

2019 Regular Session

HOUSE BILL NO. 562

BY REPRESENTATIVE EMERSON AND SENATOR MORRISH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

SCHOOLS/PROPRIETARY: Provides relative to proprietary schools

1 AN ACT

2 To amend and reenact R.S. 17:7(8) and 11 and R.S. 36:651(L) and 801.5(A), to enact R.S.
3 17:3140.1 through 3140.17, and to repeal R.S. 17:3141.1 through 3141.19, relative
4 to proprietary schools; to provide for technical corrections and recodification of
5 statutory provisions relative to proprietary schools; to provide for the regulation and
6 oversight of proprietary schools by the Board of Regents including licensure,
7 applications, fees, appeals, and degree granting; to provide with regard to the
8 Advisory Commission on Proprietary Schools and the Proprietary School Student
9 Protection Fund; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 17:7(8) and 11 are hereby amended and reenacted and R.S.
12 17:3140.1 through 3140.17 are hereby enacted to read as follows:

13 §7. Duties, functions, and responsibilities of board

14 In addition to the authorities granted by R.S. 17:6 and any powers, duties, and
15 responsibilities vested by any other applicable laws, the board shall:

16 * * *

17 (8) Except as otherwise provided by law, approve ~~private and proprietary~~
18 nonpublic schools in accordance with the provisions of R.S. ~~17:10~~ 17:11 and any
19 other applicable laws.

20 * * *

1 §11. Approval of ~~private~~ nonpublic schools by board

2 A. The board shall adopt standards and guidelines which shall be applied in
3 determining whether a ~~private or proprietary~~ nonpublic school applying for approval
4 meets the requirements of a sustained curriculum or specialized course of study of
5 quality at least equal to that prescribed for similar public schools. The board shall
6 appoint an advisory committee of ~~private and proprietary~~ nonpublic school
7 representatives, who shall advise and counsel with the board relative to standards and
8 guidelines affecting these schools. After initial approval the board shall periodically
9 determine whether the ~~private~~ nonpublic school is maintaining such quality and if
10 not, shall discontinue approval of the school.

11 B. The board shall approve any ~~private~~ nonpublic elementary, or secondary,
12 ~~or proprietary~~ school which makes application therefor on a form furnished by the
13 board, if such school meets and maintains a sustained curriculum or specialized
14 course of study of quality at least equal to that prescribed for similar public schools.

15 C. All certificates and diplomas issued by an approved ~~private~~ nonpublic
16 school shall carry the same privileges as one issued by a state public school.

17 * * *

18 §3140.1. Definitions

19 For the purposes of this Chapter:

20 (1) "Academic course" means a subject designed for transfer of credit.

21 (2) "Board" means the Board of Regents.

22 (3) "Commission" means the Advisory Commission on Proprietary Schools.

23 (4) "Notice to the school" means written correspondence sent to the address
24 contained in the application or affidavit.

25 (5) "Owner" of a school means, if the school is owned by one or more
26 individuals, each individual; if the school is owned by a partnership, the owners of
27 the school are the partnership and each partner; and if the school is owned by a
28 corporation, the owners of the school are the corporation, the officers and directors
29 of the corporation, and any stockholder who owns five percent or more of the total

1 aggregate number of shares of all types of stock issued by the corporation that owns
2 the school or of any corporation owning stock, directly or indirectly, of the
3 corporation that owns the school.

4 (6) "Proprietary school" or "school":

5 (a) Means any business enterprise operated for a profit or on a nonprofit
6 basis which maintains a place of business within this state, or which sells or offers
7 for sale any course of instruction in this state, or at which place of business such a
8 course or courses of instruction or study is available through classroom or internet
9 instruction, or both, or by any other means, to a person or persons for the purpose of
10 training or preparing for a field of endeavor in a business, trade, technical, or
11 industrial occupation, except as otherwise provided by law.

12 (b) Means, for institutions based out-of-state that provide online instruction
13 within the state of Louisiana, a business enterprise offering online courses that
14 require clinical experiences at a Louisiana site in which students are observed,
15 assisted, or evaluated by supervisors, preceptors, instructors, or other individuals to
16 determine that program requirements have been met.

17 (c) Shall not mean:

18 (i) A school or educational institution supported entirely or partly by public
19 funds from either a local or state source.

20 (ii) A parochial, denominational, or eleemosynary school or institution that
21 provides religious training or theological education. However, any school or
22 institution that also offers training in a secular field of endeavor shall be subject to
23 the provisions of this Chapter.

24 (iii) A school or training program which offers instruction primarily in the
25 fields of recreation, health, entertainment, or personal enrichment and which does
26 not purport to prepare or qualify persons for employment as determined by the
27 commission.

28 (iv) A course or courses of instruction or study sponsored by an employer
29 for the training and preparation of its own employees when the employer is not

1 primarily engaged in the business of selling or offering courses of instruction or
2 study.

3 (v) A course or courses of study or instruction sponsored by a recognized
4 trade, business, or professional organization for the instruction of the members of the
5 organization.

6 (vi) Private colleges and universities which only award a baccalaureate or
7 higher degree and which maintain and operate educational programs for which
8 students earn credits.

9 (vii) A nonpublic school which provides a basic academic education
10 comparable to that provided in the public schools of the state.

11 (viii) A school offering a program only for children under six years of age.

12 (ix) A school which is regulated and licensed under other laws of this state.

13 (x) A private tutor, teacher, or individual engaged in giving private tutoring
14 or lessons to five persons or less in nonschool connected activities severed from the
15 regular curriculum of a school as determined by the commission.

16 (xi) A day camp.

17 (xii) A training program that offers for sale only nonsequential and
18 noncontinuous courses which do not exceed twenty hours of training.

19 (xiii) A manufacturer-certified training center that offers, at no additional
20 charge to the person receiving training, manufacturer-authorized training that is
21 included as part of the manufacturer's pricing package to prepare persons for
22 certification conferred by the manufacturer and that uses course equipment and
23 materials which are developed and sold by the manufacturer and course instructors
24 and facilities which are certified by the manufacturer.

25 (xiv) A school or business enterprise which only offers instruction to prepare
26 students for tests which are required for entry into a postsecondary program of study.

27 (xv) A school or business enterprise which offers yoga teacher training.

28 (xvi) A school or business enterprise which provides students with advanced
29 training techniques for police and service dogs.

1 (xvii) An educator preparation program that is approved by the State Board
2 of Elementary and Secondary Education.

3 (xviii) Any form of contract training.

4 (7) "School employee" means all instructors, administrators, solicitors,
5 clerical, and office personnel employed by the school.

6 (8) "Solicitor" means a person who solicits business for a proprietary school
7 or who offers to sell or sells in this state any instruction or course of instruction
8 offered by a proprietary school.

9 (9) "Teach-out" means the time remaining in a student's course of study.

10 (10) "Treasurer" means the state treasurer.

11 §3140.2. Advisory Commission on Proprietary Schools; creation; membership;
12 terms; rules and regulations

13 A. There is hereby established under the jurisdiction of the board the
14 Advisory Commission on Proprietary Schools, comprised of nine members to be
15 appointed as follows:

16 (1) One member by the commissioner of higher education.

17 (2) Two members by the boards.

18 (3) Three members by the Louisiana Career College Association.

19 (4) One member by the Board of Supervisors of the Louisiana Community
20 and Technical College System.

21 (5) One member by the State Association of Better Business Bureaus.

22 (6) One member by the Louisiana Association of Chamber of Commerce
23 Executives.

24 B.(1) Each member shall serve for a four-year term and shall serve until his
25 successor is appointed or qualified.

26 (2) Any vacancy occurring in the membership of the commission shall be
27 filled in the manner of original appointment.

28 C. Members shall serve without compensation but shall be reimbursed for
29 actual expenses incurred in attending meetings of the commission.

1 D. The commission shall elect annually from its membership a chairman and
2 a vice chairman.

3 E. The commission shall be advisory in nature, but may have such powers
4 and duties as set forth in this Chapter, subject to approval of and oversight by the
5 board. The board may ratify, annul, or modify any decision, finding, or order of the
6 commission as it deems appropriate. Any action taken by the commission pursuant
7 to the provisions of this Chapter shall not be effective until ratified by the board.

8 F.(1) The board shall adopt rules and regulations in accordance with the
9 Administrative Procedure Act as deemed necessary to administer the provisions of
10 this Chapter and the functions of the commission. The rules and regulations shall be
11 interpreted and implemented to promote high quality instruction, consumer
12 protection, and student success. The rules and regulations shall include but not be
13 limited to:

14 (a) Establishing acceptable standards for the conduct of staff and for the
15 operation of schools.

16 (b) Providing for investigation of complaints related to the established
17 standards and for the disposition of complaints.

18 (c) Providing remedies including but not limited to restitution orders, fines,
19 and other appropriate measures for violation of established standards.

20 (d) Providing for a student complaint procedure which shall be applicable
21 to all licensed proprietary schools and include a mechanism for informing all
22 students of the availability of the student complaint procedure.

23 (2) The board shall post the rules and regulations adopted pursuant to this
24 Subsection on the board's website.

25 G. The board shall provide for the monitoring of all proprietary schools to
26 ensure that all advertising and representations made on behalf of a school to a
27 prospective student are truthful and free from misrepresentation and fraud.

1 §3140.3. Licenses; fees; application; renewal

2 A.(1) No proprietary school subject to the provisions of this Chapter shall
3 do business in this state unless the owner holds a valid license approved and issued
4 by the board. Applications for licensure shall be made to the commission as
5 provided in this Chapter and rules established by the board.

6 (2) No course of instruction shall be established, offered, or given, and no
7 diploma, degree, or other written evidence of proficiency or achievement shall be
8 offered or awarded until the owner of the school planning to offer or offering such
9 course of instruction, diplomas, or degrees has obtained a license.

10 (3)(a) No license shall be transferable. In the event of a change of ownership
11 of a school, the license shall be revoked unless the new owner notifies the
12 commission within ten days of the sale and files a license application within the time
13 period prescribed by the board.

14 (b) If the school is owned by a corporation, a change of ownership is deemed
15 to occur when fifty percent or more of all types in the aggregate of the corporation's
16 stock has been transferred to a person or persons other than the person or persons
17 who were stockholders at the time the school license was issued.

18 (c) For the purposes of this Chapter, an application for a change of
19 ownership for a proprietary school already licensed by the board shall be treated as
20 an initial license application with the additional submission of the bill of sale.

21 (4) No new course shall be offered by any school holding a license until it
22 is approved by the board upon the recommendation of the commission.

23 (5) Each application for a license shall be accompanied by a surety bond in
24 the amount of ten thousand dollars.

25 B.(1) The fee for an initial license or change of ownership shall be two
26 thousand dollars.

27 (2)(a) The annual renewal fee for any school whose previous year's gross
28 tuition income is less than fifty thousand dollars shall be five hundred dollars. The
29 annual renewal fee for any school whose previous year's gross tuition income is

1 equal to or greater than fifty thousand dollars shall be one thousand dollars, or the
2 school's previous year's gross tuition income multiplied by twenty-five hundredths
3 of one percent, whichever is greater.

4 (b) Any income earned by a proprietary school for courses of instruction
5 which are not subject to licensure shall not be used in the calculation of license
6 renewal fees for the school.

7 (3) No portion of any fee shall be subject to refund.

8 (4) An additional delinquent fee of five hundred dollars shall be imposed
9 when an application for a license renewal is not received at the commission office
10 at least thirty days prior to its expiration date.

11 (5) The reinstatement licensure fee for a suspended school shall be five
12 hundred dollars.

13 C. An applicant for an initial license shall provide, at a minimum, the
14 following:

15 (1) A properly completed application form provided by the board..

16 (2) Documentation of the legal structure of the school.

17 (3) A copy of the school's business plan.

18 (4)(a) A current audited balance sheet of the school prepared by an
19 independent, certified public accountant within six months prior to the date of the
20 initial application for licensure.

21 (b) Certification by a school official that all information contained in the
22 balance sheet is true and correct.

23 (5) Verification of surety bond coverage.

24 (6) A list of equipment available for instruction in each course of study
25 offered by the school.

26 (7) A copy of the school catalogue as set forth in this Chapter and by rules
27 established by the board.

28 (8) A copy of the certificate of occupancy.

1 (9) A copy of all enrollment contracts or agreements which students
2 attending the school will be required to sign.

3 (10) A copy of all proposed bulletins, published materials, form letters,
4 circulars, and all advertising which will be transmitted to the public or prospective
5 students.

6 (11) A copy of current accreditation granted by a nationally or regionally
7 recognized accrediting agency approved by the United States Department of
8 Education, if applicable.

9 (12) A detailed outline of each career program, including the number of
10 courses required for completion of each career program and a description of each
11 course.

12 (13) Any other information required by the board.

13 D. An applicant for a license renewal shall provide, at a minimum, the
14 following:

15 (1) Verification of continuation of surety bond coverage.

16 (2)(a) Current financial statements of the school prepared by a certified
17 public accountant.

18 (b) Certification by a school official that information contained in the
19 balance sheet is true and correct.

20 (3) Documentation of solvency.

21 (4) A copy of the current school catalogue as provided in this Chapter and
22 board rules.

23 (5) A copy of all enrollment contracts or agreements which students will be
24 required to sign.

25 (6) The number of students enrolled, number of students graduated, and the
26 school's placement rate for the previous business year.

27 (7) A copy of current accreditation granted by a nationally or regionally
28 recognized accrediting agency approved by the United States Department of
29 Education, if applicable.

1 E. No license shall be renewed for a school that has failed to make any
2 student tuition refunds in the manner provided by state and federal laws and
3 regulations.

4 F. The board may conduct onsite visits and require information as may be
5 necessary to grant a license and monitor institutional compliance with this Section.
6 §3140.4. Licenses; minimum standards; duration

7 A. No applicant shall be issued a license pursuant to this Chapter until the
8 board has first determined that the school substantially complies with the following:

9 (1) The school's instructors have the following qualifications:

10 (a) In an academic course, an instructor shall, at a minimum, possess a
11 baccalaureate degree from a bona fide, accredited college or university and
12 demonstrate appropriate familiarity with the subject matter taught.

13 (b) In a technical or occupational course, an instructor shall possess, at a
14 minimum, a bona fide high school diploma or its equivalent; a certificate, diploma,
15 license, other degree, or documented evidence of on-the-job training in the area
16 taught; and a minimum of four years of documented occupational experience in the
17 area taught.

18 (2) All advertising and representations made on behalf of the school to
19 prospective students are truthful and free from misrepresentation and fraud.

20 (3) Any dormitory or eating facility provided by the school or for which the
21 school has contracted services is clean, healthful, safe, and adequate for the number
22 of students served and adequately supervised at all times.

23 (4) The premises and conditions under which the students work or study are
24 sanitary, healthful, and safe according to the standards set forth by the Louisiana
25 Department of Health.

26 (5) Prior to enrollment, the student has been provided a written statement of
27 total tuition charges, required fees, all charges for books, equipment, and supplies,
28 and any applicable charges for housing. If housing is not furnished, a statement to
29 that effect shall also be included.

1 (6) The school adheres to the tuition refund schedule established by the
2 board. The refund schedule shall be included in the enrollment contract or agreement
3 and may include an administrative or registration fee for the school that shall not
4 exceed one hundred fifty dollars.

5 (7) The school is equipped and able at all times to comply with its
6 contractual relationships with a student.

7 (8) The facilities, class instruction rooms, housing quarters, and eating
8 facilities are at all reasonable times open to inspection by the commissioner of higher
9 education, authorized staff of the board, the commission, its members and staff, or
10 designated agents and the representatives of the Louisiana Department of Health.

11 (9) All equipment furnished is representative of that customarily used within
12 the industry for which the student is training.

13 (10) The school provides evidence that it meets local and state guidelines
14 and standards, relative to zoning, occupational licensure, health, and safety.

15 B. The board shall act on all applications for licensure within sixty days after
16 receipt of the completed application and all supporting materials required by the
17 board. A license shall be valid only for the school and programs for which it is
18 issued and shall not include other schools or branches operated by the owner.

19 C.(1) Each license shall be valid for not more than one year from the date of
20 issuance and may be renewed thereafter for a period to be determined by the board
21 or until revoked for cause by the board. The effective date of the first license
22 renewal shall be established by the board.

23 (2) Each license shall be assigned a number.

24 (3) Each school shall prominently display its licenses on the school's
25 premises.

26 §3140.5. Surety bond; requirement

27 A. Each application for a license shall be accompanied by a surety bond in
28 the amount of ten thousand dollars. The bond shall be issued by a surety authorized
29 to do business in this state and shall be filed with the board. The term of the bond

1 shall be continuous but shall be subject to cancellation by the surety in the manner
2 provided in this Section.

3 B. The bond shall provide for the indemnification of any person suffering
4 loss or damage as a result of any of the following:

5 (1) Any fraud or misrepresentation used in procuring his enrollment.

6 (2) The failure on the part of the school to carry out and comply with each
7 contract and agreement made and entered into by the school, acting by and through
8 its officers, agents, or representatives with any student.

9 (3) The inability of the student to complete a program of study because the
10 school ceased operation or failed to furnish the facilities advertised or included in the
11 contracted agreement.

12 (4) The failure on the part of the school to adequately maintain all student
13 records including the failure to transfer the records in accordance with the provisions
14 of this Chapter.

15 C. The bond shall be subject to a ten year prescriptive period for actions or
16 breach of contract.

17 D. The surety bond shall cover the period of the license except when the
18 surety is released as provided in this Section.

19 E. A surety on the bond may be released after the surety has made a written
20 notice directed to the commission and the board at least thirty days prior to the
21 release. The release shall not affect the liability of the surety for acts arising prior to
22 the release of the surety.

23 F. The surety may terminate the bond upon giving a sixty-day written notice
24 to the principal, the commission, and the board. However, the liability of the surety
25 for the acts of the principal and its agents shall continue during the sixty-day period.
26 The notice shall not release the surety from liability which accrues before the
27 cancellation becomes final but which is discovered after that date and which arose
28 at any time during the term of the bond.

1 G. Unless the bond is replaced by that of another surety before the expiration
2 of the sixty-day period, the license shall be suspended by the board.

3 H. Any person required to file a bond may file in lieu thereof a certificate of
4 deposit in the amount of ten thousand dollars. The deposit shall be subject to the
5 same terms and conditions as required for surety bonds. Any interest or earnings on
6 the deposits are payable to the depositor.

7 I. Notwithstanding the provisions of this Section, a proprietary school may
8 not be required to post the surety bond if the school only offers programs that do not
9 exceed four weeks in length, the school has been in continuous operation for at least
10 five years, and the school has met all of the regulations and rules established by the
11 board.

12 §3140.6. Denial of license; hearings; appeal

13 A.(1) If the commission recommends the denial of a license, the applicant
14 shall be notified in writing no later than five business days after the recommendation.

15 (2) An applicant who is recommended for a denial of a license may, within
16 fourteen business days after receipt of notice of the denial, file with the commission
17 a request for a hearing before the commission at its next regular meeting. If a
18 hearing is requested, the matter shall not be presented to the board until the hearing
19 is held by the commission. The applicant may appear in person or by counsel and
20 may present evidence in support of the granting of the license. Any interested person
21 may appear and present oral and documentary evidence to the commission
22 concerning the issuance of a license to the applicant. Strict rules of evidence shall
23 not apply.

24 (3) The commission shall issue a statement not later than seven business
25 days after the hearing giving reasons for its recommendation that a license be granted
26 or denied.

27 (4) A school may continue to operate until a final determination has been
28 made regarding the issuance or denial of its license.

1 B. If the board receives a recommendation from the commission that a
2 license be denied, the applicant may provide a written request for a public hearing
3 before the board at the time the recommendation is considered. If the Board of
4 Regents denies a license without a public hearing, the applicant may request a
5 hearing at the next meeting of the board.

6 C. An applicant for a license who is dissatisfied with the ruling of board after
7 public hearing may file a written appeal to the district court for the parish in which
8 the applicant resides within ninety days after receipt of a notice of the final
9 determination of the board. Written notice of the appeal shall be served on the
10 presiding officer of the board, stating the reasons therefor.

11 D. A new license shall not be issued to a school if any owner of the school
12 has been or is an owner of a proprietary school that failed to make student tuition
13 refunds in the manner provided by the tuition refund guidelines and any applicable
14 provisions of state and federal law or regulation.

15 §3140.7. Revocation of license; causes; appeal; injunction; subpoena power

16 A. The board, upon the recommendation of the commissioner of higher
17 education or the commission, may suspend, revoke, or cancel any license issued by
18 it or to place certain specified conditions upon the continued operation of the school.

19 B. A decision to suspend, revoke, or cancel any license or to place certain
20 specified conditions upon the continued operation of a school shall require a
21 favorable vote by at least two-thirds of the total membership of the board.

22 C. A school with a suspended license may continue to provide instruction to
23 students already enrolled in a course but shall not enroll new students. The
24 suspension shall remain in effect until the deficiency causing the suspension has been
25 remedied.

26 D. The commission may recommend to the board that the license of a school
27 be suspended, revoked, cancelled, or restricted for any of the following reasons:

28 (1) Signing of a license application or holding of a solicitor permit by a
29 person who has pleaded guilty to a felony or has been found guilty of a felony.

1 (2) Failure to comply with a commitment made in an application for a
2 license.

3 (3) Failure to substantially comply with the requirements established
4 pursuant to this Chapter.

5 (4) Failure to maintain sufficient financial resources as evidenced by
6 applicable financial information or letter of credit reflecting solvency.

7 (5) Acceptance or use by the owner of any school of the services of a
8 solicitor who does not hold a permit required by this Chapter.

9 (6) Failure to comply with the provisions of this Chapter or any rule or
10 regulation adopted by the board.

11 (7) Use by an employee, solicitor, or representative of a school, with the
12 knowledge of the owner, of fraud or misrepresentation in procuring the enrollment
13 of a student or if an incident is called to the attention of the owner, failure by the
14 owner to take remedial steps including restitution of fees collected and expenses
15 incurred by the prospective student.

16 (8) Failure on the part of the school to comply with every contract and
17 agreement made and entered into by it or by its representative with a student.

18 (9) Use by a school or any school representative of deceptive or fraudulent
19 advertising in any form.

20 (10) Violation of the prohibited provisions of this Chapter by a school
21 owner.

22 (11) Filing of false information with the commission, the commissioner of
23 higher education, or the board by an owner of a school or by any holder of a license
24 or a permit.

25 (12) Failure of the owner of the school to notify the commission in writing
26 of the withdrawal of accreditation or approval.

27 (13) Failure to provide facilities or equipment for offering courses of
28 instruction in a safe and sanitary condition.

29 (14) Failure to provide the equipment described in the application.

1 (15) Offering an unapproved program.

2 E. The commission shall hold a hearing prior to making a recommendation
3 to the board for the revocation of a license.

4 F. The board shall notify a licensee of its decision to suspend, revoke, or
5 cancel a license. At any time within thirty days prior to the revocation or
6 conditioning of a license, the board shall afford the holder an opportunity to be heard
7 in person or by counsel. Strict rules of evidence shall not apply.

8 G. Within thirty days prior to the date set for a hearing on revocation or
9 restriction, the board shall notify the licensee in writing of the date and purpose of
10 the hearing and the grounds for the action contemplated.

11 H. The board shall suspend the license of any school that:

12 (1) Fails to pay required fees or annually submit updated information on
13 changes in staff and school programs, not less than thirty days prior to the expiration
14 date of its license.

15 (2) Is no longer covered by a surety bond or certificate of deposit.

16 I. Any final decision or determination of the board may be appealed to the
17 district court for the parish in which the applicant resides within ninety days after
18 receipt of written notice from the board of the final determination. Written notice
19 of the appeal shall be served on the presiding officer of the board, stating the reasons
20 therefor.

21 §3140.8. Prohibited acts; penalty; injunctive relief

22 A. It shall be unlawful for any owner of a school or a representative of a
23 proprietary school offering courses of instruction in this state to:

24 (1) Operate the school without a valid license.

25 (2) Operate the school without a valid surety bond or certificate of deposit
26 as required by this Chapter.

27 (3) Use advertising designed to mislead or deceive prospective students.

28 (4) Accept a contract from a solicitor who does not hold a valid permit
29 issued in accordance with this Chapter.

1 (5) Violate any provisions of this Chapter.

2 B. It shall be unlawful for any person selling or offering to sell courses of
3 instruction in this state to:

4 (1) Solicit a prospective student without holding a valid permit as required
5 by this Chapter.

6 (2) Solicit a prospective student without having a surety bond or certificate
7 of deposit as required by this Chapter.

8 (3) Use fraud or misrepresentation in procuring a student's enrollment.

9 (4) Violate any provisions of this Chapter.

10 C. Any owner, school employee, or solicitor who is found guilty of any act
11 prohibited by this Chapter shall be guilty of a misdemeanor and shall be fined an
12 amount not to exceed five hundred dollars. Each day a violation continues shall
13 constitute a separate offense.

14 D. If the commissioner of higher education or the commission has probable
15 cause to believe that any owner of a proprietary school or any solicitor of an owner
16 who sells or offers to sell any course of instruction has committed any of the acts
17 prohibited by this Chapter, the commissioner of higher education shall petition a
18 court of competent jurisdiction for an injunction against the school or solicitor.

19 §3140.9. Complaints; investigations; hearings; judicial review

20 A. Based on information gathered from its investigation of complaints as
21 provided in this Chapter, the commission shall determine whether a violation has
22 occurred. The commission shall send a notice of the violation to the school or to the
23 solicitor specifying the standard violated, the remedy proposed, and the procedure
24 by which an administrative hearing may be requested.

25 B. For purposes of an investigation or hearing, the commission may
26 administer oaths and affirmations, subpoena witnesses, compel their attendance, take
27 evidence, and require the production of any records which the commission deems
28 relevant or material to the investigation or hearing.

1 C. If a party fails or refuses to obey a subpoena or to comply with a request
2 for information, the board or the commission may make application to the
3 Nineteenth Judicial District Court which shall have jurisdiction to issue an order
4 requiring the party involved to appear before the board, to produce evidence, or to
5 give testimony touching on the matter under consideration. Any failure to obey an
6 order of the court may be punished by the court as contempt.

7 D. Following an opportunity for a hearing, the commission shall transmit its
8 findings to the board. The board shall review the findings of the commission and
9 shall render a written decision. The board shall consider the record of proceedings
10 conducted before the board and may accept, reject, or modify the recommendations
11 of the commission and may provide for corrective action including but not limited
12 to restitution orders and fines, which fines shall not exceed five hundred dollars per
13 violation.

14 E. Any party aggrieved by any decision or order of the commission or board
15 may seek judicial review.

16 F. No cause of action shall exist against any student who in good faith makes
17 a report, cooperates in the investigation by the commission, or participates in judicial
18 proceedings and each student shall have immunity from civil or criminal liability that
19 might otherwise be incurred or imposed. This immunity from liability shall not
20 extend to any person who makes a report known to be false or with reckless
21 disregard for the truth of the report.

22 §3140.10. Cessation of operations

23 A.(1) If a licensed proprietary school makes a determination to cease
24 operations it shall provide formal written notice to the board at least thirty days prior
25 to the date it will cease operations.

26 (2) Cessation of operations shall mean the cessation of all instructional and
27 business operations directly related to the offering of education and training as
28 authorized under the provisions of this Chapter, with no reasonable prospect of
29 resuming operations.

1 B. The notice, at a minimum, shall provide the following:

2 (1) Teach-out plans for current students. The teach-out school shall not be
3 liable for any refunds to a transfer student.

4 (2) Commencement ceremony plans, if the school has offered a ceremony,
5 for each student who has or will complete all requirements for graduation prior to the
6 date operations cease.

7 (3) Student notification plans regarding cessation of operations, teach-out
8 options, and commencement activities, if applicable.

9 (4) Plans for transferring student records to the board.

10 (5) Other information required by the board.

11 C. If a school ceases operations, the board may authorize the seizure and sale
12 at public auction of all unsecured assets of the school, with all proceeds to be
13 deposited in the Proprietary School Student Protection Fund.

14 §3140.11. Proprietary School Student Protection Fund

15 A. There shall be established in the state treasury as a special permanent
16 fund the Proprietary School Student Protection Fund. Following compliance with
17 the requirements of Article VII, Section 9(B) of the Constitution of Louisiana
18 relative to the Bond Security and Redemption Fund, all monies generated pursuant
19 to the provisions of this Section shall be deposited into the Proprietary School
20 Student Protection Fund, and monies in this fund shall be used solely to make
21 refunds of unearned tuition as provided in this Chapter. The monies in the fund shall
22 be invested by the state treasurer in the same manner as for the state general fund and
23 interest earned on the investment of these monies shall be credited to the fund. All
24 unexpended and unencumbered monies in the fund at the end of a fiscal year shall
25 remain in the fund and be available for expenditure in the next fiscal year. The
26 legislature shall make yearly appropriations from the fund to the board for the
27 purposes of the proprietary school student protection program.

28 B.(1) Each licensed proprietary school shall make payments to the
29 Proprietary School Student Protection Fund. The first payment to the fund by a

1 school shall be one thousand dollars and shall accompany application for licensure.
 2 Beginning one year after licensure by the board and annually thereafter, the annual
 3 payment shall be determined based on the graduated schedule as provided in this
 4 Paragraph. If the gross tuition collected by a school during the first assessment
 5 period after licensure requires an adjustment, the adjustment shall be made in
 6 accordance with the applicable provisions of this Section.

7 PROPRIETARY SCHOOL STUDENT PROTECTION FUND SCHEDULE

8	<u>Gross Tuition Collected During</u>		<u>Annual Payment</u>			
9	<u>Assessment Period</u>					
10	\$	<u>1</u>	-	<u>24,999</u>	\$	<u>200.00</u>
11	\$	<u>25,000</u>	-	<u>49,999</u>	\$	<u>250.00</u>
12	\$	<u>50,000</u>	-	<u>99,999</u>	\$	<u>300.00</u>
13	\$	<u>100,000</u>	-	<u>199,999</u>	\$	<u>400.00</u>
14	\$	<u>200,000</u>	-	<u>299,999</u>	\$	<u>500.00</u>
15	\$	<u>300,000</u>	-	<u>399,999</u>	\$	<u>600.00</u>
16	\$	<u>400,000</u>	-	<u>499,999</u>	\$	<u>700.00</u>
17	\$	<u>500,000</u>	-	<u>749,999</u>	\$	<u>1,000.00</u>
18	\$	<u>750,000</u>	-	<u>999,999</u>	\$	<u>1,250.00</u>
19	\$	<u>1,000,000</u>	-	<u>1,499,999</u>	\$	<u>1,500.00</u>
20	\$	<u>1,500,000</u>	-	<u>and above</u>	\$	<u>2,000.00</u>

21 (2) All payments to the Proprietary School Student Protection Fund shall be
 22 made payable to the "Student Protection Fund". Except in cases of overpayment, all
 23 payments to the Proprietary School Student Protection Fund shall be nonrefundable.

24 (3) Nontuition revenues and all income generated from contract training
 25 services shall be exempt from the calculation of a school's gross tuition revenues.

26 (4) Payments required pursuant to this Section shall be a condition of doing
 27 business in the state and failure to make a payment within thirty days following the
 28 date on which it is due shall result in the loss of licensure as granted under the
 29 provisions of this Chapter. The commission shall provide written notice of the

1 required payment to each school not less than thirty days prior to the due date of the
2 payment.

3 (5) If an audit of tuition revenues conducted by the board determines that a
4 school has paid into the Proprietary School Student Protection Fund an amount less
5 than was required, the school shall pay the amount required to the commission within
6 thirty days of receipt of written notice from the board of the amount of the
7 underpayment.

8 (6) If an audit of tuition revenues conducted by the board determines that a
9 school has paid into the Proprietary School Student Protection Fund an amount more
10 than was required, subsequent payment or payments by the school shall be
11 appropriately credited by the commissioner of higher education or his designee until
12 the credited payment or payments equal the amount of the overpayment.

13 C. Forms developed and provided annually to calculate payments due the
14 Proprietary School Student Protection Fund shall be completed by the school and
15 submitted annually to the commission. The school director or persons designated to
16 sign on his behalf shall attest that the information provided is correct and complete.

17 D. Claims against the fund shall be considered from currently enrolled
18 students only when there is a lack of availability for that student to transfer for the
19 time remaining in his course of study at no additional cost to a similar program
20 within the student's local area as determined by the Advisory Commission on
21 Proprietary Schools or other teach-out options.

22 E. A school shall inform its students in writing of their rights under the
23 provisions governing the Proprietary School Student Protection Fund.

24 F. Any student enrolled in a proprietary school licensed under the provisions
25 of this Chapter who is unable to complete a course or unit of instruction at a school
26 because of cessation of operation of the school and who has paid tuition for the
27 course or unit of instruction may make application to the board for a refund of tuition
28 from the Proprietary School Student Protection Fund to the extent that the fund exists
29 or has reached the level necessary to pay outstanding approved claims.

1 G.(1) Application for refund shall be made on forms provided by the board
2 after determination of cessation of operation of the school.

3 (2) In applying for a refund pursuant to the provisions of this Section, a
4 student shall specify all sources and amounts of tuition which were paid on the
5 student's behalf.

6 H.(1) Upon application, the board shall determine whether the applicant is
7 unable to complete a course or unit of instruction because of the cessation of
8 operation of the school to which tuition has been paid. The board may summon by
9 subpoena any person, records, or documents pertinent to the making of a
10 determination regarding cessation of operation.

11 (2) If the board finds that the applicant is entitled to a tuition refund because
12 of the cessation of operation of the school, the board shall determine the amount of
13 an appropriate refund which shall be equal to or a portion of the tuition paid for the
14 uncompleted course or unit of instruction. The board shall direct the commission to
15 pay the refund to the applicant or persons, agencies, or organizations indicated by the
16 applicant who has paid tuition on the student's behalf. If the student is a minor,
17 payment shall be made to the student's parent or legal guardian.

18 (3) Each recipient of a tuition refund made in accordance with the provisions
19 of this Section shall assign all rights to the state of any action against the school or
20 its owner or owners for tuition amounts reimbursed pursuant to this Section. Upon
21 assignment, the board may take appropriate action against the school or its owner or
22 owners in order to reimburse the Proprietary School Student Protection Fund for any
23 expenses or claims that are paid from the fund and to reimburse the state for the
24 reasonable and necessary expenses in undertaking the action.

25 I. A claim shall be made against the fund only if it arises out of the cessation
26 of operation and after claims are made against the surety bond or other school
27 financial resources.

1 §3140.12. Administration

2 A. All funds collected from proprietary schools licensed pursuant to this
3 Chapter, except payments made to the Proprietary School Student Protection Fund,
4 shall be used exclusively for implementing and otherwise administering the
5 provisions of this Chapter. The board shall annually update the Advisory
6 Commission on Proprietary Schools regarding all funds collected and all
7 expenditures made pursuant to the provisions of this Chapter.

8 B. The board shall assign employees to implement and administer the
9 provisions of this Chapter. The duties and responsibilities of the employees shall be
10 determined by the commissioner of higher education, subject to the approval of the
11 board, but shall include responsibility for all administrative, clerical, legal, and
12 financial matters associated with the licensing, monitoring, and evaluation of
13 proprietary schools governed by this Chapter and with the operation of the
14 commission.

15 §3140.13. Solicitor permits

16 A.(1) No person shall sell any course of instruction offered by a proprietary
17 school or solicit students in this state unless he first applies for and obtains a permit
18 as a solicitor.

19 (2) If the solicitor represents more than one school, he shall obtain a separate
20 permit for each school he represents.

21 (3) Each permit shall be valid for one year from the date of issue.

22 (4)(a) The fee for each permit and each renewal shall be one hundred dollars.

23 (b) All fees collected for the issuance or renewal of permits required by this
24 Section shall be retained by the board solely for administering the provisions of this
25 Chapter and no part thereof shall revert to the state general fund at the end of any
26 fiscal year.

27 B. The application for a permit shall be made on forms furnished by the
28 board.

1 C.(1) Each application shall be accompanied by a surety bond acceptable to
2 the board in the sum of one thousand dollars. The bond shall be continuous. The
3 bond shall be issued by a solvent surety authorized to do business in this state, shall
4 be filed with the commissioner of higher education, and shall be conditioned to
5 provide indemnification to any student suffering loss as a result of any fraud or
6 misrepresentation used by the solicitor in procuring his enrollment. The bond may
7 be provided by a solicitor for a school or by the school itself as a blanket bond
8 covering each of its agents in the amount of one thousand dollars.

9 (2) The liability of the surety on the bond for each solicitor covered shall not
10 exceed the sum of one thousand dollars as an aggregate for all students for all
11 breaches of the conditions of the bond by the solicitors. The bond shall be subject
12 to a ten-year prescriptive period for actions or breach of contract.

13 (3) The surety of any bond may cancel the same upon giving thirty days'
14 written notice to the commission and the board and, upon giving notice, shall be
15 relieved of liability for any breach of condition occurring after the effective date of
16 the cancellation.

17 (4) Each application for renewal of a permit shall be accompanied by a
18 surety bond as provided in this Section.

19 D. The board shall take action on all permits applied for in accordance with
20 the provisions of this Section within sixty days after receipt of the application.

21 E. Upon approval of a permit application, the board shall issue a permit in
22 the form of an identification card to the solicitor which shall contain his name,
23 address, and permit number, the name and address of his employing school, and
24 certification that the person whose name appears on the card is an authorized
25 solicitor of the school. The identification card shall be carried by and displayed by
26 the solicitor at all times that he is soliciting or seeking to enroll students.

27 F.(1) Any permit issued to a solicitor may be revoked by the board if the
28 holder of the permit solicits or enrolls students through fraud, deception, or
29 misrepresentation, or other cause as provided by board rule.

1 (2) The board shall notify the permit holder in writing of its decision to
2 revoke his permit. At any time within thirty days prior to revocation, upon request
3 of the solicitor, the commission shall afford the solicitor an opportunity to be heard
4 in person or by counsel. Strict rules of evidence shall not apply. On or before thirty
5 days prior to the date of the hearing, the commission shall notify the aggrieved
6 solicitor of the date and purpose of the hearing and the grounds for the contemplated
7 revocation of the permit. The action of the commission shall be determined by a
8 vote of a majority of the members of the commission and ratified by a majority vote
9 of the board. Any final decision of the commission may be appealed to the board.

10 §3140.14. Recovery on contracts

11 No recovery shall be had on any contract for or in connection with a course
12 of instruction by any owner selling or administering a course if the solicitor for the
13 owner was not the holder of a valid permit as required by the provisions of this
14 Chapter at the time the contract was negotiated or the course sold.

15 §3140.15. Student records

16 A. Each school shall maintain accurate and complete records on each student
17 enrolled in the school.

18 B. Each school shall keep electronic records of:

19 (1) The student's name and permanent address.

20 (2) The date the student began instruction at the school.

21 (3) The student's enrollment agreement.

22 (4) The student's academic transcript data, including the date of last
23 instruction or of program completion.

24 (5) Financial records showing all tuition amounts paid to the school by or on
25 behalf of a student.

26 (6) Other information required by the board.

27 C. The records shall be kept current and on file at the school and be available
28 for inspection by the commissioner of higher education or his designee upon request.

1 D. If a school ceases operations, the records shall be transferred
2 electronically in a secure format, unless the board approves transfer by hard copy,
3 to the board within ten days of cessation of operation. If records are seized or
4 confiscated by those legally authorized, a copy of all records of students affected by
5 the cessation of operation shall be sent to the board.

6 E. Notwithstanding R.S. 44:39(A)(2) and any other law to the contrary, the
7 board shall not be required to maintain original hard copies of proprietary school
8 records transferred to the board upon cessation pursuant to this Section, provided that
9 the board maintains the records stored electronically in a sufficiently secured manner
10 with redundant data storage for data protection.

11 §3140.16. Advertising

12 No owner of a school or solicitor for a school shall publish or cause to be
13 published any advertising materials until the owner or solicitor obtains a valid
14 license or a permit issued in accordance with the provisions of this Chapter.

15 §3140.17. Occupational degree granting status

16 A. The board shall approve or disapprove occupational degree proposals
17 submitted by licensed proprietary schools under its jurisdiction.

18 B. A proprietary school shall be eligible for degree granting status for
19 occupational degrees if it is:

20 (1) Licensed by the board.

21 (2) Domiciled in the state of Louisiana.

22 (3) Accredited by a regional or national accrediting agency recognized by
23 the United States Department of Education.

24 C.(1) The board shall revoke the occupational degree granting status of a
25 proprietary school which has its accreditation withdrawn.

26 (2) A proprietary school that has its accreditation withdrawn shall
27 immediately notify the board of the withdrawal of accreditation.

28 D. Approved and licensed proprietary schools shall award a nonacademic
29 degree entitled "Associate in Occupational Studies". All advertising, recruiting, and

1 publications shall state clearly that the occupational degree awarded is nonacademic
2 and does not imply, promise, or guarantee transferability.

3 E. Each student admitted to an occupational degree program in an accredited
4 proprietary school shall be required to:

5 (1) Possess a high school diploma or equivalent.

6 (2) Complete a minimum of two years, four semesters, or six quarters of
7 course work for each degree program.

8 F. Each occupational degree program shall meet the following minimum
9 requirements:

10 (1) Seventy-five percent of the course of study in the program shall be in a
11 specific occupational area.

12 (2) Each course of study shall be composed of the minimum hours required
13 by the accrediting agency recognized by the United States Department of Education.

14 Section 2. R.S. 36:651(L) and 801.5(A) are hereby amended and reenacted to read
15 as follows:

16 §651. Transfer of boards, commissions, departments, and agencies to Department
17 of Education; boards, commissions, and agencies within Department of
18 Education

19 * * *

20 L. The Advisory Commission on Proprietary Schools (R.S. ~~17:3141.1~~
21 17:3140.1 et seq.) is placed within the Department of Education and shall exercise
22 and perform its powers, duties, functions, and responsibilities in the manner provided
23 in R.S. 36:801.5.

24 * * *

25 §801.5. Transfer; Advisory Commission on Proprietary Schools; Louisiana Health
26 Works Commission; Nursing Supply and Demand Council; Simulation
27 Medical Training and Education Council for Louisiana

28 A. The agency placed within the Department of Education by the provisions
29 of R.S. 36:651(L) shall exercise all powers, duties, functions, and responsibilities

1 provided or authorized for such agency by the constitution and laws, and particularly
 2 the provisions of ~~R.S. 17:3141.1 through 3141.19~~ R.S. 17:3140.1 et seq., and shall
 3 exercise all such powers, duties, functions, and responsibilities in the manner and to
 4 the extent so provided or authorized. The agency shall be under the jurisdiction of
 5 the Board of Regents; and the Board of Regents shall have such powers, duties,
 6 functions, and responsibilities relative to the agency as otherwise provided by law.
 7 All personnel employed or assigned to administer and implement the powers, duties,
 8 functions, and responsibilities of the agency shall be employees of the Board of
 9 Regents. Except as otherwise provided by law, the Board of Regents shall perform
 10 and administer all functions of the agency which are in the nature of accounting and
 11 budget control, procurement and contract management, management and program
 12 analysis, data processing, personnel management, and grants management.

* * *

14 Section 3. R.S. 17:3141.1 through 3141.19 are hereby repealed in their entirety.

15 Section 4. The Louisiana State Law Institute shall place R.S. 17:3140.1 through
 16 3140.17 as enacted by this Act in Chapter 24-A of the Louisiana revised Statutes of 1950.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 562 Original

2019 Regular Session

Emerson

Abstract: Provides relative to proprietary schools.

Present law provides for the licensure, regulation, and oversight of proprietary schools by the Bd. of Regents. Provides for definitions, application requirements, fees, renewals, appeals, cessation of operations, advertising requirements, and degree granting status. Establishes the Advisory Commission on Proprietary Schools under the jurisdiction of the Bd. of Regents and provides for commission membership and duties. Establishes the Proprietary School Student Protection Fund and provides for payments to the fund by schools in accordance with the payment schedule as specified in present law.

Proposed law substantially retains present law except as follows:

- (1) Makes numerous revisions to provide for technical corrections, removal of obsolete provisions, and reorganization and recodification of present law.
- (2) Authorizes the Bd. of Regents to develop rules and regulations instead of the commission.

- (3) Changes the definition of proprietary schools to specify that out-of-state enterprises that require clinical experiences in La. are subject to proposed law.
- (4) Adds requirement that proprietary schools that cease operations take certain specified actions.
- (5) Adds requirement that proprietary schools retain electronic copies of student records and provides that the Bd. of Regents does not have to store hard copies of records it receives when a school ceases operations if the board stores the records electronically.
- (6) Removes authority given to proprietary schools to grant associate degrees, thereby limiting the degree granting authority to occupational degrees.
- (7) Deletes present law that prohibits persons from preparing advertising materials for school owners or solicitors until the commission provides information that the owner or solicitor is licensed and instead provides that the owner or solicitor may not advertise or cause any information to be advertised until the owner or solicitor is licensed in accordance with proposed law.

(Amends R.S. 17:7(8) and 11 and R.S. 36:651(L) and 801.5(A); Adds R.S. 17:3140.1-3140.17; Repeals R.S. 17:3141.1-3141.19)