, the holder shall surrender the license to the Board, and upon failure or refusal to do so; the Board may seize the license.

§ 32-3055. Review of decision

Except as provided in Section 41-1092.08, subsection H, any person affected by a final administrative decision of the Board may have the decision reviewed judicially pursuant

to provisions of Title 12, Chapter 7, Article 6. If the plaintiff in the review proceedings is not a resident of this state, the venue shall be in Maricopa County. Service of summons issued in such review proceedings may be had upon the secretary. The Board shall not be required to certify the record of the proceedings unless the plaintiff in the review proceedings first pays to the Board the reasonable costs thereof.

§32-3056. Violation; classification

A person who violates any provision of this chapter is guilty of class 3 misdemeanors.

§ 32-3057. Cease and desist order; injunctive relief; civil penalty

A. In addition to all other remedies, if it appears to the Board, either on complaint or otherwise, that any person has engaged in or is engaging in an act, practice or transaction which violates this chapter or any rule or order of the Board, the Board may either:

1. Serve on the person by certified mail or personal service a cease and desist order requiring the person to cease and desist immediately, on receipt of the notice, from engaging in the act, practice or transaction.

2. Apply, through the attorney general or through the county, city or town attorney of the county, city or town in which the act, practice or transaction is alleged to have been committed, to the superior court in that county for an injunction restraining the person from engaging in the act, practice or transaction, or doing anything in furtherance of the act, practice or transaction. On a proper showing, a temporary restraining order, a preliminary injunction or a permanent injunction shall be granted without a bond. Process in the action may be served on the defendant in any county in this state where the defendant transacts business or is found.

B. A person who has received a cease and desist order under subsection A, paragraph 1 of this section shall, upon request, be granted a hearing before the Board within thirty days of the effective date of the order.

C. If the person fails to comply with the order, the Board shall file an action, pursuant to subsection A, paragraph 2 of this section, in Superior Court to restrain and enjoin the person from engaging in the act, practice or transaction. The court in the action shall proceed as in other actions for injunction. If the court finds that the person willfully failed to obey a valid cease and desist order, the court shall impose a civil penalty of not less than two hundred fifty dollars nor more than one thousand dollars per day per violation. Any amount collected as a civil penalty shall be deposited in the state general fund.

D. Each violation of this chapter or a rule or order of the Board constitutes a separate offense and the court may impose a civil penalty not to exceed one thousand

dollars for each violation. The Board may impose an additional penalty in an amount not to exceed one thousand dollars for each day the civil penalty is not paid, beginning on the day after the penalty has been imposed. All monies derived from the imposition of civil penalties shall be transmitted to the State Treasurer for deposit in the state general fund.

§ 32-3058. Preservation of records

A. If a person who holds a private vocational program license or license to grant degrees discontinues operation, the chief administrative officer of the educational institution shall file with the Board the original or legible true copies of all educational records of the institution as specified by the Board.

B. Educational records include at least all educational information required by colleges or vocational institutions in considering students for transfer or advanced study, educational records of each student and former student and financial aid records of each student and former student.

C. If it appears to the Board that any educational records of an educational institution are in danger of being destroyed, secreted, mislaid or otherwise made unavailable to the Board, the Board may seize and take possession of the educational records on its own motion and without the order of any court.

D. The Board shall maintain a permanent file of the educational records it receives. These records are confidential and are not subject to review by the general public. The Board shall establish procedures for access to and release of such records to students and their authorized representatives.

ARTICLE 4. STUDENT TUITION RECOVERY FUND

§ 32-3071. Definitions

In this article, unless the context otherwise requires:

1. "Assessment" means the amount a private postsecondary education institution is required to pay to the Student Tuition Recovery Fund.

2. "Ceasing Operations" means a private postsecondary education institution that has stopped offering educational courses or programs to the public for any reason.

3. "Distance Learning Instruction" means a written correspondence or electronic medium education program for students enrolled in an institution licensed under this chapter.

4. "Fund" means the student tuition recovery fund.

5. "Newly Enrolled Student" means a student enrolling with a private postsecondary education institution for the first time or reenrolling after an absence from the institution for one or more years.

6. "Person Injured" means a student of a private postsecondary education institution, which is not exempt from this article pursuant to § 32-3072, subsection D and which charges prepaid tuition to a student and who is damaged monetarily by the institution ceasing operations before fulfilling its contractual obligations or fully providing the services which were paid for in advance. Person injured does not include a nonresident student who is eligible to claim for recovery under a student tuition recovery fund or similar fund in the student's state of residence.

7. "Prepaid Tuition" means monies advanced to an educational institution before the educational institution provides its service.

8. "Private Postsecondary Education Institution" or "Institution" means an educational institution subject to licensure under this chapter.

9. "Regional Accrediting Agency" means an agency recognized by the United States Department of Education and which accredits degree-granting institutions operating in a designated geographic region.

10. "Specialized Accrediting Agency" means an agency recognized by the United States Department of Education and which accredits individual programs offered by an institution and not the institution themselves.

11. "Total Course Cost" means the tuition and other fees charged by the private postsecondary education institution for each course offered.

§ 32-3072. Student tuition recovery fund

A. The student tuition recovery fund is established and shall be administered by the Board. A person injured by a private postsecondary education institution ceasing operations may recover from the fund an amount not to exceed the actual damages sustained.

B. Except as provided in subsection D of this section, each private postsecondary education institution as defined in section 32-3071 which collects prepaid tuition shall annually pay an assessment to the Board for each newly enrolled student in an amount equal to the sum of two-tenths of one percent of the total course cost for each newly enrolled student. A private postsecondary institution shall not be required to pay assessments for newly enrolled students who are not residents of this state for whom the institution has paid a student tuition recovery fund assessment or an assessment to a similar fund in the student's state of residence. A private postsecondary institution shall not be required to pay assessments for

students who are not residents of this state and who are enrolled in distance learning instruction.

C. The total assessment for each newly enrolled student shall not be more than ten dollars. If on June 30 of any year the balance in the fund exceeds five hundred thousand dollars ($500,000), and on notice by the Board to institutions, only institutions and schools that are newly or provisionally licensed during or after that fiscal year then ended shall pay the assessment.

D. Institutions accredited by a regional or specialized accrediting agency recognized by the United States Department of Education are exempt from this section.

§ 32-3073. Powers and duties of Board over fund

A. The Board shall

1. Administer the student tuition recovery fund.

2. Receive claims against the fund from persons injured and provide student's educational records from closed institutions.

3. Determine the amount of monies in any fiscal year to be drawn to administer the fund.

4. Deduct reasonable costs from the fund in addition to those permitted in paragraph 3 for any of the following purposes:

   a. Seizing student records from a closed school.
   b. Processing student records requests.
   c. Reimbursing the Board for a third party as the custodian of records.

5. Notify institutions in any fiscal year, pursuant to § 32-3072 that only institutions which are newly or provisionally licensed during or after that fiscal year shall pay the assessment.

6. Adopt rules necessary to administer this article.

B. If an institution subject to assessments under § 32-3072 ceases operations with assessments unpaid to the Board, the Board and the attorney general shall recover the assessments from the institution.

§ 32-3074. Deposit of assessments

A. The assessments and student records request fees received by the Board for deposit in the fund shall be held in trust to carry out the purposes of the fund. The

monies shall be transferred to the state treasurer to be invested, and the interest from these investments shall be deposited to the credit of the fund.

B. The monies deposited in the fund are continuously appropriated to the Board to carry out the purposes of the fund.

C. Any monies unexpended and unencumbered in the fund at the close of a fiscal year shall not revert to the state general fund.

D. Monies held in the fund shall be available only to satisfy valid claims submitted to the Board by persons who provide educational records and who are injured and are exempt from execution and from all claims by an institution's creditors or other claimants.

§ 32-3075. Statute of limitations; recovery from fund

A. A claim against the fund shall not be commenced later than one year after the private postsecondary education institution has ceased operations. The person injured shall submit a complaint to the Board outlining the circumstances surrounding the claim. The Board shall promptly investigate the complaint. If the complaint and claim are valid, the Board shall pay the claim in the amount it considers reasonable.

B. Any person injured by a private postsecondary education institution ceasing operation is eligible to submit a claim against the fund unless the person is not a resident of this state and is enrolled in distance learning instruction.

§ 32-3076. Subrogation

The state has the right of subrogation to the extent of payments made from the fund including the right to collect from a bond or cash deposit made pursuant to § 32-3023 or directly from the institution. The Board and the attorney general shall promptly enforce all subrogation claims.

§ 32-3077. Violation; penalties

A. The Board may suspend the license of an institution, which is required to pay the assessment to the student tuition recovery fund and fails to timely pay the assessment. The Board shall prohibit the institution from collecting any prepaid tuition due during the period of suspension. If the suspension is not lifted within thirty days from the date of the suspension, the Board shall direct that the institution refund the total course cost paid by each person injured.

B. The Board or any injured person may apply to the Superior Court for enforcement of a violation of an order of the Board entered pursuant to this section.

ERRATA
The Arizona State Board for Private Postsecondary Education does not assume Responsibility for the veracity of the Material and information contained herein.

ARIZONA STATE BOARD FOR PRIVATE POSTSECONDARY EDUCATION

AMERICAN DISABILITIES ACT
TITLE II

PUBLIC NOTICE

As a public entity, the Arizona State Board for Private Postsecondary Education ("Board") is subject to Title II of the American Disabilities Act. Title II prohibits discrimination against any "qualified individual with a disability" and requires that a public entity have policies and practices that do not adversely affect the full participation of individuals with disabilities in its programs, activities, and services.

The Board does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. The Board does not discriminate on the basis of disability in its hiring or employment practices.

An individual with a disability may request that Board materials be provided in an alternative format, may request auxiliary aids for effective communication, and may request reasonable accommodations to participate in Board meetings and hearings. Requests should be directed to the Board Executive Director.

For a copy of or access to the Board's title II, ADA policies regarding program, activity, and service access or a copy of or access to the Board's ADA grievance procedure please contact the Board Executive Director.

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