

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 860*
Education/Higher Education Committee Substitute Adopted 6/17/09

Short Title: Student Protection Fund/Proprietary Schools. (Public)

Sponsors:

Referred to:

March 26, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH A STUDENT PROTECTION FUND FOR PROPRIETARY
3 SCHOOL STUDENTS.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 115D-95 reads as rewritten:

6 "§ 115D-95. Bonds required.

7 (a) A guaranty bond is required for each school that is licensed to ~~operate~~:operate, if
8 required by this section. Provided, however, However, a school that is unable to secure a bond
9 may, with the consent of the State Board of Community Colleges, provide an alternative to a
10 guaranty bond, as provided in subsection (c) of this section.

11 The State Board may revoke the license of a school that fails to maintain a bond or an
12 alternative to a bond, pursuant to this section.

13 (b) A guaranty bond shall be required for a school during the first five years of
14 operation in the State as follows:

15 (1) When application is made for a license or license renewal, the applicant shall
16 file a guaranty bond with the clerk of the superior court of the county in
17 which the school will be located. The bond shall be in favor of the students.
18 The bond shall be executed by the applicant as principal and by a bonding
19 company authorized to do business in this State. The bond shall be issued in
20 the name of the North Carolina State Board of Community Colleges. The
21 bond shall be conditioned to provide indemnification to any student, or his
22 the student's parent or guardian, who has suffered a loss of ~~tuition or any~~
23 fees—tuition, fees, or any other instructional-related expenses paid to the
24 school by reason of the failure of the school to offer or complete student
25 instruction, academic services, or other goods and services related to course
26 enrollment for any reason, including the suspension, revocation, or
27 nonrenewal of a school's license, bankruptcy, foreclosure, or the school
28 ceasing to operate.

29 (2) The bond shall be in an amount determined by the State Board of
30 Community Colleges to be adequate to provide indemnification to any
31 student, or ~~his~~the student's parent or guardian, under the terms of the bond.
32 The bond amount for a school shall be at least equal to the maximum amount
33 of prepaid tuition held at any time during the last fiscal year by the school.
34 The bond shall be in an amount equal to the greatest amount of unearned
35 paid tuition in the school's possession at anytime during the prior fiscal year.
36 The bond amount shall be assessed by the school quarterly and reported to
37 the State Board or its representative. A quarterly assessment requiring an



1 increase of five percent (5%) or more in the amount of the bond held by the
2 school shall require an immediate increase in the bond amount. Bond
3 amounts shall also be assessed pursuant to this subdivision and the rules of
4 the State Board at the time of the school's annual license renewal and
5 increased if necessary regardless of the amount of the change. The bond
6 amount shall also be at least ~~ten thousand dollars (\$10,000)~~ twenty-five
7 thousand dollars (\$25,000).

8 Each application for a license or report of quarterly adjustment to the
9 bond amount shall include a letter signed by an authorized representative of
10 the school showing in detail the calculations made and the method of
11 computing the amount of the bond, pursuant to this subdivision and the rules
12 of the State Board. If the State Board finds that the calculations made and
13 the method of computing the amount of the bond are inaccurate or that the
14 amount of the bond is otherwise inadequate to provide indemnification under
15 the terms of the bond, the State Board may require the applicant to provide
16 an additional bond.

- 17 (3) The bond shall remain in force and effect until cancelled by the guarantor.
18 The guarantor may cancel the bond upon 30 days notice to the State Board
19 of Community Colleges. Cancellation of the bond shall not affect any
20 liability incurred or accrued prior to the termination of the notice period.

21 (b1) A guaranty bond shall be required for license renewal for a school that has been
22 continuously licensed to operate for more than five years in the State, as follows:

- 23 (1) If the balance of the Student Protection Fund in G.S. 115D-95.1 is below the
24 catastrophic loss amount, the school shall file a guaranty bond in an amount
25 equal to the maximum amount of prepaid tuition held by the school during
26 the prior fiscal year multiplied by the reciprocal of the Student Protection
27 Fund balance divided by the catastrophic loss amount.
28 (2) If the school held prepaid tuition in excess of the Student Protection Fund
29 catastrophic loss amount during the prior fiscal year, in addition to any bond
30 amount required by subdivision (1) of this subsection, the school shall file a
31 guaranty bond for the difference between the prepaid tuition amount held in
32 the previous fiscal year and the Fund catastrophic loss amount.

33 Each application for a license shall include a letter signed by an authorized representative of
34 the school certifying whether the school is required to file a bond under this subsection. If the
35 school is required to file a bond, the letter shall include information showing in detail the
36 calculations made and the method of computing the amount of the bond, pursuant to this
37 subdivision and the rules of the State Board. If the State Board finds that the calculations made
38 and the method of computing the amount of the bond are inaccurate or that the amount of the
39 bond is otherwise inadequate to provide indemnification under the terms of the bond, the State
40 Board may require the applicant to provide an additional bond. The requirements of
41 subdivisions (1) and (3) of subsection (b) of this section shall be met for guaranty bonds
42 required by this subsection.

43 (c) An applicant that is unable to secure a bond may seek a waiver of the guaranty bond
44 from the State Board of Community Colleges and approval of one of the guaranty bond
45 alternatives set forth in this subsection. With the approval of the State Board, an applicant may
46 file with the clerk of the superior court of the county in which the school will be located, in lieu
47 of a bond:

- 48 (1) An assignment of a savings account in an amount equal to the bond required
49 (i) which is in a form acceptable to the State Board of Community Colleges;
50 (ii) which is executed by the applicant; and (iii) which is executed by a state
51 or federal savings and loan association, state bank, or national bank, that is

1 doing business in North Carolina and whose accounts are insured by a
2 federal depositors corporation; and (iv) for which access to the account in
3 favor of the State of North Carolina is subject to the same conditions as for a
4 bond in subsection (b) of this section.

- 5 (2) A certificate of deposit (i) which is executed by a state or federal savings and
6 loan association, state bank, or national bank, which is doing business in
7 North Carolina and whose accounts are insured by a federal depositors
8 corporation; and (ii) which is either payable to the State of North Carolina,
9 unrestrictively endorsed to the State Board of Community Colleges; in the
10 case of a negotiable certificate of deposit, is unrestrictively endorsed to the
11 State Board of Community Colleges; or in the case of a nonnegotiable
12 certificate of deposit, is assigned to the State Board of Community Colleges
13 in a form satisfactory to the State Board; and (iii) for which access to the
14 certificate of deposit in favor of the State of North Carolina is subject to the
15 same conditions as for a bond in subsection (b) of this section."

16 **SECTION 2.** G.S. 115D-96 reads as rewritten:

17 **"§ 115D-96. Operating school without license or bond made misdemeanor.**

18 Any person, or each member of any association of persons or each officer of any
19 corporation who opens and conducts a proprietary business school, a proprietary technical
20 school, a proprietary trade school, or a correspondence school, without first having obtained the
21 license herein required, and without first having executed the ~~bond required~~, bond, paid the
22 assessments into the Student Protection Fund, or both, as required by law, shall be guilty of a
23 Class 3 misdemeanor, and each day ~~said~~ the school continues to be open and operated shall
24 constitute a separate offense."

25 **SECTION 3.** Chapter 115D of the General Statutes is amended by adding a new
26 section to read:

27 **"§ 115D-95.1. Student Protection Fund.**

28 (a) Definitions. – As used in this section:

- 29 (1) "Catastrophic loss amount" means the amount of funds required to protect
30 prepaid student tuition in case of a large-scale event that would draw against
31 the Student Protection Fund. For the first year of the Fund, the initial amount
32 shall be one million dollars (\$1,000,000).
33 (2) "Fund cap amount" means the catastrophic loss amount plus a reserve
34 amount. For the first year of the Fund, the initial amount shall be one million
35 five hundred thousand dollars (\$1,500,000).

36 (b) Student Protection Fund. – The Student Protection Fund is established in the
37 Department of State Treasurer as a statewide fee-supported fund. Interest accruing to the Fund
38 shall be credited to the Fund. The State Board of Community Colleges shall administer the
39 Fund. The purpose of the Fund is to compensate students enrolled in a proprietary school
40 licensed under this Article who have suffered a loss of tuition, fees, or any other instructional-
41 related expenses paid to the school by reason of the failure of the school to offer or complete
42 student instruction, academic services, or other goods and services related to course enrollment
43 for any reason, including the suspension, revocation, or nonrenewal of a school's license,
44 bankruptcy, foreclosure, or the school ceasing to operate.

45 (c) Student Protection Fund Advisory Committee. – The President of the North
46 Carolina Community College System shall appoint a Student Protection Fund Advisory
47 Committee. Members of the Committee shall be appointed for terms of three years. The
48 Committee shall consist of seven members as follows:

- 49 (1) Three professional staff members of the Community Colleges System
50 Office.

- 1 (2) An owner/director of a proprietary school with less than 100 students, or the
 2 owner/director's designee.
 3 (3) An owner/director of a proprietary school with between 100 and 750
 4 students, or the owner/director's designee.
 5 (4) An owner/director of a proprietary school with more than 750 students, or
 6 the owner/director's designee.
 7 (5) An owner/director of a proprietary school appointed at large, or the
 8 owner/director's designee.

9 The Committee shall advise the State Board of Community Colleges on matters related to
 10 the Fund, including, but not limited to, the adjustment of the catastrophic loss amount and fund
 11 cap amount.

12 (d) Initial Payment. – Prior to its first year of operation in the State, each proprietary
 13 school shall pay an initial amount of one thousand two hundred fifty dollars (\$1,250) into the
 14 Fund.

15 (e) Annual Revenue Payment. – Each proprietary school operating in the State shall pay
 16 annually into the Fund an amount based on its annual gross tuition revenue generated in the
 17 State as follows:

<u>Annual Gross Tuition Revenue</u>	<u>Amount of Assessment</u>
<u>\$1.00 – \$25,000</u>	<u>\$200.00</u>
<u>\$25,001 – \$50,000</u>	<u>\$250.00</u>
<u>\$50,001 – \$100,000</u>	<u>\$300.00</u>
<u>\$100,001 – \$200,000</u>	<u>\$400.00</u>
<u>\$200,001 – \$300,000</u>	<u>\$500.00</u>
<u>\$300,001 – \$400,000</u>	<u>\$600.00</u>
<u>\$400,001 – \$500,000</u>	<u>\$700.00</u>
<u>\$500,001 – \$750,000</u>	<u>\$1,000</u>
<u>\$750,001 – \$1,000,000</u>	<u>\$1,250</u>
<u>\$1,000,001 – \$1,500,000</u>	<u>\$1,500</u>
<u>\$1,500,001 – \$2,000,000</u>	<u>\$2,000</u>
<u>Greater than \$2,000,000</u>	<u>\$2,000 plus .0005 of annual gross tuition</u> <u>revenue over \$2,000,000</u>

32 (f) Investment of Excess Payments. – The Department of State Treasurer shall hold all
 33 Fund balances in excess of the Fund cap amount in a higher yield account.

34 (g) Suspension of Payments. – If the Student Protection Fund balance is equal to or
 35 exceeds the Fund cap amount, the State Board of Community Colleges shall suspend payments
 36 into the Fund for schools that have been continuously licensed in the State for more than eight
 37 years. The State Board shall require schools to resume payments into the Fund if the balance of
 38 the Fund is less than the catastrophic loss amount.

39 (h) Catastrophic Assessments. – If claims against the Student Protection Fund exceed
 40 the catastrophic loss amount, the State Board of Community Colleges may assess additional
 41 fees to the extent necessary to compensate students qualified for repayment under the Fund.
 42 The amount of the catastrophic assessment shall not exceed one-half of the amount of the
 43 annual revenue payment required by subsection (e) of this section. If the amount of the
 44 catastrophic assessment will be insufficient to cover qualified claims, the State Board shall
 45 develop a method of allocating funds among claims.

46 (i) Payment Required for Proprietary School Licensure. – The full and timely payment
 47 into the Fund pursuant to this section is a condition of licensure.

48 (j) Payments Nonrefundable. – No payment to the Student Protection Fund shall be
 49 refunded in the event that a school's license application is rejected or a school's license is
 50 suspended or revoked.

1 (k) Student Repayment. – A student, or the student's parent or guardian, who has
2 suffered a loss of tuition, fees, or any other instructional-related expenses paid to a proprietary
3 school licensed under this Article by reason of the failure of the school to offer or complete
4 student instruction, academic services, or other goods and services related to course enrollment
5 for any reason, including the suspension, revocation, or nonrenewal of a school's license,
6 bankruptcy, foreclosure, or the school ceasing to operate, may qualify for repayments under the
7 Student Protection Fund.

8 (l) Rules. – The State Board of Community Colleges shall adopt rules for the
9 implementation of this section."

10 **SECTION 4.** As a condition of license renewal for the 2010-2011 fiscal year, each
11 proprietary school shall pay into the Student Protection Fund an amount based on its total
12 enrollment for the previous calendar year as follows:

Number of Students	Amount of Assessment
0-49	\$500
50-99	\$1,000
100-499	\$2,000
500-999	\$3,000
1,000-1,499	\$4,000
More than 1,500	\$5,000.

20 Total enrollment equals the number of students enrolled on January 1, 2009, plus
21 new starts during the calendar year plus students reentering from a period of nonattendance
22 during the calendar year.

23 **SECTION 5.** This act becomes effective July 1, 2010.