

CURRENT THROUGH THE 2008 REGULAR SESSION

Title 49 Education  
Chapter 7 Postsecondary and Higher Education Generally  
Part 20 --Postsecondary Education Authorization Act

**49-7-2001. Short title.**

This part shall be known and cited as the "Postsecondary Education Authorization Act of 1974."

**HISTORY:** [Acts 1961, ch. 112, § 1; 1965, ch. 350, § 1; 1967, ch. 355, § 33; 1968, ch. 624, § 1; 1973, ch. 285, § 1; 1974, ch. 781, § 1; T.C.A., § 49-3901.]

**49-7-2002. Legislative intent.**

It is the purpose of this part to provide for the protection, education and welfare of the citizens of this state, its postsecondary educational institutions, and its students, by:

(1) Establishing minimum standards concerning quality of education, ethical and business practices, health and safety, and fiscal responsibility, to protect against substandard, transient, unethical, deceptive or fraudulent institutions and practices;

(2) Authorizing the granting of degrees, diplomas, certificates or other educational credentials by postsecondary educational institutions and prohibiting the granting of false or misleading educational credentials;

(3) Regulating the use of terminology in naming or otherwise designating educational institutions;

(4) Prohibiting misleading literature, advertising, solicitation or representation by educational institutions or their agents; and

(5) Providing certain rights and remedies to the consuming public and the commission necessary to effectuate the purposes of this part.

**HISTORY:** [Acts 1961, ch. 112, § 2; 1965, ch. 350, § 2; 1967, ch. 355, § 34; 1974, ch. 781, § 2; T.C.A., § 49-3902.]

**49-7-2003. Part definitions.**

As used in this part, unless the context otherwise requires:

(1) "Agent" means any person owning any interest in, employed by or representing for remuneration a postsecondary educational institution, who, by solicitation in any form, enrolls or seeks to enroll a student for education offered by an authorized institution, or offers to award educational credentials, for remuneration, on behalf of any such institution for any such purpose;

(2) "Agent's permit" means a nontransferable written authorization issued to a natural person by the commission that allows that person to solicit or enroll students for education in an authorized postsecondary educational institution;

(3) "Authorization to operate," or like term, means approval of the commission to operate or to contract to operate a postsecondary educational institution in this state;

(4) "Commission" means the Tennessee higher education commission;

(5) "Degree-granting postsecondary educational institution" includes institutions offering education or training above the high school level and where the institution awards degrees or similar credentials, such as associate, bachelors, masters, specialist or doctoral degrees;

(6) "Diploma mill" means a nontraditional, unaccredited postsecondary school that offers degrees for a relatively low flat fee, promotes the award of academic credits based on life experience, and does not require any classroom instruction;

(7) "Education," "educational services" or like term includes, but is not limited to, any class, course or program of training, instruction or study;

(8) "Educational credentials" means degrees, diplomas, certificates, transcripts, reports, documents, or letters of designation, marks, appellations, series of letters, numbers, or words which signify, purport, or are generally taken to signify enrollment, attendance, progress or satisfactory completion of the requirements or prerequisites for education at a postsecondary educational institution;

(9) "Entity" includes, but is not limited to, any company, firm, society, association, partnership, corporation, and trust;

(10) "Non-degree-granting postsecondary educational institution" includes all postsecondary educational institutions which do not meet the definition of a "degree-granting postsecondary educational institution";

(11) "Postsecondary educational institution" includes, but is not limited to, an academic, vocational, technical, online/distance learning, business, professional, or other school, college, or university, or other organization or person, offering educational credentials, or offering instruction or educational services, primarily to persons who have completed or terminated their secondary education or who are beyond the age of compulsory high school attendance, for attainment of educational, professional, or vocational objectives;

(12) "To grant" includes awarding, selling, conferring, bestowing, or giving;

(13) "To offer" includes, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form to perform the act described;

(14) "To operate" an educational institution, or like term, means to establish, keep, or maintain any facility or location in this state where, from, or through which, education is offered or given, or educational credentials are offered or granted, and includes contracting with any person, group, or entity to perform any such act; and

(15) "Tuition guaranty fund" or "fund" means the tuition guaranty fund created by § 49-7-2018.

**HISTORY:** [Acts 1961, ch. 112, § 3; 1965, ch. 350, § 3; 1967, ch. 355, § 35; 1968, ch. 624, § 2; 1974, ch. 781, § 3; 1983, ch. 398, §§ 1, 2; T.C.A., § 49-3903; Acts 1989, ch. 425, §§ 3, 6; 1998, ch. 695, §§ 1-4; 2006, ch. 766, §§ 1-3.]

#### **49-7-2004. Exempt institutions.**

The following education and educational institutions are exempted from the provisions of this part:

(1) Institutions exclusively offering instruction at any or all levels from preschool through the twelfth grade;

(2) Education sponsored by a bona fide trade, business, professional or fraternal organization, so recognized by the commission, solely for that organization's membership, or offered on a no-fee basis;

(3) Education solely avocational or recreational in nature, as determined by the commission, and institutions offering such education exclusively;

(4) Education offered by eleemosynary institutions, organizations or agencies, so recognized by the commission; provided, that such education is not advertised or promoted as leading toward educational credentials;

(5) Postsecondary educational institutions established, operated and governed by this state or its political subdivisions, including the state technology centers established under authority of chapter 11, parts 3-5 of this title, which shall continue under the exclusive control and jurisdiction of the state board for vocational education. The board may contract with a local board of education for the operation of a state technology center, but the contract shall be reviewed each year to ensure the maintenance of a quality educational program; and upon cancellation thereof, the operation of the center shall revert to the state board for vocational education;

(6) Postsecondary educational institutions:

- (A) With its primary campus domiciled in the state of Tennessee for at least ten (10) consecutive years;
  - (B) That have been accredited by an accrediting agency recognized by the United States department of education for at least ten (10) consecutive years;
  - (C) That have been chartered in Tennessee as a not-for-profit entity for at least ten (10) consecutive years; and
  - (D) That meet and maintain financial standards established by the commission or maintain financial standards as established by the Commission on Colleges of the Southern Association of Colleges and Schools (SACS).
- (7) Institutions operated solely as barber schools, schools of cosmetology, or schools of electrology;
- (8) Institutions operated solely as schools for the study of law and subject to the approval of the board of law examiners for this state; and
- (9) Educational programs conducted by state-licensed health care institutions.
- (10) Any postsecondary educational institution exempt from the provisions of this part by virtue of the provisions of subdivision (6) shall lose such exemption upon the occurrence of one (1) of the following events, subject to appeal to the commission as provided at § 49-7-2010:

- (A) Loss or failure to meet any of the listed criteria for exemption;
- (B) Loss of Title IV federal student aid funding; or
- (C) Federal financial aid cohort default rate of twenty percent (20%) or higher for three (3) consecutive years or any single year over thirty-five percent (35%) as reported by the United States Department of Education, Office of Postsecondary Educational Institutional Data System.

Notwithstanding anything in this section to the contrary, an institution that has lost its exemption due to the occurrence of one (1) of the conditions listed in subdivisions (10)(A)-(C), will not be required to reestablish the ten (10) consecutive year standards in order to regain its exempt status. Instead, the commission shall have the authority to reinstate the exemption once the condition that caused the loss of exemption has, in the opinion of the commission, been remedied.

**HISTORY:** [Acts 1961, ch. 112, § 4; 1974, ch. 781, § 4; 1976, ch. 543, § 1; 1976, ch. 802, § 1; 1978, ch. 609, § 1; 1980, ch. 541, § 1; 1983, ch. 398, § 3; T.C.A., § 49-3904; Acts 1989, ch. 425, § 4; 1993, ch. 113, § 1; 1994, ch. 685, § 3; 1998, ch. 695, §§ 5-7.]

**49-7-2005. Commission -- Powers and duties.**

(a) The commission, as defined in § 49-7-2003, has the power and duty to:

(1) Establish minimum criteria in conformity with § 49-7-2006, including quality of education, ethical and business practices, health and safety, and fiscal responsibility, that applicants for authorization to operate, or for an agent's permit, shall meet before such authorization or permit may be issued; and to continue such authorization or permit in effect. The criteria to be developed hereunder shall be such as will effectuate the purposes of this part, but will not unreasonably hinder legitimate educational innovation;

(2) Receive, investigate as it may deem necessary, and act upon applications for authorization to operate postsecondary educational institutions and applications for agent's permits;

(3) Maintain a list of postsecondary educational institutions and agents authorized to operate in this state under the provisions of this part. This list shall be available for the information of the public;

(4) Negotiate and enter into interstate reciprocity agreements with similar agencies in other states, if, in the judgment of the commission, such agreements are or will be helpful in effectuating the purposes of this part; provided, that nothing contained in any such reciprocity agreement shall be construed as limiting the commission's powers, duties and responsibilities with respect to independently investigating or acting upon any application for authorization to operate or any application for renewal of such authorization to operate for a postsecondary educational institution, or an applica-

tion for issuance of or renewal of any agent's permit, or with respect to the enforcement of any provision of this part, or any of the rules or regulations promulgated under this part;

(5) Receive and cause to be maintained as a permanent file, copies of academic records in conformity with § 49-7-2016;

(6) Promulgate rules, regulations, performance standards and procedures necessary or appropriate for the conduct of its work and the implementation of this part, which rules and regulations shall have the force of law; and to hold such hearings as it may deem advisable or as required by law in developing such rules, regulations and procedures, or in aid of any investigation or inquiry;

(7) Investigate as it may deem necessary, on its own initiative or in response to any complaint lodged with it, any person, group or entity subject to, or reasonably believed by the commission to be subject to, the jurisdiction of this part; and in connection therewith to subpoena any persons, books, records or documents pertaining to such investigation, which subpoenas shall be enforceable by any court of this state; to require answers in writing under oath to questions propounded by the commission; and to administer an oath or affirmation to any person in connection with any investigation;

(8) Exercise other powers and duties implied but not enumerated in this subsection (a), but in conformity with the provisions of this part which, in the judgment of the commission, are determined necessary in order to carry out the provisions of this part;

(9) May require as part of the application for initial authorization of a postsecondary educational institution a full set of fingerprints of all owners and the directors of the institution to enable a criminal background investigation to be conducted. The commission shall submit the completed fingerprint card to the Tennessee bureau of investigation, which is authorized to submit the fingerprints to the federal bureau of investigation for a national criminal history record check. Dissemination of information provided to the commission as a result of this process shall be governed by Public Law 92-544; and

(10) Study and report to the general assembly by February 1, 2005, on the appropriateness and the relevance of current training and educational programs offered by institutions authorized pursuant to this part for members of the allied health care professions to determine the extent to which training and educational activities are structured to assure the availability of up to date training that reflects current responsibilities of the various allied health fields. Regionally accredited, degree granting institutions shall be exempted from this provision.

(b) The commission may employ such other employees as it may deem necessary to discharge the duties imposed by this part and shall prescribe their duties and, within budgetary limitations, fix their compensation, subject to the approval of the commissioners of finance and administration and personnel.

(c) To effectuate the purposes of this part, the commission may request from any department, division, board, bureau, agency or commission, and the same shall provide, such information as will enable the commission to exercise properly its powers and perform its duties under this part.

**HISTORY:** [Acts 1961, ch. 112, §§ 5, 6; 1974, ch. 781, §§ 5, 6; 1976, ch. 806, § 1(135); 1983, ch. 398, § 4; T.C.A., §§ 49-3905, 49-3906; Acts 1992, ch. 1026, § 2; 1998, ch. 685, § 1; 2004, ch. 831, § 2; 2006, ch. 766, § 4.]

#### **49-7-2006. Minimum standards for authorization.**

(a) In establishing the criteria required by § 49-7-2005(a), the commission shall observe and require compliance with the following minimum standards:

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

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

(B) The institution has adequate space, equipment, instructional materials and personnel to provide education of good quality;

(C) The education and experience qualifications of directors, administrators, supervisors and instructors are such as may reasonably ensure that the students will receive education consistent with the objectives of the course or program of study;

(D) The institution provides students and other interested persons with a catalog or brochure containing information describing the programs offered, program objectives, length of program, schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study, cancellation and refund policies, and such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures specified by the commission and/or defined in the rules and regulations; and that such information is provided to prospective students prior to enrollment;

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

(F) Adequate records are maintained by the institution to show attendance, progress or grades, and that satisfactory standards are enforced relating to attendance, progress and performance;

(G) The institution is maintained and operated in compliance with all pertinent ordinances and laws, including rules and regulations adopted pursuant thereto, relative to the safety and health of all persons upon the premises;

(H) The institution is financially sound and capable of fulfilling its commitments to students;

(I) Neither the institution nor its agents engage in advertising, sales, collection, credit or other practices of any type which are false, deceptive, misleading or unfair;

(J) The chief executive officer, trustees, directors, owners, administrators, supervisors, staff and instructors are of good reputation and character;

(K) The student housing owned, maintained or approved by the institution, if any, is appropriate, safe and adequate;

(L) The institution has a fair and equitable cancellation and refund policy; and

(M) No principal party involved in the applicant institution has ever been associated as a principal party, owner or administrator in any postsecondary educational institution which ceased operation with a resulting loss of time or money for enrollees in such institution; and

(2) An applicant for an agent's permit shall be an individual of good reputation and character and shall represent only a postsecondary educational institution or institutions which meet the minimum standards established in this section and the criteria established under § 49-7-2005(a).

(b) (1) For postsecondary educational institutions, accreditation by an accrediting agency recognized by the United States department of education may be accepted by the commission as evidence of compliance with the minimum standards established hereunder and the criteria to be established under § 49-7-2005(a); provided, that the commission may require such further evidence and make such further investigation as in its judgment may be necessary.

(2) Accreditation by a recognized accrediting agency may be accepted as evidence of such compliance only as to the portion or program of an institution accredited by such agency if the institution as a whole is not accredited.

**HISTORY:** [Acts 1961, ch. 112, § 7; 1974, ch. 781, § 7; 1976, ch. 802, § 2; T.C.A., § 49-3907; Acts 1989, ch. 425, § 5; 1992, ch. 1026, § 3; 1998, ch. 695, §§ 8, 9.]

#### **49-7-2007. Prohibited acts.**

No person, agent, group or entity of whatever kind, alone or in concert with others, shall:

(1) Operate in this state a postsecondary educational institution not exempted from the provisions of this part, unless the institution has a currently valid authorization to operate issued pursuant to the provisions of this part;

(2) Offer, as or through an agent, enrollment or instruction in, or the granting of educational credentials from, a postsecondary educational institution outside this state which is not exempted from the provisions of this part, unless

such agent is a natural person and has a currently valid agent's permit issued pursuant to the provisions of this part, nor accept contracts or enrollment applications from an agent who does not have a current permit as required by this part; provided, that the commission may promulgate rules and regulations to permit the rendering of legitimate public information services without such permit;

(3) Instruct or educate, or offer to instruct or educate, including advertising or soliciting for such purpose, enroll or offer to enroll, contract or offer to contract with any person for such purpose, or award any educational credential, or contract with any institution or party to perform any such act, in this state, whether such person, agent, group or entity is located within or without this state, unless such person, agent, group or entity observes and is in compliance with the minimum standards set forth in § 49-7-2006(a), the criteria established by the commission pursuant to § 49-7-2005(a)(1), and the rules and regulations adopted by the commission pursuant to § 49-7-2005(a)(6);

(4) Use "university" or other terminology that could mislead the general public without authorization to do so from the commission; or

(5) Grant, or offer to grant, educational credentials, without authorization to do so from the commission.

**HISTORY:** [Acts 1961, ch. 112, § 8; 1974, ch. 781, § 8; T.C.A., § 49-3908.]

**49-7-2008. Authorization to operate.**

(a) (1) Each postsecondary educational institution desiring to operate in this state shall make application to the commission, upon forms to be provided by the commission.

(2) Such application shall be accompanied by a catalog or brochure published, or proposed to be published, by the institution, containing the information specified in § 49-7-2006(a)(1)(D), including information required by rules and regulations of the commission.

(3) Such application shall also be accompanied by evidence of a surety bond as required by this part, and payment of the fees specified herein.

(b) (1) Following review of such application and any further information submitted by the applicant, or required by the commission, and such investigation of the applicant as the commission may deem necessary or appropriate, the commission shall either grant or deny authorization to operate to the applicant.

(2) A grant of authorization to operate may be on such terms and conditions as the commission may specify. In the case of initial applications for new institutions, a temporary authorization of up to two (2) years may be issued. In the case of applications or reapplications for institutions or programs which were previously authorized but which have lapsed or are deficient, a probationary authorization may be granted until such deficiencies are corrected.

(c) The authorization to operate shall be in a form recommended and approved by the commission and shall state in a clear and conspicuous manner at least the following information:

(1) The date of issuance, effective date and term of approval;

(2) The correct name and address of the institution so authorized;

(3) The authority for approval and conditions thereof; and

(4) Any limitation of the authorization, as deemed necessary by the commission.

(d) The term for which authorization is given shall not extend for more than up to six (6) years, and may be issued for a lesser period of time as provided in subdivision (b)(2) or as otherwise determined by the commission.

(e) (1) The authorization to operate shall be issued to the owner, or governing body, of the applicant institution, and shall be nontransferable.

(2) In the event of a change in ownership of the institution, a new owner, or governing body, must, within ten (10) days after the change in ownership, apply for a new authorization to operate, and in the event of failure to do so, the institution's authorization to operate shall terminate.

(3) Application for a new authorization to operate by reason of change in ownership of the institution shall for purposes of § 49-7-2010(a)(2), be deemed an application for renewal of the institution's authorization to operate.

(4) "Ownership," for purposes of this section, is deemed to mean ownership of a controlling interest in the institution, or in the event the institution is owned or controlled by a corporation or other legal entity other than a natural person or persons, ownership of a controlling interest in the legal entity owning or controlling such institution.

(f) (1) Prior to the expiration of an authorization to operate, the institution shall complete and file with the commission an application form for renewal of its authorization to operate.

(2) A renewal application for authorization shall be acted on by the commission under the same procedures used in initial applications, but before any renewal is authorized, an institutional self-study using the standards of an appropriate accrediting authority shall be performed and the results filed with the commission, and during the authorization period, with annual reports and fee payment, there shall be an on-site visit of the institution by at least one (1) external authority on that type of institution and a staff member of the commission. The self-study and site visit may be conducted in conjunction with a normally scheduled accreditation visit, but, in any event, the institution shall pay the reasonable honorarium compensation and travel expenses of the external authority, if requested.

(3) The commission may require an institution to publish placement rates and other information indicating actual employment and earnings in relevant occupations post successful completion of offered programs.

(g) (1) An institution not yet in operation when its application for authorization to operate is filed may not begin operation until receipt of authorization.

(2) An institution in operation when its application for authorization to operate is filed may continue operation until its application is acted upon by the commission, and thereupon its authority to operate shall be governed by the action of the commission.

(3) In any event, the commission may issue provisional authorization to operate, containing such limitations as to time, procedures, functions or other conditions as the commission may deem necessary.

**HISTORY:** [Acts 1961, ch. 112, § 9; 1974, ch. 781, § 9; T.C.A., § 49-3909; Acts 1989, ch. 425, §§ 7-9; 2004, ch. 831, § 3; 2006, ch. 766, § 5.]

#### **49-7-2009. Agent's permit.**

(a) (1) Each person desiring to solicit or perform the services of an agent, as defined in this part, shall make application to the commission, upon forms to be provided by the commission.

(2) Such application shall be accompanied by evidence of the good reputation and character of the applicant, in a form to be prescribed by the commission, and shall state the institution or institutions which the applicant intends to represent.

(3) An agent representing more than one (1) institution must obtain a separate agent's permit for each institution represented; provided, that when an agent represents institutions having a common ownership, only one (1) agent's permit shall be required with respect to the institutions.

(4) In the event any institution which the applicant intends to represent does not have authorization to operate in this state, the application shall be accompanied by the information required of institutions making application for such authorization.

(5) The application for an agent's permit shall also be accompanied by evidence of a surety bond as required by this part, and payment of the fees specified herein.

(b) Following review of such application and any further information submitted by the applicant, or required by the commission, and such investigation of the applicant as the commission may deem necessary or appropriate, the commission shall either grant or deny an agent's permit to the applicant.

(c) The agent's permit shall be in a form recommended and approved by the commission and shall state in a clear and conspicuous manner at least the following information:

- (1) The date of issuance, effective date, and term;
- (2) The correct name and address of the agent; and
- (3) The institution or institutions which such agent is authorized to represent.

(d) The term for which an agent's permit is issued shall not extend for more than one (1) year, and may be issued for a lesser period of time.

(e) (1) At least sixty (60) days prior to the expiration of an agent's permit, the agent shall complete and file with the commission an application form for renewal of the permit.

- (2) The renewal application shall be reviewed and acted upon as provided hereinabove.

**HISTORY:** [Acts 1961, ch. 112, § 10; 1974, ch. 781, § 10; T.C.A., § 49-3910; Acts 1989, ch. 425, § 10.]

**49-7-2010. Denial, revocation, or conditional issuance of authorization or permit -- Noncompliance by institution.**

(a) (1) If the commission, upon review and consideration of an application for authorization to operate, or for an agent's permit, or for renewal thereof, determines that the applicant fails to meet the criteria established as provided in this part, the commission shall so notify the applicant, setting forth the reasons therefor in writing, and shall deny the application.

(2) The commission may grant to an applicant for renewal an extension of time of reasonable duration in which the applicant may eliminate the reason or reasons for denial contained in the statement of denial, if the applicant has demonstrated to the satisfaction of the commission the applicant's desire to meet the requirements of § 49-7-2006 and the criteria established pursuant to § 49-7-2005(a), and if, in the judgment of the commission, it would be reasonably possible for the applicant to meet the requirements and criteria within such time.

(3) In the event the commission denies an application for an agent's permit, or for renewal thereof, it shall notify the institution or institutions which the agent represented or proposed to represent, according to the records of the commission, including the reasons therefor.

(b) Any person aggrieved by a decision of the commission respecting denial of an authorization to operate, or of an agent's permit, or the placing of conditions thereon, whether on initial application or an application for renewal, and any person aggrieved by the imposition of a penalty by the commission under § 49-7-2017, shall have the right to a hearing and review of such decision by the commission as provided herein.

(1) If, upon written notification of any such action taken by the commission, the aggrieved party desires a hearing and review, such party shall notify the commission, in writing, within ten (10) days after the giving of notice of such action, otherwise the action shall be deemed final.

(2) Upon receiving such notice from the aggrieved party, the commission shall fix the time and place for a hearing, and shall notify the aggrieved party thereof.

(3) At such hearing, the party may employ counsel, shall have the right to hear the evidence upon which the action is based, and present evidence in opposition or in extenuation. Any member of the commission may preside except where a clear conflict of interest may be demonstrated.

(4) A decision of the commission following hearing, or on expiration of the time for demand of a hearing if no such demand is filed, shall be deemed final, subject to the right of judicial review provided hereinafter. All matters presented by hearing as provided herein shall be acted upon promptly by the commission, and the commission shall notify all parties in writing of its decision, which shall include a statement of findings and conclusions upon all material issues of fact, law or discretion presented at the hearing, and the appropriate rule, order, sanction, relief or denial thereof.

(c) (1) An authorization to operate, or an agent's permit, may be revoked or made conditional after its issuance if the commission has reasonable cause to believe that the holder of the authorization or permit has violated or is violating this part or any rules and regulations promulgated hereunder. Prior to such revocation or imposition of condition, the commission shall notify the holder of the authorization or permit in writing of the impending action, setting forth the grounds for the action contemplated to be taken and advising the holder of a permit that if a hearing is requested, in

writing, within ten (10) days of receipt of the notice, the commission shall set a time and place for a hearing at which the holder of the authorization or permit may be heard in response to the allegation of noncompliance with the provisions of this part.

(2) If a hearing is requested as aforementioned, such hearing shall be conducted as provided in subdivision (b)(3), and the holder of the authorization or permit shall have the rights set forth therein.

(A) The decision of the commission shall be made as provided in subdivision (b)(4), and shall be deemed final, subject to the right of judicial review provided hereinafter.

(B) In the event an agent's permit is revoked or condition imposed thereon, the commission shall notify the institution or institutions which the agent was permitted to represent, as shown in the records of the commission, in addition to the notice required to be given to the agent and any other parties to the hearing.

(d) In the event a postsecondary educational institution is determined by the commission to be in noncompliance with one (1) or more of the minimum standards for authorization established by this chapter, including any implementing regulations promulgated by the commission pursuant thereto, the commission may direct, as an alternative to or in addition to revocation or making conditional its authorization to operate, the institution to cease admission of additional students at the institution or may direct such other action as may be deemed necessary, until such time as, in the judgment of the commission, the institution is being maintained and operated in compliance with minimum standards. Nothing in this section shall be construed to absolve institutions of their educational and financial obligations to currently enrolled students. Actions under this section are subject to the hearing and review provisions of subsection (b).

**HISTORY:** [Acts 1961, ch. 112, §§ 11-13; 1974, ch. 781, §§ 11-13; T.C.A., §§ 49-3911 -- 49-3913; Acts 1992, ch. 1026, § 4.]

#### **49-7-2011. Complaints against institution or agent.**

(a) (1) Any person claiming damage or loss as a result of any act or practice by a postsecondary educational institution or its agent, or both, which is a violation of this part or of the rules and regulations promulgated hereunder, may file with the commission a verified complaint against such institution or against its agent, or both.

(2) The complaint shall set forth the alleged violation and shall contain such other information as may be required by the commission.

(3) A complaint may also be filed with the commission by the executive director of the commission, or a commissioner thereof, or the attorney general and reporter.

(4) A complainant may also file with the commission as a representative of a class of complainants.

(b) (1) The commission shall investigate any such complaint and may, at its discretion, attempt to effectuate a settlement by persuasion and conciliation.

(2) The commission may consider a complaint after ten (10) days' written notice by registered mail, return receipt requested, to such institution or to such agent, or both, as appropriate, giving notice of a time and place for hearing thereon.

(c) (1) If, upon all the evidence at a hearing, the commission shall find that a postsecondary educational institution or its agent, or both, has engaged in or is engaging in, any act or practice which violates this part or the rules and regulations promulgated hereunder, the commission shall issue and cause to be served upon such institution or agent, or both, an order requiring such institution or agent, or both, to cease and desist from such act or practice.

(2) Additionally, if the commission shall find that the complainant, or class of complainants, has suffered loss or damage as a result of such act or practice, the commission may, at its discretion, award the complainant, or class of complainants, full or partial restitution for such damage or loss and may impose the penalties provided for in § 49-7-2017(a).

(3) The commission may also, as appropriate, based on its own investigation and/or the evidence adduced at such hearing, commence an action to revoke an institution's authorization to operate or an agent's permit.

(d) Nothing in this section shall be construed so as to prohibit the use of nonbinding mediation to settle disputes arising between a postsecondary institution and its enrollees, nor the inclusion of a mediation clause in enrollment contracts.

**HISTORY:** [Acts 1961, ch. 112, § 14; 1974, ch. 781, § 14; T.C.A., § 49-3914; Acts 1992, ch. 1026, § 5.]

**49-7-2012. Judicial review.**

(a) Any person aggrieved or adversely affected by any final commission action, or by any penalty imposed by the commission, may obtain judicial review of such action as provided in this section.

(b) (1) An action for judicial review may be commenced in any court of competent jurisdiction in accordance with the Tennessee Rules of Civil Procedure within thirty (30) days after such commission action becomes effective.

(2) Upon a finding that irreparable injury would otherwise result, the commission, upon application therefor, shall postpone the effective date of its action pending judicial review, or the reviewing court, upon such security, if any, as the court shall find necessary, shall issue appropriate process to postpone the effective date of the commission's action or to preserve the rights of the parties pending conclusion of the review proceedings.

(3) The record on review, unless otherwise stipulated by the parties, shall include the original or certified copies of all pleadings, applications, evidence, exhibits and other papers presented to or considered by the commission, and the decision, findings and action of the commission. As to alleged procedural irregularities, evidence may be taken independently by the court.

(4) If the court finds no error, it shall affirm the commission's action. If it finds that such action was: arbitrary or capricious; a denial of statutory right; contrary to constitutional right, power, privilege or immunity; in excess of statutory jurisdiction, authority, purposes or limitation; not in accordance with the procedures or procedural limitations of this part, or otherwise required by law; an abuse or clearly unwarranted exercise of discretion; unsupported by substantial evidence when the record is considered as a whole; or otherwise contrary to law, then the court shall hold unlawful and set aside the commission action, and afford such relief as may be appropriate.

(5) The decision of the trial court shall be subject to appellate review in the same manner and with the same effect as in appeals from a final judgment or decree in any other civil action.

**HISTORY:** [Acts 1961, ch. 112, § 15; 1974, ch. 781, § 15; T.C.A., § 49-3915.]

**49-7-2013. Bond requirements.**

(a) (1) At the time application is made for authorization to operate, or for renewal thereof, the commission may require the postsecondary educational institution making such application to file with the commission a good and sufficient surety bond in a penal sum in the amount of ten thousand dollars (\$10,000) for in-state institutions and twenty thousand dollars (\$20,000) for out-of-state postsecondary educational institutions that provide all or part of their instruction in Tennessee, including out-of-state institutions which begin operation of branch campuses in Tennessee after July 1, 1989, or such other sum as may be provided by the commission. Institutions providing primarily religious instruction or not organized as private postsecondary educational institutions shall maintain a ten thousand dollar (\$10,000) institutional surety bond. Such bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state.

(2) A cash surety bond in the amount of ten thousand dollars (\$10,000) or twenty thousand dollars (\$20,000), as applicable, on deposit in Tennessee in a bank or savings and loan association which is federally insured may be filed instead of the corporate bond, subject to approval by the commission. This cash surety bond shall be payable upon demand by the commission under the same conditions specified hereinafter for corporate bonds and not subject to withdrawal without the approval of the commission.

(3) The bond shall be conditioned to provide indemnification to any student or enrollee or the student's or enrollee's parents or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this part by the postsecondary educational institution, and that the bonding company shall pay any final,

nonappealable judgment rendered by the commission or any court of this state having jurisdiction, upon receipt of written notification thereof.

(4) Regardless of the number of years that such bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond.

(5) The bond may be continuous.

(b) (1) An application for each agent's permit for an out-of-state institution shall be accompanied by a good and sufficient surety bond in the penal sum of five thousand dollars (\$5,000) for each such agent. The bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond may be in blanket form to cover more than one (1) agent for a postsecondary educational institution, but it shall cover each agent for the institution in a penal sum of five thousand dollars (\$5,000), or such other sum as may be provided by the commission.

(2) A cash surety bond in the amount of five thousand dollars (\$5,000) for each agent of an out-of-state institution on deposit in Tennessee in a bank or savings and loan association which is federally insured may be filed instead of the corporate bond, subject to approval by the commission. This bond shall be payable upon demand by the commission under the same conditions specified hereinafter for corporate bonds and not subject to withdrawal without the approval of the commission.

(3) The bond shall be conditioned to provide indemnification to any student, enrollee, or the student's or enrollee's parents or guardian, or class thereof, determined to have suffered loss or damage as a result of any act or practice which is a violation of this part by the agent, and that the bonding company shall pay any final, nonappealable judgment rendered by the commission or any court of this state having jurisdiction, upon receipt of written notification thereof.

(4) Regardless of the number of years that such bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum thereof.

(5) The bond may be continuous.

(c) (1) The corporate surety bond to be filed hereunder shall cover the period of the authorization to operate or the agent's permit, as appropriate, except when a surety shall be released as provided herein.

(2) A surety on any bond filed under the provisions of this section may be released therefrom after such surety shall serve written notice thereof to the commission sixty (60) days prior to the release; but the release shall not discharge or otherwise affect any claim theretofore or thereafter filed by a student or enrollee or the student's or enrollee's parents or guardian for loss or damage resulting from any act or practice which is a violation of this part alleged to have occurred while the bond was in effect, nor for an institution's ceasing operations during the term for which tuition has been paid while the bond was in force.

(3) A cash surety bond shall remain on file for one (1) year after the expiration of the period of authorization to operate or the agent's permit, as appropriate. The expiration or withdrawal of the cash bond shall not serve to diminish or nullify the rights of claimants. The claimants shall have the same rights as claimants have against a postsecondary educational institution or agent that filed a corporate bond which was subsequently released, as described hereinbefore.

(d) Authorization for an institution to operate and an agent's permit shall be suspended by operation of law when the institution or agent is no longer covered by a surety bond as required by this section; but the commission shall cause the institution or agent, or both, to receive at least thirty (30) days' written notice prior to the release of the surety, to the effect that the authorization or permit shall be suspended by operation of law until another surety bond shall be filed in the same manner and like amount as the bond being terminated.

**HISTORY:** [Acts 1961, ch. 112, § 16; 1974, ch. 781, § 16; 1978, ch. 501, §§ 1-3; T.C.A., § 49-3916; Acts 1989, ch. 425, §§ 11-14; 1998, ch. 695, § 10.]

#### **49-7-2014. Fees.**

(a) The commission is authorized to set fees annually based on the intent to collect revenues sufficient to cover the costs of this regulatory function (including, but not limited to travel, employee costs, legal costs, expert fees).

(b) All fees collected pursuant to the provisions of this part shall be deposited in the state treasury credited to a special agency account to administer the provisions of this part.

(c) The fees to be collected by the commission shall accompany an application for authorization to operate an institution or an application for an agent's permit, or other application or request in accordance with the schedule set out in the administrative rules under this chapter. All fees shall be stated as a flat fee, with the exception of renewal fees, which shall be based upon an institution's annual gross tuition revenues.

**HISTORY:** [Acts 1961, ch. 112, § 17; 1974, ch. 781, § 17; T.C.A., § 49-3917; Acts 1989, ch. 425, §§ 15-17; 1992, ch. 1026, § 6; 2006, ch. 766, § 6.]

#### **49-7-2015. Student loans.**

(a) (1) If the person to whom educational services are to be rendered or furnished by a postsecondary educational institution is a resident of this state at the time any contract relating to payment for such services, or any note, instrument or other evidence of indebtedness relating thereto, is entered into, the provisions of this subsection shall govern the rights of the parties to such contract or evidence of indebtedness.

(2) In such event the following agreements entered into in connection with the contract or the giving of such evidence of indebtedness are invalid:

(A) That the law of another state shall apply;

(B) That the maker or any person liable on such contract or evidence of indebtedness consents to the jurisdiction of another state;

(C) That another person is authorized to confess judgment on such contract or evidence of indebtedness; or

(D) That fixes venue.

(3) No note, instrument or other evidence of indebtedness, or contract relating to payment for education or educational services shall be enforceable in the courts of this state by any postsecondary educational institution operating in this state, unless the institution has received authorization to operate under the provisions of this part, nor by any postsecondary educational institution having an agent or agents in this state, unless any and all agents who enrolled or sought to enroll the person to whom such services were to be rendered, or to whom educational credentials were to be granted, had an agent's permit at the time of their contract with such person.

(b) (1) For purposes of this subsection, "lending agency" means any postsecondary educational institution, or any person, group or entity controlling, controlled by, or held in common ownership with, such institution, or regularly loaning money to, or to students of, such institution.

(2) Any lending agency extending credit or loaning money to any person for tuition, fees or any charges whatever of a postsecondary educational institution for educational or other services or facilities to be rendered or furnished by the institution, shall cause any note, instrument or other evidence of indebtedness taken in connection with such loan or extension of credit to be conspicuously marked on the face thereof, "Student Loan." A lending agency which fails to do so is liable for any loss or damage suffered or incurred by any subsequent assignee, transferee or holder of such evidence of indebtedness on account of the absence of such notation.

**HISTORY:** [Acts 1961, ch. 112, §§ 19, 20; 1974, ch. 781, §§ 19, 20; T.C.A., §§ 49-3919, 49-3920.]

#### **49-7-2016. Closing of institution.**

(a) In the event any postsecondary educational institution now or hereafter operating in this state proposes to discontinue its operation, the chief administrative officer, by whatever title designated, of such institution shall cause to be filed with the commission the original or legible true copies of all such academic records of such institution as may be specified by the commission.

(b) Such records shall include, at a minimum, such academic information as is customarily required by colleges when considering students for transfer or advanced study, and, as a separate document, the academic record of each former student.

(c) In the event it appears to the commission that any such records of an institution discontinuing its operations are in danger of being destroyed, secreted, mislaid or otherwise made unavailable to the commission, the commission may seize and take possession of such records, on its own motion, and without order of court.

(d) The commission shall maintain, or cause to be maintained, a permanent file of such records coming into its possession.

(e) As an alternative to the deposit of such records with the commission, the institution may propose to the commission a plan for permanent retention of such records. Such plan shall be put into effect only with the approval of the commission.

(f) When a postsecondary educational institution now or hereafter operating in this state proposes to discontinue its operation, such institution shall cause to be created a teachout plan, acceptable to the commission, by which its educational obligations to its students can be fulfilled.

**HISTORY:** [Acts 1961, ch. 112, § 19; 1974, ch. 781, § 18; T.C.A., § 49-3918; Acts 1992, ch. 1026, § 7.]

#### **49-7-2017. Fines, penalties and enforcement.**

(a) (1) Any person, group or entity, or any owner, officer, agent, or employee thereof, who violates § 49-7-2007, or who fails or refuses to deposit with the commission the records required by § 49-7-2016, is subject to a civil penalty not to exceed five hundred dollars (\$500) for such violation.

(2) Each day's failure to comply with the provisions of § 49-7-2007 or § 49-7-2016 is a separate violation.

(3) Such fine may be imposed by the commission in an administrative proceeding or by any court of competent jurisdiction.

(b) (1) Any person, group or entity, or any owner, officer, agent, or employee thereof, who willfully violates § 49-7-2007, or who willfully fails or refuses to deposit with the commission the records required by § 49-7-2016, commits a Class C misdemeanor.

(2) Each day's failure to comply with the provisions of § 49-7-2007 or § 49-7-2016 is a separate violation.

(3) Such criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the attorney general and reporter or a district attorney general pursuant to subsections (d) and (e).

(c) (1) Any postsecondary educational institution not exempt from the provisions of this part, whether or not a resident of or having a place of business in this state, which instructs or educates, or offers to instruct or educate, enrolls or offers to enroll, contracts or offers to contract, to provide instructional or educational services in this state, whether such instruction or services are provided in person or by correspondence, to a resident of this state, or which offers to award or awards any educational credentials to a resident of this state, submits such institution, and, if a natural person, the person's personal representative, to the jurisdiction of the courts of this state, concerning any cause of action arising therefrom, and for the purpose of enforcement of this part by injunction pursuant to subsections (d) and (e).

(2) Service of process upon any such institution subject to the jurisdiction of the courts of this state may be made by personally serving the summons upon the defendant within or outside this state, in the manner prescribed by the Tennessee Rules of Civil Procedure.

(d) The attorney general and reporter, or the district attorney general of any district in which a postsecondary educational institution or an agent thereof is found, at the request of the commission or on the attorney general and reporter's or district attorney general's own motion, may bring any appropriate action or proceeding (including injunctive proceedings, or criminal proceedings pursuant to subsection (b)) in any court of competent jurisdiction for the enforcement of the provisions of this part.

(e) (1) Whenever it shall appear to the commission that any person, agent, group or entity is, is about to, or has been violating any of the provisions of this part or any of the lawful rules, regulations or orders of the commission, the commission may, on its own motion or on the written complaint of any person, file a petition for injunction in the name of the commission in any court of competent jurisdiction in this state against such person, group or entity, for the purpose of enjoining such violation or for an order directing compliance with this part, and all rules, regulations and orders issued hereunder.

(2) It is not necessary that the commission allege or prove that it has no adequate remedy at law.

(3) The right of injunction provided in this subsection shall be in addition to any other legal remedy which the commission has, and shall be in addition to any right of criminal prosecution provided by law; provided, that the commission shall not obtain a temporary restraining order without notice to the person, group or entity affected.

(4) The existence of commission action with respect to alleged violations of this part shall not operate as a bar to an action for injunctive relief pursuant to this subsection.

**HISTORY:** [Acts 1961, ch. 112, §§ 21-24; 1973, ch. 285, §§ 2, 3; 1974, ch. 781, §§ 21-25; T.C.A., §§ 49-3921 -- 49-3925; Acts 1989, ch. 591, § 113.]

#### **49-7-2018. Tuition guaranty fund -- Establishment -- Board -- Fees.**

(a) The general assembly hereby recognizes the need to establish a fund from which reimbursement can be made to students, or an entity making loans to students, at private postsecondary education institutions which close without earning tuition collected from enrollees, and that the moneys for such fund can be most properly raised based on the level of tuition collections at each such education institution.

(b) There is hereby established the "tuition guaranty fund" which is established in the state treasury as a separate, revolving, nonreverting agency account for the purpose of receiving fees and paying claims authorized by this section. The moneys in the fund shall be invested by the state treasurer, as are other state funds, and any interest so obtained shall be added to the fund. Payments out of the fund shall be made by warrant of the state treasurer, as directed by the board of directors of the tuition guaranty fund.

(c) There is hereby established the board of directors of the tuition guaranty fund which shall be composed of the comptroller of the treasury, the commissioner of finance and administration, the state treasurer, the chair of the advisory committee on the postsecondary education institutions to the commission, a representative of the private postsecondary education industry named by the chair of the commission, and the executive director of the Tennessee higher education commission, or their designees, so designated in writing. The state treasurer or the state treasurer's designee shall be chair. The board is hereby authorized to take any actions necessary to administer the fund, including promulgation of rules, regulations, and bylaws. The board shall report annually to the general assembly and governor on the condition of the fund.

(d) (1) There is imposed on each postsecondary educational institution authorized under this part, unless exempt under § 49-7-2004, a tuition guaranty fund fee in accordance with the schedule set out in the administrative rules under this chapter.

(2) The fee shall be based on tuition collections, however described, in the previous academic year unless the board determines a different time measure is more appropriate for an institution. The fee shall be paid to the tuition guaranty fund at least thirty (30) days before the beginning of a new academic year; provided, that the board may establish alternate dates to account for variations in institutional programs and schedules. The board may also establish late payment penalties by regulation.

(e) At such time as the board, in its discretion, determines that the fund is adequately funded to insure against institutional closure, it may suspend collection of the fee, but may institute it at such time as the fund balance drops below a predetermined minimum balance. For a new postsecondary educational institution that begins operation in Tennessee after July 1, 2006, the institution must meet bonding requirements as specified in § 49-7-2013, and pay guaranty fund assessments as specified in subsection (d) for at least six (6) years.

(f) In the event an institution participating in the fund goes into bankruptcy, or ceases operations without completing its educational obligations or reimbursing its students, the board may reimburse valid claims of students for tuition paid to

that institution, in accordance with guidelines and regulations established by the board. If a student is attending on a loan, the board shall direct reimbursement to that lender rather than to the student. As a condition of receiving reimbursement from the fund, a student or lender shall agree to subrogate such person's right of recovery against the institution to the board.

(g) The board is authorized to audit the accounts of any institution covered under this section to ascertain the correctness of any tendered fee, and to take appropriate actions, through the attorney general and reporter, to enforce its rights and responsibilities under this section.

**HISTORY:** [Acts 1989, ch. 425, § 18; 1992, ch. 1026, § 8; 1997, ch. 333, § 1; 1998, ch. 695, §§ 11-15; 2006, ch. 766, §§ 7, 8.]

**49-7-2019. Notification and Internet posting of graduation, job placement and tuition information.**

Information related to graduation, job placement and tuition costs required to be provided to the commission shall also be provided in writing to a prospective student for the specific field of study in which the student is considering enrolling. Tuition cost information shall also be posted on the institution's web site. Institutions subject to the provisions of this section shall post a link to the commission's web site, which will provide job placement and graduation information for each program offered by the institution. The institutions shall include a clear reference on their web sites of the availability of the data on the commission's web site and shall provide a link to the commission's web site directly below such reference.

**HISTORY:** [Acts 2008, ch. 1103, § 2.]

**49-7-2020. Addendum to enrollment agreement regarding conditional basis of institution's authorization to operate.**

(a) (1) A postsecondary institution authorized to operate in this state under § 49-7-2008 shall provide an addendum to any enrollment contract or agreement entered into, on or after notification is received by the institution of any final decision by the commission that its authorization or reauthorization is on a conditional basis; provided, that the final decision includes a determination by the commission that public disclosure of the limitation or restriction is necessary to protect the public interest. A decision of the commission shall not be a final decision until it is final under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The addendum shall notify the student of the conditional authorization. The addendum shall be entitled "Notice of Conditional Authorization" and shall be signed and dated by the student.

(2) If the institution has been notified of a final decision to place it on conditional authorization to operate as provided in subdivision (a)(1), the statement shall explicitly set forth the standards that the institution failed to meet and the conditions under which the executive director or the commission placed the institution on conditional authorization. The commission shall specify in the final decision the matters required to be disclosed in the statement. The statement shall also state that continued failure to meet the conditions may result in the school's loss of authorization to operate in this state. All information concerning conditional or probationary authorization shall be in bold face type.

(b) The information required under subsection (a) shall also be posted on the institution's web site in bold face type.

**HISTORY:** [Acts 2008, ch. 1103, § 3.]