

**STATE OF MICHIGAN
87TH LEGISLATURE
REGULAR SESSION OF 1993**

Introduced by Rep. Saunders

ENROLLED HOUSE BILL No. 4823

AN ACT to regulate proprietary schools; to establish license and other fees; to establish procedures for disciplinary action; to establish civil and criminal penalties; to provide certain duties of certain state departments, agencies, and officials; and to repeal certain parts of the act on specific dates.

The People of the State of Michigan enact:

PART 1

DEFINITIONS

Sec. 1. This act shall be known and may be cited as "the proprietary school licensing act of 1993".

Sec. 2. As used in this act, the words and phrases defined in sections 3 and 4 have the meanings given to them in those sections.

Sec. 3. (1) "Course" means a component unit of an instructional program.

(2) "Department" means the department of education.

(3) "Foreign proprietary institution" means a private trade school, business school, correspondence school, or institute that is located outside of this state and is organized to offer instruction to the public in any manner in any trade, occupation, or vocation for money or any other consideration.

(4) "Instructional program" means 1 or more structured learning experiences designed to accomplish a predetermined objective or set of allied objectives in any particular trade, occupation, or vocation.

(5) "Licensee" means the holder of a license to establish or maintain and operate, or both, a proprietary school.

Sec. 4. (1) "Person" means an individual, partnership, corporation, association, organization, or other legal entity.

(2) "Proprietary school" means a private trade school, business school, correspondence school, institute, or facility located and doing business in this 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. Proprietary school does not include the following:

- (a) An educational institution created by the legislature or a state department.
- (b) An educational institution or educational training program that is maintained or provided by an employer or group of employers, without charge, for its employees or anticipated employees.
- (c) An educational institution or educational training program that is maintained or provided by a labor organization, without charge, for its members or apprentices.
- (d) An educational institution or educational training program that is maintained by a joint union-management nonprofit benefit plan to provide training in a skilled trade for its employees or members.
- (e) An educational institution or educational training program that offers only self-improvement, motivational, or avocational courses or programs that are not designed to prepare individuals for employment or an occupation.
- (f) With the exception of parts 1 and 2, a bonded nonprofit trade association whose curriculum and instructors are approved and regulated by an agency of this state other than the department.
- (g) A degree-granting 2-year or 4-year college or university.
- (h) An educational institution that offers only instruction that is less than 30 clock hours in length.
- (i) A school licensed by law through an agency of this state other than the department.
- (3) "Revenue fund" means the fee revenue fund created in section 16.
- (4) "Solicitor" means a person or agent representing a proprietary school or foreign proprietary institution who personally attempts to procure students, enrollees, or subscribers for the proprietary school or foreign proprietary institution at 1 or more places other than the office or place of business of the proprietary school or foreign proprietary institution.
- (5) "State board" means the state board of education.
- (6) "Superintendent" means the superintendent of public instruction.

PART 2

LICENSING AND FEES

Sec. 11. (1) A person shall not establish or maintain and operate a proprietary school unless the proprietary school is licensed by the state board under this act. A separate license is required for each location at which instruction is offered, except a proprietary school may offer instruction at an auxiliary classroom or a public assembly site without obtaining a separate license for that location. However, if a proprietary school operates at multiple locations under the same management and operates only identical instructional programs in income tax preparation or income tax theory, each consisting of 80 or fewer hours of instruction, the proprietary school may operate those instructional programs under a single license held by 1 licensee. For purposes of this subsection, "same management" includes operation by a franchisee of the licensee if the instructional program operated by the franchisee consists of a curriculum developed by the licensee and is taught according to guidelines set by the licensee. As used in this subsection:

- (a) "Auxiliary classroom" means a facility used only for instruction by the proprietary school that is located not more than 1 mile from the location at which the proprietary school is licensed to operate.
- (b) "Public assembly site" means a site located in a public educational institution or located in a public meeting area suitable for instruction in a public or privately owned facility.
- (2) A license issued under this act is valid for not more than 1 year for the period July 1 to June 30 and shall be renewed if the applicant continues to comply with this act and the rules promulgated under this act.
- (3) An applicant for a proprietary school license or renewal shall apply to the department for a license in the form and manner prescribed by the state board. The application shall include attachments and information required by this act for a license and for approval of each instructional program the applicant seeks to have included on the license.
- (4) An application for initial licensure of a proprietary school shall include the required application fee and initial license fee under section 16 and information about the applicant or the proprietary school as required by the state board.
- (5) An application by a licensee for renewal of a license shall include the required license fee under section 16 and the assessments for the tuition reimbursement fund required under section 3 of the proprietary school educational assurance act. If the applicant operates a proprietary school that offers 1 or more instructional programs consisting of more than 80 hours of instruction, the application for renewal shall also include a financial report as required by the superintendent that includes at least a statement of the proprietary school's cash receipts, disbursements, assets, liabilities, and capital, as those items relate to the requirements of this act, and statistical reports required under subsection (6). The licensee is responsible for the costs of the required financial report.

(6) An applicant for renewal of a license shall submit statistical reports as specified by the state board that include at least enrollment data. For each instructional program consisting of more than 80 hours of instruction, the statistical reports shall also include the completion rate for the instructional program and job placement data for those completing the instructional program.

(7) If an application for licensure or renewal does not include all of the fees and information required by this act and the tuition reimbursement fund assessment required under the proprietary school educational assurance act, the state board shall not consider the application for licensure or renewal.

(8) The department shall include on a license issued under this section a listing of all instructional programs the proprietary school is authorized to offer under section 24.

(9) A proprietary school shall post its license in a location at the school that is readily visible to the public.

Sec. 12. (1) A foreign proprietary institution shall not solicit students in this state or employ or contract with a person to solicit students in this state unless the foreign proprietary institution has obtained a certificate of compliance under this section. An applicant for a certificate of compliance shall submit a written application to the department in the form and manner prescribed by the state board. The application shall include all information required by the state board.

(2) A certificate of compliance issued to a foreign proprietary institution shall specify the particular curriculum, institutional management, and address covered by the certificate of compliance. The address specified shall be for a definite location. If the foreign proprietary institution changes any of those specifics, the certificate of compliance is invalid.

(3) A certificate of compliance remains in effect as long as the foreign proprietary institution pays the applicable annual fees set forth in section 16 and is determined by the department to be continuing to comply with this act. The department may revoke a certificate of compliance if, after written notice and an opportunity for a hearing, the state board finds that the foreign proprietary institution has not complied with this act.

Sec. 13. (1) In addition to other information required under this act in an application for a license, renewal, or certificate of compliance, an applicant shall disclose all of the following information:

(a) Whether the applicant, a person holding an ownership or control interest in the proprietary school or foreign proprietary institution that is the subject of the application, or an employee of the proprietary school or foreign proprietary institution who is responsible in a supervisory capacity for the administration of student funds or government funds has been convicted of a criminal violation of this act or of another crime in this state or another jurisdiction involving the operation of an educational or training program or the unlawful acquisition, use, payment, or expenditure of the funds of an educational or training program.

(b) Whether the applicant, a person holding an ownership or control interest in the proprietary school or foreign proprietary institution that is the subject of the application, or an employee of the proprietary school or foreign proprietary institution who is responsible in a supervisory capacity for the administration of student or government funds has been finally adjudicated in an administrative or civil proceeding to have violated this act, a rule promulgated under this act, an order of the state board, department, or superintendent related to this act, or a rule promulgated under this act or to have committed a similar violation of law in another jurisdiction relating to the licensure or operation of an educational or training program.

(c) Whether any proprietary school, foreign proprietary institution, or other educational or training program operated by the applicant in this or another state has closed or ceased operation, and whether, at the time of the 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.

(2) The state board shall not deny an application for a license, renewal, or certificate of compliance because of a disclosure made pursuant to subsection (1) unless the state board makes a written determination that there is a direct relationship between 1 or more of the disclosures and the license, renewal, or certificate sought or that issuing the license, renewal, or certificate would create an unreasonable risk to property or to the safety, education, or welfare of 1 or more specific individuals or the general public.

(3) The state board may deny, suspend, revoke, or decline to renew a license or certificate of compliance if it determines that the significance of a disclosure under subsection (1) warrants the action or if it determines that an applicant failed to make a disclosure required under subsection (1).

(4) As used in this section, "ownership or control interest" means, for a proprietary school or foreign proprietary institution organized as or owned by a corporation, a position as an officer or director of the corporation; for a proprietary school or foreign proprietary institution that is organized as or owned by a partnership, a position as a partner; or any other direct or indirect interest totalling at least 10% of the total assets or equity of a proprietary school or foreign proprietary institution.

Sec. 14. (1) A license or certificate of compliance issued under this act is not transferable or assignable unless the transfer or assignment is approved by the state board under this section. A transfer or assignment that changes ownership control of a proprietary school or foreign proprietary institution or that totals 50% or more of a proprietary school's or foreign proprietary institution's total assets or equity is considered a transfer or assignment of a license or certificate of compliance.

(2) A person seeking a transfer or assignment of a license or certificate of compliance shall apply to the state board for approval. The application shall be in the form and manner prescribed by the state board. In determining whether to approve or deny a transfer or assignment of a license or certificate of compliance to a particular person, the state board shall evaluate the transferee or assignee using the same factors used under this act to determine whether to approve or deny a license, renewal, or certificate. Not later than 30 days after the application is submitted, the state board shall notify an applicant for transfer or assignment of a license or certificate in writing of its approval or denial of the application, together with the reasons for a denial. An approval or denial is retroactive to the date the application was submitted.

(3) A licensee or certificate holder shall report a transfer or assignment of any interest totalling at least 10% but less than 50% of the proprietary school's or foreign proprietary institution's total assets or equity to the superintendent within 90 days after the transfer or assignment.

Sec. 15. (1) A proprietary school or foreign proprietary institution shall apply for and obtain a solicitor's permit from the department for each solicitor employed by or under contract to the proprietary school or foreign proprietary institution and pay the solicitor's permit fee required under section 16.

(2) A person shall not act as a solicitor for a proprietary school or a foreign proprietary institution unless the person is employed by or under contract to the proprietary school or foreign proprietary institution and the proprietary school or foreign proprietary institution has obtained a solicitor's permit for the person under subsection (1).

(3) The department shall issue a solicitor's permit or a renewal to a proprietary school or foreign proprietary institution for a solicitor if the proprietary school or foreign proprietary institution demonstrates to the satisfaction of the department that the solicitor has good moral character and will use ethical and fair practices in the presentation of services to a prospective student.

(4) A permit issued under this section is valid for a period of 1 year after the date of issuance and shall state the proprietary school or foreign proprietary institution for which the solicitor is authorized to solicit students.

(5) Not later than 30 days after a proprietary school or foreign proprietary institution applying for a solicitor's permit under this section submits a complete application, the superintendent shall issue a temporary authorization to the proprietary school or foreign proprietary institution that is valid until the superintendent grants or denies the permit.

(6) A solicitor shall not represent more than 1 proprietary school or foreign proprietary institution under different ownership unless each of the proprietary schools or foreign proprietary institutions has obtained a solicitor's permit for the solicitor.

(7) A solicitor shall not guarantee a job after graduation to a prospective student.

(8) For the purposes of this act, a solicitor is an agent of each proprietary school or foreign proprietary institution he or she represents. If a solicitor violates this act or solicits or enrolls a student through fraud or misrepresentation while representing a proprietary school or foreign proprietary institution, the proprietary school or foreign proprietary institution shall be considered to have committed the violation, and, in addition to other remedies available under this act, the superintendent may revoke the proprietary school's or foreign proprietary institution's solicitor's permit for that solicitor upon 10 days' notice and after an opportunity for a hearing.

Sec. 16. (1) Subject to subsections (2) and (3), the department shall collect the following fees under this act:

(a) An applicant for initial licensure of a proprietary school or for an initial certificate of compliance for a foreign proprietary institution shall pay an application fee of \$500.00.

(b) A proprietary school approved by the state board to receive an initial license shall pay a fee of \$1,000.00 before beginning operation of the proprietary school or soliciting students.

(c) A foreign proprietary institution approved by the state board to receive an initial certificate of compliance or a renewal shall pay a fee of \$1,000.00 before soliciting students in the state.

(d) An applicant for renewal of a proprietary school license for a proprietary school that operates 1 or more instructional programs consisting of 80 or fewer hours of instruction and does not operate any instructional programs consisting of more than 80 hours of instruction shall pay a license renewal fee of \$600.00.

(e) An applicant for renewal of a proprietary school license for a proprietary school that operates 1 or more instructional programs consisting of more than 80 hours of instruction shall pay a license renewal fee of \$900.00.

(f) Regardless of the number of hours in the instructional programs, an applicant for renewal of a proprietary school license for a proprietary school that only has instructional programs of 25 or fewer students shall pay a license renewal fee of \$250.00.

(g) An applicant for approval of a change in the number of hours of instruction in an instructional program or for approval of an additional instructional program for a proprietary school shall pay a fee of \$200.00.

(h) An applicant for approval of a change in the location of a proprietary school shall pay a fee of \$200.00.

(i) A proprietary school or foreign proprietary institution shall pay a fee of \$400.00 for each solicitor's permit issued to the school under section 15.

(j) If a license is transferred or assigned under section 14, the transferee or assignee shall pay a fee of \$500.00.

(2) The department may begin to collect the fees specified in this section at any time beginning on the effective date of this act. If a proprietary school or foreign proprietary institution has already paid an amount under prior law that covers all or part of the same period as a fee under this section, the department shall credit that amount against the fee due from the proprietary school or foreign proprietary institution under this section.

(3) At the beginning of each state fiscal year, the state board shall adjust the amount of the fees charged under this section as follows:

(a) If the state board determines that the sum of the balance remaining in the fee revenue fund established under subsection (4) at the end of the immediately preceding state fiscal year plus the revenue that would be expected if the fees were not adjusted from those in effect in the immediately preceding state fiscal year would exceed the amount appropriated by the legislature to administer this act in the state fiscal year in which the calculation is made, the state board shall decrease the amount of each type of fee proportionately so that the total amount of fee revenue under this section will equal not more than 115% of the amount appropriated by the legislature for the administration of this act for the state fiscal year in which the calculation is made.

(b) If there is no adjustment made under subdivision (a), the state board shall adjust the amount of the fees by the same percentage as the percentage increase or decrease in the Detroit consumer price index for all items, as reported by the United States bureau of labor statistics and certified by the state treasurer. The adjustment shall be made by multiplying the percentage increase or decrease in that Detroit consumer price index for all items for the immediately preceding state fiscal year times the fee in effect in the immediately preceding state fiscal year, adding that product to the fee in effect in the immediately preceding state fiscal year, and rounding the sum to the nearest whole dollar.

(4) There is created the fee revenue fund as a separate fund in the state treasury, to be administered by the department. All revenue received from fees under this section or from other sources under this act that is not credited to the tuition reimbursement fund shall be credited to the fee revenue fund and used for administration of this act. Money remaining in the fee revenue fund at the end of a fiscal year shall not revert to the general fund but shall be carried over in the fund to the next and succeeding state fiscal years.

(5) This section is repealed effective September 1, 1996.

PART 3

OPERATION OF PROPRIETARY SCHOOLS

Sec. 21. (1) A proprietary school that operates an instructional program consisting of more than 80 hours of instruction shall not admit as a student in the instructional program an individual who does not possess a high school diploma, general educational development certificate (G.E.D.), or a generally recognized equivalent from a foreign country unless the student demonstrates before admission to the instructional program that he or she has the ability to benefit from the instruction, determined as described in subsection (2).

(2) A proprietary school described in subsection (1) shall determine a student's ability to benefit from his or her chosen instructional program by administering an examination approved by the state board as being an effective measurement of a prospective student's ability to benefit from the particular instructional program. An examination approved for use shall be appropriate for the particular instructional program and, so far as practicable, shall be an examination approved by the United States department of education. The proprietary school shall maintain each student's examination results and original examination answer sheet in the student's permanent record.

(3) A proprietary school described in subsection (1) shall administer an examination under this section in accordance with testing procedures that are established by the testing company that created the examination and are approved by the superintendent.

(4) A proprietary school described in subsection (1) shall establish and enforce a specific score necessary to pass an examination described in this section and shall report that score to the state board as part of the examination approval process. In addition, at the request of the department the proprietary school shall supply to the department a detailed description of the criteria and rationale used to determine the passing score. If a prospective student fails an

examination under this section, the proprietary school shall adhere to procedures and conditions for retesting that are recommended by the testing company and approved by the superintendent.

Sec. 22. A proprietary school that operates an instructional program consisting of more than 80 hours of instruction shall advise students in the instructional program and prospective students on an individual basis on matters including, but not limited to, the student's ability to progress in the instructional program; the availability of free or low-cost programs to earn a general educational development certificate (G.E.D.) or a high school diploma, or for remedial instruction; and the potential of the instructional program to prepare the student for available employment opportunities within the geographic region in which the proprietary school is located. The proprietary school shall provide advising on a regular and continuing basis for each student in the instructional program.

Sec. 23. (1) A proprietary school that operates an instructional program consisting of more than 80 hours of instruction shall provide to each student admitted to the instructional program before enrollment at least all of the following information in writing in plain language:

- (a) Information concerning the proprietary school, including, but not limited to, all of the following:
 - (i) A description of the courses offered.
 - (ii) Program objectives and the length of the instructional program.
 - (iii) A schedule of tuition payments, fees, and all other charges and expenses necessary for completion of the instructional program.
 - (iv) The tuition refund and contract cancellation policies and procedures of the proprietary school. The information shall include the tuition refund schedule included in the proprietary school's tuition refund policy required under section 41.
 - (v) A description of the faculty and other instructional personnel and their qualifications.
 - (vi) The names of associations, agencies, or governmental bodies that accredit, approve, or license the proprietary school.
 - (vii) A description of any special facilities and services available to handicapped students.
 - (viii) Any other items required by rules promulgated under this act.
 - (b) The completion rate for students in the instructional program for the most recent calendar year.
 - (c) The job placement rate for students who completed the instructional program in the most recent calendar year, showing the percentage of students who obtained employment in an occupation for which the instructional program is offered.
 - (d) The pass rate of graduates of the instructional program for the most recent calendar year on any licensure or certification examination required by the state for employment in each particular occupational field for which the proprietary school offers training, if this information is available to the proprietary school.
 - (e) Information concerning student financial assistance for which the student may be eligible, including at least a description of the procedures and forms, student eligibility requirements, and the rights and responsibilities of students receiving financial aid.
 - (f) A description of the proprietary school's internal complaint procedures.
 - (g) A description of the procedures for filing a complaint with the superintendent under section 55.
- (2) A proprietary school shall submit the written information required under subsection (1) to the superintendent for approval as part of the annual license renewal process.

Sec. 24. (1) A proprietary school shall not offer an instructional program unless the curriculum of the instructional program is approved by the department and the instructional program is authorized on the proprietary school's license.

(2) Before operating an instructional program or course or changing the number of hours of instruction in an approved instructional program, a proprietary school shall apply to the department for approval of the curriculum for the instructional program or of the change in the number of hours of instruction in the instructional program in the form and manner prescribed by the department, supplying the information required by the department. If the curriculum of the instructional program is approved under this section, the department shall authorize the proprietary school to offer the instructional program and shall indicate the authorization on the proprietary school's license.

(3) Initial approval of a curriculum under this section is valid for 3 years. After that time, the superintendent may require reapproval of a curriculum if he or she has cause to believe that the curriculum is not meeting the needs of students.

(4) For a curriculum to be eligible for approval, the proprietary school shall demonstrate to the satisfaction of the department that the curriculum meets at least all of the following requirements:

(a) The admission standards will effectively require successful applicants to demonstrate that they possess the skills, competencies, and prerequisite knowledge needed to progress in the curriculum.

(b) The content will enable the student to develop the skills and competencies required for employment in the occupational area for which the instructional program was developed and will be offered.

(c) The proprietary school will use appropriate facilities and instructional methods.

(d) The instructional equipment to be used in the instructional program is comparable to the equipment being used at the time of application for curriculum approval by business or industry in the occupational area for which the instructional program was developed and will be offered.

(e) If students are required as part of the curriculum to engage in industrial or commercial activity, the required industrial or commercial activity is reasonably necessary to gain practical experience needed for the occupational program for which the instructional program was developed and will be offered.

(5) If the evaluation of a particular curriculum, portion of a curriculum, or facility used in an instructional program requires the services of an expert not employed by the department, the department may contract with such an expert.

(6) Upon request by a proprietary school, the department may contract with a consultant to expedite an approval, and the proprietary school shall reimburse the department for the reasonable cost of the consultant's services.

Sec. 25. (1) A proprietary school shall not use an enrollment agreement or a catalog unless the enrollment agreement or catalog is approved by the state board under section 61.

(2) A proprietary school shall use a student enrollment agreement form that is written in plain language and shall provide a copy to the student. An enrollment agreement entered into by a proprietary school is subject to the tuition refund provision of part 4 and shall include at least all of the following:

(a) The tuition refund schedule included in the proprietary school's tuition refund policy required under section 41.

(b) A notification that the student may be entitled to a refund if the school closes or ceases instruction before the student completes his or her course or instructional program.

(c) A notification that the student may contact the department if any questions, complaints, or problems arise that cannot be settled with the school.

(d) A schedule of tuition payments, fees, and all other charges and expenses necessary for completion of his or her course or instructional program.

(e) A notification of the student's right to cancel the contract with no penalty within 3 business days after signing it.

Sec. 26. (1) A proprietary school's housing, instructional, and other facilities shall conform to all applicable standards prescribed by the appropriate local and state authorities, including, but not limited to, fire, health, safety, building construction, and sanitary requirements.

(2) A proprietary school shall notify the department before changing the location of any of its facilities.

Sec. 27. After a particular course in a proprietary school begins, the proprietary school shall not do any of the following:

(a) Make any unscheduled cancellation or suspension of the course without giving each student an opportunity to receive a full refund for the course.

(b) Change the location of the proprietary school or change the day, time, or location of any scheduled class unless the students enrolled at the time of the change had been informed in writing of the possible change at the time of their initial enrollment for the class. If no prior notification was given, and the new location of the proprietary school or the new day, time, or location of the class is not equally convenient for a particular student as the original day, time, or location, the proprietary school shall make an adjustment of tuition charges for the affected student as agreed to in writing by the affected student.

(c) Alter the number of hours of instruction advertised for a course in the proprietary school's catalog or other printed material without obtaining the prior written consent of each student enrolled in the course and notifying the department.

Sec. 28. A proprietary school shall establish and maintain an internal complaint process for students to express to the proprietary school's administration any concerns about academic or administrative matters.

Sec. 29. A proprietary school shall not require students of the proprietary school to engage in industrial or commercial activity as part of a course or instructional program unless the activity is part of the curriculum of the instructional program as approved under section 24.

Sec. 30. A proprietary school shall employ and use only administrative, supervisory, and instructional staff who have appropriate education or experience in each substantive field that the individual is assigned to administer, supervise, or teach.

Sec. 31. (1) A proprietary school shall not use a name that includes the word "college" or "university". A proprietary school shall not use a name that implies that the proprietary school is affiliated with a government agency or that could imply that the proprietary school is affiliated with a public or private corporation, agency, or association with which it is not in fact affiliated. A proprietary school may advertise that it is licensed by the state board but shall not represent that it is approved, recommended, endorsed, or accredited by the state board or the department.

(2) A proprietary school or foreign proprietary institution shall ensure that all published advertising literature, illustrations, diagrams, and other advertising media regarding the proprietary school or foreign proprietary institution convey only true and accurate information supported by facts and statistics about the proprietary school or foreign proprietary institution, its management, instruction, and offerings, and the occupational opportunities it provides, and that the advertising includes the name that appears on the proprietary school's license or the foreign proprietary institution's certificate of compliance and the address and city where the proprietary school or foreign proprietary institution is located.

(3) A proprietary school or foreign proprietary institution or its agent shall not do any of the following:

(a) Make any misrepresentation concerning any of the following:

(i) Employment opportunities for graduates, including, but not limited to, suitable jobs, job availability, and probable earnings.

(ii) The proprietary school's or foreign proprietary institution's facilities, instructional programs, courses, management, operational policies, charges for tuition and fees, available training equipment, instructors' qualifications, or placement activities.

(iii) Transfer to degree-granting colleges and universities.

(iv) Eligibility for student financial assistance.

(b) Make any statement or representation in an advertisement or solicitation that a student will be guaranteed employment while enrolled in the proprietary school or foreign proprietary institution or after graduation.

(c) Include in an advertisement or solicitation a quote of a dollar amount as representing or indicating the earning potential of graduates.

(4) The department may at any time require a proprietary school or foreign proprietary institution to furnish proof of the truth and accuracy of any of the specific claims in its advertising. If the proprietary school or foreign proprietary institution does not furnish proof satisfactory to the department, the department may order the proprietary school or foreign proprietary institution to cease making the claim and to retract the claim using the same method of advertising as was used to make the claim. A proprietary school or foreign proprietary institution that does not comply with an order under this subsection or that continues advertising a claim described in this subsection after being ordered to cease is subject to disciplinary action under section 52.

Sec. 32. (1) Subject to subsection (2), a proprietary school shall maintain the records required in this act for a period of not less than 6 years at its principal place of business within this state. The records shall be maintained in the manner and form prescribed in this section and in rules promulgated by the state board and a proprietary school shall make the records available upon request to the department.

(2) In addition to the other requirements of this section, a proprietary school shall retain each student's academic record and transcript, as described in subsection (3), for at least 20 years. If the proprietary school closes or discontinues its operations, the proprietary school shall forward all of those student grade records and transcripts to the department.

(3) A proprietary school shall make and maintain for each student an academic record and transcript showing at least courses taken, grades earned, and certificates or degrees awarded. Upon request by the student, a proprietary school shall make available to the student his or her academic record and transcript.

(4) A proprietary school shall not close, cease instruction, or surrender its license unless it provides to the department at least 30 days before the date of that action written notice of its intention to take that action and a plan for safely securing the academic records and transcripts of the proprietary school and transferring those documents to the department. However, the department may waive the 30-day notice requirement for good cause.

(5) Upon ceasing instruction, a proprietary school promptly shall provide to the department pursuant to the plan submitted under subsection (4) the original or a copy of the academic record and transcript of each student that has attended the proprietary school.

(6) The department shall maintain academic records and transcripts received under subsection (4) and, upon written request by a student, shall make available to the student his or her academic record and transcript.

PART 4

TUITION REFUNDS

Sec. 41. (1) A student at a proprietary school may withdraw from an instructional program or course at any time. If a student withdraws from an instructional program or course, the proprietary school shall pay a refund to the student in the amount calculated under the refund policy specified in this section, or as otherwise approved by the department, not later than 45 days after the student's withdrawal.

(2) Subject to subsection (3), if all or a portion of the tuition was paid from federal student financial aid money, the refund shall be first used by the proprietary school to repay the unpaid balance of a student loan taken out by the student to the lender of the student loan or, if appropriate, the state or federal agency that guaranteed or reinsured the student loan. After that payment, any amount of the refund in excess of the unpaid balance of the student loan shall be first used by the proprietary school to repay any amount owed by the student to any other student financial aid programs from which the student received benefits, in proportion to the amount of the benefits received. If there is any amount remaining after those payments, the remaining amount shall be paid to the student.

(3) If all or a portion of the tuition was paid from federal student financial aid money, the department shall consider compliance with the federal regulations concerning refunds of that money to be compliance with subsection (2).

(4) Not later than 10 days after the day on which the refund is made, the proprietary school shall notify the student in writing of the date on which the refund was made, the amount of the refund, the method of calculating the refund, and the name and address of each entity to which a part of the refund was sent. The following statement shall be placed at the top of the notice in at least 10-point boldfaced type: "This Notice Is Important. Keep It For Your Records."

(5) The following refund policy applies to each proprietary school, except that a proprietary school that is accredited may follow a policy established by the particular accrediting agency and approved by the department:

(a) A student is entitled to a full refund if 1 or more of the following are met:

(i) The student cancels the enrollment agreement or enrollment application within 3 business days after signing it.

(ii) The student did not meet the proprietary school's minimum admission requirements.

(iii) The student's enrollment was procured as the result of a misrepresentation in the written materials used by the proprietary school or in oral representations made by or on behalf of the proprietary school.

(iv) The student had not visited the proprietary school prior to enrollment and the student withdrew within 3 days after attending a regularly-scheduled orientation or making a tour of the proprietary school facilities and inspection of equipment, whichever is earlier.

(b) A student withdrawing from an instructional program within 1 week after entering a proprietary school and starting the instructional program is entitled to a refund of 90% of the contract price of the instructional program, minus \$150.00. However, the proprietary school shall not retain a total of more than \$350.00.

(c) A student withdrawing from an instructional program after 1 week but within the first 25% of the duration of the instructional program is entitled to a refund of 75% of the contract price of the instructional program, minus \$150.00.

(d) A student withdrawing from an instructional program after completing more than 25% but less than 50% of the duration of the instructional program is entitled to a refund of 50% of the contract price of the instructional program, minus \$150.00.

(e) A student withdrawing from an instructional program after completing at least 50% but less than 75% of the duration of the instructional program is entitled to a refund of 25% of the contract price of the instructional program, minus \$150.00.

(f) A student withdrawing from an instructional program after completing 75% or more of the duration of the instructional program is not entitled to a refund.

(6) If the proprietary school specifies in the enrollment agreement for an instructional program a separate charge for equipment that the student actually obtains and the student fails to return that equipment in good condition, allowing for reasonable wear and tear, within 10 days after the date of the student's withdrawal, the proprietary school may offset against the refund calculated under subsection (5) the amount specified in the enrollment agreement for equipment. The student is liable for the amount, if any, by which the amount for equipment exceeds the refund amount calculated under subsection (5).

(7) If the proprietary school specifies in the enrollment agreement for an instructional program a separate charge for equipment that the student has not obtained at the time of the student's withdrawal, the student is entitled to the refund described in subsection (5) plus any amount the student has paid of the charge specified in the enrollment agreement for the equipment.

(8) For the purpose of determining a refund under this section, a student shall be considered to have withdrawn from an instructional program on the earliest of the following dates:

- (a) The date the student notifies the proprietary school in writing of the student's withdrawal.
- (b) The date the proprietary school terminates the student's enrollment as provided in the enrollment agreement.
- (c) If the student has failed to attend classes for a period of 3 consecutive weeks and the student is not on a formal leave of absence, the last date of recorded attendance.
- (d) If the student has failed to submit 3 consecutive completed lessons or has failed to submit a completed lesson within 60 days after its due date as required in a self-paced, home study, or correspondence course, the date on which the student submitted the last completed lesson.
- (9) A proprietary school has the burden of proof to establish the number of classes or hours remaining in a course or instructional program without a fixed class schedule after a student's withdrawal. The proprietary school shall maintain records for 5 years of all the evidence on which the proprietary school relies under this section.

Sec. 42. (1) If the superintendent determines that a proprietary school has demonstrated a pattern or practice of failing to make tuition refunds in a timely manner under section 41, the superintendent shall require the proprietary school to establish a trust account in a manner prescribed by the superintendent. The assets and funds in the trust account shall be maintained for the sole and exclusive benefit of the students enrolled in the proprietary school.

(2) In making the determination under subsection (1), the superintendent shall consider at least all of the following factors:

- (a) The number of refunds not paid by the school in a timely manner.
- (b) Whether the pattern of misconduct substantially affects the financial interests of students or the state.

PART 5

COMPLIANCE AND VIOLATIONS

Sec. 51. (1) The department shall conduct periodic scheduled reviews of proprietary schools to monitor compliance with this act, rules promulgated under this act, and any final order of the state board under this act.

(2) The department may conduct an unscheduled inspection of a proprietary school at any time if the department has reason to believe that the proprietary school has violated or is violating this act or rules promulgated under this act or any final order of the state board under this act. The department shall inform the appropriate personnel of the proprietary school of the suspected violation in writing at the time of the unscheduled inspection.

(3) Upon request by the department, a licensee shall provide to the department any records the department considers necessary to review compliance with this act, rules promulgated under this act, or a final order of the state board issued under this act.

Sec. 52. (1) After notice of intent to take disciplinary action and an opportunity for a hearing under section 55, the superintendent may take disciplinary action against a proprietary school, foreign proprietary institution, or solicitor under this section for violation of this act.

(2) A proprietary school, foreign proprietary institution, or solicitor is subject to disciplinary action by the superintendent for any of the following:

(a) Fraudulent statements or misrepresentations to the department, a student, or the public in connection with any activity of the proprietary school or foreign proprietary institution.

(b) A violation of this act or rules promulgated under this act.

(c) A violation of the proprietary school educational assurance act or rules promulgated under that act.

(3) Subject to subsection (4), the superintendent may impose any 1 or more of the following penalties on a proprietary school, foreign proprietary institution, or solicitor that is found to be subject to disciplinary action under subsection (2):

(a) A cease and desist order.

(b) An order to remedy a violation.

(c) Suspension or revocation of a license, certificate of compliance, or solicitor's permit.

(d) Probation.

(e) An order to make restitution or refund, or both.

(f) An administrative fine of not more than \$2,500.00 for a first violation and not more than \$5,000.00 for a second or further violation occurring within the same 5-year period as the first violation.

(4) In addition to the other penalties under this act, the superintendent may impose an administrative fine of not more than \$25,000.00 for the first offense or not more than \$50,000.00 for the second offense against a person found to have committed 1 or more of the following violations:

(a) Intentionally operating a proprietary school without a license.

(b) Operating a proprietary school knowing that the proprietary school's license has been suspended or revoked.

(5) The superintendent may suspend a license, certificate of compliance, or solicitor's permit if a proprietary school or foreign proprietary institution fails to pay a fee, fine, or penalty under this act, or a tuition reimbursement fund assessment required under the proprietary school educational assurance act, unless the failure is determined by the superintendent to be for good cause.

(6) Upon receipt, the superintendent shall deposit all money received from imposition of a penalty under this section with the state treasurer for credit to the revenue fund.

Sec. 53. (1) A person who knowingly violates this act or a rule promulgated or an order issued under this act is guilty of a misdemeanor, punishable by imprisonment for not more than 30 days or a fine of not more than \$1,000.00, or both. If the conviction is for a second or further offense committed within 5 years after the first conviction, the person is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than \$2,000.00, or both.

(2) A person who knowingly does 1 of the following is guilty of a misdemeanor punishable by imprisonment for not more than 1 year or a fine of not more than \$5,000.00, or both:

(a) Falsifies or destroys, with intent to defraud, business records relating to the operation of a proprietary school or foreign proprietary institution.

(b) Operates a proprietary school without a valid license or under a suspended or revoked license.

(3) A criminal penalty under this section is in addition to any other penalty or disciplinary action under this act or other law.

Sec. 54. An individual injured by a violation of this act may bring an action against a proprietary school, the operator of a proprietary school, a foreign proprietary institution, or a solicitor in the circuit court for a county in which the proprietary school, foreign proprietary institution, or solicitor does business for actual damages or \$100.00, whichever is greater. The court may award costs and reasonable attorney's fees to a prevailing plaintiff.

Sec. 55. (1) A person alleging a violation of this act or of the proprietary school educational assurance act may file a written complaint with the superintendent not later than 1 year after the date of the alleged violation. If, after an investigation, the superintendent finds that there is reasonable cause to believe that such a violation has occurred, the superintendent may initiate a hearing by serving a notice of intent to take disciplinary action and hearing on each person subject to disciplinary action for the alleged violation. The notice shall provide reasonable notice of the hearing, including at least the time, place, and nature of the hearing, the nature of the allegations, and the penalties sought.

(2) In the hearing, a person subject to discipline has the right to respond to allegations, to cross-examine witnesses, to present evidence and argument on the issues involved in the hearing and to have counsel or another representative present.

(3) A hearing under this section may be resolved by stipulation, agreed settlement, consent order, default, or other informal disposition.

(4) A hearing shall be conducted by a hearing officer, who may do all of the following:

(a) Administer an oath or affirmation.

(b) Regulate the course of the hearing, set the time and place for continued hearings, and set the time for filing of briefs and other documents.

(c) Direct the person subject to discipline to appear and confer in a pre-hearing conference to consider the simplification of issues by consent.

(d) Grant a request for adjournment of a hearing upon a showing of good cause.

(5) The strict legal rules of evidence do not apply in a hearing under this section.

(6) After conclusion of a hearing, if there is no informal disposition, the hearing officer shall make written findings of fact and conclusions of law, shall make a recommended decision and recommend penalties to the superintendent in writing, and shall mail a copy of the findings and recommendation to the person subject to discipline and the person's attorney or representative.

(7) The superintendent shall make the final determination of whether a violation has occurred and the penalty to be imposed based exclusively on the evidence and other material presented at the hearing. If the superintendent determines that a person has committed a violation, he or she shall issue a final order imposing discipline according to

section 52 and shall send by certified mail a copy of the order to the person subject to discipline and the person's attorney or representative. At the request of the person subject to discipline, the superintendent shall furnish the person a copy of the transcript of the hearing upon payment by the person of the reasonable cost of producing the transcript.

(8) An order of discipline imposed under this section shall be supported by substantial evidence on the record as a whole and may be appealed to the circuit court for a county in which the proprietary school, foreign proprietary institution, or solicitor does business.

Sec. 56. The attorney general, in his or her own capacity or at the request of the superintendent, may bring an appropriate action or proceeding in the circuit court to collect a fine or enforce another penalty imposed under this act or to enforce this act.

Sec. 57. (1) Upon a finding that a deficiency or violation of this act or the rules promulgated under this act seriously affects the health, safety, or welfare of individuals receiving services from a proprietary school, the superintendent may issue an emergency order limiting, suspending, or revoking the license of the proprietary school. The superintendent shall provide an opportunity for a hearing under section 55 within 10 working days after issuance of the order.

(2) An order under this section shall incorporate the superintendent's findings. The conduct of a hearing under this section does not suspend the superintendent's order.

Sec. 58. An enrollment agreement or contract entered into in this state by a proprietary school, a foreign proprietary institution, or a solicitor that does not hold the appropriate valid license, certificate of compliance, solicitor's permit, or other authorization under this act is void. A promissory note or other evidence of indebtedness taken in lieu of a cash payment by a proprietary school, foreign proprietary institution, or solicitor that does not hold the appropriate valid license, certificate of compliance, solicitor's permit, or other authorization under this act is void.

PART 6

ADMINISTRATION

Sec. 61. (1) The state board shall approve all of the following:

- (a) The form and content of proprietary school enrollment agreements and catalogs.
- (b) The form and content of records to be kept by a proprietary school.
- (c) The manner in which records described in subdivision (b) are maintained.

(2) Not later than 60 days after receipt by the state board or department, the state board or department, as appropriate, shall act on any item required to be submitted by a licensee to the state board or department for approval under this act. If the state board or department does not either disapprove the item in writing within that 60-day period or return the item to the licensee with specific written changes within that 60-day period, the item is considered to be approved.

(3) The department may promulgate rules pursuant to the administrative procedures act of 1969, Act No. 306 of the Public Acts of 1969, being sections 24.201 to 24.328 of the Michigan Compiled Laws, to implement this act, which rules may include, but are not limited to, all of the following matters relating to proprietary schools:

- (a) Standards and methods of instruction.
- (b) Equipment to be available for instruction.
- (c) Physical plant.
- (d) Maximum enrollments based upon methods of instruction, equipment, and physical plant.
- (e) Qualifications and experience of teaching or management personnel, or both.
- (f) Methods of collecting tuition.
- (g) Sufficiency and suitability of the economic resources available for the support of a proprietary school.
- (h) Counseling provided to students.

Sec. 62. (1) There is created in the department the proprietary schools committee, which shall consist of the following 7 members:

(a) Six individuals, each of whom is an owner, operator, employee, officer, or director of or a consultant to a licensed proprietary school, the members to represent a variety of types and sizes of proprietary schools. Any organization that has as its members 20% or more of the licensed proprietary schools shall have at least 1 member of the committee who is associated with a member of that organization. All members of the committee shall be appointed by the department.

(b) The superintendent or his or her designee.

- (2) The committee shall meet not less than 2 times per year.
- (3) Members of the committee shall serve for a term of 4 years except that of those initially appointed, 3 members shall serve for a term of 4 years, and 2 members shall serve for a term of 3 years. An appointment to fill the unexpired term of a member shall be for the unexpired term and shall be made in the same manner as the original appointment.
- (4) The committee shall do all of the following:
- (a) Act as liaison between proprietary schools and the department.
 - (b) Review all department policies and procedures concerning proprietary schools and make recommendations to the department concerning those policies and procedures.

Sec. 64. This act shall take effect September 1, 1993.

Sec. 65. This act shall not take effect unless all of the following bills of the 87th Legislature are enacted into law:

- (a) Senate Bill No. 163.
- (b) Senate Bill No. 661.

This act is ordered to take immediate effect.

Co-Clerk of the House of Representatives.

Secretary of the Senate.

Approved -----

Governor.