

Senate Bill 400

By: Senators Burns of the 23rd, Hickman of the 4th, Hufstetler of the 52nd, Payne of the 54th, Dixon of the 45th 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 prohibit
3 unaccredited institutions from offering degrees; to authorize the use of irrevocable letters of
4 credit in lieu of surety bonds; to require denial of applications to operate in certain
5 circumstances; to clarify that grievance procedures for denials of authorization to operate do
6 not apply to denials of authorization to offer additional courses; to require certain
7 postsecondary educational institutions to provide academic records to the executive director
8 in certain circumstances; to require certain institutions to participate in the Tuition Guaranty
9 Trust Fund and to provide how such institutions may participate; to provide for
10 indemnification; to provide for definitions; to provide for related matters; to repeal
11 conflicting laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

14 Part 1A of Article 7 of Chapter 3 of Title 20 of the Official Code of Georgia Annotated,
15 relating to nonpublic postsecondary educational institutions, is amended in Code Section

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16 20-3-250.2, relating to definitions relative to nonpublic postsecondary educational
17 institutions, by revising paragraph (17) and adding a new paragraph to read as follows:

18 “(7.1) 'Distance education' means education or educational services that use one or more
19 technologies to deliver such education or educational services to students who are
20 separated from the instructor and to support regular and substantive interaction between
21 the students and the instructor, either synchronously or asynchronously.”

22 “(17) 'Postsecondary activity' means:

23 (A) Awarding a postsecondary degree or certificate; ~~or~~

24 (B) Conducting or offering study, experience, or testing for an individual related to a
25 field or profession associated with public health, public welfare, or public safety, as
26 determined by the commission in its sole discretion; or

27 (C) Offering distance education:

28 (i) To a person within this state; or

29 (ii) From within this state and operating a campus, branch, instructional facility, or
30 administrative office within this state.”

31 **SECTION 2.**

32 Said part is further amended in Code Section 20-3-250.7, relating to prohibited activities
33 relative to nonpublic postsecondary educational institutions, by revising subsection (a) as
34 follows:

35 “(a) No person, group, or entity of whatever kind, alone or in concert with others, shall:

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

39 (2) Offer postsecondary instruction leading to a postsecondary degree or certificate to
40 Georgia residents from a location outside this state by correspondence or any

- 41 telecommunications or electronic media technology unless issued a current certificate of
42 valid authorization;
- 43 (3) Solicit prospective students without being authorized by the executive director to do
44 so and without being bonded if required to do so by Code Section 20-3-250.10;
- 45 (4) Make or cause to be made any statement or representation, oral, written, or visual,
46 in connection with the offering or publicizing of a course, if such person knows or
47 reasonably should have known the statement or representation to be false, deceptive,
48 substantially inaccurate, or misleading;
- 49 (5) Instruct or educate, or offer to instruct or educate, including advertising or soliciting
50 for such purpose, enroll or offer to enroll, contract or offer to contract with any person
51 for such purpose, or award any educational credential, or contract with any institution or
52 party to perform any such act, in this state, whether such person, group, or entity is
53 located within or outside this state, unless such person, group, or entity observes and is
54 in compliance with the minimum standards set forth in Code Section 20-3-250.6, the
55 criteria established by the commission pursuant to paragraph (2) of subsection (b) of
56 Code Section 20-3-250.5, and the rules and regulations adopted by the commission;
- 57 (6) Promise or guarantee employment utilizing information, training, or skill purported
58 to be provided or otherwise enhanced by a course, unless the promisor or guarantor offers
59 the student or prospective student a bona fide contract of employment agreeing to employ
60 said student or prospective student for a specified period of time in a business or other
61 enterprise regularly conducted by him or her where such information, training, or skill
62 is a normal condition of employment;
- 63 (7) Do any act constituting part of the conduct or administration of a course or the
64 obtaining of students thereof, if such person knows or reasonably should know that any
65 phase or incident of the conduct or administration of the course is being carried on by the
66 use of fraud, deception, other misrepresentation, or by any person soliciting students
67 without a permit; or

68 (8) Grant, or offer to grant, postsecondary degrees, diplomas, certificates, or honorary
 69 or unearned degrees without authorization to do so from the commission; or
 70 (9) Grant, or offer to grant, postsecondary degrees unless such person, group, or entity
 71 is accredited or in the process of becoming accredited by an accrediting agency
 72 recognized by the United States Department of Education or its successor."

73 **SECTION 3.**

74 Said part is further amended in Code Section 20-3-250.10, relating to surety bonds, filing,
 75 release of surety, and suspension upon release of surety, by adding a new subsection to read
 76 as follows:

77 "(e) The commission, by rule or regulation, shall authorize the executive director to accept
 78 an irrevocable letter of credit issued by a bank or savings and loan association, as defined
 79 in Code Section 7-1-4, in lieu of the surety bond otherwise required under this Code section
 80 and subject to the same requirements and conditions provided for surety bonds in this Code
 81 section."

82 **SECTION 4.**

83 Said part is further amended in Code Section 20-3-250.12, relating to denial of application,
 84 by revising subsection (a) and adding a new subsection to read as follows:

85 "(a) If ~~the executive director~~, upon review and consideration of an application for
 86 authorization to operate or for renewal thereof, ~~the executive director~~ determines that the
 87 applicant ~~meets one or more of the factors considered pursuant to subsection (a.1) of this~~
 88 Code section, the executive director shall deny the application and shall notify the applicant
 89 setting forth the reason or reasons therefor.

90 (a.1) The review of an application for authorization to operate or for renewal thereof shall
 91 include consideration of whether the applicant:

92 (1) ~~Fails~~ fails to meet the criteria established as provided in this part;

- 93 (2) Has previously caused loss or damage to a student of a nonpublic postsecondary
94 educational institution as a result of any act or practice which is a violation of this part
95 or of the rules and regulations established by the commission for the administration of
96 this part or as a result of the commission of an offense provided for in Chapter 9 of Title
97 16 or a substantially similar offense in another jurisdiction;
- 98 (3) Has willfully failed to comply with the provisions of this part or the rules and
99 regulations established by the commission for the administration of this part or with the
100 laws applicable to nonpublic postsecondary educational institutions of another
101 jurisdiction;
- 102 (4) Is acting for or on behalf of a person who has caused loss or damage to a student of
103 a nonpublic postsecondary educational institution as a result of any act or practice which
104 is a violation of this part or of the rules and regulations established by the commission for
105 the administration of this part or as a result of the commission of an offense provided for
106 in Chapter 9 of Title 16 or a substantially similar offense in another jurisdiction; or
- 107 (5) Is acting for or on behalf of a person who has willfully failed to comply with the
108 provisions of this part or the rules and regulations established by the commission for the
109 administration of this part or with laws applicable to nonpublic postsecondary educational
110 institutions of another jurisdiction ~~the executive director shall so notify the applicant,~~
111 ~~setting forth the reasons therefor in writing, and shall deny the application."~~

112

SECTION 5.

113 Said part is further amended in Code Section 20-3-250.15, relating to hearing and review by
114 commission of denial of authorization to operate, by adding a new subsection to read as
115 follows:

116 "(f) This Code section shall not apply to denials of authorization of additional course
117 offerings pursuant to subsection (i) of Code Section 20-3-250.8."

118

SECTION 6.

119 Said part is further amended by revising Code Section 20-3-250.17, relating to
120 discontinuation of operations of nonpublic postsecondary educational institution, as follows:

121 "20-3-250.17.

122 (a) In the event any nonpublic postsecondary educational institution, including
123 degree-granting institutions exempted from this part under paragraphs (7), (10), (11), (13),
124 and (14) of subsection (a) of Code Section 20-3-250.3, now or hereafter operating in this
125 state proposes to discontinue its operations, the chief administrative officer, by whatever
126 title designated, of such institution shall cause to be filed with the executive director the
127 original or legible true copies of all such academic records of such institution as may be
128 specified by the executive director. The commission shall be authorized to establish
129 requirements for the format of such records, including whether such records shall be filed
130 in a paper or digital format. Such records shall include, at a minimum, such information
131 as is customarily required by colleges or other postsecondary educational institutions when
132 considering students for transfer or advanced study and, as a separate document, the
133 academic record of each former student. In the event it appears to the executive director
134 that any such records of an institution discontinuing its operations are in danger of being
135 destroyed, secreted, mislaid, or otherwise made unavailable to the executive director, the
136 executive director may, with court order, seize and take possession of such records, subject
137 to the confidentiality accorded normal school records. The executive director shall
138 maintain or cause to be maintained a permanent file of such records coming into his or her
139 possession.

140 (b) In the event the executive director determines that any nonpublic postsecondary
141 educational institution, including degree-granting institutions exempted from this part
142 under paragraphs (7), (10), (11), (13), and (14) of subsection (a) of Code
143 Section 20-3-250.3, now or hereafter operating in this state is at risk of discontinuing
144 operations and that the academic records of such institution are at risk of being destroyed,

145 secreted, mislaid, not properly maintained, not safeguarded, or otherwise made unavailable
146 to the executive director or the students of such institution, the executive director shall be
147 authorized to request that such institution file with the executive director copies of all such
148 academic records of such institution in a format required by the commission, subject to the
149 confidentiality accorded normal school records. If such institution fails to file such records,
150 the executive director shall be authorized to seek a court order to obtain such records or
151 copies of such records. The executive director shall maintain or cause to be maintained a
152 permanent file of such records coming into his or her possession."

153 **SECTION 7.**

154 Said part is further amended by revising Code Section 20-3-250.27, relating to Tuition
155 Guaranty Trust Fund, as follows:

156 "20-3-250.27.

157 (a) It is the purpose of this Code section to create a trust fund from participation fees from
158 postsecondary educational institutions to enable such institutions, collectively, to protect
159 students against financial loss when a postsecondary educational institution closes without
160 reimbursing its students and without completing its educational obligations to its students
161 and to provide consumer information, as necessary in the determination of the commission,
162 to prospective and currently enrolled students.

163 (b)(1) Effective on July 1, 1992, the Tuition Guaranty Trust Fund is created. The
164 participation fees received by the commission from postsecondary educational
165 institutions pursuant to the provisions of subsections (c) and (d) of this Code section shall
166 be deposited in a special account designated 'Tuition Guaranty Trust Fund' and shall be
167 held in trust by the board of trustees provided for in paragraph (2) of this subsection for
168 the purpose of carrying out the provisions of this Code section. The money in the fund
169 may be invested by said board of trustees in any bonds and other securities of agencies
170 of the government of the United States and bonds and other securities of state and local

171 governments. The earnings from such investments shall be deposited to the credit of the
172 Tuition Guaranty Trust Fund and shall be available for the same purposes as other money
173 deposited in the fund.

174 (2) The fund shall be administered by the Board of Trustees of the Tuition Guaranty
175 Trust Fund. The board of trustees shall consist of five members of the commission
176 designated by majority vote of the commission, where at least two members, by June 30,
177 2020, shall represent postsecondary educational institutions. The five members of the
178 commission who are so designated shall serve for such terms of office as members of the
179 board as the commission shall establish by rule or regulation. The commission shall
180 appoint one of the members so designated as chairman of the board. The executive
181 director shall also serve as executive director and secretary of the board. Three members
182 of the board must vote in agreement in order for the board to take official action. The
183 commission may by rule or regulation provide for another member of the commission to
184 serve in the place of a member of the board who is absent from a meeting of the board.

185 (c)(1) ~~All~~ Except as expressly provided otherwise in this Code section, all postsecondary
186 educational institutions operating or conducting postsecondary activity in this state,
187 except those which are exempt from the provisions of this Code section pursuant to Code
188 Section 20-3-250.3, shall participate in the tuition guaranty fund. Those postsecondary
189 educational institutions specified in ~~paragraphs (10) and (14)~~ paragraph (4) of subsection
190 (a) of Code Section 20-3-250.3 and in subsection (c) of Code Section 20-3-250.3 shall
191 not be required to participate in the tuition guaranty fund regardless of whether such
192 institution has received authorization to operate.

193 (2) Postsecondary educational institutions which were authorized to operate in this state
194 prior to July 1, 1990, and which have maintained continuous authorization in this state
195 since July 1, 1990, and institutions which have been continuously licensed since July 1,
196 1990, pursuant to the provisions of Title 43 and were authorized by the commission prior
197 to July 1, 2022, shall participate in the fund and shall not be required to provide surety

198 bonds as provided in Code Section 20-3-250.10; provided, however, that any surety bond
199 provided by an institution before July 1, 2021, shall remain in effect for one full year after
200 the effective date of such surety bond.

201 ~~(3) Postsecondary educational institutions which are currently authorized to operate in~~
202 ~~this state and which were first authorized to operate in this state on or after July 1, 1990,~~
203 ~~shall participate in the fund for seven years of authorized operation; provided, however,~~
204 ~~that no postsecondary educational institution first authorized to operate in this state on~~
205 ~~or after July 1, 1990, which fully participated in the fund for five years on or before~~
206 ~~January 1, 2022, shall be required to participate in the fund for seven years as otherwise~~
207 ~~provided in this paragraph. A postsecondary educational institution specified in~~
208 ~~paragraph (14) of subsection (a) of Code Section 20-3-250.3 shall not be required to~~
209 ~~participate in the fund if such institution fully participated in the fund on or before~~
210 ~~January 1, 2026.~~

211 ~~(4) Following a change of ownership, as provided for in subsection (f) of Code Section~~
212 ~~20-3-250.8, a postsecondary educational institution may be required to participate in the~~
213 ~~fund for a period of up to seven years as determined by the executive director in his or~~
214 ~~her sole discretion.~~

215 (d)(1) In addition to any other fees required by this part, the commission shall by
216 regulation establish fees to which shall be paid annually by postsecondary educational
217 institutions for participation in the tuition guaranty fund, except as otherwise provided
218 in this subsection. The fees shall be based on gross tuition collected during a year by
219 each postsecondary educational institution. If an institution has not operated for a full
220 year, its participation fee shall be based initially on its projected gross tuition for the first
221 full year of operation. At the conclusion of the first year, the fee for that year shall be
222 adjusted to reflect actual gross tuition. The annual fee established by the commission
223 shall be sufficient, when added to the earnings of the fund, to create a balance in the fund
224 of at least \$10 million by July 1, 2040. The board of trustees shall notify the commission

225 when the fund balance exceeds \$10 million, and, except as otherwise provided in
226 paragraph (2) of this subsection, upon receiving such notification, the commission shall
227 cease collection of participation fees from postsecondary educational institutions which
228 have contributed to the fund for at least five years. The commission, upon notification
229 from the board of trustees, shall reestablish collection of participation fees from such
230 participating postsecondary educational institutions at any time the fund balance is less
231 than \$4 million. At such time, fees shall be collected from such participating institutions
232 according to a schedule adopted by the commission based on gross tuition in amounts
233 sufficient to raise the fund balance to \$10 million.

234 ~~(2) Each postsecondary educational institution which is first authorized to operate in this~~
235 ~~state after July 1, 1992, and is required to participate in the fund for seven years of~~
236 ~~authorized operation under the provisions of paragraph (3) of subsection (c) of this Code~~
237 ~~section shall be required to pay participation fees for such period of time notwithstanding~~
238 ~~the amount in the tuition guaranty fund. If the balance in the fund exceeds \$10 million,~~
239 ~~participation fees shall be collected from each such institution according to the fee~~
240 ~~schedule adopted by the commission pursuant to paragraph (1) of this subsection. No~~
241 ~~postsecondary educational institution first authorized to operate in this state on or after~~
242 ~~July 1, 1992, which fully participated in the fund for five years on or before January 1,~~
243 ~~2022, shall be required to participate in the fund for seven years as otherwise provided~~
244 ~~in this paragraph.~~

245 (2) Each postsecondary educational institution required to participate in the fund,
246 excluding an institution that has filed a surety bond with the commission pursuant to
247 Code Section 20-3-250.10, shall be authorized to participate in the fund by securing and
248 maintaining a surety bond or irrevocable letter of credit in lieu of paying the annual fee
249 provided for in paragraph (1) of this subsection. The commission shall, by rule or
250 regulation, establish conditions for such bonds and letters of credit to ensure that such
251 bonds and letters of credit include provisions to indemnify the Tuition Guaranty Trust

252 Fund and students of the institution in the event the institution ceases operations without
253 fulfilling its educational obligations to its students or without reimbursing its students.

254 (e) The annual cost incurred by the commission and by the board of trustees in
255 administering the Tuition Guaranty Trust Fund and providing consumer information as
256 necessary for prospective and currently enrolled students, including expenses incurred in
257 collecting from defaulting postsecondary educational institutions the amounts paid from
258 the fund to or on behalf of students pursuant to the provisions of subsection (g) of this Code
259 section, shall be paid from the fund; provided, however, that such annual administrative
260 costs shall not exceed 2.5 percent of the fund during the fiscal year. The commission shall
261 issue a report annually to each postsecondary educational institution participating in the
262 fund. The report shall provide an evaluation of the financial condition of the fund and a
263 summary of claims paid or other expenditures from the fund during the immediately
264 preceding fiscal year.

265 (f) The commission shall establish by regulation a late payment fee for the failure of a
266 postsecondary educational institution to pay its participation fee at the time established by
267 regulation of the commission for the payment of such fees. An application for
268 authorization to operate or for the renewal thereof may be denied under Code Section
269 20-3-250.12 for failure to pay participation fees. Late payment fees shall be paid into the
270 fund. Any authorization to operate may be revoked, suspended, or made conditional under
271 Code Section 20-3-250.13 for failure to pay participation fees.

272 (g)(1) In the event a postsecondary educational institution participating in the fund
273 ceases operations without fulfilling its educational obligations to its students or without
274 reimbursing its students, the board of trustees may reimburse from the fund valid and
275 documented claims of students for tuition and fees paid to that institution as well as costs
276 incurred as a result of such cessation of operations in accordance with guidelines and
277 procedures adopted by the commission; provided, however, that in the event of a
278 precipitous closure, no student of the institution which is the subject of such closure shall

279 be reimbursed from the fund unless such institution was participating in the fund at the
280 time of such closure. Payments from the fund shall be made by warrant of the state
281 treasurer on the order of the board of trustees.

282 (1.1) No student who is not a resident of this state shall be reimbursed from the fund if
283 he or she is eligible for reimbursement for such tuition and fees from a similar fund in his
284 or her state of residence.

285 (2) The maximum amount that may be paid from the fund in claims on behalf of the
286 students of any single defaulting postsecondary educational institution shall be
287 determined by the commission, but shall not exceed 10 percent of the total fund,
288 regardless of the fact that total claims may exceed that amount, unless a higher
289 percentage is authorized by a two-thirds' majority vote of the commission in the event of
290 a significant precipitous closure.

291 (3) As an alternative to paying claims to or on behalf of students of a defaulting
292 postsecondary educational institution, the board of trustees may arrange for another
293 postsecondary educational institution to complete the educational obligations to the
294 students of the defaulting postsecondary educational institution, provided that the
295 program offered by the other institution is substantially equivalent to the program for
296 which the students had paid tuition; and provided, further, that attendance at the other
297 institution does not cause unreasonable hardship or inconvenience to the students. The
298 commission shall have the authority to adopt rules or regulations which shall govern the
299 board of trustees in the administration of the provisions of this paragraph. As a part of
300 any such program, the board of trustees may reimburse the other postsecondary
301 educational institution from the fund for expenses incurred by the institution in providing
302 educational services for the students of the defaulting postsecondary educational
303 institution. The Tuition Guaranty Trust Fund shall have an independent claim for
304 recovery against the defaulting postsecondary educational institution and any surety
305 issuing a bond pursuant to Code Section 20-3-250.10 to the extent that the fund has

306 reimbursed a postsecondary educational institution from the fund for expenses pursuant
307 to this paragraph and without the necessity of any further act by any party.

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

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

331 (h) The board of trustees shall issue a biennial report to the Governor and members of the
332 General Assembly providing a summary of the financial condition of the fund and claims

333 experience during the preceding biennium. Such reports shall be issued during the regular
334 session of the General Assembly held during each even-numbered year beginning in 1994.

335 (i) The tuition guaranty fund shall be exempt from all license fees or income, franchise,
336 privilege, occupation, or other taxes levied or assessed by the state or by any county,
337 municipality, or other political subdivision of the state. Any payment of claims or refund
338 of participation fees from the tuition guaranty fund shall not be exempt from taxation
339 unless such payment or refund is exempt from taxation pursuant to the provisions of law
340 independent of the provisions of this part.

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

344 (k) The Tuition Guaranty Trust Fund shall have an independent claim for recovery against
345 a defaulting postsecondary educational institution and any surety issuing a bond pursuant
346 to Code Section 20-3-250.10 for reimbursements of valid and documented claims of
347 students paid from the fund pursuant to paragraph (1) of subsection (g) of this Code section
348 and without the necessity of any further act by any party."

349

SECTION 8.

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