

1 HB321
2 128850-2
3 By Representatives Baker, Fincher, McClurkin, Davis, McMillan,
4 Shiver, Ison and Faust
5 RFD: Education Policy
6 First Read: 22-MAR-11

1 ENGROSSED

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4 A BILL
5 TO BE ENTITLED
6 AN ACT
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8 To amend Sections 16-46-1 and 16-46-3, Code of
9 Alabama 1975, relating to the regulation of certain schools
10 and courses of instruction and exemptions from school
11 licensing; to clarify the definitions of profit and nonprofit
12 schools; and to allow additional nonprofit schools to apply
13 for exemption from licensure.

14 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

15 Section 1. Sections 16-46-1 and 16-46-3 of the Code
16 of Alabama 1975, are amended to read as follows:

17 "§16-46-1.

18 "For the purposes of this chapter, the following
19 words shall have the meanings respectively ascribed to them by
20 this section:

21 "(1) ~~(8)~~ ACADEMIC FRAUD. Courses offered are
22 insufficient in quality, content, or administration to achieve
23 the stated or implied educational objective. Persons offering
24 such courses who know or reasonably should know that said
25 courses cannot achieve the stated or implied educational
26 objective shall be considered to be involved in academic
27 fraud.

1 "(2) ~~(4)~~ AGENT or REPRESENTATIVE. Salesperson who
2 presents materials, sells courses, or solicits students for
3 enrollment ~~therefor in this state outside the boundaries of~~
4 ~~the school facilities~~ of students in the state in person, by
5 mail, by correspondence, by telephone, online, by distance
6 learning education, or by any other method of advertising
7 within the state.

8 "(3) ~~(11)~~ CHURCH SCHOOL. A school operated by a
9 local church, group of churches, denomination, and/or
10 association of churches on a nonprofit basis.

11 "(4) ~~(1)~~ COURSE. Any course, or portion of a plan or
12 program of instruction, whether conducted in person, by mail,
13 by correspondence, online, by distance learning education, or
14 by any other method.

15 "(5) ~~(7)~~ ECONOMIC FRAUD. The sale of courses or
16 programs of study which an institution is unable or unwilling
17 to provide as advertised or described because of inadequate
18 financial stability, facilities, instructional staff, or
19 commitment to honor written or verbal contracts made with
20 students. Included is the solicitation of students for
21 enrollment through intentional deception or misrepresentation
22 of fact and the use of advertising which is known to be false,
23 inaccurate, or misleading. Failure to properly administer
24 student cancellation and refund policies according to
25 appropriate regulations or agreements made with students shall
26 also constitute economic fraud.

1 "(6) ~~(5)~~ LICENSE. A private school license
2 identifying the name and location of the school and
3 establishing the courses which may be offered thereunder.

4 "(7) ~~(6)~~ PERMIT. A pocket card issued to ~~a~~ an agent
5 or representative providing identification as an authorized
6 agent of a school.

7 "(8) ~~(10)~~ PRINCIPAL BASE OF OPERATIONS. A school
8 which has established a main campus in Alabama. Administrative
9 and managerial support and physical plant facilities are
10 maintained continuously in this location. Franchises chartered
11 independently of parent corporations may be accorded this
12 status provided they comply with the residency requirements.

13 "(9) ~~(3)~~ PRIVATE SCHOOL. Operation of either a for
14 profit or nonprofit entity as opposed to publicly owned or
15 operated schools.

16 "a. A for profit entity is any school operated as a
17 business corporation, partnership, or proprietorship.

18 "b. A nonprofit entity is any school established by
19 a nonprofit charter or articles of incorporation with bylaws
20 establishing a nonprofit mode of operation that is determined
21 by the Internal Revenue Service to be eligible for tax
22 deductible contributions in accordance with Section 26 U.S.C.
23 501(c) (3).

24 "(10) ~~(9)~~ RESIDENT ~~PRIVATE SCHOOL. A~~ COURSE. Any
25 course or sequence of courses of instruction offered by a
26 school which is domiciled within Alabama and has established

1 for a period of three years permanent administrative and
2 management facilities in this state.

3 "(11) ~~(2)~~ SCHOOL. Any person, group of people,
4 institution, establishment, agency, or organization offering
5 or administering a plan, course, or program of instruction
6 whether conducted in person, by mail, by correspondence,
7 online, by distance learning education, or by any other method
8 except the teaching of private lessons of instruction on a
9 singular subject, unless otherwise provided by law.

10 "§16-46-3.

11 "(a) This chapter shall not apply to any of the
12 following schools nor to any person in regard to the operation
13 of such schools, except for the conditions stated in this
14 section:

15 "(1) Schools operated on a nonprofit basis offering
16 only courses or programs of study in which do not lead to an
17 associate or baccalaureate degree and are limited in nature to
18 the performance of or preparation for the ministry of any
19 established church, denomination, or religion.

20 "(2) Courses conducted by employers exclusively for
21 their employees and courses conducted by labor unions
22 exclusively for their members.

23 "(3) Schools offering instruction in grades K-12,
24 including the kindergarten, elementary, or secondary level and
25 operated by a parochial, denominational, or religious
26 organization, and/or as a ministry of a local church or group
27 of churches on a nonprofit basis.

1 "(4) Schools offering instruction in grades K-12,
2 including the kindergarten, elementary, or secondary level,
3 and operated by a community, educational organization, or
4 group of parents, organized as a nonprofit educational
5 corporation with the expectation of establishing a more
6 favorable environment for those in attendance.

7 "(5) Schools, colleges, and universities principally
8 operated and supported by the State of Alabama or its
9 political subdivisions.

10 "(6) Seminars and short courses sponsored or offered
11 by professional business, trade, or religious organizations
12 primarily for benefit of members thereof, or similar public
13 programs of training where the majority of the students have
14 at least half of their tuition and enrollment fees paid by
15 their employers, provided that evidence is supplied supporting
16 this exemption continuously over the preceding five years.

17 "(7) Any private school conducting resident courses
18 whose principal base of operation is within the State of
19 Alabama which has been in continuous operation for 20 years or
20 more as of ~~April 29, 1980~~ July 1, 2004, and that held
21 accreditation as of that date by an accrediting agency
22 recognized by the United States Department of Education.

23 "(8) Programs of study regulated by other state
24 public boards, commissions, or agencies requiring school
25 licensure ~~and/or~~ or performance bonding, or both, except where
26 the appropriate regulatory agency requires a license under
27 this chapter.

1 "(9) Any ~~proprietary~~ private postsecondary
2 institution conducting resident courses that has been in
3 operation within Alabama for at least five years as of July 1,
4 2004, and that is accredited by an accrediting agency
5 recognized by the United States Department of Education shall
6 be accorded the following provisions: Upon proof of such
7 accreditation, such schools shall be issued a license and
8 representative permits after required fees are paid to the
9 Alabama Department of Postsecondary Education. The requisite
10 accreditation shall satisfy the minimum standards of this
11 chapter.

12 "(b) Any private school exempted in this section
13 shall retain the exempted status as long as the conditions of
14 exemption remain valid. An accredited private school or
15 program of study not elsewhere exempted whose accreditation is
16 withdrawn, suspended, or revoked shall forfeit its exemption
17 status until the grant of accreditation is restored. Due
18 process of the accrediting agency shall be allowed prior to
19 withdrawal of an exemption. Schools having accreditation
20 withheld as a result of transfer of ownership shall be allowed
21 a period of time to regain the grant in accordance with the
22 appropriate accrediting agency regulations.

23 "(c) An exemption pursuant to this section shall not
24 be construed to constitute approval or endorsement by the
25 State of Alabama for any purpose.

1 "(d) Exempted private schools may voluntarily
2 request to be licensed without surety as described in Sections
3 16-46-5 and 16-46-6.

4 "(e) Private schools which cease operations shall
5 place the student academic, attendance, and financial aid
6 records in the office of the appropriate school administrator
7 where a repository shall exist to safeguard and to make
8 available these records to authorized persons upon request as
9 follows:

10 "(1) Schools which merge, consolidate, or undergo
11 change of ownership shall deposit with the continuing school.

12 "(2) Schools which are a part of a system,
13 organization, franchise, or a ministry of a local church or a
14 group of churches shall deposit with the administrative office
15 thereof if such is to remain in operation.

16 "(3) Elementary and secondary schools without system
17 support shall deposit with the superintendent of the public
18 county or city within whose district the school is located.

19 "(4) Postsecondary, higher, and others not elsewhere
20 designated shall deposit with the Alabama Department of
21 Postsecondary Education."

22 Section 2. This act shall become effective on the
23 first day of the third month following its passage and
24 approval by the Governor, or its otherwise becoming law.

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House of Representatives

Read for the first time and re-
ferred to the House of Representa-
tives committee on Education Policy
..... 22-MAR-11

Read for the second time and placed
on the calendar 1 amendment 31-MAR-11

Read for the third time and passed
as amended..... 21-APR-11

Yeas 87, Nays 3, Abstains 1

Greg Pappas
Clerk