

CHAPTER 348

EDUCATION - UNIVERSITIES AND COLLEGES

HOUSE BILL 09-1267

BY REPRESENTATIVE(S) Todd, Summers, Ryden;
also SENATOR(S) Bacon.**AN ACT****CONCERNING THE REMOVAL OF STATUTORY PROVISIONS DESCRIBING Pervasively SECTARIAN
EDUCATIONAL INSTITUTIONS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.***Be it enacted by the General Assembly of the State of Colorado:*

SECTION 1. Legislative declaration. (1) The general assembly hereby observes that in the recent case of *Colorado Christian University v. Weaver*, 534 F.3d 1245 (10th Cir. 2008), the United States tenth circuit court of appeals held that Colorado's use of the "pervasively sectarian" standard to discriminate among religious educational institutions in determining those institutions' respective eligibility for state moneys is unconstitutional because:

(a) The standard expressly discriminates among religions without constitutional justification; and

(b) The criteria used by the standard involve unconstitutionally intrusive scrutiny of religious belief and practice.

(2) Therefore, the general assembly hereby declares that:

(a) The "pervasively sectarian" standard of the Colorado Revised Statutes shall be replaced with a new standard that prohibits state assistance only to students who are pursuing professional degrees in theology;

(b) A "professional degree in theology" shall mean an undergraduate or graduate degree from a degree program that is:

(I) Devotional in nature or designed to induce religious faith; and

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(II) Offered by an institution as preparation for a career in the clergy;

(c) This new standard reflects the decision of the United States Supreme Court in *Locke v. Davey*, 540 U.S. 712 (U.S. 2004), and the provisions of section 7 of article IX of the state constitution.

SECTION 2. 23-3.3-101 (3) (d), Colorado Revised Statutes, is amended, and the said 23-3.3-101 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

23-3.3-101. Definitions. As used in this article, unless the context otherwise requires:

(3) "Institution" means an educational institution operating in this state which meets all of the following:

(d) Is not a pervasively sectarian institution, pursuant to section 23-3.5-105, or a theological institution or any branch program of an institution of higher education whose principal campus and facilities are located outside this state.

(3.7) "PROFESSIONAL DEGREE IN THEOLOGY" MEANS A CERTIFICATE SIGNIFYING A PERSON'S GRADUATION FROM A DEGREE PROGRAM THAT IS:

(a) DEVOTIONAL IN NATURE OR DESIGNED TO INDUCE RELIGIOUS FAITH; AND

(b) OFFERED BY AN INSTITUTION AS PREPARATION FOR A CAREER IN THE CLERGY.

SECTION 3. Part 1 of article 3.3 of title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

23-3.3-104. Assistance to professional theology students prohibited. (1) THE POLICIES AND PROCEDURES ESTABLISHED BY THE COMMISSION PURSUANT TO SECTION 23-3.3-102 (3) SHALL INCLUDE:

(a) A PROHIBITION AGAINST THE AWARDED OF ANY FINANCIAL ASSISTANCE PURSUANT TO THIS ARTICLE TO A STUDENT WHO IS PURSUING A PROFESSIONAL DEGREE IN THEOLOGY; EXCEPT THAT THE PROHIBITION DESCRIBED IN THIS SECTION SHALL NOT APPLY TO FINANCIAL ASSISTANCE THAT IS AWARDED TO A STUDENT FROM A FEDERAL PROGRAM, INCLUDING BUT NOT LIMITED TO TITLE IV OF THE FEDERAL "HIGHER EDUCATION ACT OF 1965", 20 U.S.C. SEC. 1070, AS AMENDED; AND

(b) A REQUIREMENT THAT AN INSTITUTION OR NONPUBLIC INSTITUTION OF HIGHER EDUCATION THAT SEEKS TO AWARD FINANCIAL ASSISTANCE TO A STUDENT PURSUANT TO THIS ARTICLE CERTIFY THAT THE STUDENT IS NOT PURSUING A PROFESSIONAL DEGREE IN THEOLOGY.

SECTION 4. 23-3.5-102 (3) (b), Colorado Revised Statutes, is amended, and the said 23-3.5-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

23-3.5-102. Definitions. As used in this article, unless the context otherwise

requires:

(3) (b) The term "institution of higher education" does not include ~~any pervasively sectarian or theological institution or any~~ A branch program of an institution of higher education whose principal campus and facilities are located outside this state, unless the institution operating the branch program has received a certificate of approval from the private occupational school division in accordance with the provisions of article 59 of title 12, C.R.S.

(5) "PROFESSIONAL DEGREE IN THEOLOGY" MEANS A CERTIFICATE SIGNIFYING A PERSON'S GRADUATION FROM A DEGREE PROGRAM THAT IS:

- (a) DEVOTIONAL IN NATURE OR DESIGNED TO INDUCE RELIGIOUS FAITH; AND
- (b) OFFERED BY AN INSTITUTION AS PREPARATION FOR A CAREER IN THE CLERGY.

SECTION 5. Article 3.5 of title 23, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

23-3.5-103.5. Assistance to professional theology students prohibited.

(1) THE GUIDELINES ESTABLISHED BY THE COMMISSION PURSUANT TO SECTION 23-3.5-103 (1) SHALL INCLUDE:

(a) A PROHIBITION AGAINST THE AWARDING OF ANY FINANCIAL ASSISTANCE PURSUANT TO THIS ARTICLE TO A STUDENT WHO IS PURSUING A PROFESSIONAL DEGREE IN THEOLOGY; EXCEPT THAT THE PROHIBITION DESCRIBED IN THIS SECTION SHALL NOT APPLY TO FINANCIAL ASSISTANCE THAT IS AWARDED TO A STUDENT FROM A FEDERAL PROGRAM, INCLUDING BUT NOT LIMITED TO TITLE IV OF THE FEDERAL "HIGHER EDUCATION ACT OF 1965", 20 U.S.C. SEC. 1070, AS AMENDED; AND

(b) A REQUIREMENT THAT AN INSTITUTION OR NONPUBLIC INSTITUTION OF HIGHER EDUCATION THAT SEEKS TO AWARD FINANCIAL ASSISTANCE TO A STUDENT PURSUANT TO THIS ARTICLE CERTIFY THAT THE STUDENT IS NOT PURSUING A PROFESSIONAL DEGREE IN THEOLOGY.

SECTION 6. 23-3.7-102 (3) (f), Colorado Revised Statutes, is amended, and the said 23-3.7-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

23-3.7-102. Definitions. As used in this article, unless the context otherwise requires:

(3) "Nonpublic institution of higher education" means an institution of higher education operating in this state that:

(f) Is not a ~~pervasively sectarian or theological institution or any~~ branch program or campus of an institution of higher education whose principal campus and facilities are located outside this state, unless the institution operating the branch program has received a certificate of approval from the private occupational school division in accordance with the provisions of article 59 of title 12, C.R.S.

(4) "PROFESSIONAL DEGREE IN THEOLOGY" MEANS A CERTIFICATE SIGNIFYING A PERSON'S GRADUATION FROM A DEGREE PROGRAM THAT IS:

- (a) DEVOTIONAL IN NATURE OR DESIGNED TO INDUCE RELIGIOUS FAITH; AND
- (b) OFFERED BY AN INSTITUTION AS PREPARATION FOR A CAREER IN THE CLERGY.

SECTION 7. 23-3.7-103 (2), Colorado Revised Statutes, is amended to read:

23-3.7-103. Tuition assistance grant program - authorization - administration. (2) An in-state student may apply to an eligible nonpublic institution of higher education for a grant at any time after his OR HER acceptance by such nonpublic institution of higher education. The commission shall award grants, out of moneys in the fund created in section 23-3.7-107, for such students to such institutions in accordance with criteria established by the commission. In establishing this criteria the commission shall include, but not be limited to, the consideration of need and merit. THE CRITERIA SHALL ALSO INCLUDE:

(a) A PROHIBITION AGAINST THE AWARDED OF ANY FINANCIAL ASSISTANCE PURSUANT TO THIS ARTICLE TO A STUDENT WHO IS PURSUING A PROFESSIONAL DEGREE IN THEOLOGY; EXCEPT THAT THE PROHIBITION DESCRIBED IN THIS SECTION SHALL NOT APPLY TO FINANCIAL ASSISTANCE THAT IS AWARDED TO A STUDENT FROM A FEDERAL PROGRAM, INCLUDING BUT NOT LIMITED TO TITLE IV OF THE FEDERAL "HIGHER EDUCATION ACT OF 1965", 20 U.S.C. SEC. 1070, AS AMENDED; AND

(b) A REQUIREMENT THAT A NONPUBLIC INSTITUTION OF HIGHER EDUCATION THAT SEEKS TO AWARD FINANCIAL ASSISTANCE TO A STUDENT PURSUANT TO THIS ARTICLE CERTIFY THAT THE STUDENT IS NOT PURSUING A PROFESSIONAL DEGREE IN THEOLOGY.

SECTION 8. 23-18-102 (5) (a) (II) (C), Colorado Revised Statutes, is amended, and the said 23-18-102 (5) (a) (II) is further amended BY THE ADDITION OF A NEW SUB-SUBPARAGRAPH, to read:

23-18-102. Definitions. As used in this article, unless the context otherwise requires:

(5) (a) "Eligible undergraduate student" means:

(II) A student who is enrolled at a participating private institution of higher education and who:

(C) Demonstrates financial need through the student's eligibility for the federal Pell grant, or its successor program; ~~and~~

(C.5) IS NOT PURSUING A PROFESSIONAL DEGREE IN THEOLOGY; AND

SECTION 9. 23-18-102 (9), Colorado Revised Statutes, is amended, and the said 23-18-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

23-18-102. Definitions. As used in this article, unless the context otherwise requires:

(9) "Private institution of higher education" means a not-for-profit college or university that ~~is not pervasively sectarian and that~~ maintains its primary place of business in the state of Colorado, that offers general baccalaureate degrees in arts and sciences, and that is institutionally accredited on the basis of an on-site review in Colorado by one of the six nationally recognized regional accrediting associations or by an accrediting agency determined by the commission to be appropriate to its educational purposes and programs.

(9.5) "PROFESSIONAL DEGREE IN THEOLOGY" MEANS A CERTIFICATE SIGNIFYING A PERSON'S GRADUATION FROM A DEGREE PROGRAM THAT IS:

- (a) DEVOTIONAL IN NATURE OR DESIGNED TO INDUCE RELIGIOUS FAITH; AND
- (b) OFFERED BY AN INSTITUTION AS PREPARATION FOR A CAREER IN THE CLERGY.

SECTION 10. 22-26-102 (1), Colorado Revised Statutes, is amended to read:

22-26-102. Definitions. As used in this article, unless the context otherwise requires:

(1) "Approved gifted and talented educational program" means a program for secondary school students, whether of an enrichment, acceleration, individualized instruction, or special grouping nature, that provides for educational opportunities commensurate with the abilities, achievements, or special needs of the gifted and talented students and which:

- (a) Is approved by the board;
- (b) Is offered by any private for-profit or nonprofit agency, organization, or institution approved by the department; AND
- (c) Offers programs of short duration, the length of which is approved by the board.
- ~~(d) Is not operated by nor connected with any pervasively sectarian private for-profit or nonprofit agency, organization, or institution; and~~
- ~~(e) Offers a curriculum that is pervasively nonsectarian.~~

SECTION 11. 22-35-103 (2) (f), Colorado Revised Statutes, is amended to read:

22-35-103. Definitions. For the purposes of this article:

(2) "Nonpublic institution of higher education" means an institution of higher education operating in this state that:

- ~~(f) Is not a pervasively sectarian or theological institution or any branch program or campus of an institution of higher education whose principal campus and~~

facilities are located outside this state.

SECTION 12. Repeal. 23-3.5-105 and 23-3.7-104, Colorado Revised Statutes, are repealed.

SECTION 13. Appropriation - adjustments to the 2009 long bill. For the implementation of this act, the appropriation from the general fund made in the annual general appropriation act for the fiscal year beginning July 1, 2009, to the department of higher education, for allocation to the college opportunity fund, for stipends for students attending participating private institutions, is increased by ninety-four thousand eight hundred sixty dollars (\$94,860), for an estimated ninety-three eligible full-time equivalent students, or so much thereof as may be necessary, for the implementation of this act.

SECTION 14. Effective date. This act shall take effect upon passage; except that section 11 of this act amending section 22-35-103 (2) (f), Colorado Revised Statutes, shall not take effect unless House Bill 09-1319 is not enacted and does not become law.

SECTION 15. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 1, 2009