

1 SB38
2 154968-1
3 By Senators Brewbaker and Marsh
4 RFD: Education
5 First Read: 14-JAN-14
6 PFD: 11/07/2013

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8 SYNOPSIS: This bill would clarify that private,
9 nonpublic, and church schools offering instruction
10 in grades K-12, are not subject to licensure or
11 regulation by the State Department of Education.

12 This bill would prohibit any public two-year
13 or four-year institution of higher education from
14 denying admittance to an otherwise qualified
15 student on the basis that the student was home
16 schooled or attended private, nonpublic, or church
17 school.

18 This bill would also prohibit the State
19 Department of Education from denying certification
20 to an otherwise qualified person on the basis that
21 the person was employed by an elementary or
22 secondary private, nonpublic, or church school.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 To amend Sections 16-1-11, 16-28-7, 16-46-1,
2 16-46-2, 16-46-3, 16-46-4, 16-46-5, 16-46-6, 16-46-7, 16-46-8,
3 16-46-9, and 16-46-10, Code of Alabama 1975, relating to
4 education; to clarify the autonomy of private, nonpublic, and
5 church schools offering instruction in grades K-12, and home
6 schooled students, from regulation by the State Department of
7 Education, the State Board of Education, and the State
8 Superintendent of Education; to prohibit any public two-year
9 or four-year institution of higher education from denying
10 admittance to an otherwise qualified student on the basis that
11 the student was home schooled or attended a private,
12 nonpublic, or church school; and to prohibit the State
13 Department of Education from denying certification to an
14 otherwise qualified person on the basis that the person was
15 employed by an elementary or secondary private, nonpublic, or
16 church school.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. The Legislature finds and declares the
19 following:

20 (1) Parents have a choice in how to educate their
21 children and many parents choose to home school or enroll
22 their children in elementary and secondary private, nonpublic,
23 or church schools, that are not subject to state regulation
24 and do not receive state or federal funds.

25 (2) Other than reporting on the enrollment of
26 students, these private K-12 schools have been primarily

1 exempt from state regulation and have only been required by
2 state law to report the enrollment of students.

3 (3) Regulation by the State Department of Education
4 of any school with a religious affiliation would be an
5 unconstitutional burden on religious activities in direct
6 violation of the Alabama Religious Freedom Amendment and the
7 First Amendment to the United States Constitution and would
8 require a compelling interest by the department.

9 (4) No student who has been home schooled or who has
10 attended a private, nonpublic, or church school, if otherwise
11 qualified for admittance, should be denied entrance to a
12 two-year or four-year institution of higher education based on
13 that fact alone.

14 Section 2. Sections 16-1-11 and 16-28-7 of the Code
15 of Alabama 1975, are amended to read as follows:

16 "§16-1-11.

17 "All private schools or institutions of any kind
18 having a school in connection therewith, except church schools
19 as defined in Section 16-28-1, shall register annually on or
20 before October 10 with the Department of Education and shall
21 report on uniform blanks furnished by the State Superintendent
22 of Education, giving such statistics as relate to the number
23 of pupils, the number of instructors, enrollment, attendance,
24 course of study, length of term, cost of tuition, funds, value
25 of property, and the general condition of the school. This
26 section may not be interpreted or construed to authorize the
27 Department of Education, the State Board of Education, or the

1 State Superintendent of Education to license or regulate any
2 private, nonpublic, or church school offering instruction in
3 grades K-12, or any combination thereof.

4 "§16-28-7.

5 "At the end of the fifth day from the opening of the
6 public school, the principal teacher of each public school,
7 private school, and each private tutor, but not church school,
8 shall report on forms prescribed by the State Superintendent
9 of Education to the county superintendent of education, in the
10 event the school is operated in territory under the control
11 and supervision of the county board of education, or to the
12 city superintendent of schools, in the event the school is
13 operated in territory under the control and supervision of a
14 city board of education, the names and addresses of all
15 children of mandatory school attendance age who have enrolled
16 in such schools; and thereafter, throughout the compulsory
17 attendance period, the principal teacher of each school and
18 private tutor shall report at least weekly the names and
19 addresses of all children of mandatory school attendance age
20 who enroll in the school or who, having enrolled, were absent
21 without being excused, or whose absence was not satisfactorily
22 explained by the parent, guardian, or other person having
23 control of the child. The enrollment and attendance of a child
24 in a church school shall be filed with the local public school
25 superintendent by the parent, guardian, or other person in
26 charge or control of the child on a form provided by the
27 superintendent or his or her agent which shall be

1 countersigned by the administrator of the church school and
2 returned to the public school superintendent by the parent.
3 Should the child cease attendance at a church school, the
4 parent, guardian, or other person in charge or control of the
5 child shall by prior consent at the time of enrollment direct
6 the church school to notify the local public school
7 superintendent or his or her agent that the child no longer is
8 in attendance at a church school. This section may not be
9 interpreted or construed as authorizing the Department of
10 Education, the State Board of Education, or the State
11 Superintendent of Education to license or regulate any
12 private, nonpublic, or church school offering instruction in
13 grades K-12, or any combination thereof."

14 Section 3. Sections 16-46-1, 16-46-2, 16-46-3,
15 16-46-4, 16-46-5, 16-46-6, 16-46-7, 16-46-8, 16-46-9, and
16 16-46-10 of the Code of Alabama 1975, are amended to read as
17 follows:

18 "§16-46-1.

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

22 "(1) ACADEMIC FRAUD. Courses offered are
23 insufficient in quality, content, or administration to achieve
24 the stated or implied educational objective. Persons offering
25 such courses who know or reasonably should know that the
26 courses cannot achieve the stated or implied educational

1 objective shall be considered to be involved in academic
2 fraud.

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

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

12 "(3) ~~(4)~~ COURSE. Any course, or portion of a plan or
13 program of instruction, whether conducted in person, by mail,
14 by correspondence, online, by distance learning education, or
15 by any other method.

16 "(4) ~~(5)~~ ECONOMIC FRAUD. The sale of courses or
17 programs of study which an institution is unable or unwilling
18 to provide as advertised or described because of inadequate
19 financial stability, facilities, instructional staff, or
20 commitment to honor written or verbal contracts made with
21 students. Included is the solicitation of students for
22 enrollment through intentional deception or misrepresentation
23 of fact and the use of advertising which is known to be false,
24 inaccurate, or misleading. Failure to properly administer
25 student cancellation and refund policies according to
26 appropriate regulations or agreements made with students shall
27 also constitute economic fraud.

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

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

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

15 "(8) ~~(9)~~ PRIVATE ~~SCHOOL~~ POSTSECONDARY INSTITUTION.
16 Operation of either a for profit or nonprofit ~~entity~~
17 postsecondary school as opposed to publicly owned or operated
18 postsecondary schools. For the purposes of this subdivision, a
19 for profit ~~entity~~ postsecondary school is any school operated
20 as a business corporation, partnership, or proprietorship and
21 a nonprofit ~~entity~~ school is any school established by a
22 nonprofit charter or articles of incorporation with bylaws
23 establishing a nonprofit mode of operation that is determined
24 by the Internal Revenue Service to be eligible for tax
25 deductible contributions in accordance with 26 U.S.C.
26 §501(c)(3).

1 "(9) ~~(10)~~ RESIDENT COURSE. Any course or sequence of
2 courses of instruction offered by a school which is domiciled
3 within Alabama and has established for a period of three years
4 permanent administrative and management facilities in this
5 state.

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

13 "§16-46-2.

14 "It is hereby generally recognized that courses of
15 instruction, whether given in residence or by mail, result in
16 substantial benefits for students pursuing such courses,
17 provided that such courses are designed and administered in
18 accordance with recognized educational standards and
19 practices. It is also recognized that persons taking such
20 courses and institutions offering such courses should be
21 afforded additional protection under the laws of this state.
22 It is the purpose of this chapter to supplement the general
23 law of fraud of this state so as to provide for students,
24 ~~educational~~ private postsecondary institutions, and the
25 general public such added protection.

26 "§16-46-3.

1 "(a) This chapter shall not apply to any school
2 offering instruction in grades K-12, or any combination
3 thereof, or to any private postsecondary institution
4 satisfying the conditions stated in this section, or of the
5 following schools nor to any person in regard to the operation
6 of such schools, except for the conditions stated in this
7 section:

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

13 "(2) Courses conducted by employers exclusively for
14 their employees and courses conducted by labor unions
15 exclusively for their members.

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

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

1 "(5) Schools, colleges, and universities principally
2 operated and supported by the State of Alabama or its
3 political subdivisions.

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

11 "(7) Any private ~~school~~ postsecondary institution
12 conducting resident courses whose principal base of operation
13 is within the State of Alabama which has been in continuous
14 operation for 20 years or more as of July 1, 2004, and that
15 held accreditation as of that date by an accrediting agency
16 recognized by the United States Department of Education.

17 "(8) Programs of study regulated by other state
18 public boards, commissions, or agencies requiring school
19 licensure or performance bonding, or both, except where the
20 appropriate regulatory agency requires a license under this
21 chapter.

22 "(9) Any private postsecondary institution
23 conducting resident courses that has been in operation within
24 Alabama for at least five years as of July 1, 2004, and that
25 is accredited by an accrediting agency recognized by the
26 United States Department of Education shall be accorded the
27 following provisions: Upon proof of such accreditation, such

1 ~~schools~~ private postsecondary schools shall be issued a
2 license and representative permits after required fees are
3 paid to the Alabama Department of Postsecondary Education. The
4 requisite accreditation shall satisfy the minimum standards of
5 this chapter.

6 "(10) Any private or church school, as defined in
7 Section 16-28-1, offering instruction in grades K-12, or any
8 combination thereof, which holds a certificate issued by the
9 State Superintendent of Education, showing that the school
10 conforms to the requirements listed in subdivision (1) of
11 Section 16-28-1, or any nonpublic school, as defined in
12 Section 16-22A-3, offering instruction in grades K-12, or any
13 combination thereof.

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

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

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

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

13 "(1) ~~Schools~~ Private postsecondary institutions
14 which merge, consolidate, or undergo change of ownership shall
15 deposit with the continuing school.

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

24 "(3) ~~(4)~~ Postsecondary, higher, and others not
25 elsewhere designated shall deposit with the ~~Alabama~~ Department
26 of Postsecondary Education.

27 "§16-46-4.

1 "No person shall do any of the following:

2 "(1) Make or cause to be made any statement or
3 representation, oral, written, or visual, in connection with
4 the operation of a school or the offering of a course, if such
5 person knows or reasonably should know the statement or
6 representation to be false, inaccurate, or misleading~~7~~.

7 "(2) Promise or guarantee employment utilizing
8 information, training, or skill purported to be provided or
9 otherwise enhanced by a course or school, unless such person
10 offers the student or prospective student a bona fide contract
11 of employment agreeing to employ ~~said~~ the student or
12 prospective student for a period of not less than six months
13 in a business or other enterprise regularly conducted by him
14 or her and in which such information, training, or skill is a
15 normal condition of employment~~7~~~~or~~.

16 "(3) Do any act constituting part of the conduct of
17 operating a school or administration of a course or the
18 obtaining of students therefor if such person knows or
19 reasonably should know that any phase or incident of the
20 conduct or operation of the school or administration of the
21 course is being carried on by the use of fraud, deception, or
22 other misrepresentation or by a person or persons operating a
23 school without a license or soliciting students without a
24 permit provided for by this chapter.

25 "§16-46-5.

26 "(a) No ~~proprietary private~~ private postsecondary ~~school~~
27 institution, except those enumerated in Section 16-46-3, shall

1 operate within this state unless the ~~school~~ private
2 postsecondary institution first secures a license from the
3 ~~Alabama~~ Department of Postsecondary Education, regardless of
4 whether the ~~school~~ private postsecondary institution enrolls
5 Alabama students or has a physical presence within the State
6 of Alabama. Procedures for licensing and bonding of ~~schools~~
7 private postsecondary institutions operating courses in
8 separate locations shall be established in the rules and
9 regulations pursuant to Section 16-46-7.

10 ~~"(b) No K-12 school, except those enumerated in~~
11 ~~Section 16-46-3, shall operate within this state unless the~~
12 ~~school first secures a license from the Alabama State~~
13 ~~Department of Education. Procedures for licensing and bonding~~
14 ~~of schools operating courses in separate locations shall be~~
15 ~~established in the rules and regulations pursuant to Section~~
16 ~~16-46-7.~~

17 ~~"(b) (c)~~ Upon satisfactory review of a ~~school~~
18 private postsecondary institution, the ~~Alabama State~~
19 ~~Department of Education or the Alabama~~ Department of
20 Postsecondary Education, ~~as appropriate~~, shall issue a license
21 to be publicly displayed on the premises where the ~~school~~
22 private postsecondary institution operates.

23 ~~"(c) (d)~~ The application for a license for a ~~K-12~~
24 ~~school shall be made on forms furnished by the Alabama State~~
25 ~~Department of Education. Application for a license for a~~
26 ~~proprietary~~ private postsecondary institution shall be made on

1 forms furnished by the ~~Alabama~~ Department of Postsecondary
2 Education.

3 "(d) ~~(e)~~ The State Board of Education shall
4 promulgate a schedule of licensing fees, which may be revised
5 from time to time upon reasonable notice at the discretion of
6 the board. All licensing fees collected from private
7 postsecondary institutions shall be deposited in the State
8 Treasury to the credit of the private school licensing section
9 in the ~~Alabama~~ Department of Postsecondary Education.
10 ~~Licensing fees collected from K-12 schools shall be deposited~~
11 ~~in the State Treasury to the credit of the Alabama State~~
12 ~~Department of Education.~~

13 "(e) ~~(f)~~ ~~All K-12 schools except those enumerated in~~
14 ~~Section 16-46-3 shall be required to establish financial~~
15 ~~stability by a surety acceptable to the Alabama State~~
16 ~~Department of Education in the penal sum of not more than~~
17 ~~\$10,000.00. The sum required to provide prepaid tuition~~
18 ~~liability shall be established by the Alabama State Department~~
19 ~~of Education by appropriate regulation pursuant to Section~~
20 ~~16-46-7. All proprietary private postsecondary institutions,~~
21 ~~except those enumerated in Section 16-46-3, shall be required~~
22 ~~to establish financial stability by surety acceptable to the~~
23 ~~Alabama Department of Postsecondary Education in the penal sum~~
24 ~~of not more than twenty thousand dollars (\$20,000). The sum~~
25 ~~required to provide prepaid tuition liability shall be~~
26 ~~established by the ~~Alabama~~ Department of Postsecondary~~
27 ~~Education by appropriate regulation pursuant to Section~~

1 16-46-7. Financial stability for separate locations shall be
2 provided through the principal base of operations. Such surety
3 shall be continuous and shall be conditioned to provide
4 indemnification to any student suffering loss as a result of
5 any fraud or misrepresentation used in procuring his or her
6 enrollment in and/or administering a course covered by this
7 chapter for the purpose of assuring due and faithful
8 performance of agreements or contracts with students.

9 "(f) ~~(g)~~ A license shall be valid for two years from
10 the date on which it was issued.

11 "(g) ~~(h)~~ Regardless of the number of years that a
12 surety is in force, the aggregate liability thereon shall in
13 no event exceed the penal sum of the surety accepted by ~~either~~
14 ~~the Alabama State Department of Education or the Alabama~~
15 ~~Department of Postsecondary Education, as appropriate.~~ The
16 surety may cancel the same upon giving 30 days' notice in
17 writing to the ~~Alabama State Department of Education or the~~
18 ~~Alabama~~ Department of Postsecondary Education, ~~as appropriate,~~
19 and thereafter shall be relieved of liability for any breach
20 of condition occurring after the effective date of the
21 cancellation.

22 "(h) ~~(i)~~ Application for a license shall also be
23 accompanied by a financial statement acceptable to the ~~State~~
24 ~~Department of Education or the Alabama~~ Department of
25 Postsecondary Education, ~~as appropriate,~~ and a copy of the
26 current catalog, brochure, or bulletin of the ~~school~~ private

1 postsecondary institution, which shall include all of the
2 following:

3 "(1) Identifying data such as volume number, date,
4 and publication.

5 "(2) Name, address, and telephone of the ~~school~~
6 private postsecondary institution and its governing body,
7 officials, and faculty.

8 "(3) A clear and concise statement of the objectives
9 of the training given by the school.

10 "(4) The exact manner in which the stated objectives
11 are to be attained.

12 "(5) A tuition and refund policy which is in
13 compliance with the appropriate regulation pursuant to Section
14 16-46-7.

15 "(6) A grievance policy which directs aggrieved
16 students to first attempt to resolve complaints through the
17 appropriate ~~school~~ officials of the private postsecondary
18 institution. Student grievances not resolved by the ~~school~~
19 private postsecondary institution shall be referred to the
20 ~~Alabama State Department of Education or the Alabama~~
21 ~~Department of Postsecondary Education, as appropriate.~~

22 "(7) Such other reasonable information as the
23 ~~Alabama State Department of Education or the Alabama~~
24 ~~Department of Postsecondary Education, as appropriate,~~ may
25 impose.

26 "(i) ~~(j)~~ Upon receipt of the required information,
27 the ~~Alabama State Department of Education or the Alabama~~

1 Department of Postsecondary Education, ~~as appropriate,~~ may
2 issue a license provided the institution is complying with all
3 of the following standards:

4 "(1) The courses, curriculum, and instructions of
5 ~~such school~~ the private postsecondary institution are
6 consistent, in quality and content, with recognized
7 educational standards as determined by the ~~Alabama State~~
8 ~~Department of Education or the Alabama~~ Department of
9 Postsecondary Education, ~~as appropriate.~~

10 "(2) There is available to the ~~school~~ private
11 postsecondary institution adequate space, equipment,
12 instructional material, and instructor personnel to provide
13 training of good quality.

14 "(3) Adequate records as determined by the ~~Alabama~~
15 ~~State Department of Education or the Alabama~~ Department of
16 Postsecondary Education, ~~as appropriate,~~ are kept to show
17 attendance and student progress. Records shall be available
18 upon request of the student to be furnished prospective
19 employers and other interested parties.

20 "(4) The ~~school~~ private postsecondary institution is
21 financially sound and capable of fulfilling its commitments
22 for training.

23 "(5) ~~Schools~~ Private postsecondary institutions or
24 courses domiciled outside Alabama shall designate a state
25 agent who is a resident of this state to service all
26 complaints against the ~~school~~ institution.

1 "(6) A student enrollment agreement or contract
2 shall be utilized to set forth clearly all conditions for
3 enrollment in and completion of courses of instruction,
4 itemized course cost, terms of payment, and other conditions
5 the ~~school~~ private postsecondary institution may desire to
6 establish. Conditions for forced withdrawal for academic or
7 disciplinary reasons shall be stated. Contracts establishing
8 installment payments with interest charges shall be in
9 compliance with Alabama statutes regarding lending and usury
10 and shall be certified by the Alabama State Banking
11 Department.

12 "(7) The ~~school~~ private postsecondary institution
13 shall comply with all local, state, and federal laws and
14 regulations.

15 "(j) ~~(k)~~ Any license applied for pursuant to this
16 section shall be granted, deferred, or denied within 30 days
17 of the receipt of the application therefor by ~~either the~~
18 ~~Alabama State Department of Education or the Alabama~~
19 ~~Department of Postsecondary Education, as appropriate.~~

20 "(k) ~~(l)~~ The ~~Alabama State Department of Education~~
21 ~~or the Alabama~~ Department of Postsecondary Education, ~~as~~
22 ~~appropriate,~~ may invoke negative actions against any license
23 issued if the holder of the license solicits or enrolls
24 students or administers instructions through fraud, deception,
25 or misrepresentation. Negative actions shall include
26 probation, suspension, and/or revocation.

1 "(l) ~~(m)~~ The fact that a surety is in force pursuant
2 to this section shall not limit nor impair any right of
3 recovery otherwise available under law, nor shall the amount
4 of such surety be relevant in determining the amount of
5 damages or other relief to which any plaintiff may be
6 entitled.

7 "(m) ~~(n)~~ No recovery against any student shall be
8 had on any contract if such ~~school~~ private postsecondary
9 institution was not the holder of a license as required by
10 this section at the time that ~~such school~~ the institution or
11 its representative negotiated the contract for or sold such
12 course.

13 "(n) ~~(o)~~ ~~Schools~~ Private postsecondary institutions
14 which undergo transfer of ownership shall be reviewed to
15 determine that minimum standards remain in effect. The license
16 may not be transferred to new ownership. Financial stability
17 of the new ownership shall be established.

18 "(o) ~~(p)~~ The issuance of a license pursuant to this
19 section shall represent authority to operate an educational
20 institution in Alabama. Licensure may not be advertised as an
21 endorsement or recommendation, but it implies compliance with
22 the laws of Alabama. Advertising may indicate only that the
23 ~~school~~ private postsecondary institution is licensed by the
24 state.

25 "§16-46-6.

26 "(a) No person representing any ~~school~~ private
27 postsecondary institution or other individual or organization

1 offering courses in this state, or from a place of business in
2 this state, whether located within or outside this state,
3 shall sell any course or solicit students therefor in this
4 state for a consideration or remuneration unless a permit is
5 first secured from the ~~Alabama State Department of Education~~
6 ~~or the Alabama~~ Department of Postsecondary Education, ~~as~~
7 ~~appropriate~~, with the exception of agents representing schools
8 exempted under Section 16-46-3. If the agent represents more
9 than one school not exempted under Section 16-46-3, a separate
10 permit shall be obtained for each school represented. The
11 application for a permit shall be made on forms to be
12 furnished by ~~either the Alabama State Department of Education~~
13 ~~or Alabama~~ Department of Postsecondary Education, ~~as~~
14 ~~appropriate~~, and shall be renewed every two years.

15 "(b) Upon satisfactory review of an agent, the
16 ~~Alabama State Department of Education or the Alabama~~
17 ~~Department of Postsecondary Education, as appropriate,~~ shall
18 issue a pocket card displaying the signature of the person,
19 facial photo, name and address, the name and address of the
20 employing ~~school~~ private postsecondary institution, and
21 certifying that the person is an authorized agent of the
22 ~~school~~ institution. A permit shall be valid for two years from
23 the date on which it was issued. This permit shall be carried
24 on person when representing the ~~school~~ institution as an
25 agent.

26 "(c) ~~Schools~~ Private postsecondary institutions
27 utilizing agents shall provide indemnification to any student

1 suffering loss as a result of any fraud or misrepresentation
2 used by the agents in procuring enrollment.

3 "(d) One complimentary agent's permit may be issued
4 to a designated owner, director, or managerial person of each
5 licensed ~~school~~ private postsecondary institution identified
6 as a principal base of operation.

7 "(e) No person shall be issued a permit to represent
8 any ~~school~~ private postsecondary institution, whether located
9 within or outside this state, until it has been determined by
10 the ~~Alabama State Department of Education or the Alabama~~
11 ~~Department of Postsecondary Education, as appropriate,~~ that
12 the school has qualified under the requirements of Section
13 16-46-5.

14 "(f) Any permit applied for pursuant to this section
15 shall be granted, deferred, or denied within 30 days of the
16 receipt of the application therefor by the ~~Alabama State~~
17 ~~Department of Education or the Alabama~~ Department of
18 Postsecondary Education, ~~as appropriate.~~

19 "(g) The ~~Alabama State Department of Education or~~
20 ~~the Alabama~~ Department of Postsecondary Education, ~~as~~
21 ~~appropriate,~~ may invoke negative actions against any permit
22 issued if the holder of the permit solicits or enrolls
23 students through fraud, deception, or misrepresentation or
24 upon a finding that the license to operate the ~~school~~ private
25 postsecondary institution represented is revoked or it is
26 determined by the ~~Alabama State Department of Education or the~~
27 ~~Alabama~~ Department of Postsecondary Education, ~~as appropriate,~~

1 that the ~~school~~ private postsecondary institution located
2 outside of the state which the holder of the permit represents
3 does not meet the requirements of Section 16-46-5. Negative
4 actions shall include probation, suspension, and/or
5 revocation.

6 "(h) The fact that a surety is in force shall not
7 limit or impair any right of recovery otherwise available
8 under law, nor shall the amount of such bond be relevant in
9 determining the amount of damages or other relief to which any
10 plaintiff may be entitled.

11 "(i) No recovery shall be had on any contract for or
12 in connection with a course by any person selling or
13 administering such course if the representative soliciting the
14 students or selling the course was not the holder of a permit
15 as required by this section at the time that such
16 representative negotiated the contract for or sold such
17 course.

18 "(j) No recovery shall be had on any contract for or
19 in connection with a course by any person or institution
20 holding such a contract who is legally a third party or
21 holding agent for one of the other parties where the selling
22 of the course or the conduct or operation of the ~~school~~
23 private postsecondary institution or the administering of the
24 course is carried on by use of fraud, deception, or other
25 misrepresentation or if the person or persons operating the
26 ~~school~~ private postsecondary institution, administering the

1 course, or soliciting students is without a license provided
2 by this chapter.

3 "(k) The issuance of a permit pursuant to this
4 section shall not be deemed to constitute endorsement of any
5 course, person, or institution offering, conducting, or
6 otherwise administering the same. Any representation contrary
7 to this subsection or tending to imply that a permit issued
8 pursuant to this section constitutes such endorsement shall be
9 a misrepresentation within the meaning of this chapter.

10 Permits to sell courses, solicit students, or otherwise
11 represent a ~~school~~ private postsecondary institution located
12 within this state may not be issued unless the ~~school~~
13 institution first obtained a license to operate under Section
14 16-46-5, nor may permits be issued to represent schools
15 located outside of the state until it has been determined by
16 the ~~Alabama State Department of Education or the Alabama~~
17 ~~Department of Postsecondary Education, as appropriate,~~ that
18 ~~such school~~ the private postsecondary institution qualifies
19 under the requirements of Section 16-46-5.

20 "§16-46-7.

21 "The ~~Alabama~~ State Board of Education may adopt
22 rules and regulations for the administration and enforcement
23 of this chapter and shall require the Chancellor to establish
24 an advisory committee of owners or operators of proprietary
25 private postsecondary institutions, to which this chapter
26 applies, and of other persons with knowledge in the field to
27 which this chapter applies to advise the Chancellor in the

1 administration of this chapter relating to ~~proprietary~~ private
2 postsecondary institutions. The advisory committee may review
3 any action taken or policy established by the ~~Alabama~~
4 Department of Postsecondary Education, ~~as appropriate,~~ in the
5 administration of this chapter and may offer recommendations
6 to the Chancellor or State Board of Education. Reimbursement
7 for per diem and travel to advisory committee meetings shall
8 be authorized under this chapter and shall be expended by
9 voucher as required by the ~~Alabama~~ Department of Postsecondary
10 Education.

11 "§16-46-8.

12 "The ~~Alabama State Department of Education or the~~
13 ~~Alabama~~ Department of Postsecondary Education, ~~as appropriate,~~
14 may institute such action of law or in equity as may be
15 necessary to enforce this chapter. In addition to any other
16 remedy under this chapter, the ~~Alabama State Department of~~
17 ~~Education or the Alabama~~ Department of Postsecondary
18 Education, ~~as appropriate,~~ may apply for relief by injunction,
19 mandamus, or any other appropriate remedy in equity without
20 being compelled to allege or prove that an adequate remedy at
21 law does not otherwise exist. The ~~Alabama State Department of~~
22 ~~Education and the Alabama~~ Department of Postsecondary
23 Education ~~are~~ is not required to give or post bond in any
24 action to which it is party, whether upon appeal or otherwise.
25 All legal actions shall be brought against the ~~Alabama State~~
26 ~~Department of Education or the Alabama~~ Department of
27 Postsecondary Education, ~~as appropriate,~~ in the name of the

1 ~~Alabama State Board of Education or the Alabama~~ Department of
2 Postsecondary Education, ~~as appropriate~~. The ~~Alabama State~~
3 ~~Department of Education and the Alabama~~ Department of
4 Postsecondary Education, ~~as appropriate~~, may institute an
5 action by its own attorney, but ~~each~~ shall have the right, if
6 it deems advisable, to call upon any assistant district
7 attorney or district attorney to represent it in the circuit
8 courts of this state or the Attorney General to represent it
9 on appeal in the appellate courts of this state.

10 "§16-46-9.

11 "Any person or school or private postsecondary
12 institution aggrieved by the actions of the ~~Alabama State~~
13 ~~Department of Education or the Alabama~~ Department of
14 Postsecondary Education with respect to exemption, issuance,
15 denial, deferral, probation, suspension, or revocation of a
16 license or permit provided for in Sections 16-46-3, 16-46-5,
17 and 16-46-6, may file within 30 days a petition for review by
18 the ~~Alabama~~ State Board of Education. The aggrieved person, or
19 school, or institution shall then be entitled to a hearing
20 before the ~~Alabama~~ State Board of Education. The person, or
21 school, or institution may be represented by counsel at the
22 hearing. The aggrieved person, or school, or institution may
23 adduce evidence, both oral and documentary, at such hearing
24 and on official record if such hearing shall be transcribed by
25 a qualified court reporter. After the ~~Alabama~~ State Board of
26 Education acts on the petition for review, any person, or
27 school, or institution aggrieved by the ~~Alabama~~ State Board of

1 Education's actions ~~shall~~, within 30 days after receiving
2 notice of any such action, shall have such action reviewed by
3 a writ of certiorari by filing in the Circuit Court of
4 Montgomery County, Alabama, a verified petition setting out
5 the specific action of the ~~Alabama~~ State Board of Education by
6 which the person or school is aggrieved. The court shall
7 consider only such matters as are contained in the petition.
8 Upon such petition being filed, a writ of certiorari shall be
9 issued out of the court directly to the ~~Alabama~~ State Board of
10 Education requiring it to file with the court the records and
11 transcript of testimony upon which such action or order was
12 made and requiring the board to file an answer to the petition
13 within 30 days of service of the writ. Upon the board filing
14 such answer, the issue shall be joined thereon without further
15 pleading and the case considered on the petition, the records
16 of the board, and the answer filed by the board, but no new or
17 additional evidence shall be taken or heard by the court. If
18 new or additional evidence is discovered by any party ~~or~~
19 ~~school~~, after the hearing of the ~~Alabama~~ State Board of
20 Education, the evidence may be made grounds for a motion for a
21 new hearing before the ~~Alabama~~ State Board of Education under
22 the rules applicable to similar laws for a new trial in the
23 state courts of Alabama. Such court may suspend or stay such
24 actions of the ~~Alabama~~ State Board of Education complained of
25 in such petition, pending final hearing, only upon the
26 petitioner executing a bond in such amount as the court deems
27 reasonably sufficient to pay all costs of appeal if the

1 petition is not sustained. In no case shall the bond be less
2 than the reasonable cost of the transcript of the hearing
3 before the ~~Alabama~~ State Board of Education that is being
4 appealed. Upon final hearing, the court shall have
5 jurisdiction to reverse, vacate, or modify the action
6 complained of if, upon the consideration of the issues before
7 the court, the court is of the opinion that the action is
8 unlawful.

9 "§16-46-10.

10 "It shall be unlawful for any person to violate ~~any~~
11 ~~provisions of~~ this chapter. Any person required by this
12 chapter to have a license or permit who shall do in this state
13 any business of the nature described in this chapter without
14 first obtaining such a license or permit as required of him or
15 her by this chapter shall be guilty of a misdemeanor and, upon
16 conviction, shall be punished by a fine of not more than five
17 hundred dollars (\$500) or a term of imprisonment not to exceed
18 six months, or both. Each day's violation of this chapter
19 shall constitute a separate offense. All fines shall be
20 deposited in the State Treasury to the credit of the ~~Alabama~~
21 ~~State Department of Education or the Alabama~~ Department of
22 Postsecondary Education, ~~as appropriate.~~"

23 Section 4. Any provision of law to the contrary
24 notwithstanding, no public two-year or four-year institution
25 of higher education in the state may deny admission to an
26 otherwise qualified student on the basis that the student was

1 home schooled or attended a private, nonpublic, or church
2 school.

3 Section 5. Any provision of law to the contrary
4 notwithstanding, the State Department of Education may not
5 deny certification to an otherwise qualified person on the
6 basis that the person is or was employed by an elementary or
7 secondary private, nonpublic, or church school that is not
8 subject to state regulation.

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