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Chapter No. 478

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***SENATE BILL NO. 2771***

Originated in Senate *Jennette Guyres* Secretary

SENATE BILL NO. 2771

AN ACT TO AMEND SECTIONS 75-60-4 AND 75-60-15, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE STATE BOARD FOR COMMUNITY AND JUNIOR COLLEGES TO LEVY CERTAIN FEES AS MAY BE REQUIRED FOR THE PERFORMANCE OF THE PROPRIETARY SCHOOL AND COLLEGE REGISTRATION LAW; TO AMEND SECTION 75-60-17, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR THE SURETY BOND TO BE POSTED BY APPLICANTS FOR CERTIFICATES OF REGISTRATION; TO AMEND SECTIONS 75-60-19, 75-60-23, 75-60-25, 75-60-27, 75-60-29, 75-60-31, 75-60-33, 75-60-35 AND 75-60-37, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR PROPRIETARY SCHOOL AGENT PERMITS, FEES AND AGENT BONDS; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

**SECTION 1.** Section 75-60-4, Mississippi Code of 1972, is amended as follows:

75-60-4. (1) The State Board for Community and Junior Colleges shall appoint a "Commission on Proprietary School and College Registration" to be composed of five (5) qualified members, one (1) appointed from each of the five (5) Mississippi congressional districts existing on January 1, 1992. The membership of said commission shall be composed of persons who have held a teaching, managerial or other similar position with any public, private, trade, technical or other school; provided, however, that one (1) member of the commission shall be actively engaged in teaching, managerial or other similar position with a privately owned trade, technical or other school. The membership of said commission shall be appointed by the board within ninety (90) days of the passage of this chapter. In making the first appointments, two (2) members shall be appointed for three (3) years, two (2) members for four (4) years, and one (1) member for five (5) years. Thereafter, all members shall be appointed for a

term of five (5) years. If one (1) of the members appointed by the board resigns or is otherwise unable to serve, a new member shall be appointed by the commission to fill the unexpired term. All five (5) members of the commission have full voting rights. The members shall not be paid for their services, but may be compensated for the expenses necessarily incurred in the attendance at meetings or in performing other services for the commission at a rate prescribed under Section 25-3-69, Mississippi Code of 1972, plus actual expenses and mileage as provided by Section 25-3-41, Mississippi Code of 1972. Members of the commission shall annually elect a chairman from among its members.

(2) The State Board for Community and Junior Colleges shall appoint such staff as may be required for the performance of the commission's duties and provide necessary facilities.

(3) The State Board for Community and Junior Colleges shall levy only fees authorized in this chapter only in such amounts as may be required for the performance of the commission's duties.

(4) In addition to the fees authorized in this chapter, the State Board for Community and Junior Colleges is authorized to levy and collect fees from proprietary schools and colleges (a) to recover the cost of audits, investigations and hearings relating to such institutions, and (b) to recover the cost of activities conducted under Section 73-15-25 relating to the accreditation of practical nursing programs.

(5) It shall be the purpose of the Commission on Proprietary School and College Registration to establish and implement the registration program as provided in this chapter. All controversies involving the registration of such schools shall be initially heard by a duly authorized hearing officer of the commission before whom a complete record shall be made. After the conclusion of the hearing, the duly authorized hearing officer of the commission shall make a recommendation to the commission as to the resolution of the controversies, and the commission, after

considering the transcribed record and the recommendation of its hearing officer, shall make its decision which becomes final unless the school or college or other person involved shall appeal to the State Board for Community and Junior Colleges, which appeal shall be on the record previously made before the commission's hearing officer except as may be provided by rules and regulations adopted by the State Board for Community and Junior Colleges. All appeals from the State Board for Community and Junior Colleges shall be on the record and shall be filed in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

**SECTION 2.** Section 75-60-15, Mississippi Code of 1972, is amended as follows:

75-60-15. (1) An initial application fee shall accompany each application for certificate of registration, \* \* \* and a renewal fee shall accompany each application for renewal of registration. \* \* \*

\* \* \*

(2) If a renewal fee is not paid at least thirty (30) days prior to the expiration of a school's certificate of registration, in addition to the renewal fee, there shall be a delinquent fee \* \* \* collected \* \* \*. No portion of any license fee shall be subject to refund.

(3) A certificate of registration shall be issued or denied within sixty (60) days after receipt of the application by the commission.

(4) No new program of study shall be offered by any school holding a certificate of registration until it is registered with and approved by the commission in accordance with procedures which shall be established by the commission. After such course is registered in accordance with the approval procedures provided for herein, it shall be included as a part of any renewal of a certificate of registration. Each application for the original

registration of a new program registration fee to be determined by the commission.

(5) A certificate of registration shall be valid only for the school and courses for which it is issued and shall not include other schools or additional locations of a school unless each such additional location (a) offers only courses which are identical to courses offered at the registered location and (b) is under the same ownership, management and control as that of the registered location except as may be provided otherwise in this section. Such additional locations meeting such requirements shall be identified as "annexes" on a certificate application. Gross tuition revenues for the registered location and all annexes shall be combined for the purpose of determining fees payable under this section.

(6) The fees submitted with \* \* \* applications for initial or renewal of registration are not returnable to the applicant, even though a certificate of registration is not issued, unless the Commission on Proprietary School and College Registration determines that a financial hardship will result.

(7) The amount of fees authorized in this section and in Section 75-60-27 shall be determined by the State Board for Community and Junior Colleges after receiving recommendations from the commission.

**SECTION 3.** Section 75-60-17, Mississippi Code of 1972, is amended as follows:

75-60-17. The application for a certificate of registration shall be accompanied by a surety bond \* \* \* with conditions and in a form prescribed by the Commission on Proprietary School and College Registration with at least one (1) corporate bonding company approved by the Department of Insurance as surety thereon. The bond shall provide for the indemnification of any person suffering loss as the result of any false certification, school closure, any fraud or misrepresentation used in behalf of the

principal in procuring such person's enrollment in a course of instruction, including repayment of tuition paid in advance by any student. \* \* \* The term of the bond shall be continuous, but it shall be subject to cancellation by the surety in the manner described in this section. The bond shall provide blanket coverage for the acts of all persons engaged as agents of the school without naming them and without regard to the time they are engaged during the term of the bond.

The surety may terminate the bond upon giving a sixty-day written notice to the principal and to the Commission on Proprietary School and College Registration, but the liability of the surety for acts of the principal and its agents shall continue during the sixty (60) days of cancellation notice. The notice does not absolve the surety from liability which accrues before the cancellation becomes final but which is discovered after that date and which may have arisen at any time during the term of the bond. Unless the bond is replaced by that of another surety before the expiration of the sixty (60) days' notice of cancellation, the certificate of registration shall be suspended. Any person subject to this chapter required to file a bond with an application for a certificate of registration may file, in lieu thereof, cash, a certificate of deposit, or government bonds of the same dollar value as the prescribed bond. Said deposit is subject to the same terms and conditions as are provided for in the surety bond required herein. Any interest or earnings on such deposits are payable to the depositor.

**SECTION 4.** Section 75-60-19, Mississippi Code of 1972, is amended as follows:

75-60-19. (1) The Commission on Proprietary School and College Registration may suspend, revoke or cancel a certificate of registration for any one (1) or any combination of the following causes:

- (a) Violation of any provision of the sections of this chapter or any regulation made by the commission;
- (b) The furnishing of false, misleading or incomplete information requested by the commission;
- (c) The signing of an application or the holding of a certificate of registration by a person who has pleaded guilty or has been found guilty of a felony or has pleaded guilty or been found guilty of any other indictable offense;
- (d) The signing of an application or the holding of a certificate of registration by a person who is addicted to the use of any narcotic drug, or who is found to be mentally incompetent;
- (e) Violation of any commitment made in an application for a certificate of registration;
- (f) Presentation to prospective students of misleading, false or fraudulent information relating to the course of instruction, employment opportunity, or opportunities for enrollment in accredited institutions of higher education after entering or completing courses offered by the holder of a certificate of registration;
- (g) Failure to provide or maintain premises or equipment for offering courses of instruction in a safe and sanitary condition;
- (h) Refusal by an agent to display his agent permit upon demand of a prospective student or other interested person;
- (i) Failure to maintain financial resources adequate for the satisfactory conduct of courses of study as presented in the plan of operation or to retain a sufficient number and qualified staff of instruction; however nothing in this chapter shall require an instructor to be certificated by the Commission on Proprietary School and College Registration or to hold any type of post-high school degree;
- (j) Offering training or courses of instruction other than those presented in the application; however, schools may

offer special courses adapted to the needs of individual students where the special courses are in the subject field specified in the application;

(k) Accepting the services of an agent not licensed in accordance with Sections 75-60-23 through 75-60-37, inclusive;

(l) Conviction or a plea of nolo contendere on the part of any owner, operator or director of a registered school of any felony under Mississippi law or the law of another jurisdiction;

(m) Continued employment of a teacher or instructor who has been convicted of or entered a plea of nolo contendere to any felony under Mississippi law or the law of another jurisdiction;

(n) Incompetence of any owner or operator to operate a school.

(2) (a) Any person who believes he has been aggrieved by a violation of this section shall have the right to file a written complaint within two (2) years of the alleged violation. The commission shall maintain a written record of each complaint that is made. The commission shall also send to the complainant a form acknowledging the complaint and requesting further information if necessary and shall advise the director of the school that a complaint has been made and, where appropriate, the nature of the complaint.

(b) The commission shall within twenty (20) days of receipt of such written complaint commence an investigation of the alleged violation and shall, within ninety (90) days of the receipt of such written complaint, issue a written finding. The commission shall furnish such findings to the person who filed the complaint and to the chief operating officer of the school cited in the complaint. If the commission finds that there has been a violation of this section, the commission shall take appropriate action.

(c) The commission may initiate an investigation without a complaint.

(3) **Hearing procedures.** (a) Upon a finding that there is good cause to believe that a school, or an officer, agent, employee, partner or teacher, has committed a violation of subsection (1) of this section, the commission shall initiate proceedings by serving a notice of hearing upon each and every such party subject to the administrative action. The school or such party shall be given reasonable notice of hearing, including the time, place and nature of the hearing and a statement sufficiently particular to give notice of the transactions or occurrences intended to be proved, the material elements of each cause of action and the civil penalties and/or administrative sanctions sought.

(b) Opportunity shall be afforded to the party to respond and present evidence and argument on the issues involved in the hearing including the right of cross-examination. In a hearing, the school or such party shall be accorded the right to have its representative appear in person or by or with counsel or other representative. Disposition may be made in any hearing by stipulation, agreed settlement, consent order, default or other informal method.

(c) The commission shall designate an impartial hearing officer to conduct the hearing, who shall be empowered to:

(i) Administer oaths and affirmations; and  
(ii) Regulate the course of the hearings, set the time and place for continued hearings, and fix the time for filing of briefs and other documents; and

(iii) Direct the school or such party to appear and confer to consider the simplification of the issues by consent; and

(iv) Grant a request for an adjournment of the hearing only upon good cause shown.

The strict legal rules of evidence shall not apply, but the decision shall be supported by substantial evidence in the record.

(4) The commission, acting by and through its hearing officer, is hereby authorized and empowered to issue subpoenas for the attendance of witnesses and the production of books and papers at such hearing. Process issued by the commission shall extend to all parts of the state and shall be served by any person designated by the commission for such service. Where, in any proceeding before the hearing officer, any witness fails or refuses to attend upon a subpoena issued by the commission, refuses to testify, or refuses to produce any books and papers the production of which is called for by a subpoena, the attendance of such witness, the giving of his testimony or the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

(5) **Decision after hearing.** The hearing officer shall make written findings of fact and conclusions of law, and shall also recommend in writing to the commission a final decision, including penalties. The hearing officer shall mail a copy of his findings of fact, conclusions of law and recommended penalty to the party and his attorney, or representative. The commission shall make the final decision, which shall be based exclusively on evidence and other materials introduced at the hearing. If it is determined that a party has committed a violation, the commission shall issue a final order and shall impose penalties in accordance with this section. The commission shall send by certified mail, return receipt requested, a copy of the final order to the party and his attorney, or representative. The commission shall, at the request of the school or such party, furnish a copy of the transcript or any part thereof upon payment of the cost thereof.

(6) **Civil penalties and administrative sanctions.** (a) A hearing officer may recommend, and the commission may impose, a civil penalty not to exceed Two Thousand Five Hundred Dollars

(\$2,500.00) for any violation of this section. In the case of a second or further violation committed within the previous five (5) years, the liability shall be a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each such violation.

(b) Notwithstanding the provisions of paragraph (a) of this subsection, a hearing officer may recommend and the commission may impose a civil penalty not to exceed Twenty-five Thousand Dollars (\$25,000.00) for any of the following violations: (i) operation of a school without a registration in violation of this chapter; (ii) operation of a school knowing that the school's registration has been suspended or revoked; (iii) use of false, misleading, deceptive or fraudulent advertising; (iv) employment of recruiters on the basis of a commission, bonus or quota, except as authorized by the commission; (v) directing or authorizing recruiters to offer guarantees of jobs upon completion of a course; (vi) failure to make a tuition refund when such failure is part of a pattern of misconduct; or (vii) violation of any other provision of this chapter, or any rule or regulation promulgated pursuant thereto, when such violation constitutes part of a pattern of misconduct which significantly impairs the educational quality of the program or programs being offered by the school. For each enumerated offense, a second or further violation committed within the previous five (5) years shall be subject to a civil penalty not to exceed Fifty Thousand Dollars (\$50,000.00) for each such violation.

(c) In addition to the penalties authorized in paragraphs (a) and (b) of this subsection, a hearing officer may recommend and the commission may impose any of the following administrative sanctions: (i) a cease and desist order; (ii) a mandatory direction; (iii) a suspension or revocation of a certificate of registration; (iv) a probation order; or (v) an order of restitution.

(d) The commission may suspend a registration upon the failure of a school to pay any fee, fine or penalty as required by this chapter unless such failure is determined by the commission to be for good cause.

(e) All civil penalties, fines and settlements received shall accrue to the credit of the Commission on Proprietary School and College Registration.

(7) Any penalty or administrative sanction imposed by the commission under this section may be appealed by the school, college or other person affected to the State Board for Community and Junior Colleges as provided in Section 75-60-4(3), which appeal shall be on the record previously made before the commission's hearing officer. All appeals from the State Board for Community and Junior Colleges shall be on the record and shall be filed in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

**SECTION 5.** Section 75-60-23, Mississippi Code of 1972, is amended as follows:

75-60-23. No person shall sell any course of instruction or solicit students therefor in this state unless he first secures a permit as an agent from the Commission on Proprietary School and College Registration. If the agent represents more than one (1) school, a separate permit shall be obtained for each school represented by him. Agent permits shall only be issued to agents of schools that hold a certificate of registration for the State of Mississippi.

**SECTION 6.** Section 75-60-25, Mississippi Code of 1972, is amended as follows:

75-60-25. The application for an agent permit shall be made on forms to be furnished by the Commission on Proprietary School and College Registration. Any agent permit applied for shall be granted or denied within sixty (60) days of the receipt of the application therefor by the commission. If the commission has not

completed its determination with respect to the issuance of an agent permit within such sixty-day period, it shall issue a temporary agent permit to the applicant, which permit is sufficient to meet the requirements of Section 75-60-23 until such time as such determination is made. Upon approval for an agent permit, the commission shall issue a pocket card to the person, giving his name, address, agent permit number and the name and address of his employing school, and certifying that the person whose name appears on the card is an authorized agent of the school. An agent permit is valid for one (1) year from the date on which it was issued.

**SECTION 7.** Section 75-60-27, Mississippi Code of 1972, is amended as follows:

75-60-27. The application for an agent permit and an application for renewal thereof shall be accompanied by fees determined by the State Board for Community and Junior Colleges. \* \* \* All fees collected for the issuance or renewal of agent permits shall be deposited in the State Treasury to the credit of the Commission on Proprietary School and College Registration.

**SECTION 8.** Section 75-60-29, Mississippi Code of 1972, is amended as follows:

75-60-29. The application for an agent permit shall be accompanied by a surety bond acceptable to the Commission on Proprietary School and College Registration \* \* \*. Such bond may be continuous and shall be conditioned to provide indemnification to any student suffering loss as a result of any fraud or misrepresentation used in procuring his enrollment, and may be supplied by an agent of a school or by the school itself as a blanket bond covering each of its agents. \* \* \* The surety of any such bond may cancel the same upon giving thirty (30) days' notice in writing to the commission and is relieved of liability for any breach of condition occurring after the effective date of said

cancellation. An application for renewal shall be accompanied by a surety bond, as provided in this section, if a continuous bond has not been furnished.

**SECTION 9.** Section 75-60-31, Mississippi Code of 1972, is amended as follows:

75-60-31. No agent permit shall be issued pursuant to Section 75-60-25 to any person found by the Commission on Proprietary School and College Registration not to be of good moral character.

**SECTION 10.** Section 75-60-33, Mississippi Code of 1972, is amended as follows:

75-60-33. Any agent permit issued may be revoked by the Commission on Proprietary School and College Registration if the holder of the permit solicits or enrolls students through fraud, deception or misrepresentation, or upon a finding that the permit holder is not of good moral character.

The Commission on Proprietary School and College Registration shall hold informal conferences pursuant to Section 75-60-19 with an agent believed to be in violation of one or more of the above conditions. If these conferences fail to eliminate the agent's objectionable practices or procedures, the commission shall hold a public hearing. A record of such proceedings shall be taken and appeals to the commission shall be upon such record, except as may be provided by rules and regulations to be adopted by the commission. Nothing said or done in the informal conferences shall be disclosed by the staff of the commission nor be used as evidence in any subsequent proceedings.

**SECTION 11.** Section 75-60-35, Mississippi Code of 1972, is amended as follows:

75-60-35. The fact that a bond is in force pursuant to Section 75-60-29 does not limit nor impair any right of recovery otherwise available pursuant to law, nor is the amount of such

bond relevant in determining the amount of damages or other relief to which any plaintiff may be entitled.

No recovery shall be had on any contract for or in connection with a course of instruction by any person selling or administering such course if the agent of such person was not the holder of an agent permit as required by Section 75-60-23 at the time he negotiated the contract for or sold such course.

**SECTION 12.** Section 75-60-37, Mississippi Code of 1972, is amended as follows:

75-60-37. The issuance of an agent permit pursuant to Section 75-60-25 does not constitute approval of any program of instruction or the person or institution offering, conducting or otherwise administering the same, unless licensed by the Commission on Proprietary School and College Registration. Any representation contrary to this section or tending to imply that an agent permit issued pursuant to Section 75-60-25 constitutes such approval is misrepresentation within the meaning of the provisions of this chapter.

**SECTION 13.** This act shall take effect and be in force from and after July 1, 2011.

PASSED BY THE SENATE  
February 8, 2011

  
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PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES  
March 2, 2011

  
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SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR

  
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GOVERNOR

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