

By: Morrison

H.B. No. 2806

Substitute the following for H.B. No. 2806:

By: Brown of Brazos

C.S.H.B. No. 2806

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of career schools and colleges.

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

SECTION 1. Section 132.001, Education Code, is amended by amending Subdivisions (8) and (9) and adding Subdivisions (1-a), (1-b), and (14) to read as follows:

(1-a) "Class" or "course" means an identifiable unit of instruction that is part of a program of instruction.

(1-b) "Course time" means a course or class period as follows:

(A) a 50-minute to 60-minute lecture, recitation, or class, including a laboratory class or shop training, in a 60-minute period;

(B) a 50-minute to 60-minute internship in a 60-minute period; or

(C) 60 minutes of preparation in asynchronous distance education.

(8) "Person" means any individual, firm, partnership, association, corporation, limited liability company, or other private entity or combination.

(9) "Unearned tuition" means total tuition and fees subject to refund under Section 132.061[~~, total tuition and fees collected from students currently enrolled, and total tuition and fees collected from prospective students~~].

1 (14) "Program" or "program of instruction" means a
2 postsecondary program of organized instruction or study that may
3 lead to an academic, professional, or vocational degree,
4 certificate, or other recognized educational credential.

5 SECTION 2. Section 132.004, Education Code, is amended to
6 read as follows:

7 Sec. 132.004. EXCLUSIVE OFFERING OF EXEMPTED COURSES OR
8 PROGRAMS BY BUSINESS ENTERPRISE. A business enterprise that
9 offers exclusively courses or programs of instruction that are
10 exempt under Section 132.002 or 132.003 is exempt from this
11 chapter.

12 SECTION 3. Section 132.051, Education Code, is amended to
13 read as follows:

14 Sec. 132.051. CERTIFICATE OF APPROVAL. (a) A career school
15 or college may not maintain, advertise, solicit for, or conduct any
16 program [~~course~~] of instruction in this state until [~~before the~~
17 ~~later of:~~

18 ~~[(1) the 30th day after the date the school or college~~
19 ~~applies for a certificate of approval under this chapter, or~~

20 ~~[(2) the date]~~ the career school or college receives a
21 certificate of approval from the commission.

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

1 a career school or college that does not hold a certificate of
2 approval issued under this chapter is unenforceable in any action
3 brought on the note, instrument, or contract.

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

6 Sec. 132.055. CRITERIA. (a) The commission may approve the
7 application of a a [~~such~~] career school or college when the school or
8 college is found, upon investigation at the premises of the school
9 or college, to have met the [~~following~~] criteria specified by
10 Subsection (b). [~~+~~]

11 (b)(1) [~~(a)~~] The programs [~~courses~~], curriculum, and
12 instruction are of such quality, content, and length as may
13 reasonably and adequately achieve the stated objective for which
14 the programs [~~courses~~], curriculum, or instruction is offered.
15 Before a career school or college conducts a program [~~course~~] of
16 instruction in court reporting, the school or college must produce
17 evidence that the school or college has obtained approval for the
18 curriculum from the Court Reporters Certification Board.

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

22 (3) [~~(c)~~] Educational and experience qualifications
23 of directors, administrators, and instructors are adequate.

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

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

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

17 (6) [~~(f)~~] Except as provided by Section 132.062, on
18 completion of training, the student is given a certificate by the
19 school or college indicating the program [~~course~~] and that training
20 was satisfactorily completed.

21 (7) [~~(g)~~] Adequate records as prescribed by the
22 commission are kept to show [~~attendance and~~] progress or grades,
23 and satisfactory standards relating to [~~attendance,~~] progress [~~,~~]
24 and conduct are enforced.

25 (8) [~~(h)~~] The school or college complies with all
26 local, city, county, municipal, state, and federal rules and
27 regulations, such as fire, building, and sanitation codes. The

1 commission may require such evidence of compliance as is deemed
2 necessary.

3 (9) [~~(i)~~] The school or college is financially sound
4 and capable of fulfilling its commitments for training.

5 (10) [~~(j)~~] The school's or college's administrators,
6 directors, owners, and instructors are of good reputation and
7 character.

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

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

18 (13) The school or college meets [~~(m) Such~~] additional
19 criteria as may be required by the commission.

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

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

27 (16) [~~(p)~~] The school or college furnishes to the

1 commission for approval or disapproval student admission
2 requirements for each [~~course or~~] program offered by the school or
3 college.

4 (17) [~~(g)~~] The school or college furnishes to the
5 commission for approval or disapproval the course times [~~hour~~
6 ~~lengths~~] and curriculum content for each program [~~course~~] offered
7 by the school or college.

8 (18) [~~(r)~~] The school or college does not owe a penalty
9 under Section 132.152, 132.155, or 132.157.

10 SECTION 5. Sections 132.056(a) and (c), Education Code, are
11 amended to read as follows:

12 (a) The commission, upon review of an application for a
13 certificate of approval duly submitted in accordance with Section
14 132.052 and meeting the requirements of Section 132.055, shall
15 issue a certificate of approval to the applicant career school or
16 college. The certificate of approval shall be in a form prescribed
17 by the commission and shall state in a clear and conspicuous manner
18 at least the following information:

19 (1) date of issuance, effective date, and term of
20 approval; and

21 (2) correct name and address of the school or
22 college[~~;~~

23 [~~(3) authority for approval and conditions of~~
24 ~~approval, if any, referring specifically to the approved catalogue~~
25 ~~or bulletin published by the school or college,~~

26 [~~(4) signature of the agency administrator, and~~

27 [~~(5) any other fair and reasonable representations~~

1 ~~that are consistent with this chapter and deemed necessary by the~~
2 ~~commission].~~

3 (c) The certificate of approval shall be issued to the owner
4 of the applicant career school or college and is nontransferable.
5 In the event of a change in ownership of the school or college, a new
6 owner must, at least 30 days prior to the change in ownership,
7 apply, in the manner prescribed by the commission, for a new
8 certificate of approval.

9 SECTION 6. Section 132.061, Education Code, is amended by
10 amending Subsections (b), (c), (d), (g), and (h) and adding
11 Subsections (j) and (k) to read as follows:

12 (b) Except as provided by Subsection (g), as a condition for
13 granting certification each career school or college must maintain
14 a policy for the refund of the unused portion of tuition, fees, and
15 other charges in the event the student, after expiration of the
16 72-hour cancellation privilege, fails to enter a program in which
17 the student is enrolled or [the course,] withdraws[7] or is
18 discontinued from the program [therefrom] at any time prior to
19 completion, and such policy must provide:

20 (1) refunds for resident programs [~~courses~~] and
21 synchronous distance education courses will be based on the period
22 of enrollment computed on the basis of course time [~~expressed in~~
23 ~~clock hours~~];

24 (2) the effective date of [~~the~~] termination for refund
25 purposes in residence career schools or colleges will be the
26 earliest of the following:

27 (A) the last date of attendance, if the student

1 is terminated by the school or college;

2 (B) the date of receipt of written notice from
3 the student; or

4 (C) 10 school days following the last date of
5 attendance;

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

11 (4) for the student who enters a residence program or a
12 synchronous distance education course of not more than 12 months in
13 length, terminates, or withdraws, the school or college may retain
14 \$100 of tuition and fees and the minimum refund of the remaining
15 tuition and fees will be:

16 (A) during the first week or one-tenth of the
17 program or course, whichever is less, 90 percent of the remaining
18 tuition and fees;

19 (B) after the first week or one-tenth of the
20 program or course, whichever is less, but within the first three
21 weeks or one-fifth of the program or course, whichever is less, 80
22 percent of the remaining tuition and fees;

23 (C) after the first three weeks or one-fifth of
24 the program or course, whichever is less, but within the first
25 quarter of the program or course, 75 percent of the remaining
26 tuition and fees;

27 (D) during the second quarter of the program or

1 course, 50 percent of the remaining tuition and fees;

2 (E) during the third quarter of the program or
3 course, 10 percent of the remaining tuition and fees; or

4 (F) during the last quarter of the program or
5 course, the student may be considered obligated for the full
6 tuition and fees;

7 (5) for residence programs or synchronous distance
8 education courses more than 12 months in length, the refund shall be
9 applied to each 12-month period paid, or part thereof separately,
10 and the student is entitled to a refund as provided by Subdivision
11 (4);

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

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

22 (8) refunds for asynchronous distance education
23 courses will be computed on the basis of the number of lessons in
24 the course;

25 (9) the effective date of [~~the~~] termination for refund
26 purposes in asynchronous distance education courses will be the
27 earliest of the following:

1 (A) the date of notification to the student if
2 the student is terminated;

3 (B) the date of receipt of written notice from
4 the student; or

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

9 (10) if tuition and fees are collected before any
10 lessons for a program have been completed, and if, after expiration
11 of the 72-hour cancellation privilege, the student fails to begin
12 the program [~~course~~], not more than \$50 shall be retained by the
13 school or college;

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

22 (12) refunds based on enrollment in asynchronous
23 distance education schools or colleges will be totally consummated
24 within 60 days after the effective date of termination.

25 (c) In lieu of the refund policy herein set forth, for
26 programs of instruction not regularly offered to the public, the
27 commission may, for good cause shown, amend, modify, or substitute

1 the terms of a career school's or college's policy due to the
2 specialized nature and objective of the school's or college's
3 program [~~course~~] of instruction.

4 (d) If a program [~~course~~] of instruction is discontinued by
5 the career school or college and this prevents the student from
6 completing the program [~~course~~], all tuition and fees paid are then
7 due and refundable.

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

17 (1) refunds are based on the period of enrollment
18 computed on the basis of course time [~~expressed in clock hours~~];

19 (2) the effective date of [~~the~~] termination for refund
20 purposes is the earlier of:

21 (A) the last date of attendance; or

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

25 (3) the student will be refunded the pro rata portion
26 of tuition, fees, and other charges that the number of [~~class~~] hours
27 of course time remaining in the student's program [~~course~~] after

1 the effective date of [~~the~~] termination bears to the total number of
2 [~~class~~] hours of course time in the program [~~course~~].

3 (h) A closing career school or college shall, subject to
4 Section 132.242, make a full refund to each student of the school or
5 college who is owed a refund under this section.

6 (j) A career school or college that is eligible to
7 participate in student financial aid programs under Title IV,
8 Higher Education Act of 1965 (20 U.S.C. Section 1070 et seq.), shall
9 make refunds in accordance with the policy adopted under Subsection
10 (b), except that the effective date of termination for refund
11 purposes is the earlier of:

12 (1) the date of receipt of written notice from the
13 student that the student is withdrawing; or

14 (2) the date of the student's withdrawal, as
15 determined in accordance with 34 C.F.R. Section 668.22(c), for a
16 career school or college that is not required to take attendance.

17 (k) The commission may adopt rules governing records
18 necessary to make refunds authorized by this chapter.

19 SECTION 7. Subchapter C, Chapter 132, Education Code, is
20 amended by adding Section 132.065 to read as follows:

21 Sec. 132.065. SCHOOLS NOT REQUIRED TO TAKE ATTENDANCE. A
22 career school or college that is eligible to participate in student
23 financial aid programs under Title IV, Higher Education Act of 1965
24 (20 U.S.C. Section 1070 et seq.), is not required to take
25 attendance.

26 SECTION 8. Section 132.151, Education Code, is amended to
27 read as follows:

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

2 (1) operate a career school or college without a
3 certificate of approval issued by the commission;

4 (2) solicit prospective students for or on behalf of a
5 career school or college without being registered as a
6 representative of the career school or college as required by this
7 chapter;

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

10 (4) utilize advertising designed to mislead or deceive
11 prospective students;

12 (5) fail to notify the commission of the
13 discontinuance of the operation of any career school or college
14 within 72 hours of cessation of classes and make available accurate
15 records as required by this chapter;

16 (6) ~~[fail to secure and file within 30 days an~~
17 ~~increased bond as required by this chapter,~~

18 ~~[(7)]~~ negotiate any promissory instrument received as
19 payment of tuition or other charge prior to completion of 75 percent
20 of the applicable program ~~[course]~~, provided that prior to such
21 time, the instrument may be transferred by assignment to a
22 purchaser who shall be subject to all the defenses available
23 against the career school or college named as payee; or

24 (7) ~~[(8)]~~ violate any provision of this chapter.

25 SECTION 9. Sections 132.201(a) and (d), Education Code, are
26 amended to read as follows:

27 (a) Certificate and registration fees, except those charged

1 pursuant to Subsection (d), shall be collected by the commission.
2 Each fee shall be in an amount set by the commission in an amount not
3 to exceed 150 percent of each fee in the following schedule:

4 (1) the initial fee for a career school or college:

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

6 (B) for a small career school or college
7 certificate of approval is \$1,000;

8 (2) the first renewal fee and each subsequent renewal
9 fee for a career school or college is the greater of:

10 (A) an amount that is determined by applying a
11 percentage, not to exceed 0.3 percent, to the gross tuition and
12 fees, excluding refunds as provided by Section 132.061, of the
13 school or college; or

14 (B) \$500;

15 (3) the initial registration fee for a representative
16 is \$60;

17 (4) the annual renewal fee for a representative is
18 \$30;

19 (5) the fee for a change of a name of a career school or
20 college or owner is \$100;

21 (6) the fee for a change of an address of a career
22 school or college is \$180;

23 (7) the fee for a change in the name or address of a
24 representative or a change in the name or address of a career school
25 or college that causes the reissuance of a representative permit is
26 \$10;

27 (8) the application fee for an additional program

1 ~~[course]~~ is \$150, except for seminars [~~seminar~~] and workshops
2 [~~workshop courses~~], for which the fee is \$25;

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

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

7 (11) the application fee for an additional degree
8 program [~~course~~] is \$250; and

9 (12) the fee for an inspection required by commission
10 rule of classroom facilities that are separate from the main campus
11 is \$250.

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

19 SECTION 10. Section 132.2415(d), Education Code, is amended
20 to read as follows:

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

1 the following factors in determining the amount of a partial refund
2 to be paid to a student:

- 3 (1) the amount of money in the trust account;
- 4 (2) the cost and number of claims against the trust
5 account resulting from closure of the school or college;
- 6 (3) the average cost of a claim paid from the trust
7 account in the past; and
- 8 (4) the availability of other [~~licensed career~~]
9 schools or colleges, regardless of whether the school or college is
10 a career school or college, at which the student may complete the
11 student's training.

12 SECTION 11. Sections 132.242(a), (b), (c), (d), and (f),
13 Education Code, are amended to read as follows:

14 (a) If a career school or college closes, the commission
15 shall attempt to arrange for students of the closed school or
16 college to attend another [~~career~~] school or college, regardless of
17 whether the school or college is a career school or college.

18 (b) The expense incurred by a school or college, regardless
19 of whether the school or college is a career school or college, in
20 providing a teachout that is directly related to educating a
21 student placed in the school or college under this section,
22 including the applicable tuition for the period for which the
23 student has paid tuition, shall be paid from the career school or
24 college tuition trust account.

25 (c) If the student cannot be placed in another school or
26 college, regardless of whether the school or college is a career
27 school or college, the student's tuition and fees shall be refunded

1 under Section 132.061(d).

2 (d) If a student does not accept a place that is available
3 and reasonable in another school or college, regardless of whether
4 the school or college is a career school or college, the student's
5 tuition and fees shall be refunded under the refund policy
6 maintained by the closing career school or college under Section
7 132.061.

8 (f) If another school or college, regardless of whether the
9 school or college is a career school or college, assumes
10 responsibility for the closed career school's or college's students
11 with no significant changes in the quality of training, the student
12 is not entitled to a refund under Subsection (c) or (d).

13 SECTION 12. Sections 132.021(b) and 132.056(e), Education
14 Code, are repealed.

15 SECTION 13. (a) The change in law made by this Act to
16 Section 132.051(a), Education Code, applies to the date on which a
17 career school or college may begin maintaining, advertising,
18 soliciting for, or conducting a program only if the school or
19 college submits a certificate of approval application on or after
20 the date this Act takes effect. If the career school or college
21 submits a certificate of approval application before the date this
22 Act takes effect, the date on which a career school or college may
23 begin maintaining, advertising, soliciting for, or conducting a
24 program is governed by the law in effect on the date the certificate
25 of approval application was submitted, and the former law is
26 continued in effect for that purpose.

27 (b) The change in law made by this Act to Section

1 132.051(b), Education Code, applies only to a contract entered into
2 on or after the date this Act takes effect. A contract entered into
3 before the date this Act takes effect is governed by the law in
4 effect on the date the contract was entered into, and the former law
5 is continued in effect for that purpose.

6 SECTION 14. The change in law made by this Act to Section
7 132.055, Education Code, applies only to a certificate of approval
8 application submitted to the Texas Workforce Commission on or after
9 the date this Act takes effect. A certificate of approval
10 application submitted before the date this Act takes effect is
11 governed by the law in effect on the date the application was
12 submitted, and the former law is continued in effect for that
13 purpose.

14 SECTION 15. The change in law made by this Act to Section
15 132.056, Education Code, applies only to a certificate of approval
16 issued on or after the date this Act takes effect. A certificate of
17 approval issued before the date this Act takes effect is governed by
18 the law in effect on the date the certificate of approval was
19 issued, and the former law is continued in effect for that purpose.

20 SECTION 16. The change in law made by this Act to Section
21 132.061, Education Code, applies only to the refund policy of a
22 career school or college to which a certificate of approval is
23 granted or for which a certificate of approval is renewed by the
24 Texas Workforce Commission on or after the date this Act takes
25 effect. The refund policy of a career school or college to which a
26 certificate of approval is granted or for which a certificate of
27 approval is renewed by the Texas Workforce Commission before the

1 date this Act takes effect is governed by the law in effect on the
2 date the certificate of approval was granted or renewed, and the
3 former law is continued in effect for that purpose.

4 SECTION 17. The change in law made by this Act to Section
5 132.242, Education Code, applies only to a refund that becomes due
6 on or after the date this Act takes effect. A refund that becomes
7 due before the date this Act takes effect is governed by the law in
8 effect on the date the refund becomes due, and the former law is
9 continued in effect for that purpose.

10 SECTION 18. This Act takes effect September 1, 2005.