STATE OF NEW YORK

2459

2021-2022 Regular Sessions

IN ASSEMBLY

January 19, 2021

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

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

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

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

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

2. Complaint process for access to the proprietary college tuition reimbursement account. (a)(i) Claimants who had been enrolled in proprietary degree-granting colleges which have not 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 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 made a request to the college for a refund amount up to the total cost of tuition expended by the student and has done so in a manner consistent with any existing complaint process as outlined by the department prior to the effective date of this section or any future process promulgated by the department;

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

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

(5) 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 using a refund formula to be promulgated by the department. The commissioner shall act on each refund request within thirty business days of such request.

(iii) Utilizing any existing complaint process at the department that may exist or any new complaint process that the department may promulgate, 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

using a refund formula to be promulgated by the department. The commissioner shall act on each refund request within thirty business days of such request, unless such request relates to a recent or impending college closure in which case the department shall handle all similarly situated claims within a reasonable amount of time but in no instance shall that time be longer than ninety business days.

(iii) Utilizing any existing complaint process at the department that may exist or any new complaint process that the department may promulgate, if a student who meets the eligibility requirements of subparagraph (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 the student as determined using a refund formula to be promulgated by the commissioner.

(iv) For a student who has been enrolled in a proprietary degree-granting college that has closed or ceased operation, the refund shall be paid in an amount up to the total cost of tuition expended by a student for the program the student was enrolled in at college closure, 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 subdivision.

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

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

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

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

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

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

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

of trustees, if such conviction negatively impacts the student's program of study:

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

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

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

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

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

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

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

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

(e) Within the first year that a proprietary degree-granting college begins operation as a fully accredited degree-granting institution, the commissioner shall assess such college an amount to be deposited into the account in an amount to be determined by the commissioner. The

amount determined by the commissioner shall not exceed the amount of five payments of the maximum assessed fee collected by the department under this section.

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

(i) six years of the alleged violation; or

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

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

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

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

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

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

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

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

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

3. (a) Notwithstanding any other law, rule, or regulation to the contrary, the state comptroller is hereby authorized and directed to receive for deposit to the credit of the account established in this

section moneys collected pursuant to sections two hundred twelve-b and two hundred twelve-d of the education law including, but not limited to, all fees and assessments relating to the supervision of proprietary degree-granting colleges received after September first, two thousand twenty-one pursuant to such sections and all other moneys credited or transferred to such accounts from any other fund or source pursuant to law.

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

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

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

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