

MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN  
2008 (SECOND) Regular Session

2008 NOV 20

Bill No. 390 (LS)

Introduced by:

F.T. Ishizaki *efsm*  
J.T. Won Pat *A*

AN ACT TO RE-ENACT CHAPTER 44 OF TITLE 17 OF  
THE GUAM CODE ANNOTATED, RELATIVE TO THE  
CREATION OF THE "COUNCIL ON POSTSECONDARY  
INSTITUTION CERTIFICATION"

1 BE IT ENACTED BY THE PEOPLE OF GUAM:

2 Section 1. Chapter 44 of Title 17 of the Guam Code Annotated is here by *re-enacted*  
3 to read:

4 "Chapter 44

5 PRIVATE POSTSECONDARY INSTITUTIONS

- 6 §44101. Legislative Findings and Intent.  
7 §44102. Definitions.  
8 §44103. Exemptions.  
9 §44104. Council on Postsecondary Institution Certification.  
10 §44105. Private Postsecondary Institutions: Certification.  
11 §44105.1. Private Postsecondary Institutions: Certification Period, Renewal.  
12 §44105.2. Private Postsecondary Institutions: Institutional Closure.  
13 §44106. Fair Consumer Practice.  
14 §44107. Violations and Penalties.  
15 §44108. Severability.

16  
17 §44101. Legislative Findings and Intent.

18 *I Liheslaturan Guahan* finds that there are several private postsecondary  
19 institutions that have been established on the island. *I Liheslatura* recognizes that

1 educational credential serves several purposes to which employers rely upon in  
2 judging such person's qualifications for employment and for educators to assess the  
3 adequacy of such person's preparation for the pursuit of further education. An  
4 important tool in process of providing a substantial and adequate education has  
5 been removed by a previous legislature. It is further found that the need for  
6 educational services is so great that it cannot be met by tax-supported institutions  
7 alone. The contribution of educational institutions is needed for the growth of our  
8 island as a progressive community. This can be best achieved by protecting the  
9 integrity of degrees and diplomas issued by educational institutions on our island  
10 through an evaluation of minimum education requirements.

11 It is the intent of *I Liheslatura* to encourage privately supported education, as  
12 well as to protect the integrity of degrees and diplomas conferred by privately- and  
13 publicly-supported education institutions. *I Liheslatura* further intends to prohibit  
14 the granting of false or misleading educational credentials and to prohibit  
15 misleading literature, advertising, solicitation, or representations by private  
16 postsecondary institutions or their agents.

17  
18 **§44102. Definitions.**

19 As used in this Chapter, the following terms apply:

- 20 (a) 'Accreditation' means accredited status awarded to an institution by  
21 an accrediting agency or association that is recognized by the United  
22 States Department of Education and that has standards comparable to  
23 the minimum standards required to operate an educational institution  
24 at that level in this Territory.
- 25 (b) 'Agent' means any person who, at a place away from the principal  
26 school premises or site of instruction, whose primary task is to serve as  
27 a paid recruiter, while owning an interest in, employed by or  
28 representing for remuneration or other consideration a private

1 postsecondary educational institution offers or attempts to secure  
2 enrollment of any person within the Territory of Guam and accepts  
3 application fees or admission fees for education in an institution.

4 (c) 'Avocational' means a course or program the objective of which is not  
5 occupational but is only for personal enrichment or enjoyment. To be  
6 classified as avocational, a program must:

7 i. Prior to enrollment, provide to each enrollee, and maintain a record  
8 copy of, a written statement that includes the following or  
9 substantially similar language: "This program is not designed or  
10 intended to qualify its participants and graduates for employment.  
11 It is solely for the avocation, personal enrichment, and enjoyment  
12 of its participants."

13 ii. Not make any other verbal or written statement that negates the  
14 required written statement by stating or implying that people who  
15 enroll in or complete the program have a more substantial  
16 likelihood of obtaining employment in the field to which the  
17 training pertains than people who do not.

18 (d) 'Council' means the Council on Postsecondary Institution Certification  
19 established by §44104 of this Chapter.

20 (e) 'Degree' means any academic degree or honorary degree or title of any  
21 designation, mark, appellation, series of letters or words such as, but  
22 not limited to, associate, bachelor, master, doctor or fellow which  
23 signified, purports or is generally taken to signify satisfactory  
24 completion of the requirements of an academic, educational,  
25 technological or professional program of study beyond the secondary  
26 school level or is an honorary title conferred for recognition of some  
27 meritorious achievement.

28 (f) 'Diploma' means any diploma, certificate, transcript, document or

1 other writing which indicates enrollment in or completion of a course  
2 of study other than a degree.

3 (g) Education or education services includes, but is not limited to, any  
4 class, course or program of training, instruction or study.

5 (h) 'In-service, continuing education, or professional development' means  
6 training provided by:

7 i. A trade or professional association or a group of employers in the  
8 same or related business who offer training and provide only  
9 professional development programs to bona fide employees or  
10 contractors of an employer who is a member of the association or  
11 employers who qualify for membership;

12 ii. A labor union or group of labor unions that offer training to and  
13 trains only those persons who are dues-paying members of the  
14 participating labor union;

15 iii. An independent contractor engaged by the labor union or group of  
16 labor unions, by written contract, to provide the training on its  
17 behalf exclusively to those who are selected by the labor union or  
18 group of labor unions that engaged the contractor and who are  
19 dues-paying members of that union; or

20 iv. A person or entity offering only continuing education programs to  
21 persons who engage in an occupation or profession whose  
22 practitioners are subject to licensure, certification, or registration by  
23 a state agency that recognizes the programs for continuing  
24 education purposes and provides a written statement of the  
25 recognition.

26 (i) 'Out-of-territory college/university' or 'out-of-territory school' means  
27 any private postsecondary educational institution where the place of  
28 instruction, the legal place of residence, or the place of evaluation of

1 instruction or work by correspondence or distance education is not  
2 within the legal boundaries of this Territory.

3 (j) 'To offer' includes, in addition to its usual meanings, advertising,  
4 publicizing, soliciting or encouraging any person, directly or  
5 indirectly, in any form, to perform the act described.

6 (k) 'To operate an educational institution', or like term, means to establish,  
7 keep, or maintain any facility or location in this Territory where, from  
8 or through which services are offered or educational degrees or  
9 diplomas are offered or granted.

10 (l) 'Private Postsecondary Institution' or 'institution' means any  
11 nonpublic postsecondary noncollegiate educational institution,  
12 association, corporation, person, partnership, or organization of any  
13 type which:

- 14 i. Offers to provide or provides any complete, or substantially  
15 complete, postsecondary program of instruction through the  
16 student's personal attendance; in the presence of an instructor; in a  
17 classroom, clinical, or other practicum setting; or through  
18 correspondence or other distance education;
- 19 ii. Represents, directly or by implication, that the instruction will  
20 qualify the student for employment in an occupation for which a  
21 degree is not required in order to practice in this Territory;
- 22 iii. Receives remuneration from the student or any other source based  
23 on the enrollment of a student or the number of students enrolled;  
24 or
- 25 iv. Offers to award or awards a diploma, regardless of whether it  
26 conducts instruction or receives remuneration.
- 27

28 **§44103. Exemptions.**

1           The following education and educational institutions are exempted from the  
2 provisions of this Chapter:

- 3           (a) Education solely vocational or recreational in nature, as determined by  
4 the Council;
- 5           (b) A nonprofit institution owned, controlled and operated and  
6 maintained by a bona fide church or religious denomination if such  
7 education is limited to instructions in the principles of that church or  
8 denomination or to courses offered for the purpose of training the  
9 adherents of such church or denomination in the care of the sick in  
10 accordance with its religious tenets and the diploma or degree is  
11 limited to evidence of completion of that education, and the  
12 meritorious recognition upon which any honorary degree is conferred  
13 is limited to the principles of that church or denomination.
- 14           (c) Postsecondary education institutions established, operated and  
15 governed by the government of Guam.
- 16           (d) Education sponsored by a bona fide trade, business, professional or  
17 fraternal organization which is recognized by the Council as being  
18 solely for that organization's membership and offered at no charge for  
19 the persons taking the course.
- 20           (e) Institutions exclusively offering instruction at any or all levels from  
21 preschool through twelfth grade.
- 22           (f) Any postsecondary educational course or program of study offered by  
23 an institution of higher education at a United States military post or  
24 reservation when that course or program is open *only* to military  
25 personnel, their dependents, or civilians employed by that military  
26 post or reservation.
- 27           (g) Tutorial instruction delivered and designed to supplement regular  
28 classes for students enrolled in any public or private school or to

1                   prepare an individual for an examination for professional practice or  
2                   higher education.  
3

4       **§44104. Council on Postsecondary Institution Certification.**

5       (a)   **Establishment, Powers and Duties.** There is within the government of Guam  
6       the Council on Postsecondary Institution Certification that shall authorize the  
7       granting of diplomas and degrees by any private, nonpublic postsecondary  
8       institution operating on Guam. The Council shall exercise independently all  
9       powers, duties, and functions prescribed by law. The Council shall function  
10      in matters concerning independent postsecondary institutions in consumer  
11      protection, program improvement, and certification for private postsecondary  
12      institutions prescribed in this Chapter. The Council shall:

- 13      (1)   Establish minimum criteria including quality of education, ethical and  
14      business practices, health and safety and fiscal responsibility, which  
15      applicants for authorization to offer or operate education services or  
16      grant degrees or diplomas as a postsecondary education institution or  
17      for an agent's certification, shall meet before such authorization or  
18      certification may be issued, and to continue such authorization or  
19      certification in effect. Criteria to be developed hereunder shall be such  
20      as will effectuate the purposes of this Chapter but will not  
21      unreasonably hinder legitimate education innovation.
- 22      (2)   Establish rules for the approval of modified or additional programs,  
23      degrees, and locations.
- 24      (3)   Receive, investigate, and act upon applications for authorization or  
25      approval to operate educational institution and application for agent's  
26      permit.
- 27      (4)   Inform private postsecondary institutions operating in the Territory of  
28      Guam of laws adopted by *I Liheslaturan Guåhan*, and rules and

1 regulations adopted by the Council and of their responsibility to  
2 follow those laws and rules and regulations.

3 (5) Establish procedures for receiving and responding to complaints from  
4 students, faculty, and others concerning institutions or programs  
5 under the purview of the Council, and keep records of such complaints  
6 in order to determine the frequency and nature of complaints with  
7 respect to specific institutions of higher education.

8 (6) Establish procedures and criterion for application by means of  
9 accreditation.

10 (7) Establish procedures for conducting periodical assessments on each  
11 certified institution to determine if such is in compliance with this  
12 Chapter. The Council may extend an annual or provisional  
13 certification if a good faith effort has been made by the institution. The  
14 Council shall determine what constitutes compliance or a good faith  
15 effort and may adopt rules to administer this provision.

16 (8) Develop minimum standards by which to evaluate institutions for  
17 certification. These standards must include at least the institution's  
18 name, financial stability, purpose, administrative organization,  
19 admission and recruitment, education programs and curricula,  
20 retention, completion, career placement, faculty, learning resources,  
21 student personnel services, physical plant and facilities, publications,  
22 and disclosure statements about the status of the institution with  
23 respect to professional certification and licensure. The Council may  
24 adopt rules to ensure that institutions certified under this Chapter  
25 meet these standards in ways that are appropriate to achieve the stated  
26 intent of this Chapter, including provisions for nontraditional or  
27 distance education programs and delivery.

28 (9) Establish rules to ensure the protection of students, including rules

1                    establishing fair consumer practices pursuant to §44106 of this  
2                    Chapter.

3                    (10) Establish rules to protect students from the detriment caused by  
4                    certified institutions that cease operation without providing for proper  
5                    completion of student training or for the appropriate refund of student  
6                    fees. Rules may be established to exercise control over student records  
7                    upon closure of a certified institution if the institution does not provide  
8                    an orderly closure.

9                    (11) Recognize an institution based on the institution's highest educational  
10                    offering and shall adopt rules for certification that include reporting  
11                    requirements for each level of certification.

12                    (12) Serve as a central body for collecting and distributing current  
13                    information regarding institutions certified by the Council.

14                    (13) Make rules for its own governance.

15                    All rules, regulations, and fees established by the Council as necessary to  
16                    implement the provisions of this Chapter shall be subject to Chapter 9 of Title  
17                    5 of the Guam Code Annotated (the Administrative Adjudication Law). The  
18                    Council in its entirety is subject to all laws applicable on Guam to include  
19                    Chapters 8 and 10 of Title 5 of the Guam Code Annotated (the Open  
20                    Government Law and the Freedom of Information Act Law, respectively).

21                    (b) The Council may:

22                    (1) Appoint standing or special committees to assist it in carrying out its  
23                    responsibilities. Committees may include members who are not Council  
24                    members or representatives of certified postsecondary institutions.

25                    (2) Sue or be sued.

26                    (3) Advise *I Maga'lahren* and *I Liheslatura* on issues relating to private  
27                    postsecondary education.

28                    (4) Assist private postsecondary institutions in formulating articulation

1 agreements with public and other independent institutions.

2 (5) Establish fees for the following:

3 (i) Application for Certification.

4 (ii) Application for Renewal of Certification.

5 (iii) Late fees for an institution's failure to timely submit required  
6 materials.

7 (6) Take such legal action as it deems necessary to cause the owners,  
8 directors, or administrators of private postsecondary institutions to  
9 refrain from offering any part or all of such educational programs  
10 which the Council shall have found to be inadequate.

11 (7) Refer matters it deems appropriate to the Office of the Attorney  
12 General for investigation and prosecution.

13 (c) **Membership.** The Council shall consist of seven (7) members who are bona  
14 fide residents of the Territory of Guam. The membership shall consist of:

15 (1) The President of the University of Guam, or his appointed designee;

16 (2) The President of the Guam Community College, or his appointed  
17 designee;

18 (3) The Superintendent of the Guam Public School System, or his  
19 appointed designee;

20 (4) The Director of the Department of Labor, or his appointed designee;

21 (5) A Chairman appointed by *I Maga'lahaen Guåhan*, with the advice and  
22 consent of *I Liheslaturan Guåhan*; and

23 (6) Two (2) at-large members appointed by *I Maga'lahaen Guåhan*, with the  
24 advice and consent of *I Liheslaturan Guåhan*, with backgrounds in  
25 education and business, respectively, who are not affiliated with any  
26 institution of higher education.

27 (i) Members appointed by *I Maga'lahaen* shall serve for a term of  
28 three (3) years and until their successors are appointed and

1 confirmed. Such members shall not be required to submit  
2 courtesy resignations should there be a change in  
3 administration. Should a vacancy occur before the expiration of  
4 a term, *I Maga'laha*n shall appoint a successor to serve the  
5 unexpired portion of the term. Designees appointed by the  
6 President of the University of Guam, the President of the Guam  
7 Community College, the Superintendent of the Guam Public  
8 School System, and/or the Director of the Department of Labor  
9 shall serve a term as designated by their appointing authority.

10 (ii) Members appointed by the Governor shall receive a stipend of  
11 fifty dollars (\$50.00) per official meeting.

12 (d) **Meetings.** The Council shall determine the time and place of Council  
13 meetings which shall not be fewer than four (4) times in each calendar  
14 year. Five (5) members shall constitute a quorum and all actions, with the  
15 exception of those regarding the operating procedures of the Council, shall be  
16 adopted according to the affirmative vote of the majority of Members present  
17 and shall be in writing.

18 (e) **Administrative Support.** The Council shall be administratively supported by  
19 the Staff of the Guam Commission for Educator Certification, whose  
20 administrative office shall hereby be called, "*the Guam Certification Office*".

21 (f) **Fees.** The Council shall retain all fees collected and use such fees for its  
22 operations. Fifty percent (50%) of its fees collected shall be used for the  
23 administrative function of the Guam Certification Office.

24 (g) **Website.** The Council shall maintain a website that shall contain rules,  
25 regulations, and fees as established and adopted by the Council pursuant to  
26 this Chapter. The website shall also contain, but not limited to, the following:

- 27 (i) procedure and application for certification;  
28 (ii) list of applications received by the Council;

- (iii) list of rejected applications;
- (iv) list of all actions taken by the Council;

**§44105. Private Postsecondary Institutions: Certification.**

- (a) Each private postsecondary institution operating within the Territory of Guam must obtain certification from the Council.
- (b) Each certified institution is solely responsible for notifying the Council in writing of the institution's current mailing address and the location of the institution. A certified institution's failure to notify the Council of a change of address constitutes a violation of this paragraph, and may be disciplined by the Council. Notwithstanding any other provision of law, service by regular mail to the last known address of record with the Council constitutes adequate and sufficient notice for any official communication to and by the Council.
- (c) Provisional certification shall be granted to an applicant for initial certification for a period not to exceed one (1) year when the Council determines that the applicant is in substantial compliance with the standards for certification. A provisional certification granted for initial certification may be extended for up to one (1) additional year. A certified institution that has undergone a substantive change, as defined by rule, must be granted a provisional certificate for a period of time determined by the Council, after which period the institution may apply for a different status. A provisional certificate may include conditions required by the Council, and all conditions must be met before the institution may receive a different certification status.
- (d) The Council shall ensure through an investigative process that applicants for certification meet the standards as defined in rule. When the investigative process is not completed within the time set out in rule and the Council has reason to believe that the applicant does not meet certification standards, the

1 Council may issue a ninety- (90-) day certification delay, which shall be in  
2 writing and sufficient to notify the applicant of the reason for the delay.

- 3 (e) All materials submitted by an institution in its application for approval or in  
4 response to a request by the Council for pertinent information shall be subject  
5 to Chapter 10 of Title 5 of the Guam Code Annotated (the Freedom of  
6 Information Act) and shall be available for public inspection in accordance  
7 with the provisions of Guam law.

8  
9 **§44105.1. Private Postsecondary Institutions: Certification Period, Renewal.**

- 10 (a) An institution may not conduct a program unless specific authority is granted  
11 in its certification.
- 12 (b) A certificate granted by the Council is not transferable to another institution  
13 or to another agent, and an institution's certificate does not transfer when the  
14 institution's ownership changes without the approval of the Council.
- 15 (c) Should a change in ownership or control of a certified institution take place,  
16 notification must be made to the Council prior to the change. The Council  
17 shall adopt procedures for interim executive approval of a change of  
18 ownership or control if the next scheduled meeting of the Council occurs after  
19 the scheduled date of the change of ownership or control.
- 20 (d) A private postsecondary institution or any person acting on behalf of such an  
21 institution may not publish any advertisement soliciting students or offering  
22 credential before the institution is duly certified by the Council or while the  
23 institution is under an injunction against operating, soliciting students, or  
24 offering and educational credential.
- 25 (f) The Council shall have the power to inspect, in a lawful manner at all  
26 reasonable hours, any applicant for certification or certified private  
27 postsecondary institution.
- 28 (g) A certified private postsecondary institution that seeks to expand or modify

1           its programs or degrees to be conferred or to add new locations must seek  
2           prior approval from the Council.

- 3           (h) The Council may not grant or renew a certificate unless the institution  
4           seeking the action provides the Council with a sworn statement of  
5           compliance with rules regarding fair consumer practices.

6  
7           **§44105.2. Private Postsecondary Institutions: Institutional Closings.**

8           At least thirty (30) days prior to closing an institution, its owners, directors, or  
9           administrators shall notify the Council in writing of the closure of the institution. An  
10          owner, director, or administrator who violates this provision, or who fails to organize the  
11          orderly closure of the institution commits a misdemeanor of the second degree. The  
12          Council may exercise control over student records upon closure of a certified institution if  
13          the institution does not provide an orderly closure.

14          The Council may require the institution to convey all student records to the Council  
15          office or another location designated by the Council and shall make copies of records  
16          available to bankruptcy trustees upon request and to the student or those designated by the  
17          student. Confidentiality of the records shall be maintained to the extent required by law.  
18          The Council may seek civil penalties not to exceed ten thousand dollars (\$10,000) from any  
19          owner, director, or administrator of an institution who knowingly destroys, abandons, or  
20          fails to convey or provide for the safekeeping of institutional and student records.

21  
22          **§44106. Fair Consumer Practices.**

23          Every institution that is under the jurisdiction of the Council or is exempt from the  
24          jurisdiction or purview of the Council pursuant to §44103 of this Chapter and that either  
25          directly or indirectly solicits for enrollment of any student shall:

- 26          (a) Disclose to each prospective student a statement of the purpose of such  
27          institution, its educational programs and curricula, a description of its  
28          physical facilities, its status regarding certification, its fee schedule and

1 policies regarding retaining student fees if a student withdraws, and a  
2 statement regarding the transferability of credits to and from other  
3 institutions. Every institution, private and public, shall make the required  
4 disclosures in writing at least one (1) week prior to enrollment or collection of  
5 any tuition from the prospective student. The required disclosures may be  
6 made in the institution's current catalog;

- 7 (b) Use a reliable method to assess, before accepting a student into a program,  
8 the student's ability to complete successfully the course of study for which he  
9 or she has applied;
- 10 (c) Inform each student accurately about financial assistance and obligations for  
11 repayment of loans; describe any employment placement services provided  
12 and the limitations thereof; and refrain from promising or implying  
13 guaranteed placement, market availability, or salary amounts;
- 14 (d) Provide to prospective and enrolled students accurate information regarding  
15 the relationship of its programs to state certification requirements for  
16 practicing related occupations and professions in Guam;
- 17 (e) Ensure that all advertisements are accurate and not misleading;
- 18 (f) Publish and follow an equitable prorated refund policy for all students, and  
19 follow both the federal refund guidelines for students receiving federal  
20 financial assistance and the minimum refund guidelines set by Council rule;
- 21 (g) Follow the requirements of Guam and federal laws that require annual  
22 reporting with respect to crime statistics and physical plant safety and make  
23 those reports available to the public; and
- 24 (h) Publish and follow procedures for handling student complaints, disciplinary  
25 actions, and appeals.

26 In addition, institutions that are required to be certified by the Council shall disclose  
27 to prospective students that additional information regarding the institution may be  
28 obtained by contacting the Council on Postsecondary Institution Certification.

1  
2 **§44107. Violations and Penalties.**

- 3 (a) Each of the following acts constitutes a misdemeanor in the second degree:
- 4 (2) Operating a private postsecondary institution without a valid, active  
5 certificate issued pursuant to this Chapter.
- 6 (3) Obtaining or attempting to obtain a certificate to operate an institution  
7 by fraudulent misrepresentation.
- 8 (4) Using or attempting to use a certificate that has been suspended or  
9 revoked.
- 10 (5) Falsifying or attempting to falsify or destroying or attempting to  
11 destroy school or other business records relating to the operation of the  
12 school with the intent to defraud.
- 13 (b) Each of the following acts constitutes a misdemeanor in the third degree:
- 14 (1) Knowingly concealing information relating to violations of this  
15 Chapter.
- 16 (2) Willfully making any false oath or affirmation when required to make  
17 an oath or affirmation pursuant to this Chapter.
- 18 (c) Each degree, diploma, certificate, program, or course of study offered or  
19 conferred in violation of this Chapter shall constitute a separate offense.
- 20 (d) A student injured by a violation of this Chapter may bring an action against  
21 the owner, director, or administrator of a certified private postsecondary  
22 institution for actual damages. A court may, in its discretion, award  
23 reasonable attorney's fees to the prevailing plaintiff.
- 24

25 **§44108. Severability.** *If any provision of this Law or its application to any person or*  
26 *circumstance is found to be invalid or contrary to law, such invalidity shall not affect other*  
27 *provisions or applications of this Law which can be given effect without the invalid*  
28 *provisions or application, and to this end the provisions of this Law are severable."*