

# STATE OF NEW YORK

5562

2019-2020 Regular Sessions

## IN SENATE

May 7, 2019

Introduced by Sen. STAVISKY -- read twice and ordered printed, and when printed to be committed 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.