

By: Jackson

S.B. No. 1343

Substitute the following for S.B. No. 1343:

By: Morrison

C.S.S.B. No. 1343

A BILL TO BE ENTITLED

AN ACT

relating to the regulation and operation of certain career schools and colleges.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

ARTICLE 1. SUBSTANTIVE CHANGES REGARDING CAREER

SCHOOLS AND COLLEGES

SECTION 1.01. Section 132.001, Education Code, is amended by amending Subdivisions (1)-(8), (10), and (12) and adding Subdivision (13) to read as follows:

(1) "Career school or college" [~~"Proprietary school"~~] means any business enterprise operated for a profit ~~or on a nonprofit basis~~ that maintains a place of business within this state or solicits business within this state, [~~and~~] that is not specifically exempted by this chapter, and:

(A) that offers or maintains a course or courses of instruction or study; or

(B) at which place of business such a course or courses of instruction or study are [~~is~~] available through classroom instruction or by distance education [~~correspondence~~], or both, to a person for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for avocational or personal improvement.

(2) "Owner" of a career school or college [~~proprietary school~~] means:

1 (A) in the case of a career school or college
2 owned by an individual, that individual;

3 (B) in the case of a career school or college
4 owned by a partnership, all full, silent, and limited partners;

5 (C) in the case of a career school or college
6 owned by a corporation, the corporation, its directors, officers,
7 and each shareholder owning shares of issued and outstanding stock
8 aggregating at least 10 percent of the total of the issued and
9 outstanding shares;

10 (D) in the case of a career school or college in
11 which the ownership interest is held in trust, the beneficiary of
12 that trust; or

13 (E) in the case of a career school or college
14 owned by another legal entity, a person who owns at least 10 percent
15 ownership interest in the entity.

16 (3) "School employee" means any person, other than an
17 owner, who directly or indirectly receives compensation from a
18 career [~~proprietary~~] school or college for services rendered.

19 (4) "Representative" means a person employed by a
20 career [~~proprietary~~] school or college, whether the school or
21 college is located within or without this state, to act as an agent,
22 solicitor, broker, or independent contractor to directly procure
23 students for the school or college by solicitation within or
24 without this state at any place.

25 (5) "Agency administrator" means the agency
26 administrator of the Texas Workforce Commission or a person,
27 knowledgeable in the administration of regulating career

1 ~~[proprietary]~~ schools and colleges, designated by the agency
2 administrator to administer this chapter.

3 (6) "Notice to the career school or college"
4 ~~[proprietary school]~~ means written correspondence sent to the
5 address of record for legal service contained in the application
6 for a certificate of approval. "Date of Notice" means the date the
7 notice is mailed by the commission.

8 (7) "Support" or "supported" means the primary source
9 and means by which a career ~~[proprietary]~~ school or college derives
10 revenue to perpetuate its operation.

11 (8) "Person" means any individual, firm, partnership,
12 association, corporation, or other private entity or combination
13 ~~[thereof]~~.

14 (10) "Small career school or college" ~~[proprietary~~
15 ~~school]~~ means a career ~~[proprietary]~~ school or college that does
16 not receive any payment from federal funds under 20 U.S.C. Section
17 1070 et seq. and its subsequent amendments or a prepaid federal or
18 state source as compensation in whole or in part for any student
19 tuition and fees or other charges and either:

20 (A) has an annual gross income from student
21 tuition and fees that is less than or equal to \$100,000 for programs
22 regulated by the agency;

23 (B) exclusively offers programs to assist
24 students to prepare for an undergraduate or graduate course of
25 study at a college or university; or

26 (C) exclusively offers programs to assist
27 students, who have obtained, or who are in the process of obtaining,

1 degrees after completing an undergraduate or graduate course of
2 study at a college or university, to prepare for an examination.

3 (12) "Division" means the division of education of
4 ~~[in]~~ the commission.

5 (13) "Distance education" means a formal education
6 process in which:

7 (A) the student and instructor are separated by
8 physical distance; and

9 (B) a variety of communication technologies may
10 be used to deliver synchronous or asynchronous instruction to the
11 student.

12 SECTION 1.02. Subchapter A, Chapter 132, Education Code, is
13 amended by adding Section 132.0015 to read as follows:

14 Sec. 132.0015. REFERENCE TO PROPRIETARY SCHOOL. A
15 reference in this code or another law to a proprietary school means
16 a career school or college.

17 SECTION 1.03. Section 132.002, Education Code, is amended
18 by amending Subsections (a) and (d) and adding Subsections (e),
19 (f), and (g) to read as follows:

20 (a) The following schools or educational institutions may
21 be exempted ~~[are specifically exempt]~~ from this chapter by the
22 commission under Subsection (d) ~~[and are not within the definition~~
23 ~~of "proprietary school"]~~:

24 (1) a school or educational institution supported by
25 taxation from either a local or state source;

26 (2) a nonprofit school ~~[schools]~~ owned, controlled,
27 operated, and conducted by a bona fide religious, denominational,

1 eleemosynary, or similar public institution [~~institutions~~] exempt
2 from property taxation under the laws of this state[, ~~but such~~
3 ~~schools may choose to apply for a certificate of approval~~
4 ~~hereunder, and upon approval and issuance, are subject to this~~
5 ~~chapter as determined by the commission~~];

6 (3) a school or training program that offers
7 instruction of purely avocational or recreational subjects as
8 determined by the commission;

9 (4) a course or courses of instruction or study
10 sponsored by an employer for the training and preparation of its own
11 employees, and for which no tuition fee is charged to the student;

12 (5) a course or courses of study or instruction
13 sponsored by a recognized trade, business, or professional
14 organization for the instruction of the members of the organization
15 with a closed membership;

16 (6) a private college [~~colleges~~] or university
17 [~~universities~~] that awards [~~award~~] a recognized baccalaureate, or
18 higher degree, and that maintains [~~maintain~~] and operates [~~operate~~]
19 educational programs for which a majority of the credits given are
20 transferable to a college, junior college, or university supported
21 entirely or partly by taxation from either a local or state source;

22 (7) a school or course that is otherwise regulated and
23 approved under and pursuant to any other law or rulemaking process
24 of this state or approved for continuing education credit by an
25 organization that accredits courses for the maintenance of a
26 license, except as provided by Subsection (c);

27 (8) an aviation school [~~schools~~] or instructor

1 [instructors] approved by and under the supervision of the Federal
2 Aviation Administration;

3 (9) a school that offers intensive review of a
4 student's acquired education, training, or experience to prepare
5 the student for an examination, other than a high school
6 equivalency examination, that the student by law may not take
7 unless the student has completed or substantially completed a
8 particular degree program, or that the student is required to take
9 as a precondition for enrollment in or admission to a particular
10 degree program;

11 (10) a private school offering primary or secondary
12 education, which may include a kindergarten or prekindergarten
13 program, and that satisfies the compulsory attendance requirements
14 of Section 25.085 pursuant to Section 25.086(a)(1);

15 (11) a course or courses of instruction by bona fide
16 electrical trade associations for the purpose of preparing students
17 for electrical tests required for licensing and for the purpose of
18 providing continuing education to students for the renewal of
19 electrical licenses;

20 (12) a nonprofit arts organization that has as its
21 primary purpose the provision of instruction in the dramatic arts
22 and the communications media to persons younger than 19 years of
23 age;

24 (13) a course or training program conducted by a
25 nonprofit association of air conditioning and refrigeration
26 contractors approved by the Air Conditioning and Refrigeration
27 Contractors Advisory Board to provide instruction for technical,

1 business, or license examination preparation programs relating to
2 air conditioning and refrigeration contracting, as that term is
3 defined by Chapter 1302, Occupations Code [~~the Air Conditioning and~~
4 ~~Refrigeration Contractor License Law (Article 8861, Vernon's Texas~~
5 ~~Civil Statutes)~~];

6 (14) a course of instruction by a plumbing trade
7 association to prepare students for a plumbing test or program
8 required for licensing, certification, or endorsement or to provide
9 continuing education approved by the Texas State Board of Plumbing
10 Examiners; and

11 (15) a course of instruction in the use of
12 technological hardware or software if the course is offered to a
13 purchaser of the hardware or software or to the purchaser's
14 employee by a person who manufactures and sells, or develops and
15 sells, the hardware or software, and if the seller is not primarily
16 in the business of providing courses of instruction in the use of
17 the hardware or software, as determined by the commission.

18 (d) Except as provided by Subsection (g), a school or
19 educational institution is exempt from regulation under this
20 chapter only if:

21 (1) the owner of the school or educational
22 institution:

23 (A) applies to the commission for an exemption
24 under this section; and

25 (B) provides to the commission any information
26 considered necessary by the commission to support the owner's
27 application for an exemption; and

1 (2) the commission declares that the school or
2 educational institution is exempt after finding that the school or
3 institution is a school or institution listed in Subsection (a).

4 (e) After a school or educational institution is declared
5 exempt by the commission under this section, the commission may
6 inspect the school or institution or require the owner of the school
7 or institution to provide any information the commission considers
8 necessary for the commission to ensure the school or institution's
9 continued compliance with the requirements of the exemption.

10 (f) A school or educational institution listed in
11 Subsection (a) may seek a certificate of approval under
12 ~~[Notwithstanding the exemptions listed in Subsection (a), a dispute~~
13 ~~resolution organization, as defined by Section 154.001, Civil~~
14 ~~Practice and Remedies Code, may seek a certificate of approval~~
15 ~~pursuant to]~~ Subchapter C.

16 (g) An institution of higher education or a private or
17 independent institution of higher education, as defined by Section
18 61.003, that was exempt from regulation under this chapter before
19 September 1, 2003, remains exempt from regulation under this
20 chapter and is not required to comply with this section.

21 SECTION 1.04. Section 132.051(b), Education Code, is
22 amended to read as follows:

23 (b) Any contract entered into with any person for a course
24 of instruction by or on behalf of any person operating any career
25 ~~[proprietary]~~ school or college to which a certificate of approval
26 has not been issued pursuant to this chapter is unenforceable in any
27 action brought thereon. Any note, other instrument of

1 indebtedness, or contract relating to payment for educational
2 services obtained from a career school or college that does not hold
3 a certificate of approval issued under this chapter is
4 unenforceable in any action brought on the note, instrument, or
5 contract.

6 SECTION 1.05. Section 132.055, Education Code, is amended
7 to read as follows:

8 Sec. 132.055. CRITERIA. The commission may approve the
9 application of such career [~~proprietary~~] school or college when the
10 school or college is found, upon investigation at the premises of
11 the school or college, to have met the following criteria:

12 (a) The courses, curriculum, and instruction are of
13 such quality, content, and length as may reasonably and adequately
14 achieve the stated objective for which the courses, curriculum, or
15 instruction is [~~are~~] offered. Before a school or college conducts a
16 course of instruction in court reporting, the school or college
17 must produce evidence that the school or college has obtained
18 approval for the curriculum from the Court Reporters Certification
19 Board.

20 (b) There is in the school or college adequate space,
21 equipment, instructional material, and instructor personnel to
22 provide training of good quality.

23 (c) Educational and experience qualifications of
24 directors, administrators, and instructors are adequate.

25 (d) The school or college maintains a written record
26 of the previous education and training of the applicant student and
27 clearly indicates that appropriate credit has been given by the

1 school or college for previous education and training, with the new
2 training period shortened where warranted through use of
3 appropriate skills or achievement tests and the student so
4 notified.

5 (e) A copy of the course outline; schedule of tuition,
6 fees, refund policy, and other charges; regulations pertaining to
7 absence, grading policy, and rules of operation and conduct;
8 regulations pertaining to incomplete grades; the name, mailing
9 address, and telephone number of the commission for the purpose of
10 directing complaints to the agency; the current rates of job
11 placement and employment of students issued a certificate of
12 completion; and notification of the availability of the cost
13 comparison information prepared under Section 132.021(b) through
14 the commission will be furnished the student prior to enrollment.

15 (f) Except as provided by Section 132.062, on
16 completion of training, the student is given a certificate by the
17 school or college indicating the course and that training was
18 satisfactorily completed.

19 (g) Adequate records as prescribed by the commission
20 are kept to show attendance and progress or grades, and
21 satisfactory standards relating to attendance, progress, and
22 conduct are enforced.

23 (h) The school or college complies with all local,
24 city, county, municipal, state, and federal regulations, such as
25 fire, building, and sanitation codes. The commission may require
26 such evidence of compliance as is deemed necessary.

27 (i) The school or college is financially sound and

1 capable of fulfilling its commitments for training.

2 (j) The school's or college's administrators,
3 directors, owners, and instructors are of good reputation and
4 character.

5 (k) The school or college has, maintains, and
6 publishes in its catalogue and enrollment contract the proper
7 policy for the refund of the unused portion of tuition, fees, and
8 other charges in the event the student enrolled by the school or
9 college fails to take the course or withdraws or is discontinued
10 therefrom at any time prior to completion.

11 (l) The school or college does not utilize erroneous
12 or misleading advertising, either by actual statement, omission, or
13 intimation as determined by the commission.

14 (m) Such additional criteria as may be required by the
15 commission.

16 (n) The school or college does not use a name like or
17 similar to an existing [~~tax-supported~~] school or college unless the
18 commission approves the school's or college's use of the name [in
19 the same area].

20 (o) The school or college furnishes to the commission
21 the current rates of students who receive a certificate of
22 completion and of job placement and employment of students issued a
23 certificate of completion.

24 (p) The school or college furnishes to the commission
25 for approval or disapproval student admission requirements for each
26 course or program offered by the school or college.

27 (q) The school or college furnishes to the commission

1 for approval or disapproval the course hour lengths and curriculum
2 content for each course offered by the school or college.

3 (r) The school or college does not owe a penalty under
4 Section 132.152, 132.155, or 132.157.

5 SECTION 1.06. Section 132.061, Education Code, is amended
6 to read as follows:

7 Sec. 132.061. REFUND POLICY. (a) Except as provided by
8 Subsection (g), as a condition for granting certification each
9 career [~~proprietary~~] school or college must maintain a cancellation
10 and settlement policy that must provide a full refund of all monies
11 paid by a student if:

12 (1) the student cancels the enrollment agreement or
13 contract within 72 hours (until midnight of the third day excluding
14 Saturdays, Sundays, and legal holidays) after the enrollment
15 contract is signed by the prospective student; or

16 (2) the enrollment of the student was procured as the
17 result of any misrepresentation in advertising, promotional
18 materials of the school or college, or representations by the owner
19 or representatives of the school or college.

20 (b) Except as provided by Subsection (g), as a condition for
21 granting certification each career [~~proprietary~~] school or college
22 must maintain a policy for the refund of the unused portion of
23 tuition, fees, and other charges in the event the student, after
24 expiration of the 72-hour cancellation privilege, fails to enter
25 the course, withdraws, or is discontinued therefrom at any time
26 prior to completion, and such policy must provide:

27 (1) refunds for resident courses and synchronous

1 distance education courses will be based on the period of
2 enrollment computed on the basis of course time expressed in clock
3 hours;

4 (2) the effective date of the termination for refund
5 purposes in residence schools or colleges will be the earliest of
6 the following:

7 (A) the last date of attendance, if the student
8 is terminated by the school or college;

9 (B) the date of receipt of written notice from
10 the student; or

11 (C) 10 school days following the last date of
12 attendance;

13 (3) if tuition and fees are collected in advance of
14 entrance, and if, after expiration of the 72-hour cancellation
15 privilege, the student does not enter the residence school or
16 college, not more than \$100 shall be retained by the school or
17 college;

18 (4) for the student who enters a residence or a
19 synchronous distance education course of not more than 12 months in
20 length, terminates, or withdraws, the school or college may retain
21 \$100 of tuition and fees and the minimum refund of the remaining
22 tuition and fees will be:

23 (A) during the first week or one-tenth of the
24 course, whichever is less, 90 percent of the remaining tuition and
25 fees;

26 (B) after the first week or one-tenth of the
27 course, whichever is less, but within the first three weeks or

1 one-fifth of the course, whichever is less, 80 percent of the
2 remaining tuition and fees;

3 (C) after the first three weeks or one-fifth of
4 the course, whichever is less, but within the first quarter of the
5 course, 75 percent of the remaining tuition and fees;

6 (D) during the second quarter of the course, 50
7 percent of the remaining tuition and fees;

8 (E) during the third quarter of the course, 10
9 percent of the remaining tuition and fees; or

10 (F) during the last quarter of the course, the
11 student may be considered obligated for the full tuition and fees;

12 (5) for residence or synchronous distance education
13 courses more than 12 months in length, the refund shall be applied
14 to each 12-month period paid, or part thereof separately, and the
15 student is entitled to a refund as provided by Subdivision (4);

16 (6) refunds of items of extra expense to the student,
17 such as instructional supplies, books, student activities,
18 laboratory fees, service charges, rentals, deposits, and all other
19 such ancillary miscellaneous charges, where these items are
20 separately stated and shown in the data furnished the student
21 before enrollment, will be made in a reasonable manner acceptable
22 to the commission;

23 (7) refunds based on enrollment in residence and
24 synchronous distance education schools or colleges will be totally
25 consummated within 60 days after the effective date of termination;

26 (8) refunds for asynchronous distance education
27 [~~correspondence~~] courses will be computed on the basis of the

1 number of lessons in the course;

2 (9) the effective date of the termination for refund
3 purposes in asynchronous distance education [~~correspondence~~]
4 courses will be the earliest of the following:

5 (A) the date of notification to the student if
6 the student is terminated;

7 (B) the date of receipt of written notice from
8 the student; or

9 (C) the end of the third calendar month following
10 the month in which the student's last lesson assignment was
11 received unless notification has been received from the student
12 that the student wishes to remain enrolled;

13 (10) if tuition and fees are collected before any
14 lessons have been completed, and if, after expiration of the
15 72-hour cancellation privilege, the student fails to begin the
16 course, not more than \$50 shall be retained by the school or
17 college;

18 (11) in cases of termination or withdrawal after the
19 student has begun the asynchronous distance education
20 [~~correspondence~~] course, the school or college may retain \$50 of
21 tuition and fees, and the minimum refund policy must provide that
22 the student will be refunded the pro rata portion of the remaining
23 tuition, fees, and other charges that the number of lessons
24 completed and serviced by the school or college bears to the total
25 number of lessons in the course; and

26 (12) refunds based on enrollment in asynchronous
27 distance education [~~correspondence~~] schools or colleges will be

1 totally consummated within 60 days after the effective date of
2 termination.

3 (c) In lieu of the refund policy herein set forth, for
4 programs of instruction not regularly offered to the public, the
5 commission may, for good cause shown, amend, modify, or substitute
6 the terms of a career school's or college's [~~proprietary school's~~]
7 policy due to the specialized nature and objective of the school's
8 or college's course of instruction.

9 (d) If a course of instruction is discontinued by the career
10 [~~proprietary~~] school or college and this prevents the student from
11 completing the course, all tuition and fees paid are then due and
12 refundable.

13 (e) If a refund is not made within the period required by
14 this section, the career [~~proprietary~~] school or college shall pay
15 a penalty. If the refund is made to a lending institution, the
16 penalty shall also be paid to that institution and applied against
17 the student's loan. The commission annually shall establish the
18 level of the penalty at a level sufficient to provide a deterrent to
19 the retention of student funds. The commission may exempt a school
20 or college from the payment of the penalty if the school or college
21 makes a good faith effort to refund the tuition, fees, and other
22 charges but is unable to locate the student. The school or college
23 shall provide to the commission on request documentation of the
24 effort to locate the student.

25 (f) A career [~~proprietary~~] school or college shall record a
26 grade of "incomplete" for a student who withdraws but is not
27 entitled to a refund under Subsection (b)(4)(F) if the student

1 requests the grade at the time the student withdraws and the student
2 withdraws for an appropriate reason unrelated to the student's
3 academic status. A student who receives a grade of incomplete may
4 re-enroll in the program during the 12-month period following the
5 date the student withdraws and complete those incomplete subjects
6 without payment of additional tuition.

7 (g) A program that is 40 hours or less of class time, or a
8 seminar or workshop, is exempt from the 72-hour rule provided by
9 Subsection (a). The career [~~proprietary~~] school or college shall
10 maintain a policy for the refund of the unused portion of tuition,
11 fees, and other charges in the event the student fails to enter the
12 course, withdraws from the course, or is discontinued from the
13 class at any time before completion of the course as provided by
14 this section. The policy must provide that:

15 (1) refunds are based on the period of enrollment
16 computed on the basis of course time expressed in clock hours;

17 (2) the effective date of the termination for refund
18 purposes is the earlier of:

19 (A) the last date of attendance; or

20 (B) the date the school or college receives
21 written notice from the student that the student is withdrawing
22 from the class; and

23 (3) the student will be refunded the pro rata portion
24 of tuition, fees, and other charges that the number of class hours
25 remaining in the course after the effective date of the termination
26 bears to the total number of class hours in the course.

27 SECTION 1.07. Sections 132.152(c)-(i), Education Code, are

1 amended to read as follows:

2 (c) If, after examination of a possible violation and the
3 facts relating to that possible violation, the commission concludes
4 that a violation has occurred, the commission shall issue a
5 preliminary report that states the facts on which the conclusion is
6 based, the fact that an administrative penalty is to be imposed
7 ~~[recommended]~~, and the amount of the penalty to be assessed
8 ~~[recommended]~~. Not later than the 10th day after the date on which
9 the commission issues the preliminary report, the commission shall
10 send a copy of the report ~~[by certified mail]~~ to the person charged
11 with the violation, together with a statement of the right of the
12 person to a hearing relating to the alleged violation and the amount
13 of the penalty.

14 (d) Not later than the 20th day after the date on which the
15 ~~[person receives the]~~ report is sent, the person charged must
16 either make a written request for a hearing or remit the amount of
17 the administrative penalty to the commission. Failure either to
18 request a hearing or to remit the amount of the administrative
19 penalty within the time provided by this subsection results in a
20 waiver of a right to a hearing under this section. If the person
21 charged requests a hearing, the hearing shall be conducted in the
22 same manner as a hearing on the denial of a certificate of approval
23 under Section 132.101. If the hearing results in a finding that a
24 violation has occurred, the commission shall:

25 (1) provide to the person written notice of:

26 (A) the findings established at the hearing; and

27 (B) the amount of the penalty; and

1 (2) enter an order requiring the person to pay the
2 amount of the penalty [~~by an administrative law judge of the State~~
3 ~~Office of Administrative Hearings. The administrative law judge~~
4 ~~shall make findings of fact and conclusions of law and promptly~~
5 ~~issue to the commission a proposal for a decision about the~~
6 ~~occurrence of the violation and the amount of the proposed penalty.~~
7 ~~Based on the findings of fact, conclusions of law, and proposal for~~
8 ~~decision, the commission by order may:~~

9 [~~(1) find that a violation has occurred and impose a~~
10 ~~penalty; or~~

11 [~~(2) find that a violation has not occurred~~].

12 (e) [~~The notice of the commission's order given to the~~
13 ~~person under Chapter 2001, Government Code, must include a~~
14 ~~statement of the person's right to judicial review of the order.~~

15 [~~(f)~~] Not later than the 30th day after the date the person
16 receives the order entered by the commission under Subsection (d)
17 [~~commission's order is final under Section 2001.144, Government~~
18 ~~Code~~], the person shall:

19 (1) pay the amount of the penalty;

20 (2) remit [~~pay~~] the amount of the penalty to the
21 commission for deposit in an escrow account and file a petition for
22 judicial review contesting the occurrence of the violation, the
23 amount of the penalty, or both the occurrence of the violation and
24 the amount of the penalty; or

25 (3) without paying the amount of the penalty, file a
26 petition for judicial review contesting the occurrence of the
27 violation, the amount of the penalty, or both the occurrence of the

1 violation and the amount of the penalty and file with the court a
2 sworn affidavit stating that the person is financially unable to
3 pay the amount of the penalty.

4 (f) The commission's order is subject to judicial review in
5 the same manner as an appeal of a decision to deny a certificate of
6 approval under Section 132.102.

7 (g) If on review the court does not sustain the occurrence
8 of the violation or finds that the amount of the penalty should be
9 reduced, the commission shall remit the appropriate amount to the
10 person charged with the violation not later than the 30th day after
11 the date the court's judgment becomes final. [~~Within the period~~
12 ~~prescribed by Subsection (f), a person who acts under Subsection~~
13 ~~(f)(3) may:~~

14 [~~(1) stay enforcement of the penalty by:~~

15 [~~(A) paying the amount of the penalty to the~~
16 ~~court for placement in an escrow account; or~~

17 [~~(B) giving to the court a supersedeas bond~~
18 ~~approved by the court that is in the amount of the penalty and that~~
19 ~~is effective until all judicial review of the commission's order is~~
20 ~~final; or~~

21 [~~(2) request the court to stay enforcement of the~~
22 ~~penalty by:~~

23 [~~(A) filing with the court a sworn affidavit of~~
24 ~~the person stating that the person is financially unable to pay the~~
25 ~~amount of the penalty and is financially unable to give the~~
26 ~~supersedeas bond; and~~

27 [~~(B) giving a copy of the affidavit to the~~

1 ~~commission by certified mail.]~~

2 (h) If the court sustains the occurrence of the violation:

3 (1) the court:

4 (A) shall order the person to pay the amount of
5 the penalty; and

6 (B) may award to the commission the attorney's
7 fees and court costs incurred by the commission in defending the
8 action; and

9 (2) the commission shall remit the amount of the
10 penalty to the comptroller for deposit in the general revenue fund.

11 ~~[The commission may file with the court a contest to an affidavit~~
12 ~~received under Subsection (g)(2) not later than the fifth day after~~
13 ~~the date the commission receives the copy. The court shall hold a~~
14 ~~hearing on the facts alleged in the affidavit as soon as practicable~~
15 ~~and shall stay the enforcement of the penalty on finding that the~~
16 ~~alleged facts are true. The person who files an affidavit has the~~
17 ~~burden of proving that the person is financially unable to pay the~~
18 ~~amount of the penalty and to give a supersedeas bond.]~~

19 (i) If the person does not pay the amount of the penalty
20 after the commission's order becomes final for all purposes ~~and~~
21 ~~the enforcement of the penalty is not stayed],~~ the commission may
22 refer the matter to the attorney general for collection of the
23 amount of the penalty.

24 SECTION 1.08. Subchapter I, Chapter 132, Education Code, is
25 amended by adding Section 132.2415 to read as follows:

26 Sec. 132.2415. TUITION TRUST ACCOUNT. (a) The Texas
27 Workforce Commission depository bonds guaranty trust account is

1 renamed the career school or college tuition trust account. The
2 career school or college tuition trust account is the account
3 designated to receive all amounts related to the protection of
4 career school or college tuition. The balance of the trust account
5 may not exceed \$1 million.

6 (b) The commission may collect annually a fee from each
7 career school or college to be deposited to the credit of the career
8 school or college tuition trust account. The total amount of the
9 fees collected in a year shall be set by the commission in the
10 amount estimated as necessary to pay the liabilities of the trust
11 account during that year, not to exceed 0.2 percent of the gross
12 amount of tuition and fees charged by career schools and colleges in
13 that year, excluding amounts refunded under Section 132.061.

14 (c) If, at the end of a fiscal year, the commission
15 determines that the commission has collected fees under this
16 chapter in excess of the amount necessary to defray the expense of
17 administering this chapter, the commission may transfer any portion
18 of the excess amount to the career school or college tuition trust
19 account.

20 (d) From money in the career school or college tuition trust
21 account, the commission shall attempt to provide a full refund to
22 each student of a closed career school or college of the amount owed
23 to the student as determined under Section 132.061. The commission
24 may provide a partial refund to a student only if the commission
25 determines that the amount in the trust account is insufficient to
26 provide a full refund to the student. The commission shall consider
27 the following factors in determining the amount of a partial refund

1 to be paid to a student:

2 (1) the amount of money in the trust account;

3 (2) the cost and number of claims against the trust
4 account resulting from closure of the school or college;

5 (3) the average cost of a claim paid from the trust
6 account in the past; and

7 (4) the availability of other licensed career schools
8 or colleges at which the student may complete the student's
9 training.

10 SECTION 1.09. Section 132.242, Education Code, is amended
11 to read as follows:

12 Sec. 132.242. CLOSED SCHOOL OR COLLEGE. (a) If a career
13 [~~proprietary~~] school or college closes, the commission shall
14 attempt to arrange for students of the closed school or college to
15 attend another career [~~proprietary~~] school or college.

16 (b) The expense incurred by a career [~~proprietary~~] school or
17 college in providing a teachout that is directly related to
18 educating a student placed in the school or college under this
19 section, including the applicable tuition for the period for which
20 the student has paid tuition, shall be paid from the career
21 [~~proprietary~~] school or college tuition trust account [~~protection~~
22 fund].

23 (c) If the student cannot be placed in another career
24 [~~proprietary~~] school or college, the student's tuition and fees
25 shall be refunded under Section 132.061(d).

26 (d) If a student does not accept a place that is available
27 and reasonable in another career [~~proprietary~~] school or college,

1 the student's tuition and fees shall be refunded under the refund
2 policy maintained by the closing career [~~proprietary~~] school or
3 college under Section 132.061[~~(b)~~].

4 (e) For each closed career school or college, refunds shall
5 be paid from the career school or college [~~If the amount of the~~
6 ~~closed proprietary school's bond under Section 132.060 is less than~~
7 ~~the amount required for student refunds under Subsections (c) and~~
8 ~~(d), the refunds shall be paid from the proprietary school]~~ tuition
9 trust account [~~protection fund~~] in an amount not to exceed \$150,000
10 [~~\$50,000~~].

11 (f) If another career [~~proprietary~~] school or college
12 assumes responsibility for the closed career school's or college's
13 [~~proprietary school's~~] students with no significant changes in the
14 quality of training, the student is not entitled to a refund under
15 Subsection (c) or (d).

16 (g) Attorney's fees, court costs, or damages may not be paid
17 from the career [~~proprietary~~] school or college tuition trust
18 account [~~protection fund~~].

19 SECTION 1.10. The following laws are repealed:

- 20 (1) Sections 132.152(j)-(m), Education Code; and
21 (2) Sections 132.060 and 132.241, Education Code.

22 SECTION 1.11. The change in law made by this article to
23 Section 132.051(b), Education Code, applies only to a note or other
24 instrument issued, or a contract entered into, on or after the
25 effective date of this Act. A note or other instrument issued, or a
26 contract entered into, before the effective date of this Act is
27 governed by the law in effect on the date the note or other

1 instrument was issued or the contract was entered into, and the
2 former law is continued in effect for that purpose.

3 SECTION 1.12. The change in law made by this article to
4 Section 132.055, Education Code, applies only to an application for
5 a certificate of approval filed with the Texas Workforce Commission
6 on or after the effective date of this Act. An application for a
7 certificate of approval filed before the effective date of this Act
8 is governed by the law in effect on the date the application was
9 filed, and the former law is continued in effect for that purpose.

10 SECTION 1.13. The changes in law made by this article to
11 Section 132.061(b), Education Code, apply only to the refund policy
12 of a career school or college to which a certificate of approval is
13 granted or renewed by the Texas Workforce Commission on or after the
14 effective date of this Act.

15 SECTION 1.14. The changes in law made by this article to
16 Section 132.152, Education Code, apply only to an alleged violation
17 of Section 132.151, Education Code, that occurs on or after the
18 effective date of this Act. An alleged violation that occurs before
19 the effective date of this Act is governed by the law in effect on
20 the date the alleged violation occurred, and the former law is
21 continued in effect for that purpose.

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

1 as added by this article.

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

4 SECTION 2.01. Section 52.32(b), Education Code, is amended
5 to read as follows:

6 (b) If a loan applicant is enrolled at a career
7 [~~proprietary~~] school or college in a degree program that is
8 approved by the board, the applicant is not required to provide
9 evidence that the applicant [~~he~~] is unable to obtain a guaranteed
10 student loan from a commercial lender under Subsection (a)(2) of
11 this section.

12 SECTION 2.02. Section 53.02(5), Education Code, is amended
13 to read as follows:

14 (5) "Institution of higher education" means (i) any
15 institution of higher education as defined by Subdivision (8) of
16 Section 61.003 of this code, or (ii) a degree-granting college or
17 university corporation accredited by the Texas Education Agency or
18 by a recognized accrediting agency, as defined by Subdivision (13)
19 of Section 61.003 of this code, or (iii) a postsecondary career
20 [~~proprietary~~] school or college accredited by the Association of
21 Independent Colleges and Schools, the National Association of Trade
22 and Technical Schools, or the National Accrediting Commission of
23 Cosmetology Arts and Sciences.

24 SECTION 2.03. Section 54.6001, Education Code, is amended
25 to read as follows:

26 Sec. 54.6001. PUBLIC PURPOSE. An educated population being
27 necessary to the social development and economic health of this

1 state, the legislature finds and declares it to be an urgent public
2 necessity to assist young Texans in obtaining a higher education.
3 Because the state's population is rapidly growing and is diverse,
4 the state is required to use all of the higher education facilities
5 and resources within the state, both public and private, to provide
6 a wide variety of educational environments and instructional
7 options and to preserve the partnership between the state and
8 private or independent institutions of higher education and between
9 the state and career [~~proprietary~~] schools and colleges, as defined
10 by Section 132.001, that offer a two-year associate degree as
11 approved by the Texas Higher Education Coordinating Board.
12 Therefore, the prepaid higher education tuition program is
13 established to help Texas students attend the institution that best
14 meets their individual needs.

15 SECTION 2.04. Section 54.601(9), Education Code, is amended
16 to read as follows:

17 (9) "Career school or college" [~~"Proprietary school"~~]
18 means a career [~~proprietary~~] school or college, as defined by
19 Section 132.001, that offers a two-year associate degree as
20 approved by the Texas Higher Education Coordinating Board.

21 SECTION 2.05. Section 54.605(a), Education Code, is amended
22 to read as follows:

23 (a) A prepaid tuition contract remains in effect after the
24 program is terminated if, when the program is terminated, the
25 beneficiary:

26 (1) has been accepted by or is enrolled in an
27 institution of higher education, a private or independent

1 institution of higher education, or a career [~~proprietary~~] school
2 or college; or

3 (2) is projected to graduate from high school not
4 later than the third anniversary of the date the program is
5 terminated.

6 SECTION 2.06. Section 54.618(b), Education Code, is amended
7 to read as follows:

8 (b) The board may:

9 (1) adopt an official seal;

10 (2) adopt rules to implement this subchapter;

11 (3) sue and be sued;

12 (4) enter into contracts and other necessary
13 instruments;

14 (5) enter into agreements or other transactions with
15 the United States, state agencies, including institutions of higher
16 education, private or independent institutions of higher
17 education, career [~~proprietary~~] schools and colleges, and local
18 governments;

19 (6) appear in its own behalf before governmental
20 agencies;

21 (7) contract for necessary goods and services and
22 engage the services of private consultants, actuaries, trustees,
23 records administrators, managers, legal counsel, and auditors for
24 administrative or technical assistance;

25 (8) solicit and accept gifts, grants, loans, and other
26 aid from any source or participate in any other way in any
27 government program to carry out this subchapter;

1 (9) impose administrative fees;

2 (10) contract with a person to market the program;

3 (11) purchase liability insurance covering the board
4 and employees and agents of the board; and

5 (12) establish other policies, procedures, and
6 eligibility criteria to implement this subchapter.

7 SECTION 2.07. Section 54.619(h), Education Code, is amended
8 to read as follows:

9 (h) Notwithstanding other provisions of this subchapter,
10 any contract benefits purchased under this subchapter may be
11 applied to the payment of tuition and required fees at a career
12 [~~proprietary~~] school or college as if the [~~proprietary~~] school or
13 college were an institution of higher education or private or
14 independent institution of higher education. On the purchaser's
15 request, the board shall apply, in accordance with Section 54.628,
16 any existing amount of prepaid tuition contract benefits to the
17 payment of tuition and required fees at a career [~~proprietary~~]
18 school or college. The board is not responsible for the payment of
19 tuition and required fees at the career [~~proprietary~~] school or
20 college in excess of that amount. The board may adopt rules as
21 necessary to implement this subsection.

22 SECTION 2.08. The heading to Chapter 132, Education Code,
23 is amended to read as follows:

24 CHAPTER 132. CAREER [~~PROPRIETARY~~] SCHOOLS AND COLLEGES

25 SECTION 2.09. Sections 132.021(a) and (b), Education Code,
26 are amended to read as follows:

27 (a) The commission shall exercise jurisdiction and control

1 of the system of career [~~proprietary~~] schools and colleges, and the
2 commission shall carry out supervision of the provisions of this
3 chapter, and enforce minimum standards for approval of career
4 [~~proprietary~~] schools and colleges under the operating regulations
5 and policies hereinafter set forth and as may be adopted pursuant to
6 this chapter.

7 (b) The commission shall prepare a comparison of the cost to
8 a student of courses of instruction or training programs at career
9 [~~proprietary~~] schools and colleges to the cost to a student of
10 similar courses or programs at schools that are exempt from this
11 chapter under Section 132.002.

12 SECTION 2.10. Section 132.022, Education Code, is amended
13 to read as follows:

14 Sec. 132.022. DUTIES OF COMMISSION. The commission shall
15 carry out the policies of this chapter and enforce the rules adopted
16 under this chapter. The commission shall also certify the names of
17 those career [~~proprietary~~] schools and colleges meeting the
18 requirements for a certificate of approval.

19 SECTION 2.11. Section 132.023, Education Code, is amended
20 to read as follows:

21 Sec. 132.023. MEMORANDUM OF UNDERSTANDING FOR REGULATION OF
22 CAREER [~~PROPRIETARY~~] SCHOOLS AND COLLEGES. (a) The commission
23 shall develop, in consultation with the Texas Guaranteed Student
24 Loan Corporation and each state agency that regulates career
25 [~~proprietary~~] schools and colleges in this state, a comprehensive
26 strategy to reduce default rates at the regulated career
27 [~~proprietary~~] schools and colleges and to improve the overall

1 quality of the programs operated by these schools and colleges.

2 (b) The commission shall execute a memorandum of
3 understanding outlining the strategy with the corporation and each
4 state agency regulating career [~~proprietary~~] schools and colleges
5 and shall adopt rules to carry out the commission's [~~its~~] duties
6 under this section. The Texas Guaranteed Student Loan Corporation
7 shall adopt the memorandum of understanding as procedures of the
8 corporation, and each agency by rule shall adopt the memorandum of
9 understanding.

10 (c) The memorandum of understanding shall:

11 (1) require the development and monitoring of
12 indicators that identify career [~~proprietary~~] schools and colleges
13 that have excessive loan default rates, poor program performance,
14 or both;

15 (2) require the sharing of specific information
16 relating to the indicators between the commission and the Texas
17 Guaranteed Student Loan Corporation or other agency; and

18 (3) require the application of specific sanctions by
19 the commission or by the Texas Guaranteed Student Loan Corporation
20 or other agency, as appropriate, to lower the default rates,
21 improve program performance, or both.

22 (d) If the commission enters into a memorandum of
23 understanding with the Texas Guaranteed Student Loan Corporation
24 related to the regulation of career [~~proprietary~~] schools and
25 colleges, the commission may require each career [~~proprietary~~]
26 school or college governed by this chapter to provide information
27 to the commission that is necessary for the purposes of the

1 memorandum of understanding.

2 SECTION 2.12. Section 132.051(a), Education Code, is
3 amended to read as follows:

4 (a) A career [~~proprietary~~] school or college may not
5 maintain, advertise, solicit for, or conduct any course of
6 instruction in this state before the later of:

7 (1) the 30th day after the date the school or college
8 applies for a certificate of approval under this chapter; or

9 (2) the date the school or college receives a
10 certificate of approval from the commission.

11 SECTION 2.13. Section 132.052, Education Code, is amended
12 to read as follows:

13 Sec. 132.052. APPLICATION FOR CERTIFICATE OF APPROVAL.
14 Every career [~~proprietary~~] school or college desiring to operate in
15 this state or do business in this state shall make written
16 application to the commission for a certificate of approval. Such
17 application shall be verified, be in such form as may be prescribed
18 by the commission, and shall furnish the commission such
19 information as the commission may require.

20 SECTION 2.14. Section 132.053, Education Code, is amended
21 to read as follows:

22 Sec. 132.053. STATUTORY WAIVER AUTHORITY. (a) The
23 commission may establish rules that waive, alter, suspend, or
24 replace any of the following provisions governing small career
25 [~~proprietary~~] schools and colleges:

26 (1) the fee schedule authorized under Section 132.201,
27 provided that fees under a fee schedule established by rule may not

1 be less than the reasonable administrative cost for regulation or
2 more than the amount that a small career [~~proprietary~~] school or
3 college would otherwise pay if it were not classified as a small
4 career [~~proprietary~~] school or college;

5 (2) participation in the career [~~proprietary~~] school
6 or college tuition trust account [~~protection fund~~] required by
7 Section 132.2415 [~~132.241~~];

8 (3) the refund policy provisions of Section 132.061;

9 (4) [~~the bonding requirements of Section 132.060~~;

10 [~~5~~] the examination of a school or college for
11 compliance under Section 132.056(f);

12 (5) [~~6~~] the reporting requirements of Section
13 132.055(o); and

14 (6) [~~7~~] the term for which a certificate of approval
15 is issued under Section 132.056(b), provided that a rule adopted
16 under this section may not provide for a term that exceeds three
17 years or is less than one year.

18 (b) A rule proposed under this section may be adopted only
19 if it will reduce the regulatory burden for small career
20 [~~proprietary~~] schools and colleges and will adequately safeguard
21 the interests of the students of small career [~~proprietary~~] schools
22 and colleges to receive either the education for which they have
23 contracted or an appropriate refund.

24 SECTION 2.15. Section 132.054, Education Code, is amended
25 to read as follows:

26 Sec. 132.054. SMALL SCHOOL OR COLLEGE EXEMPTION. The
27 commission may exempt small career [~~proprietary~~] schools and

1 colleges from any requirement of this chapter to reduce the cost to
2 small schools and colleges of receiving a certificate of approval.

3 SECTION 2.16. Section 132.056, Education Code, is amended
4 to read as follows:

5 Sec. 132.056. ISSUANCE OF CERTIFICATE OF APPROVAL; RENEWAL.

6 (a) The commission, upon review of an application for a certificate
7 of approval duly submitted in accordance with Section 132.052 and
8 meeting the requirements of Section 132.055, shall issue a
9 certificate of approval to the applicant career [~~proprietary~~]
10 school or college. The certificate of approval shall be in a form
11 prescribed by the commission and shall state in a clear and
12 conspicuous manner at least the following information:

13 (1) date of issuance, effective date, and term of
14 approval;

15 (2) correct name and address of the school or college;

16 (3) authority for approval and conditions of approval,
17 if any, referring specifically to the approved catalogue or
18 bulletin published by the school or college;

19 (4) signature of the agency administrator; and

20 (5) any other fair and reasonable representations that
21 are consistent with this chapter and deemed necessary by the
22 commission.

23 (b) The term for which a certificate of approval shall be
24 issued may not exceed one year.

25 (c) The certificate of approval shall be issued to the owner
26 of the applicant career [~~proprietary~~] school or college and is
27 nontransferable. In the event of a change in ownership of the

1 school or college, a new owner must, at least 30 days prior to the
2 change in ownership, apply for a new certificate of approval.

3 (d) At least 30 days prior to expiration of a certificate of
4 approval, the career [~~proprietary~~] school or college shall forward
5 to the commission an application for renewal. The commission shall
6 reexamine the premises of the school or college as frequently as the
7 commission considers necessary and renew, revoke, or deny renewal
8 of the school's or college's [~~school's~~] certificate of approval. If
9 a school or college fails to file a complete application for renewal
10 at least 30 days before the expiration date of the certificate of
11 approval, the school or college, as a condition of renewal, must
12 pay, in addition to the annual renewal fee, a late renewal fee in an
13 amount established by commission rule of at least \$100.

14 (e) A career [~~proprietary~~] school or college not yet in
15 operation when its application for a certificate of approval is
16 filed may not begin operation until receipt of the certificate of
17 approval.

18 (f) The commission shall visit a career [~~proprietary~~]
19 school or college to reexamine the school or college for compliance
20 with the criteria provided by Section 132.055 not later than three
21 months after the date the [~~a~~] school or college begins operation or
22 after a change in ownership of the [~~a~~] school or college.

23 SECTION 2.17. Section 132.058, Education Code, is amended
24 to read as follows:

25 Sec. 132.058. REVOCATION OF CERTIFICATE OF APPROVAL. (a)
26 The commission may revoke an issued certificate of approval or
27 place reasonable conditions upon the continued approval

1 represented by the certificate. Prior to revocation or imposition
2 of conditions upon a certificate of approval, the commission shall
3 notify the holder of the certificate, in writing, of the impending
4 action and set forth the grounds for the action. The commission may
5 reexamine a career [~~proprietary~~] school or college two or more
6 times during each year in which a notice relating to the school or
7 college has been issued or conditions have been imposed on the
8 school or college under this subsection.

9 (b) A certificate of approval may be revoked or made
10 conditional if the commission has reasonable cause to believe that
11 the career [~~proprietary~~] school or college is guilty of a violation
12 of this chapter or of any rules adopted under this chapter.

13 SECTION 2.18. Sections 132.059(a), (b), and (d), Education
14 Code, are amended to read as follows:

15 (a) All representatives employed by a career [~~proprietary~~]
16 school or college shall register with the commission. Application
17 for registration may be made at any time and shall be based on
18 information submitted in accordance with the provisions of Section
19 132.052.

20 (b) Registration of a representative is effective upon
21 receipt of notice from the commission and remains in effect for a
22 period not in excess of 12 calendar months. Renewal of
23 representative registration shall be in accordance with the renewal
24 application form forwarded to the career [~~proprietary~~] school or
25 college by the commission.

26 (d) Career [~~Proprietary~~] schools and colleges domiciled or
27 having their principal place of business outside of this state that

1 engage representatives to canvass, solicit, or contract with any
2 person within this state, are subject to the requirements for
3 registration of representatives.

4 SECTION 2.19. Section 132.062, Education Code, is amended
5 to read as follows:

6 Sec. 132.062. WITHHOLDING RECORDS. A career [~~proprietary~~]
7 school or college may withhold a student's transcript or
8 certificate of completion of training until the student has
9 fulfilled the student's financial obligation to the school or
10 college.

11 SECTION 2.20. Section 132.063, Education Code, is amended
12 to read as follows:

13 Sec. 132.063. APPROVED DEGREES. A career [~~proprietary~~]
14 school or college may offer a degree approved by the Texas Higher
15 Education Coordinating Board.

16 SECTION 2.21. Section 132.064, Education Code, is amended
17 to read as follows:

18 Sec. 132.064. NONQUALIFICATION AS SMALL CAREER
19 [~~PROPRIETARY~~] SCHOOL AND COLLEGE. (a) A career [~~proprietary~~]
20 school or college operating as a small career [~~proprietary~~] school
21 or college but that has an annual gross income from tuition and fees
22 that exceeds \$100,000 (other than a test preparation school
23 described by Section 132.001(10)(B) or (C)) that intends to receive
24 a payment from federal funds under 20 U.S.C. Section 1070 et seq. or
25 intends to receive prepayment of tuition, fees, or other charges
26 from federal or state funds shall send written notice to the
27 commission. The notice must be sent not later than the following

1 date, as applicable:

2 (1) the 60th day after the date on which annual gross
3 income is determined to exceed the maximum;

4 (2) the day before receiving a payment of federal
5 funds under 20 U.S.C. Section 1070 et seq.; or

6 (3) the day before enrolling a student who will prepay
7 tuition, a fee, or another charge in whole or in part from federal
8 or state funds.

9 (b) A career [~~proprietary~~] school or college that no longer
10 qualifies as a small career [~~proprietary~~] school or college shall
11 apply for an initial certificate of approval as a career
12 [~~proprietary~~] school or college within 30 days after the date the
13 school has notified the commission that it no longer qualifies as a
14 small career [~~proprietary~~] school or college. The commission may
15 apply or prorate any fees paid by the school or college as a small
16 career [~~proprietary~~] school or college.

17 (c) A career [~~proprietary~~] school or college that no longer
18 qualifies as a small career [~~proprietary~~] school or college shall
19 submit to the commission an amount of money equal to the difference
20 between the fee for the small career [~~proprietary~~] school or
21 college certificate of approval submitted by the school or college
22 and the fee that the school or college would be required to submit
23 after its qualifications as a small career [~~proprietary~~] school or
24 college cease.

25 (d) The authority of a career [~~proprietary~~] school or
26 college to operate under a small career [~~proprietary~~] school or
27 college certificate of approval terminates on the final

1 determination of issuance or denial of an initial certificate of
2 approval. If a school or college fails to file a complete
3 application within the period required by Subsection (b), the
4 school or college, as a condition of issuance, must pay a late fee
5 in an amount established by commission rule of at least \$100.

6 SECTION 2.22. Section 132.151, Education Code, is amended
7 to read as follows:

8 Sec. 132.151. PROHIBITIONS. A person may not:

9 (1) operate a career [~~proprietary~~] school or college
10 without a certificate of approval issued by the commission;

11 (2) solicit prospective students for or on behalf of a
12 career [~~proprietary~~] school or college without being registered as
13 a representative of the career [~~proprietary~~] school or college as
14 required by this chapter;

15 (3) accept contracts or enrollment applications from a
16 representative who is not bonded as required by this chapter;

17 (4) utilize advertising designed to mislead or deceive
18 prospective students;

19 (5) fail to notify the commission of the
20 discontinuance of the operation of any career [~~proprietary~~] school
21 or college within 72 hours of cessation of classes and make
22 available accurate records as required by this chapter;

23 (6) fail to secure and file within 30 days an increased
24 bond as required by this chapter;

25 (7) negotiate any promissory instrument received as
26 payment of tuition or other charge prior to completion of 75 percent
27 of the course, provided that prior to such time, the instrument may

1 be transferred by assignment to a purchaser who shall be subject to
2 all the defenses available against the career [~~proprietary~~] school
3 or college named as payee; or

4 (8) violate any provision of this chapter.

5 SECTION 2.23. Section 132.153, Education Code, is amended
6 to read as follows:

7 Sec. 132.153. COMPETITIVE BIDDING; ADVERTISING. The
8 commission may not adopt rules to restrict competitive bidding or
9 advertising by a career [~~proprietary~~] school or college except to
10 prohibit false, misleading, or deceptive competitive bidding or
11 advertising practices. Those rules may not restrict:

12 (1) the use of an advertising medium;

13 (2) the size or duration of an advertisement; or

14 (3) advertisement under a trade name.

15 SECTION 2.24. Section 132.154(a), Education Code, is
16 amended to read as follows:

17 (a) Whenever the commission has probable cause to believe
18 that any career [~~proprietary~~] school or college has committed any
19 acts that would be in violation of this chapter, the commission
20 shall apply for an injunction restraining the commission of such
21 acts.

22 SECTION 2.25. Section 132.156, Education Code, is amended
23 to read as follows:

24 Sec. 132.156. SANCTIONS. (a) If the commission has
25 reasonable cause to believe that a career [~~proprietary~~] school or
26 college has violated this chapter or a rule adopted under this
27 chapter, the commission may:

- 1 (1) order a peer review of the school or college; or
2 (2) suspend the admission of students to the school or
3 college.

4 (b) A peer review ordered under this section shall be
5 conducted by a peer review team composed of knowledgeable persons
6 selected by the commission. The commission shall attempt to
7 provide a balance on each team between members assigned to the team
8 who are from this state and those who are from other states. The
9 team shall provide the commission with an objective assessment of
10 the content of the career school's or college's [~~proprietary~~
11 ~~school's~~] curriculum and its application. The costs of providing a
12 peer review team shall be paid by the school or college.

13 SECTION 2.26. Sections 132.157(a), (b), (c), and (d),
14 Education Code, are amended to read as follows:

15 (a) If a career [~~proprietary~~] school or college fails to
16 timely comply with the requirements of Section 132.064, in addition
17 to any other penalties authorized by law, the commission may assess
18 a penalty in an amount not greater than two times the amount that
19 the school or college would have paid in fees and other charges if
20 the school or college had complied with the requirements of Section
21 132.064 or may assess a penalty in the amount of the tuition or fee
22 charge to any students whose tuition or fees were contracted to be
23 funded by a prepaid federal or state source.

24 (b) If the commission finds that the career [~~proprietary~~]
25 school or college acted intentionally, the commission may, in
26 addition to any other remedy available under law, assess a penalty
27 against the owner in an amount not greater than four times the

1 amount of the fees and charges that the school or college should
2 have paid or four times the amount of the student tuition that was
3 contracted to be funded from a prepaid federal or state source.

4 (c) The failure to notify the commission within four months
5 after the career school's or college's [~~proprietary school's~~]
6 earnings exceed that of a small career [~~proprietary~~] school or
7 college gives rise to a rebuttable presumption of intent for
8 purposes of assessment of a penalty.

9 (d) The failure to notify the commission within 10 days
10 after a career [~~proprietary~~] school or college has enrolled a
11 student whose tuition or fees are paid in whole or in part from a
12 prepaid federal or state source gives rise to a rebuttable
13 presumption of intent for purposes of assessment of a penalty.

14 SECTION 2.27. Sections 132.201(a), (c), (d), (e), (f), (h),
15 and (i), Education Code, are amended to read as follows:

16 (a) Certificate and registration fees, except those charged
17 pursuant to Subsection (d), shall be collected by the commission.
18 Each fee shall be in an amount set by the commission in an amount not
19 to exceed 150 percent of each fee in the following schedule:

20 (1) the initial fee for a career [~~proprietary~~] school
21 or college:

22 (A) for a certificate of approval is \$2,000; or

23 (B) for a small career [~~proprietary~~] school or
24 college certificate of approval is \$1,000;

25 (2) the first renewal fee and each subsequent renewal
26 fee for a career [~~proprietary~~] school or college is the greater of:

27 (A) an amount that is determined by applying a

1 percentage, not to exceed 0.3 percent, to the gross tuition and
2 fees, excluding refunds as provided by Section 132.061, of the
3 school or college; or

4 (B) \$500;

5 (3) the initial registration fee for a representative
6 is \$60;

7 (4) the annual renewal fee for a representative is
8 \$30;

9 (5) the fee for a change of a name of a career
10 [~~proprietary~~] school or college or owner is \$100;

11 (6) the fee for a change of an address of a career
12 [~~proprietary~~] school or college is \$180;

13 (7) the fee for a change in the name or address of a
14 representative or a change in the name or address of a career
15 [~~proprietary~~] school or college that causes the reissuance of a
16 representative permit is \$10;

17 (8) the application fee for an additional course is
18 \$150, except for seminar and workshop courses, for which the fee is
19 \$25;

20 (9) the application fee for a director, administrative
21 staff member, or instructor is \$15;

22 (10) the application fee for the authority to grant
23 degrees is \$2,000;

24 (11) the application fee for an additional degree
25 course is \$250; and

26 (12) the fee for an inspection required by commission
27 rule of classroom facilities that are separate from the main campus

1 is \$250.

2 (c) For purposes of this section, the gross amount of annual
3 student fees and tuition for a career [~~proprietary~~] school or
4 college is the amount determined by the commission based on any
5 report submitted by the school or college to the commission or other
6 information obtained by the commission.

7 (d) In connection with the regulation of any career
8 [~~proprietary~~] school or college or course through a memorandum of
9 understanding pursuant to Section 132.002(c), the commission shall
10 set an application and annual renewal fee, not to exceed \$2,000.
11 The fee shall be an amount reasonably calculated to cover the
12 administrative costs associated with assuming the additional
13 regulation.

14 (e) The fee for an investigation at a career [~~proprietary~~]
15 school or college to resolve a complaint filed against the school or
16 college is \$600. The fee may be charged only if:

17 (1) the complaint could not have been resolved by
18 telephone or written correspondence only;

19 (2) a representative of the commission visits the
20 school or college as a part of the complaint resolution process; and

21 (3) the school or college is found to be at fault.

22 (f) The commission may allow payment of any fee authorized
23 under this section or under Section 132.2415 [~~132.241~~] that exceeds
24 \$1,000 to be paid by installment. The commission shall provide for
25 appropriate interest charges and late penalties in addition to any
26 other remedy that is provided for by law for the late payment of a
27 fee installment authorized under this section. The commission may

1 assess a reasonable service charge or interest to be paid by a
2 career [~~proprietary~~] school or college that pays a fee by
3 installment in an amount not to exceed 10 percent annually of the
4 fee that is to be paid by installment.

5 (h) The commission may apply or prorate a fee paid by a small
6 career [~~proprietary~~] school or college that has complied with the
7 notification requirements of Section 132.064 toward an initial
8 certificate as a career [~~proprietary~~] school or college in the
9 event that a career [~~proprietary~~] school or college has ceased to
10 qualify as a small career [~~proprietary~~] school or college during a
11 certification period.

12 (i) The commission may charge each career [~~proprietary~~]
13 school or college a fee for the cost of a service that collects,
14 analyzes, and reports student-level data in order to assess the
15 outcome of students who attend career [~~proprietary~~] schools and
16 colleges. The total amount of the fees charged under this
17 subsection must not exceed the cost of the service to the
18 commission.

19 SECTION 2.28. Section 52.013(b), Government Code, is
20 amended to read as follows:

21 (b) The board may:

- 22 (1) appoint any necessary or proper subcommittee;
- 23 (2) hire necessary employees;
- 24 (3) pay all reasonable expenses from available funds;
- 25 (4) approve curriculum for court reporter career
26 [~~proprietary~~] schools and colleges as provided by Section 132.055,
27 Education Code;

1 (5) approve court reporter programs in technical
2 institutes and public community colleges for purposes of
3 certification under Section 61.051, Education Code; and

4 (6) approve continuing professional education courses
5 for persons certified as court reporters.

6 SECTION 2.29. Section 305.002(3), Labor Code, is amended to
7 read as follows:

8 (3) "Eligible institution" means a career
9 ~~[proprietary]~~ school or college in this state that:

10 (A) holds a certificate of approval under Chapter
11 132, Education Code; and

12 (B) is approved by the commission under Section
13 305.023 for its students to participate in the grant program
14 established under this chapter.

15 SECTION 2.30. Section 305.023, Labor Code, is amended to
16 read as follows:

17 Sec. 305.023. APPROVAL OF INSTITUTIONS. The commission
18 shall approve a career ~~[proprietary]~~ school or college for its
19 students to participate in the grant program established under this
20 chapter if the school or college:

21 (1) has been accredited for not less than five years by
22 an accrediting agency recognized by the United States Department of
23 Education and maintains that accreditation;

24 (2) has held a certificate of approval under Chapter
25 132, Education Code, for at least five years; and

26 (3) offers one or more qualified education programs.

27 SECTION 2.31. Section E, Article 2.23A, Texas Non-Profit

1 Corporation Act (Article 1396-2.23A, Vernon's Texas Civil
2 Statutes), is amended to read as follows:

3 E. This article does not apply to:

4 (1) a corporation that solicits funds only from its
5 members;

6 (2) a corporation which does not intend to solicit and
7 receive and does not actually raise or receive contributions from
8 sources other than its own membership in excess of \$10,000 during a
9 fiscal year;

10 (3) a career [~~proprietary~~] school or college that has
11 received a certificate of approval from the Texas Workforce
12 Commission [~~State Commissioner of Education~~], a public institution
13 of higher education and foundations chartered for the benefit of
14 such institutions or any component part thereof, a private or
15 independent institution of higher education as defined by Section
16 61.003, Education Code, a postsecondary educational institution
17 with a certificate of authority to grant a degree issued by the
18 Texas Higher Education Coordinating Board, [~~Texas College and~~
19 ~~University System,~~] or an elementary or secondary school;

20 (4) religious institutions which shall be limited to
21 churches, ecclesiastical or denominational organizations, or other
22 established physical places for worship at which religious services
23 are the primary activity and such activities are regularly
24 conducted;

25 (5) a trade association or professional society whose
26 income is principally derived from membership dues and assessments,
27 sales, or services;

1 (6) any insurer licensed and regulated by the Texas
2 Department [~~State Board~~] of Insurance;

3 (7) an organization whose charitable activities
4 relate to public concern in the conservation and protection of
5 wildlife, fisheries, and allied natural resources;

6 (8) an alumni association of a public or private
7 institution of higher education in this state, provided that such
8 association is recognized and acknowledged by the institution as
9 its official alumni association.

10 ARTICLE 3. EFFECTIVE DATE

11 SECTION 3.01. This Act takes effect September 1, 2003.