

ALLOW PROPRIETARY SCHOOLS TO CHARGE FOR STUDENT-PERFORMED SERVICES

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House Bill 4536 (Substitute H-1)
Sponsor: Rep. Gary McDowell
Committee: Regulatory Reform

First Analysis (6-10-09)

BRIEF SUMMARY: The bill would prohibit an unlicensed proprietary school from operating in Michigan, allow a proprietary school to charge a nominal fee for goods produced or services provided by students under certain conditions, and revise penalties for violations of the act or rules.

FISCAL IMPACT: The bill would have no significant fiscal impact on the state or local governmental units, although the bill could potentially increase the workload of the DELEG, Office of Post Secondary Services to the extent that practical experiences are incorporated into the requirements of a course of study and such requirements are considered to be a change in a program or a new course, which require DELEG-OPS approval.

THE APPARENT PROBLEM:

Current law prohibits the Department of Labor and Economic Growth from licensing or granting a temporary permit to operate a propriety school as part of, or in conjunction with, another business or commercial enterprise that utilizes or sells goods or services produced by students. In general, propriety schools include private business, trade, or home study schools that teach a trade, occupation, or vocation. Apparently, despite this prohibition, some proprietary schools have been charging fees for products produced by students or services performed by students, for example, massages performed by massage therapy students. Reportedly, at least one massage school was recently warned by DLEG that continuing the practice could result in loss of its license.

Some proprietary schools have responded that their students need to provide services to the public in order to develop appropriate skills and that faculty-supervised experience provides essential training that is integral to their programs. Furthermore, the revenue generated by nominal fees charged for student-provided goods or services enables many programs to curb tuition increases. Indeed, some schools fear that without these fees, they would have to close. Some feel that it is time to revise the law and allow, under certain conditions, proprietary schools to legally charge for services provided to the public by their students.

THE CONTENT OF THE BILL:

Currently, a proprietary school is defined as "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." The term includes a private business, trade, or home study school, but does not include a degree-granting institution.

House Bill 4536 would amend Public Act 148 of 1943 (MCL 395.101 et seq.), which regulates proprietary schools, to rename it the "Proprietary Schools Act." The bill would prohibit a person from operating a proprietary school within the state without a license or temporary permit from the Department of Energy, Labor, and Economic Growth. The department would have to prescribe the form of license and temporary permit. A license issued to a proprietary school accredited by a federally-recognized national or regional accrediting agency would be valid for three years; a license issued to any other proprietary school would be valid for one year. Whether operating under a three-year or a one-year license, a proprietary school would have to pay an annual license fee as set by the department under Section 2a(2) of the act.

A limited liability company (LLC) would be added to the current definition of "person" contained in the act; therefore, the act would apply also to a proprietary school owned by an LLC. In addition, a proprietary school licensed under the act would have to adopt and publish a written policy that allowed students to file a complaint with the department for any violation of the act or departmental rules.

Further, the bill would make numerous changes of a technical nature (e.g., replacing references to the Board of Education with references to the Department of Energy, Labor and Economic Growth, to reflect the shift of regulatory duties made several years ago by Executive Order).

Goods and services by students. Currently, the act prohibits the department from granting a temporary permit or a license to operate a proprietary school as part of, or in conjunction with, another business or commercial enterprise that utilizes or sells goods or services provided by students.

The bill would create an exception that would allow a proprietary school to sell goods produced or services provided by an enrolled student, and it would prohibit the department from refusing to grant a temporary permit or license, if all of the following criteria were met:

- The program included classroom study and practical training.
- Any practical training included faculty supervision.
- Engaging in producing the goods or providing the services as part of the student's training is an integral part of the program. However, the school would have to clearly disclose to the student in writing before enrollment that it intended to sell

any goods or services produced by the student as part of practical training. The disclosure would have to be included in a signed enrollment agreement between the school and the student.

- Any customer who purchased goods produced or services provided by a student in the program is provided written notification that the individual producing the good or providing the services was a student of the school.
- The customer is charged the reasonable costs of providing the goods and services and could.
- Money from the sale of the goods or services is used solely to support the school.
- The school did not charge a student a monetary penalty or increase program hours beyond the number approved by the department for failing to attend any practical training, or require a student to recruit purchasers of the goods and services, unless that obligation is clearly disclosed to the student in writing before enrollment in the program.

Penalties. Currently, a person who violates the act is guilty of a misdemeanor punishable by a maximum fine of \$1,000 or imprisonment for not more than 90 days, or both.

Instead, the bill would specify that in lieu of license revocation for noncompliance with any laws or departmental rulings, the department could assess an administrative fine of up to \$1,000 against a school for a violation of the act or departmental rules; the department could not assess fines that in the aggregate were more than \$5,000 for multiple violations of the act or departmental rules arising from the same transaction.

A school that violated the act and had its license revoked, or that operated in the state without a license, would be guilty of a misdemeanor punishable by a maximum term of imprisonment of one year and/or a maximum fine of \$10,000.

BACKGROUND INFORMATION:

The bill is similar to House Bill 5995 of the 2007-2008 legislative session. That bill was passed by the House but died on the Senate floor.

ARGUMENTS:

For:

Having students provide goods or services to the public under faculty supervision is a component of many trade and vocational programs and provides necessary experience for students to master the skills needed for their new careers. To generate needed operating capital or to keep tuition costs down, many of these schools have been charging the public reduced fees for these goods and services. However, this practice is currently prohibited under the 65-year-old act that regulates such educational programs. Unless

this law is updated, some schools may go out of business while others will have to raise tuition.

The bill would create an exception to the prohibition if certain conditions are met, such as keeping the fee to the public nominal and giving full disclosure to consumers and students alike that services are provided by the students of the school. In addition, the school's financial records relating to those services would have to be disclosed to the state regulatory agency and the fee revenue could only be used to support the school. The addition of an administrative fine and increased criminal penalties for violations should deter any school from improperly using the services of students to reap financial gain, or from violating any other provisions of the act.

Against:

Allowing career schools to collect fees for services provided by students would create an unfair advantage over new and established businesses offering the same services since the fees charged by the schools would be lower than that charged by the businesses.

Response:

It is reasonable to assume that services provided by experienced persons that have already completed educational programs and received state licensing or registration or national accreditation would be of a higher level than the same services performed by a student and thus could command higher prices. Few would expect a student to perform at the same level as someone who has been practicing that trade for several years. However, under the guidance and supervision of a faculty member, a student can still safely and adequately perform certain services. And, since student-provided services usually cost less, people who could not otherwise afford those services are able to access them. The important point is that full disclosure is provided to the public, something that the bill would require.

POSITIONS:

The following entities testified in or indicated support for the bill on 6-3-09:

Department of Energy, Labor, and Economic Growth
American Massage Therapy Association
Associated Bodywork & Massage Professionals
Ross Education
Great Lakes Boat Building School
Michigan Association of Career Colleges and Schools
Irene's Myomassology Institute
Lakewood School of Therapeutic Massage

Legislative Analyst: Susan Stutzky
Fiscal Analyst: Mark Wolf

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