

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

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ENROLLED, An Act,

To amend Sections 16-46-1 and 16-46-3, Code of Alabama 1975, relating to the regulation of certain schools and courses of instruction and exemptions from school licensing; to clarify the definitions of profit and nonprofit schools; and to allow additional nonprofit schools to apply for exemption from licensure.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§16-46-1.

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

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

"(2) ~~(4)~~ AGENT or REPRESENTATIVE. Salesperson who presents materials, sells courses, or solicits students for enrollment ~~therefor in this state outside the boundaries of~~

1 ~~the school facilities~~ of students in the state in person, by  
2 mail, by correspondence, by telephone, online, by distance  
3 learning education, or by any other method of advertising  
4 within the state.

5           "(3) ~~(11)~~ CHURCH SCHOOL. A school operated by a  
6 local church, group of churches, denomination, and/or  
7 association of churches on a nonprofit basis.

8           "(4) ~~(1)~~ COURSE. Any course, or portion of a plan or  
9 program of instruction, whether conducted in person, by mail,  
10 by correspondence, online, by distance learning education, or  
11 by any other method.

12           "(5) ~~(7)~~ ECONOMIC FRAUD. The sale of courses or  
13 programs of study which an institution is unable or unwilling  
14 to provide as advertised or described because of inadequate  
15 financial stability, facilities, instructional staff, or  
16 commitment to honor written or verbal contracts made with  
17 students. Included is the solicitation of students for  
18 enrollment through intentional deception or misrepresentation  
19 of fact and the use of advertising which is known to be false,  
20 inaccurate, or misleading. Failure to properly administer  
21 student cancellation and refund policies according to  
22 appropriate regulations or agreements made with students shall  
23 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

1 school which is domiciled within Alabama and has established  
2 for a period of three years permanent administrative and  
3 management facilities in this state.

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

11 "§16-46-3.

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

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

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

24 "(3) Schools offering instruction in grades K-12,  
25 including the kindergarten, elementary, or secondary level and

1 operated by a parochial, denominational, or religious  
2 organization, and/or as a ministry of a local church or group  
3 of churches on a nonprofit basis.

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

10 "(5) Schools, colleges, and universities principally  
11 operated and supported by the State of Alabama or its  
12 political subdivisions.

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

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

1           "(8) Programs of study regulated by other state  
2 public boards, commissions, or agencies requiring school  
3 licensure ~~and/or~~ or performance bonding, or both, except where  
4 the appropriate regulatory agency requires a license under  
5 this chapter.

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

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

1 a period of time to regain the grant in accordance with the  
2 appropriate accrediting agency regulations.

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

6 "(d) Exempted private schools may voluntarily  
7 request to be licensed without surety as described in Sections  
8 16-46-5 and 16-46-6.

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

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

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

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



1                   "(4) Postsecondary, higher, and others not elsewhere  
2                   designated shall deposit with the Alabama Department of  
3                   Postsecondary Education."

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

