

Senate Bill 333

By: Senators Albers of the 56th, Dugan of the 30th, Hatchett of the 50th, Robertson of the 29th, Gooch of the 51st and others

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, relating to nonpublic postsecondary educational institutions, so as to remove
3 provisions related to agents and agent's permits; to repeal definitions of such terms; to
4 provide for new exemptions from applicability of the part relating to certain programs for
5 industry-specific certifications and certain short courses; to provide for expanded exemption
6 from applicability of the part for certain programs where students obtain occupational
7 training through employment experience; to require financial assessments for each institution
8 applying for an initial or renewed authorization to operate; to revise bonding requirements;
9 to revise Tuition Guaranty Trust Fund participation requirements; to eliminate the cap on
10 such fund; to remove bankruptcy of a participating postsecondary educational institution as
11 grounds for reimbursements from such fund; to provide for expanded opportunities for
12 reimbursements from such fund; to provide for the suspension of authorization for a
13 postsecondary educational institution to operate when it does not meet its obligations
14 regarding such fund; to revise a definition; to provide for conforming changes; to provide for
15 an effective date; to provide for related matters; to repeal conflicting laws; and for other
16 purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

S. B. 333

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SECTION 1.

Part 1A of Article 7 of Chapter 3 of Title 20 of the Official Code of Georgia Annotated, relating to nonpublic postsecondary educational institutions, is amended in Code Section 20-3-250.2, relating to definitions, by repealing and reserving paragraph (2) and by revising paragraph (17) of subsection (a) as follows:

"(17) 'Postsecondary activity' means awarding a postsecondary degree or certificate or conducting or offering study, experience, or testing for an individual, ~~or certifying prior successful completion by an individual of study, experience, or testing under the representation that the individual successfully completing the study, experience, or testing will be awarded therefor, at least in part, a postsecondary degree or certificate related to a field or profession associated with public health, public welfare, or public safety, as determined by the commission in its sole discretion.~~"

SECTION 2.

Said part is further amended in Code Section 20-3-250.3, relating to educational institutions exempted from application of part, by revising paragraphs (2), (3), and (9) of subsection (a) as follows:

"(2) Education sponsored by a bona fide trade, business, professional, or fraternal organization, so recognized by the commission in its sole discretion, not for granting degrees and solely for that organization's membership or offered on a no-fee basis, ~~not granting degrees~~ or developed and licensed by an industry recognized certification provider, so recognized by the commission in its sole discretion, not for granting degrees;

(3) Education solely avocational or recreational in nature, or short courses, as determined by the commission in its sole discretion, and institutions, ~~not granting degrees~~, offering such education not for granting degrees exclusively;"

"(9) A school where the sole purpose of the instructional program is review or preparation for a specific occupational examination recognized by a government agency

or bona fide trade, business, or fraternal organization and where the student's occupational training received from another school or through employment experience already makes the student eligible to sit for the examination;"

SECTION 3.

Said part is further amended in Code Section 20-3-250.5, relating to administration and general powers and duties, by revising subsections (b) and (c) as follows:

"(b) The commission shall have the following powers and duties:

(1) To establish and promulgate standards, rules, regulations, and policies for carrying out the provisions of this part and for the orderly operation of the commission. To effectuate the purposes of this part, the commission may request from any department, division, board, bureau, commission, or other agency of the state, and such agency shall provide such information as will enable the commission to exercise properly its powers and perform its duties under this part;

(2) To establish minimum criteria in conformity with Code Section 20-3-250.6, including quality of education, ethical and business practices, health and safety, and fiscal responsibility which applicants for authorization to operate ~~or for an agent's permit~~ shall meet before such authorization ~~or permit~~ may be issued, and to continue such authorization ~~or permit~~ in effect. The criteria to be developed under this paragraph shall be such as will effectuate the purposes of this part but will not unreasonably hinder legitimate educational innovation;

(3) To negotiate and enter into interstate reciprocity agreements with similar agencies in other states and with the United States Department of Education if, in the judgment of the commission, such agreements are or will be helpful in effectuating the purposes of this part; but nothing contained in any such reciprocity agreement shall be construed as limiting the commission's or the executive director's powers, duties, and responsibilities with respect to investigating independently or acting upon any application for

70 authorization to operate or for renewal of such authorization to operate a nonpublic
71 postsecondary educational institution, ~~or upon an application for issuance or renewal of~~
72 ~~any agent's permit~~, or with respect to the enforcement of any provision of this part, or of
73 any of the rules or regulations promulgated under this part;

74 (4) To promulgate rules, regulations, and procedures necessary or appropriate for the
75 conduct of its work and the implementation of this part, and to hold such hearings as it
76 may deem advisable or as required by law in developing such rules, regulations, and
77 procedures, or in aid of any investigation or inquiry;

78 (5) To delegate to the executive director such administrative powers and duties, in
79 addition to those powers and duties of the executive director otherwise specified in this
80 part, as may be reasonably necessary to carry out effectively this part and to establish
81 such administrative organization and procedures as may be reasonably necessary to carry
82 out this part;

83 (6) To exercise other powers and duties implied but not enumerated in this subsection
84 but in conformity with this part which, in the judgment of the commission, are necessary
85 in order to carry out this part;

86 (7) To submit annually to the House Higher Education Committee, to the House
87 Education Committee and the Senate Education and Youth Committee, and to the Senate
88 Higher Education Committee an annual written report summarizing the activities of the
89 commission in regard to its responsibilities, activities, and administration of this part;

90 (8) To receive and hold title to property, equipment, money, and materials;

91 (9) To contract with other state, federal, or local public or private schools and other
92 entities, individuals, or other legal entities for the provision of services or activities the
93 commission deems necessary; and

94 (10) To establish and promulgate regulations for qualified proprietary institutions whose
95 students receive tuition equalization grants in accordance with the criteria set forth in
96 subparagraph (B) of paragraph (2) of Code Section 20-3-411.

(c) The executive director of the Nonpublic Postsecondary Education Commission shall be appointed by the Governor. The executive director shall administer the provisions of this part as provided in this subsection and as provided by rules, regulations, and policies of the commission. The executive director shall have the following powers and duties:

(1) To employ such personnel as may be necessary to carry out the provisions of this part and in connection therewith to develop job descriptions for such personnel;

(2) To receive, investigate as he or she may deem necessary, and act upon applications for authorization to operate nonpublic postsecondary educational institutions ~~and upon applications for agents' permits;~~

(3) To maintain separate lists of degree-granting nonpublic postsecondary educational institutions; and nondegree-granting postsecondary educational institutions, ~~and agents~~ authorized to operate in this state under this part. Such lists shall be available for the information of the public;

(4) To receive and cause to be maintained as a permanent file copies of academic records in conformity with Code Section 20-3-250.17;

(5) To investigate as he or she may deem necessary on his or her own initiative or in response to any complaint lodged with him or her any person, group, or entity subject to, or reasonably believed by him or her to be subject to, the jurisdiction of this part; and, in connection therewith, to subpoena any persons, books, records, or documents pertaining to such investigation, which subpoenas shall be enforceable by any court of this state; to require answers in writing under oath to questions propounded by him or her; and to administer an oath or affirmation to any person in connection with any investigation; and

(6) To administer compliance with this part in accordance with standards, rules, regulations, and policies of the commission."

SECTION 4.

Said part is further amended in Code Section 20-3-250.6, relating to minimum standards for educational institutions, by revising subsections (a) and (c) as follows:

"(a) In establishing the criteria required by paragraph (2) of subsection (b) of Code Section 20-3-250.5, the commission shall observe and shall require ~~compliance with the following minimum standards:~~

~~(1) A~~ that a nonpublic postsecondary educational institution must be maintained and operated, or, in the case of a new institution, it must demonstrate that it can be maintained and operated in compliance with the following minimum standards:

~~(A)(1)~~ That the quality and content of each course or program of instruction, training, or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered;

~~(B)(2)~~ That the institution has adequate space, equipment, library and physical facilities, instructional materials, and personnel to provide education of good quality;

~~(C)(3)~~ That the education and experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably ensure that the students will receive education consistent with the objectives of the course or program of study and that each director and instructor shall satisfactorily meet educational qualifications and other requirements established by the commission;

~~(D)(4)~~ That the institution provides students and other interested persons with a catalog or other written description containing information describing the programs offered; program objectives; length of program; schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study; cancellation and refund policies consistent with standards adopted by the commission; prior year's enrollment, graduation, and job placement rates; and such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures specified by

the executive director or defined in the rules and regulations of the commission; and that such information is provided to prospective students prior to enrollment;

~~(E)~~(5) That upon satisfactory completion of training, the student is given appropriate educational credentials by such institution indicating that such course or courses of instruction or study have been satisfactorily completed by said student;

~~(F)~~(6) That adequate records are maintained by the institution to show attendance, progress, or grades and that satisfactory standards are enforced relating to attendance, progress, and performance;

~~(G)~~(7) That the institution is maintained and operated in compliance with all pertinent ordinances and laws, including rules and regulations, relative to the safety and health of all persons upon the premises;

~~(H)~~(8) That the institution is financially sound and capable of fulfilling its commitments to students;

~~(I)~~(9) That ~~neither the institution nor its agents~~ does not engage in advertising, sales, collection, credit, or other practices of any type which are false, deceptive, misleading, or unfair;

~~(J)~~(10) That the chief executive officer, trustees, directors, owners, administrators, supervisors, agents, staff, and instructors are of good reputation and character and that each institution has an education director who meets the requirements established by the commission for such position which requirements shall be substantially related to the predominant course offerings at that institution;

~~(K)~~(11) That the student housing owned, maintained, or approved by the institution, if any, is appropriate, safe, and adequate and meets all local fire, safety, and health codes;

~~(L)~~(12) That the institution has and maintains a reasonable and proper policy, consistent with standards adopted by the commission, for the refund of the unused portion of tuition, fees, housing or dormitory fees, and any other charges in the event a student enrolled by the institution fails to begin a course or withdraws or is discontinued therefrom prior to

completion, which policy shall take into account those costs to the institution that are not diminished by the failure of the student to enter or complete the course of instruction;

~~(M)(13)~~ That the institution maintains a policy of allowing any student a minimum of 72 hours from the date of the contract or agreement to cancel any contract or rescind any agreement to become a student at the institution and that in the event of any such cancellation or rescission, the student shall receive a refund of the total tuition and fees, if any, paid to the institution at the time of or in connection with the execution of the contract or agreement and that such policy shall be a clearly stated part of any written contract or agreement required of students attending the institution; and

~~(N)(14)~~ That the institution posts continuously in a conspicuous place a notice, in such form as required by the commission, which sets forth the procedures for filing a complaint with the commission for any alleged violation of this part.

~~(2) An applicant for an agent's permit shall be an individual of good reputation and character and shall represent only a nonpublic postsecondary educational institution or institutions which meet the minimum standards established in this Code section and the criteria established under paragraph (2) of subsection (b) of Code Section 20-3-250.5."~~

"(c) Institutions otherwise exempt from certain provisions of this part under paragraphs (7), (10), (11), and (13) of subsection (a) of Code Section 20-3-250.3 shall be required to meet the standards of financial soundness and being capable of fulfilling commitments to students as provided in ~~subparagraph (a)(1)(H)~~ paragraph (8) of subsection (a) of this Code section, and, because of such requirement, each such institution shall provide the commission with audited financial statements as performed by an independent certified public accountant and at such times as the commission shall require. The commission may impose a fee to be paid by such institutions to offset the cost of receiving and reviewing such audited financial statements. Institutions otherwise exempt from certain provisions of this part under subsection (c) of Code Section 20-3-250.3 shall be required to submit annual financial reports to the commission when applying for annual renewal of exemption

or authorization using the reporting format provided by the commission. In addition thereto, institutions otherwise exempt from certain provisions of this part under paragraph (10) of subsection (a) of Code Section 20-3-250.3 shall be subject to the requirements of Code Sections 20-3-250.8, 20-3-250.10, and 20-3-250.27. The reports to the Governor and to the General Assembly required by subsection (h) of Code Section 20-3-250.27 shall include a summary of the commission's findings from its review of audited financial statements required by this subsection."

SECTION 5.

Said part is further amended in Code Section 20-3-250.7, relating to prohibited activities of persons, agents, groups, or entities, by revising subsections (a), (b), (e), and (f) as follows:

"(a) No person, ~~agent~~, group, or entity of whatever kind, alone or in concert with others, shall:

(1) Operate in this state a nonpublic postsecondary educational institution or conduct postsecondary activities in this state unless issued a current certificate of valid authorization by the executive director;

(2) Offer postsecondary instruction leading to a postsecondary degree or certificate to Georgia residents from a location outside this state by correspondence or any telecommunications or electronic media technology unless issued a current certificate of valid authorization;

(3) Solicit prospective students without being authorized by the executive director to do so and without being bonded if required to do so by Code Section 20-3-250.10;

~~(4) Offer, as or through an agent, enrollment or instruction in, or the granting of educational credentials from, a postsecondary educational institution not exempted from this part, whether such institution is within or outside this state, unless such agent is a natural person and has a currently valid agent's permit issued pursuant to this part; or accept contracts or enrollment applications from an agent who does not have a current~~

228 ~~permit as required by this part; but the commission may promulgate rules and regulations~~
229 ~~to permit the rendering of legitimate public information services without such permit;~~

230 ~~(5)~~(4) Make or cause to be made any statement or representation, oral, written, or visual,
231 in connection with the offering or publicizing of a course, if such person knows or
232 reasonably should have known the statement or representation to be false, deceptive,
233 substantially inaccurate, or misleading;

234 ~~(6)~~(5) Instruct or educate, or offer to instruct or educate, including advertising or
235 soliciting for such purpose, enroll or offer to enroll, contract or offer to contract with any
236 person for such purpose, or award any educational credential, or contract with any
237 institution or party to perform any such act, in this state, whether such person, ~~agent~~,
238 group, or entity is located within or outside this state, unless such person, ~~agent~~, group,
239 or entity observes and is in compliance with the minimum standards set forth in Code
240 Section 20-3-250.6, the criteria established by the commission pursuant to paragraph (2)
241 of subsection (b) of Code Section 20-3-250.5, and the rules and regulations adopted by
242 the commission;

243 ~~(7)~~(6) Promise or guarantee employment utilizing information, training, or skill
244 purported to be provided or otherwise enhanced by a course, unless the promisor or
245 guarantor offers the student or prospective student a bona fide contract of employment
246 agreeing to employ said student or prospective student for a specified period of time in
247 a business or other enterprise regularly conducted by him or her where such information,
248 training, or skill is a normal condition of employment;

249 ~~(8)~~(7) Do any act constituting part of the conduct or administration of a course or the
250 obtaining of students thereof, if such person knows or reasonably should know that any
251 phase or incident of the conduct or administration of the course is being carried on by the
252 use of fraud, deception, other misrepresentation, or by any person soliciting students
253 without a permit; or

(9)(8) Grant, or offer to grant, postsecondary degrees, diplomas, certificates, or honorary or unearned degrees without authorization to do so from the commission.

(b) No person, ~~agent~~, group, or entity of whatever kind shall use the term 'college' or 'university' without authorization to do so from the commission unless it was doing so prior to July 1, 1985, or is otherwise authorized to do so under this part. Nonpublic postsecondary educational institutions operating in this state which are otherwise exempted from this part pursuant to Code Section 20-3-250.3 shall be subject to the provision of this subsection."

"(e) Any contract entered into with any person for any course of instruction by or on behalf of any owner, employee, ~~agent~~, or other representative of a nonpublic postsecondary educational institution subject to this part to which a certificate of authorization has not been issued shall be unenforceable in any action brought thereon.

(f) Any person, group, or entity or any owner, officer, ~~agent~~, or employee thereof who willfully violates this Code section, Code Section 20-3-250.8, or willfully fails or refuses to deposit with the executive director the records required by Code Section 20-3-250.17 shall be guilty of a misdemeanor. Each day's failure to comply with such Code sections shall be a separate violation. Such criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the Attorney General or a district attorney pursuant to Code Section 20-3-250.18."

SECTION 6.

Said part is further amended in Code Section 20-3-250.8, relating to application to operate or conduct postsecondary activities, by revising subsections (a) and (b) as follows:

"(a) Each nonpublic postsecondary educational institution desiring to operate or conduct postsecondary activities in this state shall make application to the commission, upon forms to be provided by the commission. Such application shall be accompanied by a catalog or other written description published, or proposed to be published, by the institution,

containing the information specified in ~~subparagraph (a)(1)(D)~~ paragraph (4) of subsection (a) of Code Section 20-3-250.6, including information required by rules and regulations of the commission. Such application shall also be accompanied by evidence of a surety bond if required by Code Section 20-3-250.10 and subsection (c) of Code Section 20-3-250.27 and shall be accompanied by payment of the fees specified in Code Section 20-3-250.11; provided, however, that when making application to the commission for authorization to operate, those institutions exempt from certain provisions of this part pursuant to the provisions of paragraph (10) of subsection (a) of Code Section 20-3-250.3 or subsection (c) of Code Section 20-3-250.3 shall be required to submit only those documents pertaining to provisions of this part from which such institutions are not exempt.

(b) A nonpublic postsecondary educational institution shall not operate or conduct postsecondary activities in any building in which that institution did not previously operate or conduct postsecondary activities unless the institution obtains authorization to operate or conduct those activities in that building as a branch facility. An application for authorization to operate any branch facility shall be accompanied by catalogs, other written documents, evidence of bond if a bond is required, and payment of fees as required for an initial application pursuant to subsection (a) of this Code section."

SECTION 7.

Said part is further amended by repealing and reserving Code Section 20-3-250.9, relating to application by persons to solicit or perform services of agent.

SECTION 8.

Said part is further amended by revising subsections (a), (b), and (c) of Code Section 20-3-250.10, relating to surety bonds, filing, amount, release of surety, and suspension upon release of surety, as follows:

305 "20-3-250.10.

306 (a) As part of the application review process, the commission shall conduct a financial
307 assessment of each institution that applies to the commission for initial or renewed
308 authorization to operate. ~~At the time an initial application or application for a branch~~
309 ~~facility is made for authorization to operate or in the event of a change of ownership as~~
310 ~~provided for in subsection (f) of Code Section 20-3-250.8; If a financial assessment~~
311 includes findings or notes raising concern about such applicant's institutional internal
312 controls or recommends that such applicant should be placed on financial monitoring
313 status, the executive director in his or her sole discretion may require ~~shall require the~~
314 ~~nonpublic postsecondary educational institution making such application~~ such applicant
315 to file with the ~~executive director~~ commission a good and sufficient surety bond in such
316 sum and with such surety or sureties as the executive director may require. Such bond shall
317 be conditioned upon the faithful performance of the applicant's obligations under this part
318 and the rules, regulations, and policies of the commission. Such obligations shall include,
319 but shall not be limited to, the institution's duties regarding responsibility for negligence,
320 proper management of the institution's accounting, management, and other internal
321 controls, and other requirements of this part. ~~as determined by subsection (b) of this Code~~
322 ~~section. Such bond shall be executed by the applicant as principal and by a surety company~~
323 ~~qualified and authorized to do business in this state. The~~ Such bond shall also be
324 conditioned to provide indemnification to the Tuition Guaranty Trust Fund established in
325 Code Section 20-3-250.27 and to any student or enrollee or that person's parent or guardian
326 or class thereof determined to have suffered loss or damage as a result of any act or practice
327 which is a violation of this part or of rules and regulations promulgated pursuant thereto
328 by such nonpublic postsecondary educational institution and that the bonding company
329 shall pay any final, nonappealable judgment rendered by the commission or any court of
330 this state having jurisdiction, upon receipt of written notification thereof. If a bond is in
331 force at the time of an institutional closure, the surety shall be required to remit the full face

value of the bond. 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. Such bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state and secured through an authorized agent with an office in this state. The executive director in his or her sole discretion may require the surety company to have its headquarters and principal place of business within the geographic boundaries of the State of Georgia and have at least a B+ bond rating. Such bond shall remain in effect until the institution's authorization to operate terminates or the commission determines that the institution's financial or other issues requiring the bond have been resolved to the satisfaction of the executive director in his or her sole discretion.

(b) ~~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
400,001.00 — 500,000.00	150,000.00
500,001.00 — 1,000,000.00	200,000.00
1,000,001.00 — 2,000,000.00	300,000.00
2,000,001.00 and over	450,000.00

For situations where a nonpublic postsecondary educational institution is unable to secure a bond amount provided for by this subsection, a bank standby letter of credit secured from a federally insured financial institution shall be accepted pursuant to rules and regulations of the commission. Institutions with \$1,000,001.00 or more in the previous year's gross tuition or estimated gross tuition, whichever is larger, that are authorized and bonded prior to July 1, 2021, shall not be subject to the \$300,000.00 or the \$450,000.00 bonding requirement unless a change of ownership occurs after July 1, 2021.

(c)(b) If the bond filed with the initial application to operate remains in effect, it shall be sufficient when an application is made for the renewal of authorization to operate, unless the amount of the bond must be increased because of increased gross tuition to comply with requirements of subsection (b) of this Code section set forth by the commission."

SECTION 9.

Said part is further amended in Code Section 20-3-250.11, relating to collection of fees established by commission, by revising subsection (a) as follows:

"(a)(1) Fees shall be collected by the executive director in such amounts as shall be established by the commission. The commission is authorized to establish the following fees and fee schedules:

(1)(A) Separate initial application and renewal fee schedules for degree-granting and nondegree-granting nonpublic postsecondary educational institutions based upon the commission's relative cost of performing its duties and responsibilities with regard to those categories of institutions and, within those categories, based upon actual or projected gross tuition of those institutions;

(2) Initial and renewal fees for agents' permits;

(3)(B) Special fees for the evaluation of postsecondary educational institutions;

(4)(C) Fees authorized pursuant to Code Section 20-3-250.27; and

(5)(D) Special fees to offset other identified administrative costs.

(2) All fees collected pursuant to this part, except fees collected pursuant to Code Section 20-3-250.27, shall be deposited in the state treasury to the credit of the general fund, and no fees collected under this part shall be subject to refund, except as provided in Code Section 20-3-250.27. Except as otherwise indicated in this part, the fees to be collected by the commission under this part shall accompany an application for authorization to operate ~~or an agent's permit.~~"

SECTION 10.

Said part is further amended in Code Section 20-3-250.12, relating to denial of application for agent's permit, by revising subsections (a) and (c) as follows:

"(a) If the executive director, upon review and consideration of an application for authorization to operate ~~or for an agent's permit~~ or for renewal thereof, ~~shall determine~~ determines that the applicant fails to meet the criteria established as provided in this part, the executive director shall so notify the applicant, setting forth the reasons therefor in writing, and shall deny the application."

~~"(c) In the event the executive director denies an application for an agent's permit or for renewal thereof, he shall notify the institution or institutions which such agent represented or proposed to represent, according to the records of the commission, including the reasons therefor."~~

SECTION 11.

Said part is further amended by revising Code Section 20-3-250.13, relating to revocation of agent's permit, conditional permits, and hearing, as follows:

"20-3-250.13.

(a) An authorization to operate ~~or an agent's permit~~ may be revoked or made conditional after its issuance if the executive director has reasonable cause to believe that the holder of such authorization ~~or permit~~ has violated or is violating this part or any rules and

regulations promulgated pursuant thereto. Prior to such revocation or imposition of condition, the executive director shall notify the holder of the authorization ~~or permit~~ in writing of the impending action, setting forth the grounds for the action contemplated to be taken and advising ~~the holder of a permit~~ that if a hearing is requested, in writing, within ten days of receipt of such notice, the executive director shall set a time and place for a hearing at which the holder of the authorization ~~or permit~~ may be heard in response to the allegation of noncompliance with this part or rules and regulations promulgated pursuant to this part.

(b) If a hearing is requested as provided in subsection (a) of this Code section, such hearing shall be conducted as provided in subsection (d) of Code Section 20-3-250.15, and the holder of the authorization ~~or permit~~ shall have the rights set forth in that Code section. The decision of the commission shall be made as provided in subsection (e) of Code Section 20-3-250.15 and shall be deemed final, subject to the right of judicial review provided for by Code Section 20-3-250.16. ~~In the event an agent's permit is revoked or a condition is imposed thereon, the executive director shall notify the institution or institutions which such agent was permitted to represent, as shown in the records of the commission, in addition to the notice required to be given to the agent and any other parties to the hearing."~~

SECTION 12.

Said part is further amended in Code Section 20-3-250.14, relating filing complaint against institution or agent by revising subsections (a) and (c) as follows:

"(a) Any person claiming damage or loss as a result of any act or practice by a nonpublic postsecondary educational institution ~~or its agent, or both~~, which is a violation of this part or of the rules and regulations promulgated pursuant thereto may file with the executive director a complaint against such institution ~~or against its agent, or both~~. A complaint shall be filed with the executive director within a reasonable period of time, as determined by

regulations of the commission, after the event giving rise to the complaint. The complaint shall set forth the alleged violation and shall contain such other information as may be required by the commission. A complaint may also be filed with the executive director by the commission's representatives or by the Attorney General. A complainant may also file with the executive director as a representative of a class of complainants."

"(c) If, based upon all the evidence at a hearing or other procedure, the executive director ~~shall find~~ finds that a nonpublic postsecondary educational institution ~~or its agent, or both,~~ have has engaged in or ~~are~~ is engaging in any act or practice which violates this part or the rules and regulations promulgated pursuant thereto, the executive director shall issue and cause to be served upon such institution ~~or agent, or both,~~ an order requiring such institution ~~or agent, or both,~~ to cease and desist from such act or practice. Additionally, if the executive director ~~shall find~~ finds that the complainant or class of complainants has suffered loss or damage as a result of such act or practice, the executive director may, at his or her discretion, award the complainant or class of complainants full or partial restitution for such damage or loss and may impose the penalties provided for in Code Section 20-3-250.21. The executive director may also, as appropriate, based on his or her own investigation or the evidence adduced at such hearing or on the basis of such investigation and evidence, commence an action to revoke an institution's authorization to operate ~~or revoke an agent's permit.~~"

SECTION 13.

Said part is further amended in Code Section 20-3-250.15, relating to hearing and review by commission of denial of permit, by revising subsection (a) as follows:

"(a) Any person aggrieved by a decision of the executive director respecting denial of an authorization to operate ~~or of an agent's permit~~ or the placing of conditions thereon, whether on initial application or on application for renewal, or by a decision of the executive director revoking an institution's authorization to operate ~~or an agent's permit~~ and

460 any person aggrieved by the imposition of a penalty by the executive director under Code
461 Section 20-3-250.21 shall have the right to a hearing and review of such decision by the
462 commission as provided in this Code section."

463 **SECTION 14.**

464 Said part is further amended by revising Code Section 20-3-250.18, relating to initiation of
465 court proceedings by executive director, as follows:

466 "20-3-250.18.

467 (a) The Attorney General of this state or the district attorney of any judicial circuit in
468 which a nonpublic postsecondary educational institution ~~or an agent thereof~~ is found, at the
469 request of the executive director or on his or her own motion, may bring any appropriate
470 action or proceeding in any court of competent jurisdiction for the enforcement of this part.

471 (b) Whenever it shall appear to the executive director that any person, ~~agent~~, group, or
472 entity is about to violate or has been violating any of the provisions of this part or any of
473 the lawful rules, regulations, or orders of the executive director, the executive director may,
474 on his or her own motion or on the written complaint of any person, file a petition for
475 injunction in the name of the commission in any court of competent jurisdiction in this state
476 against such person, group, or entity for the purpose of enjoining such violation or for an
477 order directing compliance with this part and all rules, regulations, and orders issued
478 pursuant thereto. It shall not be necessary that the executive director allege or prove that
479 he or she has no adequate remedy at law. The right of injunction provided in this Code
480 section shall be in addition to any other legal remedy which the executive director has and
481 shall be in addition to any right of criminal prosecution provided by law, but the executive
482 director shall not obtain a temporary restraining order without notice to the person, group,
483 or entity affected. The existence of an action of the executive director with respect to
484 alleged violations of this part shall not operate as a bar to an action for injunctive relief
485 pursuant to this Code section."

SECTION 15.

Said part is further amended by revising Code Section 20-3-250.21, relating to fines for violations, as follows:

"20-3-250.21.

Any person, group, or entity or any owner, officer, ~~agent~~, or employee thereof who shall willfully violate Code Section 20-3-250.7 or 20-3-250.8 or who shall fail or refuse to deposit with the executive director the records required by Code Section 20-3-250.17 shall be subject to a civil penalty not to exceed \$1,000.00 for each violation. Each day's failure to comply with such Code sections shall be a separate violation. Such fine may be imposed by the executive director in an administrative proceeding or by any court of competent jurisdiction. The commission shall adopt a schedule of regularly imposed fines for violations of this part and shall have such schedule published by the executive director."

SECTION 16.

Said part is further amended in Code Section 20-3-250.27, relating to Tuition Guaranty Trust Fund, by revising subsections (c), (d), and (g) and by adding a new subsection to read as follows:

"(c)(1) All postsecondary educational institutions operating in this state, except those which are exempt from the provisions of this Code section pursuant to Code Section 20-3-250.3, shall participate in the tuition guaranty fund. Those postsecondary educational institutions specified in paragraphs (10) and (14) of subsection (a) of Code Section 20-3-250.3 and in subsection (c) of Code Section 20-3-250.3 shall participate in the tuition guaranty fund.

(2) Postsecondary educational institutions which were authorized to operate in this state prior to July 1, 1990, and which have maintained continuous authorization in this state since July 1, 1990, and institutions which have been continuously licensed since July 1, 1990, pursuant to the provisions of Title 43 and were authorized by the

commission prior to July 1, ~~1992~~ 2022, shall participate in the fund and shall not be required to provide surety bonds as provided in Code Section 20-3-250.10; provided, however, that any surety bond provided by an institution before July 1, ~~1992~~ 2021, shall remain in effect for one full year after the effective date of such surety bond.

(3) Postsecondary educational institutions which are currently authorized to operate in this state and which were first authorized to operate in this state on or after July 1, 1990, shall participate in the fund for ~~five~~ seven years of ~~continuous~~ authorized operation; provided, however, that no postsecondary educational institution first authorized to operate in this state on or after July 1, 1990, which fully participated in the fund for five years on or before January 1, 2022, shall be required to participate in the fund for seven years as otherwise provided in this paragraph and shall provide the surety bonds required in Code Section 20-3-250.10; provided, however, that such surety bonds shall no longer be required of any such institutions which have maintained five full years of continuous authorized operation to the present. Any institution which fails to maintain continuous authorization in this state, and which subsequently applies for reinstatement of its certificate of authorization, must provide a surety bond for five full years following reinstatement of authorization.

(4) Following a change of ownership, as provided for in subsection (f) of Code Section 20-3-250.8, a postsecondary educational institution may be required to participate in the fund for a period of up to seven years as determined by the executive director in his or her sole discretion.

(d)(1) In addition to any other fees required by this part, the commission shall by regulation establish fees to be paid annually by postsecondary educational institutions for participation in the tuition guaranty fund. The fees shall be based on gross tuition collected during a year by each postsecondary educational institution. If an institution has not operated for a full year, its participation fee shall be based initially on its projected gross tuition for the first full year of operation. At the conclusion of the first

year, the fee for that year shall be adjusted to reflect actual gross tuition. The annual fee established by the commission shall be sufficient, when added to the earnings of the fund, to create a balance in the fund of at least ~~\$500,000.00~~ \$10 million by July 1, 1997. The board of trustees shall notify the commission when the fund balance exceeds ~~\$500,000.00~~ \$10 million, and, except as otherwise provided in paragraph (2) of this subsection, upon receiving such notification, the commission shall cease collection of participation fees from postsecondary educational institutions which have contributed to the fund for at least five years. The commission, upon notification from the board of trustees, shall reestablish collection of participation fees from such participating postsecondary educational institutions at any time the fund balance is less than ~~\$475,000.00~~ \$4 million. At such time, fees shall be collected from such participating institutions according to a schedule adopted by the commission based on gross tuition in amounts sufficient to raise the fund balance to ~~\$500,000.00~~ \$10 million.

(2) Each postsecondary educational institution which is first authorized to operate in this state after July 1, 1992, and is required to participate in the fund for ~~five~~ seven years of ~~continuous~~ authorized operation under the provisions of paragraph (3) of subsection (c) of this Code section shall be required to pay participation fees for such period of time notwithstanding the amount in the tuition guaranty fund. If the balance in the fund exceeds ~~\$500,000.00~~ \$10 million, participation fees shall be collected from each such institution according to the fee schedule adopted by the commission pursuant to paragraph (1) of this subsection. No postsecondary educational institution first authorized to operate in this state on or after July 1, 1992, which fully participated in the fund for five years on or before January 1, 2022, shall be required to participate in the fund for seven years as otherwise provided in this paragraph.

~~(3) If earnings from investments, participation fees required under paragraph (2) of this subsection, and claims experience ever cause the balance in the fund to exceed \$7.75 million, the commission, upon being notified by the board of trustees, shall make refunds~~

to postsecondary educational institutions which have participated in the fund for at least five years, so that the fund balance is reduced to \$7.5 million. Any such refund shall be determined by the commission in proportion to the total participation fees paid by a postsecondary educational institution until the time of the refund; provided, however, that no reimbursement shall be made to any postsecondary educational institution whose students have been reimbursed from the fund or from bond forfeiture as provided in subsection (g) of this Code section. The commission shall establish by regulation the time and other procedures and requirements for making any such refund, but refunds shall be issued no more than once during a fiscal year."

"(g)(1) Except as otherwise provided in paragraph (2) of this subsection, in In the event a postsecondary educational institution participating in the fund ~~goes into bankruptcy or~~ ceases operations without fulfilling its educational obligations to its students or without reimbursing its students, the board of trustees may reimburse from the fund valid and documented claims of students for tuition and fees paid to that institution as well as costs incurred as a result of such cessation of operations in accordance with guidelines and procedures adopted by the commission, ~~regulations of the board~~. If a student who attended the defaulting postsecondary educational institution received financial aid under either a state or federal student loan program, the board shall direct payment to the financial institution or other entity who made the loan to the student, rather than directly to the student. If the fund reimburses a student or a financial institution or other entity which made a loan to a student, the fund, to the extent of the amount reimbursed and without the necessity of any further act by any party, shall have an independent claim for recovery against the defaulting postsecondary educational institution and any surety issuing a bond pursuant to Code Section 20-3-250.10; provided, however, that if the reimbursement from the fund is insufficient fully to cover the amount due the student or the entity making the loan to the student, then such student or entity shall retain the right of recovery against the defaulting institution and the surety for the unreimbursed amount.

593 Payments from the fund shall be made by warrant of the state treasurer on the order of
594 the board of trustees.

595 ~~(2) Until surety bonds are no longer required of a participating postsecondary~~
596 ~~educational institution under the provisions of paragraph (3) of subsection (c) of this~~
597 ~~Code section, the reimbursement of tuition to students or to financial institutions or other~~
598 ~~entities on behalf of students, in the event of the default of the postsecondary educational~~
599 ~~institution, shall be accomplished by bond forfeiture proceedings and not from the tuition~~
600 ~~guaranty fund unless the full amount of the bond is paid in reimbursements and such~~
601 ~~amount is insufficient to cover all reimbursements; provided, however, that if a student,~~
602 ~~financial institution, or other lending entity is entitled to reimbursement of tuition paid~~
603 ~~for a term which concluded before the expiration of the surety bond, the Tuition Guaranty~~
604 ~~Trust Fund may make reimbursements to the students or to the financial institutions or~~
605 ~~other entities on behalf of the students prior to initiating bond forfeiture proceedings.~~

606 ~~(3) If the board of trustees pays a claim to or on behalf of a student of a defaulting~~
607 ~~postsecondary educational institution or if such a claim is paid as a result of a bond~~
608 ~~forfeiture, the authorization to operate of the defaulting postsecondary educational~~
609 ~~institution shall be automatically revoked as of the date of such payment, if the~~
610 ~~authorization to operate has not been previously revoked by the commission pursuant to~~
611 ~~other provisions of this part. If a defaulting postsecondary educational institution~~
612 ~~reimburses the fund for any claims paid on behalf of its students, the commission shall~~
613 ~~be authorized to issue a new authorization to operate to such postsecondary educational~~
614 ~~institution if the commission finds that the institution is then qualified to operate as a~~
615 ~~postsecondary educational institution. Such an institution shall provide the surety bond~~
616 ~~required in Code Section 20-3-250.10 for two years and shall pay participation fees to the~~
617 ~~tuition guaranty fund for five years as provided in paragraph (2) of subsection (d) of this~~
618 ~~Code section.~~

~~(4)(2)~~ If at any time the money available in the tuition guaranty fund is insufficient to satisfy tuition reimbursement claims then pending against the fund, the board of trustees may require each participating postsecondary educational institution to pay a special assessment to the fund. The special assessment shall be in addition to the participation fee provided for in paragraph (1) of subsection (d) of this Code section but the total amount which may be collected in such special assessments in any one fiscal year shall not exceed either the total amount paid during the immediately preceding fiscal year in participation fees or \$100,000.00, whichever is greater. The maximum amount that may be paid from the fund in claims on behalf of the students of any single defaulting postsecondary educational institution is ~~\$250,000.00~~, shall be determined by the commission, but shall not exceed 10 percent of the total fund, regardless of the fact that total claims may exceed that amount, unless a higher percentage is authorized by a two-thirds' majority vote of the commission in the event of a significant precipitous closure.

~~(5)(3)~~ As an alternative to paying claims to or on behalf of students of a defaulting postsecondary educational institution, the board of trustees may arrange for another postsecondary educational institution to complete the educational obligations to the students of the defaulting postsecondary educational institution, provided that the program offered by the other institution is substantially equivalent to the program for which the students had paid tuition; and provided, further, that attendance at the other institution does not cause unreasonable hardship or inconvenience to the students. The commission shall have the authority to adopt rules or regulations which shall govern the board of trustees in the administration of the provisions of this paragraph. As a part of any such program, the board of trustees may reimburse the other postsecondary educational institution from the fund for expenses incurred by the institution in providing educational services for the students of the defaulting postsecondary educational institution. The Tuition Guaranty Trust Fund shall have an independent claim for

recovery against the defaulting postsecondary educational institution and any surety issuing a bond pursuant to Code Section 20-3-250.10 to the extent that the fund has reimbursed a postsecondary educational institution from the fund for expenses pursuant to this paragraph and without the necessity of any further act by any party.

~~(6)~~(4) It shall not be necessary to claim a loss or damage pursuant to the provisions of Code Section 20-3-250.14 in order for the board of trustees to pay claims to or on behalf of students pursuant to the provisions of this Code section. Procedures and requirements for filing claims under this Code section shall be as provided by rules or regulations adopted for that purpose by the commission.

~~(7)~~(5) Any person aggrieved by a decision of the board of trustees to pay or deny a claim pursuant to the provisions of this Code section may appeal to the commission. A decision of the board of trustees shall be in writing and shall be sent by certified mail or statutory overnight delivery to the claimant and to the owner of the defaulting postsecondary educational institution. If the whereabouts of the owner of the defaulting postsecondary educational institution is not known and cannot reasonably be ascertained by the board of trustees, a notice of the decision shall be published in the legal organ of the county where the student claimant attended the defaulting postsecondary educational institution or a facility of such institution. The appeal to the commission shall be commenced by filing a written notice of such appeal to the commission within 30 days after receiving the written decision of the board of trustees. Within 30 days after receiving a notice of appeal, the commission shall affirm the decision of the board of trustees, modify and affirm the decision of the board of trustees, or overrule the decision of the board of trustees. Any person aggrieved by the action of the commission shall have the right to judicial review pursuant to the provisions of Code Section 20-3-250.16. The commission shall adopt rules or regulations providing procedures for the conduct of appeals from the board of trustees, but such rules or regulations shall be consistent with the provisions of this paragraph."

673 "(j) Authorization for a postsecondary educational institution to operate shall be suspended
674 upon written notice by the executive director when such institution fails to participate in
675 the fund as required under this Code section."

676 **SECTION 17.**

677 This Act shall become effective July 1, 2022.

678 **SECTION 18.**

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