

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H.B. 467
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10260-TCfp-17

Short Title: Establish State Board of Prop. (Public)

Sponsors: Representatives R. Turner, Fraley, and Blackwell (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH THE NORTH CAROLINA PROPRIETARY SCHOOL
3 LICENSURE ACT.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 8 of Chapter 115D of the General Statutes is repealed.

6 **SECTION 2.** The General Statutes are amended by adding a new Chapter to read:

7 **"Chapter 115F.**

8 **"North Carolina Proprietary School Licensure Act.**

9 **"§ 115F-1. Short title.**

10 This Chapter shall be known as the "North Carolina Proprietary School Licensure Act."

11 **"§ 115F-5. Purpose.**

12 The purpose of this Chapter is to provide for the establishment, organization, and
13 administration of educational institutions having a physical presence in North Carolina that
14 educate or train students in vocational programs leading toward professional licensing
15 examination, employment, or a postsecondary degree below the associate level. The major
16 purpose of each institution operating under this Chapter shall be to provide a quality education
17 through a sustained curriculum equal to that prescribed for similar public schools and educational
18 institutions of the State that have met the standards set forth by the North Carolina Board of
19 Proprietary Schools, including course offerings, adequate facilities, financial stability, competent
20 personnel, and legitimate operating practices.

21 **"§ 115F-10. Definitions.**

22 The following definitions apply in this Chapter:

23 (1) Board. – North Carolina Board of Proprietary Schools.

24 (2) Catastrophic loss amount. – Funds in the amount of one million five hundred
25 thousand dollars (\$1,500,000) to protect prepaid student tuition in case of a
26 large-scale event that would draw against the Student Protection Fund.

27 (3) Commercial Education Fund. – The Fund established in G.S. 115F-35.

28 (4) Distance education. – Education, training courses, or programs delivered to a
29 student who is geographically separate from the instructor. Distance education
30 shall not include education, training courses, or programs delivered by
31 institutions licensed under G.S. 116-15. Delivery systems employed by a
32 proprietary school may include any of the following:

33 a. Correspondence.

34 b. Classroom instruction.

35 c. Instruction provided in hotels or other temporary dwelling units or
36 areas.



- 1 d. Electronic communications.
- 2 (5) Fund cap amount. – The cap amount for the Student Protection Fund that is
- 3 equal to the catastrophic loss amount plus a reserve in the amount of five
- 4 hundred thousand dollars (\$500,000).
- 5 (6) License. – A certificate issued by the Board to a proprietary school that meets
- 6 the requirements established for a proprietary school by this Chapter and rules
- 7 adopted pursuant to this Chapter.
- 8 (7) Person. – Any individual, association, partnership, or corporation and includes
- 9 any director, receiver, referee, trustee, executor, or administrator, as well as a
- 10 natural person.
- 11 (8) Proprietary school. – An educational institution having a physical presence
- 12 within North Carolina, including a branch or extension of a private
- 13 postsecondary educational institution of another state that (i) is located in this
- 14 State or (ii) offers educational services or education at a physical location
- 15 within this State, that meets all of the following conditions:
- 16 a. It is privately owned by a sole proprietorship, partnership, limited
- 17 liability company, or corporation.
- 18 b. It is established as a business entity or as a nonprofit charitable
- 19 organization.
- 20 c. It offers instruction to individuals who (i) have completed their
- 21 elementary and secondary education or (ii) are beyond the age of
- 22 compulsory secondary school attendance and have demonstrated an
- 23 ability to benefit from that instruction for the attainment of educational
- 24 objectives, vocational objectives, or both.
- 25 d. It charges tuition or receives any consideration from a student for any
- 26 portion of the instruction in any form, including written or audiovisual
- 27 material.
- 28 e. It educates, trains, or claims to educate or train students in a program
- 29 leading toward (i) examinations for licensing in a profession or
- 30 vocation, (ii) employment at a beginning or advanced level, or (iii) a
- 31 postsecondary educational credential below the associate degree level.
- 32 (9) Student Protection Fund. – The Fund established in G.S. 115F-60.

33 **"§ 115F-15. Exemptions.**

34 The following shall be exempt from the provisions of this Chapter:

- 35 (1) Nonprofit schools conducted by (i) charities that are exempt from taxation
- 36 under section 501(c)(3) of the Internal Revenue Code where no fee or tuition
- 37 is charged to the student or (ii) religious institutions.
- 38 (2) Schools maintained or classes conducted by employers for their own
- 39 employees where no fee or tuition is charged to the student.
- 40 (3) Courses of instruction given by any fraternal society, civic club, or benevolent
- 41 order, which courses are not operated for profit.
- 42 (4) Any school for which there is another legally existing licensing or approving
- 43 board or agency in this State.
- 44 (5) Classes or schools that are equipment-specific to purchasers, users, classes, or
- 45 schools offering training or instruction to acquaint purchasers or users with
- 46 equipment capabilities.
- 47 (6) Classes or schools that the Board determines are avocational, recreational, for
- 48 self-improvement, or continuing education for already trained and
- 49 occupationally qualified individuals.
- 50 (7) Any established university, professional, or liberal arts college, public or
- 51 private school regulated or recognized pursuant to Chapter 115C of the

1 General Statutes or by any other State agency, or any State institution which
2 has offered, or which may offer, one or more courses covered in this Chapter,
3 provided that the tuition, fees, and charges, if any, made by such university,
4 college, high school, or State institution shall be collected by their regular
5 officers in accordance with the rules prescribed by the board of trustees or
6 governing body of such university, college, high school, or State institution.

7 (8) Any institution exempt from licensure pursuant to G.S. 116-15(c).

8 **"§ 115F-20. North Carolina Board of Proprietary Schools.**

9 (a) There is established the North Carolina Board of Proprietary Schools.

10 (b) The Board shall consist of seven members appointed or serving ex officio as follows:

11 (1) Two members appointed by the Governor.

12 (2) Two members appointed by the General Assembly upon the recommendation
13 of the President Pro Tempore of the Senate, as provided in G.S. 120-121, as
14 follows:

15 a. One member who is the owner or director of a proprietary school
16 licensed in the State with a total annual enrollment of fewer than 100
17 students.

18 b. One member who is the owner or director of a proprietary school or
19 group of proprietary schools licensed in the State with a total annual
20 enrollment of more than 750 students.

21 (3) Two members appointed by the General Assembly upon the recommendation
22 of the Speaker of the House of Representatives, as provided in G.S. 120-121,
23 as follows:

24 a. One member who is the owner or director of a proprietary school
25 licensed in the State with a total annual enrollment between 100 and
26 750 students.

27 b. One member who is the owner or director of a proprietary school
28 licensed in the State.

29 (4) The President of the North Carolina Community College System or the
30 President's designee.

31 (c) Members appointed pursuant to subsection (b) of this section shall possess (i) a
32 demonstrated history of experience related to a proprietary school or public postsecondary
33 education, (ii) an understanding of standards of quality in postsecondary education, and (iii) a
34 leadership background beyond the leadership experience demonstrated at a particular proprietary
35 school.

36 (d) Appointments for all members shall be for terms of four years beginning on January
37 1. Appointed members may be reappointed but shall not serve more than two consecutive terms
38 of four years. Vacancies among appointed members shall be filled by the appointing entity and
39 shall be for the remainder of the vacant term. Vacancies appointed by the General Assembly shall
40 be filled in accordance with G.S. 120-122.

41 (e) The Board shall elect from the appointed members a chair and a vice-chair for terms
42 of two years. A chair or vice-chair may serve no more than two consecutive terms in that role.

43 (f) No member of the General Assembly, spouse of a member of the General Assembly,
44 or officer or employee of the State shall be eligible to serve on the Board as an appointed member.

45 (g) The Board may declare vacant the office of a member who does not attend three
46 consecutive scheduled meetings without justifiable excuse. The chair shall notify the appropriate
47 appointing authority of any such vacancy.

48 (h) The Board shall meet at stated times established by the Board but not less frequently
49 than four times a year. Special meetings of the Board may be set at any regular meeting or may
50 be called by the chair. A majority of the appointed members of the Board shall constitute a
51 quorum for the transaction of business.

1 (i) Members of the Board shall receive such per diem compensation and necessary travel
2 and subsistence expenses while engaged in the official discharge of the official duties as provided
3 in G.S. 93B-5.

4 **"§ 115F-25. Powers and duties of the Board.**

5 The Board shall have the following powers and duties:

- 6 (1) Administer and enforce the provisions of this Chapter, including all of the
7 following powers:
- 8 a. Have the powers of a body corporate, including the power to make
9 contracts and to alter the same as may be deemed expedient.
- 10 b. Be authorized and empowered to rent and lease such property, real or
11 personal, as the Board may deem proper to carry out the purposes and
12 provisions of this Chapter, all or any of them.
- 13 c. Establish an office for the transaction of its business at such place or
14 places as, in the opinion of the Board, shall be advisable or necessary
15 in carrying out the purposes of this Chapter.
- 16 d. Be authorized and empowered to pay from the Commercial Education
17 Fund all necessary costs and expenses involved in and incident to the
18 formation, organization, and administration of the Board and all other
19 costs and expenses reasonably necessary or expedient in carrying out
20 and accomplishing the purposes of this Chapter.
- 21 e. Be authorized and empowered to do any and all other acts and things
22 in this Chapter authorized or required to be done, whether or not
23 included in the general powers listed in this section.
- 24 (2) Adopt rules in accordance with Chapter 150B of the General Statutes as may
25 be necessary to administer the provisions of this Chapter.
- 26 (3) Grant and issue licenses to proprietary schools whose sustained curriculum is
27 of a grade equal to that prescribed for similar public schools and educational
28 institutions of the State and that have met the standards set forth by the Board,
29 including offerings, adequate facilities, financial stability, competent
30 personnel, and legitimate operating practices.
- 31 (4) Formulate the criteria and the standards for the approval of proprietary
32 schools.
- 33 (5) Provide for adequate investigations of all proprietary schools applying for a
34 license. The Board shall not contract with or employ a person who is
35 employed by a proprietary school licensed by the Board to serve as an
36 investigator or inspector.
- 37 (6) Issue licenses to those applicants meeting the standards adopted by the Board.
- 38 (7) Maintain a list of schools licensed under the provisions of this Chapter and
39 make that list available for inspection by the public.
- 40 (8) Provide for periodic inspection of all schools licensed under the provisions of
41 this Chapter.
- 42 (9) Oversee the proprietary schools in the State in order to protect the health,
43 safety, and welfare of the public by requiring the proprietary schools to
44 maintain adequate, safe, and sanitary school locations, sufficient and proper
45 facilities and equipment, sufficient and qualified teaching and administrative
46 staff, and satisfactory programs of operation and instruction and to require
47 proprietary schools to carry out advertised promises and contracts made with
48 its students and patrons.
- 49 (10) Request any occupational licensing or approving board or agency in this State
50 to adopt rules requiring the approval of that board or agency for a course of
51 study. Under these rules, the board or agency shall pass on the adequacy of

1 equipment, curricula, and instructional personnel. The Board may deny
2 approval to a course of study that is not approved by such board or agency.

- 3 (11) Pursuant to the maximum amounts set forth by this Chapter and other specific
4 authority authorizing fees, establish reasonable fees related to the approval
5 and operation of proprietary schools.

6 **"§ 115F-30. Office of Proprietary Schools.**

7 (a) The Board shall establish an Office of Proprietary Schools as its principal
8 administrative unit. The Board shall employ an executive director of the Office of Proprietary
9 Schools, who shall serve as chief administrative officer. The Board may contract with an outside
10 consultant to serve as the executive director. The compensation of this position shall be fixed by
11 the Board from funds provided by fees deposited in the Commercial Education Fund.

12 (b) The Board may hire other employees as it deems necessary to carry out the provisions
13 of this Chapter. The compensation of the staff members hired by the Board shall be fixed by the
14 Board upon recommendation of the executive director of the Office of Proprietary Schools.

15 (c) The Office of Proprietary Schools shall use BEACON, or the State payroll system
16 that supersedes BEACON, for payroll purposes for employees of the Board.

17 (d) Each year, at a time designated by the Board, the executive director of the Office of
18 Proprietary Schools shall submit a written report to the Board and the State Board of Community
19 Colleges containing the following information:

20 (1) The number of schools receiving initial licenses during the previous year.

21 (2) A list of all licensed proprietary schools operating in the State.

22 (3) Any school closures during the previous year, including a complete report of
23 actions concerning any catastrophic closures.

24 (4) Any complaints received and the resulting decisions or actions on the
25 complaints.

26 (5) The total fees collected.

27 (6) The balances of the Commercial Education Fund and the Student Protection
28 Fund.

29 (7) A recommendation for the annual projected operating budget.

30 (8) If applicable, a recommendation for an adjustment to the catastrophic loss
31 amount or cap amount for the Student Protection Fund.

32 (e) The executive director for the Board is authorized to collect in the name and on behalf
33 of the Board the fees prescribed by this Article, and shall turn over to the State Treasurer all funds
34 collected or received under this Article. Those funds shall be credited to the appropriate Fund of
35 the State Board of Proprietary Schools established by this Chapter, and said funds shall be held
36 and expended under the supervision of the Director of the Budget of the State of North Carolina
37 exclusively for the administration and enforcement of the provisions of this Article. Nothing in
38 this Article shall be construed to authorize any expenditure in excess of the amount available
39 from time to time in the hands of the State Treasurer derived from the fees collected under the
40 provisions of this Article and received by the State Treasurer.

41 **"§ 115F-35. Authority to establish and collect fees; Commercial Education Fund; refund**
42 **of fees.**

43 (a) The Board shall establish fees for applications, initial licensure, license renewal, and
44 inspections performed of proprietary schools pursuant to this Chapter in accordance with Article
45 2A of Chapter 150B of the General Statutes not to exceed the following:

46 (1) Initial license. – Three thousand five hundred twenty dollars (\$3,520), plus
47 fifty-five dollars (\$55.00) per program submitted for licensure.

48 (2) Annual license renewal. – One thousand eight hundred seventy dollars
49 (\$1,870), plus fifty-five dollars (\$55.00) per licensed program renewed and
50 two hundred twenty dollars (\$220.00) for each new program submitted for

1 licensure. A late fee of five hundred fifty dollars (\$550.00) may be assessed
2 for any license renewal application postmarked after March 15.

3 (3) Program additions submitted outside of the annual license renewal period. –
4 Two hundred twenty dollars (\$220.00).

5 (4) Program revisions. – Two hundred twenty dollars (\$220.00).

6 (5) School relocations. – Five hundred fifty dollars (\$550.00).

7 (6) Remote sites. – One thousand one hundred dollars (\$1,100) initial site fee,
8 plus an annual renewal fee of eight hundred twenty-five dollars (\$825.00).

9 (7) Site assessments to verify compliance with statutes or rules or to approve
10 program additions of changes. – Five hundred fifty dollars (\$550.00).

11 (b) All fees and other moneys collected and received by the Board shall be used for the
12 purposes of implementing this Chapter. In no case shall any salary, expense, or other obligation
13 of the Board be charged against the General Fund.

14 (c) There is established the Commercial Education Fund as a special fund consisting of
15 fees collected pursuant to this Chapter. Moneys in the Fund shall be used under the supervision
16 and direction of the Board for the administration of this Chapter.

17 (d) No fee shall be refunded in the event an application is rejected or if a license is
18 suspended or revoked.

19 **"§ 115F-40. License required; application for license; school bulletins; requirements for**
20 **issuance of license; license restricted to courses indicated; supplementary**
21 **applications.**

22 (a) No person shall operate, conduct, or maintain or offer to operate in this State a
23 proprietary school unless a license is first secured from the Board granted in accordance with the
24 provisions of this Chapter and the rules adopted by the Board. The license, when issued, shall
25 constitute the formal acceptance by the Board of the educational programs and facilities of each
26 school approved.

27 (b) If a proprietary school has physical locations and offers classes in more than one
28 county in the State, the school's operation in each county shall constitute a separate proprietary
29 school for the purposes of licensure under this Chapter.

30 (c) Application for a license shall be filed in the manner and upon the forms prescribed
31 and furnished by the Board for that purpose. The application shall be signed by the applicant and
32 properly verified and shall contain the following information as may apply to the particular
33 proprietary school for which a license is sought:

34 (1) The title or name of the school or classes and the names and addresses of the
35 owners and of the controlling officers of the school.

36 (2) The general field of instruction.

37 (3) The place or places where the instruction shall be given.

38 (4) A specific listing of the equipment available for instruction in each field.

39 (5) The qualifications of instructors and supervisors.

40 (6) Financial resources available to equip and to maintain the school or classes.

41 (7) A copy of the current bulletin or catalog of the school, which shall be in
42 published form and certified by an authorized official of the school as being
43 current, true, and correct in content and policy. The school bulletin shall
44 contain the following information:

45 a. Identifying data, such as volume number and date of publication.

46 b. Names of the school and its governing body, officials, and faculty.

47 c. A calendar of the school showing legal holidays, beginning and ending
48 dates of each quarter, term, or semester, and other important dates.

49 d. Policy and regulations relative to leave, absences, class cuts, make-up
50 work, tardiness, and interruptions for unsatisfactory attendance.

- 1 e. Policy and regulations on enrollment with respect to enrollment dates
2 and specific entrance requirements for each course.
- 3 f. Policy and regulations relative to standards of progress required of the
4 student by the school. A statement shall be made regarding progress
5 records kept by the school and furnished to the student. The policy
6 must define the following:
- 7 1. The grading system of the school.
8 2. The minimum grades considered satisfactory.
9 3. Conditions for interruption for unsatisfactory grades or
10 progress.
11 4. Description of the probationary period, if any, allowed by the
12 school.
13 5. Conditions of reentrance for those students dismissed for
14 unsatisfactory progress.
- 15 g. Policy and regulations relating to student conduct and conditions for
16 dismissal for unsatisfactory conduct.
- 17 h. Detailed schedule of fees; charges for tuition, books, supplies, tools,
18 student activities, laboratory fees, service charges, rentals, and
19 deposits; and all other charges.
- 20 i. Policy and regulations relative to the refund of the unused portion of
21 tuition, fees, and other charges in the event the student does not enter
22 or withdraws from a course or a course is discontinued. The policy and
23 regulations shall provide for, at a minimum, a full refund if a student
24 withdraws before the first day of class or the school cancels the class
25 and a seventy-five percent (75%) refund if the student withdraws
26 within the first twenty-five percent (25%) of the period of enrollment
27 for which the student was charged.
- 28 j. A description of the available space, facilities, and equipment.
- 29 k. A course outline for each course for which approval is requested,
30 showing:
- 31 1. Subjects or units in the course.
32 2. Type of skill to be learned.
33 3. Approximate time in clock hours, credit hours, or credit hours
34 equivalent, as appropriate, to be spent on each subject or unit.
- 35 l. Policy and regulations for granting credit for previous educational
36 training.
- 37 (8) Any additional information as the Board may deem necessary to enable it to
38 determine the adequacy of the program of instruction and whether the
39 standards for licensure adopted by the Board have been met.
- 40 (d) After reasonable investigation and consideration on the part of the Board, a license
41 shall be granted to the proprietary school when it is shown to the satisfaction of the Board that
42 the applicant, school, and programs of study or courses are found to have met at least the
43 following criteria:
- 44 (1) Courses, curriculum, and instruction are consistent in quality, content, and
45 length with similar courses in public schools and other private schools in the
46 State, with recognized accepted standards.
- 47 (2) Adequate space, equipment, instructional material, and instructor personnel
48 are available to students to provide training of good quality.
- 49 (3) Education and experience qualifications of the director, administrators, and
50 instructors are adequate.

- 1 (4) The school maintains a written record of the previous education and training
2 of the student.
- 3 (5) A copy of the course outline, schedule of tuition, fees, and other charges,
4 regulations pertaining to absences, grading policy, and the rules of operation
5 and conduct shall be furnished to the student upon enrollment.
- 6 (6) Upon completion of training, the student is given a certificate or diploma by
7 the school for work in the approved course or subjects that indicates the
8 training was satisfactorily completed.
- 9 (7) Adequate records, as prescribed by the Board, are kept to show student
10 attendance, progress, or grades, and that satisfactory standards relating to
11 attendance, progress, and conduct are enforced.
- 12 (8) The school complies with all local, city, county, municipal, State, and federal
13 laws and regulations, including fire codes and building and sanitation codes.
14 The Board may require evidence of compliance as is deemed necessary.
- 15 (9) The school is financially sound and capable of fulfilling its commitments for
16 training.
- 17 (10) The school does not exceed its enrollment limitation, as established by the
18 Board.
- 19 (11) The school does not utilize advertising of any type which is erroneous or
20 misleading, either by actual statement, omission, or intimation.
- 21 (12) The school's administrators, directors, owners, and instructors are of good
22 reputation and character.
- 23 (13) Any additional criteria as may be deemed necessary by the Board.
- 24 (e) Any license issued to a proprietary school shall be restricted to the programs of
25 instruction or courses or subjects specifically indicated in the application for a license. The holder
26 of a license shall present a supplementary application, as may be directed by the Board, for
27 approval of additional programs of instruction, courses, or subjects in which it seeks to offer
28 instruction during the effective period of the license.
- 29 **§ 115F-45. Duration and renewal of licenses; notice of changes, including ownership and**
30 **administration; license not transferable.**
- 31 (a) All licenses issued to a proprietary school by the Board shall expire on June 30 each
32 year.
- 33 (b) Unless otherwise prescribed by the Board, licenses shall be renewable annually on
34 July 1 of each year if all of the following conditions are met:
- 35 (1) An application for the renewal of the license has been filed in the form and
36 manner prescribed by the Board.
- 37 (2) The renewal fee has been paid in full.
- 38 (3) The school and its courses, facilities, faculty, and all other operations are
39 found to meet the criteria set forth in the requirements for a school to secure
40 an initial license under this Chapter.
- 41 (c) After a license is granted to any proprietary school by the Board on the basis of its
42 application, the school shall notify the Board immediately of any material changes to the
43 operation of the school or its courses or programs as set forth in the application, including
44 changes in the ownership, administration, location, faculty, or the instructional program, or other
45 changes as may affect significantly the course of instruction offered.
- 46 (d) In the event of the sale or transfer of a proprietary school, a license granted to the
47 original owner or operators of a proprietary school shall not be transferable to subsequent owners
48 or operators. The Board may issue a 90-day temporary operating license to a proprietary school
49 upon its sale or transfer if the school held a valid, current license prior to the sale or transfer and
50 if the Board finds that the school is likely to qualify after the sale or transfer for a license under
51 this Chapter.

1 **"§ 115F-50. Suspension, revocation, or refusal of license; notice and hearing; judicial**
2 **review; grounds.**

3 (a) A refusal to issue, refusal to renew, suspension of, or revocation of a license by the
4 Board for a proprietary school under this section shall be subject to the provisions of Article 3 of
5 Chapter 150B of the General Statutes.

6 (b) A decision by the Board under this section to refuse to grant, refuse to renew, suspend,
7 or revoke a license for a proprietary school shall be subject to judicial review in accordance with
8 Article 4 of Chapter 150B of the General Statutes.

9 (c) The Board shall have the power to refuse to issue or renew any license and to suspend
10 or revoke any license issued to a proprietary school if the Board finds that an applicant for a
11 proprietary school or the holder of a proprietary school license has done one or more of the
12 following:

13 (1) Violated any of the provisions of this Chapter or any of the rules promulgated
14 by the Board for the administration of this Chapter.

15 (2) Knowingly presented to the Board false or misleading information relating to
16 approval or renewal of a license.

17 (3) Failed or refused to permit authorized representatives of the Board to inspect
18 the school or refused to make available to them at any time upon request full
19 information pertaining to matters within the purview of the Board under the
20 provisions of this Chapter.

21 (4) Perpetrated or committed fraud or deceit in advertising the school or in
22 presenting to the prospective students written or oral information relating to
23 the school, to employment opportunities, or to opportunities for enrollment in
24 other schools upon completion of the instruction offered in the school.

25 (5) Pled guilty, entered a plea of nolo contendere, or been found guilty of a crime
26 involving moral turpitude by a judge or jury in any state or federal court.

27 (6) Failed to provide or maintain premises, equipment, or conditions in a safe and
28 sanitary manner in accordance with such standards of the State or any of its
29 political subdivisions as are applicable to the premises and equipment.

30 (7) During the licensure period, employed teachers, supervisors, or administrators
31 who had not been approved by the Board.

32 (8) During the licensure period, failed to provide and maintain adequate premises,
33 equipment, materials, or supplies or exceeded the maximum enrollment for
34 which the school or class was licensed.

35 (9) During the licensure period, failed to provide and maintain adequate standards
36 of instruction or an adequate and qualified administrative, supervisory, or
37 teaching staff.

38 (10) Failed to pay license or renewal fees.

39 (11) Failed to provide a required bond or bond alternative.

40 (12) Failed to pay assessments into the Student Protection Fund.

41 **"§ 115F-55. Bonds required.**

42 (a) An applicant for a proprietary school license shall comply with the bond requirements
43 set forth in this section. The bond shall cover the potential loss by students of the proprietary
44 school of prepaid tuition and other payments made by them to a school licensed under this
45 Chapter by reason of the school ceasing to operate for any reason, including bankruptcy,
46 foreclosure, or the suspension, revocation, or nonrenewal of a school's license.

47 (b) An applicant for a proprietary school license shall file a bond with the Board executed
48 by the applicant as a principal and by a bonding company authorized to do business in this State.
49 The bond shall be payable to the Board, shall be conditioned on fulfillment of the school's
50 obligations, and shall remain in effect until cancelled by the bonding company. The bonding
51 company may cancel the bond upon 30 days' written notice to the Board.

1 (c) The application for a proprietary school initial license or renewal shall set forth the
2 calculations made by the applicant to determine the amount of bond required with the application.
3 The required amount shall be determined as follows:

4 (1) Initial licensure. – For an applicant for initial licensure of a school, the bond
5 amount shall be the amount determined by the Board that is adequate to
6 provide indemnification to any student or student's parent or guardian who has
7 suffered a loss of tuition, fees, or any other instructional-related expenses paid
8 to the school. A bond amount shall be at least twenty-five thousand dollars
9 (\$25,000).

10 (2) First five license renewals. – For the first five license renewal applications of
11 a school, the bond shall be in an amount equal to the greatest amount of
12 unearned paid tuition in the school's possession at any time during the prior
13 fiscal year. The bond amount shall be evaluated by the school quarterly and
14 reported to the Board. A quarterly evaluation requiring an increase of five
15 percent (5%) or more in the amount of the bond held by the school shall
16 require an immediate increase in the bond amount.

17 (3) Renewal for schools licensed at least six continuous years. – A guaranty bond
18 shall be required for license renewal for a school that has been continuously
19 licensed to operate for at least six years in the State, as follows:

20 a. If the balance of the Student Protection Fund is below the catastrophic
21 loss amount, the school shall file a guaranty bond in an amount equal
22 to the maximum amount of prepaid tuition held by the school during
23 the prior fiscal year multiplied by the percentage of the amount the
24 fund is deficient.

25 b. If the school held prepaid tuition in excess of the catastrophic loss
26 amount during the prior fiscal year, in addition to any bond amount
27 required by sub-subdivision a. of this subdivision, the school shall file
28 a guaranty bond for the difference between the prepaid tuition amount
29 held in the previous fiscal year and the catastrophic loss amount.

30 Notwithstanding the amounts set forth in this subsection, the Board may require any licensed
31 school to increase its bond if it determines the increase is necessary to provide indemnification
32 to any student or a student's parent or legal guardian who may suffer a loss of tuition, fees, or any
33 other instructional-related expenses paid to the school.

34 (d) An applicant for a proprietary school license who is unable to secure a bond may seek
35 a waiver of the guaranty bond from the Board and approval of one of the guaranty bond
36 alternatives set forth in this subsection. With the approval of the Board, an applicant may obtain
37 in lieu of a bond any of the following:

38 (1) An assignment of a savings account in an amount equal to the bond required
39 (i) that is in a form acceptable to the Board, (ii) that is executed by the
40 applicant, (iii) that is executed by a state or federal savings and loan
41 association, state bank, or national bank that is doing business in North
42 Carolina and whose accounts are insured by a federal depositors corporation,
43 and (iv) for which access to the account in favor of the State is subject to the
44 same conditions as for a bond in subsection (c) of this section.

45 (2) A certificate of deposit (i) that is executed by a state or federal savings and
46 loan association, state bank, or national bank that is doing business in North
47 Carolina and whose accounts are insured by a federal depositors corporation,
48 (ii) that is payable to North Carolina, (iii) that, if a negotiable certificate of
49 deposit, is unrestrictedly endorsed to the Board or, if a nonnegotiable
50 certificate of deposit, is assigned to the Board in a form satisfactory to the
51 Board, and (iv) for which access to the certificate of deposit in favor of the

State is subject to the same conditions as for a bond in subsection (c) of this section.

§ 115F-60. Student Protection Fund; payments; assessments.

(a) The Student Protection Fund is established in the Department of State Treasurer as a statewide fee-supported fund collected pursuant to this section. Interest accruing to the Student Protection Fund shall be credited to the Fund. The Board shall administer the Student Protection Fund in accordance with this section. The purpose of the Student Protection Fund is to compensate students enrolled in a proprietary school licensed under this Chapter who have suffered a loss of 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 if the school ceases to operate for any reason, including bankruptcy, foreclosure, or the suspension, revocation, or nonrenewal of a school's license.

(b) Prior to its first year of operation in the State, each proprietary school shall pay an initial amount of one thousand two hundred fifty dollars (\$1,250) into the Student Protection Fund.

(c) Each proprietary school operating in the State shall pay annually into the Student Protection Fund an amount based on its annual gross tuition revenue generated in the 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 one-twentieth of one percent (.05%) of annual gross tuition revenue over \$2,000,000.</u>

(d) If the Student Protection Fund balance is equal to or exceeds the fund cap amount, the Board shall suspend payments into the Fund for schools that have been continuously licensed in the State for more than eight years. The Board shall require schools to resume payments into the Student Protection Fund if the balance of the Fund is less than the catastrophic loss amount.

(e) If claims against the Student Protection Fund exceed the catastrophic loss amount, the Board may assess additional fees to the extent necessary to compensate students qualified for repayment under the Fund. The amount of the catastrophic assessment shall not exceed one-half of the amount of the annual revenue payment required by subsection (c) of this section. If the amount of the catastrophic assessment is insufficient to cover qualified claims, the Board shall develop a method of allocating funds among claims.

(f) The full and timely payment into the Student Protection Fund pursuant to this section is a condition of licensure.

(g) No payment to the Student Protection Fund shall be refunded in the event that a school's license application is rejected or a school's license is suspended or revoked.

(h) A student or the student's parent or guardian who has suffered a loss of tuition, fees, or any other instructional-related expenses paid to a proprietary school licensed under this Chapter by reason of the school ceasing to operate for any reason, including bankruptcy,

1 foreclosure, or the suspension, revocation, or nonrenewal of a school's license may qualify for
2 repayments under the Student Protection Fund. The Board first must issue repayment from the
3 bonds issued under G.S. 115F-55. If the Student Protection Fund is insufficient to cover the
4 qualified claims, the Board shall develop a method of allocating funds among claims.

5 (i) The Board shall adopt rules for the implementation of this section.

6 **"§ 115F-65. Contracts with unlicensed schools and evidences of indebtedness made null**
7 **and void.**

8 All contracts entered into by a proprietary school with students or prospective students and
9 all promissory notes or other evidence of indebtedness taken in lieu of cash payments by a
10 proprietary school shall be null and void unless the school is duly licensed as required by this
11 Chapter.

12 **"§ 115F-70. Operating school without license or bond; misdemeanor.**

13 Any person, or a member of any association of persons or an officer of any corporation, who
14 opens and operates a proprietary school without first obtaining the license required by this
15 Chapter, executing the bond required under G.S. 115F-55, and paying the assessments into the
16 Student Protection Fund under G.S. 115F-60, shall be guilty of a Class 3 misdemeanor. Each day
17 the school continues to be open and operated shall constitute a separate offense.

18 **"§ 115F-75. Enforcement; injunctive relief; civil penalties; disciplinary costs.**

19 (a) The Board or the Board's authorized representatives may make application to superior
20 court for an order enjoining a violation of this Chapter. Upon a showing by the Board that a
21 person has violated or is about to violate this Chapter, the court may grant an injunction or
22 restraining order or take any further action it deems appropriate. The court is empowered to grant
23 the requested relief regardless of whether criminal prosecution or other actions have been or may
24 be instituted as a result of the violation. Actions under this section shall be brought in the county
25 where the defendant resides or maintains his or her principal place of business or where the
26 alleged acts occurred.

27 (b) The Board may assess a civil penalty not in excess of one thousand dollars (\$1,000)
28 for the violation of any section of this Chapter or the violation of any rules adopted by the Board
29 to implement this Chapter. The continuation of the same act for which the penalty is imposed
30 shall not be the basis for an additional penalty unless the penalty is imposed against the same
31 party who has repeated the same act for which the discipline has previously been imposed. The
32 clear proceeds of any civil penalty assessed under this section shall be remitted to the Civil
33 Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. The Board shall establish a
34 schedule of civil penalties for violations of this Chapter. The assessment of civil penalties shall
35 be subject to the provisions of Article 3 of Chapter 150B of the General Statutes.

36 (c) Before imposing and assessing a civil penalty under this section, the Board shall
37 consider at least the following factors:

38 (1) The nature, gravity, and persistence of the particular violation.

39 (2) The appropriateness of the imposition of a civil penalty when considered alone
40 or in combination with other punishment.

41 (3) Whether the violation was willful and malicious.

42 (4) Any other factors that would tend to mitigate or aggravate the violations found
43 to exist.

44 (d) The Board may assess the costs of enforcement actions taken under this Chapter,
45 including reasonable attorneys' fees, and transcriptions of a disciplinary hearing held by the
46 Board or the Office of Administrative Hearings, to include the recording of the hearing by a court
47 reporter and transcription of the proceeding against any person found to be in violation of this
48 Chapter or rules adopted by the Board."

49 **SECTION 3.** G.S. 86A-22(7)a. reads as rewritten:

1 subsection if the applicant has provided an alternative to a guaranty bond
2 under ~~G.S. 115D-95(e)~~; G.S. 115F-55(d).

3"

4 **SECTION 8.** G.S. 126-5(c2)(4) reads as rewritten:

5 "(4) Employees of the Office of Proprietary Schools whose salaries are fixed by
6 the ~~State~~ North Carolina Board of Proprietary Schools in accordance with the
7 provisions of ~~G.S. 115D-89.2~~; G.S. 115F-30."

8 **SECTION 9.** G.S. 135-1.1 is amended by adding a new subsection to read:

9 "(c) Notwithstanding any other provision of this Chapter, a State board charged with the
10 duty of administering any law relating to the licensing of proprietary schools who is subject to
11 the provisions of the State Budget Act, Chapter 143C of the General Statutes, may make an
12 irrevocable election by October 1, 2019, to become an employer in the Teachers' and State
13 Employees' Retirement System. Retirement System coverage shall be conditioned on the board's
14 payment of all of the employer's contributions or matching funds from funds of the board and on
15 the board's collecting from its employees the employees' contributions, at such rates as may be
16 fixed by law and by the rules of the Board of Trustees of the Retirement System, all of such funds
17 to be paid to the Retirement System and placed in the appropriate funds."

18 **SECTION 10.** G.S. 135-48.1(11) reads as rewritten:

19 "(11) Employing Unit. – A North Carolina School System; Community College;
20 State Department, Agency, or Institution; Administrative Office of the Courts;
21 or ~~Association or Examining Association, Examining, or Licensing Board~~
22 whose employees are eligible for membership in a State-Supported
23 Retirement System. An employing unit also shall mean (i) a charter school in
24 accordance with Article 14A of Chapter 115C of the General Statutes whose
25 board of directors elects to become a participating employer in the Plan under
26 G.S. 135-48.54 or (ii) a local government unit that participates in the Plan
27 under G.S. 135-48.47 or under any other law. Bona fide fire departments,
28 rescue or emergency medical service squads, and National Guard units are
29 deemed to be employing units for the purpose of providing benefits under this
30 Article."

31 **SECTION 11.** Notwithstanding G.S. 115F-20, as enacted by this act, and Article 8
32 of Chapter 115D of the General Statutes, the members serving on the State Board of Proprietary
33 Schools as of the date this section becomes law who were appointed pursuant to G.S. 115D-89.1
34 shall (i) beginning September 1, 2019, serve in a dual capacity as members of the State Board of
35 Proprietary Schools, pursuant to Article 8 of Chapter 115D of the General Statutes, and as
36 members of the North Carolina Board of Proprietary Schools pursuant to Chapter 115F of the
37 General Statutes, as enacted by this act, until September 30, 2019, (ii) beginning October 1, 2019,
38 serve the remainder of their terms as members of the North Carolina Board of Proprietary Schools
39 established pursuant to Chapter 115F of the General Statutes, as enacted by this act, and (iii)
40 beginning October 1, 2019, assume the advisory duties and responsibilities of the State Board of
41 Proprietary Schools under Article 8 of Chapter 115D of the General Statutes in regard to any
42 proprietary school operating in this State under a license approved on or before October 1, 2019.
43 As the terms of the members serving on the North Carolina Board of Proprietary Schools in
44 accordance with this section expire, or when a vacancy occurs prior to the expiration of a term,
45 members on the Board shall be appointed in accordance with G.S. 115F-20, as enacted by this
46 act.

47 **SECTION 12.** The North Carolina Board of Proprietary Schools may enter into an
48 agreement with the State Board of Community Colleges to provide that the Community Colleges
49 System Office act as the fiscal agent for the North Carolina Board of Proprietary Schools and for
50 the Office of Proprietary Schools for the purpose of administering the Commercial Education
51 Fund established under G.S. 115F-35, formerly administered under G.S. 115D-92, and the

1 Student Protection Fund established under G.S. 115F-60, formerly administered under
2 G.S. 115D-95.1, until such time those funds may be established in accounts with the Department
3 of State Treasurer under the sole supervision and direction of the North Carolina Board of
4 Proprietary Schools in accordance with Chapter 115F of the General Statutes.

5 **SECTION 13.** Notwithstanding G.S. 115F-35, as enacted by this act, the fees for
6 applications, initial licensure, license renewal, and inspections performed of proprietary schools
7 pursuant to this Chapter for the North Carolina Board of Proprietary Schools shall be as follows,
8 until fees are established under G.S. 115F-35 in accordance with Article 2A of Chapter 150B of
9 the General Statutes:

- 10 (1) Initial license. – Three thousand two hundred dollars (\$3,200), plus fifty
11 dollars (\$50.00) per program submitted for licensure.
- 12 (2) Annual license renewal. – One thousand seven hundred dollars (\$1,700), plus
13 fifty dollars (\$50.00) per licensed program renewed and two hundred dollars
14 (\$200.00) for each new program submitted for licensure. A late fee of five
15 hundred dollars (\$500.00) may be assessed for any license renewal application
16 postmarked after March 15.
- 17 (3) Program additions submitted outside of the annual license renewal period. –
18 Two hundred dollars (\$200.00).
- 19 (4) Program revisions. – Two hundred dollars (\$200.00).
- 20 (5) School relocations. – Five hundred dollars (\$500.00).
- 21 (6) Remote sites. – One thousand dollars (\$1,000) initial site fee, plus an annual
22 renewal fee of seven hundred fifty dollars (\$750.00).
- 23 (7) Site assessments to verify compliance with statutes or rules or to approve
24 program additions or changes. – Five hundred dollars (\$500.00).

25 **SECTION 14.** Chapter 115F of the General Statutes, as enacted by this act, applies
26 to any person applying for an initial license or the renewal of a license for a proprietary school
27 on or after October 1, 2019.

28 **SECTION 15.** Section 1 of this act is effective October 1, 2019. The remainder of
29 this act is effective September 1, 2019.