

1-1 By: Jackson S.B. No. 1343
1-2 (In the Senate - Filed March 13, 2003; March 19, 2003, read
1-3 first time and referred to Committee on Education; April 24, 2003,
1-4 reported favorably by the following vote: Yeas 8, Nays 0;
1-5 April 24, 2003, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the regulation and operation of certain proprietary
1-9 schools.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 132.001, Education Code, is amended by
1-12 amending Subdivision (1) and adding Subdivision (13) to read as
1-13 follows:

1-14 (1) "Proprietary school" means any business
1-15 enterprise operated for a profit~~[,]~~ or on a nonprofit basis~~[,]~~ that
1-16 maintains a place of business within this state~~[,]~~ or solicits
1-17 business within this state, ~~and~~ that is not specifically exempted
1-18 by this chapter, and:

1-19 (A) that offers or maintains a course or courses
1-20 of instruction or study; or

1-21 (B) at which place of business such a course or
1-22 courses of instruction or study are ~~is~~ available through
1-23 classroom instruction or by distance education ~~correspondence~~,
1-24 or both, to a person for the purpose of training or preparing the
1-25 person for a field of endeavor in a business, trade, technical, or
1-26 industrial occupation, or for avocational or personal improvement.

1-27 (13) "Distance education" means a formal education
1-28 process in which:

1-29 (A) the student and instructor are separated by
1-30 physical distance; and

1-31 (B) a variety of communication technologies may
1-32 be used to deliver synchronous or asynchronous instruction to the
1-33 student.

1-34 SECTION 2. Section 132.002, Education Code, is amended by
1-35 amending Subsections (a) and (d) and adding Subsections (e) and (f)
1-36 to read as follows:

1-37 (a) The following schools or educational institutions may
1-38 be exempted ~~are specifically exempt~~ from this chapter by the
1-39 commission under Subsection (d) ~~and are not within the definition~~
1-40 ~~of "proprietary school":~~

1-41 (1) a school or educational institution supported by
1-42 taxation from either a local or state source;

1-43 (2) a nonprofit school ~~schools~~ owned, controlled,
1-44 operated, and conducted by a bona fide religious, denominational,
1-45 eleemosynary, or similar public institution ~~institutions~~ exempt
1-46 from property taxation under the laws of this state~~, but such~~
1-47 ~~schools may choose to apply for a certificate of approval~~
1-48 ~~hereunder, and upon approval and issuance, are subject to this~~
1-49 ~~chapter as determined by the commission];~~

1-50 (3) a school or training program that offers
1-51 instruction of purely avocational or recreational subjects as
1-52 determined by the commission;

1-53 (4) a course or courses of instruction or study
1-54 sponsored by an employer for the training and preparation of its own
1-55 employees, and for which no tuition fee is charged to the student;

1-56 (5) a course or courses of study or instruction
1-57 sponsored by a recognized trade, business, or professional
1-58 organization for the instruction of the members of the organization
1-59 with a closed membership;

1-60 (6) a private college ~~colleges~~ or university
1-61 ~~universities~~ that awards ~~award~~ a recognized baccalaureate, or
1-62 higher degree, and that maintains ~~maintain~~ and operates ~~operate~~
1-63 educational programs for which a majority of the credits given are
1-64 transferable to a college, junior college, or university supported

2-1 entirely or partly by taxation from either a local or state source;
 2-2 (7) a school or course that is otherwise regulated and
 2-3 approved under and pursuant to any other law or rulemaking process
 2-4 of this state or approved for continuing education credit by an
 2-5 organization that accredits courses for the maintenance of a
 2-6 license, except as provided by Subsection (c);

2-7 (8) an aviation school [~~schools~~] or instructor
 2-8 [~~instructors~~] approved by and under the supervision of the Federal
 2-9 Aviation Administration;

2-10 (9) a school that offers intensive review of a
 2-11 student's acquired education, training, or experience to prepare
 2-12 the student for an examination, other than a high school
 2-13 equivalency examination, that the student by law may not take
 2-14 unless the student has completed or substantially completed a
 2-15 particular degree program, or that the student is required to take
 2-16 as a precondition for enrollment in or admission to a particular
 2-17 degree program;

2-18 (10) a private school offering primary or secondary
 2-19 education, which may include a kindergarten or prekindergarten
 2-20 program, and that satisfies the compulsory attendance requirements
 2-21 of Section 25.085 pursuant to Section 25.086(a)(1);

2-22 (11) a course or courses of instruction by bona fide
 2-23 electrical trade associations for the purpose of preparing students
 2-24 for electrical tests required for licensing and for the purpose of
 2-25 providing continuing education to students for the renewal of
 2-26 electrical licenses;

2-27 (12) a nonprofit arts organization that has as its
 2-28 primary purpose the provision of instruction in the dramatic arts
 2-29 and the communications media to persons younger than 19 years of
 2-30 age;

2-31 (13) a course or training program conducted by a
 2-32 nonprofit association of air conditioning and refrigeration
 2-33 contractors approved by the Air Conditioning and Refrigeration
 2-34 Contractors Advisory Board to provide instruction for technical,
 2-35 business, or license examination preparation programs relating to
 2-36 air conditioning and refrigeration contracting, as that term is
 2-37 defined by Chapter 1302, Occupations Code [~~the Air Conditioning and~~
 2-38 ~~Refrigeration Contractor License Law (Article 8861, Vernon's Texas~~
 2-39 ~~Civil Statutes)];~~

2-40 (14) a course of instruction by a plumbing trade
 2-41 association to prepare students for a plumbing test or program
 2-42 required for licensing, certification, or endorsement or to provide
 2-43 continuing education approved by the Texas State Board of Plumbing
 2-44 Examiners; and

2-45 (15) a course of instruction in the use of
 2-46 technological hardware or software if the course is offered to a
 2-47 purchaser of the hardware or software or to the purchaser's
 2-48 employee by a person who manufactures and sells, or develops and
 2-49 sells, the hardware or software, and if the seller is not primarily
 2-50 in the business of providing courses of instruction in the use of
 2-51 the hardware or software, as determined by the commission.

2-52 (d) A school or educational institution is exempt from
 2-53 regulation under this chapter only if:

2-54 (1) the owner of the school or educational
 2-55 institution:

2-56 (A) applies to the commission for an exemption
 2-57 under this section; and

2-58 (B) provides to the commission any information
 2-59 considered necessary by the commission to support the owner's
 2-60 application for an exemption; and

2-61 (2) the commission declares that the school or
 2-62 educational institution is exempt after finding that the school or
 2-63 institution is a school or institution listed in Subsection (a).

2-64 (e) After a school or educational institution is declared
 2-65 exempt by the commission under this section, the commission may
 2-66 inspect the school or institution or require the owner of the school
 2-67 or institution to provide any information the commission considers
 2-68 necessary for the commission to ensure the school or institution's
 2-69 continued compliance with the requirements of the exemption.

3-1 (f) A school or educational institution listed in
3-2 Subsection (a) [Notwithstanding the exemptions listed in
3-3 Subsection (a), a dispute resolution organization, as defined by
3-4 Section 154.001, Civil Practice and Remedies Code,] may seek a
3-5 certificate of approval under [pursuant to] Subchapter C.

3-6 SECTION 3. Subsection (b), Section 132.051, Education Code,
3-7 is amended to read as follows:

3-8 (b) Any contract entered into with any person for a course
3-9 of instruction by or on behalf of any person operating any
3-10 proprietary school to which a certificate of approval has not been
3-11 issued pursuant to this chapter is unenforceable in any action
3-12 brought thereon. Any note, other instrument of indebtedness, or
3-13 contract relating to payment for educational services obtained from
3-14 a proprietary school that does not hold a certificate of approval
3-15 issued under this chapter is unenforceable in any action brought on
3-16 the note, instrument, or contract.

3-17 SECTION 4. Section 132.055, Education Code, is amended to
3-18 read as follows:

3-19 Sec. 132.055. CRITERIA. The commission may approve the
3-20 application of such proprietary school when the school is found,
3-21 upon investigation at the premises of the school, to have met the
3-22 following criteria:

3-23 (a) The courses, curriculum, and instruction are of such
3-24 quality, content, and length as may reasonably and adequately
3-25 achieve the stated objective for which the courses, curriculum, or
3-26 instruction are offered. Before a school conducts a course of
3-27 instruction in court reporting, the school must produce evidence
3-28 that the school has obtained approval for the curriculum from the
3-29 Court Reporters Certification Board.

3-30 (b) There is in the school adequate space, equipment,
3-31 instructional material, and instructor personnel to provide
3-32 training of good quality.

3-33 (c) Educational and experience qualifications of directors,
3-34 administrators, and instructors are adequate.

3-35 (d) The school maintains a written record of the previous
3-36 education and training of the applicant student and clearly
3-37 indicates that appropriate credit has been given by the school for
3-38 previous education and training, with the new training period
3-39 shortened where warranted through use of appropriate skills or
3-40 achievement tests and the student so notified.

3-41 (e) A copy of the course outline; schedule of tuition, fees,
3-42 refund policy, and other charges; regulations pertaining to
3-43 absence, grading policy, and rules of operation and conduct;
3-44 regulations pertaining to incomplete grades; the name, mailing
3-45 address, and telephone number of the commission for the purpose of
3-46 directing complaints to the agency; the current rates of job
3-47 placement and employment of students issued a certificate of
3-48 completion; and notification of the availability of the cost
3-49 comparison information prepared under Section 132.021(b) through
3-50 the commission will be furnished the student prior to enrollment.

3-51 (f) Except as provided by Section 132.062, on completion of
3-52 training, the student is given a certificate by the school
3-53 indicating the course and that training was satisfactorily
3-54 completed.

3-55 (g) Adequate records as prescribed by the commission are
3-56 kept to show attendance and progress or grades, and satisfactory
3-57 standards relating to attendance, progress, and conduct are
3-58 enforced.

3-59 (h) The school complies with all local, city, county,
3-60 municipal, state, and federal regulations, such as fire, building,
3-61 and sanitation codes. The commission may require such evidence of
3-62 compliance as is deemed necessary.

3-63 (i) The school is financially sound and capable of
3-64 fulfilling its commitments for training.

3-65 (j) The school's administrators, directors, owners, and
3-66 instructors are of good reputation and character.

3-67 (k) The school has, maintains, and publishes in its
3-68 catalogue and enrollment contract the proper policy for the refund
3-69 of the unused portion of tuition, fees, and other charges in the

4-1 event the student enrolled by the school fails to take the course or
 4-2 withdraws or is discontinued therefrom at any time prior to
 4-3 completion.

4-4 (l) The school does not utilize erroneous or misleading
 4-5 advertising, either by actual statement, omission, or intimation as
 4-6 determined by the commission.

4-7 (m) Such additional criteria as may be required by the
 4-8 commission.

4-9 (n) The school does not use a name like or similar to an
 4-10 existing ~~[tax supported]~~ school unless the commission approves the
 4-11 school's use of the name [in the same area].

4-12 (o) The school furnishes to the commission the current rates
 4-13 of students who receive a certificate of completion and of job
 4-14 placement and employment of students issued a certificate of
 4-15 completion.

4-16 (p) The school furnishes to the commission for approval or
 4-17 disapproval student admission requirements for each course or
 4-18 program offered by the school.

4-19 (q) The school furnishes to the commission for approval or
 4-20 disapproval the course hour lengths and curriculum content for each
 4-21 course offered by the school.

4-22 (r) The school does not owe a penalty under Section 132.152,
 4-23 132.155, or 132.157.

4-24 SECTION 5. Subsection (b), Section 132.061, Education Code,
 4-25 is amended to read as follows:

4-26 (b) Except as provided by Subsection (g), as a condition for
 4-27 granting certification each proprietary school must maintain a
 4-28 policy for the refund of the unused portion of tuition, fees, and
 4-29 other charges in the event the student, after expiration of the
 4-30 72-hour cancellation privilege, fails to enter the course,
 4-31 withdraws, or is discontinued therefrom at any time prior to
 4-32 completion, and such policy must provide:

4-33 (1) refunds for resident courses and synchronous
 4-34 distance education courses will be based on the period of
 4-35 enrollment computed on the basis of course time expressed in clock
 4-36 hours;

4-37 (2) the effective date of the termination for refund
 4-38 purposes in residence schools will be the earliest of the
 4-39 following:

4-40 (A) the last date of attendance, if the student
 4-41 is terminated by the school;

4-42 (B) the date of receipt of written notice from
 4-43 the student; or

4-44 (C) 10 school days following the last date of
 4-45 attendance;

4-46 (3) if tuition and fees are collected in advance of
 4-47 entrance, and if, after expiration of the 72-hour cancellation
 4-48 privilege, the student does not enter the residence school, not
 4-49 more than \$100 shall be retained by the school;

4-50 (4) for the student who enters a residence or a
 4-51 synchronous distance education course of not more than 12 months in
 4-52 length, terminates, or withdraws, the school may retain \$100 of
 4-53 tuition and fees and the minimum refund of the remaining tuition and
 4-54 fees will be:

4-55 (A) during the first week or one-tenth of the
 4-56 course, whichever is less, 90 percent of the remaining tuition and
 4-57 fees;

4-58 (B) after the first week or one-tenth of the
 4-59 course, whichever is less, but within the first three weeks or
 4-60 one-fifth of the course, whichever is less, 80 percent of the
 4-61 remaining tuition and fees;

4-62 (C) after the first three weeks or one-fifth of
 4-63 the course, whichever is less, but within the first quarter of the
 4-64 course, 75 percent of the remaining tuition and fees;

4-65 (D) during the second quarter of the course, 50
 4-66 percent of the remaining tuition and fees;

4-67 (E) during the third quarter of the course, 10
 4-68 percent of the remaining tuition and fees; or

4-69 (F) during the last quarter of the course, the

5-1 student may be considered obligated for the full tuition and fees;

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

5-6 (6) refunds of items of extra expense to the student,
5-7 such as instructional supplies, books, student activities,
5-8 laboratory fees, service charges, rentals, deposits, and all other
5-9 such ancillary miscellaneous charges, where these items are
5-10 separately stated and shown in the data furnished the student
5-11 before enrollment, will be made in a reasonable manner acceptable
5-12 to the commission;

5-13 (7) refunds based on enrollment in residence and
5-14 synchronous distance education schools will be totally consummated
5-15 within 60 days after the effective date of termination;

5-16 (8) refunds for asynchronous distance education
5-17 [~~correspondence~~] courses will be computed on the basis of the
5-18 number of lessons in the course;

5-19 (9) the effective date of the termination for refund
5-20 purposes in asynchronous distance education [~~correspondence~~]
5-21 courses will be the earliest of the following:

5-22 (A) the date of notification to the student if
5-23 the student is terminated;

5-24 (B) the date of receipt of written notice from
5-25 the student; or

5-26 (C) the end of the third calendar month following
5-27 the month in which the student's last lesson assignment was
5-28 received unless notification has been received from the student
5-29 that the student wishes to remain enrolled;

5-30 (10) if tuition and fees are collected before any
5-31 lessons have been completed, and if, after expiration of the
5-32 72-hour cancellation privilege, the student fails to begin the
5-33 course, not more than \$50 shall be retained by the school;

5-34 (11) in cases of termination or withdrawal after the
5-35 student has begun the asynchronous distance education
5-36 [~~correspondence~~] course, the school may retain \$50 of tuition and
5-37 fees, and the minimum refund policy must provide that the student
5-38 will be refunded the pro rata portion of the remaining tuition,
5-39 fees, and other charges that the number of lessons completed and
5-40 serviced by the school bears to the total number of lessons in the
5-41 course; and

5-42 (12) refunds based on enrollment in asynchronous
5-43 distance education [~~correspondence~~] schools will be totally
5-44 consummated within 60 days after the effective date of termination.

5-45 SECTION 6. Subsections (c) through (i), Section 132.152,
5-46 Education Code, are amended to read as follows:

5-47 (c) If, after examination of a possible violation and the
5-48 facts relating to that possible violation, the commission concludes
5-49 that a violation has occurred, the commission shall issue a
5-50 preliminary report that states the facts on which the conclusion is
5-51 based, the fact that an administrative penalty is to be imposed
5-52 [~~recommended~~], and the amount of the penalty to be assessed
5-53 [~~recommended~~]. Not later than the 10th day after the date on which
5-54 the commission issues the preliminary report, the commission shall
5-55 send a copy of the report [~~by certified mail~~] to the person charged
5-56 with the violation, together with a statement of the right of the
5-57 person to a hearing relating to the alleged violation and the amount
5-58 of the penalty.

5-59 (d) Not later than the 20th day after the date on which the
5-60 [~~person receives the~~] report is sent, the person charged must
5-61 either make a written request for a hearing or remit the amount of
5-62 the administrative penalty to the commission. Failure either to
5-63 request a hearing or to remit the amount of the administrative
5-64 penalty within the time provided by this subsection results in a
5-65 waiver of a right to a hearing under this section. If the person
5-66 charged requests a hearing, the hearing shall be conducted in the
5-67 same manner as a hearing on the denial of certificate of approval
5-68 under Section 132.101. If the hearing results in a finding that a
5-69 violation has occurred, the commission shall:

6-1 (1) provide to the person written notice of:
6-2 (A) the findings established at the hearing; and
6-3 (B) the amount of the penalty; and
6-4 (2) enter an order requiring the person to pay the
6-5 amount of the penalty [by an administrative law judge of the State
6-6 Office of Administrative Hearings. The administrative law judge
6-7 shall make findings of fact and conclusions of law and promptly
6-8 issue to the commission a proposal for a decision about the
6-9 occurrence of the violation and the amount of the proposed penalty.
6-10 Based on the findings of fact, conclusions of law, and proposal for
6-11 decision, the commission by order may:

6-12 ~~[(1) find that a violation has occurred and impose a~~
6-13 ~~penalty; or~~
6-14 ~~[(2) find that a violation has not occurred].~~

6-15 (e) ~~[The notice of the commission's order given to the~~
6-16 ~~person under Chapter 2001, Government Code, must include a~~
6-17 ~~statement of the person's right to judicial review of the order.~~

6-18 ~~[(f)]~~ Not later than the 30th day after the date the person
6-19 receives the order entered by the commission under Subsection (d)
6-20 [commission's order is final under Section 2001.144, Government
6-21 Code], the person shall:

6-22 (1) pay the amount of the penalty;
6-23 (2) remit [pay] the amount of the penalty to the
6-24 commission for deposit in an escrow account and file a petition for
6-25 judicial review contesting the occurrence of the violation, the
6-26 amount of the penalty, or both the occurrence of the violation and
6-27 the amount of the penalty; or

6-28 (3) without paying the amount of the penalty, file a
6-29 petition for judicial review contesting the occurrence of the
6-30 violation, the amount of the penalty, or both the occurrence of the
6-31 violation and the amount of the penalty and file with the court a
6-32 sworn affidavit stating that the person is financially unable to
6-33 pay the amount of the penalty.

6-34 (f) The commission's order is subject to judicial review in
6-35 the same manner as an appeal of a decision to deny a certificate of
6-36 approval under Section 132.102.

6-37 (g) If on review the court does not sustain the occurrence
6-38 of the violation or finds that the amount of the penalty should be
6-39 reduced, the commission shall remit the appropriate amount to the
6-40 person charged with the violation not later than the 30th day after
6-41 the date the court's judgment becomes final [Within the period
6-42 prescribed by Subsection (f), a person who acts under Subsection
6-43 (f)(3) may:

6-44 ~~[(1) stay enforcement of the penalty by:~~
6-45 ~~[(A) paying the amount of the penalty to the~~
6-46 ~~court for placement in an escrow account; or~~

6-47 ~~[(B) giving to the court a supersedeas bond~~
6-48 ~~approved by the court that is in the amount of the penalty and that~~
6-49 ~~is effective until all judicial review of the commission's order is~~
6-50 ~~final; or~~

6-51 ~~[(2) request the court to stay enforcement of the~~
6-52 ~~penalty by:~~

6-53 ~~[(A) filing with the court a sworn affidavit of~~
6-54 ~~the person stating that the person is financially unable to pay the~~
6-55 ~~amount of the penalty and is financially unable to give the~~
6-56 ~~supersedeas bond; and~~

6-57 ~~[(B) giving a copy of the affidavit to the~~
6-58 ~~commission by certified mail].~~

6-59 (h) If the court sustains the occurrence of the violation:

6-60 (1) the court:
6-61 (A) shall order the person to pay the amount of
6-62 the penalty; and

6-63 (B) may award to the commission the attorney's
6-64 fees and court costs incurred by the commission in defending the
6-65 action; and

6-66 (2) the commission shall remit the amount of the
6-67 penalty to the comptroller for deposit in the general revenue fund
6-68 [The commission may file with the court a contest to an affidavit
6-69 received under Subsection (g)(2) not later than the fifth day after

7-1 ~~the date the commission receives the copy. The court shall hold a~~
7-2 ~~hearing on the facts alleged in the affidavit as soon as practicable~~
7-3 ~~and shall stay the enforcement of the penalty on finding that the~~
7-4 ~~alleged facts are true. The person who files an affidavit has the~~
7-5 ~~burden of proving that the person is financially unable to pay the~~
7-6 ~~amount of the penalty and to give a supersedeas bond].~~

7-7 (i) If the person does not pay the amount of the penalty
7-8 after the commission's order becomes final for all purposes [~~and~~
7-9 ~~the enforcement of the penalty is not stayed], the commission may~~
7-10 refer the matter to the attorney general for collection of the
7-11 amount of the penalty.

7-12 SECTION 7. Subsections (j) through (m), Section 132.152,
7-13 Education Code, are repealed.

7-14 SECTION 8. The change in law made by this Act to Subsection
7-15 (b), Section 132.051, Education Code, applies only to a note or
7-16 other instrument issued, or a contract entered into, on or after the
7-17 effective date of this Act. A note or other instrument issued, or a
7-18 contract entered into, before the effective date of this Act is
7-19 governed by the law in effect on the date the note or other
7-20 instrument was issued or the contract was entered into, and the
7-21 former law is continued in effect for that purpose.

7-22 SECTION 9. The change in law made by this Act to Section
7-23 132.055, Education Code, applies only to an application for a
7-24 certificate of approval filed with the Texas Workforce Commission
7-25 on or after the effective date of this Act. An application for a
7-26 certificate of approval filed before the effective date of this Act
7-27 is governed by the law in effect on the date the application was
7-28 filed, and the former law is continued in effect for that purpose.

7-29 SECTION 10. The changes in law made by this Act to
7-30 Subsection (b), Section 132.061, Education Code, apply only to the
7-31 refund policy of a proprietary school to which a certificate of
7-32 approval is granted or renewed by the Texas Workforce Commission on
7-33 or after the effective date of this Act.

7-34 SECTION 11. The changes in law made by this Act to Section
7-35 132.152, Education Code, apply only to an alleged violation of
7-36 Section 132.151, Education Code, that occurs on or after the
7-37 effective date of this Act. An alleged violation that occurs before
7-38 the effective date of this Act is governed by the law in effect on
7-39 the date the alleged violation occurred, and the former law is
7-40 continued in effect for that purpose.

7-41 SECTION 12. This Act takes effect September 1, 2003.

7-42 * * * * *