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Chapter No. 333
13/SS02/R664CS
CRL/BW/SG

SENATE BILL NO. 2786

Originated in Senate *Liz Welch* Secretary

SENATE BILL NO. 2786

AN ACT TO AMEND SECTION 75-60-3, MISSISSIPPI CODE OF 1972, TO AMEND THE MISSISSIPPI PROPRIETARY SCHOOL AND COLLEGE REGISTRATION LAW TO REVISE AND ADD CERTAIN DEFINITIONS; TO AMEND SECTION 75-60-4, MISSISSIPPI CODE OF 1972, TO REVISE THE MEMBERSHIP QUALIFICATIONS OF THE COMMISSIONERS; TO AMEND SECTION 75-60-5, MISSISSIPPI CODE OF 1972, TO EXEMPT SCHOOLS OR COURSES OF INSTRUCTION UNDER THE JURISDICTION OF THE BOARD OF NURSING TO THIS LAW; TO DELETE THE PROVISION OF LAW ALLOWING NATIONALLY ACCREDITED SCHOOLS TO FOLLOW NATIONAL STANDARDS IN LIEU OF STATE STANDARDS FOR HIRING AND TRAINING FACULTY; TO AMEND SECTION 75-60-11, MISSISSIPPI CODE OF 1972, TO DELETE THE PROVISION OF LAW ALLOWING NATIONALLY ACCREDITED SCHOOLS TO SUBMIT NATIONAL ACCREDITATION STATUS IN LIEU OF OTHER APPLICATION REQUESTS UNDER THIS LAW; TO AMEND SECTION 75-60-19, MISSISSIPPI CODE OF 1972, TO REQUIRE CERTAIN NOTICE TO STUDENTS ABOUT THEIR RIGHT TO FILE A COMPLAINT WITH THE COMMISSION; TO AMEND SECTION 75-60-23, MISSISSIPPI CODE OF 1972, TO CLARIFY THAT ALL PERSONS INVOLVED IN RECRUITMENT MUST REGISTER WITH THE COMMISSION AS AN AGENT; TO AMEND SECTION 75-60-25, MISSISSIPPI CODE OF 1972, TO ADD CAMPUS LOCATION AS A REQUIREMENT FOR BUSINESS CARDS FOR AGENTS; TO CODIFY SECTION 75-60-45, MISSISSIPPI CODE OF 1972, TO SET FORTH MINIMUM QUALIFICATIONS FOR CLASSROOM INSTRUCTORS; AND FOR RELATED PURPOSES.

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

SECTION 1. Section 75-60-3, Mississippi Code of 1972, is amended as follows:

75-60-3. As used in this chapter:

(a) "Course of instruction" means the offering of instruction to individuals for a charge, fee or contribution of any kind, to a person or persons for the purpose of training or preparing such person(s) for a field of endeavor in a business, trade, technical or industrial occupation.

(b) "Program of study" means a * * * series of individual courses in an area of specialization for which a diploma, degree, certificate or other written evidence of proficiency or achievement is offered.

(c) "Agent" means any * * * person employed by an institution licensed by the commission, regardless of job title, job description, full-time or part-time employment status, who either directly or indirectly influences the decision of any prospective student to enroll for a fee in a course of instruction.

(d) "Person" means an individual, corporation, partnership, association or any other type of organization.

(e) "Board" means the * * * Mississippi Community College Board established in Section 37-4-3 et seq., Mississippi Code of 1972.

(f) "Commission" means the Commission on Proprietary School and College Registration established under this chapter.

(g) "Correspondence education" means a formal educational process under which the institution provides instructional materials, by mail or electronic transmission,

including examinations on the materials, to students who are separated from the instructor. Interaction between the instructor and the student is limited, is not regular and substantive, and is primarily initiated by the student; courses are typically self-paced.

(h) "Distance education" means a formal educational process in which the majority of the instruction (interaction between students and instructors and among students) in a course occurs when students and instructors are not in the same place. Instruction may be synchronous or asynchronous. A distance education course may use the Internet; one-way and two-way transmissions through open broadcast, closed circuit, cable, microwave, broadband lines, fiber optics, satellite or wireless communications devices; audio conferencing; or video cassettes, DVDs and CD-ROMs if used as part of the distance learning course or program.

(i) "General education course" means a unit of learning that is nontechnical in nature and is a fundamental part of a program. The content is drawn from oral and written communications, social studies, mathematics, natural sciences and the humanities.

(j) "Nontechnical course" means a unit of learning that is nontechnical in nature and includes general education courses, basic/college life skills and other related courses.

(k) "Occupational degree" means a credential awarded by a school upon successful completion of an associate degree program. This program shall contain a minimum of sixty percent (60%) technical course credits/clock hours.

(l) "Institution" means a proprietary school, career college, school person or other organization that offers programs that require registration in accordance with Section 75-60-5.

(m) "Technical course" means a unit of learning that yields skills, knowledge and understanding essential to the specific occupation for which the program is designed.

SECTION 2. Section 75-60-4, Mississippi Code of 1972, is amended as follows:

75-60-4. (1) The * * * Mississippi Community College Board 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, or retired from, 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 who is not actively engaged with a privately owned trade or technical school.

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

(3) The * * * Mississippi Community College Board 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 * * * Mississippi Community College Board 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 * * * Mississippi Community College Board, 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 * * * Mississippi Community College Board. All appeals from the * * * Mississippi Community College Board shall be on the record and shall be filed in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

SECTION 3. Section 75-60-5, Mississippi Code of 1972, is amended as follows:

75-60-5. (1) The provisions of this chapter do not apply to the following categories of courses, schools or colleges:

(a) Tuition-free courses or schools conducted by employers exclusively for their own employees;

(b) Schools, colleges, technical institutes, community colleges, junior colleges or universities under the jurisdiction of the Board of Trustees of State Institutions of Higher Learning or the * * * Mississippi Community College Board;

(c) Schools or courses of instruction under the jurisdiction of the State Board of Cosmetology, State Board of Barber Examiners * * *, the State Board of Massage Therapy or the State Board of Nursing;

(d) Courses of instruction required by law to be approved or licensed, or given by institutions approved or licensed, by a state board or agency other than the Commission on Proprietary School and College Registration; however, a school so approved or licensed may apply to the Commission on Proprietary School and College Registration for a certificate of registration to be issued in accordance with the provisions of this chapter;

(e) Correspondence * * * education;

(f) Nonprofit private schools offering academic credits at primary or secondary levels, or conducting classes for exceptional education as defined by regulations of the State Department of Education;

(g) Private nonprofit colleges and universities or any private school offering academic credits at primary, secondary or postsecondary levels;

(h) Courses of instruction conducted by a public school district or a combination of public school districts;

(i) Courses of instruction conducted outside the United States;

(j) A school that offers only instruction in subjects that the Commission on Proprietary School and College Registration determines are primarily for a vocational, personal improvement or cultural purposes and that does not represent to the public that its course of study or instruction will or may produce income for those who take that study or instruction;

(k) Courses conducted primarily on an individual tutorial basis, where not more than one (1) student is involved at any one time, except in those instances where the Commission on Proprietary School and College Registration determines that the course is for the purpose of preparing for a vocational objective;

(l) Kindergartens or similar programs for preschool-age children.

* * *

SECTION 4. Section 75-60-11, Mississippi Code of 1972, is amended as follows:

75-60-11. (1) The Commission on Proprietary School and College Registration shall issue a certificate of registration to

an applicant of good reputation, offering one or more courses of instruction upon determining that the applicant has the facilities, resources and faculty to provide students with the kind of instruction that it proposes to offer. A certificate of registration 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 the certificate of registration within such sixty-day period, it shall issue a temporary certificate to the applicant, which certificate is sufficient to meet the requirements of Section 75-60-13 until such time as determination is made. Any certificate issued by the commission is valid only for the institution and courses for which it is issued and does not cover other schools or branches operated by the owner. A certificate of registration is valid for two (2) years unless earlier revoked for cause by the commission. The commission shall adopt rules and regulations for administration of the registration process. The commission may cause an investigation to be made into the correctness of the information submitted in any application for registration. If the commission believes that false, misleading or incomplete information has been submitted to it in connection with any application for registration, the commission shall conduct a hearing on the matter and may withhold a certificate of registration upon finding that the applicant has failed to meet the standards for such certificate or has submitted false,

misleading or incomplete information to the commission.

Application for a certificate of registration shall be made in writing to the commission on forms furnished by the commission. A certificate of registration is not transferable and shall be prominently displayed on the premises of an institution.

* * *

(* * *2) The commission shall assign registration numbers to all schools registered with it. Schools shall display their registration numbers on all school publications and on all advertisements bearing the name of the school.

SECTION 5. 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) Schools shall disclose in writing to all prospective and current students their right to file a complaint with the commission.

(d) The existence of an arbitration clause in no way negates the student's right to file a complaint with the commission.

(* * *e) 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 * * * Mississippi Community College Board 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 * * * Mississippi Community College Board shall be on the record and shall be filed in the Chancery Court of the First Judicial District of Hinds County, Mississippi.

SECTION 6. Section 75-60-23, Mississippi Code of 1972, is amended as follows:

75-60-23. No person * * * employed by an institution licensed by the commission, regardless of job title, job description, full-time or part-time employment status, shall directly or indirectly influence the decision of any prospective student to enroll for a fee in a course of instruction * * * without first * * * securing a permit as an agent from the Commission on Proprietary School and College Registration. If the * * * person represents more than one (1) * * * institution, a separate permit shall be obtained for each * * * institution represented * * *. Agent permits shall only be issued to agents of * * * institutions that hold a certificate of registration * * * issued by the commission.

SECTION 7. 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, * * * agent permit number and the name and * * * campus location 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 8. The following shall be codified as Section 75-60-45, Mississippi Code of 1972:

75-60-45. The commission shall not appoint instructors, but the commission may review and evaluate whether an instructor is qualified to teach a program of study as follows:

(1) Academic classes. Classroom instructors teaching general education courses shall hold at least a bachelor's degree with appropriate coursework in the teaching discipline from an accredited institution and one (1) of the following:

(a) A minimum of eighteen (18) semester hours of credit from an accredited institution in the subject area being taught;
or

(b) A minimum of twelve (12) semester hours in methods and techniques of teaching.

(2) Technical classes. Classroom instructors teaching technical courses shall have at least a high-school diploma or an equivalent diploma and at least one (1) of the following:

(a) A degree, certificate or license in the subject area or a related field;

(b) A minimum of eighteen (18) semester hours of credit in mathematics, science or courses related to the subject area from an accredited institution; or

(c) A minimum of three (3) years' work experience in the technical area or a related field.

(3) Apprenticeship trade classes. Instructors of apprenticeship trades shall have the following qualifications and training:

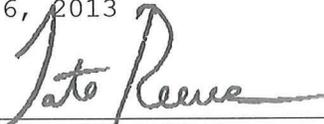
(a) At least a high-school diploma or an equivalent diploma;

(b) A minimum of three (3) years' work experience above the students' level in the trade to be taught; and

(c) Recognized standing as a tradesman or specialist supported by evidence from previous employers.

SECTION 9. This act shall take effect and be in force from and after July 1, 2013.

PASSED BY THE SENATE
February 6, 2013



PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
February 28, 2013



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

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