

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

D

SENATE BILL 860*
PROPOSED COMMITTEE SUBSTITUTE S860-PCS55438-TCf-46

Short Title: Student Protection Fund/Proprietary Schools.

(Public)

Sponsors:

Referred to:

March 26, 2009

A BILL TO BE ENTITLED

AN ACT TO ESTABLISH A STUDENT PROTECTION FUND FOR PROPRIETARY
SCHOOL STUDENTS.

The General Assembly of North Carolina enacts:

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

"§ 115D-95. Bonds required.

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

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

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

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

(2) The bond shall be in an amount determined by the State Board of Community Colleges to be adequate to provide indemnification to any student, or ~~his~~ the student's parent or guardian, under the terms of the bond. ~~The bond amount for a school shall be at least equal to the maximum amount of prepaid tuition held at any time during the last fiscal year by the school.~~ The bond shall be in an amount equal to the greatest amount of unearned



1 paid tuition in the school's possession at anytime during the prior fiscal year.
2 The bond amount shall be assessed by the school quarterly and reported to
3 the State Board or its representative. A quarterly assessment requiring an
4 increase of five percent (5%) or more in the amount of the bond held by the
5 school shall require an immediate increase in the bond amount. Bond
6 amounts shall also be assessed pursuant to this subdivision and the rules of
7 the State Board at the time of the school's annual license renewal and
8 increased if necessary regardless of the amount of the change. The bond
9 amount shall also be at least ~~ten thousand dollars (\$10,000)~~ twenty-five
10 thousand dollars (\$25,000).

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

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

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

- 26 (1) If the balance of the Student Protection Fund in G.S. 115D-95.1 is below the
27 catastrophic loss amount, the school shall file a guaranty bond in an amount
28 equal to the maximum amount of prepaid tuition held by the school during
29 the prior fiscal year multiplied by the reciprocal of the Student Protection
30 Fund balance divided by the catastrophic loss amount.

- 31 (2) If the school held prepaid tuition in excess of the Student Protection Fund
32 catastrophic loss amount during the prior fiscal year, in addition to any bond
33 amount required by subdivision (1) of this subsection, the school shall file a
34 guaranty bond for the difference between the prepaid tuition amount held in
35 the previous fiscal year and the Fund catastrophic loss amount.

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

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

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

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

21 **"§ 115D-96. Operating school without license or bond made misdemeanor.**

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

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

31 **"§ 115D-95.1. Student Protection Fund.**

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

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

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

49 (c) Student Protection Fund Advisory Committee. – The President of the North
50 Carolina Community College System shall appoint a Student Protection Fund Advisory

1 Committee. Members of the Committee shall be appointed for terms of three years. The
 2 Committee shall consist of seven members as follows:

- 3 (1) Three professional staff members of the Community Colleges System
 4 Office.
- 5 (2) An owner/director of a proprietary school with less than 100 students, or the
 6 owner/director's designee.
- 7 (3) An owner/director of a proprietary school with between 100 and 750
 8 students, or the owner/director's designee.
- 9 (4) An owner/director of a proprietary school with more than 750 students, or
 10 the owner/director's designee.
- 11 (5) An owner/director of a proprietary school appointed at large, or the
 12 owner/director's designee.

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

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

19 (e) Annual Revenue Payment. – Each proprietary school operating in the State shall pay
 20 annually into the Fund an amount based on its annual gross tuition revenue generated in the
 21 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> revenue over \$2,000,000

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

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

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

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

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

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

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

13 **SECTION 4.** As a condition of license renewal for the 2010-2011 fiscal year, each
 14 proprietary school shall pay into the Student Protection Fund an amount based on its total
 15 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.

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

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