

5607--A

2015-2016 Regular Sessions

I N   S E N A T E

May 19, 2015

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Introduced by Sen. LAVALLE -- (at request of the State Education Department) -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the education law, in relation to authorizing the state education department to enter into interstate reciprocity agreements and/or regional compacts for post-secondary distance education programs and to charge a fee to participating in-state institutions and non-participating out-of-state institutions that offer distance education; and to amend the state finance law, in relation to establishing an interstate reciprocity post-secondary distance education account

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. This act shall be known and may be cited as the "interstate  
2     reciprocity agreement for post-secondary distance education programs".  
3     S 2. Legislative intent. Subject to an appropriation, it is the  
4     purpose of this act to authorize the state education department to enter  
5     into interstate reciprocity agreements and/or regional compacts for  
6     postsecondary distance education courses and programs.  
7     S 3. The education law is amended by adding a new section 210-c to  
8     read as follows:  
9     S 210-C. INTERSTATE RECIPROCITY AGREEMENT FOR POST-SECONDARY DISTANCE  
10    EDUCATION PROGRAMS.  
11         INTERSTATE RECIPROCITY AGREEMENT FOR THE POST-SECONDARY DISTANCE  
12         EDUCATION PROGRAMS  
13                 ARTICLE I  
14                 PURPOSE, FINDINGS, AND POLICY  
15     THE STATES PARTY TO AN INTERSTATE AGREEMENT DESIRE BY COMMON ACTION TO  
16    ESTABLISH COMPARABLE STANDARDS FOR THE OFFERING OF POSTSECONDARY

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

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1 DISTANCE-EDUCATION COURSES AND PROGRAMS AND TO FACILITATE MORE OFFERINGS  
2 OF DISTANCE EDUCATION COURSES TO THE STUDENTS IN THEIR STATE.

3 ARTICLE II  
4 DEFINITIONS

5 AS USED IN THIS SECTION AND ANY AGREEMENTS AND CONTRACTS MADE PURSUANT  
6 TO IT, UNLESS THE CONTEXT CLEARLY STATES OTHERWISE:

7 (A) "ACCREDITED" SHALL MEAN HOLDING INSTITUTIONAL ACCREDITATION BY NAME  
8 AS A U.S.-BASED INSTITUTION FROM AN ACCREDITOR RECOGNIZED BY THE U.S.  
9 DEPARTMENT OF EDUCATION.

10 (B) "APPROVE" OR "APPROVAL" IN THE CONTEXT OF AN INSTITUTIONAL APPLICA-  
11 TION TO OPERATE UNDER THE STATE AUTHORIZATION RECIPROCITY AGREEMENT  
12 (SARA) MEANS: A WRITTEN STATEMENT BY A HOME STATE THAT AN INSTITUTION  
13 MEETS THE STANDARDS REQUIRED BY SARA AND IS ELIGIBLE TO OPERATE UNDER  
14 SARA.

15 (C) "COMPLAINT" MEANS: A FORMAL ASSERTION IN WRITING THAT THE TERMS OF  
16 THIS AGREEMENT, OR OF LAWS, STANDARDS OR REGULATIONS INCORPORATED BY  
17 THIS AGREEMENT, ARE BEING VIOLATED BY A PERSON, INSTITUTION, STATE,  
18 AGENCY OR OTHER ORGANIZATION OR ENTITY OPERATING UNDER THE TERMS OF THIS  
19 AGREEMENT.

20 (D) "COUNCIL" MEANS: THE NATIONAL COUNCIL FOR SARA.

21 (E) "C-RAC GUIDELINES" AND OTHER USES OF "C-RAC" REFERS TO THE INTERRE-  
22 GIONAL GUIDELINES FOR THE EVALUATION OF DISTANCE EDUCATION PROGRAMS  
23 (ONLINE LEARNING) FOR BEST PRACTICES IN POSTSECONDARY DISTANCE EDUCATION  
24 ADOPTED BY THE COUNCIL OF REGIONAL ACCREDITING COMMISSIONS (C-RAC).

25 (F) "DISTANCE EDUCATION" MEANS, FOR PURPOSES OF AN INTERSTATE RECI-  
26 PROCITY AGREEMENT UNDER THIS SECTION: INSTRUCTION OFFERED BY ANY MEANS  
27 WHERE THE STUDENT AND FACULTY MEMBER ARE IN SEPARATE PHYSICAL LOCATIONS.  
28 IT INCLUDES, BUT IS NOT LIMITED TO, ONLINE, INTERACTIVE VIDEO OR CORRE-  
29 SPONDENCE COURSES OR PROGRAMS. IT DOES NOT INCLUDE INTRASTATE DISTANCE  
30 EDUCATION ACTIVITY.

31 (G) "HOME STATE" MEANS: A MEMBER STATE WHERE THE INSTITUTION HOLDS ITS  
32 LEGAL DOMICILE. TO OPERATE UNDER SARA AN INSTITUTION MUST HAVE A SINGLE  
33 HOME STATE.

34 (H) "INSTITUTION" MEANS: A DEGREE-GRANTING POSTSECONDARY ENTITY.

35 (I) "LEGAL DOMICILE" OF AN INSTITUTION FOR PURPOSES OF ELIGIBILITY IN  
36 AN INTERSTATE AGREEMENT MEANS THE STATE IN WHICH THE INSTITUTION'S PRIN-  
37 CIPAL CAMPUS HOLDS ITS INSTITUTIONAL ACCREDITATION AND, IF APPLICABLE,  
38 ITS FEDERAL OFFICE OF POSTSECONDARY EDUCATION IDENTIFIER (OPEID) NUMBER.  
39 IN THE EVENT THAT THE OPEID NUMBER IS ASSIGNED TO A CAMPUS THAT IS IN A  
40 DIFFERENT STATE THAN THE PRINCIPAL ACCREDITED CAMPUS, THE SARA COMMIT-  
41 TEES OF THE AFFECTED REGIONAL COMPACTS SHALL DETERMINE WHICH IS THE HOME  
42 STATE FOR PURPOSES OF SARA.

43 (J) "MEMBER STATE" MEANS: ANY STATE, DISTRICT OR TERRITORY THAT HAS  
44 JOINED SARA.

45 (K) "PHYSICAL PRESENCE" MEANS: A MEASURE BY WHICH A STATE DEFINES THE  
46 STATUS OF AN EDUCATIONAL INSTITUTION'S PRESENCE WITHIN THE STATE. THE  
47 DISTANCE EDUCATION ACTIVITIES OF AN EDUCATIONAL INSTITUTION WITH A PHYS-  
48 ICAL PRESENCE WITHIN THE STATE ARE NOT COVERED UNDER AN INTERSTATE RECI-  
49 PROCITY AGREEMENT UNDER THIS ACT AND INSTEAD MUST MEET THE REQUIREMENTS  
50 OF THE STATE.

51 (L) "PORTAL AGENCY" MEANS: THE SINGLE AGENCY DESIGNATED BY THE STATE  
52 TO SERVE AS THE INTERSTATE POINT OF CONTACT FOR QUESTIONS, COMPLAINTS  
53 AND OTHER COMMUNICATIONS RELATED TO THE INTERSTATE COMPACT AND/OR ANY  
54 REGIONAL COMPACT.

55 (M) "REGIONAL COMPACT" MEANS ONE OF NEW ENGLAND BOARD OF HIGHER EDUCA-  
56 TION, MIDWESTERN HIGHER EDUCATION COMPACT, SOUTHERN REGIONAL EDUCATION

BOARD OR WESTERN INTERSTATE COMMISSION FOR HIGHER EDUCATION, OR ANOTHER SARA INTERSTATE REGIONAL COMPACT FOR THE MID-ATLANTIC STATES.

(N) "STATE AUTHORIZATION RECIPROCITY AGREEMENTS" OR "SARA" MEANS: AN AGREEMENT AMONG MEMBER STATES, DISTRICTS AND U.S. TERRITORIES THAT ESTABLISHES COMPARABLE NATIONAL STANDARDS FOR INTERSTATE OFFERING OF POST-SECONDARY DISTANCE-EDUCATION COURSES AND PROGRAMS.

### ARTICLE III

INTERSTATE RECIPROCITY AGREEMENTS FOR POSTSECONDARY DISTANCE EDUCATION

(A) THE COMMISSIONER SHALL HAVE THE AUTHORITY ON BEHALF OF NEW YORK TO ENTER INTO SARA AND/OR ANY REGIONAL COMPACTS ON BEHALF OF THIS STATE WITH ONE OR MORE OTHER STATES TO PROVIDE FOR THE RECIPROCITY OF POSTSECONDARY DISTANCE EDUCATION AND TO CARRY OUT ALL ACTIVITIES NECESSARY TO CARRY OUT SUCH FUNCTION.

(B) UPON ENTRANCE INTO SARA AND/OR ANY REGIONAL COMPACT, THE DEPARTMENT SHALL:

(I) BE DESIGNATED AS THE PORTAL AGENCY AND SHALL BE RESPONSIBLE FOR THE ADMINISTRATIVE AND FUNCTIONAL RESPONSIBILITIES OF PARTICIPATION IN SARA. THE DEPARTMENT SHALL NOT BE RESPONSIBLE FOR ALL OVERSIGHT ACTIVITIES OF PROVIDERS IN THE STATE, BUT SHALL BE THE PORTAL FOR THE STATE;

(II) CONSIDER APPLICATIONS FROM DEGREE-GRANTING INSTITUTIONS ON THE SAME BASIS AND EITHER:

(A) APPROVE ANY INSTITUTIONS THAT MEET THE STANDARDS OF SARA, AND AGREE TO THE PROCESS AND COMMITMENTS OF SARA WITHOUT DIFFERENTIATING BY SECTOR;

(B) DISAPPROVE ANY INSTITUTION THAT DOES NOT MEET THE STANDARDS OF SARA, OR DOES NOT AGREE TO THE PROCESS AND COMMITMENTS OF SARA; OR

(C) MAY APPROVE AN INSTITUTION APPLYING FOR INITIAL PARTICIPATION IN SARA TO PARTICIPATE ON A PROVISIONAL STATUS IN ANY OF THE FOLLOWING CIRCUMSTANCES:

(I) THE INSTITUTION IS ON PROBATIONARY STATUS OR THE EQUIVALENT WITH ITS INSTITUTIONAL ACCREDITING BODY;

(II) THE INSTITUTION IS USING A LETTER OF CREDIT OR IS UNDER A CASH MANAGEMENT AGREEMENT BY THE U.S. DEPARTMENT OF EDUCATION;

(III) THE INSTITUTION IS THE SUBJECT OF A PUBLICLY ANNOUNCED INVESTIGATION BY A GOVERNMENT AGENCY, AND THE INVESTIGATION IS RELATED TO THE INSTITUTION'S ACADEMIC QUALITY, FINANCIAL STABILITY OR STUDENT OR CONSUMER PROTECTION; OR

(IV) THE INSTITUTION IS THE SUBJECT OF A CURRENT INVESTIGATION BY ITS HOME STATE RELATED TO THE INSTITUTION'S ACADEMIC QUALITY, FINANCIAL STABILITY OR STUDENT OR CONSUMER PROTECTION.

(III) PRESCRIBE STATE PROCESSES FOR CONSUMER PROTECTION AND COMPLAINTS IN REGULATIONS OF THE COMMISSIONER, AS REQUIRED BY SARA;

(IV) OPERATE UNDER THE PROCESSES, PROCEDURES AND GUIDELINES REQUIRED BY SARA, INCLUDING THE INTERREGIONAL GUIDELINES FOR THE EVALUATION OF DISTANCE EDUCATION DEVELOPED BY THE COUNCIL OF REGIONAL ACCREDITING COMMISSIONERS, IF REQUIRED BY SARA;

(V) SERVE AS THE DEFAULT FORUM FOR ANY COMPLAINT FILED AGAINST AN INSTITUTION APPROVED BY THE STATE TO PARTICIPATE IN THE STATE AUTHORIZATION RECIPROCITY AGREEMENT AND THE DEPARTMENT SHALL BE RESPONSIBLE FOR COORDINATING ANY SUCH EFFORTS AND SHALL HAVE THE AUTHORITY TO INVESTIGATE AND RESOLVE COMPLAINTS THAT ORIGINATE OUTSIDE OF THE STATE. ALL OTHER STATE AGENCIES AND GOVERNING BOARDS OF SUCH INSTITUTIONS SHALL ASSIST AS NECESSARY IN SUCH INVESTIGATIONS AND REPORT AS NEEDED TO THE DEPARTMENT;

(VI) IMPOSE AS A PENALTY REFUNDS OR OTHER CORRECTIVE ACTION TO RESOLVE COMPLAINTS INVOLVING RESIDENTS OF OTHER STATES;

(VII) MAINTAIN WRITTEN DOCUMENTATION OF:

(A) ALL FORMAL COMPLAINTS RECEIVED;

(B) COMPLAINT NOTIFICATIONS PROVIDED TO INSTITUTIONS AND ACCREDITING AGENCIES;

(C) ACTIONS TAKEN THAT ARE COMMENSURATE WITH THE SEVERITY OF VIOLATIONS; AND

(D) COMPLAINT RESOLUTIONS.

(VIII) REPORT COMPLAINTS AND CONCERNS TO THE INSTITUTIONS ABOUT WHICH THE COMPLAINT IS LODGED, THE HOME STATE PORTAL AGENCY RESPONSIBLE FOR THE INSTITUTION, AND, IF APPROPRIATE, ANY ACCREDITING BODIES; AND

(IX) IMPOSE AN ANNUAL FEE ON ANY INSTITUTION PARTICIPATING IN ANY INTERSTATE AGREEMENT, IN AN AMOUNT PRESCRIBED BY THE COMMISSIONER IN REGULATIONS WHICH SHALL BE CONSISTENT WITH ANY FEES REQUIRED BY THE INTERSTATE AGREEMENT AND ANY FEES REQUIRED FOR THE STATE TO ADMINISTER SARA. ANY INSTITUTION THAT IS REMOVED FROM ELIGIBILITY FROM SARA DURING THE PERIOD OF APPROVAL RECEIVES NO FEE REFUND; AND

(X) REPORT ANY INFORMATION REQUIRED BY THE NATIONAL COUNCIL FOR SARA.

#### ARTICLE IV

##### INSTITUTIONAL ELIGIBILITY FOR ADMISSION TO SARA

AN INSTITUTION APPLYING TO OPERATE PURSUANT TO SARA UNDER THIS SECTION SHALL:

(A) HAVE ITS PRINCIPAL CAMPUS OR CENTRAL ADMINISTRATIVE UNIT DOMICILED IN A STATE THAT HAS JOINED SARA AND BE AUTHORIZED TO OPERATE IN THAT STATE. ONLY DISTANCE EDUCATION CONTENT ORIGINATING IN THE UNITED STATES OR A U.S. TERRITORY IS ELIGIBLE TO BE OFFERED UNDER THE AGREEMENT;

(B) BE A U.S. DEGREE-GRANTING INSTITUTION THAT IS ACCREDITED BY AN ACCREDITING BODY RECOGNIZED BY THE U.S. SECRETARY OF EDUCATION;

(C) AGREE TO BE BOUND BY ANY STANDARDS, PROCESSES AND/OR GUIDELINES REQUIRED BY SARA, INCLUDING THE INTERREGIONAL GUIDELINES FOR THE EVALUATION OF DISTANCE EDUCATION DEVELOPED BY THE COUNCIL OF REGIONAL ACCREDITING COMMISSIONERS, IF REQUIRED BY SARA;

(D) AGREE TO REMAIN RESPONSIBLE FOR COMPLIANCE WITH THE REQUIREMENTS OF SARA AND APPLICABLE LAWS, REGARDLESS OF WHETHER THE INSTITUTION ENGAGES IN OPERATIONS UNDER SARA ITSELF, OR THROUGH A THIRD-PARTY PROVIDER;

(E) AGREE TO NOTIFY THE EDUCATION DEPARTMENT OF ANY NEGATIVE CHANGES TO ITS ACCREDITATION STATUS;

(F) AGREE TO PROVIDE ANY DATA REQUESTED BY THE EDUCATION DEPARTMENT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND ASSIST THE DEPARTMENT IN RESOLVING ANY COMPLAINTS ARISING FROM ITS STUDENTS AND TO ABIDE BY DECISIONS OF THE DEPARTMENT, IN ORDER FOR THE EDUCATION DEPARTMENT TO EFFECTIVELY MONITOR ANY ACTIVITIES UNDER THE AGREEMENT;

(G) REPORT ANY INFORMATION REQUIRED BY SARA AND/OR THIS SECTION.

#### ARTICLE V

##### APPROVED AND ACCEPTED PROGRAMS

NOTHING IN THIS SECTION SHALL BE CONSTRUED TO REPEAL OR OTHERWISE MODIFY ANY LAW OR REGULATION OF THIS STATE RELATING TO THE APPROVAL OF ANY OTHER EDUCATIONAL PROGRAMS NOT COVERED BY THIS SECTION.

#### ARTICLE VI

##### EFFECT AND WITHDRAWAL

1. THIS SECTION SHALL BECOME EFFECTIVE UPON THIS STATE'S EXECUTION OF SARA AND/OR REGIONAL COMPACT FOR DISTANCE EDUCATION.

2. THE DURATION OF ANY REGIONAL COMPACT AND/OR INTERSTATE AGREEMENT AND THE METHODS AND CONDITIONS OF WITHDRAWAL THEREFROM SHALL BE THOSE SPECIFIED IN THEIR TERMS.

1 S 4. The state finance law is amended by adding a new section 97-llll  
2 to read as follows:

3 S 97-LLLL. INTERSTATE RECIPROCITY FOR POST-SECONDARY DISTANCE EDUCA-  
4 TION ACCOUNT. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE  
5 STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE AN  
6 ACCOUNT OF THE MISCELLANEOUS SPECIAL REVENUE FUND TO BE KNOWN AS THE  
7 INTERSTATE RECIPROCITY FOR POST-SECONDARY DISTANCE EDUCATION ACCOUNT.

8 2. NOTWITHSTANDING ANY OTHER LAW, RULE OR REGULATION TO THE CONTRARY,  
9 THE STATE COMPTROLLER IS HEREBY AUTHORIZED AND DIRECTED TO RECEIVE FOR  
10 DEPOSIT TO THE CREDIT OF THE INTERSTATE RECIPROCITY FOR POST-SECONDARY  
11 DISTANCE EDUCATION ACCOUNT, ANY APPROPRIATION AND/OR FEES ESTABLISHED IN  
12 THE REGULATIONS OF THE COMMISSIONER OF EDUCATION FOR SERVICES AND  
13 EXPENSES INCURRED BY THE EDUCATION DEPARTMENT IN CONDUCTING EVALUATIONS  
14 OF POST-SECONDARY DISTANCE EDUCATION CONDUCTED PURSUANT TO THE INTER-  
15 STATE RECIPROCITY AGREEMENT AND PROCESSING ANY COMPLAINTS RELATED THERE-  
16 TO AND/OR FOR ADMINISTERING AND/OR PARTICIPATING IN SUCH INTERSTATE  
17 AGREEMENT.

18 3. NOTWITHSTANDING ANY OTHER LAW, RULE OR REGULATION TO THE CONTRARY,  
19 THE STATE COMPTROLLER IS HEREBY AUTHORIZED AND DIRECTED TO RECEIVE FOR  
20 DEPOSIT TO THE CREDIT OF THE INTERSTATE RECIPROCITY FOR POST-SECONDARY  
21 DISTANCE EDUCATION ACCOUNT, ANY APPROPRIATION AND/OR FEES ESTABLISHED IN  
22 THE REGULATIONS OF THE COMMISSIONER OF EDUCATION FOR SERVICES AND  
23 EXPENSES INCURRED BY THE EDUCATION DEPARTMENT IN CONDUCTING EVALUATIONS,  
24 PROCESSING COMPLAINTS OR OTHER ADMINISTRATIVE FUNCTIONS RELATED TO  
25 POST-SECONDARY DISTANCE EDUCATION CONDUCTED BY THE DEPARTMENT FOR  
26 OUT-OF-STATE INSTITUTIONS SEEKING APPROVAL TO OFFER DISTANCE EDUCATION  
27 IN NEW YORK STATE THAT DO NOT PARTICIPATE IN THE INTERSTATE RECIPROCITY  
28 AGREEMENT. THIS FEE MAY ALSO INCLUDE AN APPLICATION AND PROCESSING  
29 CHARGE FOR THOSE INSTITUTIONS SEEKING TO ESTABLISH A PHYSICAL PRESENCE  
30 IN NEW YORK STATE.

31 S 5. Section 212 of the education law is amended by adding a new  
32 subdivision 7 to read as follows:

33 7. FOR SERVICES AND EXPENSES INCURRED BY THE DEPARTMENT IN CONDUCTING  
34 EVALUATIONS, PROCESSING COMPLAINTS OR PERFORMING OTHER ADMINISTRATIVE  
35 FUNCTIONS RELATED TO THE REVIEW OF POST-SECONDARY DISTANCE EDUCATION  
36 CONDUCTED BY OUT-OF-STATE INSTITUTIONS SEEKING APPROVAL TO OFFER  
37 DISTANCE EDUCATION TO STUDENTS IN NEW YORK STATE WHO DO NOT PARTICIPATE  
38 IN AN INTERSTATE RECIPROCITY AGREEMENT PURSUANT TO SECTION TWO HUNDRED  
39 TEN-C OF THIS CHAPTER.

40 S 6. This act shall take effect immediately; provided, however:

41 (a) that the addition, amendment and/or repeal of any rule or regu-  
42 lation necessary for the implementation of this act on its effective  
43 date is authorized to be made and completed on or before such effective  
44 date; and

45 (b) that the commissioner of education shall notify the legislative  
46 bill drafting commission upon the occurrence of the state's execution of  
47 SARA and/or a regional compact for distance education, as provided for  
48 in section three of this act in order that the commission may maintain  
49 an accurate and timely effective data base of the official text of the  
50 laws of the state of New York in furtherance of effectuating the  
51 provisions of section 44 of the legislative law and section 70-b of the  
52 public officers law.