

CHAPTER 1010

H.B. No. 1705

AN ACT

relating to proprietary schools; providing civil penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 32.11, Education Code, is amended by adding Subdivision (10) to read as follows:

(10) "Small proprietary school" means a proprietary school that does not receive any payment from federal funds under 20 U.S.C. Section 1070 et seq. and its subsequent amendments or a prepaid federal or state source as compensation in whole or in part for any student tuition and fees or other charges and either:

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

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

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

SECTION 2. Subchapter C, Chapter 32, Education Code, is amended by adding Section 32.241 to read as follows:

Sec. 32.241. *COMPREHENSIVE REVIEW.* The administrator shall conduct a comprehensive review of the existing rules and policies governing proprietary schools and reduce regulation of small proprietary schools by January 1, 1995. This section expires February 1, 1995.

SECTION 3. Subchapter D, Chapter 32, Education Code, is amended by adding Sections 32.321 and 32.322 to read as follows:

Sec. 32.321. *STATUTORY WAIVER AUTHORITY.* (a) The State Board of Education after consultation with the Proprietary School Advisory Commission may establish rules that waive, alter, suspend, or replace any of the following provisions governing small proprietary schools:

(1) the fee schedule authorized under Section 32.71 of this code, provided that fees under a fee schedule established by rule may not be less than the reasonable administrative cost for regulation or more than the amount that a small proprietary school would otherwise pay if it were not classified as a small proprietary school;

(2) participation in the proprietary school tuition protection fund required by Section 32.91 of this code;

(3) the refund policy provisions of Section 32.39 of this code;

(4) the bonding requirements of Section 32.38 of this code;

(5) the examination of a school for compliance under Section 32.34(f) of this code;

(6) the reporting requirements of Section 32.33(o) of this code; and

(7) *the term for which a certificate of approval is issued under Section 32.34(b) of this code, provided that a rule adopted under this section may not provide for a term that exceeds three years or is less than one year.*

(b) *A rule proposed under this section may be adopted only if it will reduce the regulatory burden for small proprietary schools and will adequately safeguard the interests of the students of small proprietary schools to receive either the education for which they have contracted or an appropriate refund.*

Sec. 32.322. SMALL SCHOOL EXEMPTION. The administrator may exempt small proprietary schools from any requirement of this chapter to reduce the cost to small schools of receiving a certificate of approval.

SECTION 4. Section 32.39, Education Code, is amended by amending Subsections (a), (b), and (e) and adding Subsection (g) to read as follows:

(a) *Except as provided by Subsection (g) of this section, as [As] a condition for granting certification each school must maintain a cancellation and settlement policy which must provide a full refund of all monies paid by a student if:*

(1) *the student cancels the enrollment agreement or contract within 72 hours (until midnight of the third day excluding Saturdays, Sundays, and legal holidays) after the enrollment contract is signed by the prospective student;*

(2) *the enrollment of the student was procured as the result of any misrepresentation in advertising, promotional materials of the school, or representations by the owner or representatives of the school.*

(b) *Except as provided by Subsection (g) of this section, as [As] a condition for granting certification, each school must maintain a policy for the refund of the unused portion of tuition, fees, and other charges in the event the student, after expiration of the 72-hour cancellation privilege, fails to enter the course, or withdraws, or is discontinued therefrom at any time prior to completion, and such policy must provide:*

(1) *refunds for resident courses will be based on the period of enrollment computed on the basis of course time expressed in clock hours;*

(2) *the effective date of the termination for refund purposes in residence schools will be the earliest of the following:*

(A) *the last date of attendance, if the student is terminated by the school;*

(B) *the date of receipt of written notice from the student;*

(C) *ten school days following the last date of attendance;*

(3) *if tuition and fees are [is] collected in advance of entrance, and if, after expiration of the 72-hour cancellation privilege, the student does not enter the residence school, not more than \$100 shall be retained by the school;*

(4) *for the student who enters a residence course of not more than 12 months in length, terminates or withdraws, the school may retain \$100 of tuition and fees and the minimum refund of the remaining tuition and fees will be:*

(A) *during the first week or one-tenth of the course, whichever is less, 90 percent of the remaining tuition and fees;*

(B) *after the first week or one-tenth of the course, whichever is less, but within the first three weeks of the course, 80 percent of the remaining tuition and fees;*

(C) *after the first three weeks of the course, but within the first quarter of the course, 75 percent of the remaining tuition and fees;*

(D) *during the second quarter of the course, 50 percent of the remaining tuition and fees;*

(E) *during the third quarter of the course, 10 percent of the remaining tuition and fees;*

(F) *during the last quarter of the course, the student may be considered obligated for the full tuition and fees;*

(5) for residence courses more than 12 months in length, the refund shall be applied to each 12-month period *paid*, or part thereof separately, *and the student is entitled to a refund as provided by Subdivision (4) of this subsection*;

(6) refunds of items of extra expense to the student, such as instructional supplies, books, student activities, laboratory fees, service charges, rentals, deposits, and all other such ancillary miscellaneous charges, where these items are separately stated and shown in the data furnished the student before enrollment, will be made in a reasonable manner acceptable to the administrator;

(7) refunds based on enrollment in residence schools will be totally consummated within 60 [30] days after the effective date of termination;

(8) refunds for correspondence courses will be computed on the basis of the number of lessons in the course;

(9) the effective date of the termination for refund purposes in correspondence courses will be the earliest of the following:

(A) the date of notification to the student if the student is terminated;

(B) the date of receipt of written notice from the student;

(C) the end of the third calendar month following the month in which the student's last lesson assignment was received unless notification has been received from the student that he wishes to remain enrolled;

(10) if tuition *and fees are* [is] collected before any lessons have been completed, and if, after expiration of the 72-hour cancellation privilege, the student fails to begin the course, not more than \$50 shall be retained by the school;

(11) in cases of termination or withdrawal after the student has begun the correspondence course, the school may retain \$50 of tuition and fees, and the minimum refund policy must provide that the student will be refunded the pro rata portion of the remaining tuition, fees, and other charges that the number of lessons completed and serviced by the school bears to the total number of lessons in the course;

(12) refunds based on enrollment in correspondence schools will be totally consummated within 60 [30] days after the effective date of termination.

(e) If a refund is not made within the period required by this section, the school shall pay a *penalty* [~~interest on the refund for the interval beginning with the first day following the expiration of the refund period and ending with the day immediately preceding the date the refund is made~~]. If the refund is made to a lending institution, the *penalty* [interest] shall also be paid to that institution and applied against the student's loan. The commissioner of education annually shall establish the level of the *penalty* [interest] at a level sufficient to provide a deterrent to the retention of student funds. The Central Education Agency may exempt a school from the payment of the *penalty* [interest] if the school makes a good faith effort to refund the tuition, *fees, and other charges* but is unable to locate the student. The school shall provide to the agency on request documentation of the effort to locate the student.

(g) *A program that is 40 hours or less of class time, or a seminar or workshop, is exempt from the 72-hour rule provided by Subsection (b) of this section. The school shall maintain a policy for the refund of the unused portion of tuition, fees, and other charges in the event the student fails to enter the course, withdraws from the course, or is discontinued from the class at any time before completion of the course as provided by this section. The policy must provide that:*

(1) *refunds are based on the period of enrollment computed on the basis of course time expressed in clock hours;*

(2) *the effective date of the termination for refund purposes is the earlier of:*

(A) *the last date of attendance; or*

(B) *the date the school receives written notice from the student that the student is withdrawing from the class; and*

(3) the student will be refunded the pro rata portion of tuition, fees, and other charges that the number of class hours remaining in the course after the effective date of the termination bears to the total number of class hours in the course.

SECTION 5. Subchapter D, Chapter 32, Education Code, is amended by adding Section 32.402 to read as follows:

Sec. 32.402. NONQUALIFICATION AS PROPRIETARY SCHOOL. (a) A school operating as a small proprietary school but that has an annual gross income from tuition and fees that exceeds \$100,000 (other than a test preparation school as defined in Section 32.11(10)(B) or (C)) that intends to receive a payment from federal funds under 20 U.S.C. Section 1070 et seq. or intends to receive prepayment of tuition, fees, or other charges from federal or state funds shall send written notice to the administrator. The notice must be sent not later than the following date, as applicable:

(1) the 60th day after the date on which annual gross income is determined to exceed the maximum;

(2) the day before receiving a payment of federal funds under 20 U.S.C. Section 1070 et seq.; or

(3) the day before enrolling a student who will prepay tuition, a fee, or another charge in whole or in part from federal or state funds.

(b) A school that no longer qualifies as a small proprietary school shall apply for an initial certificate of approval as a proprietary school within 30 days after the date the school has notified the administrator that it no longer qualifies as a small proprietary school. The administrator may apply or prorate any fees paid by the school as a small proprietary school.

(c) A school that no longer qualifies as a small proprietary school shall submit to the administrator an amount of money equal to the difference between the fee for the small proprietary school certificate of approval submitted by the school and the fee that the school would be required to submit after its qualifications as a small proprietary school cease.

(d) The authority of a school to operate under a small proprietary school certificate of approval terminates on the final determination of issuance or denial of an initial certificate of approval. If a school fails to file a complete application within the period required by Subsection (b) of this section, the school, as a condition of issuance, must pay a late fee in an amount established by State Board of Education rule of at least \$100.

SECTION 6. Subchapter G, Chapter 32, Education Code, is amended by adding Section 32.65 to read as follows:

Sec. 32.65. PENALTY FOR SMALL PROPRIETARY SCHOOL. (a) If a school fails to timely comply with the requirements of Section 32.402 of this code, in addition to any other penalties authorized by law, the administrator may assess a penalty in an amount not greater than two times the amount that the school would have paid in fees and other charges if the school had complied with the requirements of Section 32.402 or may assess a penalty in the amount of the tuition or fee charge to any students whose tuition or fees were contracted to be funded by a prepaid federal or state source.

(b) If the administrator finds that the school acted intentionally, the administrator may, in addition to any other remedy available under law, assess a penalty against the owner in an amount not greater than four times the amount of the fees and charges that the school should have paid or four times the amount of the student tuition that was contracted to be funded from a prepaid federal or state source.

(c) The failure to notify the administrator within four months after the school's earnings exceed that of a small proprietary school gives rise to a rebuttable presumption of intent for purposes of assessment of a penalty.

(d) The failure to notify the administrator within 10 days after a school has enrolled a student whose tuition or fees are paid in whole or in part from a prepaid federal or state source gives rise to a rebuttable presumption of intent for purposes of assessment of a penalty.

(e) A civil penalty under this section shall be assessed in accordance with the procedures stated in Section 32.611 of this code. A penalty collected shall be deposited in the state treasury to the credit of the general revenue fund.

SECTION 7. Section 32.71, Education Code, is amended by amending Subsections (a), (f), and (g) and adding Subsection (h) to read as follows;

(a) Certificate and registration fees, except those charged pursuant to Subsection (d) of this section, shall be collected by the Administrator and deposited with the State Treasurer. Each fee shall be in an amount set by the Administrator and approved by the State Board of Education in an amount not to exceed 150 percent of each fee in the following schedule:

(1) *the initial fee for a school:*

(A) *for a certificate of approval [the initial fee for a school] is \$2,000; or*

(B) *for a small proprietary school certificate of approval is \$1,000;*

(2) *the first [annual] renewal fee and each subsequent renewal fee for a school is the greater of:*

(A) *an amount that is determined by applying a percentage, not to exceed 0.3 percent, to the gross tuition and fees, excluding refunds as provided by Section 32.39 of this code, of the school; or*

(B) *\$500;*

(3) *the initial registration fee for a representative is \$60;*

(4) *the annual renewal fee for a representative is \$30;*

(5) *the fee for a change of a name of a school or owner is \$100;*

(6) *the fee for a change of an address of a school is \$180;*

(7) *the fee for a change in the name or address of a representative or a change in the name or address of a school that causes the reissuance of a representative permit is \$10;*

(8) *the application fee for an additional course is \$150, except for seminar and workshop courses, for which the fee is \$25;*

(9) *the application fee for a director, administrative staff member, or instructor is \$15;*

(10) *the application fee for the authority to grant degrees is \$2,000;*

(11) *the application fee for an additional degree course is \$250; and*

(12) *the fee for an inspection required by rule of the State Board of Education of classroom facilities that are separate from the main campus is \$250.*

(f) *The administrator may allow payment of any fee authorized under this section or under Section 32.91 of this code that exceeds \$1,000 to be paid by installment. The administrator shall provide for appropriate interest charges and late penalties in addition to any other remedy that is provided for by law for the late payment of a fee installment authorized under this section. The administrator may assess a reasonable service charge or interest to be paid by a school that pays a fee by installment in an amount not to exceed 10 percent annually of the fee that is to be paid by installment [The Administrator, with the approval of the State Board of Education, may increase any fee authorized under this section at a rate not to exceed the increase in the National Consumer Price Index For All Urban Consumers. The calculation of the index in effect on September 1, 1989, shall be the base for calculating the rate at which fees may increase. Fee increases under this subsection do not have to be made annually].*

(g) *All fees, interest, or other charges collected under this section shall be used only for the administration of the Texas Proprietary School Act.*

(h) *The administrator may apply or prorate a fee paid by a small proprietary school that has complied with the notification requirements of Section 32.402 of this code toward an initial certificate as a proprietary school in the event that a school has ceased to qualify as a small proprietary school during a certification period.*

SECTION 8. Section 32.91, Education Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) *Except as provided by Subsection (e) of this section, at [At] the time that each school pays its annual renewal fee, in the years provided by Subsection (c) of this section, the State Board of Education shall also collect a fee from the school for deposit to the credit of a special fund in the state treasury to be called the proprietary school tuition protection fund.*

(e) A school is not required to pay the fee for the tuition protection fund under Subsection (a) of this section if, at the time the school pays the annual renewal fee, the bond provided by the school under Section 32.38 of this code is greater than the unearned tuition of the school.

SECTION 9. Section 32.12(a), Education Code, is amended to read as follows:

(a) The following schools or educational institutions are specifically exempt from the provisions of this chapter and are not within the definition of "proprietary school":

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

(2) nonprofit schools owned, controlled, operated, and conducted by bona fide religious, denominational, eleemosynary, or similar public institutions exempt from property taxation under the laws of this State, but such schools may choose to apply for a certificate of approval hereunder, and upon approval and issuance, shall be subject to the provisions of this chapter as determined by the administrator;

(3) a school or training program which offers instruction of purely avocational or recreational subjects as determined by the administrator;

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

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

(6) private colleges or universities which award a recognized baccalaureate, or higher degree, and which maintain and operate educational programs for which a majority of the credits given are transferable to a college, junior college, or university supported entirely or partly by taxation from either a local or State source;

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

(8) aviation schools or instructors approved by and under the supervision of the Federal Aviation Administration;

(9) a school which offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations, or medical college admissions tests;

(10) a private school offering primary or secondary education, which may include kindergarten or prekindergarten program, and which satisfies the compulsory attendance requirements of Section 21.032 of this code pursuant to Section 21.033(a)(1) of this code; and

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

SECTION 10. Section 32.12, Education Code, is amended by adding Subsection (d) to read as follows:

(d) Notwithstanding the exemptions listed in Subsection (a) above, a dispute resolution organization, as defined by Section 154.001, Civil Practice and Remedies Code, may elect to seek a certificate of approval pursuant to Subchapter D of the Texas Proprietary School Act.

SECTION 11. This Act applies beginning with the 1993-1994 school year.

SECTION 12. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be

suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed by the House on May 4, 1993: Yeas 137, Nays 0, 2 present, not voting; the House concurred in Senate amendments to H.B. No. 1705 on May 27, 1993, by a non-record vote; passed by the Senate, with amendments, on May 25, 1993: Yeas 30, Nays 0.

Approved June 19, 1993.

Effective Aug. 30, 1993, 90 days after date of adjournment.