

CHAPTER 138**(HB 181)**

AN ACT relating to proprietary education.

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

➔Section 1. KRS 165A.310 is amended to read as follows:

As used in this chapter:

- (1) "Agent" means any person employed by a proprietary school to act as agent, solicitor, broker, or independent contractor to procure students for the school by solicitation of enrollment in any form made at any place other than the main office or principal place of business of the school;
- (2) "CDL" means a commercial driver's license as defined in KRS 281A.010;
- (3) "CDL driver training" means a course of study that complies with the provisions of KRS 332.095 governing the instruction of persons in the operation of commercial motor vehicles;
- (4) "CDL driver training school" means any person, firm, partnership, association, educational institution, establishment, agency, organization, or corporation that offers CDL driver training to persons desiring to obtain a Kentucky CDL in order to operate a commercial motor vehicle and for which a fee or tuition is charged;
- (5) "Commercial motor vehicle" has the same meaning as in KRS 281A.010;
- (6) "Commission" means the Kentucky Commission on Proprietary Education;
- (7) "Formal complaint" means a written statement filed on a form specified by the commission in which the complainant alleges that a school has violated a Kentucky statute or administrative regulation and has negatively impacted the complainant, and resolution is requested by the commission;
- (8) "License" means authorization issued by the commission to operate or to contract to operate a proprietary school in Kentucky as described in this chapter and does not reflect accreditation, supervision, endorsement, or recommendation by the commission;
- (9) "Person" means an individual, corporation, business trust, estate, partnership, unincorporated association, two (2) or more of any of the foregoing having a joint or common interest, or any other legal or commercial entity;
- (10) "Proprietary school" or "school" means a privately owned ~~for-profit~~ educational institution, establishment, agency, organization, or person ***maintained on either a for-profit or not-for-profit basis*** offering or administering a plan, course, or program of instruction in business, trade, technical, industrial, or related areas for which a fee or tuition is charged whether conducted in person, by mail, or by any other method, and does not include:
 - (a) A school or educational institution supported entirely or partly by taxation from either a local or state source;
 - (b) A parochial, denominational, or eleemosynary school or institution;
 - (c) A training program which offers instruction for payment by participants primarily in pursuit of a hobby, recreation, or entertainment, and does not result in the granting of postsecondary credits nor lead to an industry-recognized credential, academic certificate, or degree;
 - (d) A course or courses of instruction or study sponsored by an employer for the training and preparation of its own employees for the benefit of the employer and without charge to the employee; or
 - (e) A school or educational institution licensed or approved by or a course or courses of study or instruction sponsored by the Kentucky Board of Barbering established by KRS 317.430, the Kentucky Board of Cosmetology established by KRS 317A.030, the Kentucky Board of Nursing established by KRS 314.121, the Kentucky Board of Embalmers and Funeral Directors established by KRS 316.170, or the Kentucky Council on Postsecondary Education established by KRS 164.011;

- (11) "Resident" means any person who has established Kentucky as his or her state of domicile. Proof of residency shall include but not be limited to a deed or property tax bill, utility agreement or utility bill, or rental housing agreement;
- (12) "School year" is beginning the first day of July and ending the thirtieth day of June next following, except when approval shall be suspended or canceled pursuant to KRS 165A.350; and
- (13) "Statement of quality assurance" means a statement required by the commission from a non-degree granting institution, in a form and manner determined by the commission, that attests to the institution meeting the minimum standards required for receiving and maintaining a license.

➔Section 2. KRS 165A.320 is amended to read as follows:

KRS 165A.310 to 165A.410 shall not apply to any institution offering a four (4) year bachelor's degree recognized by the Council on Postsecondary Education, nor shall it apply to any religious ~~or nonprofit~~ institution exempt from taxation under the laws of this state or which is subject to the provisions of KRS 164.945. KRS 165A.310 to 165A.410 is intended to apply to and regulate for-profit **and not-for-profit** proprietary schools, including but not limited to traditional, Web-based, distance learning, or correspondence schools, which are operated as or are organized for **a profit, or on a not-for-profit basis** ~~whether profit is ever realized~~.

➔Section 3. KRS 165A.340 is amended to read as follows:

- (1) The Kentucky Commission on Proprietary Education is hereby created as an independent agency of the Commonwealth and shall be attached to the Education and Workforce Development Cabinet for administrative purposes. The commission shall be composed of the following members:
 - (a) Two (2) members who are representative of privately owned ~~for-profit~~ postsecondary educational institutions licensed by the commission and appointed by the Governor from a list of seven (7) names submitted by the Kentucky Association of Career Colleges and Schools;
 - (b) Two (2) members who are representative of privately owned ~~for-profit~~ postsecondary technical schools licensed by the commission and appointed by the Governor from a list of seven (7) names submitted by the Kentucky Association of Career Colleges and Schools;
 - (c) Four (4) members who are representative of the public at large with a background in education, business, or industry in Kentucky and appointed by the Governor;
 - (d) The secretary of the Education and Workforce Development Cabinet, or the secretary's designee;
 - (e) The president of the Council on Postsecondary Education, or the president's designee; and
 - (f) The commissioner of education, or the commissioner's designee.
- (2) ~~Initial~~ Terms of appointed members shall be ~~staggered by the Governor. Thereafter, terms shall be~~ four (4) years or until successors are duly appointed and qualified. A vacancy on the commission shall be filled for the remainder of the unexpired term in the same manner as the original appointment. An appointed member shall not serve more than two (2) consecutive full terms, except that a member may be reappointed after a break in service of one (1) full term.
- (3) The commission shall employ and fix the compensation of an executive director, who shall be its secretary and principal executive officer. The executive director shall have a background in the regulation of commerce, business, or education, and shall be responsible for:
 - (a) Organizing and staffing meetings of the commission;
 - (b) Establishing policies to ensure retention of original licensing documentation;
 - (c) Ensuring that minutes and other financial, procedural, complaint, and operational records are securely maintained and archived;
 - (d) Internal and external correspondence and communication;
 - (e) Submitting reports and strategic agenda items for review and approval;
 - (f) Assisting the commission in the promulgation of administrative regulations;
 - (g) Carrying out policy and program directives of the commission;
 - (h) Preparing budget submissions;

- (i) Ensuring that formal complaints are provided to the complaint committee and arranging for independent investigations as needed;
 - (j) Ensuring that an independent audit of the commission's finances is conducted biennially;
 - (k) Ensuring that formal written agreements are executed for the procurement of administrative and legal services;
 - (l) Formalizing office policies and procedures relating to licensing and financial operations;
 - (m) Developing and implementing a process for monitoring expenditures and reconciling on a monthly basis commission and student protection fund receipts reported in the Enhanced Management Administrative Reporting System (EMARS); and
 - (n) Other activities necessary to ensure that the commission meets its designated duties and responsibilities.
- (4) The commission shall have full authority to employ and fix the compensation for any personnel, including counsel, as it may deem necessary to effectively administer and enforce the provisions of this chapter. The commission shall obtain office space, furniture, stationery, and any other proper supplies and conveniences reasonably necessary to carry out the provisions of this chapter.
- (5) The commission shall annually elect a chairperson. The chairperson shall not be a school representative appointed pursuant to subsection (1)(a) or (b) of this section.
- (6) (a) The commission shall promulgate administrative regulations in accordance with KRS Chapter 13A to establish:
- 1. Commission operating and accountability procedures;
 - 2. Requirements for each licensed institution to publicly disclose according to standardized protocols, both in print and Web-based materials, information about:
 - a. Any information that the schools are required to report by the federal Higher Education Opportunity Act, Pub. L. No. 110-315, using the Integrated Postsecondary Education Data System (IPEDS) of the National Center for Educational Statistics as a condition of participating in Title IV federal financial aid programs;
 - b. The job placement rate of program graduates in the field of study and the types of jobs for which graduates are eligible;
 - c. Articulation agreements with other postsecondary educational institutions and the rights and responsibilities of students regarding transfer of credits;
 - d. The complaint procedures available to students; and
 - e. The existence of the student protection fund created in KRS 165A.450, and procedures for students to file a claim, including but not limited to the documentation required for submission of a claim;
 - 3. Quality standards and compliance monitoring schedules of traditional programs, correspondence courses, and Web-based, distance learning courses offered over the Internet;
 - 4. Advertising requirements for schools issued a license, including no distribution of materials containing untrue, deceptive, or misleading statements and no representation that the commission is an accrediting agency for the school or its programs;
 - 5. A schedule for reviewing advertisements and recruitment materials and practices of member institutions to ensure compliance with this chapter;
 - 6. An equitable structure of licensure and renewal fees, to be paid by licensed schools, necessary to carry out the provisions and purposes of this chapter and to support adequate staffing of commission responsibilities. The fee structure shall be based on the gross revenue of licensed schools, number of students enrolled, and whether the school is located within the state or outside the state; and
 - 7. The method for calculating placement rates that are to be disclosed pursuant to this subsection.

- (b) The commission shall have the authority to promulgate other administrative regulations, in cooperation with the Kentucky Department of Education and the Council on Postsecondary Education, as it deems necessary for the proper administration of this chapter.
- (7) The commission shall hold meetings at least four (4) times a year and as frequently as it deems necessary at the times and places within this state as the commission may designate. The majority of the members shall constitute a quorum, and all meetings shall be conducted in accordance with the Open Meetings Act, KRS 61.805 to 61.850.
- (8) The commission may sue and be sued in its own name.
- (9) Commission members shall receive a per diem of one hundred dollars (\$100) for attendance at each commission meeting and may be reimbursed for ordinary travel and other expenses while engaged in the business of the commission.
- (10) The commission shall administer and enforce the provisions of this chapter pertaining to the conduct, operation, maintenance, and establishment of proprietary education institutions, and the activities of agents thereof when acting as such.
- (11) The commission shall have the power to subpoena witnesses and school records as it deems necessary.
- (12) The commission chairperson shall appoint a complaint committee and designate its chairperson. The chairperson of the complaint committee shall not be employed by, have ownership interest in, or be otherwise affiliated with a licensed institution. School representatives appointed pursuant to subsection (1)(a) or (b) of this section shall not constitute a majority of the committee's membership. A committee member shall not vote on a matter in which a conflict of interest exists. The committee shall review each formal complaint and, if evidence supports an alleged violation of this chapter or any administrative regulation promulgated thereunder, the committee shall:
 - (a) Authorize an investigative report;
 - (b) Participate in informal procedures to resolve complaints;
 - (c) Ensure timely correspondence to parties involved in complaints; and
 - (d) After review of all evidence and investigative reports, make recommendations for the disposition of complaints to the full commission.
- (13) No later than November 30, 2013, and annually thereafter, the commission shall provide a status report on the requirements of this section to the Interim Joint Committee on Licensing and Occupations and the Interim Joint Committee on Education. The report shall include a summary of the data, including school performance information, relating to the requirements of subsection (6)(a) of this section.

➔Section 4. 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 license 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 *in a form* 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 loss or damage as a result of any fraud or misrepresentation used 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 *or other collateral* may be continuous.

- (b) Any claimant may file with the commission a duly verified claim against an agent. The commission shall consider ~~claims~~~~[complaints]~~ in a timely manner after ten (10) days' written notice by certified mail, return receipt requested, to the licensee of the ~~claim~~~~[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 *or other collateral* thereon, and if not paid shall bring an action on the bond in ~~Franklin Circuit Court~~~~[any court of record within the State of Kentucky]~~.
- (5) The surety bond *or other collateral* 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 *or other collateral* 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 *or other collateral* 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 *or other collateral* as otherwise required by this section, if the proprietary school shall have been issued a license 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 5. KRS 165A.360 is amended to read as follows:

- (1) (a) No person shall maintain or operate a proprietary school located and doing business within this state until ~~the~~~~[said]~~ school ~~has~~~~[shall have been]~~ issued a license by the commission pursuant to the provisions of KRS 165A.310 to 165A.410.
- (b) No person shall maintain or operate a proprietary school located without this state and do business within this state until ~~the~~~~[said]~~ school ~~has~~~~[shall have]~~ been issued a license by the commission pursuant to the provisions of KRS 165A.310 to 165A.410.
- (c) No license 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 ~~the~~ power *to investigate*~~[to make investigation as to]~~ discriminatory practices of any proprietary school and shall report~~[thereon]~~ to the commission.~~[, and said commission shall.]~~ Upon *receipt of a report* that ~~a~~~~[any such]~~ school is engaging in discriminatory practices, *the commission shall* deny or suspend ~~the~~~~[a]~~ license of ~~the~~~~[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 license unless it ~~applies~~~~[shall make application]~~, through its officers or an owner, upon forms~~[to be]~~ provided by the commission, and unless the application ~~is~~~~[shall be]~~ accompanied by a fee as established by the commission and a good and sufficient surety bond or other collateral *in a form approved by the commission*, 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:
1. For the acquisition, permanent filing, and maintenance of student records of the school;~~[-or]~~
 2. 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 license;~~[-]~~ or
 3. 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 ~~the~~~~[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 *or other collateral* may be continuous.
- (b) 1. Any claimant may file with the commission a duly verified claim against a proprietary school.
2. The commission shall consider *claims*~~[complaints]~~ in a timely manner after ten (10) days' written notice by certified mail, return receipt requested, to ~~the~~~~[such]~~ school *cited in the claim*,~~[of said complaint]~~ giving *the* time and place of *the* hearing.~~[thereon and]~~
3. If ~~the~~~~[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 ~~the~~~~[such]~~ bond *or other collateral* and the surety thereon, and if not paid may bring an action on such bond in *Franklin Circuit Court*~~[any court of record within the State of Kentucky]~~.
- (4) A surety on ~~the~~~~[said]~~ bond *or other collateral* may be released ~~[therefrom]~~ after ~~the~~~~[said]~~ surety ~~has~~~~[shall have]~~ made a written notice~~[thereof directed]~~ to the commission at least thirty (30) days prior to ~~the~~~~[said]~~ release.
- (5) The surety bond *or other collateral* shall cover the period of the license except when ~~the~~~~[said]~~ surety shall be released in the manner as provided by this section.
- (6) (a) The license shall be suspended by operation of law when ~~the~~~~[said]~~ proprietary school is no longer covered by a surety bond or other collateral as required by this section; but the commission shall cause ~~the~~~~[said]~~ proprietary school to receive at least ten (10) days' written notice prior to the release of ~~the~~~~[said]~~ surety to the effect that ~~the~~~~[said]~~ approval shall be suspended by operation of law until another surety bond *or other collateral* ~~is~~~~[shall be]~~ filed in the same manner and like amount as required for the initial surety bond.
- (b) The license shall be suspended by operation of law at any time any certified proprietary school ~~denies~~~~[shall deny]~~ enrollment ~~[in said school]~~ to any pupil, on account of race, color, or creed.
- (7) The application for a license 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 ~~the~~~~[said]~~ proprietary school.
- (8) A license shall be valid for a period of one (1) school year. A license may be renewed in the same manner and under the conditions prescribed by the commission.
- (9) Licenses 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 license and the information therein, governing ~~the~~~~[said]~~ license 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 ~~the~~~~[said]~~ school has been previously issued a license 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 ~~the said~~ school has been previously issued a license 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 license by the commission, shall be voidable at the option of the student notwithstanding any subsequent issuance of a license 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.

Signed by Governor March 26, 2019.