

Senate Bill 333

By: Senators Albers of the 56th, Dugan of the 30th, Hatchett of the 50th, Robertson of the 29th, Gooch of the 51st and others

**AS PASSED**

A BILL TO BE ENTITLED

AN ACT

1 To amend Part 1A of Article 7 of Chapter 3 of Title 20 of the Official Code of Georgia  
2 Annotated, relating to nonpublic postsecondary educational institutions, so as to remove  
3 provisions related to agents and agent's permits; to repeal definitions of such terms; to  
4 provide for new exemptions from applicability of the part relating to certain programs for  
5 industry-specific certifications and certain short courses; to provide for expanded exemption  
6 from applicability of the part for certain programs where students obtain occupational  
7 training through employment experience; to require financial assessments for each institution  
8 applying for an initial or renewed authorization to operate; to revise bonding requirements;  
9 to revise Tuition Guaranty Trust Fund participation requirements; to eliminate the cap on  
10 such fund; to remove bankruptcy of a participating postsecondary educational institution as  
11 grounds for reimbursements from such fund; to provide for expanded opportunities for  
12 reimbursements from such fund; to provide for the suspension of authorization for a  
13 postsecondary educational institution to operate when it does not meet its obligations  
14 regarding such fund; to revise a definition; to provide for conforming changes; to provide for  
15 an effective date; to provide for related matters; to repeal conflicting laws; and for other  
16 purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

S. B. 333

18

**SECTION 1.**

19 Part 1A of Article 7 of Chapter 3 of Title 20 of the Official Code of Georgia Annotated,  
 20 relating to nonpublic postsecondary educational institutions, is amended in Code  
 21 Section 20-3-250.2, relating to definitions, by repealing and reserving paragraph (2) and by  
 22 revising paragraph (17) as follows:

23 "(17) 'Postsecondary activity' means:

24 (A) Awarding ~~awarding~~ a postsecondary degree or certificate; or

25 (B) Conducting ~~conducting~~ or offering study, experience, or testing for an individual;  
 26 ~~or certifying prior successful completion by an individual of study, experience, or~~  
 27 ~~testing under the representation that the individual successfully completing the study,~~  
 28 ~~experience, or testing will be awarded therefor, at least in part, a postsecondary degree~~  
 29 ~~or certificate~~ related to a field or profession associated with public health, public  
 30 welfare, or public safety, as determined by the commission in its sole discretion."

31

**SECTION 2.**

32 Said part is further amended in Code Section 20-3-250.3, relating to educational institutions  
 33 exempted from application of part, by revising paragraphs (2), (3), and (9) of subsection (a)  
 34 as follows:

35 "(2) Education sponsored by a bona fide trade, business, professional, or fraternal  
 36 organization, so recognized by the commission in its sole discretion, not for granting  
 37 degrees and solely for that organization's membership or offered on a no-fee basis, ~~not~~  
 38 ~~granting degrees~~ or developed and licensed by an industry recognized certification  
 39 provider, so recognized by the commission in its sole discretion, not for granting degrees;

40 (3) Education solely avocational or recreational in nature, or short courses, as determined  
 41 by the commission in its sole discretion, and institutions, ~~not granting degrees~~, offering  
 42 such education not for granting degrees exclusively;"

43 "(9) A school where the sole purpose of the instructional program is review or  
 44 preparation for a specific occupational examination recognized by a government agency  
 45 or bona fide trade, business, or fraternal organization and where the student's  
 46 occupational training received from another school or through employment experience  
 47 already makes the student eligible to sit for the examination;"

48 **SECTION 3.**

49 Said part is further amended in Code Section 20-3-250.5, relating to administration and  
 50 general powers and duties, by revising subsections (b) and (c) as follows:

51 "(b) The commission shall have the following powers and duties:

52 (1) To establish and promulgate standards, rules, regulations, and policies for carrying  
 53 out the provisions of this part and for the orderly operation of the commission. To  
 54 effectuate the purposes of this part, the commission may request from any department,  
 55 division, board, bureau, commission, or other agency of the state, and such agency shall  
 56 provide such information as will enable the commission to exercise properly its powers  
 57 and perform its duties under this part;

58 (2) To establish minimum criteria in conformity with Code Section 20-3-250.6, including  
 59 quality of education, ethical and business practices, health and safety, and fiscal  
 60 responsibility which applicants for authorization to operate ~~or for an agent's permit~~ shall  
 61 meet before such authorization ~~or permit~~ may be issued, and to continue such  
 62 authorization ~~or permit~~ in effect. The criteria to be developed under this paragraph shall  
 63 be such as will effectuate the purposes of this part but will not unreasonably hinder  
 64 legitimate educational innovation;

65 (3) To negotiate and enter into interstate reciprocity agreements with similar agencies  
 66 in other states and with the United States Department of Education if, in the judgment of  
 67 the commission, such agreements are or will be helpful in effectuating the purposes of  
 68 this part; but nothing contained in any such reciprocity agreement shall be construed as

69 limiting the commission's or the executive director's powers, duties, and responsibilities  
70 with respect to investigating independently or acting upon any application for  
71 authorization to operate or for renewal of such authorization to operate a nonpublic  
72 postsecondary educational institution, ~~or upon an application for issuance or renewal of~~  
73 ~~any agent's permit~~, or with respect to the enforcement of any provision of this part, or of  
74 any of the rules or regulations promulgated under this part;

75 (4) To promulgate rules, regulations, and procedures necessary or appropriate for the  
76 conduct of its work and the implementation of this part, and to hold such hearings as it  
77 may deem advisable or as required by law in developing such rules, regulations, and  
78 procedures, or in aid of any investigation or inquiry;

79 (5) To delegate to the executive director such administrative powers and duties, in  
80 addition to those powers and duties of the executive director otherwise specified in this  
81 part, as may be reasonably necessary to carry out effectively this part and to establish  
82 such administrative organization and procedures as may be reasonably necessary to carry  
83 out this part;

84 (6) To exercise other powers and duties implied but not enumerated in this subsection  
85 but in conformity with this part which, in the judgment of the commission, are necessary  
86 in order to carry out this part;

87 (7) To submit annually to the House Higher Education Committee, to the House  
88 Education Committee and the Senate Education and Youth Committee, and to the Senate  
89 Higher Education Committee an annual written report summarizing the activities of the  
90 commission in regard to its responsibilities, activities, and administration of this part;

91 (8) To receive and hold title to property, equipment, money, and materials;

92 (9) To contract with other state, federal, or local public or private schools and other  
93 entities, individuals, or other legal entities for the provision of services or activities the  
94 commission deems necessary; and

95 (10) To establish and promulgate regulations for qualified proprietary institutions whose  
96 students receive tuition equalization grants in accordance with the criteria set forth in  
97 subparagraph (B) of paragraph (2) of Code Section 20-3-411.

98 (c) The executive director of the Nonpublic Postsecondary Education Commission shall  
99 be appointed by the Governor. The executive director shall administer the provisions of  
100 this part as provided in this subsection and as provided by rules, regulations, and policies  
101 of the commission. The executive director shall have the following powers and duties:

102 (1) To employ such personnel as may be necessary to carry out the provisions of this part  
103 and in connection therewith to develop job descriptions for such personnel;

104 (2) To receive, investigate as he or she may deem necessary, and act upon applications  
105 for authorization to operate nonpublic postsecondary educational institutions ~~and upon~~  
106 ~~applications for agents' permits;~~

107 (3) To maintain separate lists of degree-granting nonpublic postsecondary educational  
108 institutions; and nondegree-granting postsecondary educational institutions, ~~and agents~~  
109 authorized to operate in this state under this part. Such lists shall be available for the  
110 information of the public;

111 (4) To receive and cause to be maintained as a permanent file copies of academic records  
112 in conformity with Code Section 20-3-250.17;

113 (5) To investigate as he or she may deem necessary on his or her own initiative or in  
114 response to any complaint lodged with him or her any person, group, or entity subject to,  
115 or reasonably believed by him or her to be subject to, the jurisdiction of this part; and, in  
116 connection therewith, to subpoena any persons, books, records, or documents pertaining  
117 to such investigation, which subpoenas shall be enforceable by any court of this state; to  
118 require answers in writing under oath to questions propounded by him or her; and to  
119 administer an oath or affirmation to any person in connection with any investigation; and

120 (6) To administer compliance with this part in accordance with standards, rules,  
121 regulations, and policies of the commission."

**SECTION 4.**

122

123 Said part is further amended in Code Section 20-3-250.6, relating to minimum standards for  
124 educational institutions, by revising subsections (a) and (c) as follows:

125 "(a) In establishing the criteria required by paragraph (2) of subsection (b) of Code  
126 Section 20-3-250.5, the commission shall observe and shall require ~~compliance with the~~  
127 ~~following minimum standards:~~

128 ~~(1) A~~ that a nonpublic postsecondary educational institution must be maintained and  
129 operated, or, in the case of a new institution, it must demonstrate that it can be maintained  
130 and operated in compliance with the following minimum standards:

131 ~~(A)~~(1) That the quality and content of each course or program of instruction, training,  
132 or study are such as may reasonably and adequately achieve the stated objective for  
133 which the course or program is offered;

134 ~~(B)~~(2) That the institution has adequate space, equipment, library and physical facilities,  
135 instructional materials, and personnel to provide education of good quality;

136 ~~(C)~~(3) That the education and experience qualifications of directors, administrators,  
137 supervisors, and instructors are such as may reasonably ensure that the students will  
138 receive education consistent with the objectives of the course or program of study and  
139 that each director and instructor shall satisfactorily meet educational qualifications and  
140 other requirements established by the commission;

141 ~~(D)~~(4) That the institution provides students and other interested persons with a catalog  
142 or other written description containing information describing the programs offered;  
143 program objectives; length of program; schedule of tuition, fees, and all other charges and  
144 expenses necessary for completion of the course of study; cancellation and refund  
145 policies consistent with standards adopted by the commission; prior year's enrollment,  
146 graduation, and job placement rates; and such other material facts concerning the  
147 institution and the program or course of instruction as are reasonably likely to affect the  
148 decision of the student to enroll therein, together with any other disclosures specified by

149 the executive director or defined in the rules and regulations of the commission; and that  
150 such information is provided to prospective students prior to enrollment;

151 ~~(E)~~(5) That upon satisfactory completion of training, the student is given appropriate  
152 educational credentials by such institution indicating that such course or courses of  
153 instruction or study have been satisfactorily completed by said student;

154 ~~(F)~~(6) That adequate records are maintained by the institution to show attendance,  
155 progress, or grades and that satisfactory standards are enforced relating to attendance,  
156 progress, and performance;

157 ~~(G)~~(7) That the institution is maintained and operated in compliance with all pertinent  
158 ordinances and laws, including rules and regulations, relative to the safety and health of  
159 all persons upon the premises;

160 ~~(H)~~(8) That the institution is financially sound and capable of fulfilling its commitments  
161 to students;

162 ~~(I)~~(9) That ~~neither~~ the institution ~~nor its agents~~ does not engage in advertising, sales,  
163 collection, credit, or other practices of any type which are false, deceptive, misleading,  
164 or unfair;

165 ~~(J)~~(10) That the chief executive officer, trustees, directors, owners, administrators,  
166 supervisors, agents, staff, and instructors are of good reputation and character and that  
167 each institution has an education director who meets the requirements established by the  
168 commission for such position which requirements shall be substantially related to the  
169 predominant course offerings at that institution;

170 ~~(K)~~(11) That the student housing owned, maintained, or approved by the institution, if  
171 any, is appropriate, safe, and adequate and meets all local fire, safety, and health codes;

172 ~~(L)~~(12) That the institution has and maintains a reasonable and proper policy, consistent  
173 with standards adopted by the commission, for the refund of the unused portion of tuition,  
174 fees, housing or dormitory fees, and any other charges in the event a student enrolled by  
175 the institution fails to begin a course or withdraws or is discontinued therefrom prior to

176 completion, which policy shall take into account those costs to the institution that are not  
177 diminished by the failure of the student to enter or complete the course of instruction;  
178 ~~(M)(13)~~ That the institution maintains a policy of allowing any student a minimum of 72  
179 hours from the date of the contract or agreement to cancel any contract or rescind any  
180 agreement to become a student at the institution and that in the event of any such  
181 cancellation or rescission, the student shall receive a refund of the total tuition and fees,  
182 if any, paid to the institution at the time of or in connection with the execution of the  
183 contract or agreement and that such policy shall be a clearly stated part of any written  
184 contract or agreement required of students attending the institution; and  
185 ~~(N)(14)~~ That the institution posts continuously in a conspicuous place a notice, in such  
186 form as required by the commission, which sets forth the procedures for filing a  
187 complaint with the commission for any alleged violation of this part.  
188 ~~(2) An applicant for an agent's permit shall be an individual of good reputation and~~  
189 ~~character and shall represent only a nonpublic postsecondary educational institution or~~  
190 ~~institutions which meet the minimum standards established in this Code section and the~~  
191 ~~criteria established under paragraph (2) of subsection (b) of Code Section 20-3-250.5."~~  
192 "(c) Institutions otherwise exempt from certain provisions of this part under paragraphs (7),  
193 (10), (11), and (13) of subsection (a) of Code Section 20-3-250.3 shall be required to meet  
194 the standards of financial soundness and being capable of fulfilling commitments to  
195 students as provided in ~~subparagraph (a)(1)(H)~~ paragraph (8) of subsection (a) of this Code  
196 section, and, because of such requirement, each such institution shall provide the  
197 commission with audited financial statements as performed by an independent certified  
198 public accountant and at such times as the commission shall require. The commission may  
199 impose a fee to be paid by such institutions to offset the cost of receiving and reviewing  
200 such audited financial statements. Institutions otherwise exempt from certain provisions  
201 of this part under subsection (c) of Code Section 20-3-250.3 shall be required to submit  
202 annual financial reports to the commission when applying for annual renewal of exemption



203 or authorization using the reporting format provided by the commission. In addition  
204 thereto, institutions otherwise exempt from certain provisions of this part under  
205 paragraph (10) of subsection (a) of Code Section 20-3-250.3 shall be subject to the  
206 requirements of Code Sections 20-3-250.8, 20-3-250.10, and 20-3-250.27. The reports to  
207 the Governor and to the General Assembly required by subsection (h) of Code  
208 Section 20-3-250.27 shall include a summary of the commission's findings from its review  
209 of audited financial statements required by this subsection."

210

**SECTION 5.**

211 Said part is further amended in Code Section 20-3-250.7, relating to prohibited activities of  
212 persons, agents, groups, or entities, by revising subsections (a), (b), (e), and (f) as follows:  
213 "(a) No person, ~~agent~~, group, or entity of whatever kind, alone or in concert with others,  
214 shall:

215 (1) Operate in this state a nonpublic postsecondary educational institution or conduct  
216 postsecondary activities in this state unless issued a current certificate of valid  
217 authorization by the executive director;

218 (2) Offer postsecondary instruction leading to a postsecondary degree or certificate to  
219 Georgia residents from a location outside this state by correspondence or any  
220 telecommunications or electronic media technology unless issued a current certificate of  
221 valid authorization;

222 (3) Solicit prospective students without being authorized by the executive director to do  
223 so and without being bonded if required to do so by Code Section 20-3-250.10;

224 ~~(4) Offer, as or through an agent, enrollment or instruction in, or the granting of~~  
225 ~~educational credentials from, a postsecondary educational institution not exempted from~~  
226 ~~this part, whether such institution is within or outside this state, unless such agent is a~~  
227 ~~natural person and has a currently valid agent's permit issued pursuant to this part; or~~  
228 ~~accept contracts or enrollment applications from an agent who does not have a current~~

229 permit as required by this part; but the commission may promulgate rules and regulations  
230 to permit the rendering of legitimate public information services without such permit;  
231 ~~(5)~~(4) Make or cause to be made any statement or representation, oral, written, or visual,  
232 in connection with the offering or publicizing of a course, if such person knows or  
233 reasonably should have known the statement or representation to be false, deceptive,  
234 substantially inaccurate, or misleading;

235 ~~(6)~~(5) Instruct or educate, or offer to instruct or educate, including advertising or  
236 soliciting for such purpose, enroll or offer to enroll, contract or offer to contract with any  
237 person for such purpose, or award any educational credential, or contract with any  
238 institution or party to perform any such act, in this state, whether such person, ~~agent~~,  
239 group, or entity is located within or outside this state, unless such person, ~~agent~~, group,  
240 or entity observes and is in compliance with the minimum standards set forth in Code  
241 Section 20-3-250.6, the criteria established by the commission pursuant to paragraph (2)  
242 of subsection (b) of Code Section 20-3-250.5, and the rules and regulations adopted by  
243 the commission;

244 ~~(7)~~(6) Promise or guarantee employment utilizing information, training, or skill  
245 purported to be provided or otherwise enhanced by a course, unless the promisor or  
246 guarantor offers the student or prospective student a bona fide contract of employment  
247 agreeing to employ said student or prospective student for a specified period of time in  
248 a business or other enterprise regularly conducted by him or her where such information,  
249 training, or skill is a normal condition of employment;

250 ~~(8)~~(7) Do any act constituting part of the conduct or administration of a course or the  
251 obtaining of students thereof, if such person knows or reasonably should know that any  
252 phase or incident of the conduct or administration of the course is being carried on by the  
253 use of fraud, deception, other misrepresentation, or by any person soliciting students  
254 without a permit; or

255 ~~(9)~~(8) Grant, or offer to grant, postsecondary degrees, diplomas, certificates, or honorary  
256 or unearned degrees without authorization to do so from the commission.

257 (b) No person, ~~agent~~, group, or entity of whatever kind shall use the term 'college' or  
258 'university' without authorization to do so from the commission unless it was doing so prior  
259 to July 1, 1985, or is otherwise authorized to do so under this part. Nonpublic  
260 postsecondary educational institutions operating in this state which are otherwise exempted  
261 from this part pursuant to Code Section 20-3-250.3 shall be subject to the provision of this  
262 subsection."

263 "(e) Any contract entered into with any person for any course of instruction by or on behalf  
264 of any owner, employee, ~~agent~~, or other representative of a nonpublic postsecondary  
265 educational institution subject to this part to which a certificate of authorization has not  
266 been issued shall be unenforceable in any action brought thereon.

267 (f) Any person, group, or entity or any owner, officer, ~~agent~~, or employee thereof who  
268 willfully violates this Code section, Code Section 20-3-250.8, or willfully fails or refuses  
269 to deposit with the executive director the records required by Code Section 20-3-250.17  
270 shall be guilty of a misdemeanor. Each day's failure to comply with such Code sections  
271 shall be a separate violation. Such criminal sanctions may be imposed by a court of  
272 competent jurisdiction in an action brought by the Attorney General or a district attorney  
273 pursuant to Code Section 20-3-250.18."

274 **SECTION 6.**

275 Said part is further amended in Code Section 20-3-250.8, relating to application to operate  
276 or conduct postsecondary activities, by revising subsections (a) and (b) as follows:

277 "(a) Each nonpublic postsecondary educational institution desiring to operate or conduct  
278 postsecondary activities in this state shall make application to the commission, upon forms  
279 to be provided by the commission. Such application shall be accompanied by a catalog or  
280 other written description published, or proposed to be published, by the institution,

281 containing the information specified in ~~subparagraph (a)(1)(D)~~ paragraph (4) of  
282 subsection (a) of Code Section 20-3-250.6, including information required by rules and  
283 regulations of the commission. Such application shall also be accompanied by evidence  
284 of a surety bond if required by Code Section 20-3-250.10 and subsection (c) of Code  
285 Section 20-3-250.27 and shall be accompanied by payment of the fees specified in Code  
286 Section 20-3-250.11; provided, however, that when making application to the commission  
287 for authorization to operate, those institutions exempt from certain provisions of this part  
288 pursuant to the provisions of paragraph (10) of subsection (a) of Code Section 20-3-250.3  
289 or subsection (c) of Code Section 20-3-250.3 shall be required to submit only those  
290 documents pertaining to provisions of this part from which such institutions are not  
291 exempt.

292 (b) A nonpublic postsecondary educational institution shall not operate or conduct  
293 postsecondary activities in any building in which that institution did not previously operate  
294 or conduct postsecondary activities unless the institution obtains authorization to operate  
295 or conduct those activities in that building as a branch facility. An application for  
296 authorization to operate any branch facility shall be accompanied by catalogs, other written  
297 documents, evidence of bond if a bond is required, and payment of fees as required for an  
298 initial application pursuant to subsection (a) of this Code section."

299 **SECTION 7.**

300 Said part is further amended by repealing and reserving Code Section 20-3-250.9, relating  
301 to application by persons to solicit or perform services of agent.

302 **SECTION 8.**

303 Said part is further amended by revising subsections (a), (b), and (c) of Code  
304 Section 20-3-250.10, relating to surety bonds, filing, amount, release of surety, and  
305 suspension upon release of surety, as follows:

306 "20-3-250.10.

307 (a) As part of the application review process, the commission shall conduct a financial  
308 assessment of each institution that applies to the commission for initial or renewed  
309 authorization to operate. At the time an initial application or application for a branch  
310 facility is made for authorization to operate or in the event of a change of ownership as  
311 provided for in subsection (f) of Code Section 20-3-250.8; If a financial assessment  
312 includes findings or notes raising concern about such applicant's institutional internal  
313 controls or recommends that such applicant should be placed on financial monitoring  
314 status, the executive director in his or her sole discretion may require shall require the  
315 nonpublic postsecondary educational institution making such application such applicant  
316 to file with the executive director commission a good and sufficient surety bond in such  
317 sum and with such surety or sureties as the executive director may require. Such bond shall  
318 be conditioned upon the faithful performance of the applicant's obligations under this part  
319 and the rules, regulations, and policies of the commission. Such obligations shall include,  
320 but shall not be limited to, the institution's duties regarding responsibility for negligence,  
321 proper management of the institution's accounting, management, and other internal  
322 controls, and other requirements of this part. as determined by subsection (b) of this Code  
323 section. Such bond shall be executed by the applicant as principal and by a surety company  
324 qualified and authorized to do business in this state. The Such bond shall also be  
325 conditioned to provide indemnification to the Tuition Guaranty Trust Fund established in  
326 Code Section 20-3-250.27 and to any student or enrollee or that person's parent or guardian  
327 or class thereof determined to have suffered loss or damage as a result of any act or practice  
328 which is a violation of this part or of rules and regulations promulgated pursuant thereto  
329 by such nonpublic postsecondary educational institution and that the bonding company  
330 shall pay any final, nonappealable judgment rendered by the commission or any court of  
331 this state having jurisdiction, upon receipt of written notification thereof. If a bond is in  
332 force at the time of an institutional closure, the surety shall be required to remit the full face

333 value of the bond. Regardless of the number of years that such bond is in force, the  
 334 aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond.  
 335 The bond may be continuous. Such bond shall be executed by the applicant as principal  
 336 and by a surety company qualified and authorized to do business in this state with at least  
 337 a B+ bond rating. Such bond shall remain in effect until the institution's authorization to  
 338 operate terminates or the commission determines that the institution's financial or other  
 339 issues requiring the bond have been resolved to the satisfaction of the executive director  
 340 in his or her sole discretion.

341 (b) ~~The minimum amount of the bond required by subsection (a) of this Code section shall~~  
 342 ~~be based on the gross tuition of the nonpublic postsecondary educational institution during~~  
 343 ~~the previous year or on the estimated gross tuition for the current year, whichever is larger,~~  
 344 ~~and shall be as follows:~~

<u>Gross Tuition</u>	<u>Minimum Bond</u>
345 \$ <del>0.00</del> = \$ <del>50,000.00</del> . . . . .	\$ <del>20,000.00</del>
346 <del>50,001.00</del> = <del>100,000.00</del> . . . . .	<del>30,000.00</del>
347 <del>100,001.00</del> = <del>200,000.00</del> . . . . .	<del>50,000.00</del>
348 <del>200,001.00</del> = <del>300,000.00</del> . . . . .	<del>75,000.00</del>
349 <del>300,001.00</del> = <del>400,000.00</del> . . . . .	<del>100,000.00</del>
350 <del>400,001.00</del> = <del>500,000.00</del> . . . . .	<del>150,000.00</del>
351 <del>500,001.00</del> = <del>1,000,000.00</del> . . . . .	<del>200,000.00</del>
352 <del>1,000,001.00</del> = <del>2,000,000.00</del> . . . . .	<del>300,000.00</del>
353 <del>2,000,001.00 and over</del> . . . . .	<del>450,000.00</del>

355 ~~For situations where a nonpublic postsecondary educational institution is unable to secure~~  
 356 ~~a bond amount provided for by this subsection, a bank standby letter of credit secured from~~  
 357 ~~a federally insured financial institution shall be accepted pursuant to rules and regulations~~  
 358 ~~of the commission. Institutions with \$1,000,001.00 or more in the previous year's gross~~

359 ~~tuition or estimated gross tuition, whichever is larger, that are authorized and bonded prior~~  
 360 ~~to July 1, 2021, shall not be subject to the \$300,000.00 or the \$450,000.00 bonding~~  
 361 ~~requirement unless a change of ownership occurs after July 1, 2021.~~

362 ~~(e)(b)~~ If the bond filed with the initial application to operate remains in effect, it shall be  
 363 sufficient when an application is made for the renewal of authorization to operate, unless  
 364 the amount of the bond must be increased because of increased gross tuition to comply with  
 365 requirements of ~~subsection (b) of this Code section~~ set forth by the commission."

366 **SECTION 9.**

367 Said part is further amended in Code Section 20-3-250.11, relating to collection of fees  
 368 established by commission, by revising subsection (a) as follows:

369 "(a)(1) Fees shall be collected by the executive director in such amounts as shall be  
 370 established by the commission. The commission is authorized to establish the following  
 371 fees and fee schedules:

372 ~~(1)~~(A) Separate initial application and renewal fee schedules for degree-granting and  
 373 nondegree-granting nonpublic postsecondary educational institutions based upon the  
 374 commission's relative cost of performing its duties and responsibilities with regard to  
 375 those categories of institutions and, within those categories, based upon actual or  
 376 projected gross tuition of those institutions;

377 ~~(2) Initial and renewal fees for agents' permits;~~

378 ~~(3)~~(B) Special fees for the evaluation of postsecondary educational institutions;

379 ~~(4)~~(C) Fees authorized pursuant to Code Section 20-3-250.27; and

380 ~~(5)~~(D) Special fees to offset other identified administrative costs.

381 (2) All fees collected pursuant to this part, except fees collected pursuant to Code  
 382 Section 20-3-250.27, shall be deposited in the state treasury to the credit of the general  
 383 fund, and no fees collected under this part shall be subject to refund, except as provided  
 384 in Code Section 20-3-250.27. Except as otherwise indicated in this part, the fees to be

385 collected by the commission under this part shall accompany an application for  
386 authorization to operate ~~or an agent's permit.~~"

387 **SECTION 10.**

388 Said part is further amended in Code Section 20-3-250.12, relating to denial of application  
389 for agent's permit, by revising subsections (a) and (c) as follows:

390 "(a) If the executive director, upon review and consideration of an application for  
391 authorization to operate ~~or for an agent's permit~~ or for renewal thereof, ~~shall determine~~  
392 determines that the applicant fails to meet the criteria established as provided in this part,  
393 the executive director shall so notify the applicant, setting forth the reasons therefor in  
394 writing, and shall deny the application."

395 "~~(c) In the event the executive director denies an application for an agent's permit or for~~  
396 ~~renewal thereof, he shall notify the institution or institutions which such agent represented~~  
397 ~~or proposed to represent, according to the records of the commission, including the reasons~~  
398 ~~therefor.~~"

399 **SECTION 11.**

400 Said part is further amended by revising Code Section 20-3-250.13, relating to revocation  
401 of agent's permit, conditional permits, and hearing, as follows:

402 "20-3-250.13.

403 (a) An authorization to operate ~~or an agent's permit~~ may be revoked or made conditional  
404 after its issuance if the executive director has reasonable cause to believe that the holder  
405 of such authorization ~~or permit~~ has violated or is violating this part or any rules and  
406 regulations promulgated pursuant thereto. Prior to such revocation or imposition of  
407 condition, the executive director shall notify the holder of the authorization ~~or permit~~ in  
408 writing of the impending action, setting forth the grounds for the action contemplated to  
409 be taken and advising ~~the holder of a permit~~ that if a hearing is requested, in writing, within



410 ten days of receipt of such notice, the executive director shall set a time and place for a  
411 hearing at which the holder of the authorization ~~or permit~~ may be heard in response to the  
412 allegation of noncompliance with this part or rules and regulations promulgated pursuant  
413 to this part.

414 (b) If a hearing is requested as provided in subsection (a) of this Code section, such  
415 hearing shall be conducted as provided in subsection (d) of Code Section 20-3-250.15, and  
416 the holder of the authorization ~~or permit~~ shall have the rights set forth in that Code section.  
417 The decision of the commission shall be made as provided in subsection (e) of Code  
418 Section 20-3-250.15 and shall be deemed final, subject to the right of judicial review  
419 provided for by Code Section 20-3-250.16. ~~In the event an agent's permit is revoked or a~~  
420 ~~condition is imposed thereon, the executive director shall notify the institution or~~  
421 ~~institutions which such agent was permitted to represent, as shown in the records of the~~  
422 ~~commission, in addition to the notice required to be given to the agent and any other parties~~  
423 ~~to the hearing."~~

424

## SECTION 12.

425 Said part is further amended in Code Section 20-3-250.14, relating filing complaint against  
426 institution or agent by revising subsections (a) and (c) as follows:

427 "(a) Any person claiming damage or loss as a result of any act or practice by a nonpublic  
428 postsecondary educational institution ~~or its agent, or both~~, which is a violation of this part  
429 or of the rules and regulations promulgated pursuant thereto may file with the executive  
430 director a complaint against such institution ~~or against its agent, or both~~. A complaint shall  
431 be filed with the executive director within a reasonable period of time, as determined by  
432 regulations of the commission, after the event giving rise to the complaint. The complaint  
433 shall set forth the alleged violation and shall contain such other information as may be  
434 required by the commission. A complaint may also be filed with the executive director by

435 the commission's representatives or by the Attorney General. A complainant may also file  
436 with the executive director as a representative of a class of complainants."

437 "(c) If, based upon all the evidence at a hearing or other procedure, the executive director  
438 ~~shall find~~ finds that a nonpublic postsecondary educational institution ~~or its agent, or both,~~  
439 ~~have has~~ engaged in or ~~are is~~ engaging in any act or practice which violates this part or the  
440 rules and regulations promulgated pursuant thereto, the executive director shall issue and  
441 cause to be served upon such institution ~~or agent, or both,~~ an order requiring such  
442 institution ~~or agent, or both,~~ to cease and desist from such act or practice. Additionally, if  
443 the executive director ~~shall find~~ finds that the complainant or class of complainants has  
444 suffered loss or damage as a result of such act or practice, the executive director may, at  
445 his or her discretion, award the complainant or class of complainants full or partial  
446 restitution for such damage or loss and may impose the penalties provided for in Code  
447 Section 20-3-250.21. The executive director may also, as appropriate, based on his or her  
448 own investigation or the evidence adduced at such hearing or on the basis of such  
449 investigation and evidence, commence an action to revoke an institution's authorization to  
450 operate ~~or revoke an agent's permit."~~

451

### SECTION 13.

452 Said part is further amended in Code Section 20-3-250.15, relating to hearing and review by  
453 commission of denial of permit, by revising subsection (a) as follows:

454 "(a) Any person aggrieved by a decision of the executive director respecting denial of an  
455 authorization to operate ~~or of an agent's permit~~ or the placing of conditions thereon,  
456 whether on initial application or on application for renewal, or by a decision of the  
457 executive director revoking an institution's authorization to operate ~~or an agent's permit~~ and  
458 any person aggrieved by the imposition of a penalty by the executive director under Code  
459 Section 20-3-250.21 shall have the right to a hearing and review of such decision by the  
460 commission as provided in this Code section."

461

**SECTION 14.**

462 Said part is further amended by revising Code Section 20-3-250.18, relating to initiation of  
463 court proceedings by executive director, as follows:

464 "20-3-250.18.

465 (a) The Attorney General of this state or the district attorney of any judicial circuit in  
466 which a nonpublic postsecondary educational institution ~~or an agent thereof~~ is found, at the  
467 request of the executive director or on his or her own motion, may bring any appropriate  
468 action or proceeding in any court of competent jurisdiction for the enforcement of this part.

469 (b) Whenever it shall appear to the executive director that any person, ~~agent~~, group, or  
470 entity is about to violate or has been violating any of the provisions of this part or any of  
471 the lawful rules, regulations, or orders of the executive director, the executive director may,  
472 on his or her own motion or on the written complaint of any person, file a petition for  
473 injunction in the name of the commission in any court of competent jurisdiction in this state  
474 against such person, group, or entity for the purpose of enjoining such violation or for an  
475 order directing compliance with this part and all rules, regulations, and orders issued  
476 pursuant thereto. It shall not be necessary that the executive director allege or prove that  
477 he or she has no adequate remedy at law. The right of injunction provided in this Code  
478 section shall be in addition to any other legal remedy which the executive director has and  
479 shall be in addition to any right of criminal prosecution provided by law, but the executive  
480 director shall not obtain a temporary restraining order without notice to the person, group,  
481 or entity affected. The existence of an action of the executive director with respect to  
482 alleged violations of this part shall not operate as a bar to an action for injunctive relief  
483 pursuant to this Code section."

484

**SECTION 15.**

485 Said part is further amended by revising Code Section 20-3-250.21, relating to fines for  
486 violations, as follows:

487 "20-3-250.21.

488 Any person, group, or entity or any owner, officer, ~~agent~~, or employee thereof who shall  
489 willfully violate Code Section 20-3-250.7 or 20-3-250.8 or who shall fail or refuse to  
490 deposit with the executive director the records required by Code Section 20-3-250.17 shall  
491 be subject to a civil penalty not to exceed \$1,000.00 for each violation. Each day's failure  
492 to comply with such Code sections shall be a separate violation. Such fine may be imposed  
493 by the executive director in an administrative proceeding or by any court of competent  
494 jurisdiction. The commission shall adopt a schedule of regularly imposed fines for  
495 violations of this part and shall have such schedule published by the executive director."

496

### SECTION 16.

497 Said part is further amended in Code Section 20-3-250.27, relating to Tuition Guaranty Trust  
498 Fund, by revising subsections (c), (d), and (g) and by adding a new subsection to read as  
499 follows:

500 "(c)(1) All postsecondary educational institutions operating in this state, except those  
501 which are exempt from the provisions of this Code section pursuant to Code  
502 Section 20-3-250.3, shall participate in the tuition guaranty fund. Those postsecondary  
503 educational institutions specified in paragraphs (10) and (14) of subsection (a) of Code  
504 Section 20-3-250.3 and in subsection (c) of Code Section 20-3-250.3 shall participate in  
505 the tuition guaranty fund.

506 (2) Postsecondary educational institutions which were authorized to operate in this state  
507 prior to July 1, 1990, and which have maintained continuous authorization in this state  
508 since July 1, 1990, and institutions which have been continuously licensed since  
509 July 1, 1990, pursuant to the provisions of Title 43 and were authorized by the  
510 commission prior to July 1, ~~1992~~ 2022, shall participate in the fund and shall not be  
511 required to provide surety bonds as provided in Code Section 20-3-250.10; provided,

512 however, that any surety bond provided by an institution before July 1, ~~1992~~ 2021, shall  
513 remain in effect for one full year after the effective date of such surety bond.

514 (3) Postsecondary educational institutions which are currently authorized to operate in  
515 this state and which were first authorized to operate in this state on or after July 1, 1990,  
516 shall participate in the fund for ~~five~~ seven years of ~~continuous~~ authorized operation;  
517 provided, however, that no postsecondary educational institution first authorized to  
518 operate in this state on or after July 1, 1990, which fully participated in the fund for five  
519 years on or before January 1, 2022, shall be required to participate in the fund for seven  
520 years as otherwise provided in this paragraph and shall provide the surety bonds required  
521 in Code Section 20-3-250.10; provided, however, that such surety bonds shall no longer  
522 be required of any such institutions which have maintained five full years of continuous  
523 authorized operation to the present. Any institution which fails to maintain continuous  
524 authorization in this state, and which subsequently applies for reinstatement of its  
525 certificate of authorization, must provide a surety bond for five full years following  
526 reinstatement of authorization.

527 (4) Following a change of ownership, as provided for in subsection (f) of Code  
528 Section 20-3-250.8, a postsecondary educational institution may be required to participate  
529 in the fund for a period of up to seven years as determined by the executive director in  
530 his or her sole discretion.

531 (d)(1) In addition to any other fees required by this part, the commission shall by  
532 regulation establish fees to be paid annually by postsecondary educational institutions for  
533 participation in the tuition guaranty fund. The fees shall be based on gross tuition  
534 collected during a year by each postsecondary educational institution. If an institution  
535 has not operated for a full year, its participation fee shall be based initially on its  
536 projected gross tuition for the first full year of operation. At the conclusion of the first  
537 year, the fee for that year shall be adjusted to reflect actual gross tuition. The annual fee  
538 established by the commission shall be sufficient, when added to the earnings of the fund,

539 to create a balance in the fund of at least ~~\$500,000.00~~ \$10 million by July 1, ~~1997~~ 2040.  
540 The board of trustees shall notify the commission when the fund balance exceeds  
541 ~~\$500,000.00~~ \$10 million, and, except as otherwise provided in paragraph (2) of this  
542 subsection, upon receiving such notification, the commission shall cease collection of  
543 participation fees from postsecondary educational institutions which have contributed to  
544 the fund for at least five years. The commission, upon notification from the board of  
545 trustees, shall reestablish collection of participation fees from such participating  
546 postsecondary educational institutions at any time the fund balance is less than  
547 ~~\$475,000.00~~ \$4 million. At such time, fees shall be collected from such participating  
548 institutions according to a schedule adopted by the commission based on gross tuition in  
549 amounts sufficient to raise the fund balance to ~~\$500,000.00~~ \$10 million.

550 (2) Each postsecondary educational institution which is first authorized to operate in this  
551 state after July 1, 1992, and is required to participate in the fund for ~~five~~ seven years of  
552 ~~continuous~~ authorized operation under the provisions of paragraph (3) of subsection (c)  
553 of this Code section shall be required to pay participation fees for such period of time  
554 notwithstanding the amount in the tuition guaranty fund. If the balance in the fund  
555 exceeds ~~\$500,000.00~~ \$10 million, participation fees shall be collected from each such  
556 institution according to the fee schedule adopted by the commission pursuant to  
557 paragraph (1) of this subsection. No postsecondary educational institution first  
558 authorized to operate in this state on or after July 1, 1992, which fully participated in the  
559 fund for five years on or before January 1, 2022, shall be required to participate in the  
560 fund for seven years as otherwise provided in this paragraph.

561 ~~(3) If earnings from investments, participation fees required under paragraph (2) of this~~  
562 ~~subsection, and claims experience ever cause the balance in the fund to exceed \$7.75~~  
563 ~~million, the commission, upon being notified by the board of trustees, shall make refunds~~  
564 ~~to postsecondary educational institutions which have participated in the fund for at least~~  
565 ~~five years, so that the fund balance is reduced to \$7.5 million. Any such refund shall be~~

566 ~~determined by the commission in proportion to the total participation fees paid by a~~  
567 ~~postsecondary educational institution until the time of the refund; provided, however, that~~  
568 ~~no reimbursement shall be made to any postsecondary educational institution whose~~  
569 ~~students have been reimbursed from the fund or from bond forfeiture as provided in~~  
570 ~~subsection (g) of this Code section. The commission shall establish by regulation the~~  
571 ~~time and other procedures and requirements for making any such refund, but refunds shall~~  
572 ~~be issued no more than once during a fiscal year."~~

573 ~~"(g)(1) Except as otherwise provided in paragraph (2) of this subsection, in In the event~~  
574 ~~a postsecondary educational institution participating in the fund goes into bankruptcy or~~  
575 ~~ceases operations without fulfilling its educational obligations to its students or without~~  
576 ~~reimbursing its students, the board of trustees may reimburse from the fund valid and~~  
577 ~~documented claims of students for tuition and fees paid to that institution as well as costs~~  
578 ~~incurred as a result of such cessation of operations in accordance with guidelines and~~  
579 ~~procedures adopted by the commission. ~~regulations of the board. If a student who~~~~  
580 ~~attended the defaulting postsecondary educational institution received financial aid under~~  
581 ~~either a state or federal student loan program, the board shall direct payment to the~~  
582 ~~financial institution or other entity who made the loan to the student, rather than directly~~  
583 ~~to the student. If the fund reimburses a student or a financial institution or other entity~~  
584 ~~which made a loan to a student, the fund, to the extent of the amount reimbursed and~~  
585 ~~without the necessity of any further act by any party, shall have an independent claim for~~  
586 ~~recovery against the defaulting postsecondary educational institution and any surety~~  
587 ~~issuing a bond pursuant to Code Section 20-3-250.10; provided, however, that if the~~  
588 ~~reimbursement from the fund is insufficient fully to cover the amount due the student or~~  
589 ~~the entity making the loan to the student, then such student or entity shall retain the right~~  
590 ~~of recovery against the defaulting institution and the surety for the unreimbursed amount.~~  
591 ~~Payments from the fund shall be made by warrant of the state treasurer on the order of~~  
592 ~~the board of trustees.~~

593 ~~(2) Until surety bonds are no longer required of a participating postsecondary~~  
594 ~~educational institution under the provisions of paragraph (3) of subsection (c) of this~~  
595 ~~Code section, the reimbursement of tuition to students or to financial institutions or other~~  
596 ~~entities on behalf of students, in the event of the default of the postsecondary educational~~  
597 ~~institution, shall be accomplished by bond forfeiture proceedings and not from the tuition~~  
598 ~~guaranty fund unless the full amount of the bond is paid in reimbursements and such~~  
599 ~~amount is insufficient to cover all reimbursements; provided, however, that if a student,~~  
600 ~~financial institution, or other lending entity is entitled to reimbursement of tuition paid~~  
601 ~~for a term which concluded before the expiration of the surety bond, the Tuition Guaranty~~  
602 ~~Trust Fund may make reimbursements to the students or to the financial institutions or~~  
603 ~~other entities on behalf of the students prior to initiating bond forfeiture proceedings.~~

604 ~~(3) If the board of trustees pays a claim to or on behalf of a student of a defaulting~~  
605 ~~postsecondary educational institution or if such a claim is paid as a result of a bond~~  
606 ~~forfeiture, the authorization to operate of the defaulting postsecondary educational~~  
607 ~~institution shall be automatically revoked as of the date of such payment, if the~~  
608 ~~authorization to operate has not been previously revoked by the commission pursuant to~~  
609 ~~other provisions of this part. If a defaulting postsecondary educational institution~~  
610 ~~reimburses the fund for any claims paid on behalf of its students, the commission shall~~  
611 ~~be authorized to issue a new authorization to operate to such postsecondary educational~~  
612 ~~institution if the commission finds that the institution is then qualified to operate as a~~  
613 ~~postsecondary educational institution. Such an institution shall provide the surety bond~~  
614 ~~required in Code Section 20-3-250.10 for two years and shall pay participation fees to the~~  
615 ~~tuition guaranty fund for five years as provided in paragraph (2) of subsection (d) of this~~  
616 ~~Code section.~~

617 ~~(4)(2) If at any time the money available in the tuition guaranty fund is insufficient to~~  
618 ~~satisfy tuition reimbursement claims then pending against the fund, the board of trustees~~  
619 ~~may require each participating postsecondary educational institution to pay a special~~



620 ~~assessment to the fund. The special assessment shall be in addition to the participation~~  
621 ~~fee provided for in paragraph (1) of subsection (d) of this Code section but the total~~  
622 ~~amount which may be collected in such special assessments in any one fiscal year shall~~  
623 ~~not exceed either the total amount paid during the immediately preceding fiscal year in~~  
624 ~~participation fees or \$100,000.00, whichever is greater. The maximum amount that may~~  
625 ~~be paid from the fund in claims on behalf of the students of any single defaulting~~  
626 ~~postsecondary educational institution is \$250,000.00, shall be determined by the~~  
627 ~~commission, but shall not exceed 10 percent of the total fund, regardless of the fact that~~  
628 ~~total claims may exceed that amount, unless a higher percentage is authorized by a~~  
629 ~~two-thirds' majority vote of the commission in the event of a significant precipitous~~  
630 ~~closure.~~

631 (5)(3) As an alternative to paying claims to or on behalf of students of a defaulting  
632 postsecondary educational institution, the board of trustees may arrange for another  
633 postsecondary educational institution to complete the educational obligations to the  
634 students of the defaulting postsecondary educational institution, provided that the  
635 program offered by the other institution is substantially equivalent to the program for  
636 which the students had paid tuition; and provided, further, that attendance at the other  
637 institution does not cause unreasonable hardship or inconvenience to the students. The  
638 commission shall have the authority to adopt rules or regulations which shall govern the  
639 board of trustees in the administration of the provisions of this paragraph. As a part of  
640 any such program, the board of trustees may reimburse the other postsecondary  
641 educational institution from the fund for expenses incurred by the institution in providing  
642 educational services for the students of the defaulting postsecondary educational  
643 institution. The Tuition Guaranty Trust Fund shall have an independent claim for  
644 recovery against the defaulting postsecondary educational institution and any surety  
645 issuing a bond pursuant to Code Section 20-3-250.10 to the extent that the fund has

646 reimbursed a postsecondary educational institution from the fund for expenses pursuant  
647 to this paragraph and without the necessity of any further act by any party.

648 ~~(6)~~(4) It shall not be necessary to claim a loss or damage pursuant to the provisions of  
649 Code Section 20-3-250.14 in order for the board of trustees to pay claims to or on behalf  
650 of students pursuant to the provisions of this Code section. Procedures and requirements  
651 for filing claims under this Code section shall be as provided by rules or regulations  
652 adopted for that purpose by the commission.

653 ~~(7)~~(5) Any person aggrieved by a decision of the board of trustees to pay or deny a claim  
654 pursuant to the provisions of this Code section may appeal to the commission. A decision  
655 of the board of trustees shall be in writing and shall be sent by certified mail or statutory  
656 overnight delivery to the claimant and to the owner of the defaulting postsecondary  
657 educational institution. If the whereabouts of the owner of the defaulting postsecondary  
658 educational institution is not known and cannot reasonably be ascertained by the board  
659 of trustees, a notice of the decision shall be published in the legal organ of the county  
660 where the student claimant attended the defaulting postsecondary educational institution  
661 or a facility of such institution. The appeal to the commission shall be commenced by  
662 filing a written notice of such appeal to the commission within 30 days after receiving the  
663 written decision of the board of trustees. Within 30 days after receiving a notice of  
664 appeal, the commission shall affirm the decision of the board of trustees, modify and  
665 affirm the decision of the board of trustees, or overrule the decision of the board of  
666 trustees. Any person aggrieved by the action of the commission shall have the right to  
667 judicial review pursuant to the provisions of Code Section 20-3-250.16. The commission  
668 shall adopt rules or regulations providing procedures for the conduct of appeals from the  
669 board of trustees, but such rules or regulations shall be consistent with the provisions of  
670 this paragraph."

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

674 **SECTION 17.**

675 This Act shall become effective July 1, 2022.

676 **SECTION 18.**

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