

## **CHAPTER 807. CAREER SCHOOLS AND COLLEGES**

**PROPOSED RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*. THIS DOCUMENT WILL HAVE NO SUBSTANTIVE CHANGES BUT IS SUBJECT TO FORMATTING CHANGES AS REQUIRED BY THE *TEXAS REGISTER*.**

ON **OCTOBER 9, 2012**, THE TEXAS WORKFORCE COMMISSION PROPOSED THE BELOW RULES WITH PREAMBLE TO BE SUBMITTED TO THE *TEXAS REGISTER*.

Estimated Publication Date of the Proposal in the *Texas Register*: **October 26, 2012**

Estimated End of Comment Period: **November 26, 2012**

The Texas Workforce Commission (Commission) proposes amendments to the following section of Chapter 807, relating to Career Schools and Colleges:

Subchapter S. Sanctions, §807.353

- PART I. PURPOSE, BACKGROUND, AND AUTHORITY
- PART II. EXPLANATION OF INDIVIDUAL PROVISIONS
- PART III. IMPACT STATEMENTS
- PART IV. COORDINATION ACTIVITIES

### **PART I. PURPOSE, BACKGROUND, AND AUTHORITY**

Texas law charges the Commission with exercising jurisdiction and control of the oversight of career schools and colleges operating in Texas. The Commission's Career Schools and Colleges department (department) licenses and regulates most private postsecondary career schools and colleges that offer vocational training or continuing education to Texas residents. In Texas, in the five years between Fiscal Year 2007 (FY'07) and FY'12, the number of licensed career schools and colleges has grown 27 percent and the number of students enrolled has increased 21 percent. Consequently, the Commission currently regulates more than 500 career schools and colleges that provide vocational training to more than 160,000 students annually.

Texas law requires the Commission to administer the provisions of Texas Education Code, Chapter 132; enforce minimum standards for approval and regulation of career schools and colleges; and adopt policies and rules necessary for carrying out the responsibilities of Chapter 132. To fulfill this role, the department investigates complaints about schools, monitors schools to ensure regulatory compliance, arranges for the disposition of students affected by a school closure, and administers the Tuition Trust Account to pay tuition refunds to students when a school closes. In carrying out its regulatory duties, the department seeks to:

- hold that all businesses meeting the definition as a career school or college meet consistent standards of quality, performance, and regulatory oversight;
- provide consumer protection for Texas students; and
- ensure students receive quality training to meet the needs of Texas employers.

To support the department's ability to effectively and efficiently promote consistent standards of quality that is sufficient to meet the training needs of Texas employers by career schools and

colleges regulated by the Commission, the Chapter 807 amendments clarify:

- the consequences for repeat violations of requirements by specifying the sanctions to be applied for repeat violations;
- the relationship of rules to statutory guidance;
- the calculation of penalties; and
- the definition of a repeat violation.

## **PART II. EXPLANATION OF INDIVIDUAL PROVISIONS**

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

### **SUBCHAPTER S. SANCTIONS**

**The Commission proposes the following amendments to Subchapter S:**

#### **§807.353. Administrative Penalties**

Texas Education Code §132.152 authorizes the Commission to assess an administrative penalty in an amount not to exceed \$1,000 and requires the Commission to consider the seriousness of the violation in determining the amount of the penalty.

Section 807.353(a) simplifies the relationship of rule language to statutory direction on maximum penalty amounts by clarifying that an administrative penalty "shall not exceed the amount specified in Texas Education Code §132.152" for each instance of a violation and "shall be assessed in accordance with that section."

Section 807.353(b), which states that regardless of the penalty amount for a particular violation contained in the penalty matrix, the administrative penalty for repeat violations shall be up to the maximum penalty amount of \$1,000 per violation, is removed.

New §807.353(b) clarifies the calculation for an administrative penalty as "based on a penalty dollar amount and the number of instances of a violation."

New §807.353(c) more clearly defines a repeat violation by stating that "a violation is considered a repeat violation only where notice of a violation or an administrative penalty has been issued previously for that same violation."

As already provided in §807.353(d), assessment of penalties for repeat violations of specific requirements does not prevent the Agency from imposing additional penalties or other sanctions for violations of requirements of statute or rule. As set out in Texas Education Code §132.055, career schools and colleges are expected to maintain the standards of their certificates and ensure that the programs, curriculum, and instruction are of such quality, content, and length to reasonably and adequately achieve the stated objective for which the programs, curriculum, and instruction is offered. Multiple or repeat violations of rule or statute can jeopardize the ability of a career school or college to maintain these standards. In such instances, graduated penalties may be assessed with other sanctions up to and including certificate denial or revocation.

In the Chapter 807 amendments, adopted in January 2012, the Commission established a penalty matrix to set forth amounts for violations of career schools and colleges statutes and rules, based on the seriousness of the violation and potential harm to consumers, up to the \$1,000 statutory cap. However, the penalty matrix did not differentiate penalty amounts on the basis of repeat findings of the same violations.

Section 807.353(e), which introduces the penalty matrix, simplifies language to state that the matrix is for determining and assessing an administrative penalty. To provide clear deterrence for repeated failure to comply with statutory and regulatory requirements, the Commission proposes to amend the matrix to include graduated penalties that will be levied for repeat violations of specific statutory and regulatory requirements. Further, wording for some of the violations identified is revised to provide clarification on violations and how they are assessed.

Pending adoption of these rules, the department shall continue to operate consistent with the Commission's authority to establish sanctions for repeat violations up to the statutory maximum of \$1,000. It is the Commission's intent to implement sanctions for repeat violations in accordance with the penalty matrix set forth in §807.353 for any penalties levied on or after December 1, 2012.

Certain subsections in this section have been relettered to accommodate additions and deletions.

### **PART III. IMPACT STATEMENTS**

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to the costs or revenues of the state or local governments as a result of enforcing or administering the rules.

There are no significant, probable economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small or microbusinesses as a result of enforcing or administering the rules.

#### **Economic Impact Statement and Regulatory Flexibility Analysis**

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

Richard C. Froeschle, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to clarify regulatory requirements and consequences for repeat violations for career schools and colleges, to clarify regulatory requirements for career schools and colleges, and assist the Agency to exercise its regulatory authority as efficiently as possible.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

#### **PART IV. COORDINATION ACTIVITIES**

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to [TWCPolicyComments@twc.state.tx.us](mailto:TWCPolicyComments@twc.state.tx.us). The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register*.

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302, as well as Texas Education Code, Chapter 132.

**CHAPTER 807. CAREER SCHOOLS AND COLLEGES**

**§807.353. Administrative Penalties.**

- (a) ~~Unless otherwise provided by statute, an~~ An administrative penalty shall not exceed ~~\$1,000~~ the amount specified in Texas Education Code §132.152 for each instance of a violation and shall be assessed in accordance with that section.
- ~~(b) Regardless of the penalty amount for a particular violation contained in the penalty matrix, the administrative penalty for repeat violations shall be up to the maximum penalty amount of \$1,000 per violation.~~
- ~~(b)~~(e) The total amount of an administrative penalty shall be calculated based on a as the product of the penalty dollar amount and the number of instances of violation.
- (c) A violation is considered a repeat violation only where notice of a violation or an administrative penalty has been issued previously for that same violation.
- (d) The assessment of an administrative penalty shall not preclude the Agency from administering other sanctions, up to and including revocation of a school's certificate of approval.
- (e) The following penalty matrix is for ~~For the purposes of determining and assessing an administrative penalty, the Agency shall use the penalty matrix below.~~ The absence of a particular violation from the matrix shall not preclude the Agency from assessing an administrative penalty.

<b>Violation</b>	<b><u>First Offense: Penalty</u></b>	<b><u>Repeat Offenses: Penalty</u></b>
Small school transitioning to a large school: <ul style="list-style-type: none"> <li>• Failure to notify Agency of the school's status change;</li> <li>• Failure to timely apply; or</li> <li>• Failure to remit increased fees.</li> </ul>	\$250	<u>Second Offense: \$500</u>  <u>Third and Subsequent Offenses: \$1,000</u>
Failure to disclose tuition, fees, or other charges, including increases, to the Agency	\$250	<u>Second Offense: -\$500</u> <u>Third and Subsequent Offenses: \$1,000</u>

Vacating the school facility without providing prior notification <u>to the Agency</u> of a change of address	\$250	<u>Second Offense: \$500</u> <u>Third and Subsequent Offenses: \$1,000</u>
Failure to maintain records demonstrating compliance <u>with requirements of statute or rule</u>	\$250	<u>Second Offense: \$500</u> <u>Third and Subsequent Offenses: \$1,000</u>
Failure to provide complete and accurate information as required <u>by the Agency</u>	\$250	<u>Second Offense: \$500</u> <u>Third and Subsequent Offenses: \$1,000</u>
Failure to ensure <u>a staff member has representatives</u> have taken required training approved by the Agency	\$500	<u>Second and Subsequent Offenses: \$1,000</u>
Failure to provide <u>an instructor</u> <del>instructors</del> who <u>meets</u> <del>meet</del> necessary qualifications and whose <u>application was submitted within notice</u> require required time frames <del>ments</del>	\$500	<u>Second and Subsequent Offenses: \$1,000</u>
Failure to make arrangements satisfactory to the Agency for the completion of a discontinued course of instruction	\$500	<u>Second and Subsequent Offenses: \$1,000</u>
Failure to respond to <u>a request</u> <del>requests</del> or direction from the Agency	\$500	<u>Second and Subsequent Offenses: \$1,000</u>
Making a false statement in an application to the Agency	\$500	<u>Second and Subsequent Offenses: \$1,000</u>
Failure to maintain the instructors, facilities, equipment, or courses of instruction and outcomes on the basis of which approval was issued	\$500	<u>Second and Subsequent Offenses: \$1,000</u>
Failure to disclose limitations on transferability of courses of instruction <u>to a prospective student</u>	\$500	<u>Second and Subsequent Offenses: \$1,000</u>

Advertising <del>that the availability of</del> financial aid is available or advertising that financial aid may be available for a program for which it is not available	\$500	<u>Second and Subsequent Offenses: \$1,000</u>
Failure to establish that a <del>student</del> students met the approved admission requirements <u>when the student was enrolled</u>	\$750	<u>Second and Subsequent Offenses: \$1,000</u>
Failure to submit the annual program completion, job placement, and employment data <u>required by the Agency</u> by the required due date	\$750	<u>Second and Subsequent Offenses: \$1,000</u>
Failure to submit annual financial statements no later than 180 days from the close of the school's or college's fiscal year	\$750	<u>Second and Subsequent Offenses: \$1,000</u>
Transfer of <u>all</u> students from one school location to another school location, by an owner with multiple school locations, <u>without Agency approval</u>	\$750	<u>Second and Subsequent Offenses: \$1,000</u>
<del>Dismissal</del> Suspension of all classes and <del>dismissal</del> of all students contrary to the school's class schedule as printed in the school catalog for reasons not approved by the Agency	\$750	<u>Second and Subsequent Offenses: \$1,000</u>
Operating a school without a certificate of <u>approval</u>	\$1,000	<u>Second and Subsequent Offenses: \$1,000</u>
Teaching a course of instruction or revised course of instruction that has not been approved by the Agency	\$1,000	<u>Second and Subsequent Offenses: \$1,000</u>
Using advertising that is false, misleading, or deceptive, including the misrepresentation of degrees other than those approved by the Coordinating Board	\$1,000	<u>Second and Subsequent Offenses: \$1,000</u>
Failure to notify the Agency of the discontinuance of the course of instruction or the operation of a school or college within 72 hours of cessation of classes, and to make available accurate records as required	\$1,000	<u>Second and Subsequent Offenses: \$1,000</u>

Solicitation of a prospective <del>student</del> students in violation of statutory and rule requirements	\$1,000	<u>Second and Subsequent Offenses: \$1,000</u>
<u>Any misrepresentation</u> <del>Misrepresentation</del>	\$1,000	<u>Second and Subsequent Offenses: \$1,000</u>
Failure to file a complete application for renewal at least 30 days before the expiration date of the certificate of approval	10% of renewal fee not less than \$200 and not more than \$1,000	<u>Second and Subsequent Offenses: 10% of renewal fee, not less than \$200 and not more than \$1,000</u>
Failure to pay any <u>fee or penalty</u> installment by the required due date	50% of the total amount of the fee	<u>50% of the total amount of the fee</u>
Paying a <u>refund</u> <del>refunds</del> late	A rate established annually by the Commission	<u>A rate established annually by the Commission.</u>