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House Bill 5995 (Substitute H-4 as passed by the House)
Sponsor: Representative Paul Condino
House Committee: Regulatory Reform
Senate Committee: Economic Development and Regulatory Reform

Date Completed: 9-24-08

CONTENT

The bill would amend Public Act 148 of 1943, which provides for the regulation and licensure of proprietary schools, to do all of the following:

- Refer to "career schools" rather than "proprietary schools" and transfer regulatory responsibility for them from the State Board of Education to the Department of Labor and Economic Growth (DLEG).**
- Allow career schools to sell goods produced or services provided by students, if DLEG approved and other criteria were met.**
- Protect schools' financial information provided to DLEG from disclosure except under certain circumstances.**
- Require career schools to publish a grievance procedure for students.**
- Allow DLEG to assess administrative fines against a school in lieu of revoking its license.**
- Increase criminal penalties for violating the Act.**

The bill also would name the Act the "Career Schools Act".

Proprietary Schools/Career Schools

The bill would replace references to a "proprietary school" with references to a "career school". Under the Act, "proprietary school" means a school that uses a certain plan or method to teach a trade, occupation, or vocation for a consideration, reward, or promise of whatever nature, and includes a private business, trade, or home study school. "Proprietary school" does not include the following:

- A school or college possessing authority to grant degrees.
- A school licensed by law through another board of this State.
- A school maintained or a program conducted, without profit, by a person for that person's employees.

"Career school" would mean a private business school, trade school, home study school, or other school that used a certain plan or method to teach a trade or occupational skills for a consideration, reward, or promise of any kind. "Career school" would not include any of the following:

- A school or college possessing authority to grant degrees.

- A school licensed or approved by law through another board or department of this State.
- A school maintained or a program conducted, without profit, by a person for that person's employees.

The Act requires a proprietary school to secure from the State Board of Education a license issued in the form prescribed by the Board and in accordance with Act. The bill instead would prohibit a career school from operating in Michigan without a license or temporary permit from DLEG, which would have to prescribe the form of a license and temporary permit.

DLEG Powers & Duties

The Act prohibits the issuance of a license until the applicant has operated under a temporary permit in a manner satisfactory to the Board and until the Board approves the method and content of advertising, the standards and the methods of instruction, the personnel, and the operating and instructional practices of the school. The bill, instead, would prohibit DLEG from issuing a license to a career school unless the school operated in Michigan under a temporary permit from the Department in a manner satisfactory to it. The Department, rather than the Board, would have to approve the school's advertising, instruction, personnel, and practices.

Under the bill, the Department, rather than the Board, could grant and renew a temporary permit to operate a school. The Department, rather than the Board, would have to do all of the following:

- Provide for adequate inspection of schools.
- Promulgate rules and employ personnel necessary to administer the Act.
- Set and collect fees for licenses, temporary permits, and renewals issued under the Act.
- Exercise jurisdiction and control over career schools and solicitors for them, consistent with the Act.

Schools' Responsibilities

A career school would have to do both of the following with respect to DLEG, rather than to the Board:

- Submit required reports and make records available.
- Provide evidence of surety conditioned to provide indemnification to students in the event of the school's closing.

The bill also would require a licensed career school to publish a grievance procedure for students. The procedure would have to include a right to file a complaint with DLEG for any violation of the Act or rules.

Sale of Goods or Services Provided by Students

The bill would add Section 2d to the Act to allow a career school to sell goods produced or services provided by a student enrolled in an educational program operated by the school if all of the following were met:

- The program included classroom study and practical training.
- A faculty member supervised any practical training included in the program.
- It was an integral part of the program that the student engaged in producing the goods or providing the services as part of his or her practical training.
- Income from the sale of goods produced and services provided by students in the program did not exceed 15% of the program's total annual income.

- Money from the sale of the goods or services was used solely to support the school and did not involve pecuniary gain or profit or any other advantage or compensation for its officers, directors, shareholders, members, or faculty.
- The school did not charge a student a monetary penalty or increase his or her program hours beyond the number approved by DLEG if he or she did not attend any practical training.
- A student engaged in producing goods or providing services as part of his or her practical training did not displace a regular employee.
- A student enrolled in the program was not responsible for recruiting purchasers of the goods or services.
- The school provided a written notice to any student applying to participate in the program, and to any prospective purchasers of goods and services, disclosing that the goods and services were provided by students.
- The school had obtained the approval of DLEG.

A career school could not operate an educational program described above, or sell goods produced or services provided by a student enrolled in that program, without DLEG's written approval. An approval or renewal of an approval would be valid for one year.

The Department could renew an approval if the career school continued to comply with proposed Section 2d and any rules promulgated under it. A career school requesting renewal of an approval would have to submit an application for renewal to DLEG, in the form prescribed by the Department, and include any financial information requested by DLEG that demonstrated the school's compliance with the requirements listed above in the preceding year.

The Department would have to revoke an approval if the career school's license were revoked. The Department could revoke an approval at any time, if it determined that the career school to which the approval was granted was not complying with Section 2d or any rules promulgated under it.

Any financial information provided to DLEG by a career school under this section would be confidential and not subject to disclosure under the Freedom of Information Act, except that disclosure could be made in any of the following circumstances:

- With the written consent of the school.
- Pursuant to a court proceeding.
- To a DLEG agent or employee.
- To an agent or employee of a state or the Federal government authorized by law to see or review the information.

Administrative Sanctions & Criminal Penalties

Under the Act, a proprietary school license may be revoked at any time if, in the judgment of the Board, the licensee is not complying with applicable law or rulings of the Board. The bill would give DLEG the authority to revoke a license if a career school did not comply with applicable law or DLEG rulings. In lieu of revocation, however, DLEG could assess against a career school an administrative fine of up to \$1,000 for a violation of the Act or rules promulgated under it. The Department could not assess against a career school administrative fines that, in the aggregate, were more than \$10,000 for multiple violations that arose from the same transaction.

Currently, a person who violates the Act is guilty of a misdemeanor punishable by a maximum fine of \$1,000 and/or up to 90 days' imprisonment. The bill specifies instead that a career school that violated the Act and had its license revoked, or that operated in

Michigan without a license, would be guilty of a misdemeanor punishable by a maximum fine of \$50,000 and/or up to one year's imprisonment.

MCL 395.101-395.103

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on local government. There are no data to indicate how many career schools would be convicted of violating the Act. To the extent that the bill increased convictions or incarceration time, local governments would incur the costs of misdemeanor probation and incarceration in local facilities, which vary by county. Additional penal fine revenue would benefit public libraries.

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.