

Senate Bill 425

By: Senators Hill of the 4th, Golden of the 8th, Hamrick of the 30th and Burton of the 5th

**AS PASSED SENATE**

A BILL TO BE ENTITLED

AN ACT

1 To amend Part 1A of Article 7 of Chapter 3 of Title 20 of the Official Code of Georgia  
 2 Annotated, the "Nonpublic Postsecondary Educational Institutions Act of 1990," so as to  
 3 revise definitions; to change a provision relating to educational institutions exempt from the  
 4 Act, to increase the number of members of the Nonpublic Postsecondary Education  
 5 Commission, and to change the number of members required to call a meeting or to take  
 6 official action; to provide that the Tuition Guaranty Trust Fund shall be named as a  
 7 beneficiary of surety bonds filed by nonpublic postsecondary educational institutions; to  
 8 increase the amount of the surety bond required for certain institutions; to provide that  
 9 maintenance of a surety bond is not required for institutions which have maintained five  
 10 years of continuous authorized operation; to change the maximum amount authorized for the  
 11 fund before refunds are required; to provide for independent claims by the Tuition Guaranty  
 12 Trust Fund against a defaulting educational institution to the extent of certain  
 13 reimbursements to students, entities making loans to students by the fund, and other  
 14 educational institutions; to provide for claims against sureties; to allow reimbursement to the  
 15 students before the fund institutes bond forfeiture proceedings in certain circumstances; to  
 16 provide for related matters; to repeal conflicting laws; and for other purposes.

17 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

18 **SECTION 1.**

19 Part 1A of Article 7 of Chapter 3 of Title 20 of the Official Code of Georgia Annotated, the  
 20 "Nonpublic Postsecondary Educational Institutions Act of 1990," is amended in Code  
 21 Section 20-3-250.2, relating to definitions, by striking paragraph (19) and inserting in lieu  
 22 thereof the following:

23 "(19) 'Proprietary school' or 'school' means any business enterprise operated for a profit  
 24 or on a nonprofit basis which maintains a place of business within this state or solicits  
 25 business within this state, ~~and~~ which is not specifically exempted by Code Section  
 26 20-3-250.3, and:

1 ~~(A) Which which offers or maintains a course or courses of instruction or study; and~~

2 ~~(B) At which place of business such a course or courses of instruction or study are~~  
 3 available through classroom instruction, correspondence, or any telecommunications or  
 4 electronic media technology, or any combination thereof, to a person or persons for the  
 5 purpose of:

6 ~~(A) Training ~~training~~ such person or persons for work in a business, trade, or technical~~  
 7 ~~or industrial occupation; or~~

8 ~~(B) Preparing such person or persons for taking and passing certification exams for~~  
 9 ~~work in a business, trade, or technical or industrial occupation.~~"

## 10 SECTION 2.

11 Said part is further amended in Code Section 20-3-250.3, relating to educational institutions  
 12 exempted from application of the part, by striking paragraph (9) of subsection (a) and  
 13 inserting in lieu thereof the following:

14 "(9) A school where the ~~total~~ sole purpose of the instructional program is review or  
 15 preparation for a specific occupational examination recognized by a government agency  
 16 or bona fide trade, business, or fraternal organization and where the student's  
 17 occupational training received from another school already makes the student eligible to  
 18 sit for the examination;"

## 19 SECTION 3.

20 Said part is further amended in Code Section 20-3-250.4, relating to the Nonpublic  
 21 Postsecondary Education Commission, by striking subsections (a), (e), and (g) and inserting  
 22 in lieu thereof the following:

23 "(a) There is established the Nonpublic Postsecondary Education Commission consisting  
 24 of ~~12~~ 14 members who shall be appointed by the Governor and confirmed by the Senate.  
 25 One member shall be appointed from each congressional district and the remaining  
 26 members shall be appointed as at-large members. The first members appointed to the  
 27 commission shall be appointed for terms of office beginning July 1, 1991, with four of  
 28 those members to serve initial terms of one year each, four of those members to serve  
 29 initial terms of two years each, and four of those members to serve initial terms of three  
 30 years each. The initial terms of office shall be specified in the appointment. After these  
 31 initial terms, members of the commission shall be appointed for terms of three years each.  
 32 Each member shall serve for the term of office to which the person is appointed and until  
 33 a successor is appointed, confirmed, and qualified. Members may be appointed to succeed  
 34 themselves but shall not serve for more than two full consecutive terms."

1 "(e) The commission shall meet at least quarterly on the call of the chairperson or upon the  
2 written petition of at least ~~six~~ seven members of the commission."

3 "(g) A majority of the commission shall constitute a quorum for the conduct of business,  
4 but not less than ~~six~~ seven voting members must concur in order for the commission to take  
5 official action."

6 **SECTION 4.**

7 Said part is further amended in Code Section 20-3-250.10, relating to surety bonds, by  
8 striking subsections (a) and (b) and inserting in lieu thereof the following:

9 "(a) At the time an initial application or application for a branch facility is made for  
10 authorization to operate, the executive director shall require the nonpublic postsecondary  
11 educational institution making such application to file with the executive director a good  
12 and sufficient surety bond in such sum as determined by subsection (b) of this Code  
13 section. Such bond shall be executed by the applicant as principal and by a surety company  
14 qualified and authorized to do business in this state. The bond shall be conditioned to  
15 provide indemnification to the Tuition Guaranty Trust Fund established in Code Section  
16 20-3-250.27 and to any student or enrollee or that person's parent or guardian or class  
17 thereof determined to have suffered loss or damage as a result of any act or practice which  
18 is a violation of this part or of rules and regulations promulgated pursuant thereto by such  
19 nonpublic postsecondary educational institution and that the bonding company shall pay  
20 any final, nonappealable judgment rendered by the commission or any court of this state  
21 having jurisdiction, upon receipt of written notification thereof. Regardless of the number  
22 of years that such bond is in force, the aggregate liability of the surety thereon shall in no  
23 event exceed the penal sum of the bond. The bond may be continuous.

24 (b)(1) Except as otherwise provided in paragraph (2) of this subsection, the minimum  
25 amount of the bond required by subsection (a) of this Code section shall be based on the  
26 gross tuition of the nonpublic postsecondary educational institution during the previous  
27 year or on the estimated gross tuition for the current year, whichever is larger, and shall  
28 be as follows:

<u>Gross Tuition</u>	<u>Minimum Bond</u>
29 \$ 0.00 - \$ 50,000.00 .....	\$ 20,000.00
30 50,001.00 - 100,000.00 .....	30,000.00
31 100,001.00 - 200,000.00 .....	50,000.00
32 200,001.00 - 300,000.00 .....	75,000.00
33 300,001.00 - 400,000.00 .....	100,000.00

1	400,001.00 <del>and over</del> - <u>500,000.00</u> .....	150,000.00
2	<u>500,001.00 and over</u> .....	<u>200,000.00</u>

3 (2) As an alternative to the amount of the bond determined under paragraph (1) of this  
 4 subsection, the nonpublic postsecondary educational institution shall have the option of  
 5 filing a bond in an amount equal to the total income collected by the institution during the  
 6 previous fiscal year or the estimated total income for the current year, whichever is  
 7 larger; provided, however, the amount so determined shall be rounded off to the next  
 8 highest \$1,000.00."

9 **SECTION 5.**

10 Said part is further amended in Code Section 20-3-250.27, relating to the Tuition Guaranty  
 11 Trust Fund, by striking paragraph (3) of subsection (c), paragraph (3) of subsection (d), and  
 12 paragraphs (1), (2), and (5) of subsection (g) and inserting in lieu thereof the following:

13 "(3) Postsecondary educational institutions which are currently authorized to operate in  
 14 this state and which were first authorized to operate in this state on or after July 1, 1990,  
 15 shall participate in the fund for five years of continuous authorized operation and shall  
 16 provide the surety bonds required in Code Section 20-3-250.10; provided, however, that  
 17 such surety bonds shall no longer be required of any such institutions which have  
 18 maintained ~~two~~ five full years of continuous authorized operation to the present. Any  
 19 institution which fails to maintain continuous authorization in this state, and which  
 20 subsequently applies for reinstatement of its certificate of authorization, must provide a  
 21 surety bond for ~~two~~ five full years following reinstatement of authorization."

22 "(3) If earnings from investments, participation fees required under paragraph (2) of this  
 23 subsection, and claims experience ever cause the balance in the fund to exceed  
 24 ~~\$1,025,000.00~~ \$5,025,000.00, the commission, upon being notified by the board of  
 25 trustees, shall make refunds to postsecondary educational institutions which have  
 26 participated in the fund for at least five years, so that the fund balance is reduced to ~~\$1~~  
 27 ~~million~~ \$5 million. Any such refund shall be determined by the commission in  
 28 proportion to the total participation fees paid by a postsecondary educational institution  
 29 until the time of the refund; provided, however, no reimbursement shall be made to any  
 30 postsecondary educational institution whose students have been reimbursed from the fund  
 31 or from bond forfeiture as provided in subsection (g) of this Code section. The  
 32 commission shall establish by regulation the time and other procedures and requirements  
 33 for making any such refund, but refunds shall be issued no more than once during a fiscal  
 34 year."

1 "(g)(1) Except as otherwise provided in paragraph (2) of this subsection, in the event a  
 2 postsecondary educational institution participating in the fund goes into bankruptcy or  
 3 ceases operations without fulfilling its educational obligations to its students or without  
 4 reimbursing its students, the board of trustees may reimburse from the fund valid claims  
 5 of students for tuition paid to that institution in accordance with guidelines and  
 6 procedures adopted by regulations of the board. If a student who attended the defaulting  
 7 postsecondary educational institution received financial aid under either a state or federal  
 8 student loan program, the board shall direct payment to the financial institution or other  
 9 entity who made the loan to the student, rather than directly to the student. ~~As a condition~~  
 10 ~~of receiving reimbursement from the fund, the~~ If the fund reimburses a student and the  
 11 or a financial institution or other entity which made the a loan to the a student, the fund,  
 12 to the extent of the amount reimbursed and without the necessity of any further act by any  
 13 party, shall agree to subrogate their rights of have an independent claim for recovery  
 14 against the defaulting postsecondary educational institution ~~to the board of trustees and~~  
 15 any surety issuing a bond pursuant to Code Section 20-3-250.10; provided, however, that  
 16 if the reimbursement from the fund is insufficient fully to cover the amount due the  
 17 student or the entity making the loan to the student, then such student or entity shall retain  
 18 the right of recovery against the defaulting institution and the surety for the unreimbursed  
 19 amount. Payments from the fund shall be made by warrant of the director of the Office  
 20 of Treasury and Fiscal Services on the order of the board of trustees.

21 (2) Until surety bonds are no longer required of a participating postsecondary  
 22 educational institution under the provisions of paragraph (3) of subsection (c) of this  
 23 Code section, the reimbursement of tuition to students or to financial institutions or other  
 24 entities on behalf of students, in the event of the default of the postsecondary educational  
 25 institution, shall be accomplished by bond forfeiture proceedings and not from the tuition  
 26 guaranty fund unless the full amount of the bond is paid in reimbursements and such  
 27 amount is insufficient to cover all reimbursements. ~~If~~ Provided, however, that if a  
 28 student, financial institution, or other lending entity is entitled to reimbursement of tuition  
 29 paid for a term which concluded before the expiration of the surety bond, the  
 30 ~~reimbursement shall be accomplished by bond forfeiture proceedings and not from the~~  
 31 ~~tuition guaranty fund unless the full amount of the bond is paid in reimbursements and~~  
 32 ~~such amount is insufficient to cover all reimbursements~~ Tuition Guaranty Trust Fund may  
 33 make reimbursements to the students or to the financial institutions or other entities on  
 34 behalf of the students prior to initiating bond forfeiture proceedings."

35 "(5) As an alternative to paying claims to or on behalf of students of a defaulting  
 36 postsecondary educational institution, the board of trustees may arrange for another

1 postsecondary educational institution to complete the educational obligations to the  
2 students of the defaulting postsecondary educational institution, provided that the  
3 program offered by the other institution is substantially equivalent to the program for  
4 which the students had paid tuition and provided, further, that attendance at the other  
5 institution does not cause unreasonable hardship or inconvenience to the students. The  
6 commission shall have the authority to adopt rules or regulations which shall govern the  
7 board of trustees in the administration of the provisions of this paragraph. As a part of  
8 any such program, the board of trustees may reimburse the other postsecondary  
9 educational institution from the fund for expenses incurred by the institution in providing  
10 educational services for the students of the defaulting postsecondary educational  
11 institution, ~~but such expenses shall not include the payment of tuition on behalf of such~~  
12 ~~students.~~ The Tuition Guaranty Trust fund shall have an independent claim for recovery  
13 against the defaulting postsecondary educational institution and any surety issuing a bond  
14 pursuant to Code Section 20-3-250.10 to the extent that the fund has reimbursed a  
15 postsecondary educational institution from the fund for expenses pursuant to this  
16 paragraph and without the necessity of any further act by any party."

17 **SECTION 6.**

18 All laws and parts of laws in conflict with this Act are repealed.