

Regular Session, 2014

SENATE BILL NO. 476

BY SENATOR GARY SMITH

COMMERCIAL REGULATIONS. Provides relative to driving school bond requirement and cease and desist orders. (8/1/14)

1 AN ACT

2 To enact R.S. 40:1462 and 1463, relative to driver training; to provide for bond
3 requirements; to provide for cease and desist orders; and to provide for related
4 matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 40:1462 and 1463 are hereby enacted to read as follows:

7 **§1462. Bond requirement**

8 **A. Each private driving school shall execute a good and sufficient surety**
9 **bond with a surety company qualified to do business in Louisiana as surety, in**
10 **the sum of forty thousand dollars, if such surety bond is available for purchase.**
11 **Such bond shall name the Department of Public Safety and Corrections, office**
12 **of motor vehicles, as obligee and shall be subject to the condition that, if the**
13 **private driving school or any of the private driving school's instructors fails to**
14 **perform any services the school agreed to provide to a student or a student's**
15 **parent, that student, or the parent in case the student is a minor, may recover**
16 **the private driving school fees from the bond by filing a claim through the**
17 **department against the bond. If the company fails to meet the conditions of the**

1 bond, the obligation of the surety shall remain in full force and effect. A private
2 driving school with multiple locations shall furnish only a single forty thousand
3 dollar surety bond.

4 B. The surety bond furnished as required in this Section shall be
5 delivered to and filed with the office of motor vehicles.

6 §1463. Cease and desist orders

7 A. It shall be unlawful for any person to operate a driving school or to
8 offer instruction as a driving school instructor unless both the school and the
9 instructor are currently licensed as a driving school by the department, or for
10 a licensed driving school to engage in any prohibited activity.

11 B. For the purpose of this Section, "prohibited activity" means:

12 (1) Activity normally conducted by a driving school such as classroom
13 instruction, behind the wheel instruction, issuing certificates of successful
14 completion to be used by an applicant to apply for a driver's license, advertising
15 as a licensed, authorized, or approved driving school, or holding oneself out as
16 an authorized or approved driving school or instructor without a license,
17 authorization, or approval by the department.

18 (2) Activity conducted by a driving school or an instructor, whether
19 licensed or not, in which a student of the school is requested to go to, or is taken
20 to, a hotel room, a private residence, or any other location not appropriate for
21 a person of the student's age.

22 C. The office of motor vehicles may issue a cease and desist order to any
23 person or business which is operating in violation of this Part. Any such cease
24 and desist order shall be served either by regular mail with a proof of mailing
25 issued by the United States Post Office, or by hand delivery by a representative
26 of the department. If the cease and desist order is served by mail with proof of
27 mailing, it shall be deemed delivered on the seventh calendar day after the date
28 affixed by the post office on the certificate or proof of mailing. The
29 presumption of delivery in this Subsection shall not apply if the post office

1 **returns the cease and desist order as undeliverable.**

2 **D. If the person or business subject to the cease and desist order in this**
 3 **Section cannot be served, or does not comply with the cease and desist order,**
 4 **the department may file a petition for injunctive relief as provided in the Code**
 5 **of Civil Procedure in district court. There shall be no suspensive appeal or stay**
 6 **of an order or judgment of the district court granting the department a**
 7 **preliminary or permanent injunction.**

8 **E. The department shall promulgate rules as it determines are necessary**
 9 **to aid in the implementation and enforcement of this Section, in accordance**
 10 **with the Administrative Procedure Act.**

The original instrument was prepared by Alan Miller. The following digest, which does not constitute a part of the legislative instrument, was prepared by Ann S. Brown.

DIGEST

Gary Smith (SB 476)

Proposed law requires each private driving school to execute a surety bond in the sum of \$40,000, if such surety bond is available for purchase. The bond shall name the Department of Public Safety and Corrections (DPSC), office of motor vehicles (OMV), as obligee and shall be subject to the condition that, if the private driving school or any of the private driving school's instructors fails to perform any services the school agreed to provide to a student or a student's parent, the private driving school fees may be recovered from the bond by filing a claim through DPSC against the bond. Private driving schools with multiple locations shall be required to furnish only a \$40,000 surety bond.

Proposed law requires the surety bond furnished to be delivered to and filed with OMV.

Proposed law provides that it shall be unlawful for any person to operate a driving school or to offer instruction as a driving school instructor unless both the school and the instructor are currently licensed as a driving school by the department, or for a licensed driving school to engage in any prohibited activity.

Proposed law defines "prohibited activity" as:

- (1) Activity normally conducted by a driving school such as classroom instruction, behind the wheel instruction, issuing certificates of successful completion to be used by an applicant to apply for a driver's license, advertising as a licensed, authorized or approved driving school, or holding oneself out as an authorized or approved driving school or instructor without a license, authorization or approval by the department; or
- (2) Activity conducted by a driving school or an instructor, whether licensed or not, in which a student of the school is requested to go to, or is taken to, a hotel room, a private residence, or any other location not appropriate for a person that age.

Proposed law provides for the procedure in which a cease and desist order may be issued.

Proposed law requires that the cease and desist order be served either by USPS regular mail with a proof of mailing, or by hand delivery by a representative of DPSC. If the order is served by mail with proof of mailing, it is deemed delivered on the seventh calendar day after postmark. There is no presumption of delivery if the USPS returns the cease and desist order as undeliverable.

Proposed law provides that if the person or business subject to the cease and desist order cannot be served, or does not comply with the cease and desist order, DPSC may file a petition for injunctive relief in district court. Further provides that there shall be no suspensive appeal or stay of an order or judgment granting the DPSC a preliminary or permanent injunction.

Proposed law provides that DPSC shall promulgate rules necessary to aid in the implementation and enforcement of this Section, in accordance with the Administrative Procedure Act.

Effective August 1, 2014.

(Adds R.S. 40:1462 and 1463)

Summary of Amendments Adopted by Senate

Senate Floor Amendments to engrossed bill

1. Makes technical changes.