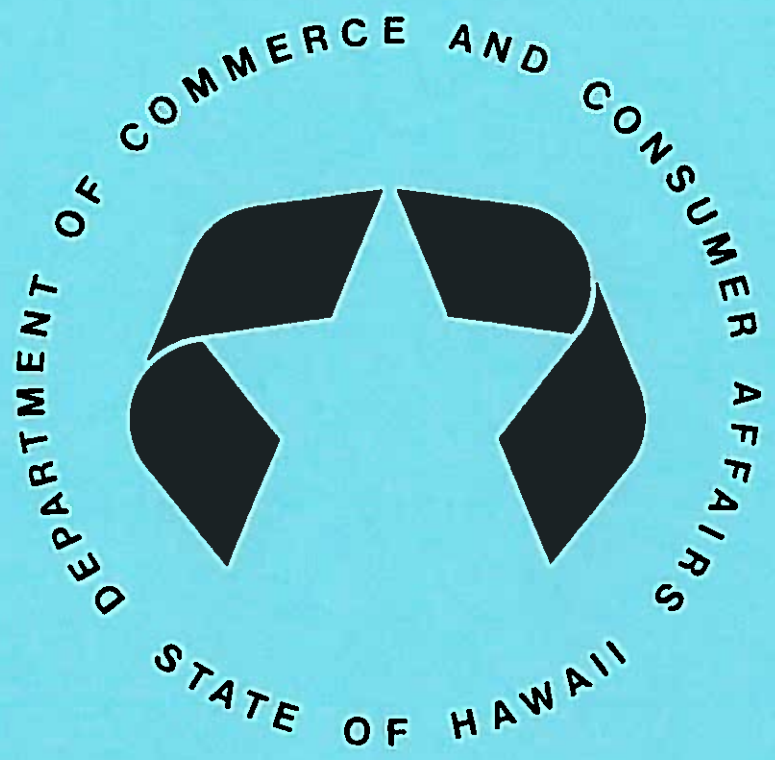

CHAPTER 305J
HAWAII REVISED STATUTES

POST-SECONDARY EDUCATION AUTHORIZATION

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CHAPTER 305J
POST-SECONDARY EDUCATION AUTHORIZATION

SECTION

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[§305J-1] Post-secondary education authorization program; establishment. There is established a post-secondary education authorization program within the department of commerce and consumer affairs, to be administered by the director of commerce and consumer affairs.

[§305J-2] Definitions. Whenever used in this chapter, unless the context otherwise requires:

"Accredited" means holding an institutional accreditation by name to offer post-secondary education as a United States-based institution from a regional or national accrediting agency recognized by the United States Department of Education.

"Alternative enrollment" means the opportunity for a student enrolled in a private college or university that ceases operation to meet the student's educational objectives through education provided by another authorized private college or university, the University of Hawaii system, an area vocational school, or any other educational arrangement acceptable to the director.

"Authorization" means the authorization granted to a private college or university, seminary, or religious training institution as provided in this chapter and any applicable rules and policies. Authorization is not an endorsement by the department.

"Degree" means a statement, diploma, certificate, or other writing in any language that indicates or represents, or is intended to indicate or represent, that the person named thereon is learned in or has satisfactorily completed a prescribed course of study in a particular field of endeavor or that the person named thereon has demonstrated proficiency in a field of endeavor as a result of formal preparation or training.

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Enrollment agreement" means the contract prepared by a private college or university, seminary, or religious training institution that a student signs to indicate agreement to the terms of admission, delivery of instruction, and monetary terms as outlined in the private college, university, seminary, or religious training institution's student handbook or catalog.

"Governing board" means the elected or appointed group of persons that oversees and controls a private college or university, seminary, or religious training institution.

"Home state" means the state in which the institution holds its principal accreditation.

"Honorary degree" means a statement, diploma, certificate, or other writing in any language that indicates or represents, or that is intended to indicate or represent, that the person named thereon is learned in a field of public service or has performed outstanding public service or that the person named thereon has demonstrated proficiency in a field of endeavor without having completed formal courses of instruction or study or formal preparation or training.

"Out-of-state public institution" means an institution of higher education that is established by a government entity in a state other than Hawaii.

"Owner" means:

(1) An individual, if a private for-profit college or university is structured as a sole proprietorship;
(2) Partners, if a private for-profit college or university is structured as a partnership;
(3) Members in a limited liability company, if a private for-profit college or university is structured as a limited liability company; and
(4) Shareholders in a corporation that hold a controlling interest, if a private for-profit college or university is structured as a corporation.

"Physical presence" means:

(1) Having a physical location in the State, where students receive synchronous or asynchronous instruction; or
(2) Establishing an administrative office in the State in order to:
    (A) Provide information to prospective students, enrolling students, or the general public about the institution;
    (B) Provide services to enrolled students;
    (C) Provide office space for instructional or non-instructional staff; and
    (D) Maintain an institutional mailing address, street address, or telephone number in the State.

"Private college or university" means a nonpublic post-secondary education institution having a physical presence in the State that offers associate, baccalaureate, post-baccalaureate, master's, or doctoral degrees or diplomas. For purposes of the requirements of this chapter, an out-of-state public institution shall be considered as a private college or university.

"Seminary" or "religious training institution" means a bona fide religious post-secondary educational institution that has a physical presence in the State, that is exempt from property taxation under the laws of the State, and that offers associate, baccalaureate, post-baccalaureate, master's, or doctoral degrees or diplomas.

"Unaccredited post-secondary educational institution" means a degree-granting institution that is not accredited or a candidate for accreditation by at least one accrediting agency recognized by the United States Department of Education.

"University of Hawaii system" means the post-secondary educational institution, including all campuses and community colleges, established and existing pursuant to article X, section 5, of the Hawaii State Constitution and chapter 304A.

[§305J-3] Applicability of chapter; exceptions. (a) This chapter shall not apply to:

(1) Schools or educational programs conducted by firms, corporations, or persons for the training of their own employees;

(2) Apprenticeship or other training programs provided by labor unions to union members or applicants for union membership;

(3) Schools or educational programs that provide courses of instruction that do not lead to the conferring of a degree;

(4) Schools or educational programs that offer seminars, refresher courses, and programs of instruction sponsored by professional, business, or farming organizations or associations for their members or the employees of their members;

(5) Schools or educational programs that offer courses of instruction conducted by public school complex areas;

(6) Schools, courses of instruction, or courses of training that are offered by a vendor or the purchaser or prospective purchaser of the vendor's product when the objective of the school or course is to enable the purchaser or the purchaser's employees to gain the skills and knowledge necessary to use the product;

(7) Schools and educational programs conducted by religious entities that are owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation and that award only religious degrees or certificates, including but not limited to a certificate of Talmudic studies, an associate of Biblical studies, a bachelor of religious studies, a master of divinity, or a doctor of divinity;

(8) Non-degree-granting post-secondary educational institutions licensed by any entity of the State or governed by any other chapter of the Hawaii Revised Statutes;

(9) Schools and educational programs that offer courses of instruction exclusively through online and distance education; and

(10) Unaccredited post-secondary educational institutions governed by chapter 446E.

(b) Nothing in this subsection shall prohibit an entity listed in subsection (a) or section 305J-4 from applying for authorization; provided that the entity shall meet the criteria for and comply with all authorization requirements under this chapter.

[§305J-4] Authorization of the University of Hawaii system. The University of Hawaii system, established as an educational institution pursuant to article X, section 5, of the Hawaii

State Constitution, is hereby authorized by the State to provide educational programs in and from this State. The University of Hawaii system shall be subject to section 305J-17. The department may impose sanctions pursuant to section 305J-11 on the University of Hawaii system in accordance with the requirements of this chapter.

[§305J-5] Powers and duties of the director. (a) The director shall:

(1) Unless otherwise provided by law, adopt, amend, and repeal rules pursuant to chapter 91 to carry out the purposes of this chapter;

(2) Adopt policies and procedures as necessary, without regard to chapter 91, for reauthorization pursuant to section 305J-10;

(3) Issue declaratory rulings or informal, nonbinding interpretations and conduct contested case proceedings pursuant to chapter 91;

(4) Grant, deny, confirm, forfeit, renew, reinstate, or restore authorizations, including conditional, probationary, or qualified authorizations;

(5) Revoke, suspend, condition, or otherwise limit the authorization of an institution for any violation of this chapter, applicable rules, or the Higher Education Act of 1965, as amended;

(6) Establish requirements for authorization in accordance with this chapter;

(7) Investigate and conduct hearings regarding any violation of this chapter, applicable rules, or the Higher Education Act of 1965, as amended;

(8) Create fact-finding committees, including the appointment of one or more advisory committees, which may assist the department and make recommendations for consideration;

(9) Contract with qualified persons, including investigative and legal staff, who may be exempt from chapter 76, to assist the director in exercising the director's powers and duties;

(10) Subpoena witnesses and documents, administer oaths, and receive affidavits and oral testimony, including communications through electronic media;

(11) Establish the types and amounts of fees that the department may assess in order to carry out the purposes of this chapter;

(12) Establish policies to require authorized institutions to submit to the department, upon request, data that is directly related to student enrollment and degree completion and, if applicable, student financial aid and educator preparation programs, which policies shall include a determination as to whether data received may be disclosed to the public;

(13) Establish policies and procedures for the handling of proprietary information;

(14) Enter into any post-secondary education authorization reciprocity agreement with other post-secondary educational authorizers of schools whose home state is not Hawaii pursuant to section 305J-16; and

(15) Do any and all things necessary or incidental to the exercise of the director's powers and duties.

(b) The director may cooperate with the federal government to qualify the State to receive funds made available under the Higher Education Act of 1965, P.L. 89-329, as amended from time to time. In addition, the department may serve as the state agency for the receipt of federal funds when federal legislation dealing with higher education or post-secondary education

requires, as a condition of the receipt of federal funds, the designation of a state agency that is broadly representative of the general public and of post-secondary education in the State and when agencies other than the department may not qualify.

(c) No funds appropriated by the legislature may be used to aid a person attending an institution not owned or exclusively controlled by the State or a department of the State or to pay for any staff work distributing federal or private funds to students attending such schools. The maximum amount of any grant awarded under the Hawaii state incentive grant program shall be equal to the maximum allowed by federal law.

(d) The department, when appropriate and necessary, may be assisted by other state agencies, including but not limited to the University of Hawaii system and the department of education.

(e) The director, acting through the department of the attorney general, may proceed by injunction against any violation of this chapter, but an injunction proceeding or an order issued therein or as a result thereof shall not bar the imposition of any other penalty for a violation of this chapter.

[§305J-6] Department's powers and authority. (a) The department shall administer the provisions of this chapter and any administrative rules, policies, and procedures adopted by the director.

(b) To administer this chapter, the department shall:

(1) Maintain a list of the private colleges or universities, seminaries, and religious training institutions that have been authorized and make this list available to the public;

(2) Maintain a list of the states with which the director has entered into a post-secondary education authorization reciprocity agreement and make this list available to the public; and

(3) Receive, arbitrate, investigate, and process complaints.

(c) In conducting an investigation, the department may physically inspect the private college or university, seminary, or religious training institution's facilities and records, and the institution shall have an affirmative duty to cooperate with requests from the department for information regarding any investigation or inspection.

(d) In administering its responsibilities, the department may assess fees sufficient to provide for the self-sufficiency of the program pursuant to section 26-9(o).

[§305J-7] Awarding degrees. (a) A person, partnership, corporation, company, society, or association with a physical presence in the State shall not award, bestow, confer, give, grant, convey, or sell to any other person a degree or honorary degree upon which is inscribed, in any language, the word "associate", "bachelor", "baccalaureate", "post-baccalaureate", "master", or "doctor", or any abbreviation thereof, or offer courses of instruction or credits purporting to lead to any such degree, unless the person, partnership, corporation, company, society, or association is:

(1) A private college or university, seminary, or religious training institution that is authorized pursuant to this chapter;

(2) A school or educational program conducted by a religious entity that is owned, controlled, operated, and maintained by a religious organization lawfully operating as a nonprofit religious corporation and that awards only religious degrees or certificates, including but not limited to a certificate of Talmudic studies, associate of Biblical studies, a bachelor of religious studies, a master of divinity, or a doctor of divinity;

(3) An unaccredited post-secondary educational institution governed under chapter 446E; or

(4) A part of the University of Hawaii system.

(b) Notwithstanding subsection (a), in order to award degrees in the State, all private colleges and universities, seminaries, and religious training institutions operating in the State on June 25, 2013 shall be authorized no later than July 1, 2014.

Revision Note

"June 25, 2013" substituted for "the effective date of this chapter".

[§305J-8] Authorization to operate in the State; private college or university. (a) To operate in the State, a private college or university shall:

(1) Be party to a reciprocity agreement to which the State is a member; or

(2) Apply for, on a form prescribed by the department, and receive authorization from the director; provided that the private college or university meets the requirements of section 305J-14; provided further that a private college or university shall apply for and obtain a separate authorization for each campus, branch, or site that is separately accredited. A separate authorization shall not be required for additional professional accreditations. A private, nonprofit college or university shall submit verification of its nonprofit status with its application.

(b) Upon receiving an application for authorization, the director shall review the application to confirm that the private college or university is accredited. The director shall not approve an application from a private college or university that, in the two years preceding submission of the application, has:

(1) Had its accreditation suspended or withdrawn;

(2) Been prohibited from operating in another state; or

(3) Substantially the same owners, governing board, or principal officers as a private college or university that has:

(A) Had its accreditation suspended or withdrawn; or

(B) Been prohibited from operating in another state.

(c) To operate in the State, a private college or university shall be accredited on the basis of an on-site review.

(d) A private college or university shall notify the department within thirty days of any material information related to an action by the institution's accrediting body concerning the institution's accreditation status, including but not limited to reaffirmation or loss of accreditation, approval of a request for change, a campus evaluation visit, a focused visit, or approval of additional locations. In addition, the institution shall immediately notify the department if the

institution's accrediting body is no longer recognized by the United States Department of Education.

(e) A private college or university under the jurisdiction of the department shall notify the department at least one year prior to its ceasing of operations in the State.

(f) A private college or university authorized pursuant to this chapter shall pay any and all fees established pursuant to section 305J-18.

[§305J-9] Authorization to operate in the State; seminary or religious training institutions. (a) To operate in the State, a seminary or religious training institution shall:

(1) Be party to a reciprocity agreement to which the State is a member; or

(2) Apply for, on a form prescribed by the department, and receive authorization from the director; provided that the institution shall establish that it qualifies as a bona fide religious training institution and as an institution of post-secondary education.

(b) Nothing in this section shall preclude a seminary or religious training institution from seeking accreditation.

[§305J-10] Reauthorization. (a) A private college or university that is authorized pursuant to section 305J-8 and maintains its accreditation shall apply to the department for reauthorization every two years. A private college or university that has its accreditation reaffirmed without sanction and continues to demonstrate its compliance with section 305J-14, shall otherwise be presumed to be qualified for reauthorization under this chapter for a period of two years.

(b) A seminary or religious training institution authorized pursuant to section 305J-9 shall apply to the department for reauthorization every two years. A seminary or religious training institution that continues to meet the authorization requirements of this chapter shall otherwise be presumed to be qualified for reauthorization under this chapter for a period of two years.

(c) Private colleges or universities, seminaries, and religious training institutions applying for reauthorization under this section shall pay the fees required pursuant to section 305J-18.

(d) If a private college or university, seminary, or religious training institution cannot demonstrate that it meets the authorization requirements of this chapter, the director shall deny the application for reauthorization. The director shall provide the private college or university, seminary, or religious training institution with written notification of the denial of the application for reauthorization and the basis for the denial. If, within six months of receiving notice that its application for reauthorization has been denied, the private college or university, seminary, or religious training institution corrects the action or condition upon which the denial was based, it may reapply for reauthorization. If the private college or university, seminary, or religious training institution does not correct the action or condition upon which the denial was based, it may submit a new application for authorization pursuant to section 305J-8 or 305J-9, whichever is applicable, once the action or condition has been corrected.

(e) If a private college or university is under a sanction from its accrediting body at the time that it submits its application for reauthorization, the director may:

(1) Approve the private college or university's reauthorization; or

(2) Grant probationary approval of the private college or university's reauthorization; provided that if the private college or university is granted probationary reauthorization:

(A) The department shall provide the private college or university with written notice of its probationary status;

(B) The private college or university shall reapply for reauthorization on an annual basis until the accrediting body lifts its sanction; and

(C) The private college or university shall provide the department with an annual report on its progress toward removing the sanction.

[§305J-11] Grounds for refusal to reauthorize, reinstate, or restore and for revocation, suspension, probation, or denial; condition of authorization or sanctions. (a) In addition to any other acts or conditions provided by law, the director may refuse to reauthorize, reinstate or restore, or may deny, revoke, suspend, or condition in any manner, including but not limited to placement on probation, any authorization for any one or more of the following acts or conditions on the part of the institution or applicant:

(1) Failure to meet or maintain the conditions and requirements necessary to qualify for or maintain an authorization;

(2) Failure to maintain accreditation as required by this chapter;

(3) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements;

(4) Procuring an authorization, reauthorization, or certification through fraud, misrepresentation, material omission, or deceit;

(5) Misconduct, incompetence, gross negligence, or manifest incapacity in the operation of the institution;

(6) Revocation, suspension, deauthorization, or other disciplinary action by another state or federal agency against an institution or applicant for any reason provided by this chapter or rules adopted hereunder;

(7) Criminal conviction, whether by nolo contendere or otherwise, of a penal crime directly related to the qualifications, functions, or duties of the institution or applicant in any jurisdiction in which the institution operates;

(8) Failure to report in writing to the department any disciplinary decision issued against the institution or the applicant in another jurisdiction within thirty days of the disciplinary decision;

(9) Failure to report in writing to the department any change in accreditation status by any accrediting agency;

(10) Failure to demonstrate or maintain a record of financial integrity; or

(11) Violating any provision of this chapter or rules adopted hereunder.

(b) It shall be a violation of this chapter for a private college or university, seminary, or religious training institution or its agent to:

(1) Make or cause to be made any statement or representation, oral, written, or visual, in connection with the offering of educational services if the private college or university, seminary, or religious training institution or its agent knows or reasonably should have known the statement or representation to be false, inaccurate, or materially misleading;

(2) Falsely represent or deceptively conceal, directly or by implication, through the use of a trade or business name, the fact that the institution is a private college or university, seminary, or religious training institution;

(3) Adopt a name, trade name, or trademark that represents falsely, directly or by implication, the quality, scope, nature, size, or integrity of the private college or university, seminary, or religious training institution or its educational services;

(4) Intentionally and materially represent falsely, directly or by implication, that students who successfully complete a course or program of instruction may transfer the credits earned to any institution of higher education;

(5) Intentionally and materially represent falsely, directly or by implication, in its promotional materials or in any other manner:

(A) Its size, location, facilities, or equipment;

(B) The number, educational experience, or qualifications of its faculty;

(C) The extent or nature of any approval received from any state agency; or

(D) The extent or nature of any accreditation received from any accrediting agency, body, or association;

(6) Provide prospective students with testimonials, endorsements, or other information that has the tendency to mislead or deceive prospective students or the public regarding its current practices;

(7) Designate or refer to its sales representatives by titles that imply that the sales representatives have training in academic counseling or advising if they do not; and

(8) Represent, directly or by implication, that it is authorized by the State or approved or accredited by an accrediting agency or body when it has not been authorized, approved, or accredited.

(c) Any private college or university, seminary, or religious training institution or its agent that violates this chapter may be subject to one or more of the following sanctions:

(1) A fine equal to a sum of not less than $500 or more than $10,000 for each violation. The penalties provided in this subsection are cumulative to the remedies or penalties available under all other laws of this State. Each day that a violation occurs shall be considered a separate violation;

(2) An order directing corrective action on the part of the institution;

(3) An order of restitution to one or more affected students;

(4) Revocation, suspension, probation, or conditions on the institution's authorization;

(5) An order relating to cessation of operations or alternate enrollment; or

(6) The payment of costs of investigation and legal action, irrespective of the outcome.

[§305J-11.5] Opportunity for administrative hearing. An institution may, within fifteen days of the receipt of notification of denial or of intent to suspend or terminate any authorization, request an administrative hearing for review pursuant to chapter 91.

[§305J-12] Requirements to maintain authorization. (a) Authorization by the director shall be conditioned on the maintenance of accreditation by the institution and compliance with section 305J-14. Authorization shall be automatically suspended effective as of the date of the cancellation or expiration of accreditation or the cancellation or expiration of the surety bond if a

surety bond was filed with the department. The director shall not reinstate the affected institution until satisfactory proof of compliance is submitted to the department. Failure to reinstate a suspended authorization within sixty days of suspension shall result in the termination of the authorization, and the institution shall forfeit all fees and shall be required to apply for authorization as a new applicant.

(b) An institution's authorization shall be placed on probationary status without further action by the department in the event that:

(1) The institution is placed on probationary status by its accrediting agency, contemporaneous with the action of such agency;

(2) The institution's accrediting agency ceases to be recognized by the United States Department of Education; or

(3) In the case of a seminary or religious training institution, the seminary or religious training institution no longer meets the definition of such under this chapter.

(c) An institution may, within fifteen days of the receipt of the notification of probation under this section, request an administrative hearing for review pursuant to chapter 91.

(d) If an institution's authorization is revoked due to the institution's loss of accreditation, the institution shall provide written notice to all students within thirty days following the date of revocation.

(e) A private college or university, seminary, or religious training institution that is authorized pursuant to this chapter shall:

(1) Not make or cause to be made any oral, written, or visual statement or representation that violates section 305J-11(b);

(2) Provide the department with a copy of its enrollment agreement, if applicable, in accordance with its reauthorization schedule;

(3) Provide bona fide instruction, in accordance with the standards and criteria set by its accrediting body; and

(4) If its ownership changes, provide the department with any material information concerning the transaction at least thirty days prior to the transaction.

[§305J-13] Deposit of records upon discontinuance. (a) If a private college or university, seminary, or religious training institution under the jurisdiction of the department ceases operating within the State, the institution, its owner, or the owner's designee, and its governing board shall be jointly and severally liable to deposit with the department the institution's educational records requested by the department in a form to be prescribed by the director.

(b) If the director determines that the records of a private college or university, seminary, or religious training institution that ceases operating within the State are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the department, the director may seek a court order authorizing the department to seize or take possession of the records and seek additional relief as may be appropriate.

(c) The director or the department of the attorney general may enforce this section by filing a request for an injunction with a court of competent jurisdiction.

(d) The department shall permanently retain any student transcripts received pursuant to this section in a form prescribed by the director. The department shall retain any other records requested and obtained pursuant to this section for a time period prescribed by the director;

provided that at the time of disposal, the department shall dispose of the records in a manner that will adequately protect the privacy of any personal information included in the records.

(e) For the purposes of this section, "private college or university" shall not include public, out-of-state institutions.

(f) Nothing in this section shall prohibit the department from contracting with any third party for the storage and maintenance of any records required to be deposited with the department pursuant to this section.

§305J-14 Financial integrity; surety bond. (a) A private college or university shall provide evidence of financial integrity at the time of its application for authorization. A private college or university may demonstrate financial integrity by meeting the criteria specified in [subsection] (b), (c), or (d).

(b) A private college or university may demonstrate financial integrity if it:

(1) Has been accredited for at least ten years;

(2) Has operated continuously in the State for at least ten years;

(3) Has not filed for bankruptcy protection pursuant to title 11 of the United States Code;

(4) Maintains a composite score of at least 1.5 on its equity, primary reserve, and net income ratios, as required in title 34 Code of Federal Regulations section 668.172; and

(5) Meets or exceeds the pro rata refund policies required by the United States Department of Education in title 34 Code of Federal Regulations part 668; provided that if it does not participate in federal financial aid programs, its refund and termination procedures shall comply with the requirements of its accrediting body; provided that a private college or university is not required to meet the criteria specified in paragraphs (1) and (2) if the private college or university is part of a group of private colleges or universities that is owned and operated by a common owner and the other private colleges and universities meet the criteria specified in paragraphs (1) and (2).

(c) A private college or university may also demonstrate financial integrity if it:

(1) Has received and maintains full accreditation without sanction from an accrediting body that is recognized by the United States Department of Education, and which accrediting body requires the private college or university to maintain a surety bond or an escrow account or has affirmatively waived or otherwise removed that requirement for the private college or university;

(2) Operates an instructional facility in the State;

(3) Annually provides to the department audited financial statements for the most recent fiscal year that demonstrate that the private college or university maintains positive equity;

(4) Maintains a composite score of at least 1.5 on its equity, primary reserve, and net income ratios, as required in title 34 Code of Federal Regulations section 668.172; and

(5) Meets or exceeds the pro rata refund policies required by the United States Department of Education in title 34 Code of Federal Regulations part 668; provided

that if it does not participate in federal financial aid programs, its refund and termination procedures shall comply with the requirements of its accrediting body.

(d) If a private college or university cannot demonstrate financial integrity as provided in subsections (b) and (c), the private college or university shall file with the director a surety bond in favor of the State in an amount described under subsection (f) prior to receiving authorization under this chapter. The surety bond shall be executed by the private college or university as the principal by a surety company authorized to do business in the State and shall run concurrently with the authorization period and any period of reauthorization, unless terminated or canceled by the surety company.

(e) The surety bond under subsection (d) shall be conditioned to provide indemnification to any student or enrollee, or to any parent or legal guardian of a student or enrollee, whom the director finds to have suffered a loss of tuition or fees as a result of any act or practice that is a violation of this chapter and to provide alternative enrollment as provided in section 305J-15 for students enrolled in a private college or university that ceases operation.

(f) The amount of the surety bond that a private college or university submits pursuant to subsection (d) shall be the greater of $50,000 or an amount equal to a reasonable estimate of the maximum prepaid, unearned tuition and fees of the private college or university, excluding prepaid tuition revenue that consists of government grants or federal student loans and grants authorized under title IV of the Higher Education Act of 1965, 20 United States Code 1070 et seq. for the period or term during the applicable academic year for which programs of instruction are offered, including but not limited to programs offered on a semester, quarter, monthly, or class basis; provided that the private college or university shall use the period or term of greatest duration and expense in determining this amount if its academic year consists of one or more periods or terms. Following the initial filing of the surety bond with the department, the private college or university shall recalculate the amount of the surety bond annually based on a reasonable estimate of the maximum prepaid, unearned tuition and fees received by the institution for the applicable period or term.

(g) The authorization for a private college or university shall be suspended by operation of law when it is no longer covered by a surety bond as required by this section. After receipt of a notice of cancellation from the surety, the department shall give written notice to the private college or university at its last-known address, at least forty-five days prior to the release of the surety bond, to the effect that the private college or university's authorization is suspended by operation of law until it files evidence of a surety bond in a like amount as the surety bond being released.

(h) The principal on a surety bond filed under the provisions of this section shall be released from the surety bond after the principal serves written notice thereof to the department at least sixty days prior to the release. The release shall not discharge or otherwise affect a claim filed by a student or enrollee or the student or enrollee's parent or legal guardian pursuant to section 305J-15 for a loss of tuition or fees that occurred while the surety bond was in effect or that occurred under any note or contract executed during any period of time when the surety bond was in effect, except when another surety bond is filed in a like amount and provides indemnification for any such loss.

(i) Each private college or university that files a surety bond pursuant to this section shall provide in a report to the department annual verification of continued coverage as required by this section no later than January 1 of each year.

(j) A seminary or religious training institution shall not be subject to the requirements of this section.

[§305J-15] Claims against a private college or university; cessation of operation; alternative enrollment. (a) A student or enrollee, or a parent or legal guardian of the student or enrollee, who claims loss of tuition or fees as a result of cessation of operations may file a claim with the department if the claim results from an act or practice that violates a provision of this chapter. Claims that are filed with the department shall be public records and subject to the provisions of chapter 92F; provided that the department shall not make the records public if the release would violate a federal privacy law.

(b) If a private college or university ceases operation, the director may make demand on the surety bond upon the demand for a refund by a student or the parent or legal guardian of a student or the implementation of alternative enrollment for the students enrolled in the institution, and the principal on the surety bond filed pursuant to section 305J-14(d) shall pay the claim due in a timely manner. To the extent practicable, the director shall use the amount of the surety bond to provide alternative enrollment for students of the institution that ceases operation through a contract with another authorized private college or university, the University of Hawaii system, an area vocational school, or any other arrangement that is acceptable to the department. The alternative enrollment provided to a student shall replace the original enrollment agreement, if any, between the student and the private college or university; provided that the student shall make tuition and fee payments as required by the original enrollment agreement, if any.

(c) A student who is enrolled in a private college or university that ceases operation and who declines the alternative enrollment required to be offered pursuant to subsection (b) may file a claim with the department for the student's prorated share of the prepaid, unearned tuition and fees that the student paid, subject to the limitations of subsection (d). The department shall not make a subsequent payment to a student, unless the student submits proof of satisfaction of any prior debt to a financial institution in accordance with rules adopted by the director.

(d) If the amount of the surety bond filed under section 305J-14(d) is less than the total prepaid, unearned tuition and fees that have been paid by students at the time that the private college or university ceases operation, the department shall prorate the amount of the surety bond among the students.

(e) This section shall apply only to those students enrolled in the private college or university at the time it ceases operation, and once a private college or university ceases operation, no new students shall be enrolled therein.

(f) The director shall determine whether offering alternative enrollment for students enrolled in an authorized private college or university that ceases operation is practicable without the federal government's designation of the department as trustee for student loans, Pell grants, and other student financial aid assistance.

(g) If a private college or university ceases to operate in the State, the department of the attorney general may file a claim against the private college or university to recover restitution for the enrolled students of the private college or university.

(h) A seminary or religious training institution shall not be subject to the requirements of this section.

[§305J-16] Reciprocity. The director may enter into any post-secondary education authorization reciprocity agreement; provided that the authorization standards of the reciprocity agreement shall be comparable to or exceed the authorization requirements of this chapter and any applicable administrative rules.

[§305J-17] Complaints; injunctive proceedings. (a) A student or former student of the University of Hawaii system, a private college or university, seminary, or religious training institution may file a complaint with the department concerning the institution at which the student is or was enrolled; provided that if a former student files a complaint, the complaint shall be filed within two years after the former student discontinued enrollment at the institution; provided that the two year restriction on complaints shall not apply to complaints related to obtaining transcripts.

(b) The department may investigate complaints based on possible violations of this chapter or rules adopted hereunder. The department may initiate and investigate complaints based on information the department receives concerning possible violations of this chapter or rules adopted hereunder.

(c) Nothing in this section shall give the department jurisdiction to consider complaints that infringe on the academic or religious freedom of, or question the curriculum content of, a private college or university, seminary, or religious training institution.

(d) Upon receipt of a complaint pursuant to [subsection] (a) or (b), the department shall determine whether the complaint was properly filed. The complaint shall warrant investigation only after the student or former student has exhausted all administrative remedies available at the University of Hawaii system, private college or university, seminary, or religious training institution; provided that if the complaint involves a violation of state or federal criminal law, this requirement shall not apply. If a complaint warrants investigation, the department shall forward the complaint to the University of Hawaii system, private college or university, seminary, or religious training institution. The University of Hawaii system, private college or university, seminary, or religious training institution shall have thirty days to respond in writing to the complaint. During the thirty-day period, the University of Hawaii system, private college or university, seminary, or religious training institution, with the department's assistance, may attempt to resolve the complaint with the student. If the department determines at any time that the complaint no longer warrants investigation, the department shall dismiss the complaint.

(e) If a complaint is not resolved within the thirty-day period, the department may:

(1) Dismiss the complaint based on the response of the University of Hawaii system, private college or university, seminary, or religious training institution;

(2) Investigate and, where appropriate, take disciplinary action in a manner consistent with chapter 91.

[§305J-18] Fees; public hearing. (a) An institution applying for authorization shall pay $10,000 to the department upon application for authorization under this chapter and every two years thereafter upon application for reauthorization.

(b) The director may assess fees as provided in this chapter and, notwithstanding any other law to the contrary, may change the amount of the fees required by this section at any time without regard to chapter 91, if the director:

(1) Holds at least one public hearing to discuss and take testimony on the proposed fee change; and

(2) Provides public notice at least thirty days prior to the date of the public hearing.

(c) Fees collected pursuant to this section shall be deposited into the post-secondary education authorization subaccount established pursuant to section 26-9(o).

[§305J-19] Post-secondary education authorization special subaccount. (a) All moneys collected pursuant to section 305J-18 shall be deposited into the post-secondary education authorization special subaccount of the compliance resolution fund established pursuant to section 26-9(o).

(b) Any law to the contrary notwithstanding, the moneys in the special subaccount shall be used to fund the operations of the department to carry out its duties under this chapter. Any law to the contrary notwithstanding, the director may use the moneys in the special subaccount to employ personnel to carry out the department's duties under this chapter. The moneys in the special subaccount may be used to train personnel as the director deems necessary and for any other activity related to this chapter.