

State of Arkansas
91st General Assembly
Regular Session, 2017

A Bill

HOUSE BILL 1650

By: Representative Barker

For An Act To Be Entitled

AN ACT TO TRANSFER THE STATE BOARD OF PRIVATE CAREER EDUCATION TO THE DEPARTMENT OF HIGHER EDUCATION; TO AMEND THE POWERS AND DUTIES OF THE STATE BOARD OF PRIVATE CAREER EDUCATION; TO DECLARE AN EMERGENCY; AND FOR OTHER PURPOSES.

Subtitle

TO TRANSFER THE STATE BOARD OF PRIVATE CAREER EDUCATION TO THE DEPARTMENT OF HIGHER EDUCATION; TO AMEND THE POWERS AND DUTIES OF THE STATE BOARD OF PRIVATE CAREER EDUCATION; AND TO DECLARE AN EMERGENCY.

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

SECTION 1. DO NOT CODIFY. Transfer of the State Board of Private Career Education to the Department of Higher Education.

(a)(1) The State Board of Private Career Education is transferred to the Department of Higher Education by a type 2 transfer under § 25-2-105.

(2) For the purposes of this act, the Department of Higher Education shall be considered a principal department established by Acts 1971, No. 38.

(b) All authority, powers, duties, functions, records, personnel, property, unexpended balances of appropriations, allocations, and other funds, including the functions of budgeting or purchasing of the State Board of Private Career Education are transferred to the Department of Higher



Education, except as specified by this act.

(c) All powers, duties, and functions, including rulemaking, regulation, and licensing, promulgation of rules, rates, and standards, and the rendering of findings, orders, and adjudications of the State Board of Private Career Education are transferred to the Director of the Department of Higher Education.

(d) The employee and designees of the State Board of Private Career Education shall continue to be selected in the manner and serve for the terms provided by the statutes applicable to the State Plant Board except as specified in this act.

(e) The Arkansas Code Revision Commission shall make appropriate name changes in the Arkansas Code to implement this act.

SECTION 2. Arkansas Code § 6-11-119(c)(2), concerning correspondence courses, is amended to read as follows:

(2) However, these provisions shall not apply to those schools or educational institutions regulated by the ~~State Board of Private Career Education~~ Department of Higher Education under § 6-51-601 et seq. or by the Arkansas Higher Education Coordinating Board.

SECTION 3. Arkansas Code § 6-50-204 is amended to read as follows:

6-50-204. Institutional eligibility.

The institution to be attended under the loan forgiveness program must be approved by the State Board of Career Education, the Arkansas Higher Education Coordinating Board, or the ~~State Board of Private Career Education~~ Department of Higher Education to offer training in the technical field chosen by the applicant.

SECTION 4. Arkansas Code § 6-51-604 is amended to read as follows:

6-51-604. Notice of possible violations – Responses – Injunctions.

(a) ~~Whenever~~ In consultation with the State Board of Private Career Education or its director acting for the board, ~~the Department of Higher Education~~ 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~~ department 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, unless the ~~board or the director acting for the board~~ department deems an emergency exists, in which case the entity will have up to twenty-four (24) hours in which to respond.

(c)(1) If action on the part of the person, agent, or entity in response to a notice is to seek to eliminate the violation, a further extension of time may be granted by the ~~director acting for the board~~ department.

(2) Otherwise, the ~~board~~ department may order a cease and desist of such acts after a formal hearing, or the ~~board or the director~~ department 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.

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

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

(a)(1)(A) The Governor shall appoint a State Board of Private Career Education of seven (7) members who shall serve for terms of seven (7) years.

(B) The Governor shall make appointments or reappointments to the board to provide membership of three (3) persons associated with schools and four (4) persons from the general public.

(2) The Director of the Department of Higher Education and the Director of the Department of Career Education or their designees shall serve as nonvoting, ex officio members of the ~~State Board of Private Career Education~~ board.

(b) The board+
- ~~(1) Shall have the power to~~ may elect the necessary officers, acting by and through the ~~director~~ Director of the Department of Higher Education+.

(2) ~~Shall~~ In consultation with the board, the Department of Higher Education shall have the sole authority to:

- (A) Approve all schools offering programs of study leading to or enhancing an occupational objective;
- (B) Administer and enforce this subchapter; and
- (C) Issue licenses to schools which have met the standards

set forth for the purposes of this subchapter by the ~~board~~ Department of Higher Education, including, ~~but not limited to,~~ without limitation programs of study, adequate facilities, financial stability, qualified personnel, and legitimate operating practices.

(c) Upon approval by the ~~board~~ Department of Higher Education, any such school may issue certificates or diplomas.

(d) The ~~board, acting by and through the director,~~ Department of Higher Education shall:

(1) Formulate the criteria and the standards evolved for the approval of such licensed schools;

(2) Provide for adequate investigation of all schools applying for a license;

(3) Issue licenses to those applicants meeting the standards fixed by the ~~board~~ Department of Higher Education; and

(4) Maintain a list of schools approved under the provisions of this subchapter.

(e) The ~~board, acting by and through the director,~~ Department of Higher Education shall formulate the standards evolved ~~thereunder~~ under this subchapter for the approval of admissions representatives of such licensed schools and issue licenses to those applicants meeting the standards fixed by the ~~board~~ Department of Higher Education.

(f) ~~The~~ In consultation with the board, the Department of Higher Education shall promulgate standards, and rules, ~~and regulations~~ to be prescribed for the administration of this subchapter and the management and operation of the schools and admissions representatives, subject to the provisions of this subchapter.

(g) The ~~board~~ Department of Higher Education shall participate in the hearings provided to schools and admissions representatives in cases of revocation or denial of licensure.

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

(i) A majority of favorable votes by the board members at an official meeting is required for adoption of a recommendation.

(j) Board members may be reimbursed for expenses in accordance with § 25-16-901 and stipends according to § 25-16-903.

(k) The board may adopt and use a seal, which may be used for the

authentication of the ~~acts~~ recommendations of the board.

(1)~~(1)~~ The board shall employ a director who reports to the board.

~~(2) 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 is provided in § 24-7-901 et seq.~~

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

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

(n)(1) The partners or shareholders shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check to be conducted by the Federal Bureau of Investigation.

(2) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

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

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

(5)(A) The ~~board~~ Department of Higher Education may issue a nonrenewable temporary license pending the results of the criminal background check.

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

(C) Upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that only one (1) of the partners or shareholders of the school holding the license has been convicted of any offense listed in § 6-51-606(h)(3), the ~~board~~ Department of Higher

Education shall revoke the license.

(o)(1) The provisions of § 6-51-606(h) may be waived by the ~~board~~ Department of Higher Education upon the request of:

- (A) An affected applicant for licensure; or
- (B) The partners or shareholders of a school holding a license subject to revocation.

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

- (A) The age at which the crime was committed;
- (B) The circumstances surrounding the crime;
- (C) The length of time since the crime;
- (D) Subsequent work history;
- (E) Employment references;
- (F) Character references; and
- (G) Other evidence demonstrating that the applicant does not pose a threat.

(p)(1) Any information received by the ~~board~~ Department of Higher Education from the Identification Bureau of the Department of Arkansas State Police ~~pursuant to~~ under this section shall not be available for examination except by:

- (A) The affected applicant for licensure or his or her authorized representative; or
- (B) The person whose license is subject to revocation or his or her authorized representative.

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

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

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

(s) ~~The~~ In consultation with the board, the Department of Higher Education shall adopt the necessary rules ~~and regulations~~ to fully implement the provisions of this section.

SECTION 6. Arkansas Code § 6-51-606 is amended to read as follows:
6-51-606. School license generally.

(a) No persons shall operate, conduct, maintain, or offer to operate in this state a school as defined in this subchapter, or solicit the enrollment of students residing in the state, unless a license is first secured from the ~~State Board of Private Career Education~~ Department of Higher Education issued in accordance with the provisions of this subchapter and the rules ~~and regulations~~ promulgated by the ~~board~~ department in consultation with the State Board of Private Career Education.

(b)(1) Application for a license shall be filed in the manner and upon the forms prescribed and furnished by the ~~director~~ department for that purpose.

(2) 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, satellite school, or extension course site for which a license is sought.

(c)(1) ~~Any~~ A license issued shall be restricted to the programs of study specifically indicated in the application for a license.

(2) The holder of a license shall present a supplementary application for approval of additional programs of study.

(d) The license shall remain the property of the State of Arkansas and shall be returned to the ~~director~~ department upon cause.

(e)(1) If the ~~board, acting by and through the director,~~ department, after evaluating the school 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.

(2) If the investigation of the school under subdivision (e)(1) of this section 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.

(f) After a license is issued to any school by the ~~board~~ department on the basis of its application, it shall be the responsibility of the school to notify immediately the ~~board~~ department of any changes in the ownership, administration, location, faculty, or programs of study on the forms and in

the manner prescribed by the ~~board~~ department.

(g) 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 and approved ~~prior to~~ before the new ownership's taking over operation of the school.

(h) The ~~board~~ department shall have the power to deny issuing a new or renewal license, to revoke an existing license, or to place a licensee on probation, if in its discretion it determines that:

(1) The licensee has violated any of the provisions of this subchapter or any of the rules ~~and regulations~~ of the ~~board~~ department;

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

(3) The applicant or licensee has pleaded guilty, entered a plea of nolo contendere, or has been found guilty in a criminal proceeding, regardless of whether or not the adjudication of guilt or sentence is withheld, deferred, or suspended by a court of this state, another state, or the federal government, of:

(A) Any felony; or

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

(4) The applicant or licensee has intentionally failed or refused to permit the ~~board~~ department or its representatives to inspect the school or classes or has intentionally failed or refused to make available to the ~~board~~ department, 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 school;

(5) The applicant has failed or refused to submit to the ~~board~~ department an application for license or renewal in the manner and on the forms prescribed;

(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~~ department;

(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~~;

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

(9) 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;

(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~~;

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

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

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

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

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

(16) The licensee has failed to notify the ~~director~~ department or to provide written documentation as to the cause that the license of a school has been suspended or revoked or the school has been placed on probation or a show cause issued in another state or by another regulatory agency;

(17) The licensee has failed to notify the ~~director~~ department of legal actions initiated by or against the school; or

(18) The licensee fails to make tuition refunds to the students or their lenders in compliance with current ~~regulations~~ rules.

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

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

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

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

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

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

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

(l)(1) Upon closure of a school located in Arkansas and licensed under any provision of this subchapter, whether for license revocation or any other cause, all student financial aid records for the previous three (3) years and all student transcripts regardless of age must be delivered to the ~~director~~ department.

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

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

SECTION 7. Arkansas Code § 6-51-607 is amended to read as follows:

6-51-607. Private Career School Student Protection Trust Fund.

(a)(1) Each school licensed under this subchapter shall pay annually a fee to be set by the Department of Higher Education in consultation with the State Board of Private Career Education.

(2) The fee shall be set at ~~such the~~ the amount ~~as~~ the ~~board~~ department deems necessary to establish the Private Career School Student Protection Trust Fund and to maintain the Private Career School Student Protection Trust Fund as necessary.

(3) For a renewing school, the fee shall be based on the enrollment of Arkansas residents in the preceding twelve (12) months of July 1 through June 30.

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

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

(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)(1) The fee will not be levied if, on May 30 of any year, the balance of the Private Career School Student Protection Trust Fund exceeds five hundred thousand dollars (\$500,000).

(2)(A) However, regardless of the balance in the Private Career School Student Protection Trust Fund, a fee, as set by the ~~board~~ department, will be assessed newly licensed schools.

(B) Newly licensed schools will pay for a number of years equal to the number of years paid by schools licensed on September 1, 1989.

(d)(1) The assets of the Private Career School Student Protection Trust Fund may be invested and reinvested as the ~~board~~ department may determine.

(2) Any interest income or dividends from the investment of the fund shall be credited to the Private Career School Student Protection Trust Fund.

(e) ~~With the approval of the board, the Director of the State Board of Private Career Education~~ The department may use any amounts in the Private Career School Student Protection Trust Fund, including accumulated interest, to:

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

(2) Pay expenses incurred by a school not to exceed a total of one hundred thousand dollars (\$100,000) that are 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;

(3) Pay expenses directly associated with the storage and maintenance of academic and financial aid records of those students adversely affected by school closings; and

(4)(A) Pay administrative costs due to school closings, including without limitation:

(i) Travel expenses; and

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

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

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

(1) Fund educational seminars and other forms of educational projects for the use and benefit of licensed school administrators, faculty, staff, or admissions representatives;

(2) Provide for travel expenses and registration fees to send staff or board members to accrediting meetings, seminars, or meetings relating to the school sector; or

(3) Provide staff assistance.

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

(2) If the student cannot be placed in another school, the student's tuition for which education has not been received may be refunded on a prorated basis in the manner prescribed by the ~~board~~ department.

(3) 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.

(4) Attorneys' fees, court costs, or damages may not be paid from the Private Career School Student Protection Trust Fund.

SECTION 8. Arkansas Code § 6-51-608 is amended to read as follows:
6-51-608. Extension course sites and satellite schools – Additional

school license.

(a)(1) Any school licensed under this subchapter shall make application to the ~~State Board of Private Career Education~~ Department of Higher Education to offer a course or courses at an extension course site or satellite school.

(2) The school shall submit a separate additional license fee with the licensure application for each extension course site or satellite school.

(3) The courses, facilities, faculty, and all other operations of the extension course site or satellite school must meet minimum standards as established by rules ~~and regulations~~.

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

SECTION 9. Arkansas Code § 6-51-609 is amended to read as follows:
6-51-609. Admissions representative's license – Generally.

(a)~~(1)~~ ~~No~~ A person representing a resident, distance education, or combination school shall not solicit or sell in Arkansas any program of study for consideration or remuneration unless the admissions representative first secures a license from the ~~Director of the State Board of Private Career Education~~ Department of Higher Education.

~~(2) A license issued by the director shall be subject to ratification by the State Board of Private Career Education.~~

(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 admissions representative for enrollment or recruitment purposes.

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

(c)(1) An admissions representative's license shall be automatically cancelled when the license of the school represented by the admissions representative is suspended or revoked for any reason, or the school closes.

(2)(A) The license shall be endorsed by the ~~chair of the board~~ Director of the Department of Higher Education.

(B) The license shall remain the property of the State of

Arkansas and shall be returned to the ~~director~~ Department of Higher Education upon cause.

(d) An applicant for an admissions representative's license must:

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

(2) Be a high school graduate or hold a graduate equivalent degree;

(3) Not have been convicted in any jurisdiction of a felony, theft of property, or a crime involving an act of violence 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 Armed Forces under other than honorable conditions; and

(6) Be in compliance with any other reasonable qualifications that the ~~board~~ Department of Higher Education may fix by rule.

(e)(1) An applicant for an admissions representative's license shall apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check to be conducted by the Federal Bureau of Investigation.

(2) The check shall conform to the applicable federal standards and shall include the taking of fingerprints.

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

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

(f)(1)(A) The ~~board~~ Department of Higher Education may issue a nonrenewable temporary license pending the results of the criminal background check.

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

(2) Upon receipt of information from the Identification Bureau of the Department of Arkansas State Police that the person holding the

temporary license has been convicted of a felony, Class A misdemeanor, or a crime involving an act of violence for which a pardon has not been granted, the ~~board~~ Department of Higher Education shall immediately revoke the temporary license.

(g)(1) The provisions of subdivision (d)(3) of this section may be waived by the ~~board~~ Department of Higher Education upon the request of:

- (A) An affected applicant for licensure; or
- (B) The person holding a license subject to revocation.

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

- (A) The age at which the crime was committed;
- (B) The circumstances surrounding the crime;
- (C) The length of time since the crime;
- (D) Subsequent work history;
- (E) Employment references;
- (F) Character references; and
- (G) Other evidence demonstrating that the applicant does

not pose a threat.

(h)(1) Any information received by the ~~board~~ Department of Higher Education from the Identification Bureau of the Department of Arkansas State Police ~~pursuant to~~ under this section shall not be available for examination except by:

- (A) The affected applicant for licensure or his or her authorized representative; or
- (B) The person whose license is subject to revocation or his or her authorized representative.

(2) ~~No~~ A record, file, or document shall not be removed from the custody of the Department of Arkansas State Police.

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

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

(k) ~~The board~~ In consultation with the State Board of Private Career Education, the Department of Higher Education shall adopt the necessary rules

~~and regulations~~ to fully implement the provisions of this section.

SECTION 10. Arkansas Code § 6-51-610 is amended to read as follows:

6-51-610. Fees.

(a) ~~The~~ In consultation with the State Board of Private Career Education, the Department of Higher Education shall set fees for schools and admissions representatives.

(b) The fees collected under this subchapter, except fees collected for the Private Career School Student Protection Trust Fund, shall be deposited in the State Treasury as special revenues credited to the Private Career Education Fund.

(c) ~~No~~ A license fee shall not be refunded in the event of a school or an admissions representative's license suspension, revocation, denial, or request for withdrawal of an application by a school.

SECTION 11. Arkansas Code § 6-51-611 is amended to read as follows:

6-51-611. License renewal.

(a) Licenses shall be renewable annually.

(b) The licensing period shall be determined by the ~~State Board of Private Career Education~~ Department of Higher Education.

(c)(1) Application for renewal of a school license is to be provided in the form and manner prescribed by the ~~board~~ department.

(2) The school and its programs of study, facilities, faculty, and all other operations must meet the minimum standards as established by rules ~~and regulations~~.

(d) An application for renewal of an admissions representative's license shall be made on the forms and in the manner prescribed by the ~~board~~ department.

SECTION 12. Arkansas Code § 6-51-614 is amended to read as follows:

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

(a) ~~The State Board of Private Career Education, acting by and through the director,~~ Department of Higher Education shall have the authority to refuse to issue a school license, to place on probation, or to revoke a school license theretofore issued.

(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 the date of notification of this action by the ~~director~~ department.

SECTION 13. Arkansas Code § 6-51-615 is amended to read as follows:

6-51-615. Denial or suspension of admissions representative's license – Review – Penalty.

(a) ~~No~~ A person shall not be granted an admissions representative's license if, upon investigation, the applicant is found not to meet the requirements for an admissions representative under this subchapter.

(b) The Director of the ~~State Board of Private Career Education~~ Department of Higher Education, 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 may suspend immediately a license already issued pending a review by the ~~State Board of Private Career Education~~ Department of Higher Education.

(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 Pulaski County Circuit Court within fifteen (15) calendar days immediately following the date of notification of action by the director.

(d) Any person violating the provisions of this subchapter shall be guilty of a Class B misdemeanor.

SECTION 14. The introductory language of Arkansas Code § 6-51-616(a), concerning the student grievance procedure, is amended to read as follows:

(a) Any student may file a written complaint with the ~~director~~ Department of Higher Education on the forms prescribed and furnished by the ~~director~~ department for that purpose if the student has reason to believe he or she is suffering loss or damage resulting from:

SECTION 15. Arkansas Code § 6-51-617(b)(1), concerning the Private Career Education Arbitration Panel, is amended to read as follows:

(b)(1) ~~The~~ In consultation with the State Board of Private Career Education, the Director of the Department of Higher Education shall appoint

the arbitration panel, which shall be composed of three (3) members. One (1) member shall be from the school sector, and two (2) members shall be from the general public.

SECTION 16. Arkansas Code § 6-51-618 is amended to read as follows:
6-51-618. Fines.

(a) Whenever the ~~State Board of Private Career Education~~ Department of Higher Education finds that a school is guilty of a violation of this subchapter or the rules ~~and regulations~~ of the ~~board~~ department, it shall have the power and authority to impose a penalty on the school.

(b) Prior to the imposition of any penalty, the ~~board~~ department shall hold an investigation and hearing after notice to the school.

(c)(1) Upon imposition of a penalty, the ~~board~~ department shall have the power and authority to require that the school pay a penalty to the ~~board~~ department with regard to the violation, with the sanction that the license may be suspended until the penalty is paid.

(2) No penalty imposed by the ~~board~~ department may exceed five hundred dollars (\$500) per violation.

(d) Any school dissatisfied with the penalties imposed may seek judicial review, provided the school files notice of appeal in Pulaski County Circuit Court within fifteen (15) calendar days immediately following the date of notification of this action by the ~~director~~ Director of the Department of Higher Education.

(e) The power and authority of the ~~board~~ department to impose these penalties shall not be affected by any other civil or criminal proceeding concerning the same violation.

SECTION 17. Arkansas Code § 6-51-619 is amended to read as follows:
6-51-619. Subpoenas and subpoenas duces tecum.

(a) The ~~State Board of Private Career Education~~ Department of Higher Education shall have the power to issue subpoenas and subpoenas duces tecum in connection with both its investigations and hearings.

(b) A subpoena duces tecum may require any book, writing, document, or other paper or thing which is germane to an investigation or hearing conducted by the ~~board~~ department.

(c)(1) Service of a subpoena shall be as provided by law for the

service of subpoenas in civil cases in the circuit courts of this state, and the fees and mileage of officers serving the subpoenas and of witnesses appearing in answer to the subpoenas shall be the same as provided by law for proceedings in civil cases in the circuit courts of this state.

(2)(A) The ~~board~~ department shall issue a subpoena or subpoena duces tecum upon the request of any party to a hearing before the ~~board~~ department.

(B) The fees and mileage of the officers serving the subpoena and of the witness shall be paid by the party at whose request a witness is subpoenaed.

(d)(1) In the event a person shall have been served with a subpoena or subpoena duces tecum as provided in this section and fails to comply therewith, the ~~board~~ department may apply to the circuit court of the county in which the ~~board~~ department is conducting its investigation or hearing for an order causing the arrest of the person and directing that the person be brought before the court.

(2) The court shall have the power to punish the disobedient person for contempt as provided by law in the trial of civil cases in the circuit courts of this state.

SECTION 18. Arkansas Code § 6-51-620 is amended to read as follows:
6-51-620. Bond.

(a)(1) Each school licensed under this subchapter shall maintain a surety bond during its licensure.

(2) The surety bond shall be submitted to the ~~State Board of Private Career Education~~ Department of Higher Education on or before the expiration date of the bond.

(3) The bond shall be for the period during which the license is issued.

(4)(A) The surety bond shall be conditioned to provide indemnification to any student or enrollee who suffers loss or damage as a result of:

(i) A violation of a provision of this subchapter or any rule ~~or regulation~~ of this ~~board~~ the department by the school or its officers, admissions representatives, or employees;

(ii) The failure or neglect of the school to

faithfully perform all agreements, express or otherwise, with the student, enrollee, one (1) or both of the parents of the student or enrollee, or a guardian of the student or enrollee, as represented by the application for licensure and the materials submitted in support of that application; or

(iii) An admissions representative's misrepresentation in procuring the student's enrollment.

(B)(i) A surety on that bond may be released after the surety has made a written notice of at least thirty (30) days before the release.

(ii) However, a surety may not be released from the bond unless all sureties on the bond are released.

(C)(i) The license shall be suspended when that school is no longer covered by a surety bond meeting the required amount.

(ii) The ~~board~~ department shall notify the school in writing at least ten (10) days prior to release of the surety or sureties that the license is suspended until another surety bond is filed in the manner and amount required under this chapter.

(5)(A) The bond shall be based on gross tuition, meaning the total amount collected by a school during the most recently completed twelve-month fiscal year, reduced only by the amount of refunds paid during the fiscal year, for tuition, application fees, registration fees, and those other fees deemed appropriate by rule ~~and regulation~~ of the ~~board~~ department;

(B) Provided, however, that, for a school located outside of this state which is authorized to recruit in this state, "gross tuition" means only the amount of such tuition and fees collected from residents of this state.

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

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

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

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

(7)(A) The bond shall be a surety bond issued by a company authorized to do business in this state.

(B) The bond shall be to the state to be used for payment of a tuition refund due to a student or potential student.

(b) A surety bond is not required for licensees approved by the ~~board~~ department on April 10, 1995, and that maintain continuous licensure.

(c) ~~No~~ A right of action shall not accrue on the surety bond to or for the use of any person or entity other than the obligee named in the bond or the heirs, executors, administrators, or successors of the obligee.

SECTION 19. Arkansas Code § 6-51-622(d), concerning noncommercial driver training instruction, is amended to read as follows:

(d)(1) ~~The~~ In consultation with the State Board of Private Career Education, the Department of Higher Education may promulgate reasonable rules ~~and regulations~~ to implement, enforce, and administer this section.

(2) ~~The board's regulations~~ rules of the department shall be issued in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

SECTION 20. Arkansas Code § 6-51-623 is amended to read as follows:

6-51-623. Defensive driving instruction.

A person shall not be required to obtain a license from the ~~State Board of Private Career Education~~ Department of Higher Education as a requirement for teaching or providing a course in defensive driving under a court-mandated defensive driving class.

SECTION 21. Arkansas Code § 6-61-301(a)(3), concerning incorporation of postsecondary educational institutions, is amended to read as follows:

(3) Nonpublic, not-for-profit colleges and universities currently incorporated, recognized by the Arkansas Higher Education Coordinating Board as Arkansas independent institutions of higher education, and operating under the applicable laws of this state shall not be required to receive certification from the Arkansas Higher Education Coordinating Board or to receive licensure from the ~~Arkansas State Board of Private Career~~

~~Education~~ Department of Higher Education under § 6-51-601 et seq.

SECTION 22. Arkansas Code § 17-19-402(a)(1), concerning the establishment of an educational program for bail bondsmen, is amended to read as follows:

(a)(1) The Arkansas Professional Bail Association on an annual basis shall solicit proposals from education provider applicants that are approved by the ~~State Board of Private Career Education~~ Department of Higher Education as education providers, and the Arkansas Professional Bail Association will submit the approved providers to the Professional Bail Bond Company and Professional Bail Bondsman Licensing Board for final approval.

SECTION 23. Arkansas Code § 17-42-103(5), concerning definitions used throughout real estate license law, is amended to read as follows:

(5) "Continuing education" means postlicensure education derived from participation in courses in real estate-related subjects that have been approved by the ~~State Board of Private Career Education~~ Department of Higher Education or that are not required to be approved by the ~~board~~ department;

SECTION 24. Arkansas Code § 19-5-960 is amended to read as follows:

19-5-960. Private Career School Student Protection Trust Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Private Career School Student Protection Trust Fund".

(b) The fund shall consist of a fee to be set by the Department of Higher Education in consultation with the State Board of Private Career Education as provided in § 6-51-607, there to be used for paying claims and other expenses as set out in § 6-51-607.

SECTION 25. Arkansas Code § 19-6-462 is amended to read as follows:

19-6-462. Private Career Education Fund.

The Private Career Education Fund shall consist of those special revenues as specified in § 19-6-301(24), there to be used for the maintenance and operations of the Department of Higher Education concerning the State Board of Private Career Education in carrying out the functions, powers, and duties as set out in § 6-51-601 et seq.

SECTION 26. Arkansas Code § 20-27-1501(3)(D), concerning definitions related to body piercing, branding, and tattooing, is amended to read as follows:

(D) Is a registered instructor for the specified field of body art with the ~~State Board of Private Career Education~~ Department of Higher Education;

SECTION 27. Arkansas Code § 20-27-1503 is amended to read as follows:
20-27-1503. Department of Health to license, regulate, and inspect for health hazards.

(a)(1) Body art establishments which and artists who perform body art shall be licensed by the Department of Health.

(2) A body art training facility shall be licensed by the ~~department~~ Department of Health as an establishment and by the ~~State Board of Private Career Education~~ Department of Higher Education as an approved body art training facility.

(3) An artist from a state other than Arkansas or a country outside of the United States who holds a license from the body art regulatory board or agency in that state or country may submit an application for qualifications review by the ~~department~~ Department of Health to determine eligibility for a body art license based upon criteria established by the ~~department~~ Department of Health.

(4) The business premises, equipment, procedures, techniques, and conditions of those businesses shall be subject to at least one (1) inspection by the ~~department~~ Department of Health per year.

(b)(1) The ~~department~~ Department of Health may adopt appropriate rules regarding the artists, premises, equipment, procedures, techniques, and conditions of establishments which perform procedures subject to this subchapter to assure that the premises, equipment, procedures, techniques, and conditions are aseptic and do not constitute a health hazard.

(2) Any rule affecting body art establishments in effect on August 13, 2013, shall remain in effect until the State Board of Health adopts rules ~~pursuant to~~ under this subchapter.

(c) Applicants for a license shall file applications upon forms prescribed by the ~~department~~ Department of Health.

(d) A license shall be issued only for the premises and persons in the application and shall not be transferable.

(e)(1)(A) The ~~department~~ Department of Health shall levy and collect an annual fee of one hundred fifty dollars (\$150) per facility for issuance of a license to an establishment that performs body art.

(B) The ~~department~~ Department of Health shall levy and collect an annual fee of one hundred dollars (\$100) per artist for issuance of a license to an artist who performs body art.

(2)(A) The ~~department~~ Department of Health shall collect a one-time fee of five hundred dollars (\$500) per artist licensed in a state other than Arkansas or a country other than the United States who applies for qualifications review by the ~~department~~ Department of Health.

(B) The fee for written and practical exams under § 20-27-1508 is not required for an applicant under subdivision (e)(2)(A) of this section for exams taken to complete requirements established by the ~~department~~ Department of Health.

(C) Upon satisfactory completion of the requirements by the applicant and approval of qualifications established by the ~~department~~ Department of Health, a body artist license shall be issued to an applicant under subdivision (e)(2)(A) of this section.

(D) The ~~department~~ Department of Health shall collect the annual artist fee of one hundred dollars (\$100) after the issuance of a license under subdivision (e)(2)(C) of this section.

(3) The annual fee for an artist or for an establishment shall be based upon the calendar year, January 1 through December 31, with fees for any given year due by December 31 of the previous year.

(4) If the annual fee for a licensed establishment has not been paid by March 1 of the calendar year, the establishment shall be closed until a new license has been issued by the ~~department~~ Department of Health and the annual fee has been paid.

(5)(A) If the annual fee for a licensed artist has not been paid by March 1 of the calendar year, the artist shall have his or her license suspended for ninety (90) days.

(B) If an artist has his or her license suspended, he or she shall before a license may be reissued within ninety (90) days after the suspension:

(i) Pay a reinstatement fee of one hundred dollars (\$100) and pay all overdue licensing fees;

(ii) Complete a written exam with the ~~department~~ Department of Health and a practical exam in the studio in which the artist is licensed; and

(iii) Meet current requirements established by the ~~department~~ Department of Health for artists.

(C) If an artist whose license is suspended has not met the requirements under subdivision (e)(5)(B) within ninety (90) days after the suspension, the artist may apply for qualification review.

(6) In addition to the penalty provisions found in this subsection, any studio or business owner operating without a current license commits a Class D felony.

(f) All fees levied and collected under this subchapter are declared to be special revenues and shall be deposited into the State Treasury, there to be credited to the Public Health Fund to be used exclusively for the Body Art Program of the department.

(g) Subject to any rules as may be implemented by the Chief Fiscal Officer of the State, the disbursing officer for the ~~department~~ Department of Health may transfer all unexpended funds relative to the health facility services that pertain to fees collected under this subchapter, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

SECTION 28. Arkansas Code § 20-27-1507 is amended to read as follows:
20-27-1507. Education of artist in training.

(a) An artist trainer shall be a registered instructor in a school licensed by the ~~State Board of Private Career Education~~ Department of Higher Education under § 6-51-601 et seq.

(b) ~~The board~~ In consultation with the State Board of Private Career Education, the Department of Higher Education shall develop standards to determine:

(1) The maximum number of artists in training in a training facility at one time; and

(2) The length of the program in hours and across a range of

months.

(c)(1)(A) During the artist training in the fields of tattoo, body piercing, or permanent cosmetics, each artist in training shall complete not less than three hundred seventy-five (375) clock hours of supervised body art work and classroom instruction in a period not less than six (6) months or more than twenty-four (24) months in an establishment licensed under § 20-27-1503 and § 6-51-601 et seq.

(B) During the artist training in the field of branding, each artist in training shall complete not less than three hundred seventy-five (375) clock hours of supervised body art work and classroom instruction in a period not less than six (6) months or more than twenty-four (24) months in an establishment licensed under § 20-27-1503 and § 6-51-601 et seq.

(C) Additional fields of body art training may be added by completing not less than two hundred fifty (250) clock hours of technical and procedural training in each of the other fields of body art in which an artist in training is to be licensed.

(D) An artist in training studying multiple fields of body art at the same time shall complete the total clock hours of all fields in not less than twelve (12) months or more than twenty-four (24) months.

(2)(A) The artist trainer shall maintain a training log of the clock hours completed by the artist in training on forms approved by the ~~State Board of Private Career Education~~ Department of Higher Education.

(B) The training log shall include without limitation a record of:

- (i) Hours of both theory and practical education;
- (ii) The procedures observed and completed; and
- (iii) A list of resources used for training.

(C) The artist in training shall keep available for inspection a bound record book that is separate from the record book of another artist or artist in training.

(D) The completed training log shall be submitted to the Department of Health at the time of the practical examination under § 20-27-1508.

(d) An artist trainer may offer training only in the area in which the artist trainer holds a current license from the ~~department~~ Department of Health.

(e) The ~~board~~ Department of Higher Education shall adopt a minimum curriculum for each area of body art training that shall be followed by all artist trainers, artists in training, and body art training facilities.

SECTION 29. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that this act will create more efficient regulation of private career education; and that this act is immediately necessary to provide Arkansas citizens seeking private career education the consumer protection services they need. Therefore, an emergency is declared to exist, and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.

APPROVED: 03/22/2017