

1 SB397
2 116555-1
3 By Senators Figures, Dixon, Pittman, Mitchell, Glover, and
4 Sanders
5 RFD: Education
6 First Read: 09-FEB-10

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8 SYNOPSIS: Under existing law, a private school is
9 defined as including both profit and nonprofit
10 entities and may apply for exemption from state
11 licensing requirements if in continuous operation
12 for 20 years or more as of April 29, 1980.

13 This bill would clarify the meaning of
14 profit and nonprofit as the terms relate to the
15 definition of a private school.

16 This bill would also change the baseline
17 exemption date from April 29, 1980, to January 1,
18 2004.

19
20 A BILL

21 TO BE ENTITLED

22 AN ACT

23
24 To amend Sections 16-46-1 and 16-46-3, Code of
25 Alabama 1975, relating to the regulation of private schools
26 and courses of instruction; to clarify the terms profit and
27 nonprofit as used in the definition of a private school; and

1 to change the baseline exemption date from April 29, 1980, to
2 January 1, 2004.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

6 "§16-46-1.

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

10 "(1) COURSE. Any course, or portion of a plan or
11 program of instruction, whether conducted in person, by mail,
12 or by any other method.

13 "(2) SCHOOL. Any person, group of people,
14 institution, establishment, agency, or organization offering
15 or administering a plan, course, or program of instruction
16 whether conducted in person, by mail, or by any other method.

17 "(3) PRIVATE SCHOOL. Operation of either profit a
18 for-profit or nonprofit entity as opposed to publicly owned or
19 operated schools. A for-profit school is any proprietary
20 school operated for profit by owners or investors and not a
21 not-for-profit institution, religious organization, or
22 government entity. A nonprofit school is any school
23 established pursuant to a nonprofit charter or articles of
24 incorporation and bylaws establishing a nonprofit mode of
25 operation that is recognized by Internal Revenue Service tax
26 codes as a nonprofit entity.

1 "(4) AGENT or REPRESENTATIVE. Salesperson who
2 presents materials, sells courses, or solicits students for
3 enrollment therefor in this state outside the boundaries of
4 the school facilities.

5 "(5) LICENSE. A private school license identifying
6 the name and location of the school and establishing the
7 courses which may be offered thereunder.

8 "(6) PERMIT. A pocket card issued to a
9 representative providing identification as an authorized agent
10 of a school.

11 "(7) ECONOMIC FRAUD. The sale of courses or programs
12 of study which an institution is unable or unwilling to
13 provide as advertised or described because of inadequate
14 financial stability, facilities, instructional staff, or
15 commitment to honor written or verbal contracts made with
16 students. Included is the solicitation of students for
17 enrollment through intentional deception or misrepresentation
18 of fact and the use of advertising which is known to be false,
19 inaccurate, or misleading. Failure to properly administer
20 student cancellation and refund policies according to
21 appropriate regulations or agreements made with students shall
22 also constitute economic fraud.

23 "(8) ACADEMIC FRAUD. Courses offered are
24 insufficient in quality, content, or administration to achieve
25 the stated or implied educational objective. Persons offering
26 such courses who know or reasonably should know that said
27 courses cannot achieve the stated or implied educational

1 objective shall be considered to be involved in academic
2 fraud.

3 "(9) RESIDENT PRIVATE SCHOOL. A school which is
4 domiciled within Alabama and has established for a period of
5 three years permanent administrative and management facilities
6 in this state.

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

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

16 "§16-46-3.

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

21 "(1) Schools operated on a nonprofit basis offering
22 only courses or programs of study in the performance of or
23 preparation for the ministry of any established church,
24 denomination, or religion.

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

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

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

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

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

22 "(7) Any private school conducting resident courses
23 whose principal base of operation is within the State of
24 Alabama which has been in continuous operation for 20 years or
25 more as of ~~April 29, 1980~~ January 1, 2004, and that held
26 accreditation as of that date by an accrediting agency
27 recognized by the United States Department of Education.

1 "(8) Programs of study regulated by other state
2 boards, commissions, or agencies requiring school licensure
3 and/or performance bonding, except where the appropriate
4 regulatory agency requires a license under this chapter.

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

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

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

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

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

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

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

19 "(3) Elementary and secondary schools without system
20 support shall deposit with the superintendent of the public
21 county or city within whose district the school is located.

22 "(4) Postsecondary, higher, and others not elsewhere
23 designated shall deposit with the Alabama Department of
24 Postsecondary Education."

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

