

## Tab 5, Attachment A

### Current Proprietary School Statute

**173.600. Definitions.** — As used in sections 173.600 to 173.618, unless the context clearly requires otherwise, the following terms mean:

(1) "Agent," any employee, solicitor, or other person who, for remuneration, by any means and at a place away from the school premises or site of instruction, enrolls or attempts to enroll a resident of this state in a course or courses of instruction or study offered or maintained by a proprietary school, wherever located, or otherwise hold himself out to a resident of this state as representing a proprietary school for such purpose;

(2) "Board," coordinating board for higher education;

(3) "Certificate," any award that does not have a degree designation;

(4) "Certificate of approval," approval of the board to operate a school in compliance with the provisions of sections 173.600 to 173.618 and rules and regulations promulgated pursuant to law;

(5) "Degree," any award, earned or honorary, conferred with the designation of associate, baccalaureate, masters, professional, or professional development, specialist, or doctorate;

(6) "Department of Higher Education and Workforce Development," the state department charged with administering the rules and regulations as provided for herein, operating within the guidelines approved by the board;

(7) "Operate," to establish, keep, or maintain any facility at a location or locations in this state where, from, or through which education is offered or given and shall include contracting with any person, group, or entity to perform any such act;

(8) "Person," any individual, corporation, partnership, association, or business entity of any kind or description;

(9) "Proprietary school" or "school," any person not specifically exempted in section 173.616 or other provisions of sections 173.600 to 173.618, which offers or maintains on either a profit or not-for-profit basis within the state of Missouri a course or courses of instruction or study through classroom instruction or correspondence or which grants certificates or earned or honorary degrees;

(10) "Proprietary school advisory committee" or "committee," a seven-member committee appointed by the board as provided in section 173.614;

(11) "Public institution," a postsecondary educational institution established by provisions of Missouri constitution or statutory law or established by the voters of the district in which it is located, which is funded fifty percent or more of its operating costs from public funds; which is governed by a body appointed by the governor and approved by the senate, or selected by the voters of the district in which it is located, and which operates on a not-for-profit basis;

(12) "Religious degree" or "religious program," any degree or program with a specific theological, biblical, divinity, or other religious designation;

(13) "Rules and regulations," the rules and regulations recommended by the proprietary school advisory committee and adopted by the board as authorized and provided for by sections 173.600 to 173.618.

**173.602. Certificate of approval required to offer courses for sale or solicit students.** — After one year from September 28, 1983, no proprietary school, wherever domiciled or having its principal place of business, shall offer for sale, directly or through an agent, any course or solicit any prospective student in the state of Missouri without possessing a valid certificate of approval as required by sections 173.600 to 173.618.

**173.604. Minimum standards for certification of proprietary school — out-of-state applicants.** — 1. The board shall issue certificates of approval to proprietary schools that meet the minimum standards established pursuant to the provisions of sections 173.600 to 173.618.

2. Minimum standards for proprietary schools shall be established in the rules and regulations and shall require that:

(1) Educational and experience qualifications of directors, administrators, and instructors are adequate for students to receive training consistent with the published objectives of the course or program of study;

(2) The course, curriculum and instruction are of adequate level, content, and duration to achieve the published objectives for which they are offered;

(3) The school has adequate facilities and equipment to train, instruct, or educate the number of students enrolled or proposed to be enrolled;

(4) The school has a sound financial structure with sufficient resources for its continued operation;

(5) The following shall be available in writing to each student: course outline, course objective, schedule of tuition, fees and other charges, cancellation and refund policy, appropriate financial aid information, regulations pertaining to absence, student evaluation, and student conduct;

(6) The school shall have a fair and equitable refund policy for the refund of the unused portion of tuition, fees, and other charges in the event that a student enrolled in the school fails to begin a course, withdraws, or is discontinued therefrom at any time prior to completion;

(7) Satisfactory standards relating to attendance, progress, and conduct are established and enforced by the school;

(8) Upon satisfactory completion of training, the student is given a certificate, diploma, or degree by the school indicating completion of the course or courses;

(9) No earned certificate or degree may be given, awarded, or granted solely on the basis of payment of tuition or fee, credit earned at another school or schools, on the basis of credit for life experience or other equivalency, on the basis of testing out, on the basis of research and writing, or solely on the basis of any combination of these factors. No honorary degree may be given, awarded, or granted by any school which does not give, award, or grant an earned degree and no fee or other charge may be assessed for giving, awarding, or granting an honorary degree;

(10) No school, whether certified or exempted, may advertise as having a Missouri presence or use a Missouri address on its letterhead in the absence of that school conducting an actual instructional activity in this state;

(11) The school or its agents do not utilize advertising of any type which is untrue, deceptive, or misleading. The name of the school shall appear in all media advertising;

(12) The school or its agents do not sell or offer to sell material or service by written, visual, or oral misrepresentation;

(13) Adequate financial and academic records are maintained;

(14) The school is maintained and operated in compliance with all pertinent ordinances and laws relative to the safety and health of all persons on the premises;

(15) Governmental student financial aid, including both grants and loans, awarded through or by the school shall be administered in compliance with all applicable law and regulations;

(16) Provisions are made by the school to file student transcripts and all other student records as specified in the rules and regulations with a repository approved by the board should the school terminate its operations. Failure to comply with this subdivision in the event of a school terminating operations shall result in forfeiture of the security deposit as required by section 173.612.

3. The board shall accept accreditation by national or regional accrediting agencies recognized by the United States Department of Education as evidence of partial or complete compliance with standards established by the board pursuant to this section. Such acceptance shall be on a school-by-school basis.

4. The board may dispense with investigation of an out-of-state applicant and may grant a certificate of approval upon payment of the required fees, provided that in the board's judgment, requirements for approval in the state, territory, or District of Columbia are substantially equal to those in force in Missouri at the time application for approval is filed and upon due proof that such applicant has continually operated a proprietary school for two years, and holds a current license in the other state.

**173.606. Application for certification, contents — investigation of applicant — certificates**

**nontransferable — temporary certificate — right of appeal if certificate denied.** — 1. Annually, each proprietary school desiring to operate in this state shall make written application to the board on forms furnished by the board. Such application shall include the identification of all locations operated by a proprietary school and shall identify a single location as a principal facility for the purpose of record keeping and administration. Any location at which education is offered by a franchisee of a franchisor approved to operate as a proprietary school shall be deemed a location within the scope of such franchisor's approval if such franchisor establishes the course curriculum and guidelines for teaching at such location.

2. The Department of Higher Education and Workforce Development shall review the application and may conduct an investigation of the applicant to ensure compliance with the rules and regulations. A proprietary school in continuous operation for a period of no less than five years shall be eligible to apply for certification that is valid for two years.

3. A certificate of approval is nontransferable. A change in the sole proprietor of a school, a change in the majority interest of general partners of a partnership owning a school, or a change in majority of stock ownership of a school shall for the purpose of sections 173.600 to 173.618 be deemed a transfer of ownership. Within thirty days of a transfer of ownership the new owner shall make written application to the board for a new certificate of approval. This application shall be processed like an initial application, except that the board may issue a temporary certificate of approval if the chief administrator of the school furnishes a written statement asserting that all of the conditions set forth in the rules and regulations are being met or will be met before offering training or education. A temporary certificate shall be effective for a maximum of sixty days.

4. Any school denied exemption or a certificate of approval and any approved school whose certificate is revoked or suspended may appeal to the administrative hearing commission.

**173.608. Fee for certificate — disposition — additional fees authorized, when — fund created, purpose.**

— 1. The base annual fee for a proprietary school certificate of approval shall be \$.0013 per one dollar of net tuition and fees income (excluding refunds, books, tools and supplies), with a maximum of five thousand dollars and a minimum of five hundred dollars per school. For a school having a certificate of approval for the sole purpose of recruiting students in Missouri, the net tuition used for this computation shall be only that paid to the school by students recruited from Missouri and the fee shall be five hundred dollars plus the amount produced by the foundation calculation, with a maximum of five thousand dollars. Every five years, beginning with Fiscal Year 2013, the coordinating board may increase the base annual fee as well as the related minimum and maximum amounts by administrative rule no more than the Consumer Price Index for All Urban Consumers (CPI-U), 1982-1984=100, not seasonally adjusted, as defined and officially recorded by the United States Department of Labor, or its successor agency, for the period since the last fee increase.

2. In addition to the annual fee for a certificate of approval, the coordinating board may establish by administrative rule additional appropriate fees if necessary to generate funding sufficient to cover the entirety of costs associated with the operation of the proprietary school certification program, with advice of the proprietary school advisory committee.

3. Any school which operates at two or more locations, or has franchised schools as provided in section 173.606, may combine tuition and fees for all locations for the purpose of determining the annual fee payable under sections 173.600 to 173.618.

4. All revenue received by the coordinating board from the fees authorized in this section shall be deposited in the state treasury to the credit of the "Proprietary School Certification Fund" which is hereby created for the sole purpose of funding the costs associated with the operation of the proprietary school program. Notwithstanding the provisions of section 33.080 to the contrary, any moneys remaining in the fund at the end of the biennium shall not revert to the credit of the general revenue fund.

**173.610. Tuition** — obligation or instrument of payment subject to defenses and setoffs — exceptions. —

1. The rights of a school or assignee of a school as holder of an instrument, account, contract, right, agreement, chattel paper or other writing, other than a check or draft, received by the school in payment of tuition or other charges, whether sold, transferred, assigned or endorsed before or after the obligor has completed the course of instruction, shall be subject to any and all defenses and setoffs available to the obligor, notwithstanding any agreement to the contrary. The preceding sentence shall not apply to payment of tuition or other charges by credit card transaction on a credit card issued by an issuer other than the school.

2. The definitions in articles 1, 3 and 9 of chapter 400 are applicable to subsection 1.

**173.612. Coordinating board for higher education to administer law — powers and duties — rules and regulations, suspension and reinstatement.** — 1. The board shall, through the Department of Higher Education and Workforce Development, administer, supervise, and enforce the provisions and policies of sections 173.600 to 173.618 and shall assign the personnel that are necessary to exercise its powers and duties.

2. The rules and regulations adopted by the board under sections 173.600 to 173.618, together with any amendments thereto, shall be filed with the office of the secretary of state. The board may:

(1) Issue proprietary school certificates of approval or temporary certificates of approval to applicants meeting the requirements of sections 173.600 to 173.618;

(2) Suspend or revoke certificates or temporary certificates of approval, or place certified schools on probation;

(3) Require each proprietary school to file a security bond covering the school and its agents to indemnify any student, enrollee or parent, guardian, or sponsor of a student or enrollee who suffers loss or damage because of a violation of sections 173.600 to 173.618 by the school, or because a student is unable to complete the course due to the school's ceasing operation or because a student does not receive a refund to which he is entitled. The bond or other security shall cover all the facilities and locations of a proprietary school and shall not be less than five thousand dollars or ten percent of the preceding year's gross tuition, whichever is greater, but in no case shall it exceed one hundred thousand dollars. The bond shall clearly state that the school and the agents of the school are covered by it. The board may authorize the use of certificates of deposit, letters of credit, or other assets to be posted as security in lieu of this surety bond requirement;

(4) Collect only that data from certified proprietary schools necessary to administer, supervise, and enforce the provisions of sections 173.600 to 173.619. The department shall, subject to appropriations, provide a system to electronically submit all data;

(5) Review proposals for new programs within ninety days from the date that a certified school submits a new program for review, and review proposals for revised programs within sixty days from the date that a certified school submits a revised program for review. If the department fails to review a proposal for a new or revised program within the prescribed time frame, the school shall be permitted to offer the program until the department completes its review and identifies a substantive issue or issues

that need correction. In such case the department shall notify the school within an additional ninety days and the school shall then have ninety days from the date it is informed that a program offering has a deficiency to correct the deficiency without having to cease offering the program;

(6) Administer sections 173.600 to 173.618 and initiate action to enforce it.

3. Any school which closes or whose certificate of approval is suspended, revoked, or not renewed shall, on the approval of the coordinating board, make partial or full refund of tuition and fees to the students enrolled, continue operation under a temporary certificate until students enrolled have completed the program for which they were enrolled, make arrangements for another school or schools to complete the instruction for which the students are enrolled, employ a combination of these methods in order to fulfill its obligations to the students, or implement other plans approved by the coordinating board.

4. Any rule or portion of a rule promulgated pursuant to sections 173.600 to 173.618 may be suspended by the joint house-senate committee on administrative rules until such time as the general assembly may by concurrent resolution signed by the governor reinstate such rule.

**173.614. Advisory committee — appointment, qualifications, terms — powers and duties — expenses.**

— 1. The "Proprietary School Advisory Committee" is hereby created consisting of seven members. All members shall be appointed by the commissioner of higher education and shall be owners or managerial employees of proprietary schools. The initial appointment of members to the committee shall be made within sixty days after September 28, 1983, and shall consist of two members appointed for terms expiring one year from September 28, 1983, two members appointed for terms expiring two years from September 28, 1983, and three members appointed for terms expiring three years from September 28, 1983. The terms of members initially appointed shall be designated by the board. Thereafter, each appointment shall be for a term of three years. If a committee member resigns or for any reason is unable or ineligible to continue to serve, a new member shall be appointed by the board to fill the unexpired term. At all times at least three members of the committee shall represent schools that confer a degree and at least one of the three shall represent a school that confers a degree at the baccalaureate level or higher.

2. The committee shall organize itself by the election of a chairman and other officers as needed.

3. The committee shall report to the board at least twice annually and advise the board on matters within the scope of sections 173.600 to 173.618.

4. The proprietary school advisory committee shall have the following responsibilities:

(1) To advise the board in the administration of sections 173.600 to 173.618;

(2) To make recommendations with respect to the rules and regulations establishing minimum standards which are to be adopted by the board; and

(3) To advise the board with respect to grievances and complaints.

5. Members of the committee shall serve without compensation but may be reimbursed for traveling and other expenses necessarily incurred in the performance of their duties from funds of the Department of Higher Education and Workforce Development.

**173.616. Schools and courses that are exempt from sections 173.600 to 173.618.** — 1. The following schools, training programs, and courses of instruction shall be exempt from the provisions of sections 173.600 to 173.618:

(1) A public institution;

(2) Any college or university represented directly or indirectly on the advisory committee of the coordinating board for higher education as provided in subsection 3 of section 173.005;

(3) An institution that is certified by the board as an approved private institution under subdivision (2) of subsection 1 of section 173.1102;

(4) A not-for-profit religious school that is accredited by the American Association of Bible Colleges, the Association of Theological Schools in the United States and Canada, or a regional accrediting association, such as the North Central Association, which is recognized by the Council on Postsecondary Accreditation and the United States Department of Education; and

(5) Beginning July 1, 2008, all out-of-state public institutions of higher education, as such term is defined in subdivision (14) of subsection 2 of section 173.005.

2. The coordinating board shall exempt the following schools, training programs and courses of instruction from the provisions of sections 173.600 to 173.618:

(1) A not-for-profit school owned, controlled and operated by a bona fide religious or denominational organization which offers no programs or degrees and grants no degrees or certificates other than those specifically designated as theological, bible, divinity or other religious designation;

(2) A not-for-profit school owned, controlled and operated by a bona fide eleemosynary organization which provides instruction with no financial charge to its students and at which no part of the instructional cost is defrayed by or through programs of governmental student financial aid, including grants and loans, provided directly to or for individual students;

(3) A school which offers instruction only in subject areas which are primarily for avocational or recreational purposes as distinct from courses to teach employable, marketable knowledge or skills, which does not advertise occupational objectives and which does not grant degrees;

(4) A course of instruction, study or training program sponsored by an employer for the training and preparation of its own employees;

(5) A course of study or instruction conducted by a trade, business or professional organization with a closed membership where participation in the course is limited to bona fide members of the trade, business or professional organization, or a course of instruction for persons in preparation for an examination given by a state board or commission where the state board or commission approves that course and school;

(6) A school or person whose clientele are primarily students aged sixteen or under;

(7) A yoga teacher training course, program, or school.

3. A school which is otherwise licensed and approved under and pursuant to any other licensing law of this state shall be exempt from sections 173.600 to 173.618, but a state certificate of incorporation shall not constitute licensing for the purpose of sections 173.600 to 173.618.

4. Any school, training program or course of instruction exempted herein may elect by majority action of its governing body or by action of its director to apply for approval of the school, training program or course of instruction under the provisions of sections 173.600 to 173.618. Upon application to and approval by the coordinating board, such school training program or course of instruction may become exempt from the provisions of sections 173.600 to 173.618 at any subsequent time, except the board shall not approve an application for exemption if the approved school is then in any status of noncompliance with certification standards and a reversion to exempt status shall not relieve the school of any liability for indemnification or any penalty for noncompliance with certification standards during the period of the school's approved status.

**173.618. Unlawful practices – injunction, board action – penalty.** – 1. Any act, method, or practice which violates the provisions of sections 173.600 to 173.618 shall be an unlawful practice within the meaning of section 407.020, and any action authorized in section 407.020 may be taken. In addition, the board may seek an injunction in the manner provided in chapter 407. The board may exercise the authority granted in subdivision (2) of subsection 2 of section 173.612 without seeking injunction.

2. Any person convicted of operating a proprietary school without certificate of approval or a temporary certificate of approval, or of failure to file bond or security as required by sections 173.600 to 173.618 or of violating any other provision of sections 173.600 to 173.618 is guilty of a class A misdemeanor and upon conviction shall be punished in the manner provided by law.