

Act 906 of the 1989 Regular Session.

Act 906

HB1787

By: Representative D. Wood

"AN ACT TO AMEND ARKANSAS CODE TITLE 6, CHAPTER 51, SUBCHAPTER 6 PERTAINING TO PRIVATE RESIDENT AND CORRESPONDENCE SCHOOLS; AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code Title 6, Chapter 51, Subchapter 6 is hereby amended to read as follows:

"6-51-601. Legislative intent.

(a) The General Assembly is aware of the fact that:

1. Many private career schools offering resident or correspondence courses in the State of Arkansas have contributed extensively to the well-being of the individuals and the business and industrial establishments which have benefited from such training; and

2. There is a need for protection of the consumer and the ethical private career school operator.

(b) The General Assembly determines that the establishment of reasonable standards and licensing requirements for residents or correspondence schools, their course offerings and their instructors, sales representatives, or solicitors in the manner provided in this subchapter is essential in the public interest and in furtherance of the purposes stated above.

6-51-602. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Student," "enrollee," "trainee," or "pupil" means a person seeking to enroll or who has been enrolled or who is sought for enrollment in a school as defined in this subchapter;

(2) "School" means any person, firm, partnership, association, or corporation seeking to do business or offering in the State of Arkansas such resident or correspondence training offered for credit that leads to or enhances occupational qualifications, whether or not the institution is subject to Arkansas Code 6-61-301. School shall also mean any firm, partnership, association, corporation or other form of business organization involving two or more persons which offers instruction in flight or ground school to student fliers or mechanics. School shall also mean any firm, partnership, association, corporation, or other form of business organization which offers training as preparation for passing exams which may lead to employment;

(3) "Board" means the State Board of Private Career Education;

(4) "Director" means the authorized representative of the Board of Private Career Education for the purpose of administering the provision of this subchapter;

(5) "Course" means an organized unit of subject matter in which instruction is offered within a given period of time and is recognized toward completion of training toward a predetermined occupational objective;

(6) "Sales representative", "solicitor", "admissions representative", or "agent" means a person who executes an enrollment agreement and who receives a salary, wage, or commission for the primary duties of encouraging prospective students to enroll for training in a course or courses offered by

a school covered under provisions of this subchapter;

(7) "Resident school" means any school in which all course instruction is conducted in resident classrooms or held in public meeting facilities;

(8) "Correspondence school" means any school which conducts all course instruction by correspondence;

(9) "Combination school" means any school offering both correspondence and resident training;

(10) "Extension course site" means a location away from the main campus whereby specialized courses are conducted one or more times during the licensure period;

(11) "Branch school" shall mean any institution or other non-main campus institution away from the main campus where courses are offered on a regular continuing basis;

(12) "Private Career Education Arbitration Panel" shall mean the three (3) person panel established for the purpose of arbitrating student/school grievances.

6-51-603. Exemptions.

The following are exempt from licensure under this subchapter:

(1) Private institutions exclusively offering instruction at any or all levels from preschool through twelfth grade:

(2) Schools established by laws of Arkansas, governed by Arkansas boards and permitted to operate for the sole purpose of providing specific training normally required to qualify persons for occupational licensure by state boards or commissions, which determine education and other standards for licensure and operation of such schools;

(3) Community colleges, state universities, or state colleges coordinated by the State Board of Higher Education;

(4) Courses offered by institutions or individuals for personal improvement, avocational or recreational, if designated through media or other sources, as not for the purpose of enhancing an occupational objective;

(5) Schools operated for religious instruction that are exempt from property taxation under laws of this state;

(6) A training program offered or sponsored by an employer for training and preparation of its own employees and for which no tuition fee is charged;

(7) A course of study or instruction sponsored by a recognized trade, business, or professional organization for instruction of the members of the organization with a closed membership and for which no fee is charged the student;

(8) A school or educational institution supported by state or local government taxation;

(9) Individual flight instructors licensed under appropriate Federal Aviation Administration regulations.

6-51-604. Notice of possible violations--Response--Injunctions.

(a) Whenever the board or director acting for the board has probable cause to believe that a person, agent, group, or entity has committed any acts that would be in violation of this subchapter, such as fraud, misrepresentation, or unethical practices, the board or director acting for the board shall first give notice in writing by certified mail or in person, to the agency, or entity affected.

(b) The person, agent, or entity will have ten (10) days in which to respond to the notice of violation.

(c) If action on the part of person, agent, or entity in response to notice is to seek to eliminate the violation, a further extension of time may be granted by the director acting for the board. Otherwise, the Board may order a cease and desist of such acts after a formal hearing or the director

shall have the duty to request the Attorney General or District prosecuting attorney in the county where the offense was committed to seek in a court of competent jurisdiction an injunction restraining the commission of such acts.

6-51-605. State Board of Private Career Education.

(a) The Governor shall appoint a board of seven (7) members who shall serve for a term of seven (7) years. The Governor shall make appointments or reappointments to the board to provide membership of three (3) persons from a list of names submitted by the Arkansas Association of Private Schools and four (4) persons from the general public. To the extent possible the initial board shall be current members of the already existing Vocational Standards Committee which shall cease to exist with the appointment of the State Board of Private Career Education. The Director of Higher Education and the Director of Vocational Technical Education or their designees shall serve as nonvoting, ex officio members of the State Board of Private Career Education. All files and records that are presently the property of the Vocational Standards Section of the Vocational and Technical Education Division shall become the property of the State Board of Private Career Education. In appointing the initial board the Governor shall set the terms of the appointees so that the term of one (1) member shall expire each year.

(b) The Board shall have the power to elect the necessary officers, acting by and through the director, shall have the sole authority to approve all schools offering courses leading to or enhancing an occupational objective, to administer and enforce this subchapter and to issue licenses to schools which have met the standards set forth, for the purposes of this subchapter, by the State Board of Private Career Education, including, but not limited to, course offerings, adequate facilities, financial stability, competent personnel, and legitimate operating practices.

(c) Upon approval by the Board, any such school may issue certificates, or diplomas.

(d) The Board, acting by and through the director shall formulate the criteria and the standards evolved for the approval of such schools, provide for adequate investigation of all schools applying for a license, issue licenses to those applicants meeting the standards fixed by the Board, and maintain a list of schools approved under the provisions of this subchapter.

(e) The Board, acting by and through the director, shall formulate the standards evolved thereunder for the approval of sales representatives, solicitors, or admissions representatives of such schools and issue licenses to those applicants meeting the standards fixed by the Board.

(f) The Board shall: Promulgate standards, rules, and regulations to be prescribed for the administration of this subchapter and the management and operation of the schools and solicitors subject to the provisions hereof including the development of programs of instruction to be offered in each type of institution subject to this subchapter.

(g) Participate in the hearings provided schools and solicitors in case of revocation or denial of licensure.

(h) Official meetings of the Board may be called by the Chairman as necessary, but meetings shall be held at least four (4) times a year.

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

(j) Expenses of Board members attending an official meeting may be reimbursed for travel and/or other expenses incurred in connection with official business.

(k) The Board may adopt and use a seal, which may be used for the authentication of the acts of the Board.

(l) The Board shall employ a Director who reports to the Board. Provisions will be made for a retirement plan for the staff with a state

contribution and Board approved investment option in the same manner as provided in Arkansas Code 24-7-901 et seq.

(m) The board shall annually require background investigations for all partners or shareholders with twenty-five percent (25%) or more interest in a school. The Arkansas State Police shall be authorized to conduct background investigations for applicants that have executed the appropriate release, and said background shall consist of whether the applicant has been convicted in any jurisdiction of a felony, class "A" misdemeanor or a crime involving an act of violence. The Arkansas State Police shall be authorized to disseminate said background information to the Private Career Education Board.

6-51-606. School license generally.

(a) No persons shall operate, conduct, maintain, or offer to operate in this state a private career school as defined herein, or solicit the enrollment of students residing in the state, unless a license is first secured from the board issued in accordance with the provisions of this subchapter and the rules and regulations promulgated by the board.

(b) Application for a license shall be filed in the manner and upon the forms prescribed and furnished by the director for that purpose. The application shall be signed by the applicant and properly verified and shall contain such information as may apply to the type and kind of school, branch school, or extension course site for which a license is sought.

(c) Any license issued shall be restricted to the programs of instruction or courses specifically indicated in the application for a license. The holder of a license shall present a supplementary application as may be directed by the director for approval of additional programs of instruction or courses in which it is desired to offer instruction during the effective period of the license. The license shall remain the property of the State of Arkansas and shall be returned to the director upon cause.

(d) If the board, acting by and through the director, after evaluating the institution as to kind and type is unable to make a determination regarding initial approval of a licensure application within sixty (60) days of receipt of the application and required documentation, it shall issue a temporary license valid for a period of not more than six (6) months pending an investigation. If the investigation of the school does not reveal anything justifying revoking, or denying reissue, of the temporary license, a license will be issued that will continue in force until the time of such expiration as a regular license.

(e) After a license is issued to any school by the board on the basis of its application, it shall be the responsibility of the school to notify immediately the board of any changes in the ownership, administration, location, faculty, or instructional program or other changes that may affect significantly the course of instruction offered.

(f) In the event of the sale of such school, the license granted to the original owner or operators shall not be transferable to the new ownership or operators, but application for a new license must be made by the new ownership.

(g) The board shall have the power to refuse to issue a new license or refuse to relicense a school or place on probation an existing licensee if in its discretion it determines that:

(1) The licensee has violated any of the provisions of this act or any of the rules and regulations of the board; or,

(2) The applicant or licensee has knowingly presented to the board incomplete or misleading information relating to licensure; or,

(3) The applicant or licensee has pleaded guilty, entered a plea of nolo contendere or has been found guilty of a crime constituting a felony by a judge or jury in any state or federal court; or,

(4) The applicant or licensee has intentionally failed or refused to permit the board or its representatives to inspect the school or classes or has intentionally failed or refused to make available to the board, at any time when requested to do so, full information pertaining to any or all items of information contained in an application for license or pertaining to the operation of the private licensed school; or,

(5) The applicant has failed or refused to submit to the board an application for license or renewal in the manner and form prescribed; or,

(6) A licensed admissions representative has failed or refused to display or produce his or her license when requested to do so by prospective students or designated officials of the board; or,

(7) The applicant or licensee has failed to provide or maintain premises, equipment, materials, supplies or conditions in accordance with minimum standards as established by rules and regulations; or,

(8) The licensee has been found by the Board or a court of law to have perpetrated fraud or deceit in advertising of the school or classes or in presenting to prospective students information relating to the school or classes, employment opportunities, or opportunities for enrollment in institutions of higher learning; or,

(9) The licensee has in its employee admissions representatives who have not been licensed but are actively engaged in the practice of attempting to enroll students; or,

(10) The licensee has failed to provide and maintain standards of instruction or qualified administrative, supervisory, or instructional staff as established by rules and regulations; or,

(11) The applicant or licensee is unable to provide and maintain financial resources in sufficient amount to equip and maintain the school or classes; or,

(12) The licensee has moved the school into new premises or facilities without notifying the director; or,

(13) The licensee has offered training or instruction in programs or courses which have not been approved and authorized in accordance with rules and regulations; or,

(14) A licensed admissions representative has solicited prospective students to enroll in a school which has not been licensed by the board or which is not listed on his/her license; or,

(15) There was a change in the ownership of the school without notification to and approval from the board; or,

(16) The licensee has failed to notify the director that the license of a school has been suspended or revoked in another state or failed to provide written documentation as to the cause; or,

(17) The licensee has failed to notify the director of legal actions initiated against the school.

(h) The Board shall have the power to revoke a license if in its discretion it determines that:

(1) The applicant or licensee has knowingly presented to the board incomplete or misleading information relating to licensure; or

(2) The applicant or licensee has pleaded guilty, entered a plea of nolo contendere or has been found guilty of a crime constituting a felony by a judge or jury in any state or federal court; or,

(3) The applicant or licensee has intentionally failed or refused to permit the board or its representatives to inspect the school or classes or has intentionally failed or refused to make available to the board, at any time when requested to do so, full information pertaining to any or all items of information contained in an application for license or pertaining to the operation of the private licensed school; or,

(4) A licensed admissions representative has failed or refused to

display or produce his or her license when requested to do so by prospective students or designated officials of the board; or,

(5) The licensee has perpetrated fraud or deceit in advertising of the school or classes or in presenting to prospective students information relating to the school or classes, employment opportunities, or opportunities for enrollment in institutions of higher learning; or,

(6) The licensee has in its employ admissions representatives who have not been licensed but are actively engaged in the practice of attempting to enroll students; or,

(7) The licensee has failed to notify the director that the license of a school has been suspended or revoked in another state or failed to provide written documentation as to the cause of such action; or,

(8) The licensee fails to cure a deficiency leading to a license probation within the time as may be reasonably prescribed by the board; or,

(9) The licensee while on probation has been found by the board to have incurred an additional infraction of this section.

(i) Unless directed to do so by court order the board shall not for a period of five years following revocation, reinstate the license of a private career school. Upon expiration of licensure status, the school must apply for a new license in accordance with the provisions of this act.

(j) Upon closure of a school located in Arkansas and licensed under any provision of this act, whether for license revocation or any other cause, all student records in the possession of the school must be delivered to the director. The records shall be arranged in alphabetical or chronological order and stored in boxes. The director shall be responsible for the proper security, storage and maintenance of all such records.

6-51-607. Student Protection Fund.

(a) Each school licensed under this act shall pay at the time of its annual renewal a fee to be set by the board. The fee shall be based on the enrollment of Arkansas residents in the preceding twelve (12) months and be set at such amount as the board deems necessary to initially establish the fund and to reestablish the fund as necessary.

(b) The fee will be deposited in a trust fund in the State Treasury to be called the Private Career School Student Protection Trust Fund.

(c) A fee will not be levied, if on May 30 of any year, the balance of the fund exceeds five hundred thousand dollars (\$500,000). However, regardless of the balance in the fund a fee, as set by the board, will be assessed newly licensed schools.

(d) The assets of the fund may be invested and reinvested as the board may determine, any interest, income and/or dividends from the investment of the fund shall be credited to the fund.

(e) Any amounts in the fund, including accumulated interest may be used to:

(1) pay claims filed by students when a school becomes insolvent or ceases to operate without offering a complete course or unit of instruction;

(2) pay expenses incurred by a school that is directly related to educating a student placed in the school under this subchapter, including the applicable tuition for the period of time for which the student has paid tuition,

(f) Any amounts in the fund above the required five hundred thousand dollars (\$500,000) may be used with the approval of the board to:

(1) fund educational seminars and other forms of educational projects for the use and benefit of licensed private career school administrators, faculty, staff, or solicitors; or

(2) provide for travel expenses and registration fees to send staff or board members to accrediting meetings, seminars, or meetings

relating to the private career school sector; or

(3) provide staff assistance.

(g)(1) If a private career school closes, the director shall attempt to place each student of the school in another private career school.

(2) If the student cannot be placed in another school, the student's tuition shall be refunded in the following percentages:

(a) 100 percent if the student is in the first quarter of a course;

(b) 75 percent if the student is in the second quarter of a course;

(c) 50 percent if the student is in the third quarter of a course; and

(d) 25 percent if the student is in the fourth quarter of a course.

(3) If a student does not accept a place that is available in another school, the student's tuition shall be refunded under the refund policy maintained by the closing school.

(4) If another school assumes responsibility for the closed school's students with no significant changes in the quality of training, a student is not entitled to a refund under this section.

(5) Attorney's fees, court costs, or damages may not be paid from the proprietary school student protection trust fund.

6-51-608. Extension course sites and branch schools--Additional school license.

(a)(1) Any school licensed under 6-51-606 shall make application to the board to offer courses at an extension course site or branch school.

(2) The school shall submit a separate additional license fee with the licensure application for each extension course site or branch school to be licensed in addition to the base school.

(3) The courses, facilities, faculty, and all other operations of the extension course site or branch school must meet the criteria set forth in requirements for a school to secure an original license.

(b) The school will be assessed a fee as set by the board to be deposited in the Private Career School Student Protection Trust Fund.

6-51-609. Solicitor's license generally--Indemnification bond.

(a) No person representing a privately owned resident, correspondence, or combination school shall solicit or sell in Arkansas any course for consideration or remuneration unless solicitor first secures a license from the director. A license issued by the director shall be subject to ratification by the board.

(b)(1) The license shall be on a form of such size as to be displayed for examination by each prospective student contacted by the solicitor for enrollment purposes.

(2) The license shall bear a recent photograph of the solicitor, solicitor's name, the name and address of the licensed school to be represented, and the valid period of the solicitor license which will indicate the expiration date.

(3) The license shall be endorsed by the chairman of the board. The license shall remain the property of the State of Arkansas and shall be returned to the director upon cause.

(c) A solicitor's license shall be automatically cancelled when the license of the school represented by the solicitor is suspended or revoked for any reason.

(d) An applicant for a solicitors license must:

(1) Be at least eighteen (18) years of age;

(2) Be a high school graduate or hold a GED;
(3) Not have been convicted in any jurisdiction of a felony, Class "A" misdemeanor, crime involving an act of violence, or any crime involving moral turpitude for which a pardon has not been granted;
(4) Be a citizen of the United States;
(5) Not have been discharged from the armed services of the United States under other than honorable conditions; and
(6) Be in compliance with any other reasonable qualifications that the Board may fix by rule.

(e) That the Arkansas State Police shall be authorized to conduct background investigations for applicants that have executed the appropriate release, and said background shall consist of whether the applicant has been convicted in any jurisdiction of a felony, class "A" misdemeanor or a crime involving an act of violence. The Arkansas State Police shall be authorized to disseminate said background information to the Private Career Education Board.

6-51-610. Fees.

(a) The board shall set fees for schools and solicitors.
(b) The fees shall be collected under this act, except fees collected for the Private Career School Protection Trust Fund, shall be deposited in the State Treasury as special revenues credited to the Private Career Education Fund.
(c) No license fee shall be refunded in the event of school or solicitors license suspension, revocation, denial, or request for withdrawal of application by school.

6-51-611. License renewal.

(a) Licenses shall be renewable annually.
(b) The licensing period shall be determined by the board.
(c) Application for renewal of school license is to be provided in the form and manner prescribed by the board. The school and its courses, facilities, faculty and all other operations must meet the criteria set forth in the requirements for a school to secure an original license.
(d) An application for renewal of solicitor license shall be made by form designated and in the manner prescribed by the board.

6-51-612. Penalty for operating school, etc., without license or bond.

Any person, solicitor, each member of any association of persons, or each officer of any corporation who opens and conducts a private career school, branch school, or extension course site, as defined in this subchapter, or an out-of-state school which offers to sell a course in Arkansas without first having obtained a license herein required, shall be guilty of a misdemeanor punishable by a fine of not less than one thousand dollars (\$1,000) nor more than five thousand dollars (\$5,000), or thirty (30) days' imprisonment, or both, at the discretion of the court. Each day said school continues to be open and operate shall constitute a separate offense.

6-51-613. Contracts and promissory notes of unlicensed schools void-- Recovery of tuition.

(a) All contracts entered into with students or prospective students by private career schools, branch schools, extension course sites, or solicitors as defined in this subchapter, and all promissory notes or other evidence of indebtedness taken in lieu of cash payments by such schools shall be null and void unless the schools and solicitors are licensed at the time such evidence of indebtedness is entered into as required by this subchapter.

(b) Any person shall have the right to recover moneys paid for

enrollment in such unlicensed school by petition to the chancery court from the district in which such person resides; provided that, upon recommendation of the director, the Attorney General may file, on behalf of Arkansas residents contracting with any unlicensed school, an action to recover any tuition funds paid by Arkansas residents to any unlicensed school, which recovery, after costs of litigation, shall be held for the use and benefit of persons having paid such moneys.

6-51-614. Denial or revocation of school license--Review

(a) The board, acting by and through the director, shall have the authority to refuse to issue a private career school license, place on probation or revoke a school license theretofore.

(b) Any school dissatisfied with the decision to refuse to license, to revoke, or to suspend a license may seek judicial review provided the school files notice of appeal in Pulaski County Circuit Court within fifteen (15) calendar days immediately following date of notification of this action by the director.

6-51-615. Denial or suspension of solicitor's license--Review--Penalty.

(a) No person shall be granted a solicitor's license if upon investigation the applicant is found not to meet the requirements for a solicitor under 6-51-610.

(b) The director upon receipt of information considered dependable which indicates fraud, misrepresentation, or unethical practices on the part of an applicant, may deny issuance of a license applied for or suspend immediately a license already issued pending a review by the board.

(c) Any applicant dissatisfied with the decision to refuse, suspend, or revoke a license may seek judicial review provided the applicant files notice of appeal in the Pulaski County Circuit Court within fifteen (15) calendar days immediately following date of notification of action by the director.

(d) Any person violating the provisions of this section shall be guilty of a misdemeanor and shall, upon conviction, be fined not more than five hundred dollars (\$500) or be imprisoned in the county jail not more than three (3) months, or both.

6-51-616. Student Grievance Procedure. (a) Any student may file a written complaint, with the director, on the forms prescribed and furnished by the director for that purpose, if the student has reason to believe he is suffering loss or damage resulting from:

(1) the failure of a school to perform agreements made with the student; or

(2) a solicitor's misrepresentations in enrolling the student.

(b) All complaints shall be investigated and attempts shall be made to resolve them informally. If an informal resolution cannot be achieved, the aggrieved party may request a formal hearing to be held before the Private Career Education Arbitration Panel.

(c) The aggrieved party must pursue arbitration before the arbitration panel prior to pursuing legal action in court, unless the claim is alleging fraud.

(d) The request for arbitration must be in writing and filed with the director within one year of completion of or withdrawal from the school.

(e) The written request for arbitration must name the parties involved and specific facts giving rise to the dispute.

(f) The ruling of the Arbitration Panel shall be binding upon the parties.

(g) The aggrieved party may appeal the decision of the Arbitration Panel to the Pulaski County Circuit Court for review. Notice of appeal must be

filed within fifteen (15) days of the decision of the Arbitration Panel with the Clerk of the Pulaski County Circuit Court.

6-51-617. Private Career Education Arbitration Panel.

(a) The Private Career Education Arbitration Panel as referenced in 6-51-617, shall represent the sole authority to resolve disputes between a student and schools as to grievances relating to:

(1) the failure of the school to perform agreements made with the student; or

(2) a solicitor's misrepresentations in enrolling the student.

(b) The Board of Private Career Education shall appoint the Arbitration Panel which shall be comprised of three (3) members. One (1) member shall be from the private career school sector and two (2) members shall be from the general public. No member of the Arbitration Panel may serve for hearings which involve the members' school.

(c) In resolving disputes, the arbitration panel shall:

(1) conduct the arbitration proceeding within fifteen (15) days after the request unless both of the parties agree to an extension of time;

(2) be exempt from judicial redress for failure to exercise skill or care in the performance of their duties;

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

(4) have the power to issue subpoenas for evidence and witnesses in order to resolve the dispute before the panel;

(5) render a binding decision upon the parties by a vote of not less than a simple majority."

SECTION 2. The effective date of this act shall be September 1, 1989.

SECTION 3. Nothing in this Act shall be construed to effect the responsibilities of the State Board of Higher Education as defined in Arkansas Code 6-61-301.

SECTION 4. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 5. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 6. EMERGENCY. It is hereby found and determined by the Seventy-Seventh General Assembly that minimum standards must be provided for the operation of all private career schools and related schools offering courses to residents of the State of Arkansas; that there will continue to be a need to provide adequate protection and safeguards for reputable private career school operators and the public; that such provision should be enacted immediately; and that this Act would so provide. Therefore, an emergency is hereby declared to exist and this Act being immediately necessary for the preservation of the public peace, health, and safety shall be in full force and effect from its passage and approval.

APPROVED: March 23, 1989
