HB321
128850-3
By Representatives Baker, Fincher, McClurkin, Davis, McMillan,
Shiver, Ison and Faust
RFD: Education Policy
First Read: 22-MAR-11
ENROLLED, An Act,

To amend Sections 16-46-1 and 16-46-3, Code of Alabama 1975, relating to the regulation of certain schools and courses of instruction and exemptions from school licensing; to clarify the definitions of profit and nonprofit schools; and to allow additional nonprofit schools to apply for exemption from licensure.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 16-46-1 and 16-46-3 of the Code of Alabama 1975, are amended to read as follows:

"§16-46-1."

"For the purposes of this chapter, the following words shall have the meanings respectively ascribed to them by this section:

"(1) ACADEMIC FRAUD. Courses offered are insufficient in quality, content, or administration to achieve the stated or implied educational objective. Persons offering such courses who know or reasonably should know that said courses cannot achieve the stated or implied educational objective shall be considered to be involved in academic fraud.

"(2) AGENT or REPRESENTATIVE. Salesperson who presents materials, sells courses, or solicits students for enrollment therefor in this state outside the boundaries of
the school facilities of students in the state in person, by mail, by correspondence, by telephone, online, by distance learning education, or by any other method of advertising within the state.

"(3) CHURCH SCHOOL. A school operated by a local church, group of churches, denomination, and/or association of churches on a nonprofit basis.

"(4) COURSE. Any course, or portion of a plan or program of instruction, whether conducted in person, by mail, by correspondence, online, by distance learning education, or by any other method.

"(5) ECONOMIC FRAUD. The sale of courses or programs of study which an institution is unable or unwilling to provide as advertised or described because of inadequate financial stability, facilities, instructional staff, or commitment to honor written or verbal contracts made with students. Included is the solicitation of students for enrollment through intentional deception or misrepresentation of fact and the use of advertising which is known to be false, inaccurate, or misleading. Failure to properly administer student cancellation and refund policies according to appropriate regulations or agreements made with students shall also constitute economic fraud.
"(6) LICENSE. A private school license identifying the name and location of the school and establishing the courses which may be offered thereunder.

"(7) PERMIT. A pocket card issued to an agent or representative providing identification as an authorized agent of a school.

"(8) PRINCIPAL BASE OF OPERATIONS. A school which has established a main campus in Alabama. Administrative and managerial support and physical plant facilities are maintained continuously in this location. Franchises chartered independently of parent corporations may be accorded this status provided they comply with the residency requirements.

"(9) PRIVATE SCHOOL. Operation of either a for profit or nonprofit entity as opposed to publicly owned or operated schools.

"a. A for profit entity is any school operated as a business corporation, partnership, or proprietorship.

"b. A nonprofit entity is any school established by a nonprofit charter or articles of incorporation with bylaws establishing a nonprofit mode of operation that is determined by the Internal Revenue Service to be eligible for tax deductible contributions in accordance with Section 26 U.S.C. 501(c)(3).

"(10) RESIDENT PRIVATE SCHOOL - A COURSE. Any course or sequence of courses of instruction offered by a
school which is domiciled within Alabama and has established
for a period of three years permanent administrative and
management facilities in this state.

"(11) §2+ SCHOOL. Any person, group of people,
institution, establishment, agency, or organization offering
or administering a plan, course, or program of instruction
whether conducted in person, by mail, by correspondence,
online, by distance learning education, or by any other method
except the teaching of private lessons of instruction on a
singular subject, unless otherwise provided by law.

"§16-46-3.

"(a) This chapter shall not apply to any of the
following schools nor to any person in regard to the operation
of such schools, except for the conditions stated in this
section:

"(1) Schools operated on a nonprofit basis offering
only courses or programs of study which do not lead to an
associate or baccalaureate degree and are limited in nature to
the performance of or preparation for the ministry of any
established church, denomination, or religion.

"(2) Courses conducted by employers exclusively for
their employees and courses conducted by labor unions
exclusively for their members.

"(3) Schools offering instruction in grades K-12,
including the kindergarten, elementary, or secondary level and
operated by a parochial, denominational, or religious
organization, and/or as a ministry of a local church or group
of churches on a nonprofit basis.

"(4) Schools offering instruction in grades K-12,
including the kindergarten, elementary, or secondary level,
and operated by a community, educational organization, or
group of parents, organized as a nonprofit educational
corporation with the expectation of establishing a more
favorable environment for those in attendance.

"(5) Schools, colleges, and universities principally
operated and supported by the State of Alabama or its
political subdivisions.

"(6) Seminars and short courses sponsored or offered
by professional business, trade, or religious organizations
primarily for benefit of members thereof, or similar public
programs of training where the majority of the students have
at least half of their tuition and enrollment fees paid by
their employers, provided that evidence is supplied supporting
this exemption continuously over the preceding five years.

"(7) Any private school conducting resident courses
whose principal base of operation is within the State of
Alabama which has been in continuous operation for 20 years or
more as of April 29, 1980 July 1, 2004, and that held
accreditation as of that date by an accrediting agency
recognized by the United States Department of Education.
"(8) Programs of study regulated by other state public boards, commissions, or agencies requiring school licensure and/or or performance bonding, or both, except where the appropriate regulatory agency requires a license under this chapter.

"(9) Any proprietary private postsecondary institution conducting resident courses that has been in operation within Alabama for at least five years as of July 1, 2004, and that is accredited by an accrediting agency recognized by the United States Department of Education shall be accorded the following provisions: Upon proof of such accreditation, such schools shall be issued a license and representative permits after required fees are paid to the Alabama Department of Postsecondary Education. The requisite accreditation shall satisfy the minimum standards of this chapter.

"(b) Any private school exempted in this section shall retain the exempted status as long as the conditions of exemption remain valid. An accredited private school or program of study not elsewhere exempted whose accreditation is withdrawn, suspended, or revoked shall forfeit its exemption status until the grant of accreditation is restored. Due process of the accrediting agency shall be allowed prior to withdrawal of an exemption. Schools having accreditation withheld as a result of transfer of ownership shall be allowed
a period of time to regain the grant in accordance with the
appropriate accrediting agency regulations.

"(c) An exemption pursuant to this section shall not
be construed to constitute approval or endorsement by the
State of Alabama for any purpose.

"(d) Exempted private schools may voluntarily
request to be licensed without surety as described in Sections
16-46-5 and 16-46-6.

"(e) Private schools which cease operations shall
place the student academic, attendance, and financial aid
records in the office of the appropriate school administrator
where a repository shall exist to safeguard and to make
available these records to authorized persons upon request as
follows:

"(1) Schools which merge, consolidate, or undergo
change of ownership shall deposit with the continuing school.

"(2) Schools which are a part of a system,
organization, franchise, or a ministry of a local church or a
group of churches shall deposit with the administrative office
thereof if such is to remain in operation.

"(3) Elementary and secondary schools without system
support shall deposit with the superintendent of the public
county or city within whose district the school is located.
"(4) Postsecondary, higher, and others not elsewhere designated shall deposit with the Alabama Department of Postsecondary Education."

Section 2. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.
Speaker of the House of Representatives

Kay Ivey

President and Presiding Officer of the Senate

I hereby certify that the within Act originated in and was passed by the House 21-APR-11, as amended.

Greg Pappas
Clerk

Senate 05-MAY-11 Passed

APPROVED May 31, 2011
TIME 12:15 p.m.

Robert Bentley
GOVERNOR

Alabama Secretary Of State
Act Num....: 2011-296
Bill Num....: H-321
Recv'd 05/31/11 02:23pmJJB