

Senate Bill 425

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

AS PASSED

A BILL TO BE ENTITLED

AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"(19) 'Proprietary school' or 'school' means any business enterprise operated for a profit or on a nonprofit basis which maintains a place of business within this state or solicits business within this state, ~~and~~ which is not specifically exempted by Code Section 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."

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

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

SECTION 4.

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

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

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

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

1	400,001.00 and over - <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.