

1 SENATE BILL 548

2 **52ND LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2015**

3 INTRODUCED BY

4 John M. Sapien

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10 AN ACT

11 RELATING TO HIGHER EDUCATION; INCREASING THE MINIMUM SURETY  
12 BOND AMOUNT FOR PRIVATE POST-SECONDARY INSTITUTIONS.

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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

15 SECTION 1. Section 21-23-7.1 NMSA 1978 (being Laws 1994,  
16 Chapter 108, Section 12, as amended) is amended to read:

17 "21-23-7.1. SURETY BOND REQUIRED--ALTERNATIVE SURETY.--

18 A. A college, university or career school  
19 registered or licensed by the department shall post with the  
20 department and maintain in effect a surety bond. The bond  
21 shall be payable to the department and shall be sufficient in  
22 amount to indemnify any student damaged as a result of fraud or  
23 misrepresentation by a registered or licensed college,  
24 university or career school or as a result of the college,  
25 university or career school ceasing operation prior to its

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1 students having completed the programs for which they have  
2 contracted.

3 B. The department is authorized to establish the  
4 amount of bond required on an individual basis, taking into  
5 consideration factors such as the college's, university's or  
6 career school's size, number of students and total income and  
7 assets of the college, university or career school in the  
8 state. In no case shall the bond be less than [~~five thousand~~  
9 ~~dollars (\$5,000)~~] one million five hundred thousand dollars  
10 (\$1,500,000) nor shall it exceed [~~twenty~~] fifty percent of a  
11 college's, university's or career school's gross annual tuition  
12 revenue in New Mexico.

13 C. Surety bonds may be canceled only following  
14 delivery of written notice to the department no less than  
15 ninety days prior to the date of cancellation. In case of  
16 cancellation, the college, university or career school shall  
17 provide the department with a like surety or acceptable  
18 alternative in order to maintain licensure.

19 D. As an alternative to a surety bond, a college,  
20 university or career school may elect to and the department may  
21 require that a college, university or career school establish  
22 and maintain a cash deposit escrow account, irrevocable letter  
23 of credit or alternative payable to the department in an amount  
24 set by the department and subject to rules promulgated by the  
25 department. In no case shall the deposit or account required

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1 exceed [~~twenty~~] fifty percent of the college's, university's or  
2 career school's gross tuition annual revenue in New Mexico."

3 SECTION 2. Section 21-24-5 NMSA 1978 (being Laws 1971,  
4 Chapter 304, Section 5, as amended) is amended to read:

5 "21-24-5. REGISTRATION--SURETY BOND.--

6 A. No agent representing a proprietary school shall  
7 sell any course or solicit students in person or by mail,  
8 telephone or similar means in New Mexico for a consideration  
9 unless the institution has registered with the [~~commission~~]  
10 higher education department. The [~~commission~~] department shall  
11 charge an annual registration fee of not less than five hundred  
12 dollars (\$500) for each proprietary school and an annual agent  
13 fee of not less than one hundred dollars (\$100) for each agent  
14 operating in New Mexico.

15 B. Registration shall be made on forms provided by  
16 the [~~commission~~] department and accompanied by the annual  
17 registration fee.

18 C. The registration shall include a surety bond  
19 acceptable to the [~~commission~~] department in an amount not less  
20 than [~~ten thousand dollars (\$10,000) or more than twenty-five~~  
21 ~~thousand dollars (\$25,000)] one million five hundred thousand  
22 dollars (\$1,500,000). The bond may be continuous and shall be  
23 conditioned to provide indemnification to any student suffering  
24 loss as a result of any fraud or misrepresentation used in  
25 procuring [~~his~~] the student's enrollment and shall be supplied~~

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1 by the proprietary school. The surety may cancel the bond upon  
2 giving ninety days' notice in writing to the [~~commission~~  
3 department] and thereafter is relieved of liability for any  
4 breach of condition occurring after the effective date of the  
5 cancellation.

6 D. Registration shall not be permitted unless the  
7 applying proprietary school agrees to adhere to the [~~commission~~  
8 department] rules and regulations that provide for a tuition  
9 refund policy.

10 E. Upon ten days' notice, any registration may be  
11 suspended by the [~~commission~~] department pending a hearing by  
12 the [~~commission~~] department if the registrant solicits or  
13 enrolls students through fraud, deception or misrepresentation.

14 F. Registration shall be valid for one year, from  
15 July 1 through June 30. An application for renewal shall be  
16 accompanied by the fee and shall include a surety bond if a  
17 continuous bond has not been furnished.

18 G. The existence of a surety bond shall not be  
19 construed as a limitation or impairment of any right of  
20 recovery otherwise available, nor shall the amount of the bond  
21 be relevant in determining the amount of damages or other  
22 relief to which a plaintiff may be entitled.

23 H. No recovery shall be had by a proprietary school  
24 on any contract for or in connection with a course unless the  
25 proprietary school had registered at the time that its agent

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1 sold or negotiated the contract for the particular course.

2 I. Registration shall not constitute approval of  
3 any course, agent or proprietary school conducting or  
4 administering courses. Any representation to the contrary is a  
5 misrepresentation within the meaning of Section 21-24-4 NMSA  
6 1978.

7 J. All fees collected from registration or renewal  
8 of registration shall be deposited with the state treasurer's  
9 office to the credit of the post-secondary educational  
10 institution fund and shall be spent by the [~~commission~~]  
11 department for the administration of the Out-of-State  
12 Proprietary School Act."

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