

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

As Engrossed: H3/18/03 H3/21/03

A Bill

Act 1781 of 2003
HOUSE BILL 2730

5 By: Representative Agee
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND PROVISIONS OF THE ARKANSAS CODE
10 PERTAINING TO PRIVATE CAREER SCHOOLS; AND FOR
11 OTHER PURPOSES.
12

Subtitle

14 AN ACT TO AMEND PROVISIONS OF THE
15 ARKANSAS CODE PERTAINING TO PRIVATE
16 CAREER SCHOOLS.
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 *SECTION 1. Arkansas Code § 6-51-602(2), regarding definitions used in*
22 *the law pertaining to private career schools, is amended to read as follows:*

23 *(2)(A) "School" means any person, firm, partnership, association,*
24 *corporation, or other form of business organization seeking to do business or*
25 *offering in the State of Arkansas such resident or correspondence training*
26 *that leads to or enhances occupational qualifications, whether or not the*
27 *institution is subject to the jurisdiction of the State Board of Higher*
28 *Education under § 6-61-301 State Board of Higher Education;*

29 *(B) "School" shall also mean any firm, partnership, association,*
30 *corporation, or other form of business organization which offers instruction*
31 *in flight or ground school to student fliers or mechanics;*

32 *(C) "School" shall also mean any firm, partnership, association,*
33 *corporation, or other form of business organization which offers training as*
34 *preparation for passing exams which may lead to employment;*

35 *(D) "School" shall also mean any firm, partnership, association,*
36 *corporation, or other form of business organization which offers driver*



1 education training excluding those courses taught motor vehicle violators
 2 pursuant to court order;

3
 4 SECTION 2. Arkansas Code § 6-51-602(8) through (10), regarding
 5 definitions used in the law pertaining to private career schools, are amended
 6 to read as follows:

7 (8) "~~Correspondence~~ Distance Education school" means any school in
 8 which all programs of study are conducted by ~~correspondence~~ distance
 9 education;

10 (9) "Combination school" means any school in which programs of study
 11 are conducted by both ~~correspondence~~ distance education and resident
 12 training;

13 (10) "Extension course site" means a location away from the school
 14 whereby a ~~specialized~~ course or courses are conducted one (1) or more times
 15 during the licensure period;

16
 17 SECTION 3. Arkansas Code § 6-51-603(12), regarding exemptions from the
 18 law pertaining to private career schools, is amended to read as follows:

19 (12)(A) Training offered on military bases where a majority of the
 20 students enrolled are active ~~or retired military personnel or their~~
 21 ~~dependents~~ duty personnel or their adult family members, Department of
 22 Defense civilian employees or their adult family members, members of the U.
 23 S. Armed Forces Reserve Components, and retirees.

24 (B) These organizations shall remain exempt from the requirement
 25 for licensure if required to move off of the military installation for a
 26 period of not more than ninety (90) days because of a change in security
 27 level, which would not allow civilian students on the installation.

28 (C) The board shall have the authority to review any situations
 29 that extend past the ninety-day period and determine if the exemption status
 30 should remain for the school.

31
 32 SECTION 4. Arkansas Code § 6-51-605(i) and (j) are amended to read as
 33 follows:

34 (i) A ~~minimum of four~~ (4) majority of favorable votes by the board
 35 members at an official meeting is required for adoption of a recommendation.

36 (j) Board members may be reimbursed for expenses in accordance with §

1 ~~25-16-901 et seq.~~ and stipends according to § 25-16-903.
2

3 SECTION 5. Arkansas Code § 6-51-605(m) is amended to read as follows:

4 (m)(1) The board shall annually require background investigations for
5 all partners or shareholders with ten percent (10%) or more ownership
6 interest in a school when the school seeks an original license.

7 (2) The board may establish a schedule for periodic background
8 checks for partners or shareholders with ten percent (10%) or more ownership
9 interest in a school when seeking renewal of a school license.

10 ~~(2)(A)(n)(1) The Department of Arkansas State Police shall be~~
11 ~~authorized to conduct background investigations for applicants that have~~
12 ~~executed the appropriate release, and the background shall consist of whether~~
13 ~~the applicant has been convicted in any jurisdiction of a felony, a Class A~~
14 ~~misdeemeanor, or a crime involving an act of violence. The partners or~~
15 shareholders shall apply to the Identification Bureau of the Department of
16 Arkansas State Police for a state and national criminal background check, to
17 be conducted by the Federal Bureau of Investigation.

18 ~~(B)(2) The department shall be authorized to disseminate~~
19 ~~said background information to the board. The check shall conform to the~~
20 applicable federal standards and shall include the taking of fingerprints.

21 (3) The applicant shall sign a release of information to
22 the board and shall be responsible to the Department of Arkansas State Police
23 for the payment of any fee associated with the criminal background check.

24 (4) Upon completion of the criminal background check, the
25 Identification Bureau of the Department of Arkansas State Police shall
26 forward all information obtained concerning the person in the commission of
27 any offense listed in § 6-51-606(h)(3) to the board.

28 (5)(A) The board may issue a nonrenewable temporary
29 license pending the results of the criminal background check.

30 (B) The license shall be valid for no more than six
31 (6) months.

32 (C) Upon receipt of information from the
33 Identification Bureau of the Department of Arkansas State Police that only
34 one (1) of the partners or shareholders of the school holding the license has
35 been convicted of any offense listed in § 6-51-606(h)(3) the board shall
36 revoke the license.

1
2 SECTION 6. Arkansas Code § 6-51-605 is amended by adding an additional
3 subsections to read as follows:

4 (o)(1) The provisions of § 6-51-606(h) may be waived by the board upon
5 the request of:

6 (A) An affected applicant for licensure; or

7 (B) The partners or shareholders of a school holding a
8 license subject to revocation.

9 (2) Circumstances for which a waiver may be granted shall
10 include, but not be limited to, the following:

11 (A) The age at which the crime was committed;

12 (B) The circumstances surrounding the crime;

13 (C) The length of time since the crime;

14 (D) Subsequent work history;

15 (E) Employment references;

16 (F) Character references; and

17 (G) Other evidence demonstrating that the applicant does
18 not pose a threat.

19 (p)(1) Any information received by the board from the Identification
20 Bureau pursuant to this section shall not be available for examination except
21 by:

22 (A) The affected applicant for licensure or his or her
23 authorized representative; or

24 (B) The person whose license is subject to revocation or
25 his or her authorized representative.

26 (2) No record, file, or document shall be removed from the
27 custody of the Department of Arkansas State Police.

28 (q) Any information made available to the affected applicant for
29 licensure or the person whose license is subject to revocation shall be
30 information pertaining to that person only.

31 (r) Rights of privilege and confidentiality established in this
32 section shall not extend to any document created for purposes other than the
33 background check required by this section.

34 (s) The board shall adopt the necessary rules and regulations to fully
35 implement the provisions of this section.”

36

1 SECTION 7. Arkansas Code § 6-51-606(h)(3) is amended to read as
2 follows:

3 (3) The applicant or licensee has pleaded guilty, entered a plea
4 of nolo contendere, or has been found guilty ~~of a crime constituting a felony~~
5 ~~by a judge or jury in any state or federal court; or~~ in a criminal
6 proceeding, regardless of whether or not the adjudication of guilt or
7 sentence is withheld, deferred, or suspended, by a court of this state,
8 another state, or the federal government of:

9 (A) Any felony, or

10 (B) Any act involving moral turpitude, gross immorality,
11 or which is related to the qualifications, functions, and duties of a
12 licensee.

13
14 SECTION 8. Arkansas Code § 6-51-606(i) through (l) are amended to read
15 as follows:

16 (i) The board shall have the power to revoke a license if in its
17 discretion it determines that:

18 (1) The licensee has failed to cure a deficiency leading to a
19 license probation within the time as may be reasonably prescribed by the
20 board; or

21 (2) The licensee while on probation has been found by the board
22 to have incurred an additional infraction of this subchapter; or

23 (3) The licensee has closed a school without first having
24 completed the training of all students currently enrolled or having made
25 tuition refunds to students or their lenders.

26 (j) The board may impose sanctions pursuant to § 25-15-217.

27 ~~(j)(k)(1)~~ Unless directed to do so by court order, the board shall
28 not, for a period of five (5) years following revocation, reinstate the
29 license of a school or allow an owner of any such school to seek licensure of
30 another school.

31 (2) Upon expiration of licensure status, the school must
32 apply for an original license in accordance with the provisions of this
33 subchapter.

34 ~~(k)(1)(1)~~ Upon closure of a school located in Arkansas and licensed
35 under any provision of this subchapter, whether for license revocation or any
36 other cause, all student ~~academic and~~ financial aid records for the previous

1 ~~ten (10)~~ three (3) years ~~of the school's operation and all student~~
2 transcripts regardless of age must be delivered to the director.

3 (2) Delivered records shall be arranged in alphabetical order
4 and stored in boxes or in data format at the discretion of the board.

5 (3) The director shall be responsible for the proper security,
6 storage, and maintenance of all such records.

7 ~~(1) No school shall incorporate the name "university" unless it is~~
8 ~~seeking to offer both undergraduate and graduate programs through the~~
9 ~~institutional and program certification of the Department of Higher~~
10 ~~Education.~~

11
12 SECTION 9. Arkansas Code § 6-51-607(a) is amended to read as follows:

13 (a)(1) Each school licensed under this subchapter shall pay annually a
14 fee to be set by the board.

15 (2) The fee shall be set at such amount as the board deems
16 necessary to establish the fund and to maintain the fund as necessary.

17 (3) For a renewing school, The the fee shall be based on the
18 enrollment of Arkansas residents in the preceding twelve (12) months of July
19 1 through June 30 and be set at such amount as the board deems necessary to
20 establish the fund and to reestablish the fund as necessary.

21 (4)(A) For an original license, the fee shall be a percentage as
22 determined by the board of the sum of the tuitions for each program offered.

23 (B) Additionally, during the first twelve (12) months of
24 licensure, the same percentage shall be paid to the Private Career School
25 Student Protection Trust Fund on additional new programs of study.

26
27 SECTION 10. Arkansas Code § 6-51-607(e) is amended to read as follows:

28 (e) With the approval of the board, the director may use any amounts
29 in the fund, including accumulated interest, to:

30 (1) Pay claims filed by students not to exceed a total of one
31 hundred thousand dollars (\$100,000) for all students of the school when a
32 school becomes insolvent or ceases to operate without offering a complete
33 program of study;

34 (2) Pay expenses incurred by a school not to exceed a total of
35 one hundred thousand dollars (\$100,000) that are directly related to
36 educating a student placed in the school under this subchapter, including the

1 applicable tuition for the period of time for which the student has paid
2 tuition;

3 (3) Reimburse the Private Career Education Fund for expenses
4 directly associated with the storage and maintenance of academic and
5 financial aid records of those students adversely affected by school
6 closings;

7 (4)(A) Reimburse the Private Career Education Fund for
8 administrative cost due to school closings, including but not limited to:

9 (i) Travel expenses; and

10 (ii) The employment of temporary personnel to assist
11 with transport and organization of student records.

12 (B) Provided further, that reimbursement for the expenses
13 incurred in subdivision (e)(4)(A) of this section shall not exceed five
14 thousand dollars (\$5,000) per school closing.

15

16 SECTION 11. Arkansas Code § 6-51-609(a)(1) is amended to read as
17 follows:

18 (a)(1) No person representing a resident, ~~correspondence~~ distance
19 education, or combination school shall solicit or sell in Arkansas any
20 program of study for consideration or remuneration unless the admissions
21 representative first secures a license from the director.

22

23 SECTION 12. Arkansas Code § 6-51-609(e) is amended to read as follows:

24 (e)(1) ~~The Department of Arkansas State Police shall be authorized to~~
25 ~~conduct background investigations for applicants that have executed the~~
26 ~~appropriate release, a said background investigation shall consist of whether~~
27 ~~the applicant has been convicted in any jurisdiction of a felony, a Class A~~
28 ~~misdemeanor, or a crime involving an act of violence.~~ An applicant for an
29 admissions representative's license shall apply to the Identification Bureau
30 of the Department of Arkansas State Police for a state and national criminal
31 background check, to be conducted by the Federal Bureau of Investigation.

32 (2) ~~The Department of Arkansas State Police shall be authorized~~
33 ~~to disseminate said background information to the State Board of Private~~
34 ~~Career Education.~~ The check shall conform to the applicable federal
35 standards and shall include the taking of fingerprints.

36 (3) The applicant shall sign a release of information to the

1 board and shall be responsible to the Department of Arkansas State Police for
2 the payment of any fee associated with the criminal background check.

3 (4) Upon completion of the criminal background check, the
4 Identification Bureau of the Department of Arkansas State Police shall
5 forward all information obtained concerning the person in the commission of
6 any felony, Class A misdemeanor, or a crime involving an act of violence for
7 which a pardon has not been granted.

8
9 SECTION 13. Arkansas Code § 6-51-609 is amended by adding additional
10 subsections to read as follows:

11 (f)(1)(A) The board may issue a nonrenewable temporary license pending
12 the results of the criminal background check.

13 (B) The temporary license shall be valid for no more than
14 six (6) months.

15 (2) Upon receipt of information from the Identification Bureau
16 of the Department of Arkansas State Police that the person holding the
17 temporary license has been convicted of a felony, Class A misdemeanor, or a
18 crime involving an act of violence for which a pardon has not been granted,
19 the board shall immediately revoke the temporary license.

20 (g)(1) The provisions of subsection (d)(3) of this section may be
21 waived by the board upon the request of:

22 (A) An affected applicant for licensure; or

23 (B) The person holding a license subject to revocation.

24 (2) Circumstances for which a waiver may be granted shall
25 include, but not be limited to, the following:

26 (A) The age at which the crime was committed;

27 (B) The circumstances surrounding the crime;

28 (C) The length of time since the crime;

29 (D) Subsequent work history;

30 (E) Employment references;

31 (F) Character references; and

32 (G) Other evidence demonstrating that the applicant does
33 not pose a threat.

34 (h)(1) Any information received by the board from the Identification
35 Bureau pursuant to this section shall not be available for examination except
36 by:

1 (A) The affected applicant for licensure or his or her
2 authorized representative; or

3 (B) The person whose license is subject to revocation or
4 his or her authorized representative.

5 (2) No record, file, or document shall be removed from the
6 custody of the Department of Arkansas State Police.

7 (i) Any information made available to the affected applicant for
8 licensure or the person whose license is subject to revocation shall be
9 information pertaining to that person only.

10 (j) Rights of privilege and confidentiality established in this
11 section shall not extend to any document created for purposes other than the
12 background check required by this section.

13 (k) The board shall adopt the necessary rules and regulations to fully
14 implement the provisions of this section.

15
16 SECTION 14. Arkansas Code § 6-51-616(g) is repealed.

17 ~~(g)(1) The aggrieved party may appeal the decision of the arbitration~~
18 ~~panel to the Pulaski County Circuit Court for review.~~

19 ~~(2) Notice of appeal must be filed within fifteen (15) days of~~
20 ~~the decision of the arbitration panel with the Clerk of the Pulaski County~~
21 ~~Circuit Court.~~

22
23 SECTION 15. Arkansas Code § 6-51-617(c) is amended to read as follows:

24 (c)(1) In resolving disputes, the arbitration panel shall+

25 ~~(1) Conduct the arbitration proceeding within fifteen (15) days~~
26 ~~after the request, unless both of the parties agree to an extension of time;~~

27 ~~(2) Be be exempt from judicial redress for failure to exercise~~
28 ~~skill or care in the performance of its duties+.~~

29 (2) The arbitration proceeding, confirmation, or vacation of an
30 award, and appeal shall be conducted pursuant to the Uniform Arbitration Act,
31 §§ 16-108-201 et seq.

32 ~~(3) Hear and receive evidence and examine witnesses at the~~
33 ~~arbitration proceeding before rendering a decision. In conducting the~~
34 ~~arbitration proceeding, the panel shall not be limited by the rules of~~
35 ~~evidence in receiving testimony relevant to the dispute;~~

36 ~~(4) Have the power to issue subpoenas for evidence and witnesses~~

1 ~~in order to resolve the dispute before the panel; and~~

2 ~~(5) Render a binding decision upon the parties by a vote of not~~
3 ~~less than a simple majority.~~

4
5 SECTION 16. Arkansas Code § 6-51-618(c)(2) is amended to read as
6 follows:

7 (2) No penalty imposed by the board may exceed ~~one thousand~~
8 ~~dollars (\$1,000)~~ five hundred dollars (\$500) per violation.

9
10 SECTION 17. Arkansas Code § 6-51-620(a)(1) is amended to read as
11 follows:

12 (a)(1) Each school licensed under this subchapter shall ~~annually~~
13 ~~submit~~ maintain a surety bond during its licensure.

14
15 SECTION 18. Arkansas Code § 6-51-620(a)(6) is amended to read as
16 follows:

17 (6) The board shall determine the sum of each surety bond based
18 upon the following guidelines:

19 (A) Except as provided in subdivisions (a)(6)(B) and (C)
20 of this section, a school shall procure and maintain a bond equal to ten
21 percent (10%) of the gross tuition, with a minimum bond amount of five
22 thousand dollars (\$5,000) ~~and a~~ with the maximum bond amount ~~of seventy-five~~
23 ~~thousand dollars (\$75,000)~~ to be determined by the board.

24 (B) Schools that have no gross tuition charges assessed
25 for the previous year shall secure and maintain a surety bond in the amount
26 of ~~five thousand dollars (\$5,000)~~ ten thousand dollars (\$10,000).

27 (C) Schools that have a total cost per program of three
28 thousand dollars (\$3,000) or less shall not be required to have a bond.

29
30 SECTION 19. Arkansas Code § 6-51-620(b) and (c) are amended to read as
31 follows:

32 (b) A surety bond is not required for licensees ~~currently~~ approved by
33 the State Board of Private Career Education on April 10, 1995 and that
34 maintain continuous licensure.

35 (c) ~~Any student of a school in violation of subdivision (a)(4) of this~~
36 ~~section may bring an action in the circuit court of the proper county to~~

1 ~~execute against the bond.~~ No right of action shall accrue on the surety bond
2 to or for the use of any person or entity other than the obligee named in the
3 bond or the heirs, executors, administrators, or successors of the obligee.

4
5 /s/ Agee

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8 APPROVED: 4/22/2003
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