

HOUSE No. 3512

The Commonwealth of Massachusetts

Joint, November 21, 2011.

[Document Text]

For the committee,

TOM SANNICANDRO

HOUSE No. 3512

By Mr. Sannicandro of Ashland, for the committee on Higher Education, on House, Nos. 6 and 38, a Bill relative to oversight of private occupational schools (House, No. 3512). June 16, 2011.

The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven
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An Act relative to oversight of private occupational schools.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 13 of the General Laws is hereby amended by inserting after
2 section 8 the following section: -

3 Section 8A. There is hereby established an office of private occupational school
4 education within the division of professional licensure, which shall be subject to the direction
5 and supervision of the director of the division. The office of private occupational school
6 education shall assist the director in carrying out the powers, duties and responsibilities set forth
7 in sections 259 through 275 of chapter 112. The director may appoint such employees as
8 necessary to carry out the powers, duties and responsibilities set forth in sections 259 through
9 275 of chapter 112. The office of private occupational school education shall not be deemed a
10 board serving in the division of professional licensure, within the meaning of this chapter.

11 SECTION 2. Sections 1 to 11 of chapter 75C of the General Laws are hereby repealed.

12 SECTION 3. Sections 1 to 14 of chapter 75D of the General Laws are hereby repealed.

13 SECTION 4. Sections 20A to 21G of chapter 93 of the General Laws are hereby
14 repealed.

15 SECTION 5. Chapter 112 of the General Laws is hereby amended by inserting after
16 section 258 the following sections:-

17 Section 259. As used in this chapter, the following definitions shall apply:

18 Division – the division of professional licensure established pursuant to section eight of
19 chapter thirteen acting by and through its director.

20 Private occupational school – a private educational organization, not specifically
21 exempted by section 261 of this chapter, that engages for profit or by charging tuition in
22 teaching, training, instructing, or preparing individuals in a course or courses of instruction or
23 study for the purpose of training or preparing individuals for a field or endeavor in a business,
24 trade, technical, or industrial occupation, as well as for any other vocational purpose.

25 For the purposes of this chapter, a private educational organization shall include any
26 individual, firm, partnership, association, corporation, organization, trust, or other legal entity or
27 combination of such entities that maintain a place of business within the commonwealth or
28 solicits business within the commonwealth to provide classroom instruction as well as distance
29 education. For purposes of this chapter, “private occupational school” shall include
30 correspondence schools, private business schools, private trade schools, and such similar entities
31 as shall be designated by the division.

32 Section 260. The division shall have the following powers and duties: (i) to
33 administer and enforce the provisions of this chapter; (ii) to adopt and promulgate such rules and

34 regulations governing the licensure and the operation of private occupational schools as may be
35 necessary to promote the public, health, welfare, and safety of citizens of the commonwealth
36 including mandating liability insurance and other such requirements; (iii) to grant licenses to
37 qualified applicants; (iv) to approve the curriculum, instructors, and staff of licensed schools; (v)
38 to investigate complaints, conduct inspections, review billing and student records, and set and
39 administer penalties as defined in sections 259 through 273 of this chapter for fraudulent,
40 deceptive or professionally incompetent and unsafe practices and for violations of rules and
41 regulations promulgated by the division, and (vi) to review, under subsection (b) of section 172
42 of chapter 6, the criminal offender record information of principals, administrators, employees,
43 and other individuals related to private occupational schools for purposes of licensure and
44 reviewing complaints.

45 Section 261. All private occupational schools operating in the commonwealth shall be
46 licensed by the division; provided, however, that the provisions of this chapter shall not apply to:

47 1. A school, college or other educational institution regularly chartered and authorized by
48 the commonwealth to grant degrees; however, this exemption shall not apply to non-degree
49 programs offered through such a school, college or other educational institution by a third party;

50 2. A school conducted by any persons or entities for the education and training of their
51 own employees with no fee or tuition being charged to the employee;

52 3. A school exclusively engaged in training persons with disabilities;

53 4. A school providing distance learning/online/correspondence services having no place
54 of business in the commonwealth;

55 5. Recreational programs conducted for the purpose of relaxation and enjoyment
56 regarding instruction in non-occupational pastimes, exercise, or other such diversions;

57 6. Programs owned and operated by established religious institutions for the purpose of
58 providing religious instruction;

59 7. Courses of instruction conducted by a public school district or combination of public
60 school districts;

61 8. Private schools or programs conducted for the education of students in grades pre-
62 kindergarten through twelve;

63 9. Incidental training associated with the purchase of a product from said vendor, if the
64 training is to familiarize the purchaser with its use and the purchaser is not awarded any form of
65 a certificate or diploma for having received the training; or

66 10. Such other programs as shall be designated by the division.

67 Section 262. Any person or entity desiring to operate a private occupational school
68 within the commonwealth shall submit to the state auditor, in the manner prescribed by the
69 auditor, such financial information as may be required, including but not limited to ownership
70 and organization of the school, the financial condition of the school, and the form and content of
71 the student enrollment agreement to be used by the school. In carrying out the provisions of this
72 section, the auditor is authorized to review the full records of the school and may carry out on-
73 site reviews of the school.

74 If, after investigation, the state auditor finds the applicant is financially qualified to
75 operate a private occupational school, the division shall be notified of the applicant's eligibility

76 to apply for a license to operate a private occupational school. The state auditor shall thereafter
77 re-establish the eligibility of licensees as requested by the division as well as when the state
78 auditor deems, in his or her discretion, that such an evaluation is appropriate; provided, however,
79 that each licensee shall be reviewed by the auditor at least once every 3 years. License renewal
80 shall be granted only after such an investigation has been conducted and certification of the
81 financial eligibility of the applicant for renewal has been made by the state auditor. The state
82 auditor's finding of eligibility shall not be construed as the granting of a license by the division.

83 If the state auditor finds that an applicant or licensee is not financially responsible and
84 qualified to operate a private occupational school, certification of financial eligibility shall be
85 denied and the auditor shall state the reasons for denial in writing.

86 Notwithstanding the provisions of section 12 of chapter 11 pertaining to maintenance of
87 the records in the department of the state auditor, such financial information submitted to the
88 state auditor shall be retained in the office of the state auditor and shall not be classified as public
89 records.

90 The state auditor may adopt rules and regulations, issue guidelines and prescribe forms to
91 carry out the provisions of this section and section 264.

92 Section 263. Any person or entity desiring to operate a private occupational school
93 within the commonwealth whose application has been granted initial approval by the state
94 auditor pursuant to section 262 shall submit to the division, on a form supplied by the division,
95 such information as the division may require, including but not limited to:

96 (a) the training and experience of the instructors employed or to be employed by the
97 school;

98 (b) the building facilities and equipment available or to be available for the instruction to
99 be offered by the school;

100 (c) the form and content of the courses to be offered by the school;

101 (d) the particular field of instruction to be offered by the school; and

102 (e) the form of any contract or agreement to be executed by a prospective student.

103 If, after investigation, the division finds that the applicant is qualified to operate a private
104 occupational school, the division shall issue a license to such person or entity authorizing the
105 operation of such school.

106 If the division finds that the applicant is not qualified to operate a private occupational
107 school, the division shall refuse to issue a license, and shall state the reasons therefor in writing.

108 The division shall determine the license term, renewal cycle, and renewal period for
109 licenses issued by the division. Each licensee shall apply to the division for license renewal on
110 or before the expiration date, as determined by the division, unless such license was revoked,
111 suspended, or canceled earlier by the division as a result of a disciplinary proceeding instituted
112 pursuant to this chapter. Applications for initial licenses and renewal shall be in the manner
113 approved by the division and accompanied by payment of a fee, as prescribed by the executive
114 office of administration and finance pursuant to section 3B of chapter 7. Licenses shall be non-
115 transferrable. A change in ownership or location shall require a new application. Upon closure
116 of a private occupational school, all student records shall be conveyed to the division and a fee
117 determined by the secretary of administration and finance under the provision of section 3B of
118 chapter 7 paid by the school to cover any costs associated with the maintenance of such records.

119 No application for licensure shall be approved unless all principals and employees of
120 said school are of good moral character.

121 Section 264. No license shall issue under the provisions of this chapter until the
122 prospective licensee, or two or more prospective licensees who intend to secure a joint
123 indemnification, shall furnish either a bond with surety or a form of indemnification acceptable
124 to the division in the amount determined by the state auditor in a sum not less than \$5,000 in the
125 case of a school's license, and in the amount of at least \$1,000 in the case of a license for a
126 representative of a private business school; provided, however, that the liability of the person
127 providing indemnification shall be limited to indemnifying the claimant only for his actual
128 damages.

129 The state auditor shall require additional security in those cases where he is of the
130 opinion that the cash resources of the licensee may not be sufficient to make tuition refunds to
131 students as required under section 13K of chapter 255; and provided further, that the amount of
132 the indemnification in the case of the school shall not exceed the anticipated maximum unearned
133 tuitions. For the purposes of this section the forms of indemnification other than a surety bond
134 which shall be furnished to the division for licensure are the following:

135 1. An irrevocable letter of credit, maintained for a period of 1 year, issued by a financial
136 institution as defined in section 1 of chapter 140E in an amount determined annually by the state
137 auditor and approved by the division payable to the commonwealth in which the commonwealth
138 is designated as the beneficiary.

139 2. A term deposit account held in a financial institution as defined in section 1 of chapter
140 140E, payable to the commonwealth, shall be held in trust for the benefit of students entitled

141 thereto under section 13K of chapter 255 or subject to refund provisions and policies approved
142 by the division. Said account shall be maintained for a period of 1 year, the amount to be
143 determined annually by the state auditor and acceptable to the division. All interest shall be paid
144 annually to the appropriate school, unless the term deposit account is activated due to a school
145 closing. Should the licensee for any reason, while not in default, discontinue operation, all
146 monies on deposit, including interest, shall be released to the appropriate school subject to the
147 approval of the division.

148 A joint indemnification shall be defined as an indemnification issued to cover all
149 prospective licensees to be insured under the indemnification in an amount sufficient to cover the
150 tuition refunds of the participating schools.

151 Each such indemnification shall be conditioned to provide that the obligor shall satisfy all
152 valid claims, as determined by the division, to recover damages sustained by students resulting
153 from a breach of contract; provided, however, that the aggregate liability of the person providing
154 indemnification for all breaches of the conditions of the indemnification shall not, under any
155 circumstances, exceed the sum of such indemnification. Such indemnification shall not limit or
156 impair any right of recovery otherwise available pursuant to law nor shall the amount of the
157 indemnification be relevant in determining the amount of damages or other relief to which any
158 plaintiff may be entitled. The surety on any bond may cancel the bond upon giving 60 days'
159 notice in writing to the division and thereafter shall be relieved of the liability for any breach of
160 condition occurring after the effective date of said cancellation.

161 The indemnification shall be procured only from companies or institutions legally
162 authorized to do business in the commonwealth.

163 Section 265. The division shall conduct routine inspections and investigate all
164 complaints filed relating to the operations of a private occupational school, and any violation of
165 sections 259 through 273 of this chapter or any rule or regulation of said division. Such
166 complaints may be brought by any person, or the division. The division shall have the power to
167 issue subpoenas requiring the attendance and testimony of witnesses and the production of any
168 evidence, including books, records, correspondence or documents, relating to any matter in
169 question in the investigation. The division may administer oaths and affirmations, examine
170 witnesses, and receive evidence. The power to issue subpoenas may be exercised by any person
171 or persons designated by the division for such purpose. Any witness summoned may petition the
172 division to vacate or modify a subpoena issued.

173 After such investigation as deemed appropriate, the division may grant the petition in
174 whole or part upon a finding that the testimony, or the evidence whose production is required,
175 does not relate with reasonable directness to any matter in question, or that the subpoena for the
176 attendance of a witness or the production of evidence is unreasonable or oppressive, or has not
177 been issued a reasonable period in advance of the time when the evidence is requested. Upon the
178 failure of any person to comply with a subpoena issued by the division, any justice of the
179 superior court, upon application by the division, may in his or her discretion issue an order
180 requiring the attendance of such person before the agency and the giving of testimony or
181 production of evidence. Any person failing to obey the court's order may be punished by the
182 court for contempt.

183 Section 266. For the purposes of this chapter, conduct which places into question the
184 school's fitness to conduct educational operations shall include, but not be limited to the school
185 or the school's principals, employees, or other representatives: (1) committing fraud or

186 misrepresentation in obtaining a license; (2) engaging in criminal conduct which the division
187 determines to be of such a nature as to render such a school or its principals as unfit to operate as
188 a licensed educational facility, as evidenced by criminal proceedings which resulted in a
189 conviction, guilty plea or plea of nolo contendere or an admission of sufficient facts; (3)
190 engaging in conduct which places into question the holder's competence to operate a private
191 occupational school including, but is not limited to, gross misconduct or misconduct in the
192 practice of the education activities, dishonesty, fraud or deceit, operating beyond the authorized
193 scope, or operating the school with negligence; (4) allowing instructors, staff, or other associated
194 personnel to function when such personnel are not able to perform the essential functions of their
195 positions while impaired by alcohol, drugs or other such cause; (5) aiding or abetting an
196 unqualified person to perform activities requiring a qualified instructor; (6) holding a license,
197 certificate, registration, or authority issued by another state or territory of the United States, the
198 District of Columbia, or foreign state or nation with authority to issue such a license, certificate,
199 registration, and that is or has been revoked, canceled or suspended, not renewed or otherwise
200 acted against, or the holder has been disciplined, if the basis for the action would constitute a
201 basis for disciplinary action in the commonwealth; (7) violating any rule or regulation of the
202 division; (8) failing to cooperate with the division or its agents in the conduct of an inspection or
203 investigation; (9) violating any ethical standard which the division determines to be of such a
204 nature as to render such a school unfit, such as:

205 1. Failing to establish and maintain minimum standards concerning quality of
206 education, ethical and business practices, health and safety, and fiscal responsibility;

207 2. Failing to protect students against substandard, transient, unethical, deceptive, or
208 fraudulent practices;

- 209 3. Granting of false educational credentials;
- 210 4. Authorizing or otherwise failing to protect the public from misleading literature,
211 advertising, solicitation, or representation by the school or its agents;
- 212 5. Failing to preserve essential records.

213 Section 267. (a) Except as otherwise provided by law, the division may, upon
214 determination made after a hearing finding the holder of a license issued responsible for any of
215 the offenses enumerated in this chapter, undertake the following actions:

- 216 1. suspend, revoke, cancel or place on probation such license;
- 217 2. reprimand or censure a holder;
- 218 3. assess upon such holder a civil administrative penalty not to exceed \$5,000 for each
219 violation;
- 220 4. require such holder or staff of such holder to complete additional education and
221 training as a condition of retention or future consideration or reinstatement of said license;
- 222 5. require such holder to practice under appropriate supervision for a period of time as
223 determined by the division as a condition of retention or future consideration of reinstatement of
224 said license;
- 225 6. require restitution of student fees and tuition, where appropriate; and/or
- 226 7. issue orders to licensees directing them to cease and desist from unethical or
227 unprofessional conduct.

228 (b) Nothing in this section shall be deemed a limitation on the division's authority to
229 impose such sanctions by consent agreement as are deemed reasonable and appropriate by the
230 division. Any person aggrieved by any disciplinary action taken by the division pursuant to this
231 chapter may, pursuant to section 14 of chapter 30A, file a petition for judicial review with the
232 Supreme Judicial Court.

233 (c) The division shall not be required to defer action upon any charge because of pending
234 criminal charges against a person or school accused, nor shall the pendency of any charge before
235 the division act as a continuance or ground for delay in a criminal action.

236 Section 268. Upon determination that a school's continued operation poses an
237 immediate and serious threat to the public health, safety, or welfare, the division may suspend or
238 refuse to renew the holder's license, pending a hearing on the merits of the allegation against the
239 holder; provided that the division shall hold a hearing pursuant to chapter 30A on the necessity
240 for the emergency action within 10 days of the action. The division shall issue to the licensee a
241 written order of summary suspension which specifies the findings of the division and the reasons
242 for its summary suspension and which also includes notice of the date, time and place of the
243 aforementioned ten-day hearing. At the request of a licensee the division may reschedule this
244 hearing to a date and time mutually agreeable to the division and licensee. Any such
245 rescheduling of the hearing granted at the licensee's request shall not operate to lift or stay the
246 summary suspension order. If such hearing is not held within 10 days of the division's
247 emergency action, the license against which action was taken shall be deemed reinstated.

248 At the adjudicatory hearing on the necessity for summary suspension, the division shall
249 receive evidence limited to determining whether the summary suspension order shall continue in

250 effect pending the final disposition of the complaint. Following such hearing, any continuing
251 suspension imposed by the division shall remain in effect until the conclusion of any formal
252 proceeding on the merits of the allegations against the holder, including judicial review thereof,
253 or withdrawn by such division. The division shall adopt rules and regulations governing the
254 emergency suspension procedure authorized by this section.

255 Section 269. Notwithstanding any general or special law to the contrary, the division
256 may, after a consent agreement between the parties or after an opportunity for an adjudicatory
257 proceeding held pursuant to chapter 30A, assess and collect a civil administrative penalty not to
258 exceed \$10,000 for the first violation and a civil administrative penalty not to exceed \$25,000 for
259 a second or subsequent violation upon a person or entity who, without holding the required
260 license, operates a private occupational school. The division may also order the individual or
261 entity to cease and desist from continued practice without a license. Nothing in this section shall
262 affect, restrict, diminish or limit any other penalty or remedy provided by law. The division may
263 apply to the appropriate court for an order enjoining the unlicensed practice of a trade or
264 profession, to enforce an order issued after a hearing conducted per this section, and/or for such
265 other relief as may be appropriate to enforce this section.

266 Any court review of an order of the division issued after a hearing shall be conducted in
267 accordance with the standards of review provided in paragraphs (3) to (7), inclusive, of section
268 14 of chapter 30A. An assessment of a civil administrative penalty under this section shall bar a
269 subsequent imposition of a criminal penalty for the same violation.

270 Section 270. Whoever operates or acts as a representative of an unlicensed private
271 occupational school, or operates or acts as a representative during the suspension or after the

272 revocation of a license issued pursuant to this chapter, shall be punished by imprisonment for not
273 more than 6 months or by a criminal fine of not more than \$10,000, or both. An imposition of a
274 criminal penalty under this section shall bar a subsequent assessment of a civil administrative
275 penalty for the same violation.

276 The division shall not defer action upon any charge before it until the conviction of the
277 person accused, nor shall the pendency of any charge before the division act as a continuance or
278 ground for delay in a criminal action.

279 Section 271. Any pupil of a private occupational school, who is misled by an officer
280 or representative of said school, or by any advertisement or circular issued by said school, which
281 representation is false, deceptive or misleading, may recover treble damages, or \$10,000,
282 whichever is greater, and court costs and reasonable attorney's fees.

283 Section 272. Any complaint, report, record or other information received or kept by
284 the division in connection with an investigation shall be considered a public record only
285 following the final action by the division, provided however, that the identity of the person filing
286 a complaint shall be exempt from disclosure as a public record at all times. These provisions
287 shall not be deemed to prohibit the division from providing a licensee with such information for
288 purposes of preparing a defense in a formal adjudicatory hearing nor shall it prevent the division
289 from providing records in response to requests from other state or federal agencies, divisions or
290 institutions as determined by the division.

291 Section 273. No private occupational school shall represent that it is an accredited
292 school unless it has been accredited by a national or regional accrediting agency recognized by
293 the United States Department of Education. All schools that obtain such an accreditation shall

294 notify the division in writing. In addition, schools must notify the division in writing of any
295 changes to such accreditation.

296 Section 274. Subject to appropriation, the division may retain all licensure fees,
297 renewal fees, late fees, civil administrative penalties, and other such revenue collected pursuant
298 to this chapter for the licensure and oversight of private occupational schools under sections 259
299 to 275, inclusive.

300 Section 275. There shall be within the division an advisory council on private
301 occupational schools which shall be comprised of 11 members as follows: the state auditor, ex
302 officio, or a designee, the secretary of education, ex officio, or a designee, the secretary of labor
303 and workforce development, ex officio, or a designee, and the undersecretary of the office of
304 consumer affairs and business regulation, ex officio, or a designee; and 7 members to be
305 appointed by the director of the division who shall be a cross-section of individuals with
306 knowledge and understanding of the fiscal, educational, workforce development, and consumer
307 protection issues relating to post-secondary education.

308 Members appointed by the division shall be appointed for a term of 3 years and serve at
309 the pleasure of the division. Members whose appointments have expired may continue to serve
310 until a replacement is appointed. Members appointed by the division shall be subject to the
311 provisions of chapter 268A and the division may remove any member so appointed for neglect of
312 duty, misconduct, malfeasance or misfeasance in office, or for failure, as a representative or
313 associate of an individual licensee, to follow the rules and regulations of the division. Members
314 appointed by the division shall be considered public employees for the purposes of chapter 258
315 for all acts or omissions within the scope of their duties as division members. Members

316 appointed by the division shall be immune from liability for actions taken in good faith in the
317 discharge of their responsibilities. Members appointed by the division acting in good faith in the
318 discharge of their duties shall be defended by the attorney general and shall be eligible for
319 indemnification of all costs and damages arising from claims and suits against them.

320 The division shall appoint a chair of the advisory council who shall serve at the pleasure
321 of the division. The advisory council may designate additional roles for its members as
322 necessary for the conduct of its business. Members appointed by the division shall serve without
323 compensation, but shall be reimbursed for actual and reasonable expenses incurred in the
324 performance of their duties.

325 The advisory council shall be considered a governmental body and all meetings of the
326 advisory council shall be announced and conducted in accordance with section 11A1/2 of
327 chapter 30A, with the exception that remote participation is specifically authorized so long as 2
328 or more members are physically present at the public site. At the discretion of the chair,
329 additional members, staff, or interested parties may remotely participate by any live, 2-way
330 medium such as audio or video conferencing.

331 SECTION 6. The first paragraph of section 13K of chapter 255 of the General Laws is
332 hereby amended by striking out, in lines 1 through 4, the words “trade school, business school,
333 vocational school, technical school, correspondence school, dance studio, professional or
334 proprietary school, except a proprietary school which has the authority to grant degrees,” and
335 inserting in place thereof the words “private occupational schools as defined in section 259 of
336 chapter 112, or dance studio,”.

337 SECTION 7. The department of elementary and secondary education shall transfer to the
338 division of professional licensure the functions and staff of the department associated with
339 overseeing the licensing of proprietary schools. Employees and members of the department of
340 elementary and secondary education whose office has been transferred to the division of
341 professional licensure by this act shall become employees and members of the division of
342 professional licensure without impairment of civil service status and seniority and without
343 reduction in compensation, notwithstanding any change in job titles or duties and without loss of
344 accrued rights to holidays, sick leave, vacation and benefits, and shall thereafter perform their
345 duties under the direction, control and supervision of the division of professional licensure.

346 Terms of office of employees and members of an office formerly under the department of
347 elementary and secondary education and transferred to the division of professional licensure by
348 this act shall not be deemed to be interrupted by such transfer and all such employees and
349 members shall maintain the same rights and entitlements with respect to retirement, pension and
350 group insurance benefits as previously existed under their employment with such boards or
351 offices transferred by this act. Rights and obligations under collective bargaining agreements
352 with respect to employees and members transferred from such offices shall be assumed by and
353 imposed upon the division of professional licensure. Every employee and member transferred to
354 the division of professional licensure under this section who immediately prior to such transfer
355 holds a permanent appointment classified under chapter 31 or has tenure by reason of section 9A
356 of chapter 30 shall be entitled to the rights and benefits of and shall be subject to the provisions
357 relating to tenured employees and members under chapter 31 or section 9A of chapter 30,
358 respectively.

359 All orders, rules and regulations duly made and all approvals duly granted which are in
360 force immediately before the effective date of this act, shall continue in force and shall thereafter
361 be enforced, until superseded, revised, rescinded or canceled, in accordance with law, by the
362 division of professional licensure. Private occupational schools holding a valid license at the
363 time the division supersedes, revises, rescinds or cancels such orders, rules or regulations, shall
364 have 18 months to comply with any new prerequisites to licensure established by those orders,
365 rules or regulations.

366 All books, papers, records and documents related to the licensure of private occupational
367 schools, which immediately before the effective date of this act are in the custody of the
368 department of elementary and secondary education, shall be transferred to the division of
369 professional licensure.