

HOUSE No. 03512

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

In the Year Two Thousand Eleven

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 section 8 the
2 following section: -

3 Section 8A. There is hereby established an office of private occupational school education
4 within the division of professional licensure, which shall be subject to the direction and
5 supervision of the director of the division. The office of private occupational school education
6 shall assist the director in carrying out the powers, duties and responsibilities set forth in sections
7 259 through 275 of chapter 112. The director may appoint such employees as necessary to carry
8 out the powers, duties and responsibilities set forth in sections 259 through 275 of chapter 112.
9 The office of private occupational school education shall not be deemed a board serving in the
10 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 Sections 1 to 11 of chapter 75C of the General Laws are hereby repealed.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 Sections 1 to 14 of chapter 75D of the General Laws are hereby repealed.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 Sections 20A to 21G of chapter 93 of the General Laws are hereby repealed.

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

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

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

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

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

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

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

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

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

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

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

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

- 54 5. Recreational programs conducted for the purpose of relaxation and enjoyment regarding
55 instruction in non-occupational pastimes, exercise, or other such diversions;
- 56 6. Programs owned and operated by established religious institutions for the purpose of
57 providing religious instruction;
- 58 7. Courses of instruction conducted by a public school district or combination of public school
59 districts;
- 60 8. Private schools or programs conducted for the education of students in grades pre-kindergarten
61 through twelve;
- 62 9. Incidental training associated with the purchase of a product from said vendor, if the training
63 is to familiarize the purchaser with its use and the purchaser is not awarded any form of a
64 certificate or diploma for having received the training; or
- 65 10. Such other programs as shall be designated by the division.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

136 2. A term deposit account held in a financial institution as defined in section 1 of chapter 140E,
137 payable to the commonwealth, shall be held in trust for the benefit of students entitled thereto
138 under section 13K of chapter 255 or subject to refund provisions and policies approved by the

139 division. Said account shall be maintained for a period of 1 year, the amount to be determined
140 annually by the state auditor and acceptable to the division. All interest shall be paid annually to
141 the appropriate school, unless the term deposit account is activated due to a school closing.
142 Should the licensee for any reason, while not in default, discontinue operation, all monies on
143 deposit, including interest, shall be released to the appropriate school subject to the approval of
144 the division.

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

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

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

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

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

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

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

- 202 1. Failing to establish and maintain minimum standards concerning quality of education,
203 ethical and business practices, health and safety, and fiscal responsibility;
- 204 2. Failing to protect students against substandard, transient, unethical, deceptive, or fraudulent
205 practices;

206 3. Granting of false educational credentials;

207 4. Authorizing or otherwise failing to protect the public from misleading literature,
208 advertising, solicitation, or representation by the school or its agents;

209 5. Failing to preserve essential records.

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

213 1. suspend, revoke, cancel or place on probation such license;

214 2. reprimand or censure a holder;

215 3. assess upon such holder a civil administrative penalty not to exceed \$5,000 for each violation;

216 4. require such holder or staff of such holder to complete additional education and training as a
217 condition of retention or future consideration or reinstatement of said license;

218 5. require such holder to practice under appropriate supervision for a period of time as
219 determined by the division as a condition of retention or future consideration of reinstatement of
220 said license;

221 6. require restitution of student fees and tuition, where appropriate; and/or

222 7. issue orders to licensees directing them to cease and desist from unethical or unprofessional
223 conduct.

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

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

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

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

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

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

262 Any court review of an order of the division issued after a hearing shall be conducted in
263 accordance with the standards of review provided in paragraphs (3) to (7), inclusive, of section
264 14 of chapter 30A. An assessment of a civil administrative penalty under this section shall bar a
265 subsequent imposition of a criminal penalty for the same violation.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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