

## **BILL ANALYSIS**

Senate Research Center

S.B. 1343  
By: Jackson  
Education  
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Enrolled

### **DIGEST AND PURPOSE**

Proprietary schools were regulated by the Texas Education Agency (TEA) until an Act of the 74th Legislature, 1995, moved that responsibility to the Texas Workforce Commission (TWC). When TEA regulated those schools, it assessed administrative penalties against unlicensed schools as a tool to force the submission of licensure applications. When a school appealed a penalty, the appeal hearing was held at TEA at a low cost.

The responsibility for an appeals hearing sought by a proprietary school now lies with the State Office of Administrative Hearings (SOAH), and TWC finds that those hearings are cost-prohibitive compared to an in-house hearing at TWC. As a result, TWC does not use this enforcement tool to regulate proprietary schools.

S.B. 1343 amends the provisions governing TWC's regulation of proprietary schools to allow the appeals process to be handled by TWC's special hearings department; maintains the right of a proprietary school to judicial review under the substantial evidence rule; requires a petition for judicial review to be filed in Travis County, thus providing for lower costs for contested administrative penalties; and provides TWC the ability to seek attorney's fees and court costs in enforcing its orders.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1. SUBSTANTIVE CHANGES REGARDING CAREER SCHOOLS AND COLLEGES

SECTION 1.01. Amends Section 132.001, Education Code, by amending Subdivisions (1) through (8), (10), and (12) to redefine "career school or college," "owner of career school or college," "school employee," "representatives," "agency administrator," "notice to the career school or college," "support or supported," "person," "small career school or college," "division," and adding Subdivision (13) to define "distance education."

SECTION 1.02. Amends Subchapter A, Chapter 132, Education Code, by adding Section 132.0015, as follows:

Sec. 132.0015. REFERENCE TO PROPRIETY SCHOOL. Provides that a reference in this code or another law to a proprietary school means a career school or college.

SECTION 1.03. Amends Section 132.002, Education Code, by amending Subsections (a) and (d) and adding Subsections (e), (f), and (g), as follows:

(a) Authorizes certain schools or educational institutions to be exempted, rather than are specifically exempt, from this chapter by the Texas Workforce Commission (TWC) under

Subsection (d).

(d) Exempts a school or educational institution under certain conditions from regulation under this chapter, except as provided by Subsection (g).

(e) Authorizes TWC, after a school or educational institution is declared exempt by TWC under this section, to inspect the school or institution or require the owner of the school or institution to provide any information TWC deems necessary to ensure the school or institution's continued compliance with the requirements of the exemption.

(f) Authorizes a school or educational institution listed in Subsection (a) to seek a certificate of approval under Subchapter C. Deletes text authorizing a dispute resolution organization to seek a certificate of approval pursuant to Subchapter C.

(g) Provides that an institution of higher education or a private or independent institution of higher education, as defined by Section 61.003, that was exempt from regulation under this chapter before September 1, 2003, remains exempt from regulation under this chapter and is not required to comply with this section.

SECTION 1.04. Amends Section 132.051(b), Education Code, to provide that any contract entered into with any person for a course of instruction by or on behalf of any person operating any career school or college, rather than proprietary school, to which a certificate of approval has not been issued pursuant to this chapter is unenforceable in any action brought thereon. Establishes that any note, other instrument of indebtedness, or contract relating to payment for educational services obtained from a career school or college that does not hold a certificate of approval issued under this chapter is unenforceable in any action brought on the note, instrument, or contract.

SECTION 1.05. Amends Section 132.055, Education Code, as follows:

(a)-(m) Make conforming changes.

(n) Specifies that among the criteria for TWC approval is that the school or college does not use a name like or similar to an existing school or college unless TWC approves the school's or college's use of the name.

(o)-(r) Make conforming change.

SECTION 1.06. Amends Section 132.061, Education Code, as follows:

(a) Makes a conforming change.

(b) Includes synchronous distance education course within this subsection. Makes a conforming change.

(c)-(g) Make conforming changes.

SECTION 1.07. Amends Sections 132.152(c)-(i), Education Code, as follows:

(c) Requires TWC, if after examination of a possible violation and the facts relating to that possible violation, it concludes that a violation occurred, to issue a preliminary report that states the facts on which the conclusion is based, the fact that an administrative penalty is to be imposed, rather than recommended, and the amount of the penalty to be assessed, rather than recommended. Deletes text requiring TWC to send a copy of the report by certified mail to the person charged with the violation.

(d) Requires the person charged to either make a written request for a hearing or remit the amount of the administrative penalty to TWC, by the 20th day after the date on which the report is sent. Requires a hearing to be conducted in the same manner as a hearing on denial of certificate of approval under Section 132.101, if the person charged requests a hearing. Requires TWC, if the hearing result in findings that a violation has occurred, to provide to the person written notice containing certain information. Deletes text requiring an administrative law judge of the State Office of Administrative Hearings (SOAH) to make findings of fact and give the conclusions of law, in order for TWC to take certain actions.

(e) Requires the person, by the 30th day after the date the person receives the order entered by the commission under Subsection (d), rather than commission's order is final under Section 2001.144, Government Code, to meet certain requirements. Deletes text requiring the commission's order to include a statement of the person's right to judicial review.

(f) Provides that TWC's order is subject to judicial review in the same manner as an appeal of a decision to deny a certificate of approval under Section 132.102.

(g) Requires TWC, if on review the court does not sustain the occurrence of the violation or finds that the amount of the penalty should be reduced, to remit the appropriate amount to the person charged with the violation by the 30th day after the date the court's judgment becomes final. Makes conforming changes.

(h) Requires the court, if it sustains the occurrence of the violation, to take certain actions. Makes conforming changes.

(i) Authorizes TWC, if the person does not pay the amount of the penalty after its order becomes final for all purposes, rather than if the enforcement of the penalty is not stayed, to refer the matter to the attorney general for collection of the amount of the penalty.

SECTION 1.08. Amends Subchapter I, Chapter 132, Education Code, by adding Section 132.2415, as follows:

Sec. 132.2415. TUITION TRUST ACCOUNT. (a) Provides that TWC depository bonds guaranty trust account is renamed the career school or college tuition trust account. Establishes that the career school or college tuition trust account is the account designated to receive all amounts related to the protection of career school or college tuition. Prohibits the balance of the trust account from exceeding \$1 million.

(b) Authorizes TWC to collect annually a fee from each career school or college to be deposited to the credit of the career school or college tuition trust account. Requires the total amount of the fees collected in a year to be set by TWC in the amount estimated as necessary to pay the liabilities of the trust account during that year, not to exceed 0.2 percent of the gross amount of tuition and fees charged by career schools and colleges in that year, excluding amounts refunded under Section 132.061.

(c) Provides that if TWC, at the end of the fiscal year, determines that TWC has collected fees under this chapter in excess of the amount necessary to defray the expense of administering this chapter, TWC may transfer any portion of the excess amount to the career school or college tuition trust account.

(d) Requires TWC, from money in the career school or college tuition trust account, to attempt to provide a full refund to each student of a closed career school or college of the amount owed to the student as determined under Section 132.061. Authorizes TWC to provide a partial refund to a student only if the commission determines that the amount in the trust account is insufficient to provide a full refund to the student.

Requires TWC to consider the following factors in determining the amount of a partial refund to be paid to a student; the amount of money in the trust account; the cost and number of claims against the trust account resulting from closure of the school or college; the average cost of a claim paid from the trust account in the past; and the availability of other licensed career schools or colleges at which the student may complete the student's training.

SECTION 1.09. Amends Section 132.242, Education Code, as follows:

Sec. 132.242. New heading: CLOSED SCHOOL OR COLLEGE. (a)-(d) Make conforming change.

(e) Requires the refunds to be paid from the career school or college in an amount that does not exceed \$150,000, rather than \$50,000, for each closed career school or college.

(f) and (g) Make conforming changes.

SECTION 1.10. Repealers: Sections 132.152 (j)-(m), Education Code.

Repealers: Sections 132.060 and 132.241, Education Code.

SECTION 1.11. Makes application of the change in the law made by this Act to Section 132.051(b), Education Code, prospective.

SECTION 1.12. Makes application of the change in the law made by this Act to Section 132.055, Education Code, prospective.

SECTION 1.13. Makes application of the change in the law made by this Act to Section 132.061(b), Education Code, prospective.

SECTION 1.14. Makes application of the changes in law made by this Act to Section 132.152, Education Code, prospective.

SECTION 1.15. Provides that, on or after the effective date of this article, any amount remaining in or payable to the credit of the tuition protection fund under Section 132.241, Education Code, as that section existed before repeal by this Act, shall be transferred to the credit of the career school or college tuition trust account established under Section 132.2415, Education Code, as added by this article.

## ARTICLE 2. CONFORMING AMENDMENTS REGARDING CAREER SCHOOLS AND COLLEGES

SECTION 2.01. Amends Section 52.32(b), Education Code, to make conforming and nonsubstantive changes.

SECTION 2.02. Amends Section 53.02(5), Education Code, to redefine "institution of higher education."

SECTION 2.03. Amends Section 54.6001, Education Code, to make a conforming change.

SECTION 2.04. Amends Section 54.601(9), Education Code, to redefine "career school or college."

SECTION 2.05. Amends Section 54.605(a), Education Code, to make a conforming change.

SECTION 2.06. Amends Section 54.618(b), Education Code, to make a conforming change.

SECTION 2.07. Amends Section 54.619(h), Education Code, to make a conforming change.

SECTION 2.08. Amends the heading to Chapter 132, Education Code, to read as follows:

Chapter 132. New heading: CAREER SCHOOLS AND COLLEGES

SECTION 2.09. Amends Sections 132.021(a) and (b), Education Code, to make conforming changes

SECTION 2.10. Amends Section 132.022, Education Code, to make a conforming change.

SECTION 2.11. Amends Section 132.023, Education Code, as follows:

Sec. 132.023. New heading: MEMORANDUM OF UNDERSTANDING FOR REGULATION OF CAREER SCHOOLS AND COLLEGES.

(a)-(d) Make conforming changes.

SECTION 2.12. Amends Section 132.051(a), Education Code, to make conforming changes.

SECTION 2.13. Amends Section 132.052, Education Code, to make a conforming change.

SECTION 2.14. Amends Section 132.053, Education Code, to make conforming changes.

SECTION 2.15. Amends Section 132.054, Education Code, as follows:

Sec. 132.054. New heading: SMALL SCHOOL OR COLLEGE EXEMPTION. Makes conforming change.

SECTION 2.16. Amends Section 132.056, Education Code, as follows:

(a) Makes a conforming change.

(b) Makes no changes to this section.

(c)-(f) Makes conforming changes.

SECTION 2.17. Amends Section 132.058, Education Code, to make conforming changes.

SECTION 2.18. Amends Sections 132.059(a), (b), and (d), Education Code, to make conforming changes.

SECTION 2.19. Amends Section 132.062, Education Code, to make a conforming change.

SECTION 2.20. Amends Section 132.063, Education Code, to make a conforming change.

SECTION 2.21. Amends Section 132.064, Education Code, as follows:

Sec. 132.064. New heading: NONQUALIFICATION AS SMALL CAREER SCHOOL AND COLLEGE. (a)-(d) Make conforming changes.

SECTION 2.22. Amends Section 132.151, Education Code, to make conforming changes.

- SECTION 2.23. Amends Section 132.153, Education Code, to make a conforming change.
- SECTION 2.24. Amends Section 132.154(a), Education Code, to make a conforming change.
- SECTION 2.25. Amends Section 132.156, Education Code, to make conforming changes.
- SECTION 2.26. Amends Sections 132.157 (a)-(d), Education Code, to make conforming changes.
- SECTION 2.27. Amends Sections 132.201(a), (c)-(f), (h), and (i), Education Code, to make conforming changes.
- SECTION 2.28. Amends Section 52.013(b), Government Code, to make a conforming change.
- SECTION 2.29. Amends Section 305.002(3), Education Code, to redefine “eligible institution.”
- SECTION 2.30. Amends Section 305.023, Labor Code, to make a conforming change.
- SECTION 2.31. Amends Section E, Article 2.23A, Texas Non-Profit Corporation Act (Article 1396-2.23A, V.T.C.S. to make conforming and nonsubstantive changes.

### Article 3. EFFECTIVE DATE

- SECTION 3.01. Effective date: September 1, 2003.