

1 HB354  
2 157054-1  
3 By Representative Hubbard (J)  
4 RFD: Education Policy  
5 First Read: 23-JAN-14

2  
3  
4  
5  
6  
7  
8 SYNOPSIS: This bill would clarify that private,  
9 nonpublic, and church schools offering instruction  
10 in grades K-12, are not subject to licensure or  
11 regulation by the State Department of Education.

12 This bill would prohibit any public two-year  
13 or four-year institution of higher education from  
14 denying admittance to an otherwise qualified  
15 student on the basis that the student was home  
16 schooled or attended private, nonpublic, or church  
17 school.

18 This bill would also prohibit the State  
19 Department of Education from denying certification  
20 to an otherwise qualified person on the basis that  
21 the person was employed by an elementary or  
22 secondary private, nonpublic, or church school.

23  
24 A BILL  
25 TO BE ENTITLED  
26 AN ACT  
27

1                   To amend Sections 16-1-11, 16-28-7, 16-46-1,  
2                   16-46-2, 16-46-3, 16-46-4, 16-46-5, 16-46-6, 16-46-7, 16-46-8,  
3                   16-46-9, and 16-46-10, Code of Alabama 1975, relating to  
4                   education; to clarify the autonomy of private, nonpublic, and  
5                   church schools offering instruction in grades K-12, and home  
6                   schooled students, from regulation by the State Department of  
7                   Education, the State Board of Education, and the State  
8                   Superintendent of Education; to prohibit any public two-year  
9                   or four-year institution of higher education from denying  
10                  admittance to an otherwise qualified student on the basis that  
11                  the student was home schooled or attended a private,  
12                  nonpublic, or church school; and to prohibit the State  
13                  Department of Education from denying certification to an  
14                  otherwise qualified person on the basis that the person was  
15                  employed by an elementary or secondary private, nonpublic, or  
16                  church school.

17                  BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18                         Section 1. The Legislature finds and declares the  
19                         following:

20                                 (1) Parents have a choice in how to educate their  
21                                 children and many parents choose to home school or enroll  
22                                 their children in elementary and secondary private, nonpublic,  
23                                 or church schools, that are not subject to state regulation  
24                                 and do not receive state or federal funds.

25                                 (2) Other than reporting on the enrollment of  
26                                 students, these private K-12 schools have been primarily

1 exempt from state regulation and have only been required by  
2 state law to report the enrollment of students.

3 (3) Regulation by the State Department of Education  
4 of any school with a religious affiliation would be an  
5 unconstitutional burden on religious activities in direct  
6 violation of the Alabama Religious Freedom Amendment and the  
7 First Amendment to the United States Constitution and would  
8 require a compelling interest by the department.

9 (4) No student who has been home schooled or who has  
10 attended a private, nonpublic, or church school, if otherwise  
11 qualified for admittance, should be denied entrance to a  
12 two-year or four-year institution of higher education based on  
13 that fact alone.

14 Section 2. Sections 16-1-11 and 16-28-7 of the Code  
15 of Alabama 1975, are amended to read as follows:

16 "§16-1-11.

17 "All private schools or institutions of any kind  
18 having a school in connection therewith, except church schools  
19 as defined in Section 16-28-1, shall register annually on or  
20 before October 10 with the Department of Education and shall  
21 report on uniform blanks furnished by the State Superintendent  
22 of Education, giving such statistics as relate to the number  
23 of pupils, the number of instructors, enrollment, attendance,  
24 course of study, length of term, cost of tuition, funds, value  
25 of property, and the general condition of the school. This  
26 section may not be interpreted or construed to authorize the  
27 Department of Education, the State Board of Education, or the

1 State Superintendent of Education to license or regulate any  
2 private, nonpublic, or church school offering instruction in  
3 grades K-12, or any combination thereof.

4 "§16-28-7.

5 "At the end of the fifth day from the opening of the  
6 public school, the principal teacher of each public school,  
7 private school, and each private tutor, but not church school,  
8 shall report on forms prescribed by the State Superintendent  
9 of Education to the county superintendent of education, in the  
10 event the school is operated in territory under the control  
11 and supervision of the county board of education, or to the  
12 city superintendent of schools, in the event the school is  
13 operated in territory under the control and supervision of a  
14 city board of education, the names and addresses of all  
15 children of mandatory school attendance age who have enrolled  
16 in such schools; and thereafter, throughout the compulsory  
17 attendance period, the principal teacher of each school and  
18 private tutor shall report at least weekly the names and  
19 addresses of all children of mandatory school attendance age  
20 who enroll in the school or who, having enrolled, were absent  
21 without being excused, or whose absence was not satisfactorily  
22 explained by the parent, guardian, or other person having  
23 control of the child. The enrollment and attendance of a child  
24 in a church school shall be filed with the local public school  
25 superintendent by the parent, guardian, or other person in  
26 charge or control of the child on a form provided by the  
27 superintendent or his or her agent which shall be

1 countersigned by the administrator of the church school and  
2 returned to the public school superintendent by the parent.  
3 Should the child cease attendance at a church school, the  
4 parent, guardian, or other person in charge or control of the  
5 child shall by prior consent at the time of enrollment direct  
6 the church school to notify the local public school  
7 superintendent or his or her agent that the child no longer is  
8 in attendance at a church school. This section may not be  
9 interpreted or construed as authorizing the Department of  
10 Education, the State Board of Education, or the State  
11 Superintendent of Education to license or regulate any  
12 private, nonpublic, or church school offering instruction in  
13 grades K-12, or any combination thereof."

14 Section 3. Sections 16-46-1, 16-46-2, 16-46-3,  
15 16-46-4, 16-46-5, 16-46-6, 16-46-7, 16-46-8, 16-46-9, and  
16 16-46-10 of the Code of Alabama 1975, are amended to read as  
17 follows:

18 "§16-46-1.

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

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

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

3 "(2) AGENT or REPRESENTATIVE. Salesperson who  
4 presents materials, sells courses, or solicits students for  
5 enrollment of students in the state in person, by mail, by  
6 correspondence, by telephone, online, by distance learning  
7 education, or by any other method of advertising within the  
8 state.

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

12 "(3) ~~(4)~~ COURSE. Any course, or portion of a plan or  
13 program of instruction, whether conducted in person, by mail,  
14 by correspondence, online, by distance learning education, or  
15 by any other method.

16 "(4) ~~(5)~~ ECONOMIC FRAUD. The sale of courses or  
17 programs of study which an institution is unable or unwilling  
18 to provide as advertised or described because of inadequate  
19 financial stability, facilities, instructional staff, or  
20 commitment to honor written or verbal contracts made with  
21 students. Included is the solicitation of students for  
22 enrollment through intentional deception or misrepresentation  
23 of fact and the use of advertising which is known to be false,  
24 inaccurate, or misleading. Failure to properly administer  
25 student cancellation and refund policies according to  
26 appropriate regulations or agreements made with students shall  
27 also constitute economic fraud.

1           "(5) ~~(6)~~ LICENSE. A ~~private school~~ license  
2 identifying the name and location of the ~~school~~ private  
3 postsecondary institution and establishing the courses which  
4 may be offered thereunder.

5           "(6) ~~(7)~~ PERMIT. A pocket card issued to an agent or  
6 representative providing identification as an authorized agent  
7 of a ~~school~~ private postsecondary institution.

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

15           "(8) ~~(9)~~ PRIVATE ~~SCHOOL~~ POSTSECONDARY INSTITUTION.  
16 Operation of either a for profit or nonprofit ~~entity~~  
17 postsecondary school as opposed to publicly owned or operated  
18 postsecondary schools. For the purposes of this subdivision, a  
19 for profit ~~entity~~ postsecondary school is any school operated  
20 as a business corporation, partnership, or proprietorship and  
21 a nonprofit ~~entity~~ school is any school established by a  
22 nonprofit charter or articles of incorporation with bylaws  
23 establishing a nonprofit mode of operation that is determined  
24 by the Internal Revenue Service to be eligible for tax  
25 deductible contributions in accordance with 26 U.S.C.  
26 §501(c)(3).



1           "(9) ~~(10)~~ RESIDENT COURSE. Any course or sequence of  
2 courses of instruction offered by a school which is domiciled  
3 within Alabama and has established for a period of three years  
4 permanent administrative and management facilities in this  
5 state.

6           "(10) ~~(11)~~ SCHOOL. Any person, group of people,  
7 institution, establishment, agency, or organization offering  
8 or administering a plan, course, or program of instruction  
9 whether conducted in person, by mail, by correspondence,  
10 online, by distance learning education, or by any other method  
11 except the teaching of private lessons of instruction on a  
12 singular subject, unless otherwise provided by law.

13           "§16-46-2.

14           "It is hereby generally recognized that courses of  
15 instruction, whether given in residence or by mail, result in  
16 substantial benefits for students pursuing such courses,  
17 provided that such courses are designed and administered in  
18 accordance with recognized educational standards and  
19 practices. It is also recognized that persons taking such  
20 courses and institutions offering such courses should be  
21 afforded additional protection under the laws of this state.  
22 It is the purpose of this chapter to supplement the general  
23 law of fraud of this state so as to provide for students,  
24 ~~educational~~ private postsecondary institutions, and the  
25 general public such added protection.

26           "§16-46-3.

1           "(a) This chapter shall not apply to any school  
2 offering instruction in grades K-12, or any combination  
3 thereof, or to any private postsecondary institution  
4 satisfying the conditions stated in this section, or of the  
5 following schools nor to any person in regard to the operation  
6 of such schools, except for the conditions stated in this  
7 section:

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

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

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

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

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

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

11           "(7) Any private ~~school~~ postsecondary institution  
12 conducting resident courses whose principal base of operation  
13 is within the State of Alabama which has been in continuous  
14 operation for 20 years or more as of July 1, 2004, and that  
15 held accreditation as of that date by an accrediting agency  
16 recognized by the United States Department of Education.

17           "(8) Programs of study regulated by other state  
18 public boards, commissions, or agencies requiring school  
19 licensure or performance bonding, or both, except where the  
20 appropriate regulatory agency requires a license under this  
21 chapter.

22           "(9) Any private postsecondary institution  
23 conducting resident courses that has been in operation within  
24 Alabama for at least five years as of July 1, 2004, and that  
25 is accredited by an accrediting agency recognized by the  
26 United States Department of Education shall be accorded the  
27 following provisions: Upon proof of such accreditation, such

1 ~~schools~~ private postsecondary schools shall be issued a  
2 license and representative permits after required fees are  
3 paid to the Alabama Department of Postsecondary Education. The  
4 requisite accreditation shall satisfy the minimum standards of  
5 this chapter.

6 "(10) Any private or church school, as defined in  
7 Section 16-28-1, offering instruction in grades K-12, or any  
8 combination thereof, which holds a certificate issued by the  
9 State Superintendent of Education, showing that the school  
10 conforms to the requirements listed in subdivision (1) of  
11 Section 16-28-1, or any nonpublic school, as defined in  
12 Section 16-22A-3, offering instruction in grades K-12, or any  
13 combination thereof.

14 "(b) Any private ~~school~~ postsecondary institution  
15 exempted in this section shall retain the exempted status as  
16 long as the conditions of exemption remain valid. An  
17 accredited private ~~school~~ postsecondary institution or program  
18 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~~ Private postsecondary  
23 institutions having accreditation withheld as a result of  
24 transfer of ownership shall be allowed a period of time to  
25 regain the grant in accordance with the appropriate  
26 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~~ postsecondary  
5 institutions may voluntarily request to be licensed without  
6 surety as described in Sections 16-46-5 and 16-46-6.

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

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

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

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

24           "(3) ~~(4)~~ Postsecondary, higher, and others not  
25 elsewhere designated shall deposit with the ~~Alabama~~ Department  
26 of Postsecondary Education.

27           "§16-46-4.

1 "No person shall do any of the following:

2 "(1) Make or cause to be made any statement or  
3 representation, oral, written, or visual, in connection with  
4 the operation of a school or the offering of a course, if such  
5 person knows or reasonably should know the statement or  
6 representation to be false, inaccurate, or misleading~~7.~~

7 "(2) Promise or guarantee employment utilizing  
8 information, training, or skill purported to be provided or  
9 otherwise enhanced by a course or school, unless such person  
10 offers the student or prospective student a bona fide contract  
11 of employment agreeing to employ ~~said~~ the student or  
12 prospective student for a period of not less than six months  
13 in a business or other enterprise regularly conducted by him  
14 or her and in which such information, training, or skill is a  
15 normal condition of employment~~7.~~~~or.~~

16 "(3) Do any act constituting part of the conduct of  
17 operating a school or administration of a course or the  
18 obtaining of students therefor if such person knows or  
19 reasonably should know that any phase or incident of the  
20 conduct or operation of the school or administration of the  
21 course is being carried on by the use of fraud, deception, or  
22 other misrepresentation or by a person or persons operating a  
23 school without a license or soliciting students without a  
24 permit provided for by this chapter.

25 "§16-46-5.

26 "(a) No ~~proprietary~~ private postsecondary ~~school~~  
27 institution, except those enumerated in Section 16-46-3, shall

1 operate within this state unless the ~~school~~ private  
2 postsecondary institution first secures a license from the  
3 ~~Alabama~~ Department of Postsecondary Education, regardless of  
4 whether the ~~school~~ private postsecondary institution enrolls  
5 Alabama students or has a physical presence within the State  
6 of Alabama. Procedures for licensing and bonding of ~~schools~~  
7 private postsecondary institutions operating courses in  
8 separate locations shall be established in the rules and  
9 regulations pursuant to Section 16-46-7.

10 ~~"(b) No K-12 school, except those enumerated in~~  
11 ~~Section 16-46-3, shall operate within this state unless the~~  
12 ~~school first secures a license from the Alabama State~~  
13 ~~Department of Education. Procedures for licensing and bonding~~  
14 ~~of schools operating courses in separate locations shall be~~  
15 ~~established in the rules and regulations pursuant to Section~~  
16 ~~16-46-7.~~

17 ~~"(b) (c)~~ Upon satisfactory review of a ~~school~~  
18 private postsecondary institution, the ~~Alabama State~~  
19 ~~Department of Education or the Alabama~~ Department of  
20 Postsecondary Education, ~~as appropriate~~, shall issue a license  
21 to be publicly displayed on the premises where the ~~school~~  
22 private postsecondary institution operates.

23 ~~"(c) (d)~~ The application for a license for a ~~K-12~~  
24 ~~school shall be made on forms furnished by the Alabama State~~  
25 ~~Department of Education. Application for a license for a~~  
26 ~~proprietary~~ private postsecondary institution shall be made on

1 forms furnished by the ~~Alabama~~ Department of Postsecondary  
2 Education.

3 "(d) ~~(e)~~ The State Board of Education shall  
4 promulgate a schedule of licensing fees, which may be revised  
5 from time to time upon reasonable notice at the discretion of  
6 the board. All licensing fees collected from private  
7 postsecondary institutions shall be deposited in the State  
8 Treasury to the credit of the private school licensing section  
9 in the ~~Alabama~~ Department of Postsecondary Education.  
10 ~~Licensing fees collected from K-12 schools shall be deposited~~  
11 ~~in the State Treasury to the credit of the Alabama State~~  
12 ~~Department of Education.~~

13 "(e) ~~(f)~~ All ~~K-12~~ schools except those enumerated in  
14 ~~Section 16-46-3~~ shall be required to establish financial  
15 stability by a surety acceptable to the Alabama State  
16 Department of Education in the penal sum of not more than  
17 \$10,000.00. The sum required to provide prepaid tuition  
18 liability shall be established by the Alabama State Department  
19 of Education by appropriate regulation pursuant to Section  
20 ~~16-46-7~~. All proprietary private postsecondary institutions,  
21 except those enumerated in Section 16-46-3, shall be required  
22 to establish financial stability by surety acceptable to the  
23 ~~Alabama~~ Department of Postsecondary Education in the penal sum  
24 of not more than twenty thousand dollars (\$20,000). The sum  
25 required to provide prepaid tuition liability shall be  
26 established by the ~~Alabama~~ Department of Postsecondary  
27 Education by appropriate regulation pursuant to Section



1 16-46-7. Financial stability for separate locations shall be  
2 provided through the principal base of operations. Such surety  
3 shall be continuous and shall be conditioned to provide  
4 indemnification to any student suffering loss as a result of  
5 any fraud or misrepresentation used in procuring his or her  
6 enrollment in and/or administering a course covered by this  
7 chapter for the purpose of assuring due and faithful  
8 performance of agreements or contracts with students.

9 "(f) ~~(g)~~ A license shall be valid for two years from  
10 the date on which it was issued.

11 "(g) ~~(h)~~ Regardless of the number of years that a  
12 surety is in force, the aggregate liability thereon shall in  
13 no event exceed the penal sum of the surety accepted by ~~either~~  
14 ~~the Alabama State Department of Education or the Alabama~~  
15 ~~Department of Postsecondary Education, as appropriate.~~ The  
16 surety may cancel the same upon giving 30 days' notice in  
17 writing to the ~~Alabama State Department of Education or the~~  
18 ~~Alabama~~ Department of Postsecondary Education, ~~as appropriate,~~  
19 and thereafter shall be relieved of liability for any breach  
20 of condition occurring after the effective date of the  
21 cancellation.

22 "(h) ~~(i)~~ Application for a license shall also be  
23 accompanied by a financial statement acceptable to the ~~State~~  
24 ~~Department of Education or the Alabama~~ Department of  
25 Postsecondary Education, ~~as appropriate,~~ and a copy of the  
26 current catalog, brochure, or bulletin of the ~~school~~ private

1 postsecondary institution, which shall include all of the  
2 following:

3 "(1) Identifying data such as volume number, date,  
4 and publication.

5 "(2) Name, address, and telephone of the ~~school~~  
6 private postsecondary institution and its governing body,  
7 officials, and faculty.

8 "(3) A clear and concise statement of the objectives  
9 of the training given by the school.

10 "(4) The exact manner in which the stated objectives  
11 are to be attained.

12 "(5) A tuition and refund policy which is in  
13 compliance with the appropriate regulation pursuant to Section  
14 16-46-7.

15 "(6) A grievance policy which directs aggrieved  
16 students to first attempt to resolve complaints through the  
17 appropriate ~~school~~ officials of the private postsecondary  
18 institution. Student grievances not resolved by the ~~school~~  
19 private postsecondary institution shall be referred to the  
20 ~~Alabama State Department of Education or the Alabama~~  
21 ~~Department of Postsecondary Education, as appropriate.~~

22 "(7) Such other reasonable information as the  
23 ~~Alabama State Department of Education or the Alabama~~  
24 ~~Department of Postsecondary Education, as appropriate,~~ may  
25 impose.

26 "(i) ~~(j)~~ Upon receipt of the required information,  
27 the ~~Alabama State Department of Education or the Alabama~~

1 Department of Postsecondary Education, ~~as appropriate,~~ may  
2 issue a license provided the institution is complying with all  
3 of the following standards:

4 "(1) The courses, curriculum, and instructions of  
5 ~~such school~~ the private postsecondary institution are  
6 consistent, in quality and content, with recognized  
7 educational standards as determined by the ~~Alabama State~~  
8 ~~Department of Education or the Alabama~~ Department of  
9 Postsecondary Education, ~~as appropriate.~~

10 "(2) There is available to the ~~school~~ private  
11 postsecondary institution adequate space, equipment,  
12 instructional material, and instructor personnel to provide  
13 training of good quality.

14 "(3) Adequate records as determined by the ~~Alabama~~  
15 ~~State Department of Education or the Alabama~~ Department of  
16 Postsecondary Education, ~~as appropriate,~~ are kept to show  
17 attendance and student progress. Records shall be available  
18 upon request of the student to be furnished prospective  
19 employers and other interested parties.

20 "(4) The ~~school~~ private postsecondary institution is  
21 financially sound and capable of fulfilling its commitments  
22 for training.

23 "(5) ~~Schools~~ Private postsecondary institutions or  
24 courses domiciled outside Alabama shall designate a state  
25 agent who is a resident of this state to service all  
26 complaints against the ~~school~~ institution.

1           "(6) A student enrollment agreement or contract  
2 shall be utilized to set forth clearly all conditions for  
3 enrollment in and completion of courses of instruction,  
4 itemized course cost, terms of payment, and other conditions  
5 the ~~school~~ private postsecondary institution may desire to  
6 establish. Conditions for forced withdrawal for academic or  
7 disciplinary reasons shall be stated. Contracts establishing  
8 installment payments with interest charges shall be in  
9 compliance with Alabama statutes regarding lending and usury  
10 and shall be certified by the Alabama State Banking  
11 Department.

12           "(7) The ~~school~~ private postsecondary institution  
13 shall comply with all local, state, and federal laws and  
14 regulations.

15           "(j) ~~(k)~~ Any license applied for pursuant to this  
16 section shall be granted, deferred, or denied within 30 days  
17 of the receipt of the application therefor by ~~either the~~  
18 ~~Alabama State Department of Education or the Alabama~~  
19 ~~Department of Postsecondary Education, as appropriate.~~

20           "(k) ~~(l)~~ The ~~Alabama State Department of Education~~  
21 ~~or the Alabama~~ Department of Postsecondary Education, ~~as~~  
22 ~~appropriate,~~ may invoke negative actions against any license  
23 issued if the holder of the license solicits or enrolls  
24 students or administers instructions through fraud, deception,  
25 or misrepresentation. Negative actions shall include  
26 probation, suspension, and/or revocation.

1           "(l) ~~(m)~~ The fact that a surety is in force pursuant  
2 to this section shall not limit nor impair any right of  
3 recovery otherwise available under law, nor shall the amount  
4 of such surety be relevant in determining the amount of  
5 damages or other relief to which any plaintiff may be  
6 entitled.

7           "(m) ~~(n)~~ No recovery against any student shall be  
8 had on any contract if such ~~school~~ private postsecondary  
9 institution was not the holder of a license as required by  
10 this section at the time that ~~such school~~ the institution or  
11 its representative negotiated the contract for or sold such  
12 course.

13           "(n) ~~(o)~~ ~~Schools~~ Private postsecondary institutions  
14 which undergo transfer of ownership shall be reviewed to  
15 determine that minimum standards remain in effect. The license  
16 may not be transferred to new ownership. Financial stability  
17 of the new ownership shall be established.

18           "(o) ~~(p)~~ The issuance of a license pursuant to this  
19 section shall represent authority to operate an educational  
20 institution in Alabama. Licensure may not be advertised as an  
21 endorsement or recommendation, but it implies compliance with  
22 the laws of Alabama. Advertising may indicate only that the  
23 ~~school~~ private postsecondary institution is licensed by the  
24 state.

25           "§16-46-6.

26           "(a) No person representing any ~~school~~ private  
27 postsecondary institution or other individual or organization

1 offering courses in this state, or from a place of business in  
2 this state, whether located within or outside this state,  
3 shall sell any course or solicit students therefor in this  
4 state for a consideration or remuneration unless a permit is  
5 first secured from the ~~Alabama State Department of Education~~  
6 ~~or the Alabama~~ Department of Postsecondary Education, ~~as~~  
7 ~~appropriate~~, with the exception of agents representing schools  
8 exempted under Section 16-46-3. If the agent represents more  
9 than one school not exempted under Section 16-46-3, a separate  
10 permit shall be obtained for each school represented. The  
11 application for a permit shall be made on forms to be  
12 furnished by ~~either the Alabama State Department of Education~~  
13 ~~or Alabama~~ Department of Postsecondary Education, ~~as~~  
14 ~~appropriate~~, and shall be renewed every two years.

15 "(b) Upon satisfactory review of an agent, the  
16 ~~Alabama State Department of Education or the Alabama~~  
17 ~~Department of Postsecondary Education, as appropriate,~~ shall  
18 issue a pocket card displaying the signature of the person,  
19 facial photo, name and address, the name and address of the  
20 employing ~~school~~ private postsecondary institution, and  
21 certifying that the person is an authorized agent of the  
22 ~~school~~ institution. A permit shall be valid for two years from  
23 the date on which it was issued. This permit shall be carried  
24 on person when representing the ~~school~~ institution as an  
25 agent.

26 "(c) ~~Schools~~ Private postsecondary institutions  
27 utilizing agents shall provide indemnification to any student

1 suffering loss as a result of any fraud or misrepresentation  
2 used by the agents in procuring enrollment.

3 "(d) One complimentary agent's permit may be issued  
4 to a designated owner, director, or managerial person of each  
5 licensed ~~school~~ private postsecondary institution identified  
6 as a principal base of operation.

7 "(e) No person shall be issued a permit to represent  
8 any ~~school~~ private postsecondary institution, whether located  
9 within or outside this state, until it has been determined by  
10 the ~~Alabama State Department of Education or the Alabama~~  
11 ~~Department of Postsecondary Education, as appropriate,~~ that  
12 the school has qualified under the requirements of Section  
13 16-46-5.

14 "(f) Any permit applied for pursuant to this section  
15 shall be granted, deferred, or denied within 30 days of the  
16 receipt of the application therefor by the ~~Alabama State~~  
17 ~~Department of Education or the Alabama~~ Department of  
18 Postsecondary Education, ~~as appropriate.~~

19 "(g) The ~~Alabama State Department of Education or~~  
20 ~~the Alabama~~ Department of Postsecondary Education, ~~as~~  
21 ~~appropriate,~~ may invoke negative actions against any permit  
22 issued if the holder of the permit solicits or enrolls  
23 students through fraud, deception, or misrepresentation or  
24 upon a finding that the license to operate the ~~school~~ private  
25 postsecondary institution represented is revoked or it is  
26 determined by the ~~Alabama State Department of Education or the~~  
27 ~~Alabama~~ Department of Postsecondary Education, ~~as appropriate,~~

1 that the ~~school~~ private postsecondary institution located  
2 outside of the state which the holder of the permit represents  
3 does not meet the requirements of Section 16-46-5. Negative  
4 actions shall include probation, suspension, and/or  
5 revocation.

6 "(h) The fact that a surety is in force shall not  
7 limit or impair any right of recovery otherwise available  
8 under law, nor shall the amount of such bond be relevant in  
9 determining the amount of damages or other relief to which any  
10 plaintiff may be entitled.

11 "(i) No recovery shall be had on any contract for or  
12 in connection with a course by any person selling or  
13 administering such course if the representative soliciting the  
14 students or selling the course was not the holder of a permit  
15 as required by this section at the time that such  
16 representative negotiated the contract for or sold such  
17 course.

18 "(j) No recovery shall be had on any contract for or  
19 in connection with a course by any person or institution  
20 holding such a contract who is legally a third party or  
21 holding agent for one of the other parties where the selling  
22 of the course or the conduct or operation of the ~~school~~  
23 private postsecondary institution or the administering of the  
24 course is carried on by use of fraud, deception, or other  
25 misrepresentation or if the person or persons operating the  
26 ~~school~~ private postsecondary institution, administering the



1 course, or soliciting students is without a license provided  
2 by this chapter.

3 "(k) The issuance of a permit pursuant to this  
4 section shall not be deemed to constitute endorsement of any  
5 course, person, or institution offering, conducting, or  
6 otherwise administering the same. Any representation contrary  
7 to this subsection or tending to imply that a permit issued  
8 pursuant to this section constitutes such endorsement shall be  
9 a misrepresentation within the meaning of this chapter.

10 Permits to sell courses, solicit students, or otherwise  
11 represent a ~~school~~ private postsecondary institution located  
12 within this state may not be issued unless the ~~school~~  
13 institution first obtained a license to operate under Section  
14 16-46-5, nor may permits be issued to represent schools  
15 located outside of the state until it has been determined by  
16 the ~~Alabama State Department of Education or the Alabama~~  
17 ~~Department of Postsecondary Education, as appropriate,~~ that  
18 ~~such school~~ the private postsecondary institution qualifies  
19 under the requirements of Section 16-46-5.

20 "§16-46-7.

21 "The ~~Alabama~~ State Board of Education may adopt  
22 rules and regulations for the administration and enforcement  
23 of this chapter and shall require the Chancellor to establish  
24 an advisory committee of owners or operators of proprietary  
25 private postsecondary institutions, to which this chapter  
26 applies, and of other persons with knowledge in the field to  
27 which this chapter applies to advise the Chancellor in the

1 administration of this chapter relating to ~~proprietary~~ private  
2 postsecondary institutions. The advisory committee may review  
3 any action taken or policy established by the ~~Alabama~~  
4 Department of Postsecondary Education, ~~as appropriate,~~ in the  
5 administration of this chapter and may offer recommendations  
6 to the Chancellor or State Board of Education. Reimbursement  
7 for per diem and travel to advisory committee meetings shall  
8 be authorized under this chapter and shall be expended by  
9 voucher as required by the ~~Alabama~~ Department of Postsecondary  
10 Education.

11 "§16-46-8.

12 "The ~~Alabama State Department of Education or the~~  
13 ~~Alabama~~ Department of Postsecondary Education, ~~as appropriate,~~  
14 may institute such action of law or in equity as may be  
15 necessary to enforce this chapter. In addition to any other  
16 remedy under this chapter, the ~~Alabama State Department of~~  
17 ~~Education or the Alabama~~ Department of Postsecondary  
18 Education, ~~as appropriate,~~ may apply for relief by injunction,  
19 mandamus, or any other appropriate remedy in equity without  
20 being compelled to allege or prove that an adequate remedy at  
21 law does not otherwise exist. The ~~Alabama State Department of~~  
22 ~~Education and the Alabama~~ Department of Postsecondary  
23 Education ~~are~~ is not required to give or post bond in any  
24 action to which it is party, whether upon appeal or otherwise.  
25 All legal actions shall be brought against the ~~Alabama State~~  
26 ~~Department of Education or the Alabama~~ Department of  
27 Postsecondary Education, ~~as appropriate,~~ in the name of the

1 ~~Alabama State Board of Education or the Alabama~~ Department of  
2 Postsecondary Education, ~~as appropriate~~. The ~~Alabama State~~  
3 ~~Department of Education and the Alabama~~ Department of  
4 Postsecondary Education, ~~as appropriate~~, may institute an  
5 action by its own attorney, but ~~each~~ shall have the right, if  
6 it deems advisable, to call upon any assistant district  
7 attorney or district attorney to represent it in the circuit  
8 courts of this state or the Attorney General to represent it  
9 on appeal in the appellate courts of this state.

10 "§16-46-9.

11 "Any person or school or private postsecondary  
12 institution aggrieved by the actions of the ~~Alabama State~~  
13 ~~Department of Education or the Alabama~~ Department of  
14 Postsecondary Education with respect to exemption, issuance,  
15 denial, deferral, probation, suspension, or revocation of a  
16 license or permit provided for in Sections 16-46-3, 16-46-5,  
17 and 16-46-6, may file within 30 days a petition for review by  
18 the ~~Alabama~~ State Board of Education. The aggrieved person, ~~or~~  
19 school, or institution shall then be entitled to a hearing  
20 before the ~~Alabama~~ State Board of Education. The person, ~~or~~  
21 school, or institution may be represented by counsel at the  
22 hearing. The aggrieved person, ~~or~~ school, or institution may  
23 adduce evidence, both oral and documentary, at such hearing  
24 and on official record if such hearing shall be transcribed by  
25 a qualified court reporter. After the ~~Alabama~~ State Board of  
26 Education acts on the petition for review, any person, ~~or~~  
27 school, or institution aggrieved by the ~~Alabama~~ State Board of

1 Education's actions ~~shall~~, within 30 days after receiving  
2 notice of any such action, shall have such action reviewed by  
3 a writ of certiorari by filing in the Circuit Court of  
4 Montgomery County, Alabama, a verified petition setting out  
5 the specific action of the ~~Alabama~~ State Board of Education by  
6 which the person or school is aggrieved. The court shall  
7 consider only such matters as are contained in the petition.  
8 Upon such petition being filed, a writ of certiorari shall be  
9 issued out of the court directly to the ~~Alabama~~ State Board of  
10 Education requiring it to file with the court the records and  
11 transcript of testimony upon which such action or order was  
12 made and requiring the board to file an answer to the petition  
13 within 30 days of service of the writ. Upon the board filing  
14 such answer, the issue shall be joined thereon without further  
15 pleading and the case considered on the petition, the records  
16 of the board, and the answer filed by the board, but no new or  
17 additional evidence shall be taken or heard by the court. If  
18 new or additional evidence is discovered by any party ~~or~~  
19 ~~school~~, after the hearing of the ~~Alabama~~ State Board of  
20 Education, the evidence may be made grounds for a motion for a  
21 new hearing before the ~~Alabama~~ State Board of Education under  
22 the rules applicable to similar laws for a new trial in the  
23 state courts of Alabama. Such court may suspend or stay such  
24 actions of the ~~Alabama~~ State Board of Education complained of  
25 in such petition, pending final hearing, only upon the  
26 petitioner executing a bond in such amount as the court deems  
27 reasonably sufficient to pay all costs of appeal if the

1 petition is not sustained. In no case shall the bond be less  
2 than the reasonable cost of the transcript of the hearing  
3 before the ~~Alabama~~ State Board of Education that is being  
4 appealed. Upon final hearing, the court shall have  
5 jurisdiction to reverse, vacate, or modify the action  
6 complained of if, upon the consideration of the issues before  
7 the court, the court is of the opinion that the action is  
8 unlawful.

9           "§16-46-10.

10           "It shall be unlawful for any person to violate ~~any~~  
11 ~~provisions of~~ this chapter. Any person required by this  
12 chapter to have a license or permit who shall do in this state  
13 any business of the nature described in this chapter without  
14 first obtaining such a license or permit as required of him or  
15 her by this chapter shall be guilty of a misdemeanor and, upon  
16 conviction, shall be punished by a fine of not more than five  
17 hundred dollars (\$500) or a term of imprisonment not to exceed  
18 six months, or both. Each day's violation of this chapter  
19 shall constitute a separate offense. All fines shall be  
20 deposited in the State Treasury to the credit of the ~~Alabama~~  
21 ~~State Department of Education or the Alabama~~ Department of  
22 Postsecondary Education, ~~as appropriate.~~"

23           Section 4. Any provision of law to the contrary  
24 notwithstanding, no public two-year or four-year institution  
25 of higher education in the state may deny admission to an  
26 otherwise qualified student on the basis that the student was

1 home schooled or attended a private, nonpublic, or church  
2 school.

3 Section 5. Any provision of law to the contrary  
4 notwithstanding, the State Department of Education may not  
5 deny certification to an otherwise qualified person on the  
6 basis that the person is or was employed by an elementary or  
7 secondary private, nonpublic, or church school that is not  
8 subject to state regulation.

9 Section 6. This act shall become effective on the  
10 first day of the third month following its passage and  
11 approval by the Governor, or its otherwise becoming law.