

# STATE OF NEW YORK

8119--A

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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 Gross Annual Income between \$10,000,000 or above - Assessed Fee =  
2 \$20,000.00

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4     (ii) The commissioner shall compute the total refund amount, if any,  
5 in an amount up to the total cost of tuition expended by the student  
6 using a refund formula to be promulgated by the department. The commis-  
7 sioner shall act on each refund request within thirty business days of  
8 such request, unless such request relates to a recent or impending  
9 college closure in which case the department shall handle all similarly  
10 situated claims within a reasonable amount of time but in no instance  
11 shall that time be longer than ninety business days.

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

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

28     (v) A student who is offered a teachout plan approved by an institu-  
29 tional accrediting agency for the program in which the student was  
30 enrolled at the time the college closed or ceased operation may elect to  
31 continue instruction pursuant to the teachout plan or may decline to  
32 continue instruction and may instead apply for a refund in an amount up  
33 to the total cost of tuition expended by the student under this section.  
34 The option to apply for a refund shall extend to the end of the first  
35 week of instruction at the teachout college.

36     (vi) A student who was enrolled in a proprietary degree-granting  
37 college at the time the college closes or ceases operation shall be  
38 entitled to a refund of the full amount any prepaid tuition or expenses  
39 the student expended. In addition, commencing September first, two thou-  
40 sand twenty, a student who drops out of a college, where such college  
41 closes within thirty days of the student's withdrawal and prior to  
42 completion of such student's program, shall be entitled to a refund in  
43 an amount up to the total cost of tuition expended by the student.

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

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

51     (i) fraudulent statements or representations to the department, the  
52 public or to the student in connection with any program that the student  
53 was enrolled in while matriculating at the proprietary degree-granting  
54 college;

55     (ii) violation of any provisions of this article or regulation of the  
56 commissioner that occurred within a program that the student was

1 enrolled in while matriculating at the proprietary degree-granting  
2 college;

3 (iii) conviction or a plea of no contest on the part of any owner,  
4 operator, or member of the proprietary degree-granting college's board  
5 of trustees, if such conviction negatively impacts the student's program  
6 of study;

7 (1) to any of the following felonies defined in the penal law: bribery  
8 involving public servants; commercial bribery; perjury in the second  
9 degree; rewarding official misconduct; larceny, in connection with the  
10 provision of services or involving the theft of governmental funds;  
11 offering a false instrument for filing, falsifying business records;  
12 tampering with public records; criminal usury; scheme to defraud; or  
13 defrauding the government; or

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

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

22 3. Management of the proprietary college tuition reimbursement  
23 account. (a) As used in this subdivision, net balance is defined as the  
24 actual cash balance of the account as determined by the state comp-  
25 troller on November thirtieth, two thousand twenty and every three  
26 months thereafter. For the purpose of calculating the net balance, the  
27 state comptroller shall not take into consideration any refunds made  
28 from the account pursuant to this section for the year immediately  
29 preceding the date on which the calculation is made.

30 (b) (i) In the event that the account has accumulated a net balance in  
31 excess of three million dollars, the commissioner shall, with the  
32 approval of the director of the budget, waive an amount not to exceed  
33 the amount due for the next quarterly assessment for a proprietary  
34 degree-granting college that has paid sixteen quarters or more of  
35 assessments pursuant to this section. In such event, payment of future  
36 quarterly assessments shall be suspended for colleges which have paid  
37 sixteen quarters or more of assessments until the net balance of the  
38 account falls below two million three hundred thousand dollars.

39 (ii) In the event the net balance of the account falls below two  
40 million three hundred thousand dollars, if the quarterly assessment has  
41 been suspended for colleges which have paid sixteen quarters or more of  
42 assessments pursuant to subparagraph (i) of this paragraph, it shall be  
43 reinstated for the next quarterly assessment and all subsequent quarter-  
44 ly assessments until the account has accumulated a net balance in excess  
45 of three million dollars.

46 (c) The commissioner may annually apportion from the proprietary  
47 college tuition reimbursement account an amount up to two hundred thou-  
48 sand dollars for the purpose of securing, scanning and otherwise making  
49 student transcripts from closed colleges available to students who  
50 attended such proprietary degree-granting colleges. Provided, however,  
51 that in no case shall such apportionment cause the account to fall below  
52 a balance of two million dollars.

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



1 (e) Within the first year that a proprietary degree-granting college  
2 begins operation as a fully accredited degree-granting institution, the  
3 commissioner shall assess such college an amount to be deposited into  
4 the account in an amount to be determined by the commissioner. The  
5 amount determined by the commissioner shall not exceed the amount of  
6 five payments of the maximum assessed fee collected by the department  
7 under this section.

8 4. Proprietary college tuition reimbursement account student complaint  
9 verification. (a) Any current or former student of a proprietary  
10 degree-granting college who believes he or she has been aggrieved by a  
11 violation of this section shall have the right to file a written  
12 complaint within:

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

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

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

25 5. Proprietary college complaint investigation process. (a) The  
26 commissioner shall within twenty days of receipt of such written  
27 complaint commence an investigation of the alleged violation and shall  
28 within ninety days of the receipt of such written complaint, issue a  
29 written finding. The commissioner shall furnish such findings to the  
30 person who filed the complaint and to the chief operating officer of the  
31 college cited in the complaint. If the commissioner finds that there has  
32 been a violation of this section, the commissioner shall take appropri-  
33 ate action, including but not limited to referring cases of misconduct  
34 to the state attorney general, beginning a review of the program in  
35 violation, and providing notice to students of the institution of the  
36 violation by a publicly accessible website.

37 (b) If the commissioner finds that there has been a violation of this  
38 section, the commissioner shall also place such finding on a publicly  
39 accessible website disclosing the institution that was in violation and  
40 the substance of the complaint within thirty days of the commissioner's  
41 finding.

42 (c) The department shall annually be allocated up to one million  
43 dollars from the state general fund to carry out investigations of  
44 student complaints pursuant to this subdivision.

45 (d) Any allocation pursuant to paragraph (c) of this subdivision shall  
46 be reduced by the amount of funding apportioned to the department pursu-  
47 ant to paragraph (d) of subdivision one of this section.

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

50 § 97-j. Proprietary college tuition reimbursement account. 1. There  
51 is hereby established in the joint custody of the comptroller and the  
52 commissioner of taxation and finance a fund to be known as the "proprie-  
53 tary college tuition reimbursement account".

54 2. The proprietary college tuition reimbursement account established  
55 in this section shall be for reimbursement of tuition to certain

1 students of proprietary degree-granting colleges pursuant to sections  
2 two hundred twelve-b and two hundred twelve-d of the education law.

3 3. (a) Notwithstanding any other law, rule, or regulation to the  
4 contrary, the state comptroller is hereby authorized and directed to  
5 receive for deposit to the credit of the account established in this  
6 section moneys collected pursuant to sections two hundred twelve-b and  
7 two hundred twelve-d of the education law including, but not limited to,  
8 all fees and assessments relating to the supervision of proprietary  
9 degree-granting colleges received after September first, two thousand  
10 nineteen pursuant to such sections and all other moneys credited or  
11 transferred to such accounts from any other fund or source pursuant to  
12 law.

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

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

21 § 4. Severability clause. If any clause, sentence, paragraph, subdivi-  
22 sion, section or part of this act shall be adjudged by any court of  
23 competent jurisdiction to be invalid, such judgment shall not affect,  
24 impair, or invalidate the remainder thereof, but shall be confined in  
25 its operation to the clause, sentence, paragraph, subdivision, section  
26 or part thereof directly involved in the controversy in which such judg-  
27 ment shall have been rendered. It is hereby declared to be the intent of  
28 the legislature that this act would have been enacted even if such  
29 invalid provisions had not been included herein.

30 § 5. This act shall take effect one year after it shall have become a  
31 law. Effective immediately, the addition, amendment and/or repeal of  
32 any rule or regulation necessary for the implementation of this act on  
33 its effective date are authorized to be made and completed on or before  
34 such effective date.