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Senate Bill 786 (as enacted)

PUBLIC ACT 212 of 2009

Sponsor: Senator Alan Sanborn

Senate Committee: Economic Development and Regulatory Reform

House Committee: Regulatory Reform

Date Completed: 5-18-10

CONTENT

The bill amended Public Act 148 of 1943, which provides for the regulation and licensure of proprietary schools, to do the following:

- **Transfer regulatory responsibility for proprietary schools from the State Board of Education to the Department of Energy, Labor, and Economic Growth (DELEG).**
- **Provide for a license issued to a proprietary school to be valid for three years, rather than one year, if the school is accredited.**
- **Allow proprietary schools to sell goods produced or services provided by students, if certain criteria are met.**
- **Require a proprietary school to have a written policy allowing students to file a complaint with DELEG.**
- **Allow DELEG to assess an administrative fine of up to \$1,000 for a violation of the Act or rules promulgated under it, but not more than \$5,000 for multiple violations arising from the same transaction.**
- **Increase the criminal penalty for a violation of the Act.**

The bill also named the Act the "Proprietary Schools Act".

The bill took effect on January 4, 2010.

("Proprietary school" means a school that uses a certain plan or method to teach a trade, occupation, or vocation for a consideration, reward, or promise of any kind. It includes a private business, trade, or home study school. It does not include a

degree-granting school or college; a school otherwise licensed by the State; or a school maintained or program conducted, without profit, by a person for the person's employees.)

Transfer of Regulatory Responsibility

DELEG Powers & Duties. The bill prohibits DELEG from issuing a license unless the applicant has operated under a temporary permit in a manner satisfactory to the Department and DELEG has approved the method and content of advertising, the standards and the methods of instruction, the personnel, and the operating and instructional practices of the school. The Act previously referred to the State Board of Education rather than DELEG in those provisions.

Under the bill, DELEG, rather than the Board, may grant and renew a temporary permit to operate a school. The Department, rather than the Board, must do all of the following:

- Provide for adequate inspection of schools.
- Promulgate rules and employ personnel necessary to administer the Act.
- Set and collect fees for licenses, temporary permits, and renewals issued under the Act.
- Exercise jurisdiction and control over proprietary schools and solicitors for them, consistent with the Act.

Schools' Responsibilities. A proprietary school must do both of the following with respect to DELEG, rather than to the Board:

- Submit required reports and make records available.
- Provide evidence of surety conditioned to provide indemnification to students in the event of the school's closing.

Licensure

The bill requires a proprietary school to secure from DELEG a license issued in the form prescribed by DELEG and in accordance with the Act. Previously, a person could not operate a proprietary school in Michigan without a temporary permit or license from the Board. The Department must prescribe the form of license and temporary permit.

Previously, a license issued under the Act was not valid for more than one year. If the applicant continued to comply with the Act and the rules promulgated under it, the license could be renewed. Under the bill, instead, a license issued to a proprietary school that is accredited by a national or regional accrediting agency recognized by the U.S. Secretary of Education is valid for three years. A license issued to any other proprietary school is not valid for more than one year. A proprietary school that is issued either a one-year or a three-year license must pay an annual license fee set by DELEG. The Department may renew the license of a person that continues to comply with the Act and its rules.

The bill allows DELEG to revoke a license at any time if, in its judgment, the licensee is not complying with the law or DELEG rulings. The Act previously referred to the Board, rather than DELEG, in this provision.

Sale of Goods or Services Provided by Students

Under the bill, a proprietary school may sell goods produced or services provided by a student enrolled in an educational program operated by the school, and DELEG may not refuse to grant a temporary permit or license to a proprietary school if all of the following are met:

- The program includes classroom study and practical training.
- A faculty member supervises any practical training included in the program.
- It is an integral part of the program that the student engage in producing the

goods or providing the services as part of his or her practical training.

- Any customer purchasing goods produced or services provided by a student in the program is notified in writing that the individual producing the goods or providing the services is a student of the school.
- Money from the sale of the goods or services is used solely to support the school.

Also, the school may not charge a student a monetary penalty or increase the student's program hours if he or she does not attend practical training, and may not require a student to recruit purchasers of the goods and services, unless that obligation is clearly disclosed to the student in writing before he or she enrolls in the program.

In addition, a school must clearly disclose to a student before he or she enrolls that the school intends to sell any goods or services the student produces as part of his or her practical training. The school must include the disclosure in a signed enrollment agreement between the school and the student.

Complaint Policy

The bill requires a proprietary school licensed under the Act to adopt and publish a written policy that allows students to file a complaint with DELEG for any violation of the Act or rules promulgated under it.

Administrative Fine & Criminal Penalty

In lieu of license revocation for noncompliance with any applicable law or DELEG rulings, the bill allows the Department to assess an administrative fine of not more than \$1,000 against a proprietary school for a violation of the Act or rules promulgated under it. The Department, however, may not assess administrative fines against a proprietary school that, in the aggregate, are more than \$5,000 for multiple violations that arise from the same transaction.

Under the bill, a proprietary school that violates the Act and has its license revoked, or that operates in Michigan without a license, is guilty of a misdemeanor punishable by a maximum fine of \$10,000, up to one year's imprisonment, or both.

Previously, a violation of the Act was a misdemeanor punishable by a maximum fine of \$1,000 and/or up to 90 days' imprisonment.

MCL 395.101-395.102b

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill does not change the administrative costs of the Department of Energy, Labor, and Economic Growth. Any revenue from the administrative fine included in the Act will be deposited into the General Fund.

In addition, a proprietary school that is determined to be in violation of the Act is guilty of a misdemeanor offense. The individual(s) held responsible for the violation will be subject to imprisonment for up to one year and/or a fine of not more than \$10,000. Local governments will incur the costs of incarceration in local facilities, which vary by county. Any additional penal fine revenue collected under this Act will benefit public libraries.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.