

# CHAPTER 188-G

## PRIVATE POSTSECONDARY CAREER SCHOOLS

### Section 188-G:1

#### 188-G:1 Definitions; Exclusions. –

I. In this chapter:

- (a) "Alternative delivery" means a mode of instruction which does not involve face-to-face instruction between instructor and student in the same geographic location. This mode of instruction shall include Internet, televised, video, telephonic, and correspondence media.
- (b) "Conference" or "seminar" means a scheduled meeting of 2 or more persons for discussing matters of common concern and where, if training or education is offered, it shall be incidental to the purpose of the conference.
- (c) "Commission" means the higher education commission established in RSA 21-N:8-a, II.
- (d) "Commissioner" means the commissioner of the department of education.
- (e) "Director" means the director of the division of higher education in the department of education.
- (f) "Division" means the department of education, division of educator support and higher education.
- (g) "Entity" means any individual, firm, partnership, association, company, corporation, organization, trust, school, or other legal entity or combination of these entities.
- (h) "Physical presence" means a physical location for instructional purposes, maintaining an administrative office, including a mailing address or phone number, or face-to-face advising, mentoring, supervision, testing, or instruction taking place in New Hampshire.
- (i) "Private postsecondary career school" means any for-profit or nonprofit postsecondary career entity maintaining a physical presence in this state providing education or training for tuition or a fee that enhances a person's occupational skills, or provides continuing education or certification, or fulfills a training or education requirement in one's employment, career, trade, profession, or occupation. Schools that offer resident or nonresident programs, including programs using modes of alternative delivery, beyond the secondary school level to an entity shall be included in this definition regardless of the fact that the school's tuition and fees from education and training programs constitute only a part of the school's revenue.

- (j) "Workshop" means a brief, intensive education or training program that focuses on developing techniques and skills in a particular area.

II. In this chapter, "private postsecondary career school" shall not include:

- (a) Schools authorized to grant degrees pursuant to RSA 292.
- (b) Schools specifically licensed as an education or training school by a state agency other than the commission.
- (c) Schools operated by a business organization exclusively for the training of that business' own employees and at no charge to its employees.
- (d) Schools offering noncredit courses exclusively for avocational purposes.
- (e) Schools established, operated, and governed by the state of New Hampshire or any of its political subdivisions, or any other state or its political subdivisions.
- (f) Noncredit courses or programs sponsored by recognized trade, business, or professional organizations solely for the instruction of their members that do not prepare or qualify individuals for employment in any occupation or trade.
- (g) Schools that offer programs and courses exclusively on federal military installations.
- (h) Entities that offer training at seminars, workshops, or conferences, if:
  - (1) Any training or education offered is incidental to the purpose of the seminar, workshop, or conference; and
  - (2) The attendee receiving the training is not awarded any form of a certificate, diploma, or credit including continuing education units for having received the training.
- (i) An entity training students under 14 C.F.R. part 91 or 14 C.F.R. part 141, or receiving flight or ground instruction required by the Federal Aviation Administration.
- (j) Entities that license software, the content of which is focused on training or education, if the entity:
  - (1) Is primarily engaged in the business of licensing software;
  - (2) Licenses its software primarily to other legal entities, and not directly to an end user or individual student;

- (3) Does not confer degrees, diplomas, continuing education units, or any other form of credit in connection with the software it licenses;
  - (4) Is not accredited and does not seek accreditation in connection with the software it licenses or the content it offers; and
  - (5) Does not offer an admissions process, financial aid, career advice, or job placement in connection with the software it licenses.
- (k) Entities offering only training courses at a total cost, including tuition and all other fees and charges, of not more than \$800 per course for which no payment, including a deposit, is required or collected prior to the first day of the course. This subparagraph shall not apply to entities that use alternative delivery methods.
- (l) Government entities offering training in public safety related occupations including but not limited to the division of fire standards and training and emergency medical services, the division of fire safety, and the police standards and training council.
- (m) Entities that have annual gross tuition of \$100,000 or less.

**Source.** 2011, 224:150. 2014, 132:3. 2016, 149:6, eff. Jan. 1, 2017. 2018, 315:16, eff. Aug. 24, 2018.

## **Section 188-G:2**

### **188-G:2 Licenses and Fees. –**

- I. Prior to registering or renewing a business or trade name, or soliciting students for enrollment, an entity maintaining a physical presence in this state shall be reviewed by the commission to determine if the entity requires a license. The commission shall establish procedures to accomplish this review.
- II. A private postsecondary career school maintaining a physical presence in this state shall register to obtain a license or license renewal from the commission. The license shall be issued or renewed pursuant to rules, adopted under RSA 541-A, by the commission. The rules shall establish minimum criteria, including but not limited to, financial stability, educational program, administrative and staff qualifications, business procedures, facilities, equipment, and ethical practices to be met by licensees, and criteria for rejecting a licensing applicant and for suspending or revoking a license.
- III. A school that is not required to obtain a license may apply for a license and, upon issuance of the license, shall be subject to the provisions of this chapter. Such school may voluntarily surrender its license and revert to its original status.

IV. The commission shall adopt rules pursuant to RSA 541-A to establish reasonable fees, fines, reimbursement rates for consultants, and procedures for complaint investigations and enforcement actions, which are necessary for the administration of this chapter.

V. A private postsecondary career school which the commission has determined requires a license shall, prior to the issuance of a license, comply with this section and RSA 188-G:3.

**Source.** 2011, 224:150. 2013, 187:2. 2014, 132:4, eff. June 16, 2014.

### **Section 188-G:3**

#### **188-G:3 Surety Indemnification. –**

Before a license is issued or renewed, a school shall furnish surety indemnification as required in this section.

I. A surety bond shall be provided by the school in an amount prescribed in this section. The obligation of the bond is that the school, its officers, agents, and employees shall faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the school and entity enrolling as students. The bond shall be issued by a company authorized to do business in the state of New Hampshire. The bond shall be issued in the name of the commission, and is to be used only for payment of a refund of tuition and instructional fees due to a student or potential student, and the expense of investigating and processing the claims.

II. A private postsecondary career school shall secure a bond in an amount sufficient to reimburse the tuition of any student contract which cannot be fulfilled, and taking into account the number of students or potential students to be reimbursed and the expenses for investigating and processing claims. The bond shall not be less than \$10,000. If a school licensed under RSA 188-G:2 should fail to provide the services required in a contract with any entity, as determined by a court of competent jurisdiction, the bond shall be forfeited, and the proceeds distributed by the director in such manner as justice and the circumstances require.

III. The bond company may not be relieved of liability on the bond unless it gives the school and the commission 90 days written notice of the company's intent to cancel the bond. If at any time the company that issued the bond cancels or discontinues the coverage, the school's license is revoked as a matter of law on the effective date of the cancellation or discontinuance of bond coverage, unless a replacement bond is obtained and provided to the commission.

IV. For the purposes of this section the forms of indemnification other than a surety bond which may be furnished to the commission for licensure are the following:

(a) An irrevocable letter of credit, maintained for the licensing period as a minimum, issued by a financial institution authorized to do business in New Hampshire in an amount to be determined by the commission with the commission designated as the beneficiary; or

(b) A term deposit account held in the state treasury, payable to the commission, shall be held in trust for the benefit of students entitled thereto under this section. Said account shall be maintained for the licensing period as a minimum, in an amount determined by the commission. Any interest shall be paid annually to the appropriate school, unless the term deposit account is activated due to a school closing. Should the licensee for any reason, while not in default, discontinue operation, all moneys on deposit, including any interest, shall be released to the appropriate school subject to the approval of the commission.

**Source.** 2011, 224:150. 2013, 187:3, eff. June 30, 2013. 2018, 136:1, eff. July 29, 2018.

#### **Section 188-G:4**

**188-G:4 Student Tuition Guaranty Fund.** – [Repealed 2013, 187:1, I, eff. June 30, 2013.]

#### **Section 188-G:5**

**188-G:5 Inspections.** – The commission may at any time inspect the premises, curriculum, teaching materials, faculty performance, sales literature, financial data, or other matters which are relevant to the educational and business activities of a licensed school in order to determine compliance with applicable laws and rules.

**Source.** 2011, 224:150, eff. July 1, 2011.

#### **Section 188-G:5-a**

**188-G:5-a Suspension; Hearing.** – The commissioner of the department of education may, after due notice and failure by a career school to remediate noncompliance with rules adopted pursuant to this chapter, suspend the license of any school licensed pursuant to RSA 188-G:2 for a period of not more than 90 days, until such time as a hearing before the commission can be held. The commissioner may impose interim conditions of operation which shall apply during the period of suspension. The commission may, after due notice and hearing, suspend the license of any school licensed pursuant to RSA 188-G:2 for a period of time to be determined by the commission.

**Source.** 2018, 136:2, eff. July 29, 2018.

#### **Section 188-G:6**

**188-G:6 Revocation; Hearing.** – The commission may, after due notice and hearing, revoke the license of any school licensed pursuant to RSA 188-G:2 for violating the provisions of this chapter or rules adopted hereunder. A revocation pursuant to this section shall be permanent. The provisions of RSA 541 shall apply to actions taken pursuant to this section.

**Source.** 2011, 224:150, eff. July 1, 2011. 2018, 136:3, eff. July 29, 2018.

### **Section 188-G:7**

**188-G:7 Waiting Period.** – Every contract that purports to bind any entity to pay money to a private postsecondary career school in return for training shall be construed to be a home solicitation sales contract under RSA 361-B and shall be subject to the provisions of RSA 361-B.

**Source.** 2011, 224:150, eff. July 1, 2011.

### **Section 188-G:8**

**188-G:8 Veterans, Education and Services Approval.** – The division may approve for veterans' education and services any institution licensed under this chapter. The department of education may adopt rules, under RSA 541-A, relative to the procedures for approval of institutions for veterans' education and benefits.

**Source.** 2011, 224:150, eff. July 1, 2011.

### **Section 188-G:9**

**188-G:9 Use of Fees.** – Notwithstanding any provision of law to the contrary, all license fees collected under the provisions of this chapter shall be retained by the commission for use in meeting the expenses of administering this chapter.

**Source.** 2011, 224:150, eff. July 1, 2011.

### **Section 188-G:10**

#### **188-G:10 Penalty.** –

- I. Whoever violates any provision of this chapter shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.
- II. Whenever the commission determines that a person is violating any provision of this chapter or the rules adopted hereunder, the commission shall request the attorney general, or other appropriate official having jurisdiction, to provide appropriate relief.
- III. The commission, upon verifying that a school is operating without a license, shall issue a cease and desist order to such school.
- IV. The commission shall be notified whenever a cease and desist order is issued to a school, or if a school fails to provide the services required under a contract with any entity causing the bond to be forfeited, or if a school is required to have a license but is operating without a license.

**Source.** 2011, 224:150, eff. July 1, 2011.