

The House Committee on Higher Education offers the following substitute to SB 400:

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

S. B. 400 (SUB)

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)(A) 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  
221 first full year of operation. At the conclusion of the first year, the fee for that year shall  
222 be adjusted to reflect actual gross tuition. The annual fee established by the  
223 commission shall be sufficient, when added to the earnings of the fund, to create a  
224 balance in the fund of at least \$10 million by July 1, 2040.

225 (B) Each postsecondary educational institution required to participate in the fund,  
226 excluding an institution that has filed a surety bond with the commission pursuant to  
227 Code Section 20-3-250.10, shall be authorized to participate in the fund by securing and  
228 maintaining a surety bond or irrevocable letter of credit in lieu of paying the annual fee  
229 established pursuant to subparagraph (A) of this paragraph. The commission shall, by  
230 rule or regulation, establish conditions for such bonds and letters of credit to ensure that  
231 such bonds and letters of credit include provisions to indemnify the Tuition Guaranty  
232 Trust Fund and students of the institution in the event the institution ceases operations  
233 without fulfilling its educational obligations to its students or without reimbursing its  
234 students.

235 (2)(A) The board of trustees shall notify the commission when the fund balance  
236 exceeds \$10 million, and, ~~except as otherwise provided in paragraph (2) of this~~  
237 ~~subsection,~~ upon receiving such notification, the commission shall cease collection of  
238 participation fees from postsecondary educational institutions which have contributed  
239 to the fund for at least five years.

240 (B) Except as otherwise provided in subparagraph (C) of this paragraph, the  
241 commission shall cease collection of participation fees from a postsecondary  
242 educational institution which is currently authorized to operate in this state and which  
243 was first authorized to operate in this state on or before January 1, 2026, after the total  
244 amount of the participation fees collected from such postsecondary educational  
245 institution reaches 5 percent of the fund balance specified in subparagraph (A) of this  
246 paragraph, regardless of the current balance of the fund.

247 (C) The commission, upon notification from the board of trustees, shall reestablish  
248 collection of participation fees from ~~such~~ the participating postsecondary educational  
249 institutions provided for in subparagraphs (A) and (B) of this paragraph at any time the  
250 fund balance is less than \$4 million. At such time and until the fund balance reaches  
251 \$10 million, fees shall be collected from such participating institutions according to a

252 schedule adopted by the commission based on gross tuition in amounts sufficient to  
253 raise the fund balance to \$10 million.

254 ~~(2) Each postsecondary educational institution which is first authorized to operate in this~~  
255 ~~state after July 1, 1992, and is required to participate in the fund for seven years of~~  
256 ~~authorized operation under the provisions of paragraph (3) of subsection (c) of this Code~~  
257 ~~section shall be required to pay participation fees for such period of time notwithstanding~~  
258 ~~the amount in the tuition guaranty fund. If the balance in the fund exceeds \$10 million,~~  
259 ~~participation fees shall be collected from each such institution according to the fee~~  
260 ~~schedule adopted by the commission pursuant to paragraph (1) of this subsection. No~~  
261 ~~postsecondary educational institution first authorized to operate in this state on or after~~  
262 ~~July 1, 1992, which fully participated in the fund for five years on or before January 1,~~  
263 ~~2022, shall be required to participate in the fund for seven years as otherwise provided~~  
264 ~~in this paragraph.~~

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

276 (f) The commission shall establish by regulation a late payment fee for the failure of a  
277 postsecondary educational institution to pay its participation fee at the time established by  
278 regulation of the commission for the payment of such fees. An application for

279 authorization to operate or for the renewal thereof may be denied under Code Section  
280 20-3-250.12 for failure to pay participation fees. Late payment fees shall be paid into the  
281 fund. Any authorization to operate may be revoked, suspended, or made conditional under  
282 Code Section 20-3-250.13 for failure to pay participation fees.

283 (g)(1) In the event a postsecondary educational institution participating in the fund  
284 ceases operations without fulfilling its educational obligations to its students or without  
285 reimbursing its students, the board of trustees may reimburse from the fund valid and  
286 documented claims of students for tuition and fees paid to that institution as well as costs  
287 incurred as a result of such cessation of operations in accordance with guidelines and  
288 procedures adopted by the commission; provided, however, that in the event of a  
289 precipitous closure, no student of the institution which is the subject of such closure shall  
290 be reimbursed from the fund unless such institution was participating in the fund at the  
291 time of such closure. Payments from the fund shall be made by warrant of the state  
292 treasurer on the order of the board of trustees.

293 (1.1) No student who is not a resident of this state shall be reimbursed from the fund if  
294 he or she is eligible for reimbursement for such tuition and fees from a similar fund in his  
295 or her state of residence.

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

302 (3) As an alternative to paying claims to or on behalf of students of a defaulting  
303 postsecondary educational institution, the board of trustees may arrange for another  
304 postsecondary educational institution to complete the educational obligations to the  
305 students of the defaulting postsecondary educational institution, provided that the

306 program offered by the other institution is substantially equivalent to the program for  
307 which the students had paid tuition; and provided, further, that attendance at the other  
308 institution does not cause unreasonable hardship or inconvenience to the students. The  
309 commission shall have the authority to adopt rules or regulations which shall govern the  
310 board of trustees in the administration of the provisions of this paragraph. As a part of  
311 any such program, the board of trustees may reimburse the other postsecondary  
312 educational institution from the fund for expenses incurred by the institution in providing  
313 educational services for the students of the defaulting postsecondary educational  
314 institution. The Tuition Guaranty Trust Fund shall have an independent claim for  
315 recovery against the defaulting postsecondary educational institution and any surety  
316 issuing a bond pursuant to Code Section 20-3-250.10 to the extent that the fund has  
317 reimbursed a postsecondary educational institution from the fund for expenses pursuant  
318 to this paragraph and without the necessity of any further act by any party.

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

324 (5) Any person aggrieved by a decision of the board of trustees to pay or deny a claim  
325 pursuant to the provisions of this Code section may appeal to the commission. A decision  
326 of the board of trustees shall be in writing and shall be sent by certified mail or statutory  
327 overnight delivery to the claimant and to the owner of the defaulting postsecondary  
328 educational institution. If the whereabouts of the owner of the defaulting postsecondary  
329 educational institution is not known and cannot reasonably be ascertained by the board  
330 of trustees, a notice of the decision shall be published in the legal organ of the county  
331 where the student claimant attended the defaulting postsecondary educational institution  
332 or a facility of such institution. The appeal to the commission shall be commenced by

333 filing a written notice of such appeal to the commission within 30 days after receiving the  
334 written decision of the board of trustees. Within 30 days after receiving a notice of  
335 appeal, the commission shall affirm the decision of the board of trustees, modify and  
336 affirm the decision of the board of trustees, or overrule the decision of the board of  
337 trustees. Any person aggrieved by the action of the commission shall have the right to  
338 judicial review pursuant to the provisions of Code Section 20-3-250.16. The commission  
339 shall adopt rules or regulations providing procedures for the conduct of appeals from the  
340 board of trustees, but such rules or regulations shall be consistent with the provisions of  
341 this paragraph.

342 (h) The board of trustees shall issue a biennial report to the Governor and members of the  
343 General Assembly providing a summary of the financial condition of the fund and claims  
344 experience during the preceding biennium. Such reports shall be issued during the regular  
345 session of the General Assembly held during each even-numbered year beginning in 1994.

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

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

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

360

**SECTION 8.**

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