

By: Shapiro

S.B. No. 1534

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the operation and certification of career schools or
3 colleges.

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

5 SECTION 1. Section 132.001, Education Code, is amended to
6 read as follows:

7 Sec. 132.001. Definitions

8 In this chapter:

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

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

16 (B) at which place of business such a course or
17 courses of instruction or study are available through classroom
18 instruction or by distance education, or both, to a person for the
19 purpose of training or preparing the person for a field of endeavor
20 in a business, trade, technical, or industrial occupation, or for
21 avocational or personal improvement.

22 (1-a) "Class" or "course" means an identifiable unit of
23 instruction that is part of a program of instruction.

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

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

6 (B) a 50-minute to 60-minute internship in a
7 60-minute period; or

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

10 (2) "Owner" of a career school or college means:

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

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

15 (C) in the case of a career school or college
16 owned by a corporation, the corporation, its directors, officers,
17 and each shareholder owning shares of issued and outstanding stock
18 aggregating at least 10 percent of the total of the issued and
19 outstanding shares;

20 (D) in the case of a career school or college in
21 which the ownership interest is held in trust, the beneficiary of
22 that trust; or

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

26 (3) "School employee" means any person, other than an
27 owner, who directly or indirectly receives compensation from a

1 career school or college for services rendered.

2 (4) "Representative" means a person employed by a
3 career school or college operating in this state, ~~whether the~~
4 ~~school or college is located within or without this state~~, to act as
5 an agent, solicitor, broker, or independent contractor to directly
6 procure students for the school or college by solicitation within
7 ~~or without~~ this state at any place.

8 (5) "Agency administrator" means the agency
9 administrator of the Texas Workforce Commission or a person,
10 knowledgeable in the administration of regulating career schools
11 and colleges, designated by the agency administrator to administer
12 this chapter.

13 (6) "Notice to the career school or college" means
14 written correspondence sent to the address of record for legal
15 service contained in the application for a certificate of approval.
16 "Date of Notice" means the date the notice is mailed by the
17 commission.

18 (7) "Support" or "supported" means the primary source
19 and means by which a career school or college derives revenue to
20 perpetuate its operation.

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

24 (9) "Unearned tuition" means total tuition and fees
25 subject to refund under Section 132.061.

26 (10) "Small career school or college" means a career
27 school or college that does not receive any payment from federal

1 funds under *20 U.S.C. Section 1070* et seq. and its subsequent
2 amendments or a prepaid federal or state source as compensation in
3 whole or in part for any student tuition and fees or other charges
4 and either:

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

8 (B) exclusively offers programs to assist
9 students to prepare for an undergraduate or graduate course of
10 study at a college or university; or

11 (C) exclusively offers programs to assist
12 students, who have obtained, or who are in the process of obtaining,
13 degrees after completing an undergraduate or graduate course of
14 study at a college or university, to prepare for an examination.

15 (11) "Commission" means the Texas Workforce
16 Commission.

17 (12) "Division" means the division of education of the
18 commission.

19 (13) "Distance education" means a formal education
20 process offered by a career school or college operating in this
21 state in which:

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

24 (B) a variety of communication technologies may
25 be used to deliver synchronous or asynchronous instruction to the
26 student.

27 (14) "Program" or "program of instruction" means a

1 postsecondary program of organized instruction or study offered by
2 a career school or college operating in this state that may lead to
3 an academic, professional, or vocational degree, certificate, or
4 other recognized educational credential.

5 (15) A career school or college "operates in this
6 state" or is "operating in this state" when it maintains a physical
7 place of business within this state where programs or programs of
8 instruction are offered through classroom instruction or by
9 distance education, or both.

10 SECTION 2. Section 132.002, Education Code, is amended to
11 read as follows:

12 Sec. 132.002. Exemptions

13 (a) The following schools or educational institutions may
14 be exempted from this chapter by the commission under Subsection
15 (d):

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

18 (2) a nonprofit school owned, controlled, operated,
19 and conducted by a bona fide religious, denominational,
20 eleemosynary, or similar public institution exempt from property
21 taxation under the laws of this state;

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

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

1 (5) a course or courses of study or instruction
2 sponsored by a recognized trade, business, or professional
3 organization for the instruction of the members of the organization
4 with a closed membership;

5 (6) a private college or university that awards a
6 recognized baccalaureate, or higher degree, and that maintains and
7 operates educational programs for which a majority of the credits
8 given are transferable to a college, junior college, or university
9 supported entirely or partly by taxation from either a local or
10 state source;

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

16 (8) an aviation school or instructor approved by and
17 under the supervision of the Federal Aviation Administration;

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

26 (10) a private school offering primary or secondary
27 education, which may include a kindergarten or prekindergarten

1 program, and that satisfies the compulsory attendance requirements
2 of Section 25.085 pursuant to Section 25.086(a)(1);

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

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

12 (13) a course or training program conducted by a
13 nonprofit association of air conditioning and refrigeration
14 contractors approved by the Air Conditioning and Refrigeration
15 Contractors Advisory Board to provide instruction for technical,
16 business, or license examination preparation programs relating to
17 air conditioning and refrigeration contracting, as that term is
18 defined by Chapter 1302, Occupations Code;

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

24 (15) a course of instruction in the use of
25 technological hardware or software if the course is offered to a
26 purchaser of the hardware or software or to the purchaser's
27 employee by a person who manufactures and sells, or develops and

1 sells, the hardware or software, and if the seller is not primarily
2 in the business of providing courses of instruction in the use of
3 the hardware or software, as determined by the commission; and

4 (16) a school or educational institution that is
5 physically located in another state, is legally authorized by the
6 state of its physical location to offer postsecondary education and
7 award degrees, is accredited by an accrediting agency recognized by
8 the U.S. Secretary of Education, and offers in the State of Texas
9 only postsecondary distance or correspondence programs of
10 instruction.

11 (b) Schools offering a course or courses of special study or
12 instruction financed or subsidized by local, state, or federal
13 funds or by any person, firm, association, or agency other than the
14 student involved, on a contract basis and having a closed
15 enrollment, may apply to the commission for exemption of such
16 course or courses from this chapter and such course or courses may
17 be declared exempt by the commission where the commission finds the
18 course or courses to be outside the purview of this chapter.

19 (c) If a state agency that issues a license or other
20 authorization for the practice of an occupation elects not to
21 regulate or approve course hours that exceed the minimum education
22 requirements for the issuance of the license or other
23 authorization, the licensing agency shall enter into a memorandum
24 of understanding with the commission for the regulation of those
25 excess course hours under this chapter. Any course taught under a
26 letter of approval or other written authorization issued by the
27 licensing agency before the effective date of the memorandum is

1 authorized under state law until the course is reviewed by the
2 commission. The licensing agency may terminate the memorandum of
3 understanding on notice to the commission.

4 (d) Except as provided by Subsection (g), a school or
5 educational institution is exempt from regulation under this
6 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.

26 (g) An institution of higher education or a private or
27 independent institution of higher education, as defined by Section

1 61.003, that was exempt from regulation under this chapter before
2 September 1, 2003, remains exempt from regulation under this
3 chapter and is not required to comply with this section.

4 SECTION 3. Section 132.021, Education Code, is amended to
5 read as follows:

6 Sec. 132.021. Texas Workforce Commission

7 (a) The commission shall exercise jurisdiction and control
8 of the system of career schools and colleges operating in this
9 state, and the commission shall carry out supervision of the
10 provisions of this chapter, and enforce minimum standards for
11 approval of career schools and colleges under the operating
12 regulations and policies hereinafter set forth and as may be
13 adopted pursuant to this chapter.

14 (b) [Repealed by Acts 2005, 79th Leg., ch. 747 (H.B. 2806),
15 § 12, effective September 1, 2005.]

16 (c) The commission may consult a recognized expert in a
17 field of study for assistance in determining minimum program
18 standards under this chapter for that field.

19 (d) The commission shall adopt policies and rules necessary
20 for carrying out this chapter.

21 SECTION 4. Section 132.051, Education Code, is amended to
22 read as follows:

23 Sec. 132.051. Certificate of Approval

24 (a) A career school or college operating in this state may
25 not maintain, ~~advertise, solicit for,~~ or conduct ~~any~~ program of
26 instruction in this state until the career school or college
27 receives a certificate of approval from the commission.

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

11 SECTION 5. Section 132.052, Education Code, is amended to
12 read as follows:

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

20 SECTION 6. Section 132.059, Education Code, is amended to
21 read as follows:

22 Sec. 132.059. Registration of Representatives
23 (a) All representatives employed by a career school or
24 college operating in this state shall register with the commission.
25 Application for registration may be made at any time and shall be
26 based on information submitted in accordance with the provisions of
27 Section 132.052.

1 (b) Registration of a representative is effective upon
2 receipt of notice from the commission and remains in effect for a
3 period not in excess of 12 calendar months. Renewal of
4 representative registration shall be in accordance with the renewal
5 application form forwarded to the career school or college by the
6 commission.

7 (c) Denial or revocation of registration of a
8 representative by the commission shall be in accordance with the
9 provisions of this chapter applicable to denial or revocation of a
10 certificate of approval. The commission may deny, suspend, or
11 revoke the registration of a representative who has been convicted
12 of a felony, whether within or without this state.

13 ~~(d) Career schools and colleges domiciled or having their~~
14 ~~principal place of business outside of this state that engage~~
15 ~~representatives to canvass, solicit, or contract with any person~~
16 ~~within this state, are subject to the requirements for registration~~
17 ~~of representatives.~~

18 ~~(e)~~ The commission shall deny registration of a
19 representative who owes a penalty under Section 132.152 or 132.155.

20 SECTION 7. Section 132.151, Education Code, is amended to
21 read as follows:

22 Sec. 132.151. Prohibitions

23 A person may not:

24 (1) operate a career school or college in this state
25 without a certificate of approval issued by the commission;

26 (2) solicit prospective students for or on behalf of a
27 career school or college operating in this state without being

1 registered as a representative of the career school or college as
2 required by this chapter;

3 (3) accept contracts or enrollment applications for or
4 on behalf of a career school or college operating in this state,
5 from a representative who is not bonded as required by this chapter;

6 (4) utilize advertising designed to mislead or deceive
7 prospective students;

8 (5) fail to notify the commission of the
9 ~~discontinuance of the operation~~ closure of any career school or
10 college operating in this state within 72 hours of cessation of
11 classes and make available accurate records as required by this
12 chapter;

13 (6) negotiate any promissory instrument received as
14 payment of tuition or other charge by a career school or college
15 operating in this state prior to completion of 75 percent of the
16 applicable program, provided that prior to such time, the
17 instrument may be transferred by assignment to a purchaser who
18 shall be subject to all the defenses available against the career
19 school or college named as payee; or

20 (7) violate any provision of this chapter.

21 SECTION 8. Section 132.154, Education Code, is amended to
22 read as follows:

23 Sec. 132.154. Injunctions

24 (a) Whenever the commission has probable cause to believe
25 that any career school or college operating in this state has
26 committed any acts that would be in violation of this chapter, the
27 commission shall apply for an injunction restraining the commission

1 of such acts.

2 (b) An action for an injunction under this section shall be
3 brought in Travis County.

4 SECTION 9. Section 132.156, Education Code, is amended to
5 read as follows:

6 Sec. 132.156. Sanctions

7 (a) If the commission has reasonable cause to believe that a
8 career school or college operating in this state has violated this
9 chapter or a rule adopted under this chapter, the commission may:

10 (1) order a peer review of the school or college; or

11 (2) suspend the admission of students to the school or
12 college.

13 (b) A peer review ordered under this section shall be
14 conducted by a peer review team composed of knowledgeable persons
15 selected by the commission. The commission shall attempt to
16 provide a balance on each team between members assigned to the team
17 who are from this state and those who are from other states. The
18 team shall provide the commission with an objective assessment of
19 the content of the career school's or college's curriculum and its
20 application. The costs of providing a peer review team shall be
21 paid by the school or college.

22 SECTION 10. Section 132.242, Education Code, is amended to
23 read as follows:

24 Sec. 132.242. Closed School or College

25 (a) If a career school or college operating in this state
26 closes, the commission shall attempt to arrange for students of the
27 closed school or college to attend another school or college,

1 regardless of whether the school or college is a career school or
2 college.

3 (b) The expense incurred by a school or college, regardless
4 of whether the school or college is a career school or college, in
5 providing a teachout that is directly related to educating a
6 student placed in the school or college under this section,
7 including the applicable tuition for the period for which the
8 student has paid tuition, shall be paid from the career school or
9 college tuition trust account.

10 (c) If the student cannot be placed in another school or
11 college, regardless of whether the school or college is a career
12 school or college, the student's tuition and fees shall be refunded
13 under Section 132.061(d).

14 (d) If a student does not accept a place that is available
15 and reasonable in another school or college, regardless of whether
16 the school or college is a career school or college, the student's
17 tuition and fees shall be refunded under the refund policy
18 maintained by the closing career school or college under Section
19 132.061.

20 (e) For each closed career school or college, refunds shall
21 be paid from the career school or college tuition trust account in
22 an amount not to exceed \$ 150,000.

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

1 (g) Attorney's fees, court costs, or damages may not be paid
2 from the career school or college tuition trust account.

3 SECTION 11. Section 132.301, Education Code, is amended to
4 read as follows:

5 Sec. 132.301. Hearing; Notice

6 (a) The commission may set a hearing on whether to issue a
7 cease and desist order against a person under Section 132.303 if the
8 commission has reason to believe that the person is operating a
9 career school or college in this state without a certificate issued
10 by the commission in violation of Section 132.151.

11 (b) The commission shall serve on the person a statement of
12 charges and a notice of hearing, including a copy of the applicable
13 rules of the commission.

14 SECTION 12. Section 132.303, Education Code, is amended to
15 read as follows:

16 Sec. 132.303. Cease and Desist Order

17 After a hearing held under this subchapter, the commission
18 may issue against the person charged with operating a career school
19 or college in this state without a certificate issued by the
20 commission an order that requires that the person immediately cease
21 and desist from violating this chapter.

22 SECTION 13. This Act takes effect September 1, 2011.