

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 860\*  
Education/Higher Education Committee Substitute Adopted 6/17/09  
Finance Committee Substitute Adopted 7/2/09  
House Committee Substitute Favorable 7/14/09

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-93(c) is amended by adding two subdivisions to read:

"(10) That the applicant for or a holder of a license has failed to provide a required bond or bond alternative.

(11) That the applicant for or holder of a license has failed to pay assessments into the Student Protection Fund."

**SECTION 2.** G.S. 115D-95 reads as rewritten:

**"§ 115D-95. Bonds required.**

(a) Requirement. – An applicant for a license must comply with the bond requirements in this section. The bond covers the potential loss by students of the school of prepaid tuition and other payments made by them that could occur if the school fails, for any reason, to fulfill its obligations to them to provide instruction, services, or goods for which the students have paid tuition and other charges. Reasons for failure include the suspension, revocation, or nonrenewal of the school's license, bankruptcy, foreclosure, or termination of operations. A guaranty bond is required for each school that is licensed to operate: Provided, 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) Amount. – An applicant for a license must file a bond with the North Carolina State Board of Community Colleges executed by the applicant as a principal and by a bonding company authorized to do business in this State. The bond must be payable to the State Board of Community Colleges, must be conditioned on fulfillment of the school's obligations, and must remain in effect until cancelled by the bonding company. The bonding company may cancel the bond upon 30 days' notice to the State Board of Community Colleges.

The application must set out calculations made by the applicant to determine the amount of bond required with the application. The required amount is determined as follows:

(1) Initial licensure. – For an applicant for initial licensure of a school, the bond amount is the amount determined by the State Board that is adequate to provide indemnification to any student, or the student's parent or guardian who has suffered a loss of tuition, fees, or any other instructional-related



1 expenses paid to the school. A bond amount shall be at least twenty-five  
2 thousand dollars (\$25,000).

3 (2) First four renewals. – For a school that has been licensed for one year but  
4 less than six years, the bond shall be in an amount equal to the greatest  
5 amount of unearned paid tuition in the school's possession at any time during  
6 the prior fiscal year. The bond amount shall be evaluated by the school  
7 quarterly and reported to the State Board or its representative. A quarterly  
8 evaluation requiring an increase of five percent (5%) or more in the amount  
9 of the bond held by the school shall require an immediate increase in the  
10 bond amount. Bond amounts also shall be evaluated pursuant to this  
11 subdivision and the rules of the State Board at the time of the school's annual  
12 license renewal and increased if necessary regardless of the amount of the  
13 change.

14 (3) Schools in operation more than five years. – A guaranty bond shall be  
15 required for license renewal for a school that has been continuously licensed  
16 to operate for more than five years in the State, as follows:

17 a. If the balance of the Student Protection Fund in G.S. 115D-95.1 is  
18 below the catastrophic loss amount, the school shall file a guaranty  
19 bond in an amount equal to the maximum amount of prepaid tuition  
20 held by the school during the prior fiscal year multiplied by the  
21 percentage amount the fund is deficient.

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

28 (1) ~~When application is made for a license or license renewal, the applicant shall~~  
29 ~~file a guaranty bond with the clerk of the superior court of the county in~~  
30 ~~which the school will be located. The bond shall be in favor of the students.~~  
31 ~~The bond shall be executed by the applicant as principal and by a bonding~~  
32 ~~company authorized to do business in this State. The bond shall be~~  
33 ~~conditioned to provide indemnification to any student, or his parent or~~  
34 ~~guardian, who has suffered a loss of tuition or any fees by reason of the~~  
35 ~~failure of the school to offer or complete student instruction, academic~~  
36 ~~services, or other goods and services related to course enrollment for any~~  
37 ~~reason, including the suspension, revocation, or nonrenewal of a school's~~  
38 ~~license, bankruptcy, foreclosure, or the school ceasing to operate.~~

39 (2) ~~The bond shall be in an amount determined by the State Board of~~  
40 ~~Community Colleges to be adequate to provide indemnification to any~~  
41 ~~student, or his parent or guardian, under the terms of the bond. The bond~~  
42 ~~amount for a school shall be at least equal to the maximum amount of~~  
43 ~~prepaid tuition held at any time during the last fiscal year by the school. The~~  
44 ~~bond amount shall also be at least ten thousand dollars (\$10,000).~~

45 ~~Each application for a license shall include a letter signed by an~~  
46 ~~authorized representative of the school showing in detail the calculations~~  
47 ~~made and the method of computing the amount of the bond, pursuant to this~~  
48 ~~subdivision and the rules of the State Board. If the State Board finds that the~~  
49 ~~calculations made and the method of computing the amount of the bond are~~  
50 ~~inaccurate or that the amount of the bond is otherwise inadequate to provide~~

1 indemnification under the terms of the bond, the State Board may require the  
2 applicant to provide an additional bond.

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

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

12 (1) An assignment of a savings account in an amount equal to the bond required  
13 (i) which is in a form acceptable to the State Board of Community Colleges;  
14 (ii) which is executed by the applicant; and (iii) which is executed by a state  
15 or federal savings and loan association, state bank, or national bank, that is  
16 doing business in North Carolina and whose accounts are insured by a  
17 federal depositors corporation; and (iv) for which access to the account in  
18 favor of the State of North Carolina is subject to the same conditions as for a  
19 bond in subsection (b) of this section.

20 (2) A certificate of deposit (i) which is executed by a state or federal savings and  
21 loan association, state bank, or national bank, which is doing business in  
22 North Carolina and whose accounts are insured by a federal depositors  
23 corporation; and (ii) which is either payable to the State of North Carolina,  
24 unrestrictedly endorsed to the State Board of Community Colleges; in the  
25 case of a negotiable certificate of deposit, is unrestrictedly endorsed to the  
26 State Board of Community Colleges; or in the case of a nonnegotiable  
27 certificate of deposit, is assigned to the State Board of Community Colleges  
28 in a form satisfactory to the State Board; and (iii) for which access to the  
29 certificate of deposit in favor of the State of North Carolina is subject to the  
30 same conditions as for a bond in subsection (b) of this section."

31 **SECTION 3.** G.S. 115D-96 reads as rewritten:

32 **"§ 115D-96. Operating school without license or bond made misdemeanor.**

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

40 **SECTION 4.** Chapter 115D of the General Statutes is amended by adding a new  
41 section to read:

42 **"§ 115D-95.1. Student Protection Fund.**

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

44 (1) "Catastrophic loss amount" means the amount of funds required to protect  
45 prepaid student tuition in case of a large-scale event that would draw against  
46 the Student Protection Fund. The amount is one million dollars (\$1,000,000).

47 (2) "Fund cap amount" means the catastrophic loss amount plus a reserve  
48 amount. The amount is one million five hundred thousand dollars  
49 (\$1,500,000).

50 (b) Student Protection Fund. – The Student Protection Fund is established in the  
51 Department of State Treasurer as a statewide fee-supported fund. Interest accruing to the Fund

1 is credited to the Fund. The State Board of Community Colleges administers the Fund. The  
 2 purpose of the Fund is to compensate students enrolled in a proprietary school licensed under  
 3 this Article who have suffered a loss of tuition, fees, or any other instructional-related expenses  
 4 paid to the school by reason of the failure of the school to offer or complete student instruction,  
 5 academic services, or other goods and services related to course enrollment for any reason,  
 6 including the suspension, revocation, or nonrenewal of a school's license, bankruptcy,  
 7 foreclosure, or the school ceasing to operate.

8 (c) Student Protection Fund Advisory Committee. – The President of the North  
 9 Carolina Community College System shall appoint a Student Protection Fund Advisory  
 10 Committee. Members of the Committee shall be appointed for terms of three years. The  
 11 Committee shall advise the State Board of Community Colleges on matters related to the Fund,  
 12 including, but not limited to, the adjustment of the catastrophic loss amount and Fund cap  
 13 amount.

14 The Committee shall consist of seven members as follows:

- 15 (1) Three professional staff members of the Community Colleges System  
 16 Office.
- 17 (2) An owner/director of a proprietary school with less than 100 students, or the  
 18 owner/director's designee.
- 19 (3) An owner/director of a proprietary school with between 100 and 750  
 20 students, or the owner/director's designee.
- 21 (4) An owner/director of a proprietary school or group of proprietary schools  
 22 with more than 750 students, or the owner/director's designee.
- 23 (5) An owner/director of a proprietary school appointed at large, or the  
 24 owner/director's designee.

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

28 (e) Annual Revenue Payment. – Each proprietary school operating in the State shall pay  
 29 annually into the Fund an amount based on its annual gross tuition revenue generated in the  
 30 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</u> <u>percent (.05%) of annual gross tuition</u> <u>revenue over \$2,000,000.</u>

44  
 45  
 46 (f) Suspension of Payments. – If the Student Protection Fund balance is equal to or  
 47 exceeds the Fund cap amount, the State Board of Community Colleges shall suspend payments  
 48 into the Fund for schools that have been continuously licensed in the State for more than eight  
 49 years. The State Board shall require schools to resume payments into the Fund if the balance of  
 50 the Fund is less than the catastrophic loss amount.

1        (g) Catastrophic Assessments. – If claims against the Student Protection Fund exceed  
 2 the catastrophic loss amount, the State Board of Community Colleges may assess additional  
 3 fees to the extent necessary to compensate students qualified for repayment under the Fund.  
 4 The amount of the catastrophic assessment shall not exceed one-half of the amount of the  
 5 annual revenue payment required by subsection (e) of this section. If the amount of the  
 6 catastrophic assessment will be insufficient to cover qualified claims, the State Board shall  
 7 develop a method of allocating funds among claims.

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

10       (i) Payments Nonrefundable. – No payment to the Student Protection Fund shall be  
 11 refunded in the event that a school's license application is rejected or a school's license is  
 12 suspended or revoked.

13       (j) Student Repayment. – A student, or the student's parent or guardian, who has  
 14 suffered a loss of tuition, fees, or any other instructional-related expenses paid to a proprietary  
 15 school licensed under this Article by reason of the failure of the school to offer or complete  
 16 student instruction, academic services, or other goods and services related to course enrollment  
 17 for any reason, including the suspension, revocation, or nonrenewal of a school's license,  
 18 bankruptcy, foreclosure, or the school ceasing to operate, may qualify for repayments under the  
 19 Student Protection Fund. The State Board of Community Colleges first must issue repayment  
 20 from the bonds issued under G.S. 115D-95. If the Student Protection Fund is insufficient to  
 21 cover the qualified claims, the State Board must develop a method of allocating funds among  
 22 claims."

23        **SECTION 5.** In addition to the payments required under G.S. 115D-95.1, as a  
 24 condition of license renewal for the 2010-2011 fiscal year, each proprietary school shall pay  
 25 into the Student Protection Fund an amount based on its total enrollment for the previous  
 26 calendar year as follows:

Number of Students	Amount of Assessment
0-49	\$500.00
50-99	\$1,000
100-499	\$2,000
500-999	\$3,000
1,000-1,499	\$4,000
More than 1,500	\$5,000.

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

37        **SECTION 6.** This act becomes effective July 1, 2010.