

1 HB321  
2 127553-1  
3 By Representatives Baker, Fincher, McClurkin, Davis, McMillan,  
4 Shiver, Ison and Faust  
5 RFD: Education Policy  
6 First Read: 22-MAR-11

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: This bill would clarify the definitions of  
9 profit and nonprofit schools and would allow  
10 additional nonprofit schools to apply for exemption  
11 from licensure.

12  
13 A BILL  
14 TO BE ENTITLED  
15 AN ACT

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

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

26 "§16-46-1.

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

4           "(1) ~~(8)~~ ACADEMIC FRAUD. Courses offered are  
5 insufficient in quality, content, or administration to achieve  
6 the stated or implied educational objective. Persons offering  
7 such courses who know or reasonably should know that said  
8 courses cannot achieve the stated or implied educational  
9 objective shall be considered to be involved in academic  
10 fraud.

11           "(2) ~~(4)~~ AGENT or REPRESENTATIVE. Salesperson who  
12 presents materials, sells courses, or solicits students for  
13 enrollment ~~therefor in this state outside the boundaries of~~  
14 ~~the school facilities~~ of students in the state in person, by  
15 mail, by correspondence, by telephone, online, by distance  
16 learning education, or by any other method of advertising  
17 within the state.

18           "(3) ~~(11)~~ CHURCH SCHOOL. A school operated by a  
19 local church, group of churches, denomination, and/or  
20 association of churches on a nonprofit basis.

21           "(4) ~~(1)~~ COURSE. Any course, or portion of a plan or  
22 program of instruction, whether conducted in person, by mail,  
23 by correspondence, online, by distance learning education, or  
24 by any other method.

25           "(5) ~~(7)~~ ECONOMIC FRAUD. The sale of courses or  
26 programs of study which an institution is unable or unwilling  
27 to provide as advertised or described because of inadequate

1 financial stability, facilities, instructional staff, or  
2 commitment to honor written or verbal contracts made with  
3 students. Included is the solicitation of students for  
4 enrollment through intentional deception or misrepresentation  
5 of fact and the use of advertising which is known to be false,  
6 inaccurate, or misleading. Failure to properly administer  
7 student cancellation and refund policies according to  
8 appropriate regulations or agreements made with students shall  
9 also constitute economic fraud.

10 "(6) ~~(5)~~ LICENSE. A private school license  
11 identifying the name and location of the school and  
12 establishing the courses which may be offered thereunder.

13 "(7) ~~(6)~~ PERMIT. A pocket card issued to ~~a~~ an agent  
14 or representative providing identification as an authorized  
15 agent of a school.

16 "(8) ~~(10)~~ PRINCIPAL BASE OF OPERATIONS. A school  
17 which has established a main campus in Alabama. Administrative  
18 and managerial support and physical plant facilities are  
19 maintained continuously in this location. Franchises chartered  
20 independently of parent corporations may be accorded this  
21 status provided they comply with the residency requirements.

22 "(9) ~~(3)~~ PRIVATE SCHOOL. Operation of either profit  
23 or nonprofit entity as opposed to publicly owned or operated  
24 schools.

25 "a. A profit entity includes any proprietary school  
26 operated for profit by the owner or investors, excluding a

1 not-for-profit school, institution, religious organization, or  
2 government entity.

3 "b. A nonprofit entity includes any school  
4 established by a nonprofit charter or articles of  
5 incorporation with bylaws establishing a nonprofit mode of  
6 operation that is recognized by tax law as a nonprofit entity.

7 "(10) ~~(9)~~ RESIDENT PRIVATE SCHOOL. A COURSE. Any  
8 course or sequence of courses of instruction offered by a  
9 school which is domiciled within Alabama and has established  
10 for a period of three years permanent administrative and  
11 management facilities in this state.

12 "(11) ~~(2)~~ SCHOOL. Any person, group of people,  
13 institution, establishment, agency, or organization offering  
14 or administering a plan, course, or program of instruction  
15 whether conducted in person, by mail, by correspondence,  
16 online, by distance learning education, or by any other method  
17 except the teaching of private lessons of instruction on a  
18 singular subject, unless otherwise provided by law.

19 "§16-46-3.

20 "(a) This chapter shall not apply to any of the  
21 following schools nor to any person in regard to the operation  
22 of such schools, except for the conditions stated in this  
23 section:

24 "(1) Schools operated on a nonprofit basis offering  
25 only courses or programs of study in which do not lead to an  
26 associate or baccalaureate degree and are limited in nature to

1 the performance of or preparation for the ministry of any  
2 established church, denomination, or religion.

3 "(2) Courses conducted by employers exclusively for  
4 their employees and courses conducted by labor unions  
5 exclusively for their members.

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

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

17 "(5) Schools, colleges, and universities principally  
18 operated and supported by the State of Alabama or its  
19 political subdivisions.

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

1           "(7) Any private ~~school~~ nonprofit postsecondary  
2 institution conducting resident courses whose principal base  
3 of operation is within the State of Alabama which has been in  
4 continuous operation for 20 years or more as of ~~April 29, 1980~~  
5 the effective date of the act amending this subdivision, and  
6 that held accreditation ~~as of that date~~ continuously during  
7 that period by an accrediting agency recognized by the United  
8 States Department of Education.

9           "(8) Programs of study regulated by other state  
10 public boards, commissions, or agencies requiring school  
11 licensure ~~and/or~~ or performance bonding, or both, except where  
12 the appropriate regulatory agency requires a license under  
13 this chapter.

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

25           "(b) Any private school exempted in this section  
26 shall retain the exempted status as long as the conditions of  
27 exemption remain valid. An accredited private school or

1 program of study not elsewhere exempted whose accreditation is  
2 withdrawn, suspended, or revoked shall forfeit its exemption  
3 status until the grant of accreditation is restored. Due  
4 process of the accrediting agency shall be allowed prior to  
5 withdrawal of an exemption. Schools having accreditation  
6 withheld as a result of transfer of ownership shall be allowed  
7 a period of time to regain the grant in accordance with the  
8 appropriate accrediting agency regulations.

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

12 "(d) Exempted private schools may voluntarily  
13 request to be licensed without surety as described in Sections  
14 16-46-5 and 16-46-6.

15 "(e) Private schools which cease operations shall  
16 place the student academic, attendance, and financial aid  
17 records in the office of the appropriate school administrator  
18 where a repository shall exist to safeguard and to make  
19 available these records to authorized persons upon request as  
20 follows:

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

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



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

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

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