

By: Jackson

S.B. No. 1343

A BILL TO BE ENTITLED

AN ACT

relating to the regulation and operation of certain proprietary schools.

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

SECTION 1. Section 132.001, Education Code, is amended by amending Subdivision (1) and adding Subdivision (13) to read as follows:

(1) "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.

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

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

1 (B) a variety of communication technologies may
2 be used to deliver synchronous or asynchronous instruction to the
3 student.

4 SECTION 2. Section 132.002, Education Code, is amended by
5 amending Subsections (a) and (d) and adding Subsections (e) and (f)
6 to read as follows:

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

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

13 (2) a nonprofit school [~~schools~~] owned, controlled,
14 operated, and conducted by a bona fide religious, denominational,
15 eleemosynary, or similar public institution [~~institutions~~] exempt
16 from property taxation under the laws of this state[, ~~but such~~
17 ~~schools may choose to apply for a certificate of approval~~
18 ~~hereunder, and upon approval and issuance, are subject to this~~
19 ~~chapter as determined by the commission~~];

20 (3) a school or training program that offers
21 instruction of purely avocational or recreational subjects as
22 determined by the commission;

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

26 (5) a course or courses of study or instruction
27 sponsored by a recognized trade, business, or professional

1 organization for the instruction of the members of the organization
2 with a closed membership;

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

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

14 (8) an aviation school [~~schools~~] or instructor
15 [~~instructors~~] approved by and under the supervision of the Federal
16 Aviation Administration;

17 (9) a school that offers intensive review of a
18 student's acquired education, training, or experience to prepare
19 the student for an examination, other than a high school
20 equivalency examination, that the student by law may not take
21 unless the student has completed or substantially completed a
22 particular degree program, or that the student is required to take
23 as a precondition for enrollment in or admission to a particular
24 degree program;

25 (10) a private school offering primary or secondary
26 education, which may include a kindergarten or prekindergarten
27 program, and that satisfies the compulsory attendance requirements

1 of Section 25.085 pursuant to Section 25.086(a)(1);

2 (11) a course or courses of instruction by bona fide
3 electrical trade associations for the purpose of preparing students
4 for electrical tests required for licensing and for the purpose of
5 providing continuing education to students for the renewal of
6 electrical licenses;

7 (12) a nonprofit arts organization that has as its
8 primary purpose the provision of instruction in the dramatic arts
9 and the communications media to persons younger than 19 years of
10 age;

11 (13) a course or training program conducted by a
12 nonprofit association of air conditioning and refrigeration
13 contractors approved by the Air Conditioning and Refrigeration
14 Contractors Advisory Board to provide instruction for technical,
15 business, or license examination preparation programs relating to
16 air conditioning and refrigeration contracting, as that term is
17 defined by Chapter 1302, Occupations Code [~~the Air Conditioning and
18 Refrigeration Contractor License Law (Article 8861, Vernon's Texas
19 Civil Statutes)~~];

20 (14) a course of instruction by a plumbing trade
21 association to prepare students for a plumbing test or program
22 required for licensing, certification, or endorsement or to provide
23 continuing education approved by the Texas State Board of Plumbing
24 Examiners; and

25 (15) a course of instruction in the use of
26 technological hardware or software if the course is offered to a
27 purchaser of the hardware or software or to the purchaser's

1 employee by a person who manufactures and sells, or develops and
2 sells, the hardware or software, and if the seller is not primarily
3 in the business of providing courses of instruction in the use of
4 the hardware or software, as determined by the commission.

5 (d) A school or educational institution is exempt from
6 regulation under this chapter only if:

7 (1) the owner of the school or educational
8 institution:

9 (A) applies to the commission for an exemption
10 under this section; and

11 (B) provides to the commission any information
12 considered necessary by the commission to support the owner's
13 application for an exemption; and

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

17 (e) After a school or educational institution is declared
18 exempt by the commission under this section, the commission may
19 inspect the school or institution or require the owner of the school
20 or institution to provide any information the commission considers
21 necessary for the commission to ensure the school or institution's
22 continued compliance with the requirements of the exemption.

23 (f) A school or educational institution listed in
24 Subsection (a) may seek a certificate of approval under Subchapter
25 C ~~[Notwithstanding the exemptions listed in Subsection (a), a~~
26 ~~dispute resolution organization, as defined by Section 154.001,~~
27 ~~Civil Practice and Remedies Code, may seek a certificate of~~

1 ~~approval pursuant to Subchapter C].~~

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

4 (b) Any contract entered into with any person for a course
5 of instruction by or on behalf of any person operating any
6 proprietary school to which a certificate of approval has not been
7 issued pursuant to this chapter is unenforceable in any action
8 brought thereon. Any note, other instrument of indebtedness, or
9 contract relating to payment for educational services obtained from
10 a proprietary school that does not hold a certificate of approval
11 issued under this chapter is unenforceable in any action brought on
12 the note, instrument, or contract.

13 SECTION 4. Section 132.055, Education Code, is amended to
14 read as follows:

15 Sec. 132.055. CRITERIA. The commission may approve the
16 application of such proprietary school when the school is found,
17 upon investigation at the premises of the school, to have met the
18 following criteria:

19 (a) The courses, curriculum, and instruction are of such
20 quality, content, and length as may reasonably and adequately
21 achieve the stated objective for which the courses, curriculum, or
22 instruction are offered. Before a school conducts a course of
23 instruction in court reporting, the school must produce evidence
24 that the school has obtained approval for the curriculum from the
25 Court Reporters Certification Board.

26 (b) There is in the school adequate space, equipment,
27 instructional material, and instructor personnel to provide

1 training of good quality.

2 (c) Educational and experience qualifications of directors,
3 administrators, and instructors are adequate.

4 (d) The school maintains a written record of the previous
5 education and training of the applicant student and clearly
6 indicates that appropriate credit has been given by the school for
7 previous education and training, with the new training period
8 shortened where warranted through use of appropriate skills or
9 achievement tests and the student so notified.

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

20 (f) Except as provided by Section 132.062, on completion of
21 training, the student is given a certificate by the school
22 indicating the course and that training was satisfactorily
23 completed.

24 (g) Adequate records as prescribed by the commission are
25 kept to show attendance and progress or grades, and satisfactory
26 standards relating to attendance, progress, and conduct are
27 enforced.

1 (h) The school complies with all local, city, county,
2 municipal, state, and federal regulations, such as fire, building,
3 and sanitation codes. The commission may require such evidence of
4 compliance as is deemed necessary.

5 (i) The school is financially sound and capable of
6 fulfilling its commitments for training.

7 (j) The school's administrators, directors, owners, and
8 instructors are of good reputation and character.

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

15 (l) The school does not utilize erroneous or misleading
16 advertising, either by actual statement, omission, or intimation as
17 determined by the commission.

18 (m) Such additional criteria as may be required by the
19 commission.

20 (n) The school does not use a name like or similar to an
21 existing [~~tax supported~~] school unless the commission approves the
22 school's use of the name [~~in the same area~~].

23 (o) The school furnishes to the commission the current rates
24 of students who receive a certificate of completion and of job
25 placement and employment of students issued a certificate of
26 completion.

27 (p) The school furnishes to the commission for approval or

1 disapproval student admission requirements for each course or
2 program offered by the school.

3 (q) The school furnishes to the commission for approval or
4 disapproval the course hour lengths and curriculum content for each
5 course offered by the school.

6 (r) The school does not owe a penalty under Section 132.152,
7 132.155, or 132.157.

8 SECTION 5. Section 132.061(b), Education Code, is amended
9 to read as follows:

10 (b) Except as provided by Subsection (g), as a condition for
11 granting certification each proprietary school must maintain a
12 policy for the refund of the unused portion of tuition, fees, and
13 other charges in the event the student, after expiration of the
14 72-hour cancellation privilege, fails to enter the course,
15 withdraws, or is discontinued therefrom at any time prior to
16 completion, and such policy must provide:

17 (1) refunds for resident courses and synchronous
18 distance education courses will be based on the period of
19 enrollment computed on the basis of course time expressed in clock
20 hours;

21 (2) the effective date of the termination for refund
22 purposes in residence schools will be the earliest of the
23 following:

24 (A) the last date of attendance, if the student
25 is terminated by the school;

26 (B) the date of receipt of written notice from
27 the student; or

1 (C) 10 school days following the last date of
2 attendance;

3 (3) if tuition and fees are collected in advance of
4 entrance, and if, after expiration of the 72-hour cancellation
5 privilege, the student does not enter the residence school, not
6 more than \$100 shall be retained by the school;

7 (4) for the student who enters a residence or a
8 synchronous distance education course of not more than 12 months in
9 length, terminates, or withdraws, the school may retain \$100 of
10 tuition and fees and the minimum refund of the remaining tuition and
11 fees will be:

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

15 (B) after the first week or one-tenth of the
16 course, whichever is less, but within the first three weeks or
17 one-fifth of the course, whichever is less, 80 percent of the
18 remaining tuition and fees;

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

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

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

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

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

5 (6) refunds of items of extra expense to the student,
6 such as instructional supplies, books, student activities,
7 laboratory fees, service charges, rentals, deposits, and all other
8 such ancillary miscellaneous charges, where these items are
9 separately stated and shown in the data furnished the student
10 before enrollment, will be made in a reasonable manner acceptable
11 to the commission;

12 (7) refunds based on enrollment in residence and
13 synchronous distance education schools will be totally consummated
14 within 60 days after the effective date of termination;

15 (8) refunds for asynchronous distance education
16 [~~correspondence~~] courses will be computed on the basis of the
17 number of lessons in the course;

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

21 (A) the date of notification to the student if
22 the student is terminated;

23 (B) the date of receipt of written notice from
24 the student; or

25 (C) the end of the third calendar month following
26 the month in which the student's last lesson assignment was
27 received unless notification has been received from the student

1 that the student wishes to remain enrolled;

2 (10) if tuition and fees are collected before any
3 lessons have been completed, and if, after expiration of the
4 72-hour cancellation privilege, the student fails to begin the
5 course, not more than \$50 shall be retained by the school;

6 (11) in cases of termination or withdrawal after the
7 student has begun the asynchronous distance education
8 [~~correspondence~~] course, the school may retain \$50 of tuition and
9 fees, and the minimum refund policy must provide that the student
10 will be refunded the pro rata portion of the remaining tuition,
11 fees, and other charges that the number of lessons completed and
12 serviced by the school bears to the total number of lessons in the
13 course; and

14 (12) refunds based on enrollment in asynchronous
15 distance education [~~correspondence~~] schools will be totally
16 consummated within 60 days after the effective date of termination.

17 SECTION 6. Section 132.152, Education Code, is amended by
18 amending Subsections (c)-(i) to read as follows:

19 (c) If, after examination of a possible violation and the
20 facts relating to that possible violation, the commission concludes
21 that a violation has occurred, the commission shall issue a
22 preliminary report that states the facts on which the conclusion is
23 based, the fact that an administrative penalty is to be imposed
24 [~~recommended~~], and the amount of the penalty to be assessed
25 [~~recommended~~]. Not later than the 10th day after the date on which
26 the commission issues the preliminary report, the commission shall
27 send a copy of the report [~~by certified mail~~] to the person charged

1 with the violation, together with a statement of the right of the
2 person to a hearing relating to the alleged violation and the amount
3 of the penalty.

4 (d) Not later than the 20th day after the date on which the
5 ~~[person receives the]~~ report is sent, the person charged must
6 either make a written request for a hearing or remit the amount of
7 the administrative penalty to the commission. Failure either to
8 request a hearing or to remit the amount of the administrative
9 penalty within the time provided by this subsection results in a
10 waiver of a right to a hearing under this section. If the person
11 charged requests a hearing, the hearing shall be conducted in the
12 same manner as a hearing on the denial of certificate of approval
13 under Section 132.101. If the hearing results in a finding that a
14 violation has occurred, the commission shall:

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

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

17 (B) the amount of the penalty; and

18 (2) enter an order requiring the person to pay the
19 amount of the penalty ~~[by an administrative law judge of the State~~
20 ~~Office of Administrative Hearings. The administrative law judge~~
21 ~~shall make findings of fact and conclusions of law and promptly~~
22 ~~issue to the commission a proposal for a decision about the~~
23 ~~occurrence of the violation and the amount of the proposed penalty.~~
24 ~~Based on the findings of fact, conclusions of law, and proposal for~~
25 ~~decision, the commission by order may:~~

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

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

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

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

9 (1) pay the amount of the penalty;

10 (2) remit ~~pay~~ the amount of the penalty to the
11 commission for deposit in an escrow account and file a petition for
12 judicial review contesting the occurrence of the violation, the
13 amount of the penalty, or both the occurrence of the violation and
14 the amount of the penalty; or

15 (3) without paying the amount of the penalty, file a
16 petition for judicial review contesting the occurrence of the
17 violation, the amount of the penalty, or both the occurrence of the
18 violation and the amount of the penalty and file with the court a
19 sworn affidavit stating that the person is financially unable to
20 pay the amount of the penalty.

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

24 (g) If on review the court does not sustain the occurrence
25 of the violation or finds that the amount of the penalty should be
26 reduced, the commission shall remit the appropriate amount to the
27 person charged with the violation not later than the 30th day after

1 the date the court's judgment becomes final [~~Within the period~~
2 ~~prescribed by Subsection (f), a person who acts under Subsection~~
3 ~~(f)(3) may:~~

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

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

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

11 [~~(2) request the court to stay enforcement of the~~
12 ~~penalty by:~~

13 [~~(A) filing with the court a sworn affidavit of~~
14 ~~the person stating that the person is financially unable to pay the~~
15 ~~amount of the penalty and is financially unable to give the~~
16 ~~supersedeas bond; and~~

17 [~~(B) giving a copy of the affidavit to the~~
18 ~~commission by certified mail].~~

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

20 (1) the court:

21 (A) shall order the person to pay the amount of
22 the penalty; and

23 (B) may award to the commission the attorney's
24 fees and court costs incurred by the commission in defending the
25 action; and

26 (2) the commission shall remit the amount of the
27 penalty to the comptroller for deposit in the general revenue fund

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

9 (i) If the person does not pay the amount of the penalty
10 after the commission's order becomes final for all purposes ~~[and~~
11 ~~the enforcement of the penalty is not stayed]~~, the commission may
12 refer the matter to the attorney general for collection of the
13 amount of the penalty.

14 SECTION 7. Sections 132.152(j)-(m), Education Code, are
15 repealed.

16 SECTION 8. The change in law made by this Act to Section
17 132.051(b), Education Code, applies only to a note or other
18 instrument issued, or a contract entered into, on or after the
19 effective date of this Act. A note or other instrument issued, or a
20 contract entered into, before the effective date of this Act is
21 governed by the law in effect on the date the note or other
22 instrument was issued or the contract was entered into, and the
23 former law is continued in effect for that purpose.

24 SECTION 9. The change in law made by this Act to Section
25 132.055, Education Code, applies only to an application for a
26 certificate of approval filed with the Texas Workforce Commission
27 on or after the effective date of this Act. An application for a

1 certificate of approval filed before the effective date of this Act
2 is governed by the law in effect on the date the application was
3 filed, and the former law is continued in effect for that purpose.

4 SECTION 10. The changes in law made by this Act to Section
5 132.061(b), Education Code, apply only to the refund policy of a
6 proprietary school to which a certificate of approval is granted or
7 renewed by the Texas Workforce Commission on or after the effective
8 date of this Act.

9 SECTION 11. The changes in law made by this Act to Section
10 132.152, Education Code, apply only to an alleged violation of
11 Section 132.151, Education Code, that occurs on or after the
12 effective date of this Act. An alleged violation that occurs before
13 the effective date of this Act is governed by the law in effect on
14 the date the alleged violation occurred, and the former law is
15 continued in effect for that purpose.

16 SECTION 12. This Act takes effect September 1, 2003.