

# Legislative Analysis

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## **PROPRIETARY SCHOOL: RECLASSIFY & ALLOW TO CHARGE FOR SERVICES PERFORMED BY STUDENTS**

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**House Bill 5995 (Substitute H-3)**  
**Sponsor: Rep. Paul Condino**  
**Committee: Regulatory Reform**

### **First Analysis (9-9-08)**

**BRIEF SUMMARY:** The bill would reclassify a proprietary school as a "career school," allow a career school to charge a nominal fee for goods produced or services provided by students under certain conditions, and revise penalties for violations of the act or rules.

**FISCAL IMPACT:** The bill could increase the work load (and related costs) of DLEG but an increase in the activities of licensees would yield a concomitant increase in license fees to offset the department's costs. For additional information, see [Fiscal Information](#).

### **THE APPARENT PROBLEM:**

Currently law prohibits the Department of Labor and Economic Growth from licensing or granting a temporary permit to operate a propriety school as part of, or in conjunction with, another business or commercial enterprise that utilizes or sells goods or services produced by students. In general, propriety schools include private business, trade, or home study schools that teach a trade, occupation, or vocation. Apparently, despite this prohibition, some proprietary schools have been charging fees for products produced by students or services performed by students, for example, massages performed by massage therapy students. Reportedly, at least one massage school was recently warned by DLEG that continuing the practice could result in loss of its license.

Some proprietary schools have responded that their students need to provide services to the public in order to develop appropriate skills and that faculty-supervised experience provides essential training that is integral to their programs. Furthermore, the revenue generated by nominal fees charged for student-provided goods or services enables many programs to curb tuition increases. Indeed, some schools fear that without these fees, they would have to close. Some feel that it is time to revise the law and allow, under certain conditions, proprietary schools to legally charge for services provided to the public by their students.

### **THE CONTENT OF THE BILL:**

The bill would amend Public Act 148 of 1943, which regulates proprietary schools, to rename it the "Career Schools Act." The bill would also prohibit a person from operating a career school within the state without a license or temporary permit from DLEG. The department would have to prescribe the form of license and temporary permit. A limited liability company (LLC) would be added to the current definition of "person" contained

in the act; therefore, the act would also apply to a career school owned by an LLC. A career school licensed under the act would also have to publish a grievance procedure for students that included a right to file a complaint with the department for any violation of the act or departmental rules.

The definition of "career school" would be essentially the same as for "proprietary school," except that it would refer to a school that used a certain plan or method to teach a trade or occupational skills rather than a school teaching a trade, occupation, or vocation.

Further, the bill would make numerous changes of a technical nature (e.g., replacing references to the Board of Education with references to the Department of Labor and Economic Growth, to reflect the shift of regulatory duties from the former to the latter several years ago by Executive Order).

Goods and services by students. Currently, the act prohibits the department from granting a temporary permit or a license to operate a proprietary school as part of, or in conjunction with, another business or commercial enterprise that utilizes or sells goods or services provided by students.

The bill would create an exception that would allow a licensee or holder of a temporary permit for a career school to sell goods produced or services provided by an enrolled student only if all of the following criteria were met:

- The program included classroom study and practical training.
- Any practical training included faculty supervision.
- Engaging in producing the goods or providing the services as part of the student's training is an integral part of the program.
- The school does not charge a person more than a nominal fee for any goods or services provided to that person. "Nominal fee" would mean a fee for goods or services that did not exceed a pro rata share of the amount by which a career school's expenses for an educational program for operational and instructional supplies, materials, labor, and facilities exceed the amount of tuition and fees paid to the school by students in that program.
- Money from the sale of the goods or services is used solely to support the school and didn't involve pecuniary gain or profit or any other advantage or compensation for its officers, directors, shareholders, members, or faculty.
- The school did not charge a student a monetary penalty or increase his or her program hours beyond the number approved by the department if he or she did not attend any practical training.

- A regular employee is not displaced by a student engaged in producing goods or providing services as part of his or her practical training.
- A student enrolled in the program would not be responsible for recruiting purchasers of the goods or services.
- A written notice disclosing that the goods and services are provided by students is provided to any student applying for participation in the program and any prospective purchasers.
- The school obtained the written approval of the department.

Departmental approval. A licensee or holder of a temporary permit could not operate an educational program that sold goods produced or services provided by a student without the written approval of the department. With its request for approval, a licensee or temporary permit holder would have to disclose the fees, expenses, and gross income from the goods or services produced or provided by the students in the program and the school's total gross annual income.

The financial information would be confidential and not subject to the disclosure requirements of the Freedom of Information Act, with the following exceptions:

- With the written consent of the licensee or holder of the temporary permit.
- As a result of a court proceeding.
- The disclosure was made to an agent or employee of DLEG.
- The disclosure was made to an agent or employee of a state or the federal government legally authorized to see or review the information.

Penalties. Currently, a person who violates the act is guilty of a misdemeanor punishable by a maximum fine of \$1,000 or imprisonment for not more than 90 days, or both.

Instead, the bill would specify that in lieu of revocation, the department could levy an administrative fine of up to \$1,000 against a school for each separate violation of the act or rules, not to exceed \$10,000. A person who violated the act and had their license revoked or who operated without a license would be guilty of a misdemeanor punishable by a maximum term of imprisonment of one year and/or a maximum fine of \$50,000.

MCL 395.101 et al.

***FISCAL INFORMATION:***

In permitting proprietary school students to provide services to the general public as part of their course of study, the bill eases the operating requirements placed on proprietary schools, thereby potentially resulting in an increase in the number of proprietary schools operating or in an increase in the number of programs operated by any one school. This would increase the work load (and related costs) of the DLEG Office of Post Secondary Services as it relates to the licensing of new proprietary schools, reviewing proposed

additions and changes to the programs offered by proprietary schools that are currently licensed, reviewing new programs, and generally ensuring compliance with other statutory and regulatory requirements placed on proprietary schools. The functions of the office are supported by a variety of fees imposed on proprietary schools, including a license application fee (\$1,275 in-state, \$505 out-of-state), license renewal fees based on the number of students (\$385-\$1910), a change of name fee (\$250), a change of location (\$385), and an addition of program fee (\$635). An increase in the activities of licensees would yield a concomitant increase in license fees to offset the department's costs.

***ARGUMENTS:***

***For:***

Having students provide goods or services to the public under faculty supervision is a component of many trade and vocational programs and provides necessary experience for students to master the skills needed for their new careers. To generate needed operating capital or to keep tuition costs down, many of these schools have been charging the public reduced fees for these goods and services. However, this practice is currently prohibited under the 65-year-old act that regulates such educational programs. Unless this law is updated, some schools may go out of business while others will have to raise tuition.

The bill would create an exception to the prohibition if certain conditions are met, such as keeping the fee to the public nominal and giving full disclosure to consumers and students alike that services are provided by the students of the school. In addition, the school's financial records relating to those services would have to be disclosed to the state regulatory agency and the fee revenue could only be used to support the school. The addition of an administrative fine and increased criminal penalties for violations should deter any school from improperly using the services of students to reap financial gain, or from violating any other provisions of the act.

***Against:***

Allowing career schools to collect fees for services provided by students would create an unfair advantage over new and established businesses offering the same services since the fees charged by the schools would be lower than that charged by the businesses.

***Response:***

It is reasonable to assume that services provided by experienced persons that have already completed educational programs and received state licensing or registration or national accreditation would be of a higher level than the same services performed by a student and thus could command higher prices. Few would expect a student to perform at the same level as someone who has been practicing that trade for several years. However, under the guidance and supervision of a faculty member, a student can still safely and adequately perform certain services. And, since student-provided services usually cost less, people who could not otherwise afford those services are able to access them. The important point is that full disclosure is provided to the public, something that the bill would require.

***POSITIONS:***

The Paragon School of Pet Grooming supports the bill. (5-24-08)

The Traverse City Area and Petoskey Regional Chambers of Commerce support the bill. (5-24-08)

The Department of Labor and Economic Growth supports the concept of the bill. (5-24-08)

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