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Senate Bill 221 (as introduced 3-18-15)  
Sponsor: Senator Tonya Schuitmaker  
Committee: Regulatory Reform

Date Completed: 3-25-15

## **CONTENT**

**The bill would enact the "Higher Education Authorization and Distance Education Reciprocal Exchange Act" to do the following:**

- **Permit the Department of Licensing and Regulatory Affairs (LARA), on behalf of the State, to enter into reciprocal arrangements with public educational agencies in other states or a higher education compact.**
- **Require the Department to authorize a college or university in Michigan to participate in a reciprocal agreement to which LARA was a party, if the college or university met certain conditions.**
- **Allow an out-of-State college or university that was not a party to a reciprocal agreement to provide distance education to Michigan residents if it obtained authorization from LARA.**
- **Prescribe application fees, initial authorization fees, and annual renewal fees of \$2,000 each for an in-State college or university, and \$5,000 each for an out-of-State college and university.**
- **Permit LARA to adjust the fees annually according to changes in the Detroit consumer price index.**
- **Requiring participating and authorized colleges and universities to assure that students enrolled in a distance education program received the services they paid for; protect student records; adopt a policy allowing students to file a complaint; and meet standards of practice contained in interregional guidelines.**
- **Require LARA to impose certain sanctions if a participating college or university violated the proposed Act, or rules promulgated or an order issued under it.**
- **Permit LARA to promulgate rules it considered necessary to implement, administer, and enforce the proposed Act.**

## **Definitions**

"Reciprocal agreement" would mean an agreement between this State and a higher education compact or one or more other states that allows participating colleges to provide distance education to residents of Michigan and other member states under the proposed Act.

"Distance education" would mean education that uses one or more technologies to deliver instruction to students who are separated from the instructor, and to support regular and substantive interaction between the students and the instructor, either synchronously or asynchronously. These technologies could include any of the following:

- The internet.
- One-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite, or wireless communications devices.

- Audio conferencing.
- Video cassettes, DVDs, and CD-ROMs, if they were used in a course in conjunction with any of the technologies listed above.

"College or university" would mean a degree- or certificate-granting public or private college or university, junior college, or community college.

#### College or University Participation/Authorization

In-State College or University. The Department would be required to authorize a college or university located in Michigan to participate in a reciprocal agreement to which LARA was a party if the college or university entered into an agreement with LARA to participate in the reciprocal agreement, on a form and with accompanying documentation prescribed by the Department. The document would have to provide the name of the college or university; its business address in the State; the name of an individual designated for contact; proof of accreditation; proof of financial responsibility in the form of proof of certification, under 34 CFR 668.13, of compliance with the financial responsibility standards of 34 CFR, Part 668, subpart L; and any other relevant information requested by LARA.

(Those Federal regulations establish financial responsibility requirements for institutions of higher education that participate in Federal student financial aid programs under the Higher Education Act.)

The college or university also would have to pay an application fee of \$2,000 and an initial authorization fee of \$2,000.

Out-of-State College or University. A college or university that was located outside of this State and that was not a party to a reciprocal agreement to provide distance education to Michigan residents could elect to obtain authorization from LARA to provide that distance learning. The college or university would have to enter into an agreement with LARA to subject itself to requirements of the proposed Act. It also would have to submit an application for authorization containing the same information required of an in-State college or university.

The out-of-State college or university would have to pay an application fee of \$5,000 and an initial authorization fee of \$5,000.

Renewal. An in-State college's or university's authorization to participate, and an out-of-State college's or university's authorization to provide distance education, would expire on December 31. In either case, the college or university could renew its authorization for one or more additional calendar years by submitting a renewal application and paying an annual renewal fee by December 1 of each year. The renewal fee for a "participating college" (an in-State college or university meeting the proposed requirements) would be \$2,000. The renewal fee for an authorized out-of-State college or university would be \$5,000.

Fee Adjustment & Use. The Department would be permitted to adjust the application fees, initial authorization fees, and renewal fees each year by an amount determined by the State Treasurer to reflect the cumulative annual percentage change in the Detroit consumer price index.

Fees collected under the proposed Act would have to be used solely for administrative expenses incurred under the Act, and would not be refundable.

#### College & University Responsibilities

Each participating college and each out-of-State college or university holding an authorization from LARA would have to assure that every student enrolled in a distance education program

at that college or university received the services for which he or she had paid, or received reasonable financial compensation for those services the student had not received if a course in which the student was enrolled were terminated before its expected completion date. This assurance would have to be in writing and could include tuition assurance funds, surety bonds, teach-out provisions, or other practices LARA considered sufficient to protect consumers.

Each participating college and each authorized out-of-State college or university also would have to provide for the protection of student records for students enrolled in a distance education program at that college or university, and would have to comply with any rules promulgated by LARA concerning the protection of those records.

In addition, each participating college and each authorized out-of-State college or university would have to adopt and publish a written policy that allowed students enrolled in a distance education program at that college or university to file a complaint with LARA for any violation of the proposed Act or rules promulgated under it. The Department would have to establish a complaint process for those students.

Each participating college and each authorized out-of-State college or university also would have to meet the standards of practice contained in the interregional guidelines for the evaluation of distance education published by the Council of Regional Accrediting Commissions in July 2009, which would be incorporated by reference in the proposed Act.

### Sanctions

After notice and an opportunity for a hearing under the Administrative Procedures Act, LARA would have to do one or more of the following if it determined that a participating college or an authorized out-of-State college or university had violated the proposed Act, a rule promulgated under it, or an order issued under it:

- Place a limitation on the authorization.
- Suspend the authorization.
- Deny an authorization or renewal of the authorization.
- Revoke the authorization.
- Assess an administrative fine (described below).
- Order restitution to an aggrieved student who participated or was participating in a distance education program.
- Impose any sanction LARA established by rule.

The Department could assess an administrative fine of up to \$1,000, plus LARA's actual costs of the investigation, for a violation of the Act or rules promulgated under it. The Department could not assess administrative fines against a college or university if the fines in the aggregate were more than \$5,000 for multiple violations that arose from the same transaction.

Legislative Analyst: Suzanne Lowe

### **FISCAL IMPACT**

The bill would have an indeterminate fiscal impact on the Department of Licensing and Regulatory Affairs, Michigan community colleges, and Michigan universities. The bill would allow LARA to enter into reciprocal agreements with public educational agencies in other states or a higher education compact. The Department would collect an application fee of \$2,000, an initial authorization fee of \$2,000, and an annual \$2,000 renewal fee. It also would collect an application fee of \$5,000, an initial authorization fee of \$5,000, and an annual \$5,000 renewal fee from out-of-State colleges and universities that were not part of a compact, but

that wished to provide distance education to residents of Michigan. The bill would allow LARA to adjust these fees for inflation each year. The Department would face some increased costs from administration of compacts and distance education agreements as well as rule promulgation. It is unknown at this time how much LARA would collect from these fees, and whether new revenue would be less than or greater than the new costs, so the fiscal impact of the bill for LARA is indeterminate.

The impact on community colleges and universities would vary by institution depending on the number of students generated through State Authorization Reciprocity Agreements and administrative savings realized through a state-level streamlined reciprocity process.

Fiscal Analyst: Bill Bowerman  
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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.