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Amending "The Proprietary School Act of 1966"

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CHAPTER 365

VOCATIONAL EDUCATION

PROPRIETARY SCHOOLS

Senate Bill No. 289. By Senators Enstrom and Minister; also Representatives Bain, Baer, Byerly, Evetts, McNeil, Miller, Munson, Quinlan, Sack, Showalter, Sonnenberg, Sooter, Stonebraker, Strang, and Valdez.

A N A C T

AMENDING "THE PROPRIETARY SCHOOL ACT OF 1966".

Be it enacted by the General Assembly of the State of Colorado:

Section 1. 146-3-3 (2), (3) (d) and (f), (6), (7), and (8), Colorado Revised Statutes 1963 (1967 Supp.), are amended, and the said 146-3-3 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

146-3-3. Definitions. (2) "Proprietary school" means any business enterprise operated for a profit or on a nonprofit basis which maintains a place of business either within or without this state AND DOES BUSINESS IN THIS STATE, and

(a) which offers or maintains a course or courses of instruction or study, or

(b) at which place of business such a course or courses of instruction or study is available through classroom instruction or by correspondence, or both, to a person or persons for the purpose of training or preparing such person for a field of endeavor in a business, trade, technical, or industrial occupation, except as excluded pursuant to subsection (3) of this section.

(3) (d) A school or training program which offers INCLUDES ONLY instruction ~~primarily~~ in the field of an avocation, recreation, health, or entertainment, as determined by the state board.

(f) A course or courses of study or instruction WHOLLY sponsored by a recognized trade, business, or professional organization SOLELY for the instruction of the members of such organization.

(6) "Agent's permit" means a nontransferable written authorization issued to a natural person by the state board, OR THE DIRECTOR OF OCCUPATIONAL EDUCATION WHEN SO AUTHORIZED BY THE STATE BOARD, pursuant to the provisions of this article, to solicit

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

any resident of this state to enroll in a course or courses of instruction or study offered or maintained by a proprietary school.

(7) "Certificate of approval" means a nontransferable written authorization issued by the state board to a proprietary school located within this state in the name of such school, pursuant to the provisions of this article, to offer or maintain a course or courses of instruction or study in compliance with the provisions of this article and the rules and regulations of the state board promulgated pursuant to law.

(8) "Accredited school" means a proprietary school located within this state which offers and maintains a course or courses of instruction or study in compliance with the provisions of this article and the rules and regulations promulgated pursuant to law, and which school also has been issued a certificate of accreditation by the state board as a result of maintaining standards of excellence for its course or courses of instruction or study which meet or exceed minimum accreditation standards, said standards being higher than those prescribed as a condition of obtaining a certificate of approval for said proprietary school.

(9) "Designated hearings officer" means a hearings officer or officers which may be appointed by the state board from a list supplied by the attorney general to conduct hearings on any matter within the authority of the state board which are referred to such hearings officer by the state board. The testimony presented and proceedings had at such hearings shall be taken and preserved with the records of the state board. The hearings officer shall conduct the hearing as presiding officer in accordance with the provisions of section 3-16-4, C.R.S. 1963, and shall make available to the advisory committee for proprietary schools his findings of fact and conclusions of law and a complete record of all proceedings so conducted. The advisory committee, after considering the findings of fact and conclusions of law and the complete record of all proceedings, shall make them available, together with their recommendation, to the state board. The decisions of the hearings officer shall be made and have effect as provided by section 3-16-4, C.R.S. 1963, and be subject to review as provided in that section and section 3-16-5, C.R.S. 1963. The state board may appear in court by its own attorney.

Section 2. 146-3-5 (1), (2), and (3), Colorado Revised Statutes 1963 (1967 Supp.), are amended to read:

146-3-5. Proprietary school — certificate of approval. (1) No person, company, firm, corporation, association, society, or partnership shall maintain and operate a proprietary school located within this state until said school shall have been issued a certificate of approval by the state board pursuant to the provisions of this article. No certificate of approval shall be issued by the state board to any proprietary school which denies enrollment in said school to any pupil, or makes any distinction or classification of pupils in said school, on account of race, color, or creed. The Colorado civil rights commission shall have power to make investigation as to discrimination practices of any proprietary school, and shall report thereon to the state board, and said board shall, upon report that any such school is engaging in discriminatory practices, deny or suspend a certificate of approval of such school, in accordance with the provisions of this subsection (1) and of subsection (6) (b) of this section, after notice and public hearing as required by this article.

(2) No proprietary school shall be issued a certificate of approval unless it shall make application, through its officers or an owner, upon forms to be provided by the state board, and unless said application shall be accompanied by a fee of twenty-five dollars and a good and sufficient surety bond in a penal sum of twenty thousand dollars. Said bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. **ANY BONDS REQUIRED BY THIS ARTICLE, SAID BONDS TO BE EXECUTED BY THE APPLICANT AS PRINCIPAL AND BY A SURETY COMPANY QUALIFIED AND AUTHORIZED TO DO BUSINESS AS SURETY.**

(3) (a) (i) The surety bond shall be conditioned to provide indemnification to any student or enrollee or his parent, or guardian, OR SPONSOR suffering loss or damage as a result of any fraud or misrepresentation used in procuring his enrollment or as a result of any fraud or misrepresentation as represented by the application for the certificate of approval, or as a result of the student being unable to complete the course or courses because the school ceased operations, OR **AS A RESULT OF THE STUDENT BEING UNABLE TO RECEIVE A TUITION REFUND BECAUSE THE SCHOOL CEASED OPERATIONS.** Such indemnification under the surety bond to any or all students, or parents, or guardians, OR SPONSORS shall, in no case, exceed the advanced tuition, BOOK FEES, SUPPLY FEES, OR EQUIPMENT FEES paid or liable to be paid for by said student or students or any such parent, or guardian, OR SPONSOR, and regardless of the number of years that a school's bond is in force, the aggregate liability of the surety bond shall, in no event, exceed the penal sum of the bond. The surety bond may be continuous.

(ii) **IN CASE A SCHOOL CEASES OPERATIONS, THE STATE BOARD SHALL PROCEED FORTHWITH TO ASCERTAIN THE NAMES AND ADDRESSES OF ALL STUDENTS AND SHALL REQUEST ALL SUCH STUDENTS TO FILE A VERIFIED STATEMENT OF THEIR RESPECTIVE CLAIMS AGAINST THE SCHOOL. IF A STUDENT SO ADDRESSED FAILS, REFUSES, OR NEGLECTS TO FILE SUCH STATEMENT WITH THE STATE BOARD WITHIN THREE MONTHS FROM THE DATE OF SUCH REQUEST, THE STATE BOARD SHALL THEREUPON BE RELIEVED OF FURTHER DUTY OR ACTION ON BEHALF OF SAID STUDENT. WHERE, BY REASON OF THE ABSENCE OF RECORDS OR OTHER CIRCUMSTANCES, IT IS IMPOSSIBLE OR UNREASONABLE FOR THE STATE BOARD TO ASCERTAIN THE NAMES AND ADDRESSES OF ALL OF SAID STUDENTS, THE STATE BOARD, AFTER EXERCISING DUE DILIGENCE AND MAKING REASONABLE INQUIRY TO SECURE SAID INFORMATION FROM ALL REASONABLE AND AVAILABLE SOURCES, MAY MAKE DEMAND ON THE SURETY BOND ON THE BASIS OF INFORMATION THEN IN ITS POSSESSION, AND THEREAFTER THE STATE BOARD SHALL NOT BE LIABLE OR RESPONSIBLE FOR THE CLAIMS OR THE HANDLING OF CLAIMS WHICH MAY SUBSEQUENTLY APPEAR OR BE DISCOVERED. UPON ASCERTAINING ALL CLAIMS IN THE MANNER SET FORTH IN THIS SUBPARAGRAPH (ii), THE STATE BOARD MAY THEN MAKE DEMAND UPON THE BOND ON BEHALF OF THOSE CLAIMANTS WHOSE STATEMENTS HAVE BEEN FILED, AND SHALL HAVE THE POWER TO SETTLE OR COMPROMISE SAID CLAIMS WITH THE SURETY COMPANY ON THE BOND, AND**

THE STATE BOARD IS EMPOWERED IN SUCH CASES TO EXECUTE AND DELIVER A RELEASE AND DISCHARGE OF THE BOND INVOLVED. UPON REFUSAL OF THE SURETY COMPANY TO PAY THE DEMAND, THE STATE BOARD SHALL THEREUPON BRING AN ACTION ON THE BOND IN BEHALF OF SAID STUDENT.

(b) Any claimant may file with the state board a duly verified claim OF FRAUD OR MISREPRESENTATION USED IN PROCURING HIS ENROLLMENT OR OF ENROLLMENT PROCURED AS A RESULT OF ANY FRAUD OR MISREPRESENTATION IN THE PROPRIETARY SCHOOL'S APPLICATION FOR THE CERTIFICATE OF APPROVAL against a proprietary school. The board OR ITS DESIGNATED HEARINGS OFFICER may consider such claim after ten days' written notice by registered mail, return receipt requested, to such school of said complaint giving time and place of hearing thereon and if such claim is found to be correct and due to the claimant, and if the board OR ITS DESIGNATED HEARINGS OFFICER cannot effect a settlement by persuasion and conciliation, the board shall make a demand upon the principal on such bond and the surety thereon, and if not paid shall bring an action on such bond in any court of record within the state of Colorado.

Section 3. 146-3-7, Colorado Revised Statutes 1963 (1967 Supp.), is amended BY THE ADDITION OF A NEW SUBSECTION to read:

146-3-7. Agent's permits — school approval — violations. (3) Any violation of section 146-3-4 (1) or section 146-3-5 (1) by any person, company, firm, corporation, association, society, or partnership, or any officer or employee thereof, shall constitute a deceptive trade practice and shall subject said violator to the laws and remedies provided by article 5 of chapter 55, C.R.S. 1963.

Section 4. 146-3-8 (1) (a), (i), and (l), (2), (3), and (4), Colorado Revised Statutes 1963 (1967 Supp.), are amended, and the said 146-3-8 is further amended BY THE ADDITION OF THE FOLLOWING NEW SUBSECTIONS, to read:

146-3-8. Minimum standards — certificate of approval. (1) (a) No proprietary school located in this state shall be issued a certificate of approval under the provisions of this article until the state board shall have determined that said proprietary school is maintained, operated, or, in the event of a new proprietary school, that said school can be reasonably maintained and operated, in substantial compliance with the following minimum standards:

(i) (i) That the proprietary school is financially sound and reasonably capable of fulfilling commitments to students for training and preparation. PROOF OF SATISFACTION OF THIS REQUIREMENT MAY BE DEMONSTRATED BY ONE OF THE FOLLOWING MEANS OR A COMBINATION THEREOF:

(ii) THE OWNER MAY FURNISH FINANCIAL STATEMENTS THAT HAVE BEEN CERTIFIED BY A CERTIFIED PUBLIC ACCOUNTANT, SHOWING A CAPITAL STRUCTURE THAT IS ADEQUATE TO FULFILL THE COMMITMENTS OF THE SCHOOL.

(iii) WHERE THE AMOUNT OF UNEARNED TUITION COLLECTED IN ADVANCE EXCEEDS TWENTY THOUSAND DOLLARS AT ANY ONE TIME, GOOD AND SUFFICIENT SURETY BOND

SHALL BE FURNISHED IN A PENAL SUM OF TWENTY THOUSAND DOLLARS PLUS FIFTY PERCENT OF THE AMOUNT OF THESE UNEARNED TUITIONS IN EXCESS OF TWENTY THOUSAND DOLLARS.

(iv) WHERE THE AMOUNT OF UNEARNED TUITION COLLECTED IN ADVANCE DOES NOT EXCEED TWENTY THOUSAND DOLLARS AT ANY ONE TIME, A GOOD AND SUFFICIENT SURETY BOND SHALL BE FURNISHED IN A PENAL SUM OF NOT LESS THAN TWO THOUSAND DOLLARS NOR MORE THAN TWENTY THOUSAND DOLLARS AT THE DISCRETION OF THE STATE BOARD.

(v) THE OWNER MAY ENGAGE IN AN ESCROW AGREEMENT THAT IS ACCEPTABLE TO THE STATE BOARD, PROVIDING FOR ONE OF THE FOLLOWING: AN AMOUNT EQUAL TO SEVENTY-FIVE PERCENT OF THE MAXIMUM UNEARNED TUITION COLLECTED IN ADVANCE; OR AN AMOUNT EQUAL TO SEVENTY-FIVE PERCENT OF THE MAXIMUM UNEARNED TUITIONS COLLECTED IN ADVANCE, REDUCED BY THE AMOUNT OF SURETY BOND FURNISHED; OR AN AMOUNT EQUAL TO SEVENTY-FIVE PERCENT OF THE MAXIMUM UNEARNED TUITIONS COLLECTED IN ADVANCE, REDUCED BY THE AMOUNT OF SURETY BOND FURNISHED AND BY THE AMOUNT OF NET WORTH AS CERTIFIED BY A CERTIFIED PUBLIC ACCOUNTANT.

(1) That the proprietary school adheres to a tuition refund schedule as presented in published form prior to enrollment in the event the student shall discontinue the training or be excluded therefrom. AND POLICIES OF A NATIONALLY RECOGNIZED ACCREDITING AGENCY OR ASSOCIATION WHICH HAS BEEN SO DESIGNATED BY THE COMMISSIONER OF EDUCATION OF THE UNITED STATES OFFICE OF EDUCATION.

(2) The state board shall have the power to investigate, appraise, and evaluate from time to time any proprietary school, ~~new located, or which may be hereafter located, in this state.~~ The investigation, appraisal, and evaluation shall be for the purpose of determining whether the proprietary school is maintained and operated or, in the event of a new proprietary school, whether such new proprietary school can be reasonably maintained and operated, in compliance with the provisions of this section.

(3) If the state board shall determine upon investigation, appraisal, and evaluation that a proprietary school ~~located within this state is~~ maintained and operated, or, in the event of a new proprietary school, that said school can be reasonably maintained and operated, in compliance with the minimum standards prescribed by this section, the state board shall issue a certificate of approval to said proprietary school.

(4) If the state board shall determine that any school is not maintained and operated, or cannot be reasonably maintained and operated, in compliance with the minimum standards prescribed by this section and the minimum requirements determined by the board, the state board, after notice and an opportunity for a hearing pursuant to article 16 of chapter 3, C.R.S. 1963, CONDUCTED BY THE STATE BOARD OR ITS DESIGNATED HEARINGS OFFICER, may deny the issuance of a certificate of approval or may establish conditions in conformity

with the provisions of this article which shall be met by said school prior to issuance of such a certificate.

(5) In the case of a proprietary school located out of the state of Colorado, the state board may accept the approval given by the state in which the school is located if it is determined by the state board that that state's requirements for approval are equal to or greater than the requirements of Colorado.

(6) Before an application for a certificate of approval shall be considered by the state board, a proprietary school located out of the state of Colorado shall pay the reasonable expenses incurred by the state board, its employees, and its officers for the investigation, appraisal, and evaluation of said school.

Section 5. 146-3-9 (1) and (2), Colorado Revised Statutes 1963 (1967 Supp.), are amended to read:

146-3-9. Accreditation. (1) The state board shall have the power to investigate, appraise, and evaluate from time to time any approved proprietary school, located in this state, or which may be hereafter located in this state, upon request of said school, for the purpose of determining whether said school shall be an accredited school.

(2) BEFORE THE APPLICATION FOR ACCREDITATION SHALL BE CONSIDERED BY THE STATE BOARD, THE said school shall pay the reasonable expenses not to exceed one hundred dollars incurred by THE state BOARD, ITS employees, and ITS officers during said FOR THE investigation, appraisal, and evaluation OF SAID SCHOOL.

Section 6. 146-3-10 (3), Colorado Revised Statutes 1963 (1967 Supp.), is amended to read:

146-3-10. Revocation of agent's permits and certificates of approval. (3) A certificate of approval issued to a proprietary school may be suspended or revoked for the failure to maintain and operate a course or courses of instruction or study in compliance with the standards prescribed in section 146-3-8. IF, AT ANY TIME AFTER ISSUANCE OF A CERTIFICATE OF APPROVAL, THE STATE BOARD SHALL DETERMINE THAT THE SCHOOL TO WHICH THE CERTIFICATE OF APPROVAL WAS ISSUED HAS CEASED OR FAILED TO BE OPERATED IN COMPLIANCE WITH THE MINIMUM STANDARDS PRESCRIBED BY SECTION 146-3-8, THE STATE BOARD, AFTER NOTICE AND AN OPPORTUNITY FOR A HEARING PURSUANT TO ARTICLE 16 OF CHAPTER 3, C.R.S. 1963, CONDUCTED BY THE STATE BOARD OR ITS DESIGNATED HEARINGS OFFICER, MAY SUSPEND OR REVOKE THE CERTIFICATE OF APPROVAL OF SAID SCHOOL. A certificate of approval may be suspended or revoked by the state board for a false or misleading written or oral statement submitted by the applicant proprietary school with the intent to mislead or conceal the truth.

Section 7. 124-26-4 (2), Colorado Revised Statutes 1963 (1967 Supp.), is amended to read:

124-26-4. State board for community colleges and occupational education. (2) (a) The board shall consist of nine members, appointed by the governor. The governor shall appoint the chairman and vice-chairman. The members of the board shall select an executive secretary who shall serve as secretary of the board and administrative officer, and who shall not be a member of the board. The board shall appoint

a director of occupational education and a director of community and technical colleges with the qualifications and background specified by the board. The board from time to time shall define and prescribe the duties and functions of the directors. No appointed member shall be an officer or employee of any junior college or state institution of higher learning in the state. The board shall at no time have more than five appointed members of any political party. The board shall at all times include one member representing agriculture, one member representing labor organizations, and one member representing business, AND ONE MEMBER REPRESENTING PROPRIETARY SCHOOLS, AS SUCH TERM IS DEFINED IN SECTION 146-3-3 (2), C.R.S. 1963. The board shall at all times have two members from each congressional district in the state. At least one member shall be a resident of the western slope of the state, defined in this section as that western part of the state separated from the eastern part of the state by the continental divide.

(b) Of the members first appointed by the governor, three shall be appointed for terms of six years, three for terms of four years, and three for terms of two years. Thereafter, all members shall be appointed for terms of six years each. No member shall be appointed for more than two consecutive terms. Appointed members of the board shall receive twenty dollars per diem for attendance at official meetings, plus actual and necessary expenses incurred in the conduct of official business.

Section 8. 146-3-11 (2) (b) and (3), Colorado Revised Statutes 1963 (1967 Supp.), are amended to read:

146-3-11. Advisory committee. (2) (b) Terms of office shall be for three years with initial appointments to be divided so that one-third of the members shall serve one, two, and three years respectively. As the term of office of each member shall expire, EXPIRES ON OR AFTER JULY 1, 1971, a successor shall be appointed by a two thirds vote of the state board for vocational education THE GOVERNOR for a term of three years.

(3) (a) The proprietary school advisory committee shall make recommendations to the state board relative to whether a proprietary school is maintained and operated, or in the event of a new proprietary school, whether it can be reasonably maintained and operated, in substantial compliance with the provisions of this article.

(b) THE COMMITTEE SHALL RECOMMEND THE ALLOCATING OF ALL FUNDS GRANTED TO THIS STATE BY THE VETERANS ADMINISTRATION FOR PROPRIETARY SCHOOLS OR FOR PROPRIETARY SCHOOL EDUCATION, SUBJECT TO THE APPROVAL OF THE STATE BOARD.

Section 9. Effective date. This act shall take effect July 1, 1971.

Section 10. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 4, 1971