S T A T E O F N E W Y O R K

5607--A

2015-2016 Regular Sessions

I N S E N A T E

May 19, 2015

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:

Section 1. This act shall be known and may be cited as the "interstate reciprocity agreement for post-secondary distance education programs".

S 2. Legislative intent. Subject to an appropriation, it is the purpose of this act to authorize the state education department to enter into interstate reciprocity agreements and/or regional compacts for postsecondary distance education courses and programs.

S 3. The education law is amended by adding a new section 210-c to read as follows:

S 210-C. INTERSTATE RECIPROCITY AGREEMENT FOR POST-SECONDARY DISTANCE EDUCATION PROGRAMS.

INTERSTATE RECIPROCITY AGREEMENT FOR THE POST-SECONDARY DISTANCE EDUCATION PROGRAMS

ARTICLE I

PURPOSE, FINDINGS, AND POLICY

THE STATES PARTY TO AN INTERSTATE AGREEMENT DESIRE BY COMMON ACTION TO 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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DISTANCE-EDUCATION COURSES AND PROGRAMS AND TO FACILITATE MORE OFFERINGS OF DISTANCE EDUCATION COURSES TO THE STUDENTS IN THEIR STATE.

ARTICLE II

DEFINITIONS

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

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

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

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

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

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

(F) "DISTANCE EDUCATION" MEANS, FOR PURPOSES OF AN INTERSTATE RECIPROCITY AGREEMENT UNDER THIS SECTION: INSTRUCTION OFFERED BY ANY MEANS WHERE THE STUDENT AND FACULTY MEMBER ARE IN SEPARATE PHYSICAL LOCATIONS. IT INCLUDES, BUT IS NOT LIMITED TO, ONLINE, INTERACTIVE VIDEO OR CORRESPONDENCE COURSES OR PROGRAMS. IT DOES NOT INCLUDE INTRASTATE DISTANCE EDUCATION ACTIVITY.

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

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

(I) "LEGAL DOMICILE" OF AN INSTITUTION FOR PURPOSES OF ELIGIBILITY IN AN INTERSTATE AGREEMENT MEANS THE STATE IN WHICH THE INSTITUTION'S PRINCIPAL CAMPUS HOLDS ITS INSTITUTIONAL ACCREDITATION AND, IF APPLICABLE, ITS FEDERAL OFFICE OF POSTSECONDARY EDUCATION IDENTIFIER (OPEID) NUMBER. IN THE EVENT THAT THE OPEID NUMBER IS ASSIGNED TO A CAMPUS THAT IS IN A DIFFERENT STATE THAN THE PRINCIPAL ACCREDITED CAMPUS, THE SARA COMMITTEES OF THE AFFECTED REGIONAL COMPACTS SHALL DETERMINE WHICH IS THE HOME STATE FOR PURPOSES OF SARA.

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

(K) "PHYSICAL PRESENCE" MEANS: A MEASURE BY WHICH A STATE DEFINES THE STATUS OF AN EDUCATIONAL INSTITUTION'S PRESENCE WITHIN THE STATE. THE DISTANCE EDUCATION ACTIVITIES OF AN EDUCATIONAL INSTITUTION WITH A PHYSICAL PRESENCE WITHIN THE STATE ARE NOT COVERED UNDER AN INTERSTATE RECIPROCITY AGREEMENT UNDER THIS ACT AND INSTEAD MUST MEET THE REQUIREMENTS OF THE STATE.

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

(M) "REGIONAL COMPACT" MEANS ONE OF NEW ENGLAND BOARD OF HIGHER EDUCATION, 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 COMPLIANT 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.

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

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

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

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

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

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

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

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

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