

AN ACT

RELATING TO POST-SECONDARY EDUCATION; ENACTING THE PRIVATE POST-SECONDARY STUDENT TUITION PROTECTION ACT; CREATING THE STUDENT TUITION RECOVERY FUND; MAKING AN APPROPRIATION.

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

Section 1. SHORT TITLE.--Sections 1 through 6 of this act may be cited as the "Private Post-Secondary Student Tuition Protection Act".

Section 2. DEFINITIONS.--As used in the Private Post-Secondary Student Tuition Protection Act:

A. "assessment" means the amount of money a private post-secondary education institution is required to pay annually to the fund;

B. "commission" means the commission on higher education;

C. "fund" means the student tuition recovery fund;

D. "newly enrolled student" means a student enrolling in a private post-secondary education institution in a fiscal year for the first time or re-enrolling after an absence from the institution for one or more years;

E. "prepaid tuition" means money paid to a private post-secondary education institution before completion of its services to the student;

F. "private post-secondary education institution" means an educational institution subject to licensure pursuant to the Post-Secondary Education Act; and

G. "teach-out program" means training or educational services provided by another post-secondary

education institution to complete classes that were not available at a private post-secondary education institution that terminated its operations.

Section 3. COMMISSION--DUTIES.--In consultation with the advisory council for proprietary education, the commission shall:

- A. administer the fund;
- B. determine and collect the assessment from private post-secondary education institutions;
- C. review and process claims against the fund;
- D. adopt rules for administration of the Private Post-Secondary Student Tuition Protection Act; and
- E. file suit to collect assessments due the fund.

Section 4. TEACH-OUT PROGRAM.--A person who has prepaid tuition at a private post-secondary education institution that has terminated its operations may accept a teach-out program in lieu of refund by the commission. A post-secondary education institution may provide teach-out services to a person deprived of education at another private post-secondary education institution due to the latter terminating operations. A person who agrees to accept educational services through a teach-out program in lieu of a refund of prepaid tuition from the fund shall release any claim on the fund.

Section 5. STUDENT TUITION RECOVERY FUND--
APPROPRIATION.--

A. The "student tuition recovery fund" is created in the state treasury. The fund shall be used to repay a person only the amount of his unearned prepaid tuition. The commission shall administer the fund. Assessments collected

by the commission shall be credited to the fund. Amounts in the fund shall be deposited with the state treasurer and disbursed pursuant to vouchers signed by the executive director of the commission or his authorized representative upon warrants drawn by the secretary of finance and administration. Money in the fund is appropriated to the commission to pay:

(1) refunds to persons who prepaid tuition at private post-secondary education institutions that terminated operations prior to providing educational services;

(2) for costs resulting from private post-secondary education institutions that terminate operations without complying with the Post-Secondary Education Act; and

(3) to carry out the provisions of the Private Post-Secondary Student Tuition Protection Act.

B. Money in the fund may be invested pursuant to the New Mexico Finance Authority Act and all interest earned on such investments shall be credited to the fund. Money remaining in the fund at the end of any fiscal year shall not revert to the general fund, and interest earned from the fund shall accrue to the credit of the fund.

Section 6. ASSESSMENTS--COMMISSION'S DETERMINATION.--

A. Private post-secondary education institutions that collect prepaid tuition shall annually pay an assessment to the commission for each newly enrolled student.

B. The commission shall determine assessments from each private post-secondary education institution in an amount to maintain a minimum balance in the fund of three

hundred thousand dollars (\$300,000) and not to exceed a maximum of five hundred thousand dollars (\$500,000). The assessment shall not exceed ten dollars (\$10.00) per newly enrolled student. The commission shall refund assessments that result in a fund balance of more than the maximum.

C. A claim against the fund shall not be commenced later than one year after the private post-secondary education institution has terminated services. A person seeking a refund of prepaid tuition shall submit a written claim to the commission in a form required by the commission. If the commission determines that the claim is valid, and the surety bond is exhausted, the commission shall pay the claim from the balance in the fund.

D. Disbursements from the fund shall be made in the following order:

(1) if the claimant received a loan for the prepaid tuition, to the lender who provided the loan or to the guarantor of the loan;

(2) to the claimant for prepaid tuition;

(3) to a post-secondary education institution that provided a teach-out program to the claimant; or

(4) to the commission for cost recovery for closing a private post-secondary education institution that did not comply with provisions of the Post-Secondary Education Act.

Section 7. Section 21-23-7.1 NMSA 1978 (being Laws 1994, Chapter 108, Section 12) is amended to read:

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

A. A career school licensed by the commission shall post with the commission and maintain in effect a surety bond. The bond shall be payable to the commission and shall be sufficient in amount to indemnify any student damaged as a result of fraud or misrepresentation by a licensed career school or as a result of the career school ceasing operation prior to its students having completed the programs for which they have contracted.

B. The commission is authorized to establish the amount of bond required on an individual basis, taking into consideration factors such as the career school's size, number of students and total income and assets of the career school in the state. The bond shall be at least five thousand dollars (\$5,000) but shall not exceed twenty percent of a career school's gross annual tuition revenue in New Mexico, except a private post-secondary educational institution first authorized to operate in the state after the effective date of the Private Post-Secondary Student Tuition Protection Act shall provide a minimum surety bond of ten thousand dollars (\$10,000). The commission shall review the surety bond requirement of private post-secondary educational institutions when the student tuition recovery fund reaches five hundred thousand dollars (\$500,000).

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

D. As an alternative to a surety bond, a career

school may elect to and the commission may require that a career school establish and maintain a cash deposit escrow account, irrevocable letter of credit or alternative payable to the commission in an amount set by the commission and subject to regulations promulgated by the commission. In no case shall the deposit or account required exceed twenty percent of the career school's gross tuition annual revenue in New Mexico."

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Section 8. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999. _____

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