

STATE OF NEW YORK

8119

2019-2020 Regular Sessions

IN ASSEMBLY

June 3, 2019

Introduced by M. of A. HYNDMAN -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to degree-granting proprietary colleges; and to amend the state finance law, in relation to creating the proprietary college tuition reimbursement account

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. This act shall be known and may be cited as the "degree-granting proprietary college supervision and student protection act".

§ 2. The education law is amended by adding a new section 212-d to read as follows:

§ 212-d. Proprietary college tuition reimbursement account. 1. Fee assessment. (a) The commissioner shall annually assess and have each proprietary degree-granting college pay a fee based on that college's gross annual income into a proprietary college tuition reimbursement account. The gross annual income shall be determined by annual financial statements that are submitted to the commissioner.

(b) The gross annual income fee shall be assessed according to the following schedule:

GROSS ANNUAL INCOME FEE

Gross Annual Income between 0-\$199,999 - Assessed Fee = \$1,000.00

Gross Annual Income between \$200,000-\$499,999 - Assessed Fee = \$1,500.00

Gross Annual Income between \$500,000-\$999,999 - Assessed Fee = \$2,500.00

Gross Annual Income between \$1,000,000-\$4,999,999 - Assessed Fee = \$5,000.00

Gross Annual Income between \$5,000,000-\$9,999,999 - Assessed Fee = \$10,000.00

Gross Annual Income between \$10,000,000 or above - Assessed Fee = \$20,000.00

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 This assessment shall be based upon each college's gross annual income
2 from the previous year, and shall be payable to the commissioner in
3 equal quarterly installments which shall be due on December first, March
4 first, June first, and September first.

5 (c) All of the total assessment provided for within this section shall
6 accrue to the credit of the proprietary college tuition reimbursement
7 account.

8 (d) In the event that the balance of the proprietary college tuition
9 reimbursement account provided for in this section exceeds three million
10 dollars, all additional funds shall be dedicated to fund the depart-
11 ment's supervision and regulation of proprietary degree-granting
12 colleges pursuant to an annual appropriation and an annual plan of
13 expenditure prepared by the commissioner and approved by the director of
14 the budget.

15 (e) Payments made within thirty days following the due date shall be
16 subject to interest at one percent above the prevailing prime rate.
17 Thereafter, late payments may result in enrollment caps on the number of
18 new students a college has the ability to register and the department
19 shall approve no new programs at a college that is in arrears to the
20 proprietary college tuition reimbursement account.

21 (f) Nothing in this section shall prohibit the state, if it determines
22 that there is a need, to allocate additional funding to the proprietary
23 college tuition reimbursement account to provide for the needs of harmed
24 students.

25 2. Complaint process for access to the proprietary college tuition
26 reimbursement account. (a)(i) Claimants who had been enrolled in
27 proprietary degree-granting colleges which have not closed or ceased
28 operation shall be required to show, in a manner determined by the
29 commissioner, that:

30 (1) the student is eligible pursuant to subparagraph (ii) of this
31 paragraph for a refund amount up to the total cost of tuition expended
32 by the student as determined using a refund formula to be promulgated by
33 the commissioner;

34 (2) the student has made a request to the college for a refund amount
35 up to the total cost of tuition expended by the student and has done so
36 in a manner consistent with any existing complaint process as outlined
37 by the department prior to the effective date of this section or any
38 future process promulgated by the department;

39 (3) the college has failed to provide a refund amount up to the total
40 cost of tuition expended by the student within the ninety days of the
41 complaint being submitted by the student to the college;

42 (4) the student has in their complaint clearly identified the program
43 or degree that the student believes is not compliant with this section
44 and has included information necessary for the department to complete an
45 investigation of the program; and

46 (5) the student has, if applicable, attempted to have any federal
47 student loans discharged pursuant to a borrower defense to repayment
48 claim with the United States department of education.

49 (ii) The commissioner shall compute the total refund amount, if any,
50 in an amount up to the total cost of tuition expended by the student
51 using a refund formula to be promulgated by the department. The commis-
52 sioner shall act on each refund request within thirty business days of
53 such request.

54 (iii) Utilizing any existing complaint process at the department that
55 may exist or any new complaint process that the department may promul-
56 gate, if a student who meets the eligibility requirements of subpara-

graph (i) of this paragraph and can in such complaint make a good cause showing of a violation pursuant to paragraph (c) of this subdivision has occurred then that student shall be deemed eligible for a refund in an amount up to the total cost of tuition expended by the student as determined using a refund formula to be promulgated by the commissioner.

(iv) For a student who had been enrolled in a proprietary degree-granting college that has not closed or ceased operation, the refund shall be an amount up to the total cost of tuition, however, any discharge of student loans as prescribed under borrower defense to repayment claims with the United States department of education that the student has successfully received shall be deducted from any refund calculation under this section.

(v) (1) Where a claim is paid to a student relating to a verified complaint asserting a violation by a degree-granting proprietary college that has not closed or ceased operation the commissioner shall immediately notify the college within thirty days of its decision on a student's complaint to the department.

(2) Within fifteen days of the receipt of the notice, the college shall either request a hearing to challenge the commissioner's determination that a refund was owed to the student or reimburse the fund the amount paid to the claimant. This payment shall also incur interest for each day it remains unpaid at an annual interest rate of one percent above the prime rate. The commissioner may promulgate streamlined procedures for conducting hearings pursuant to this clause.

(vi) Persons and entities receiving refunds under this section shall be deemed to have assigned or subrogated their proprietary college tuition reimbursement account rights to the commissioner on behalf of the proprietary college tuition reimbursement account only for the amount refunded by the proprietary college tuition reimbursement account. Within ninety days of any refund made pursuant to this section, the commissioner or the attorney general shall take appropriate action to recover the total amount of the refunds made, plus administrative costs, from the college.

(b) The commissioner shall develop a complaint form for students of closed or closing institutions and provide such form to students. In order to claim a refund amount up to the total cost of tuition expended by the student from the proprietary college tuition reimbursement account, a student, for the section also referred to as a claimant, shall apply to the department with a complaint form pursuant to the following requirements:

(i) Claimants who had been enrolled in proprietary degree-granting colleges which have closed or ceased operation shall be required to show in a manner determined by the commissioner that:

(1) the student is eligible pursuant to subparagraph (ii) of this paragraph for a refund amount equal up to the total cost of tuition expended by the student as determined using a refund formula to be promulgated by the commissioner;

(2) the student has in their complaint clearly identified the program or degree that the student believes was not compliant with this section at the closed college and has included information necessary for the department to complete and make a determination of the program; and

(3) the student has, if applicable, attempted to have any federal student loans discharged pursuant to a borrower defense to repayment claim with the United States department of education.

(ii) The commissioner shall compute the total refund amount, if any, in an amount up to the total cost of tuition expended by the student

1 using a refund formula to be promulgated by the department. The commis-
2 sioner shall act on each refund request within thirty business days of
3 such request.

4 (iii) Utilizing any existing complaint process at the department that
5 may exist or any new complaint process that the department may promul-
6 gate, if a student who meets the eligibility requirements of subpara-
7 graph (i) of this paragraph and can in such complaint make a good cause
8 showing of a violation pursuant to paragraph (c) of this subdivision has
9 occurred then that student shall be deemed eligible for a refund in an
10 amount up to the total cost of tuition expended by the the student as
11 determined using a refund formula to be promulgated by the commissioner.

12 (iv) For a student who has been enrolled in a proprietary degree-
13 granting college that has closed or ceased operation, the refund shall
14 be paid in an amount up to the total cost of tuition expended by a
15 student for the program the student was enrolled in at college closure,
16 however, any discharge of student loans as prescribed under borrower
17 defense to repayment claims with the United States department of educa-
18 tion that the student has successfully received shall be deducted from
19 any refund calculation under this subdivision.

20 (v) A student who is offered a teachout plan for the program in which
21 the student was enrolled at the time the college closed or ceased opera-
22 tion may elect to continue instruction pursuant to the teachout plan or
23 may decline to continue instruction and may instead apply for a refund
24 in an amount up to the total cost of tuition expended by the student
25 under this section. The option to apply for a refund shall extend to the
26 end of the first week of instruction at the teachout college.

27 (vi) A student who was enrolled in a proprietary degree-granting
28 college at the time the college closes or ceases operation shall be
29 entitled to a refund of the full amount any prepaid tuition or expenses
30 the student expended. In addition, commencing September first, two thou-
31 sand twenty, a student who drops out of a college, where such college
32 closes within thirty days of the student's termination and prior to
33 completion of such student's program as specified in the enrollment
34 agreement, shall be entitled to a refund in an amount up to the total
35 cost of tuition expended by the student.

36 (vii) Notwithstanding all notice procedures described in this subdivi-
37 sion, in the event of a proprietary degree-granting college closing, the
38 commissioner on his or her own initiative may take appropriate action in
39 accordance with this section to process refund claims on behalf of all
40 of the students of the closed college.

41 (c) For the purposes of this section a good cause showing that a
42 violation has occurred shall include any of the following:

43 (i) fraudulent statements or representatives to the department, the
44 public or to the student in connection with any program that the student
45 was enrolled in while matriculating at the proprietary degree-granting
46 college;

47 (ii) violation of any provisions of this article or regulation of the
48 commissioner that occurred within a program that the student was
49 enrolled in while matriculating at the proprietary degree-granting
50 college;

51 (iii) conviction or a plea of no contest on the part of any owner,
52 operator, or member of the proprietary degree-granting college's board
53 of trustees;

54 (1) to any of the following felonies defined in the penal law: bribery
55 involving public servants; commercial bribery; perjury in the second
56 degree; rewarding official misconduct; larceny, in connection with the

1 provision of services or involving the theft of governmental funds;
2 offering a false instrument for filing, falsifying business records;
3 tampering with public records; criminal usury; scheme to defraud; or
4 defrauding the government; or

5 (2) in any other jurisdiction for an offense which is substantially
6 similar to any of the felonies set forth in clause one of this subpara-
7 graph and for which a sentence to a term of imprisonment in excess of
8 one year was authorized and is authorized in this state regardless of
9 whether such sentence was imposed; or

10 (iv) incompetence of any owner or operator to operate a college that
11 negatively impacted any program that the student was enrolled in while
12 matriculating at the college.

13 3. Management of the proprietary college tuition reimbursement
14 account. (a) As used in this subdivision, net balance is defined as the
15 actual cash balance of the account as determined by the commissioner on
16 November thirtieth, two thousand twenty and every three months thereaft-
17 er. For the purpose of calculating the net balance, the commissioner
18 shall not take into consideration any refunds made from the account
19 pursuant to this section for the year immediately preceding the date on
20 which the calculation is made.

21 (b) (i) In the event that the account has accumulated a net balance in
22 excess of three million dollars, the commissioner shall, with the
23 approval of the director of the budget, waive an amount not to exceed
24 the amount due for the next quarterly assessment for a proprietary
25 degree-granting college that has paid sixteen quarters or more of
26 assessments pursuant to this section. In such event, payment of future
27 quarterly assessments shall be suspended for colleges which have paid
28 sixteen quarters or more of assessments until the net balance of the
29 account falls below two million three hundred thousand dollars.

30 (ii) In the event the net balance of the account falls below one
31 million three hundred thousand dollars, if the quarterly assessment has
32 been suspended for colleges which have paid sixteen quarters or more of
33 assessments pursuant to subparagraph (i) of this paragraph, it shall be
34 reinstated for the next quarterly assessment and all subsequent quarter-
35 ly assessments until the account has accumulated a net balance in excess
36 of one million eight hundred thousand dollars.

37 (c) The commissioner may annually apportion from the proprietary
38 college tuition reimbursement account an amount up to two hundred thou-
39 sand dollars for the purpose of securing, scanning and otherwise making
40 student records from closed colleges available to students who attended
41 such proprietary degree-granting colleges. Provided, however, that in no
42 case shall such apportionment cause the account to fall below a balance
43 of two million dollars.

44 (d) The state comptroller shall audit or cause to be audited the
45 proprietary college tuition reimbursement account once every two years
46 and produce an audited financial statement according to generally
47 accepted accounting principles.

48 (e) Within the first year that a proprietary degree-granting college
49 begins operation as a fully accredited degree-granting institution, the
50 commissioner shall assess such college an amount to be deposited into
51 the account in an amount to be determined by the commissioner. The
52 amount determined by the commissioner shall not exceed the amount of
53 five payments of the maximum assessed fee collected by the department
54 under this section.

55 4. Proprietary college tuition reimbursement account student complaint
56 verification. (a) Any current or former student of a proprietary

1 degree-granting college who believes he or she has been aggrieved by a
2 violation of this section shall have the right to file a written
3 complaint within:

4 (i) six years of the alleged violation; or

5 (ii) one year after receiving notification from the higher education
6 services corporation or any other guarantee agency that the student has
7 defaulted on a student loan payment as long as that remains within six
8 years of completed matriculation from their program or the student's
9 withdrawal from their program at the proprietary degree-granting
10 college.

11 (b) The commissioner shall maintain a written record of each complaint
12 that is made. The commissioner shall also send to the complainant a form
13 acknowledging the complaint and requesting further information if neces-
14 sary and shall advise the director of the college that a complaint has
15 been made and, where appropriate, the nature of the complaint.

16 (c) The commissioner shall within twenty days of receipt of such writ-
17 ten complaint commence an investigation of the alleged violation and
18 shall within ninety days of the receipt of such written complaint, issue
19 a written finding. The commissioner shall furnish such findings to the
20 person who filed the complaint and to the chief operating officer of the
21 college cited in the complaint. If the commissioner finds that there has
22 been a violation of this section, the commissioner shall take appropri-
23 ate action. If the commissioner finds that there has been a violation of
24 this section, the commissioner shall also place such finding on a
25 publicly accessible website disclosing the institution that was in
26 violation and the substance of the complaint within thirty days of the
27 commissioner's finding.

28 § 3. The state finance law is amended by adding a new section 97-j to
29 read as follows:

30 § 97-j. Proprietary college tuition reimbursement account. 1. There
31 is hereby established in the joint custody of the comptroller and the
32 commissioner of taxation and finance a fund to be known as the "proprie-
33 tary college tuition reimbursement account".

34 2. The proprietary college tuition reimbursement account established
35 in this section shall be for reimbursement of tuition to certain
36 students of proprietary degree-granting colleges pursuant to sections
37 two hundred twelve-b and two hundred twelve-d of the education law.

38 3. (a) Notwithstanding any other law, rule, or regulation to the
39 contrary, the state comptroller is hereby authorized and directed to
40 receive for deposit to the credit of the account established in this
41 section moneys collected pursuant to sections two hundred twelve-b and
42 two hundred twelve-d of the education law including, but not limited to,
43 all fees and assessments relating to the supervision of proprietary
44 degree-granting colleges received after September first, two thousand
45 nineteen pursuant to such sections and all other moneys credited or
46 transferred to such accounts from any other fund or source pursuant to
47 law.

48 (b) The comptroller is hereby authorized and directed to permit inter-
49 est earnings on any account balances on accounts established in this
50 section to accrue to the benefit of each of the accounts.

51 4. Monies of the accounts established in this section, following
52 appropriation by the legislature, shall be available to the education
53 department and may be expended pursuant to sections two hundred twelve-b
54 and two hundred twelve-d of the education law. Monies shall be paid out
55 of such accounts on the audit and warrant of the state comptroller.

1 § 4. Severability clause. If any clause, sentence, paragraph, subdivi-
2 sion, section or part of this act shall be adjudged by any court of
3 competent jurisdiction to be invalid, such judgment shall not affect,
4 impair, or invalidate the remainder thereof, but shall be confined in
5 its operation to the clause, sentence, paragraph, subdivision, section
6 or part thereof directly involved in the controversy in which such judg-
7 ment shall have been rendered. It is hereby declared to be the intent of
8 the legislature that this act would have been enacted even if such
9 invalid provisions had not been included herein.

10 § 5. This act shall take effect on the one hundred eightieth day after
11 it shall have become a law. Effective immediately, the addition, amend-
12 ment and/or repeal of any rule or regulation necessary for the implemen-
13 tation of this act on its effective date are authorized to be made and
14 completed on or before such effective date.