

**CHAPTER 141****( HB 238 )**

AN ACT relating to proprietary education and declaring an emergency.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

➔Section 1. KRS 165A.350 is amended to read as follows:

- (1) No person shall solicit or perform the services of an agent in this state for a proprietary school, located either within or without this state, unless the school shall have been issued by the commission a certificate of approval or a certificate of registration pursuant to KRS 165A.310 to 165A.410 and the person shall have been issued an agent's permit for said proprietary school.
- (2) No person shall be issued an agent's permit unless he is an individual of good moral character as determined by the commission.
- (3) Except as otherwise provided, no person shall be issued an agent's permit unless he shall make application upon forms to be provided by the commission, and unless the application shall be accompanied by a fee as established by the commission and a good and sufficient surety bond or other collateral as required by the commission but not less than five thousand dollars (\$5,000).
- (4)
  - (a) The surety bond or other collateral shall be conditioned **by the commission to recover all necessary administrative costs, including but not limited to costs for the acquisition, permanent filing, and maintenance of student records of the proprietary school or** to provide indemnification to any student or enrollee **or the student's or enrollee's parent or guardian suffering**~~[who shall suffer]~~ loss or damage as a result of **any** fraud or misrepresentation ~~used [to the student or enrollee]~~ in procuring his enrollment in a course or courses of instruction or study offered or maintained by the proprietary school, **or as a result of the student being unable to complete the course or courses because the proprietary school ceased operations.** The amount of liability on the surety bond or other collateral shall cover each agent each school year, as the term "school year" is defined in KRS 165A.310. Regardless of the number of years that an agent's bond is in force, the aggregate liability of the surety bond shall not exceed the penal sum of the bond. The surety bond may be continuous.
  - (b) Any claimant may file with the commission a duly verified claim against an agent. The commission shall consider complaints in a timely manner after ten (10) days' written notice by certified mail, return receipt requested, to the licensee of the complaint giving time and place of hearing thereon and if the claim is found to be correct and due to the claimant, and if the commission cannot effect a settlement by persuasion and conciliation, the commission shall make a demand upon the principal on the bond and the surety thereon, and if not paid shall bring an action on the bond in any court of record within the State of Kentucky.
- (5) The surety bond may be of blanket form to cover more than one (1) agent for a proprietary school, but it shall provide the required minimum coverage for each agent.
- (6) A surety on the bond may be released therefrom after the surety shall make a written notice thereof directed to the commission at least thirty (30) days prior to release.
- (7) The surety bond shall cover the period of the agent's permit, except when a surety shall be released in the manner provided herein.
- (8) Notwithstanding the provisions of other sections, the commission may issue an agent's permit to each person who is an owner of more than ten percent (10%) legal interest in a proprietary school located in this state and who is a resident of this state, and no owner shall be required to pay the agent's permit fee or execute an agent's surety bond as otherwise required by this section, if the proprietary school shall have been issued a certificate of approval pursuant to the provisions of KRS 165A.310 to 165A.410.
- (9) The commission may issue a conditional license on a monthly basis for up to a nine (9) month period of time.
- (10) An agent's permit shall be suspended by operation of law when the agent is no longer covered by a surety bond or other collateral is withdrawn as required by KRS 165A.310 to 165A.410; but the commission shall cause the agent to receive at least ten (10) days' written notice prior to the release of his surety to the effect that the

permit shall be suspended by operation of law until another surety bond or other collateral shall be filed in the same manner and like amount as required by the commission.

- (11) An agent's permit shall be valid for a period of one (1) school year as herein defined, except when suspended or canceled pursuant to these provisions. An agent's permit may be renewed in the same manner and under the same conditions prescribed for the issuance of an initial agent's permit.
- (12) The owner or owners of the proprietary school shall be held responsible for all actions of their agents when performing their duties as agents.

➔Section 2. KRS 165A.360 is amended to read as follows:

- (1) No person shall maintain or operate a proprietary school located and doing business within this state until said school shall have been issued a certificate of approval by the commission pursuant to the provisions of KRS 165A.310 to 165A.410. No person shall maintain or operate a proprietary school located without this state and do business within this state until said school shall have been issued a certificate of approval or a certificate of registration by the commission pursuant to the provisions of KRS 165A.310 to 165A.410. No certificate of approval shall be issued by the commission to any proprietary school which denies enrollment in said school to any pupil, on account of race, color, or creed. The Kentucky Commission on Human Rights shall have power to make investigation as to discriminatory practices of any proprietary school and shall report thereon to the commission, and said commission shall, upon report that any such school is engaging in discriminatory practices, deny or suspend a certificate of such school in accordance with the provisions of this section and after notice and public hearing as required herein.
- (2) No proprietary school shall be issued a certificate unless it shall make application, through its officers or an owner, upon forms to be provided by the commission, and unless the application shall be accompanied by a fee as established by the commission and a good and sufficient surety bond or other collateral in a penal sum of not less than twenty thousand dollars (\$20,000).
- (3) (a) The surety bond or other collateral shall be conditioned ***by the commission to recover all necessary administrative costs, including but not limited to costs for the acquisition, permanent filing, and maintenance of student records of the school or*** to provide indemnification to any student or enrollee or his parent or guardian suffering loss or damage as a result of any fraud or misrepresentation used in procuring his enrollment or as a result of any fraud or misrepresentation as represented by the application for the certificate, or as a result of the student being unable to complete the course or courses because the school ceased operations. Such indemnification shall, in no case, exceed the advanced tuition paid or to be paid by said student or students or any such parent or guardian and regardless of the number of years that a school's bond is in force, the aggregate liability of the surety bond shall, in no event, exceed the penal sum of the bond. The surety bond may be continuous.
- (b) Any claimant may file with the commission a duly verified claim against a proprietary school. The commission shall consider complaints in a timely manner after ten (10) days' written notice by certified mail, return receipt requested, to such school of said complaint giving time and place of hearing thereon and, if such claim is found to be correct and due to the claimant and if the commission cannot effect a settlement by persuasion and conciliation, the commission shall make a demand upon the principal on such bond and the surety thereon, and if not paid may bring an action on such bond in any court of record within the State of Kentucky.
- (4) A surety on said bond may be released therefrom after said surety shall have made a written notice thereof directed to the commission at least thirty (30) days prior to said release.
- (5) The surety bond shall cover the period of the certificate except when said surety shall be released in the manner as provided by this section.
- (6) (a) The certificate shall be suspended by operation of law when said proprietary school is no longer covered by a surety bond or other collateral as required by this section; but the commission shall cause said proprietary school to receive at least ten (10) days' written notice prior to the release of said surety to the effect that said approval shall be suspended by operation of law until another surety bond shall be filed in the same manner and like amount as required for the initial surety bond.
- (b) The certificate shall be suspended by operation of law at any time any certified proprietary school shall deny enrollment in said school to any pupil, on account of race, color, or creed.

- (7) The application for a certificate shall be accompanied by such supporting documents as the commission may require. The application and accompanying data shall be certified as true and correct in content and policy by the chief executive officer of said proprietary school.
- (8) A certificate shall be valid for a period of one (1) school year. A certificate may be renewed in the same manner and under the conditions prescribed by the commission.
- (9) Certificates are transferable to another owner. If a change of ownership occurs, the new owner shall within ten (10) days, reexecute and affirm the application for certificate of approval or certificate of registration and the information therein, governing said certificate in effect at the time of sale. The commission may establish a reasonable fee for the recording and processing of such changes.
- (10) The bonding or other collateral requirements herein set forth may be reduced at the sole discretion of the commission upon a showing by the proprietary school that they are excessive in the case of any particular proprietary school.
- (11)
  - (a) Contracts by and between a proprietary school operating or doing business within this state and a student are voidable at the option of the student unless said school has been previously issued a certificate by the commission.
  - (b) No proprietary school operating or doing business within this state shall be entitled to any money collected from students, in whatever manner collected, unless said school has been previously issued a certificate by the commission.
  - (c) Contracts by and between a proprietary school operating or doing business within this state which are entered into prior to the issuance of a certificate by the commission, shall be voidable at the option of the student notwithstanding any subsequent issuance of a certificate to the school by the commission.
  - (d) Restitution of any money paid by a student under a contract voided pursuant to this section, may be obtained through action brought by the student in either District Court or Circuit Court in the county of the student's residence or other appropriate court, at the option of the student.

➔Section 3. Whereas properly conditioned surety bonds are necessary in order to provide immediate assistance to the Kentucky Commission on Proprietary Education to better carry out its duties, an emergency is declared to exist, and this Act takes effect upon its passage and approval by the Governor or upon its otherwise becoming a law.

**Signed by Governor March 27, 2017.**