MINA' BENTE NUEBI NA LIHESLATURAN GUÅHAN
TWENTY-NINTH GUAM LEGISLATURE
155 Hessler Place, Hagåtña, Guam 96910

FILE COPY

December 31, 2008

OFFICE OF THE GOVERNOR
DEC 31 2008
TIME 3:10
CENTRAL FILES

The Honorable Felix P. Camacho
I Maga'lahen Guåhan
Ufisinan I Maga'lahi
Hagåtña, Guam 96910

Dear *Maga'lahi* Camacho:

Transmitted herewith are Bill Nos. 31(EC), 253(EC), 256(EC), 370(LS), 371(LS), 379(EC), 390(LS), 394(LS), & 403(LS); and Substitute Bill Nos. 225(LS), 248(LS), 305(EC), 314(EC), 368(LS), 389(LS) & 397(EC) which were passed by *I Mina'Bente Nuebi Na Liheslaturan Guåhan* on December 30, 2008.

Sincerely,

TINA ROSE MUNA BARNES
Senator and Secretary of the Legislature

Enclosures (16)

FILE COPY

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

CERTIFICATION OF PASSAGE OF AN ACT TO *I MAGA'LAHEN GUÅHAN*

This is to certify that **Bill No. 390 (LS), "AN ACT TO *RE-ENACT* CHAPTER 44 OF TITLE 17 OF THE GUAM CODE ANNOTATED, RELATIVE TO THE CREATION OF THE "COUNCIL ON POST-SECONDARY INSTITUTION CERTIFICATION,"** was on the 30th day of December, 2008, duly and regularly passed.

Judith T. Won Pat, Ed. D.
Speaker

Attested:

Tina Rose Muña Barnes
Senator and Secretary of the Legislature

This Act was received by *I Maga'lahen Guåhan* this 31 day of Dec, 2008, at 3:10 o'clock P.M.

Assistant Staff Officer
Maga'lahi's Office

APPROVED:

FELIX P. CAMACHO
I Maga'lahen Guåhan

Date: _____

Public Law No. _____

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

Bill No. 390 (LS)
As amended by the Committee on
Education, General and Omnibus
Affairs and further amended on the Floor.

Introduced by: Frank T. Ishizaki
J. T. Won Pat, Ed. D.
Tina Rose Muña Barnes
Judith P. Guthertz, DPA
Frank F. Blas, Jr.
Edward J.B. Calvo
B. J.F. Cruz
James V. Espaldon
Mark Forbes
J. A. Lujan
A. B. Palacios, Sr.
v. c. pangelinan
R. J. Respicio
Dr. David L.G. Shimizu
Ray Tenorio

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

BE IT ENACTED BY THE PEOPLE OF GUAM:

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

"**Chapter 44**

PRIVATE POST-SECONDARY INSTITUTIONS

§44101. Legislative Findings and Intent.

§44102. Definitions.

§44103. Exemptions.

§44104. Council on Post-secondary Institution Certification.

§44105. Private Post-secondary Institutions: Certification.

§44105.1. Private Post-secondary Institutions: Certification Period, Renewal.

§44105.2. Private Post-secondary Institutions: Institutional Closure.

§44106. Fair Consumer Practice.

§44107. Violations and Penalties.

§44108. Severability.

§44101. Legislative Findings and Intent. *I Liheslaturan Guahan* finds that there are several private postsecondary institutions that have been established on the island. *I Liheslatura* recognizes that educational credential serves several purposes to which employers rely upon in judging such person's qualifications for employment and for educators to assess the adequacy of such person's preparation for the pursuit of further education. An important tool in the process of providing a substantial and adequate education has been removed by a previous legislature. It is, further found that the need for educational services is so great that it cannot be met by tax-supported institutions alone. The contribution of educational institutions is needed for the growth of our island as a progressive community. This can be best achieved by protecting the integrity of degrees and diplomas issued by educational institutions on our island through an evaluation of minimum education requirements.

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

secondary institutions *or* their agents.

§44102. Definitions.

As used in this Chapter, the following terms apply:

(a) *Accreditation* means accredited status awarded to an institution by an accrediting agency *or* association that is recognized by the United States Department of Education and that has standards comparable to the minimum standards required to operate an educational institution at that level in this Territory.

(b) *Agent* means any person who, at a place away from the principal school premises *or* site of instruction, whose primary task is to serve as a paid recruiter, while owning an interest in, employed by *or* representing for remuneration *or* other consideration a private post-secondary educational institution offers *or* attempts to secure enrollment of any person within the Territory of Guam and accepts application fees *or* admission fees for education in an institution.

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

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

(2) Not make any other verbal *or* written statement that negates the required written statement by stating *or* implying that

people who enroll in *or* complete the program have a more substantial likelihood of obtaining employment in the field to which the training pertains than people who do *not*.

(d) *Council* means the Council on Post-secondary Institution Certification established by §44104 of this Chapter.

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

(f) *Diploma* means any diploma, certificate, transcript, document *or* other writing which indicates enrollment in *or* completion of a course of study other than a degree.

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

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

(1) A trade *or* professional association *or* a group of employers in the same *or* related business who offer training and provide only professional development programs to bona fide employees *or* contractors of an employer who is a member of the association *or* employers who qualify for membership;

(2) A labor union *or* group of labor unions that offer training to and trains only those persons who are dues-paying

members of the participating labor union;

(3) An independent contractor engaged by the labor union *or* group of labor unions, by written contract, to provide the training on its behalf exclusively to those who are selected by the labor union *or* group of labor unions that engaged the contractor and who are dues-paying members of that union; *or*

(4) A person *or* entity offering only continuing education programs to persons who engage in an occupation *or* profession whose practitioners are subject to licensure, certification, *or* registration by a state agency that recognizes the programs for continuing education purposes and provides a written statement of the recognition.

(i) *Out-of-territory college/university or out-of-territory school* means any private post-secondary educational institution where the place of instruction, the legal place of residence, *or* the place of evaluation of instruction or work by correspondence *or* distance education is *not* within the legal boundaries of this Territory.

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

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

(l) *Private Pos-secondary Institution* or *institution* means any nonpublic post-secondary non-collegiate educational institution,

association, corporation, person, partnership, *or* organization of any type from the United States or from abroad which:

(1) Offers to provide or provides any complete, *or* substantially complete, post-secondary program of instruction through the student's personal attendance; in the presence of an instructor; in a classroom, clinical, *or* other practicum setting; *or* through correspondence *or* other distance education;

(2) Represents, directly *or* by implication, that the instruction will qualify the student for employment in an occupation for which a degree is *not* required in order to practice in this Territory;

(3) Receives remuneration from the student *or* any other source based on the enrollment of a student *or* the number of students enrolled; *or*

(4) Offers to award *or* awards a diploma, regardless of whether it conducts instruction *or* receives remuneration.

§44103. Exemptions.

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

(a) Education *solely* vocational *or* recreational in nature, as determined by the Council;

(b) A nonprofit institution owned, controlled and operated and maintained by a bona fide church or religious denomination, *if* such education is limited to instructions in the principles of that church *or* denomination *or* to courses offered for the purpose of

training the adherents of such church *or* denomination in the care of the sick in accordance with its religious tenets and the diploma *or* degree is limited to evidence of completion of that education, and the meritorious recognition upon which any honorary degree is conferred is limited to the principles of that church *or* denomination.

(c) Post-secondary education institutions established, operated and governed by the government of Guam.

(d) Education sponsored by a bona fide trade, business, professional *or* fraternal organization which is recognized by the Council as being *solely* for that organization's membership and offered at no charge for the persons taking the course.

(e) Institutions exclusively offering instruction at any *or* all levels from preschool through twelfth (12^{th}) grade.

(f) Any post-secondary educational course *or* program of study offered by an institution of higher education at a United States military post *or* reservation when that course *or* program is open *only* to military personnel, their dependents, *or* civilians employed by that military post *or* reservation.

(g) Tutorial instruction delivered and designed to supplement regular classes for students enrolled in any public *or* private school *or* to prepare an individual for an examination for professional practice *or* higher education.

§44104. Council on Post-secondary Institution Certification.

(a) **Establishment, Powers and Duties.** There is within the government of Guam the Council on Post-secondary Institution Certification that *shall* authorize the granting of diplomas and degrees by any private,

nonpublic post-secondary institution operating on Guam. The Council *shall* exercise independently all powers, duties, and functions prescribed by law. The Council *shall* function in matters concerning independent post-secondary institutions in consumer protection, program improvement, and certification for private post-secondary institutions prescribed in this Chapter. The Council *shall*:

(1) Establish minimum criteria including quality of education, ethical and business practices, health and safety and fiscal responsibility, which applicants for authorization to offer *or* operate education services *or* grant degrees *or* diplomas as a post-secondary education institution *or* for an agent's certification, *shall* meet before such authorization *or* certification may be issued, and to continue such authorization *or* certification in effect. Criteria to be developed hereunder *shall* be such as will effectuate the purposes of this Chapter, but will *not* unreasonably hinder legitimate education innovation.

(2) Establish rules for the approval of modified *or* additional programs, degrees, and locations.

(3) Receive, investigate, and act upon applications for authorization *or* approval to operate educational institution and application for agent's permit.

(4) Inform private post-secondary institutions operating in the Territory of Guam of laws adopted by *I Liheslaturan Guåhan*, and rules and regulations adopted by the Council and of their responsibility to follow those laws and rules and regulations.

(5) Establish procedures for receiving and responding to complaints from students, faculty, and others concerning

institutions *or* programs under the purview of the Council, and keep records of such complaints in order to determine the frequency and nature of complaints with respect to specific institutions of higher education.

(6) Establish procedures and criterion for application by means of certification.

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

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

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

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

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

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

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

(13) Make rules for its own governance.

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

(b) The Council *may*:

(1) appoint standing *or* special committees to assist it in carrying out its responsibilities. Committees may include members who are *not* Council members *or* representatives of certified post-secondary institutions.

(2) sue *or* be sued.

(3) advise *I Maga'lahen* and *I Liheslatura* on issues relating to private post-secondary education;

(4) assist private post-secondary institutions in formulating articulation agreements with public and other independent institutions.

(5) establish fees for the following:

(i) Application for Certification.

(ii) Application for Renewal of Certification.

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

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

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

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

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

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

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

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

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

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

(i) Members appointed by *I Maga'lahen shall* serve for a term of three (3) years and until their successors are appointed and confirmed. Such members *shall not* be required to submit courtesy resignations should there be a change in administration. Should a vacancy occur before the expiration of a term, *I Maga'lahen shall* appoint a successor to serve the unexpired portion of the term. Designees appointed by the President of the University of Guam, the President of the Guam Community College, the Superintendent of the Guam Public School System, and/or the Director of the Department of Labor *shall* serve a term as designated by their appointing authority.

(ii) Members appointed by *I Maga'lahi shall* receive a stipend of Fifty Dollars ($50) per official meeting.

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

(e) **Administrative Support.** The Council *shall* be administratively

supported by the Staff of the Guam Commission for Educator Certification, whose administrative office *shall* hereby be called, "*the Guam Certification Office*".

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

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

(i) procedure and application for certification;

(ii) list of applications received by the Council;

(iii) list of rejected applications;

(iv) list of all actions taken by the Council;

§44105. Private Post-secondary Institutions: Certification.

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

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

§44105.1. Private Postsecondary Institutions: Certification Period, Renewal.

(a) An institution may *not* conduct a program unless specific authority is granted in its certification.

(b) A certificate granted by the Council is *not* transferable to another institution *or* to another agent, and an institution's certificate *does not*

transfer when the institution's ownership changes without the approval of the Council.

(c) Should a change in ownership *or* control of a certified institution take place, notification must be made to the Council prior to the change. The Council *shall* adopt procedures for interim executive approval of a change of ownership *or* control *if* the next scheduled meeting of the Council occurs after the scheduled date of the change of ownership *or* control.

(d) A private post-secondary institution *or* any person acting on behalf of such an institution may *not* publish any advertisement soliciting students *or* offering credential before the institution is duly certified by the Council *or* while the institution *if* under an injunction against operating, soliciting students, *or* offering and educational credential.

(f) The Council *shall* have the power to inspect, in a lawful manner at all reasonable hours, any applicant for certification *or* certified private post-secondary institution.

(g) A certified private post-secondary institution that seeks to expand *or* modify its programs *or* degrees to be conferred *or* to add new locations must seek prior approval from the Council.

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

§44105.2. Private Post-secondary Institutions: Institutional Closings.

At least thirty (30) days prior to closing an institution, its owners, directors, *or* administrators *shall* notify the Council in writing of the closure of the institution. An owner, director, *or* administrator who violates this provision, *or* who fails to organize the orderly closure of the institution commits a misdemeanor

of the second degree. The Council may exercise control over student records upon closure of a certified institution *if* the institution *does not* provide an orderly closure.

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

§44106. Fair Consumer Practices. Every institution that is under the jurisdiction of the Council *or* is *exempt* from the jurisdiction or purview of the Council pursuant to §44103 of this Chapter and that either directly *or* indirectly solicit for enrollment of any student *shall*:

(a) disclose to each prospective student a statement of the purpose of such institution, its educational programs and curricula, a description of its physical facilities, its status regarding certification, its fee schedule and policies regarding retaining student fees *if* a student withdraws, and a statement regarding the transferability of credits to and from other institutions. Every institution, private and public, *shall* make the required disclosures in writing at least one (1) week prior to enrollment *or* collection of any tuition from the prospective student. The required disclosures may be made in the institution's current catalog;

(b) use a reliable method to assess, before accepting a student into a program, the student's ability to complete successfully the course of

study for which he *or* she has applied;

(c) inform each student accurately about financial assistance and obligations for repayment of loans; describe any employment placement services provided and the limitations thereof; and refrain from promising *or* implying guaranteed placement, market availability, *or* salary amounts;

(d) provide to prospective and enrolled students accurate information regarding the relationship of its programs to state certification requirements for practicing related occupations and professions in Guam;

(e) ensure that all advertisements are accurate and *not* misleading;

(f) publish and follow an equitable prorated refund policy for all students, and follow both the federal refund guidelines for students receiving federal financial assistance and the minimum refund guidelines set by Council rule;

(g) follow the requirements of Guam and federal laws that require annual reporting with respect to crime statistics and physical plant safety and make those reports available to the public; and

(h) publish and follow procedures for handling student complaints, disciplinary actions, and appeals.

In addition, institutions that are required to be certified by the Council *shall* disclose to prospective students that additional information regarding the institution may be obtained by contacting the Council on Post-secondary Institution Certification.

§44107. Violations and Penalties.

(a) Each of the following acts constitutes a misdemeanor in the second degree:

(2) Operating a private post-secondary institution without a valid, active certificate issued pursuant to this Chapter.

(3) Obtaining *or* attempting to obtain a certificate to operate an institution by fraudulent misrepresentation.

(4) Using *or* attempting to use a certificate that has been suspended *or* revoked.

(5) Falsifying *or* attempting to falsify *or* destroying *or* attempting to destroy school *or* other business records relating to the operation of the school with the intent to defraud.

(b) Each of the following acts constitutes a misdemeanor in the third degree:

(1) Knowingly concealing information relating to violations of this Chapter.

(2) Willfully making any false oath *or* affirmation when required to make an oath *or* affirmation pursuant to this Chapter.

(c) Each degree, diploma, certificate, program, *or* course of study offered *or* conferred in violation of this Chapter *shall* constitute a separate offense.

(d) A student injured by a violation of this Chapter may bring an action against the owner, director, *or* administrator of a certified private postsecondary institution for actual damages. A court *may*, in its discretion, award reasonable attorney's fees to the prevailing plaintiff.

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

Section 2. Title 11, Guam Code Annotated, Chapter 76, §762113(d) is hereby *amended* to read:

"(d) For post-secondary institutions which seek to offer *or* confer any degree *or* diploma, that the degrees *or* diplomas offered are accredited by an accrediting institution of the United States, directly *or* through an affiliated institution, recognized by the United States Department of Education (USDOE). Post-secondary institutions which seek to offer *or* confer any degree *or* diploma and are in the process of obtaining accreditation through a recognized USDOE accrediting body *or* is in the process of, *or* has received accreditation from a non-sanctioned USDOE accrediting body *shall* disclose its accreditation status to each student upon the start of classes. The Department of Revenue and Taxation *shall not* issue any endorsements, business licenses, *or* certificates of incorporation to such post-secondary institutions without proper certification to operate on Guam issued by the Council of Post-secondary Institution Certification."