

2019 Regular Session

HOUSE BILL NO. 562

BY REPRESENTATIVE EMERSON AND SENATOR MORRISH

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

SCHOOLS/PROPRIETARY: Provides relative to proprietary schools

1 AN ACT

2 To amend and reenact R.S. 17:7(8) and 11 and R.S. 36:651(L) and 801.5(A), to enact R.S.  
3 17:3140.1 through 3140.17, and to repeal R.S. 17:3141.1 through 3141.19, relative  
4 to proprietary schools; to provide for technical corrections and recodification of  
5 statutory provisions relative to proprietary schools; to provide for the regulation and  
6 oversight of proprietary schools by the Board of Regents including licensure,  
7 applications, fees, appeals, and degree granting; to provide with regard to the  
8 Advisory Commission on Proprietary Schools and the Proprietary School Student  
9 Protection Fund; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. R.S. 17:7(8) and 11 are hereby amended and reenacted and R.S.  
12 17:3140.1 through 3140.17 are hereby enacted to read as follows:

13 §7. Duties, functions, and responsibilities of board

14 In addition to the authorities granted by R.S. 17:6 and any powers, duties, and  
15 responsibilities vested by any other applicable laws, the board shall:

16 \* \* \*

17 (8) Except as otherwise provided by law, approve ~~private and proprietary~~  
18 nonpublic schools in accordance with the provisions of R.S. ~~17:10~~ 17:11 and any  
19 other applicable laws.

20 \* \* \*

1 §11. Approval of ~~private~~ nonpublic schools by board

2 A. The board shall adopt standards and guidelines which shall be applied in  
3 determining whether a ~~private or proprietary~~ nonpublic school applying for approval  
4 meets the requirements of a sustained curriculum or specialized course of study of  
5 quality at least equal to that prescribed for similar public schools. The board shall  
6 appoint an advisory committee of ~~private and proprietary~~ nonpublic school  
7 representatives, who shall advise and counsel with the board relative to standards and  
8 guidelines affecting these schools. After initial approval the board shall periodically  
9 determine whether the ~~private~~ nonpublic school is maintaining such quality and if  
10 not, shall discontinue approval of the school.

11 B. The board shall approve any ~~private~~ nonpublic elementary, or secondary,  
12 ~~or proprietary~~ school which makes application therefor on a form furnished by the  
13 board, if such school meets and maintains a sustained curriculum or specialized  
14 course of study of quality at least equal to that prescribed for similar public schools.

15 C. All certificates and diplomas issued by an approved ~~private~~ nonpublic  
16 school shall carry the same privileges as one issued by a state public school.

17 \* \* \*

18 §3140.1. Definitions

19 For the purposes of this Chapter:

20 (1) "Academic course" means a subject designed for transfer of credit.

21 (2) "Board" means the Board of Regents.

22 (3) "Commission" means the Advisory Commission on Proprietary Schools.

23 (4) "Notice to the school" means written correspondence sent to the address  
24 contained in the application or affidavit.

25 (5) "Owner" of a school means, if the school is owned by one or more  
26 individuals, each individual; if the school is owned by a partnership, the owners of  
27 the school are the partnership and each partner; and if the school is owned by a  
28 corporation, the owners of the school are the corporation, the officers and directors  
29 of the corporation, and any stockholder who owns five percent or more of the total

1 aggregate number of shares of all types of stock issued by the corporation that owns  
2 the school or of any corporation owning stock, directly or indirectly, of the  
3 corporation that owns the school.

4 (6) "Proprietary school" or "school":

5 (a) Means any business enterprise operated for a profit or on a nonprofit  
6 basis which maintains a place of business within this state, or which sells or offers  
7 for sale any course of instruction in this state, or at which place of business such a  
8 course or courses of instruction or study is available through classroom or internet  
9 instruction, or both, or by any other means, to a person or persons for the purpose of  
10 training or preparing for a field of endeavor in a business, trade, technical, or  
11 industrial occupation, except as otherwise provided by law.

12 (b) Means, for institutions based out-of-state that provide online instruction  
13 within the state of Louisiana, a business enterprise offering online courses that  
14 require clinical or practical experiences at a Louisiana site in which students are  
15 observed, assisted, or evaluated by supervisors, preceptors, instructors, or other  
16 individuals to determine that program requirements have been met.

17 (c) Shall not mean:

18 (i) A school or educational institution supported entirely or partly by public  
19 funds from either a local or state source.

20 (ii) A parochial, denominational, or eleemosynary school or institution that  
21 provides religious training or theological education. However, any school or  
22 institution that also offers training in a secular field of endeavor shall be subject to  
23 the provisions of this Chapter.

24 (iii) A school or training program which offers instruction primarily in the  
25 fields of recreation, health, entertainment, or personal enrichment and which does  
26 not purport to prepare or qualify persons for employment as determined by the  
27 commission.

28 (iv) A course or courses of instruction or study sponsored by an employer  
29 for the training and preparation of its own employees when the employer is not

1 primarily engaged in the business of selling or offering courses of instruction or  
2 study.

3 (v) A course or courses of study or instruction sponsored by a recognized  
4 trade, business, or professional organization for the instruction of the members of the  
5 organization.

6 (vi) Private colleges and universities which only award a baccalaureate or  
7 higher degree and which maintain and operate educational programs for which  
8 students earn credits.

9 (vii) A nonpublic school which provides a basic academic education  
10 comparable to that provided in the public schools of the state.

11 (viii) A school offering a program only for children under six years of age.

12 (ix) A school which is regulated and licensed under other laws of this state.

13 (x) A private tutor, teacher, or individual engaged in giving private tutoring  
14 or lessons to five persons or less in nonschool connected activities severed from the  
15 regular curriculum of a school as determined by the commission.

16 (xi) A day camp.

17 (xii) A training program that offers for sale only nonsequential and  
18 noncontinuous courses which do not exceed twenty hours of training.

19 (xiii) A manufacturer-certified training center that offers, at no additional  
20 charge to the person receiving training, manufacturer-authorized training that is  
21 included as part of the manufacturer's pricing package to prepare persons for  
22 certification conferred by the manufacturer and that uses course equipment and  
23 materials which are developed and sold by the manufacturer and course instructors  
24 and facilities which are certified by the manufacturer.

25 (xiv) A school or business enterprise which only offers instruction to prepare  
26 students for tests which are required for entry into a postsecondary program of study.

27 (xv) A school or business enterprise which offers yoga teacher training.

28 (xvi) A school or business enterprise which provides students with advanced  
29 training techniques for police and service dogs.

1           (xvii) An educator preparation program that is approved by the State Board  
2           of Elementary and Secondary Education.

3           (xviii) Any form of contract training.

4           (7) "School employee" means all instructors, administrators, solicitors,  
5           clerical, and office personnel employed by the school.

6           (8) "Solicitor" means a person who solicits business for a proprietary school  
7           or who offers to sell or sells in this state any instruction or course of instruction  
8           offered by a proprietary school.

9           (9) "Teach-out" means the time remaining in a student's course of study.

10          (10) "Treasurer" means the state treasurer.

11          §3140.2. Advisory Commission on Proprietary Schools; creation; membership;  
12          terms; rules and regulations

13          A. There is hereby established under the jurisdiction of the board the  
14          Advisory Commission on Proprietary Schools, comprised of nine members to be  
15          appointed as follows:

16               (1) One member by the commissioner of higher education.

17               (2) Two members by the board.

18               (3) Three members by the Louisiana Association of Private Colleges and  
19          Schools.

20               (4) One member by the Board of Supervisors of the Louisiana Community  
21          and Technical College System.

22               (5) One member by the State Association of Better Business Bureaus.

23               (6) One member by the Louisiana Association of Chamber of Commerce  
24          Executives.

25               B.(1) Each member shall serve for a four-year term and shall serve until his  
26          successor is appointed or qualified.

27               (2) Any vacancy occurring in the membership of the commission shall be  
28          filled in the manner of original appointment.

1           C. Members shall serve without compensation but shall be reimbursed for  
2           actual expenses incurred in attending meetings of the commission.

3           D. The commission shall elect annually from its membership a chairman and  
4           a vice chairman.

5           E. The commission shall be advisory in nature, but may have such powers  
6           and duties as set forth in this Chapter, subject to approval of and oversight by the  
7           board. The board may ratify, annul, or modify any decision, finding, or order of the  
8           commission as it deems appropriate. Any action taken by the commission pursuant  
9           to the provisions of this Chapter shall not be effective until ratified by the board.

10           F.(1) The board shall adopt rules and regulations in accordance with the  
11           Administrative Procedure Act as deemed necessary to administer the provisions of  
12           this Chapter and the functions of the commission. The rules and regulations shall be  
13           interpreted and implemented to promote high-quality instruction, consumer  
14           protection, and student success. The rules and regulations shall include but not be  
15           limited to:

16           (a) Establishing acceptable standards for the conduct of staff and for the  
17           operation of schools.

18           (b) Providing for investigation of complaints related to the established  
19           standards and for the disposition of complaints.

20           (c) Providing remedies including but not limited to restitution orders, fines,  
21           and other appropriate measures for violation of established standards.

22           (d) Providing for a student complaint procedure which shall be applicable  
23           to all licensed proprietary schools and include a mechanism for informing all  
24           students of the availability of the student complaint procedure.

25           (2) The board shall post the rules and regulations adopted pursuant to this  
26           Subsection on the board's website.

27           G. The board shall provide for the monitoring of all proprietary schools to  
28           ensure that all advertising and representations made on behalf of a school to a  
29           prospective student are truthful and free from misrepresentation and fraud.

1       §3140.3. Licenses; fees; application; renewal

2               A.(1) No proprietary school subject to the provisions of this Chapter shall  
3       do business in this state unless the owner holds a valid license approved and issued  
4       by the board. Applications for licensure shall be made to the commission as  
5       provided in this Chapter and rules established by the board.

6               (2) No course of instruction shall be established, offered, or given, and no  
7       diploma, degree, or other written evidence of proficiency or achievement shall be  
8       offered or awarded until the owner of the school planning to offer or offering such  
9       course of instruction, diplomas, or degrees has obtained a license.

10              (3)(a) No license shall be transferable. In the event of a change of ownership  
11       of a school, the license shall be revoked unless the new owner notifies the  
12       commission within ten days of the sale and files a license application within the time  
13       period prescribed by the board.

14              (b) If the school is owned by a corporation, a change of ownership is deemed  
15       to occur when fifty percent or more of all types in the aggregate of the corporation's  
16       stock has been transferred to a person or persons other than the person or persons  
17       who were stockholders at the time the school license was issued.

18              (c) For the purposes of this Chapter, an application for a change of  
19       ownership for a proprietary school already licensed by the board shall be treated as  
20       an initial license application with the additional submission of the bill of sale.

21              (4) Each application for a license shall be accompanied by a surety bond in  
22       the amount of ten thousand dollars.

23              B.(1) The fee for an initial license or change of ownership shall be two  
24       thousand dollars.

25              (2)(a) The annual renewal fee for any school whose previous year's gross  
26       tuition income is less than fifty thousand dollars shall be five hundred dollars. The  
27       annual renewal fee for any school whose previous year's gross tuition income is  
28       equal to or greater than fifty thousand dollars shall be one thousand dollars, or the

1 school's previous year's gross tuition income multiplied by twenty-five hundredths  
2 of one percent, whichever is greater.

3 (b) Any income earned by a proprietary school for courses of instruction  
4 which are not subject to licensure shall not be used in the calculation of license  
5 renewal fees for the school.

6 (3) No portion of any fee shall be subject to refund.

7 (4) An additional delinquent fee of five hundred dollars shall be imposed  
8 when an application for a license renewal is not received at the commission office  
9 at least thirty days prior to its expiration date.

10 (5) The reinstatement licensure fee for a suspended school shall be five  
11 hundred dollars.

12 C. An applicant for an initial license shall provide, at a minimum, the  
13 following:

14 (1) Properly completed application forms provided by the board.

15 (2) Documentation of the legal structure of the school.

16 (3) A copy of the school's business plan.

17 (4)(a) A current audited balance sheet of the school prepared by an  
18 independent, certified public accountant within six months prior to the date of the  
19 initial application for licensure.

20 (b) Certification by a school official that all information contained in the  
21 balance sheet is true and correct.

22 (5) Verification of surety bond coverage.

23 (6) A list of equipment available for instruction in each course of study  
24 offered by the school.

25 (7) A copy of the school catalogue as set forth in this Chapter and by rules  
26 established by the board.

27 (8) A copy of the certificate of occupancy or its equivalent issued by the  
28 local governing authority.

1           (9) A copy of all enrollment contracts or agreements which students  
2           attending the school will be required to sign.

3           (10) A copy of all proposed bulletins, published materials, form letters,  
4           circulars, and all advertising which will be transmitted to the public or prospective  
5           students.

6           (11) A copy of current accreditation granted by a nationally or regionally  
7           recognized accrediting agency approved by the United States Department of  
8           Education, if applicable.

9           (12) A detailed outline of each career program, including the number of  
10          courses required for completion of each career program and a description of each  
11          course.

12          (13) A notarized affidavit stating that neither the owner or solicitor has  
13          pleaded guilty to a felony or has been found guilty of a felony.

14          (14) Any other information required by the board.

15          D. An applicant for a license renewal shall provide, at a minimum, the  
16          following:

17           (1) Verification of continuation of surety bond coverage.

18           (2)(a) Financial statements of the school prepared by an independent  
19           certified public accountant for the previous business year.

20           (b) Certification by a school official that information contained in the  
21           balance sheet is true and correct.

22           (3) Documentation of solvency.

23           (4) A copy of the current school catalogue as provided in this Chapter and  
24           board rules.

25           (5) A copy of all enrollment contracts or agreements which students will be  
26           required to sign.

27           (6) The number of students enrolled, number of students graduated, and the  
28           school's placement rate for the previous business year.

1           (7) A copy of current accreditation granted by a nationally or regionally  
2           recognized accrediting agency approved by the United States Department of  
3           Education, if applicable.

4           (8) Properly completed application forms provided by the board.

5           E. No license shall be renewed for a school that has failed to make any  
6           student tuition refunds in the manner provided by state and federal laws and  
7           regulations.

8           F. The board may conduct onsite visits and require information as may be  
9           necessary to grant a license and monitor institutional compliance with this Section.

10          §3140.4. Licenses; minimum standards; duration

11           A. No applicant shall be issued a license pursuant to this Chapter until the  
12           board has first determined that the school substantially complies with the following:

13           (1) The school's instructors have the following qualifications:

14           (a) In an academic course, an instructor shall, at a minimum, possess a  
15           baccalaureate degree from a bona fide, accredited college or university and  
16           demonstrate appropriate familiarity with the subject matter taught.

17           (b) In a technical or occupational course, an instructor shall possess, at a  
18           minimum, a bona fide high school diploma or its equivalent; a certificate, diploma,  
19           license, other degree, or documented evidence of on-the-job training in the area  
20           taught; and a minimum of four years of documented occupational experience in the  
21           area taught.

22           (2) All advertising and representations made on behalf of the school to  
23           prospective students are truthful and free from misrepresentation and fraud.

24           (3) Any dormitory or eating facility provided by the school or for which the  
25           school has contracted services is clean, healthful, safe, and adequate for the number  
26           of students served and adequately supervised at all times.

27           (4) The premises and conditions under which the students work or study are  
28           sanitary, healthful, and safe according to the standards set forth by the Louisiana  
29           Department of Health.

1           (5) Prior to enrollment, the student has been provided a written statement of  
2           total tuition charges, required fees, all charges for books, equipment, and supplies,  
3           and any applicable charges for housing. If housing is not furnished, a statement to  
4           that effect shall also be included.

5           (6) The school adheres to the tuition refund schedule established by the  
6           board. The refund schedule shall be included in the enrollment contract or agreement  
7           and may include an administrative or registration fee for the school that shall not  
8           exceed one hundred fifty dollars.

9           (7) The school is equipped and able at all times to comply with its  
10          contractual relationships with a student.

11          (8) The facilities, class instruction rooms, housing quarters, and eating  
12          facilities are at all reasonable times open to inspection by the commissioner of higher  
13          education, authorized staff of the board, the commission, its members and staff, or  
14          designated agents and the representatives of the Louisiana Department of Health.

15          (9) All equipment furnished is representative of that customarily used within  
16          the industry for which the student is training.

17          (10) The school provides evidence that it meets local and state guidelines  
18          and standards, relative to zoning, occupational licensure, health, and safety.

19          B. The board shall act on all applications for licensure within sixty days after  
20          receipt of the completed application and all supporting materials required by the  
21          board. A license shall be valid only for the school and programs for which it is  
22          issued and shall not include other schools or branches operated by the owner.

23          C.(1) Each license shall be valid for not more than one year from the date of  
24          issuance and may be renewed thereafter for a period to be determined by the board  
25          or until revoked for cause by the board. The effective date of the first license  
26          renewal shall be established by the board.

27          (2) Each license shall be assigned a number.

28          (3) Each school shall prominently display its licenses on the school's  
29          premises.

1        §3140.5. Surety bond; requirement

2            A. Each application for a license shall be accompanied by a surety bond in  
3        the amount of ten thousand dollars. The bond shall be issued by a surety authorized  
4        to do business in this state and shall be filed with the board. The term of the bond  
5        shall be continuous but shall be subject to cancellation by the surety in the manner  
6        provided in this Section.

7            B. The bond shall provide for the indemnification of any person suffering  
8        loss or damage as a result of any of the following:

9            (1) Any fraud or misrepresentation used in procuring his enrollment.

10          (2) The failure on the part of the school to carry out and comply with each  
11        contract and agreement made and entered into by the school, acting by and through  
12        its officers, agents, or representatives with any student.

13          (3) The inability of the student to complete a program of study because the  
14        school ceased operation or failed to furnish the facilities advertised or included in the  
15        contracted agreement.

16          (4) The failure on the part of the school to adequately maintain all student  
17        records including the failure to transfer the records in accordance with the provisions  
18        of this Chapter.

19          C. The bond shall be subject to a ten year prescriptive period for actions or  
20        breach of contract.

21          D. The surety bond shall cover the period of the license except when the  
22        surety is released as provided in this Section.

23          E. A surety on the bond may be released after the surety has made a written  
24        notice directed to the commission and the board at least thirty days prior to the  
25        release. The release shall not affect the liability of the surety for acts arising prior to  
26        the release of the surety.

27          F. The surety may terminate the bond upon giving a sixty-day written notice  
28        to the principal, the commission, and the board. However, the liability of the surety  
29        for the acts of the principal and its agents shall continue during the sixty-day period.

1        The notice shall not release the surety from liability which accrues before the  
2        cancellation becomes final but which is discovered after that date and which arose  
3        at any time during the term of the bond.

4                G. Unless the bond is replaced by that of another surety before the expiration  
5        of the sixty-day period, the license shall be suspended by the board.

6                H. Any person required to file a bond may file in lieu thereof a certificate of  
7        deposit in the amount of ten thousand dollars. The deposit shall be subject to the  
8        same terms and conditions as required for surety bonds. Any interest or earnings on  
9        the deposits are payable to the depositor.

10               I. Notwithstanding the provisions of this Section, a proprietary school may  
11        not be required to post the surety bond if the school only offers programs that do not  
12        exceed four weeks in length, the school has been in continuous operation for at least  
13        five years, and the school has met all of the regulations and rules established by the  
14        board.

15        §3140.6. Denial of license; hearings; appeal

16               A.(1) If the commission recommends the denial of a license, the applicant  
17        shall be notified in writing no later than five business days after the recommendation.

18               (2) An applicant who is recommended for a denial of a license may, within  
19        fourteen business days after receipt of notice of the denial, file with the commission  
20        a request for a hearing before the commission at its next regular meeting. If a  
21        hearing is requested, the matter shall not be presented to the board until the hearing  
22        is held by the commission. The applicant may appear in person or by counsel and  
23        may present evidence in support of the granting of the license. Any interested person  
24        may appear and present oral and documentary evidence to the commission  
25        concerning the issuance of a license to the applicant. Strict rules of evidence shall  
26        not apply.

27               (3) The commission shall issue a statement not later than seven business  
28        days after the hearing giving reasons for its recommendation that a license be granted  
29        or denied.

1           (4) A school may continue to operate until a final determination has been  
2           made regarding the issuance or denial of its license.

3           B. If the board receives a recommendation from the commission that a  
4           license be denied, the applicant may provide a written request for a public hearing  
5           before the board at the time the recommendation is considered. If the Board of  
6           Regents denies a license without a public hearing, the applicant may request a  
7           hearing at the next meeting of the board.

8           C. An applicant for a license who is dissatisfied with the ruling of board after  
9           public hearing may file a written appeal to the district court for the parish in which  
10           the applicant resides within ninety days after receipt of a notice of the final  
11           determination of the board. Written notice of the appeal shall be served on the  
12           presiding officer of the board, stating the reasons therefor.

13           D. A new license shall not be issued to a school if any owner of the school  
14           has been or is an owner of a proprietary school that failed to make student tuition  
15           refunds in the manner provided by the tuition refund guidelines and any applicable  
16           provisions of state and federal law or regulation.

17           §3140.7. Revocation of license; causes; appeal; injunction; subpoena power

18           A. The board, upon the recommendation of the commissioner of higher  
19           education or the commission, may suspend, revoke, or cancel any license issued by  
20           it or to place certain specified conditions upon the continued operation of the school.

21           B. A decision to suspend, revoke, or cancel any license or to place certain  
22           specified conditions upon the continued operation of a school shall require a  
23           favorable vote by at least two-thirds of the total membership of the board.

24           C. A school with a suspended license may continue to provide instruction to  
25           students already enrolled in a course but shall not enroll new students. The  
26           suspension shall remain in effect until the deficiency causing the suspension has been  
27           remedied.

28           D. The commission may recommend to the board that the license of a school  
29           be suspended, revoked, cancelled, or restricted for any of the following reasons:

1           (1) Signing of a license application or holding of a solicitor permit by a  
2           person who has pleaded guilty to a felony or has been found guilty of a felony.

3           (2) Failure to comply with a commitment made in an application for a  
4           license.

5           (3) Failure to substantially comply with the requirements established  
6           pursuant to this Chapter.

7           (4) Failure to maintain sufficient financial resources as evidenced by  
8           applicable financial information or letter of credit reflecting solvency.

9           (5) Acceptance or use by the owner of any school of the services of a  
10          solicitor who does not hold a permit required by this Chapter.

11          (6) Failure to comply with the provisions of this Chapter or any rule or  
12          regulation adopted by the board.

13          (7) Use by an employee, solicitor, or representative of a school, with the  
14          knowledge of the owner, of fraud or misrepresentation in procuring the enrollment  
15          of a student or if an incident is called to the attention of the owner, failure by the  
16          owner to take remedial steps including restitution of fees collected and expenses  
17          incurred by the prospective student.

18          (8) Failure on the part of the school to comply with every contract and  
19          agreement made and entered into by it or by its representative with a student.

20          (9) Use by a school or any school representative of deceptive or fraudulent  
21          advertising in any form.

22          (10) Violation of the prohibited provisions of this Chapter by a school  
23          owner.

24          (11) Filing of false information with the commission, the commissioner of  
25          higher education, or the board by an owner of a school or by any holder of a license  
26          or a permit.

27          (12) Failure of the owner of the school to notify the commission in writing  
28          of the withdrawal of accreditation or approval.

1           (13) Failure to provide facilities or equipment for offering courses of  
2           instruction in a safe and sanitary condition.

3           (14) Failure to provide the equipment described in the application.

4           (15) Offering an unapproved program.

5           E. The commission shall hold a hearing prior to making a recommendation  
6           to the board for the revocation of a license.

7           F. The board shall notify a licensee of its decision to suspend, revoke, or  
8           cancel a license. At any time within thirty days prior to the revocation or  
9           conditioning of a license, the board shall afford the holder an opportunity to be heard  
10          in person or by counsel. Strict rules of evidence shall not apply.

11          G. Within thirty days prior to the date set for a hearing on revocation or  
12          restriction, the board shall notify the licensee in writing of the date and purpose of  
13          the hearing and the grounds for the action contemplated.

14          H. The board shall suspend the license of any school that:

15           (1) Fails to pay required fees or annually submit updated information on  
16           changes in staff and school programs, not less than thirty days prior to the expiration  
17           date of its license.

18           (2) Is no longer covered by a surety bond or certificate of deposit.

19          I. Any final decision or determination of the board may be appealed to the  
20          district court for the parish in which the applicant resides within ninety days after  
21          receipt of written notice from the board of the final determination. Written notice  
22          of the appeal shall be served on the presiding officer of the board, stating the reasons  
23          therefor.

24          §3140.8. Prohibited acts; penalty; injunctive relief

25           A. It shall be unlawful for any owner of a school or a representative of a  
26           proprietary school offering courses of instruction in this state to:

27           (1) Operate the school without a valid license.

28           (2) Operate the school without a valid surety bond or certificate of deposit  
29           as required by this Chapter.

1           (3) Use advertising designed to mislead or deceive prospective students.

2           (4) Accept a contract from a solicitor who does not hold a valid permit  
3           issued in accordance with this Chapter.

4           (5) Violate any provisions of this Chapter.

5           B. It shall be unlawful for any person selling or offering to sell courses of  
6           instruction in this state to:

7           (1) Solicit a prospective student without holding a valid permit as required  
8           by this Chapter.

9           (2) Solicit a prospective student without having a surety bond or certificate  
10          of deposit as required by this Chapter.

11          (3) Use fraud or misrepresentation in procuring a student's enrollment.

12          (4) Violate any provisions of this Chapter.

13          C. Any owner, school employee, or solicitor who is found guilty of any act  
14          prohibited by this Chapter shall be guilty of a misdemeanor and shall be fined an  
15          amount not to exceed five hundred dollars. Each day a violation continues shall  
16          constitute a separate offense.

17          D. If the commissioner of higher education or the commission has probable  
18          cause to believe that any owner of a proprietary school or any solicitor who sells or  
19          offers to sell any course of instruction has committed any of the acts prohibited by  
20          this Chapter, the commissioner of higher education shall petition a court of  
21          competent jurisdiction for an injunction against the school or solicitor.

22          §3140.9. Complaints; investigations; hearings; judicial review

23          A. Based on information gathered from its investigation of complaints as  
24          provided in this Chapter, the commission shall determine whether a violation has  
25          occurred. The commission shall send a notice of the violation to the school or to the  
26          solicitor specifying the standard violated, the remedy proposed, and the procedure  
27          by which an administrative hearing may be requested.

28          B. For purposes of an investigation or hearing, the commission may  
29          administer oaths and affirmations, subpoena witnesses, compel their attendance, take

1 evidence, and require the production of any records which the commission deems  
2 relevant or material to the investigation or hearing.

3 C. If a party fails or refuses to obey a subpoena or to comply with a request  
4 for information, the board or the commission may make application to the  
5 Nineteenth Judicial District Court which shall have jurisdiction to issue an order  
6 requiring the party involved to appear before the board, to produce evidence, or to  
7 give testimony touching on the matter under consideration. Any failure to obey an  
8 order of the court may be punished by the court as contempt.

9 D. Following an opportunity for a hearing, the commission shall transmit its  
10 findings to the board. The board shall review the findings of the commission and  
11 shall render a written decision. The board shall consider the record of proceedings  
12 conducted before the board and may accept, reject, or modify the recommendations  
13 of the commission and may provide for corrective action including but not limited  
14 to restitution orders and fines, which fines shall not exceed five hundred dollars per  
15 violation.

16 E. Any party aggrieved by any decision or order of the commission or board  
17 may seek judicial review.

18 F. No cause of action shall exist against any student who in good faith makes  
19 a report, cooperates in the investigation by the commission, or participates in judicial  
20 proceedings and each student shall have immunity from civil or criminal liability that  
21 might otherwise be incurred or imposed. This immunity from liability shall not  
22 extend to any person who makes a report known to be false or with reckless  
23 disregard for the truth of the report.

24 §3140.10. Cessation of operations

25 A.(1) If a licensed proprietary school makes a determination to cease  
26 operations it shall provide formal written notice to the board at least thirty days prior  
27 to the date it will cease operations.

28 (2) Cessation of operations shall mean the cessation of all instructional and  
29 business operations directly related to the offering of education and training as

1 authorized under the provisions of this Chapter, with no reasonable prospect of  
2 resuming operations.

3 B. The notice, at a minimum, shall provide the following:

4 (1) Teach-out plans for current students. The teach-out school shall not be  
5 liable for any refunds to a transfer student.

6 (2) Commencement ceremony plans, if the school has offered a ceremony,  
7 for each student who has or will complete all requirements for graduation prior to the  
8 date operations cease.

9 (3) Student notification plans regarding cessation of operations, teach-out  
10 options, and commencement activities, if applicable.

11 (4) Plans for transferring student records to the board.

12 (5) Other information required by the board.

13 C. If a school ceases operations, the board may authorize the seizure and sale  
14 at public auction of all unsecured assets of the school, with all proceeds to be  
15 deposited in the Proprietary School Student Protection Fund.

16 §3140.11. Proprietary School Student Protection Fund

17 A. There shall be established in the state treasury as a special permanent  
18 fund the Proprietary School Student Protection Fund. Following compliance with  
19 the requirements of Article VII, Section 9(B) of the Constitution of Louisiana  
20 relative to the Bond Security and Redemption Fund, all monies generated pursuant  
21 to the provisions of this Section shall be deposited into the Proprietary School  
22 Student Protection Fund, and monies in this fund shall be used solely to make  
23 refunds of unearned tuition as provided in this Chapter. The monies in the fund shall  
24 be invested by the state treasurer in the same manner as for the state general fund and  
25 interest earned on the investment of these monies shall be credited to the fund. All  
26 unexpended and unencumbered monies in the fund at the end of a fiscal year shall  
27 remain in the fund and be available for expenditure in the next fiscal year. The  
28 legislature shall make yearly appropriations from the fund to the board for the  
29 purposes of the proprietary school student protection program.

1           B.(1) Each licensed proprietary school shall make payments to the  
 2           Proprietary School Student Protection Fund. The first payment to the fund by a  
 3           school shall be one thousand dollars and shall accompany application for licensure.  
 4           Beginning one year after licensure by the board and annually thereafter, the annual  
 5           payment shall be determined based on the graduated schedule as provided in this  
 6           Paragraph. If the gross tuition collected by a school during the first assessment  
 7           period after licensure requires an adjustment, the adjustment shall be made in  
 8           accordance with the applicable provisions of this Section.

9           PROPRIETARY SCHOOL STUDENT PROTECTION FUND SCHEDULE

	<u>Gross Tuition Collected During</u>		<u>Annual Payment</u>			
	<u>Assessment Period</u>					
12	\$	<u>1</u>	-	<u>24,999</u>	\$	<u>200.00</u>
13	\$	<u>25,000</u>	-	<u>49,999</u>	\$	<u>250.00</u>
14	\$	<u>50,000</u>	-	<u>99,999</u>	\$	<u>300.00</u>
15	\$	<u>100,000</u>	-	<u>199,999</u>	\$	<u>400.00</u>
16	\$	<u>200,000</u>	-	<u>299,999</u>	\$	<u>500.00</u>
17	\$	<u>300,000</u>	-	<u>399,999</u>	\$	<u>600.00</u>
18	\$	<u>400,000</u>	-	<u>499,999</u>	\$	<u>700.00</u>
19	\$	<u>500,000</u>	-	<u>749,999</u>	\$	<u>1,000.00</u>
20	\$	<u>750,000</u>	-	<u>999,999</u>	\$	<u>1,250.00</u>
21	\$	<u>1,000,000</u>	-	<u>1,499,999</u>	\$	<u>1,500.00</u>
22	\$	<u>1,500,000</u>	-	<u>and above</u>	\$	<u>2,000.00</u>

23           (2) All payments to the Proprietary School Student Protection Fund shall be  
 24           made payable to the "Student Protection Fund". Except in cases of overpayment, all  
 25           payments to the Proprietary School Student Protection Fund shall be nonrefundable.

26           (3) Nontuition revenues and all income generated from contract training  
 27           services shall be exempt from the calculation of a school's gross tuition revenues.

28           (4) Payments required pursuant to this Section shall be a condition of doing  
 29           business in the state and failure to make a payment within thirty days following the

1 date on which it is due shall result in the loss of licensure as granted under the  
2 provisions of this Chapter. The commission shall provide written notice of the  
3 required payment to each school not less than thirty days prior to the due date of the  
4 payment.

5 (5) If an audit of tuition revenues conducted by the board determines that a  
6 school has paid into the Proprietary School Student Protection Fund an amount less  
7 than was required, the school shall pay the amount required to the commission within  
8 thirty days of receipt of written notice from the board of the amount of the  
9 underpayment.

10 (6) If an audit of tuition revenues conducted by the board determines that a  
11 school has paid into the Proprietary School Student Protection Fund an amount more  
12 than was required, subsequent payment or payments by the school shall be  
13 appropriately credited by the commissioner of higher education or his designee until  
14 the credited payment or payments equal the amount of the overpayment.

15 C. Forms developed and provided annually to calculate payments due the  
16 Proprietary School Student Protection Fund shall be completed by the school and  
17 submitted annually to the commission. The school director or persons designated to  
18 sign on his behalf shall attest that the information provided is correct and complete.

19 D. Claims against the fund shall be considered from currently enrolled  
20 students only when there is a lack of availability for that student to transfer for the  
21 time remaining in his course of study at no additional cost to a similar program  
22 within the student's local area as determined by the Advisory Commission on  
23 Proprietary Schools or other teach-out options.

24 E. A school shall inform its students in writing of their rights under the  
25 provisions governing the Proprietary School Student Protection Fund.

26 F. Any student enrolled in a proprietary school licensed under the provisions  
27 of this Chapter who is unable to complete a course or unit of instruction at a school  
28 because of cessation of operation of the school and who has paid tuition for the  
29 course or unit of instruction may make application to the board for a refund of tuition

1 from the Proprietary School Student Protection Fund to the extent that the fund exists  
2 or has reached the level necessary to pay outstanding approved claims.

3 G.(1) Application for refund shall be made on forms provided by the board  
4 after determination of cessation of operation of the school.

5 (2) In applying for a refund pursuant to the provisions of this Section, a  
6 student shall specify all sources and amounts of tuition which were paid on the  
7 student's behalf.

8 H.(1) Upon application, the board shall determine whether the applicant is  
9 unable to complete a course or unit of instruction because of the cessation of  
10 operation of the school to which tuition has been paid. The board may summon by  
11 subpoena any person, records, or documents pertinent to the making of a  
12 determination regarding cessation of operation.

13 (2) If the board finds that the applicant is entitled to a tuition refund because  
14 of the cessation of operation of the school, the board shall determine the amount of  
15 an appropriate refund which shall be equal to or a portion of the tuition paid for the  
16 uncompleted course or unit of instruction. The board shall direct the commission to  
17 pay the refund to the applicant or persons, agencies, or organizations indicated by the  
18 applicant who has paid tuition on the student's behalf. If the student is a minor,  
19 payment shall be made to the student's parent or legal guardian.

20 (3) Each recipient of a tuition refund made in accordance with the provisions  
21 of this Section shall assign all rights to the state of any action against the school or  
22 its owner or owners for tuition amounts reimbursed pursuant to this Section. Upon  
23 assignment, the board may take appropriate action against the school or its owner or  
24 owners in order to reimburse the Proprietary School Student Protection Fund for any  
25 expenses or claims that are paid from the fund and to reimburse the state for the  
26 reasonable and necessary expenses in undertaking the action.

27 I. A claim shall be made against the fund only if it arises out of the cessation  
28 of operation and after claims are made against the surety bond or other school  
29 financial resources.

1           J. The board shall adopt necessary rules and regulations based on  
2           recommendations from the commission providing for the cessation of payments into  
3           the Proprietary School Student Protection Fund by schools licensed under the  
4           provisions of this Chapter upon the fund balance reaching a minimum of eight  
5           hundred thousand dollars and for the resumption of payments into the fund whenever  
6           the fund balance is less than seven hundred fifty thousand dollars.

7           K.(1) Notwithstanding the provisions of Subsection A of this Section, there  
8           is hereby established a special account within the Proprietary School Student  
9           Protection Fund to be known as the Proprietary School Student Records and  
10           Administration Account, hereafter in this Subsection referred to as the  
11           "administration account". Any balance in the Proprietary School Student Protection  
12           Fund on July 1, 2000, that exceeds eight hundred thousand dollars, as provided in  
13           Subsection F of this Section, shall be deposited into the administration account. All  
14           interest earned on the fund after July 1, 2000, shall be deposited in the administration  
15           account. All deposits made to the Proprietary School Student Protection Fund after  
16           July 1, 2000, shall be made in accordance with the provisions of this Section.

17           (2) Amounts from the administration account shall be pledged and dedicated  
18           solely and exclusively for costs associated with board functions as they relate to the  
19           administration of proprietary schools and for the creation of a digital student records  
20           management system.

21           §3140.12. Administration

22           A. All funds collected from proprietary schools licensed pursuant to this  
23           Chapter, except payments made to the Proprietary School Student Protection Fund,  
24           shall be used exclusively for implementing and otherwise administering the  
25           provisions of this Chapter. The board shall annually update the Advisory  
26           Commission on Proprietary Schools regarding all funds collected and all  
27           expenditures made pursuant to the provisions of this Chapter.

28           B. The board shall assign employees to implement and administer the  
29           provisions of this Chapter. The duties and responsibilities of the employees shall be

1 determined by the commissioner of higher education, subject to the approval of the  
2 board, but shall include responsibility for all administrative, clerical, legal, and  
3 financial matters associated with the licensing, monitoring, and evaluation of  
4 proprietary schools governed by this Chapter and with the operation of the  
5 commission.

6 §3140.13. Solicitor permits

7 A.(1) No person shall sell any course of instruction offered by a proprietary  
8 school or solicit students in this state unless he first applies for and obtains a permit  
9 as a solicitor.

10 (2) If the solicitor represents more than one school, he shall obtain a separate  
11 permit for each school he represents.

12 (3) Each permit shall be valid for one year from the date of issue.

13 (4)(a) The fee for each permit and each renewal shall be one hundred dollars.

14 (b) All fees collected for the issuance or renewal of permits required by this  
15 Section shall be retained by the board solely for administering the provisions of this  
16 Chapter and no part thereof shall revert to the state general fund at the end of any  
17 fiscal year.

18 B. The application for a permit shall be made on forms furnished by the  
19 board.

20 C.(1) Each application shall be accompanied by a surety bond acceptable to  
21 the board in the sum of one thousand dollars. The bond shall be continuous. The  
22 bond shall be issued by a solvent surety authorized to do business in this state, shall  
23 be filed with the commissioner of higher education, and shall be conditioned to  
24 provide indemnification to any student suffering loss as a result of any fraud or  
25 misrepresentation used by the solicitor in procuring his enrollment. The bond may  
26 be provided by a solicitor for a school or by the school itself as a blanket bond  
27 covering each of its agents in the amount of one thousand dollars.

28 (2) The liability of the surety on the bond for each solicitor covered shall not  
29 exceed the sum of one thousand dollars as an aggregate for all students for all

1 breaches of the conditions of the bond by the solicitors. The bond shall be subject  
2 to a ten-year prescriptive period for actions or breach of contract.

3 (3) The surety of any bond may cancel the same upon giving thirty days  
4 written notice to the commission and the board and, upon giving notice, shall be  
5 relieved of liability for any breach of condition occurring after the effective date of  
6 the cancellation.

7 (4) Each application for renewal of a permit shall be accompanied by a  
8 surety bond as provided in this Section.

9 D. The board shall take action on all permits applied for in accordance with  
10 the provisions of this Section within sixty days after receipt of the application.

11 E. Upon approval of a permit application, the board shall issue a permit in  
12 the form of an identification card to the solicitor which shall contain his name,  
13 address, and permit number, the name and address of his employing school, and  
14 certification that the person whose name appears on the card is an authorized  
15 solicitor of the school. The identification card shall be carried by and displayed by  
16 the solicitor at all times that he is soliciting or seeking to enroll students.

17 F.(1) Any permit issued to a solicitor may be revoked by the board if the  
18 holder of the permit solicits or enrolls students through fraud, deception, or  
19 misrepresentation, or other cause as provided by board rule.

20 (2) The board shall notify the permit holder in writing of its decision to  
21 revoke his permit. At any time within thirty days prior to revocation, upon request  
22 of the solicitor, the commission shall afford the solicitor an opportunity to be heard  
23 in person or by counsel. Strict rules of evidence shall not apply. On or before thirty  
24 days prior to the date of the hearing, the commission shall notify the aggrieved  
25 solicitor of the date and purpose of the hearing and the grounds for the contemplated  
26 revocation of the permit. The action of the commission shall be determined by a  
27 vote of a majority of the members of the commission and ratified by a majority vote  
28 of the board. Any final decision of the commission may be appealed to the board.

1        §3140.14. Recovery on contracts

2                No recovery shall be had on any contract for or in connection with a course  
3        of instruction by any owner selling or administering a course if the solicitor for the  
4        owner was not the holder of a valid permit as required by the provisions of this  
5        Chapter at the time the contract was negotiated or the course sold.

6        §3140.15. Student records

7                A. Each school shall maintain accurate and complete records on each student  
8        enrolled in the school.

9                B. Each school shall keep records of:

10                (1) The student's name and permanent address.

11                (2) The date the student began instruction at the school.

12                (3) The student's enrollment agreement.

13                (4) The student's academic transcript data, including the date of last  
14        instruction or of program completion.

15                (5) Financial records showing all tuition amounts paid to the school by or on  
16        behalf of a student.

17                (6) Other information required by the board.

18                C. The records shall be kept current and on file at the school and be available  
19        for inspection by the commissioner of higher education or his designee upon request.

20                D. If a school ceases operations, the records shall be transferred  
21        electronically in a secure format, unless the board approves transfer by hard copy,  
22        to the board within ten days of cessation of operation. If records are seized or  
23        confiscated by those legally authorized, a copy of all records of students affected by  
24        the cessation of operation shall be sent to the board.

25        §3140.16. Advertising

26                No owner of a school or solicitor for a school shall publish or cause to be  
27        published any advertising materials until the owner or solicitor obtains a valid  
28        license or a permit issued in accordance with the provisions of this Chapter.

1        §3140.17. Occupational degree granting status

2            A. The board shall approve or disapprove occupational degree proposals  
3        submitted by licensed proprietary schools under its jurisdiction.

4            B. A proprietary school shall be eligible for degree granting status for  
5        occupational degrees if it is:

6            (1) Licensed by the board.

7            (2) Domiciled in the state of Louisiana.

8            (3) Accredited by a regional or national accrediting agency recognized by  
9        the United States Department of Education.

10          C.(1) The board shall revoke the occupational degree granting status of a  
11        proprietary school which has its accreditation withdrawn.

12          (2) A proprietary school that has its accreditation withdrawn shall  
13        immediately notify the board of the withdrawal of accreditation.

14          D. Approved and licensed proprietary schools shall award a nonacademic  
15        degree entitled "Associate in Occupational Studies". All advertising, recruiting, and  
16        publications shall state clearly that the occupational degree awarded is nonacademic  
17        and does not imply, promise, or guarantee transferability.

18          E. Each student admitted to an occupational degree program in an accredited  
19        proprietary school shall be required to:

20          (1) Possess a high school diploma or equivalent.

21          (2) Complete a minimum of two years, four semesters, or six quarters of  
22        course work for each degree program.

23          F. Each occupational degree program shall meet the following minimum  
24        requirements:

25          (1) Seventy-five percent of the course of study in the program shall be in a  
26        specific occupational area.

27          (2) Each course of study shall be composed of the minimum hours required  
28        by the accrediting agency recognized by the United States Department of Education.

1 Section 2. R.S. 36:651(L) and 801.5(A) are hereby amended and reenacted to read  
2 as follows:

3 §651. Transfer of boards, commissions, departments, and agencies to Department  
4 of Education; boards, commissions, and agencies within Department of  
5 Education

6 \* \* \*

7 L. The Advisory Commission on Proprietary Schools (R.S. ~~17:3141.1~~  
8 17:3140.1 et seq.) is placed within the Department of Education and shall exercise  
9 and perform its powers, duties, functions, and responsibilities in the manner provided  
10 in R.S. 36:801.5.

11 \* \* \*

12 §801.5. Transfer; Advisory Commission on Proprietary Schools; Louisiana Health  
13 Works Commission; Nursing Supply and Demand Council; Simulation  
14 Medical Training and Education Council for Louisiana

15 A. The agency placed within the Department of Education by the provisions  
16 of R.S. 36:651(L) shall exercise all powers, duties, functions, and responsibilities  
17 provided or authorized for such agency by the constitution and laws, and particularly  
18 the provisions of R.S. ~~17:3141.1 through 3141.19~~ R.S. 17:3140.1 et seq., and shall  
19 exercise all such powers, duties, functions, and responsibilities in the manner and to  
20 the extent so provided or authorized. The agency shall be under the jurisdiction of  
21 the Board of Regents; and the Board of Regents shall have such powers, duties,  
22 functions, and responsibilities relative to the agency as otherwise provided by law.  
23 All personnel employed or assigned to administer and implement the powers, duties,  
24 functions, and responsibilities of the agency shall be employees of the Board of  
25 Regents. Except as otherwise provided by law, the Board of Regents shall perform  
26 and administer all functions of the agency which are in the nature of accounting and  
27 budget control, procurement and contract management, management and program  
28 analysis, data processing, personnel management, and grants management.

29 \* \* \*

- 1 Section 3. R.S. 17:3141.1 through 3141.19 are hereby repealed in their entirety.
- 2 Section 4. The Louisiana State Law Institute shall place R.S. 17:3140.1 through
- 3 3140.17 as enacted by this Act in Chapter 24-A of the Louisiana Revised Statutes of 1950.

### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 562 Engrossed

2019 Regular Session

Emerson

**Abstract:** Provides relative to proprietary schools.

Present law provides for the licensure, regulation, and oversight of proprietary schools by the Bd. of Regents. Provides for definitions, application requirements, fees, renewals, appeals, cessation of operations, advertising requirements, and degree granting status. Establishes the Advisory Commission on Proprietary Schools under the jurisdiction of the Bd. of Regents and provides for commission membership and duties. Establishes the Proprietary School Student Protection Fund and provides for payments to the fund by schools in accordance with the payment schedule as specified in present law.

Proposed law substantially retains present law except as follows:

- (1) Makes numerous revisions to provide for technical corrections, removal of obsolete provisions, and reorganization and recodification of present law.
- (2) Authorizes the Bd. of Regents to develop rules and regulations instead of the commission.
- (3) Changes the definition of proprietary schools to specify that out-of-state enterprises that require clinical or practical experiences in La. are subject to proposed law.
- (4) Adds requirement that proprietary schools that cease operations take certain specified actions.
- (5) Deletes requirement that proprietary schools retain electronic copies of student records and that the Bd. of Regents does not have to store hard copies of records it receives when a school ceases operations if the board stores the records electronically.
- (6) Removes authority given to proprietary schools to grant associate degrees, thereby limiting the degree granting authority to occupational degrees.
- (7) Deletes present law that prohibits persons from preparing advertising materials for school owners or solicitors until the commission provides information that the owner or solicitor is licensed and instead provides that the owner or solicitor may not advertise or cause any information to be advertised until the owner or solicitor is licensed in accordance with proposed law.

(Amends R.S. 17:7(8) and 11 and R.S. 36:651(L) and 801.5(A); Adds R.S. 17:3140.1-3140.17; Repeals R.S. 17:3141.1-3141.19)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Education to the original bill:

1. Add out-of-state enterprises that require practical experiences in La. to the definition of proprietary schools.
2. Delete requirement that proprietary schools retain electronic copies of student records and that the Bd. of Regents does not have to store hard copies of records it receives when a school ceases operations if the board stores the records electronically.
3. Reinstate present law relative to the cessation of payments into the Proprietary School Student Protection Fund and the deposit and use of funds in the Proprietary School Student Records and Administration Account.