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## PROPRIETARY SCHOOLS

House Bill 4823 as enrolled/vetoed  
Sponsor: Rep. Nelson W. Saunders  
House Committee: Higher Education  
Senate Committee: None

Senate Bill 163 as enrolled  
Senate Bill 661 as enrolled  
Sponsor: Sen. Michael J. Bouchard  
Senate Committee: Education  
House Committee: Higher Education

### Second Analysis (9-9-93)

### ***THE APPARENT PROBLEM:***

Michigan's current law regulating proprietary (private business and trade) schools was enacted in 1943, prior to the tremendous growth of these schools in the 1980s due to increased participation in federal and state student financial aid programs. Recently, however, there has been much publicity surrounding the high rate of defaulted student loans by students attending these schools. A U.S. Senate Subcommittee on Investigations has found that thousands of students have been the victims of unscrupulous schools who have given them neither the training nor the skills they hoped to acquire. Many of these schools close at short notice. In a few cases, students were able to finish their courses through "teachouts," where arrangements are made to transfer them to another school. But in many cases, the students are left with responsibility for their student loans and without training or jobs. Likewise, taxpayers are ultimately billed for billions of dollars of losses in defaulted loans, while at the same time many school owners and other financial players profit handsomely. The subcommittee issued a report calling for comprehensive reform. In addition, Congress has reauthorized the Higher Education Act, calling for increased participation by the states in the monitoring of proprietary schools.

In Michigan, a performance audit by the Office of the Auditor General on proprietary school licensing stated that Michigan laws were outdated and did not clearly address the educational and enforcement standards necessary for effective regulation. The report called for more effective monitoring of schools and better consumer protection. Private trade schools and business schools in the state are licensed under Public Act 148 of 1943. Permits are issued to representatives of such schools who solicit

prospective students for enrollment under Public Act 40 of 1963. The Department of Education maintains that a lack of resources has prevented it from performing its duties related to reviewing and approving license applications, monitoring school activities, and identifying unlicensed schools. The department supports legislation based on reforms recommended in a 1990 report published by the State Higher Education Executive Officers (SHEEO). These reforms, it believes, would protect the public from unscrupulous practices such as fraudulent advertising, improper recruiting practices, admission of unqualified students, failure to deliver quality education, improper counseling, insufficient assessment, inadequate placement, falsification of records, failure to make tuition refunds, operating in an improper environment, and failure to maintain financially stable operations.

### ***THE CONTENT OF THE BILLS:***

The bills are part of a package that would create new acts to regulate and license "proprietary schools." Senate Bill 163 would repeal, as of September 1, 1993, two acts that currently deal with the schools: Public Act 48 of 1943, under which the schools are licensed; and Public Act 40 of 1963, which authorizes the solicitation of students by private trade, business, and correspondence schools and institutes. Senate Bill 661 would create the Proprietary School Educational Assurance Act under which a Tuition Reimbursement Fund would be created in the state treasury to reimburse students when a school closed and to provide them alternative instruction (through so-called teachout arrangements). The bill would also establish a

process for determining assessments to be charged proprietary school licensees for the reimbursement fund, and require that the State Board of Education promulgate rules to implement the act according to the requirements of the Administrative Procedures Act. House Bill 4823 would create the Proprietary School Licensing Act of 1993, which would, in general, govern the operation of such schools. Among other things, the bill would: put in place a new licensing system and set new fees for schools; establish a tuition refund policy; require curriculums to be approved by the state; regulate advertising; and establish enforcement mechanisms and penalties. Senate Bill 661 and House Bill 4823, which are explained in more detail later, contain complementary provisions and would take effect September 1, 1993. The three bills are tie-barred to one another.

#### Definition of Proprietary School

The term "proprietary school", as defined in House Bill 4823, would refer to a private trade school, business school, correspondence school, institute, or facility, located and doing business in the state by offering instruction or training to the public for tuition, fee, or charge in any trade, occupation, or vocation, either in the recipient's home or at a designated location. The term would not include: an educational institution created by the legislature or a state department; an educational institution or training program maintained or provided by an employer or group of employers, without charge, for its employees or anticipated employees; a program maintained or provided by a labor organization without charge for its members or apprentices; a program maintained by a joint union-management nonprofit benefit plan to provide training in a skilled trade for employees or members; a program that offers only self-improvement, motivational, or avocational courses, or a program not designed to prepare individuals for employment or an occupation; a degree-granting two-year or four-year college or university; an institution that offered only instruction that was less than 30 clock hours in length; and a school licensed by law through an agency of this state other than the education department. A bonded, nonprofit trade association whose curriculum and instructors approved and regulated by an agency of the state (other than the education department) would not be considered a proprietary school for those parts of the new law other than Parts 1 and 2 (sections dealing with definitions and with licensing and fees).

The following is a description of the main provisions of House Bill 4823.

#### Licensing/Fees

\*\* Proprietary schools would have to obtain a license from the State Board of Education or, if based out of state, a certificate of compliance from the Department of Education. A separate license would be required for each location at which instruction was offered (except for certain income tax preparation or theory programs). Licenses would be good for one year and would include a listing of all instructional programs the school was authorized to offer. A certificate of compliance would stay in effect as long as the "foreign" (out-of-state) school paid the required annual fees and would specify the particular curriculum, institutional management, and address covered by the certificate.

\*\* In addition to other required information and the required fees and assessments, applicants for a license, license renewal, or certificate would have to disclose information about certain relevant criminal convictions and civil violations of persons holding ownership or control interests or serving in a supervisory capacity for the administration of student or government funds. An applicant also would have to disclose whether any school or program operated by the applicant had closed or ceased operation and whether at the time of closing or cessation, the applicant was subject to a pending disciplinary action or penalty or was delinquent in paying a refund to any government agency or student. The state board would not deny an application based on such information unless it made a written determination that there was a direct relationship between one or more of the disclosures and the license, renewal, or certificate being sought or that issuing a license, renewal or certificate would create an unreasonable risk to property or to the safety, education, and welfare of specific individuals or the general public. The board could deny, suspend, revoke, or decline to renew a license if it determined that the significance of the disclosure warranted the action or if it determined an applicant failed to make a required disclosure.

\*\* A school would have to obtain a solicitor's permit from the Department of Education for each solicitor it employed or had under contract. The permit would be valid for one year for the specific institution stated on the permit and would be issued

upon a demonstration that the solicitor had good moral character and would use ethical and fair practices in the presentation of services to a prospective student. (A solicitor could not guarantee a prospective student a job after graduation.) A solicitor would be considered an agent of each institution he or she represented, and a violation of the act by a solicitor would be considered a violation by the institution.

\*\* A variety of fees would be collected by the department to go into a Fee Revenue Fund for use in administration of the new act. The fees include: a \$500 fee for applying for a license or certificate of compliance; a \$1,000 fee before a school approved for a license or certificate could begin soliciting students; a license renewal fee of \$900 for a school that has one or more programs with over 80 hours of instruction, of \$600 for a school without a program with more than 80 hours of instruction, and \$250 for a school, regardless of program hours, that only has programs of 25 or fewer students; a \$200 fee for an application to change the number of hours of instruction in a program or to add a program; \$200 to apply for approval of a change in location of a school; \$400 for a solicitor's permit; and \$500 for a license transfer or assignment. The fees would be adjusted annually based on changes in the Detroit consumer price index and would be reduced proportionately if it appeared available fee revenues would equal 115 percent or more of the amount appropriated to administer the new act. The section imposing the fees would be repealed effective September 1, 1996.

#### Tuition Refunds

\*\* Schools would have to refund the tuition of students who withdrew no later than 45 days following withdrawal, following a policy specified in the bill (or another policy approved by the department). Refunds would go first to repay federal financial aid, then other financial aid programs, with the remainder to the student. A student would be entitled to a full refund if he or she canceled the enrollment agreement or application within three business days of signing it; did not meet the school's minimum admission standards; enrolled as a result of misrepresentation in written materials or in oral representations; or withdrew within three days after attending a regularly-scheduled orientation or making a tour of the school facilities (if there had been no pre-enrollment visit). A student who withdrew within a

week would be entitled to a 90 percent refund of the contract price minus \$150 (although the school could keep no more than \$350). A student withdrawing after the first week but within the first 25 percent of the program would be entitled to a 75 percent refund, minus \$150. A student completing more than 25 percent but less than 50 percent of a program would be entitled to a 50 percent refund, minus \$150; one completing at least 50 percent but less than 75 percent would be entitled to a 25 percent refund minus \$150. Refunds would also be adjusted based on equipment charges. The bill would specify how to determine when a student had withdrawn. A school could be required to establish a special trust account if it had demonstrated a pattern or practice of failing to make tuition refunds in a timely manner.

#### School Operations/Advertising

\*\* Before an instructional program of a school could be offered, the curriculum would have to be approved by the department (as would a change in the number of hours of instruction). Initial approval of a curriculum would be valid for three years, after which time reapproval could be required. A school's enrollment agreement or catalog would require approval by the state board. Its facilities would have to meet applicable local and state standards, including fire, health, safety, building construction, and sanitary standards. A school would have to notify the department before changing the location of any of its facilities. Schools would be required to employ and use only administrative, supervisory, and instructional staff who had the appropriate education and experience. Also, schools would be required to maintain an internal complaint process.

\*\* Once a particular course had begun, a school would be prohibited from: making unscheduled course cancellations or suspensions without giving each student an opportunity for a refund; changing the school's location or the day, time, or location of a class without informing students of the possibility at initial enrollment; or altering the number of hours of instruction without the prior written consent of students.

\*\* A proprietary school that operated an instructional program of more than 80 hours of instruction could not admit a person who did not have a high school diploma, a G.E.D., or the equivalent from a foreign country unless the student



demonstrated the ability to benefit from the instruction by taking a test approved by the state board of education. Such a school would have to advise students and prospective students on an individual basis about their ability to progress in the program, the availability of free or low-cost programs to earn a high school diploma or G.E.D. or to obtain remedial instruction, and the potential of the program to prepare them for available employment opportunities in the geographic area.

**\*\* Schools with instructional programs of more than 80 hours also would have to provide written information in plain language on:** course descriptions; program objectives and length; the schedule of tuition payments and other expenses; the tuition refund and contract cancellation policies; the faculty and other instructional personnel and their qualifications; the associations, agencies, or governmental bodies that accredit, approve, or license the school; special facilities and services available to handicapped students; the completion rate for students in the most recent calendar year; the job placement rate, showing the percentage of students obtaining employment in an occupation for which the program is offered; the pass rate for program graduates on any licensure or certification examination required by the state for employment in the occupational field; financial assistance available; the internal complaint procedures; and procedures for filing a complaint with the state. The written information would have to be submitted to the superintendent for approval as part of the annual license renewal process.

**\*\* A proprietary school would be prohibited from using a name that included the words "college" or "university" or from implying that it was affiliated with a government agency or a public or private corporation that it was not affiliated with. A school could advertise that it was licensed by the state but could not represent that it was approved, recommended, endorsed, or accredited by the state. Its published advertising literature, illustrations, diagrams, and other advertising media could convey only true and accurate information supported by facts and statistics, and advertising would have to include the name that appeared on the school's license or certificate of compliance and the address and city where it was located. Schools and their agents would be prohibited from making misrepresentations about employment opportunities for graduates; the school's facilities, programs, courses, management, operational policies, charges,**

**training equipment, instructors' qualifications, and placement activities; eligibility for student financial assistance; and transfer to degree-granting colleges and universities. Further, schools could not make statements or representations in advertising or soliciting that a student would be guaranteed employment while enrolled or after graduation or include a quotation of a dollar amount as representing the earning potential of graduates. The Department of Education could at any time require a school to furnish proof of the truth and accuracy of any of the specific claims in its advertising.**

**\*\* Schools would be required to maintain for each student an academic record and transcript showing at least courses taken, grades earned, and certificates or degrees awarded and to retain the record, which would be available to students on request, for at least 20 years. If a school closed or discontinued operations, it would have to send student records to the education department. Other kinds of required records would have to be maintained by a school for six years.**

#### Enforcement/Penalties

**\*\* The Department of Education would have to conduct periodic scheduled reviews of proprietary schools to monitor compliance with the new act, its rules, and any final orders of the state board. The department could conduct unscheduled inspections if it had reason to believe a school had committed or was committing violations. Licensees would have to provide the department with any records it requested.**

**\*\* The superintendent of public instruction could impose the following penalties on a school or solicitor, subsequent to a notice of intent to take disciplinary action and a public hearing: a cease and desist order; an order to remedy a violation; suspension or revocation of a license, certificate, or permit; probation; an order to make restitution or refund, or both; and an administrative fine of up to \$2,500 for a first violation and \$5,000 for a subsequent violation in a five-year period. An administrative fine of up to \$25,000 for a first offense and \$50,000 for a second offense could be imposed for intentionally operating a proprietary school without a license or while knowing the license had been suspended or revoked. The superintendent could suspend a license, certificate, or permit if a school failed to pay a fee, fine or**

penalty, or a tuition reimbursement assessment, unless the failure was determined to be for good cause. Upon a finding that a deficiency or violation seriously affected the health, safety, or welfare of individuals receiving services from a school, the superintendent could issue an emergency order limiting, suspending, or revoking the license. An opportunity for a hearing would have to be provided within ten working days.

\*\* Further, a person who knowingly violated the act or a rule promulgated or an order issued under it would be guilty of a misdemeanor, punishable by imprisonment for not more than 30 days or a fine of not more than \$1,000, or both. If the conviction was for a second or further offense within five years, the fine could go up to \$2,000. The misdemeanor fine would be up to \$5,000 for operating without a valid license or under a revoked or suspended license and falsifying or destroying business records, with intent to defraud. The criminal penalties would be in addition to any other penalty or disciplinary action. The attorney general, in his or her own capacity or at the request of the superintendent, could bring an appropriate action or proceeding in the circuit court to collect a fine or enforce another penalty imposed under the new act or to enforce the act.

\*\* A person alleging a violation of the new act or the new act created by Senate Bill 661 could file a written complaint with the superintendent up to one year after the date of the alleged violation, and the superintendent could, based on an investigation, initiate a hearing. The hearing would be conducted following procedures specified in the bill by a hearing officer who, if there was no informal disposition, would make written findings of fact and conclusions of law, along with a recommended decision and recommended penalties. The final determination would be by the superintendent, with appeal to the circuit court. Also, an individual injured by a violation of the act would be able to bring an action in circuit court for actual damages or \$100, whichever was greater, and the court could award costs and reasonable attorney fees to a prevailing plaintiff.

#### Department Functions

\*\* A proprietary schools committee would be established in the Department of Education to act as a liaison between schools and the department and to review all department policies and

procedures concerning the schools and make recommendations. The committee would have seven members: the superintendent or a designee and six individuals, each of whom was an owner, operator, employee, officer, or director of or a consultant to a licensed proprietary school, and representing a variety of types and sizes of schools. If an organization had as members 20 percent or more of the licensed schools, one of the committee members would have to be associated with a member of that organization. The committee would be appointed by the education department.

\*\* The Department of Education would be able to promulgate rules regarding, among other things, standards and methods of instruction, equipment to be available for instruction, physical plant, maximum enrollments based on methods of instruction, equipment, and physical plant; qualifications and experience of teaching and management personnel; methods of collecting tuition; sufficiency and suitability of the economic resources available to support a school; and student counseling.

The following is a description of the main provisions of Senate Bill 661.

#### Tuition Reimbursement Fund

\*\* A Tuition Reimbursement Fund would be created within the Department of Treasury, to be administered by the Department of Education. Money received from any source, including assessments charged to licensed schools, would be deposited in the fund, and used only for tuition refunds to students, for authorized costs incurred by the department in arranging teachout opportunities when they weren't otherwise available, and, with the approval of the State Board of Education, for the purchase of insurance or reinsurance to guarantee that the fund's obligations could be met.

\*\* The process for determining assessments to be charged licensees would be structured so that each licensee would pay an equitable assessment, based on the school's enrollment, tuition charges, and claims history. The initial assessments would be calculated to generate at least \$30,000, and the assessment process would have to guarantee that the fund balance at the beginning of each fiscal year was at least \$30,000, minus any amount paid for insurance or reinsurance. (The bill also says that "the process could be structured so that assessments were imposed and collected to satisfy the obligations

of the fund only as they arose, or to maintain a fund balance of at least \$30,000, minus insurance or reinsurance payments.") Emergency assessments could also be imposed.

\*\* The auditor general and the department would each be required to audit the fund annually. In addition, the auditor general would be required to produce an annual financial statement for the fund according to generally accepted accounting principles. If either determined, as a result of an audit, that the resources of the fund were inadequate to meet actual or anticipated obligations, then both would be required to make recommendations to the state board of education on changes to ensure that the fund would have adequate resources.

\*\* The department would be required to develop, adopt, and submit to the state board a plan of operation for the tuition reimbursement fund within six months after the effective date of the act. Copies of the plan would also have to be provided to the standing committees of the legislature responsible for higher education legislation, and would include at least a process for determining debts and liabilities to be paid from the fund and a process for determining assessments. At least 30 days after the department submitted its plan of operation, the state board would be required to approve, disapprove, or modify the process for determining assessments and to notify the department and the legislative standing committees for higher education legislation.

\*\* The department would be considered a party in interest in all proceedings involving a claim against the fund, could investigate a claim to determine its validity, and could compromise, settle, and pay a valid claim and deny an invalid claim.

#### Tuition Refunds

\*\* A student would be eligible for a refund if a school closed or ceased instruction and the student was not offered a teachout opportunity according to a teachout plan developed by the department for the instructional program in which he or she was enrolled, or if continuing instruction at a teachout school would be an undue hardship for the student. The portion of the tuition payment made by or on behalf of the student from funds other than federal or state student financial aid would be repaid to the student in full. The portion of the tuition payment

paid from federal or state student financial aid funds would be refunded in accordance with applicable state or federal law.

\*\* Until the amount of a tuition refund was exhausted, a tuition refund would be paid in the following order of priority: first, to repay the unpaid balance of a guaranteed student loan taken out by the claimant for payment of tuition; second, to repay a state or federal government agency that had paid tuition on behalf of the claimant; and third, to refund to the claimant actual personal tuition expenditures or money borrowed from other sources.

\*\* Refund recipients would be considered to have assigned or subrogated their tuition refund rights against the proprietary school to the education department on behalf of the reimbursement fund for the amount refunded.

#### Teachout Arrangements

\*\* If a proprietary school closed or ceased instruction, the department would have to develop a teachout plan that made arrangements with one or more other schools to provide teachout opportunities. A proprietary school would be required to participate in a teachout plan developed by the department. (As noted earlier, a student could decline to enroll at a teachout school if his or her participation would result in undue hardship, and could instead seek a refund from the Tuition Reimbursement Fund.)

\*\* Under a teachout plan, teachout opportunities would be arranged with one or more teachout schools offering an instructional program or course that was substantially similar to that offered in the school that ceased instruction. The teachout school would have to fulfill the enrollment agreement signed by a student at the school ceasing instruction, except that the department, in consultation with the teachout school and with the approval of each student, could modify the agreement's requirements. However, the teachout plan could not require a teachout school to provide teachout opportunities in a particular instructional program to a number of students that exceeded ten percent of the school's average enrollment for the program over the immediately preceding three years.

\*\* A teachout school could not subject a student enrolling under a teachout plan to any costs beyond



the total costs in the original enrollment agreement. The school, however, would be entitled to receive any tuition still owed to the school that had closed or ceased instruction under the enrollment agreement.

### ***FISCAL IMPLICATIONS:***

According to testimony by the Department of Education, the fees in House Bill 4823 are intended to raise about \$300,000 for the administration of the new acts regulating proprietary schools. (7-14-93)

### ***ARGUMENTS:***

#### ***For:***

House Bill 4823 and Senate Bill 661 are consumer protection bills. They provide the state with tools to do a better job of regulating proprietary schools and to guard against the abuses that have been all-too-common in that industry. Many people depend on proprietary schools to provide them with education and training that will help them find new careers or new or better jobs. It is essential that they not be victimized by unscrupulous or greedy school operators and left only with debts and disappointment. It is important, too, for the many reputable and conscientious schools that the industry's reputation be protected. State officials and representatives of the schools have worked for several years to put a package of reforms together. The bills in this package would reportedly implement many of the recommendations made in a 1990 report by the State Higher Education Executive Officers, which called for reform of the proprietary school industry. These include:

-- A license to operate a post-secondary institution should be conditioned on a reasonable expectation of business viability and success.

-- In the event of a business failure or sudden closure of a school, students should be financially protected and given the opportunity to complete their program of study.

-- Students admitted to institutions should demonstrate an ability to benefit from the program of study.

-- An institutional license should be offered (or renewed) only in those instances where the institution can demonstrate reasonable outcomes regarding student graduation and/or job placement.

-- State financial support for existing or strengthened licensing standards should be adequate to ensure proper enforcement.

-- Standards governing institutional licensure should be fair and equally applied to institutions of similar types and missions.

-- Coordination and consolidation of state licensing should be implemented to the greatest extent possible.

#### ***Against:***

The proprietary school industry is quite diverse. For some small operators the fees contemplated by these bills represent very large increases in costs. Further, the bills propose a significant increase in the degree of state involvement in the operation of these schools; some would say far too much involvement over minor matters. Regulations that may make sense for one kind of school might not for others. For example, at least one small school operator (preparing students for the travel industry) has complained that the tuition refund policy will be harmful in that it will encourage dropouts, thus denying places to more interested students and revenue to schools. Some schools now do not refund tuition once a course has begun on the grounds that the course expectations have been made clear to students and that the students should be serious about pursuing the training. To allow students to take up classroom space that may be in demand and then get much of their investment back if they don't like the course is unfair to some schools. Also, there is some concern the effective date will not provide schools with sufficient time to accommodate the new requirements.

#### ***Against:***

Governor Engler's veto message cited the following objections to House Bill 4823. (1) It is unwise to create a new statutory cause of action when there is already access to a judicial remedy through general principles of contract law. If a cause of action is defensible, it ought to be put in the Revised Judicature Act so as to provide reasonable notice to the public. (2) The award of attorney fees and court costs to the prevailing party ought to be permitted in all civil actions and not established on a case-by-case basis. Plus, the bill does not define "prevailing party." (3) The creation of the special committee in the Department of Education is a needless expansion of bureaucracy and a dilution of accountability. The responsibilities assigned to the

committee properly belong with the superintendent of public instruction.