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*** Current Through the 2015 Regular Session ***

TITLE 20. EDUCATION
CHAPTER 3. POSTSECONDARY EDUCATION
ARTICLE 7. SCHOLARSHIPS, LOANS, AND GRANTS
PART 1A. NONPUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS

GO TO GEORGIA STATUTES ARCHIVE DIRECTORY

O.C.G.A. TITLE 20 Chapter 3 Article 7 Part 1A (2015)

TITLE 20 Chapter 3 Article 7 Part 1A NOTE

PART NOTES

ADMINISTRATIVE RULES AND REGULATIONS. --Nonpublic postsecondary education commission, Official Compilation of the Rules and Regulations of the State of Georgia, Chapter 392.

RESEARCH REFERENCES

ALR. --Misconduct of college or university student off campus as grounds for expulsion, suspension, or other disciplinary action, *28 ALR4th 463*.

Tort liability of college, university, fraternity, or sorority for injury or death of member or prospective member by hazing or initiation activity, *68 ALR4th 228*.

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O.C.G.A. § 20-3-250.1 (2015)

§ 20-3-250.1. Short title

This part shall be known and may be cited as the "Nonpublic Postsecondary Educational Institutions Act of 1990."

HISTORY: Code 1981, § 20-3-250.1, enacted by Ga. L. 1990, p. 1166, § 3.

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O.C.G.A. § 20-3-250.2 (2015)

§ 20-3-250.2. Definitions

As used in this part, the term:

(1) "Agent" means any natural person owning any interest in, employed by, or representing for remuneration a nonpublic postsecondary educational institution within or outside this state and who, by solicitation in any form made in this state, enrolls or seeks to enroll a resident of this state for education offered by such institution, or who offers to award educational credentials, for remuneration, on behalf of any such institution, or who holds himself or herself out to residents of this state as representing a nonpublic postsecondary educational institution for any such purpose.

(2) "Agent's permit" means a nontransferable written authorization issued to a natural person by the executive director which allows that person to solicit or enroll any resident of this state for education in a nonpublic postsecondary educational institution.

(3) "Authorization to operate," or like term, means authorization by the commission to operate or to contract to operate a nonpublic postsecondary educational institution in this state or to conduct nonpublic postsecondary activities.

(3.1) "Board of trustees" or "board" means the Board of Trustees of the Tuition Guaranty Trust Fund provided for in *Code Section 20-3-250.27*.

(4) "Certificate" means a diploma or similar document indicating satisfactory completion of training in a course or program of study, not leading to a postsecondary degree, which is offered by a nonpublic postsecondary educational institution.

(5) "Commission" means the Nonpublic Postsecondary Education Commission provided for in *Code Section 20-3-250.4*.

(6) "Course" means any plan or program of instruction or study, whether conducted in person, by mail, or by any other method.

(7) "Date of notice" means the date the notice is mailed by the executive director.

(8) "Education" or "educational services," or like term, means, but is not limited to, any class, course, or program of training, instruction, study, or testing.

(9) "Educational credentials" means certificates, degrees, transcripts, reports, documents or letters of designation, marks, appellations, series of letters, numbers, or words which signify, purport, or are generally taken to signify enrollment, attendance, progress, or satisfactory completion of the requirements or prerequisites for education at a nonpublic postsecondary educational institution.

(10) "Entity" means, but is not limited to, any company, firm, society, association, partnership, corporation, or trust.

(11) "Executive director" means the executive director of the Nonpublic Postsecondary Education Commission.

(11.1) "Gross tuition" means the total amount collected by a postsecondary educational institution during the most recently completed 12 month fiscal year, reduced only by the amount of refunds paid during the fiscal year, for tuition, application fees, registration fees, and those other fees deemed appropriate by rule or regulation of the commission; provided, however, that for a postsecondary educational institution located outside of this state which is authorized only for the purpose of advertising and recruiting in this state, or is authorized only for the purpose of offering instruction by correspondence or any telecommunications or electronic media technology, or a combination of these purposes, "gross tuition" means only the amount of such tuition and fees collected from residents of this state while such residents reside in this state.

(12) "Nonpublic" means a private postsecondary educational institution not established, operated, or governed by the State of Georgia, or any public or private postsecondary educational institution legally operating in another state or nation that conducts postsecondary activities in Georgia or offers postsecondary instruction leading to a postsecondary degree or certificate granted to Georgia residents from a location outside Georgia.

(13) "Notice to the postsecondary educational institutions" means written correspondence sent to the address of record for legal service contained in the application for a certificate of authorization as provided for in this part.

(14) "Owner" of a postsecondary educational institution means:

(A) In the case of a postsecondary educational institution owned by an individual, that individual;

(B) In the case of a postsecondary educational institution owned by a partnership, all full, silent, and limited partners; and

(C) In the case of a postsecondary educational institution owned by a corporation, the corporation and each shareholder owning shares of issued and outstanding stock aggregating at least 10 percent of the total of the issued and outstanding shares.

(15) "Person" means any individual, firm, partnership, association, corporation, or other private entity.

(16) "Postsecondary degree" means a credential conferring on the recipient thereof the title of "Associate," "Bachelor," "Master," "Specialist," or "Doctor," or an equivalent title, signifying educational attainment based on:

(A) Study;

(B) A substitute for study in the form of equivalent experience or achievement testing; or

(C) A combination of the foregoing, provided that "postsecondary degree" shall not include any honorary degree or other so-called "unearned" degree.

(17) "Postsecondary activity" means awarding a postsecondary degree or certificate or conducting or offering study, experience, or testing for an individual, or certifying prior successful completion by an individual of study, experience, or testing under the representation that the individual successfully completing the study, experience, or testing will be awarded therefor, at least in part, a postsecondary degree or certificate.

(18) "Postsecondary educational institution" means a postsecondary degree-granting or certificate-granting nonpublic college or university or a proprietary school, offering instruction or educational services primarily to persons who have completed or terminated their secondary education or who are beyond the age of compulsory high school attendance, or any sole proprietorship, group, partnership, venture, society, company, corporation, school, or consortium of colleges, universities, or other institutions that engages in, purports to engage in, or intends to engage in any type of postsecondary activity.

(19) "Proprietary school" or "school" means any business enterprise operated for a profit or on a nonprofit basis which maintains a place of business within this state or solicits business within this state, which is not specifically exempted by *Code Section 20-3-250.3*, and which offers a course or courses of instruction or study available through classroom instruction, correspondence, or any telecommunications or electronic media technology, or any combination thereof, to a person or persons for the purpose of:

(A) Training such person or persons for work in a business, trade, or technical or industrial occupation; or

(B) Preparing such person or persons for taking and passing certification exams for work in a business, trade, or technical or industrial occupation.

(20) "School employee" means any person, other than any "owner" as defined in paragraph (14) of this Code section, who directly or indirectly receives compensation from a postsecondary educational institution for services rendered.

(21) "Student" means any person who contracts to pay for and be the recipient of any course defined in paragraph (6) of this Code section.

(22) "Support" or "supported" means the primary source or having as the primary source from which a postsecondary educational institution derives revenue to perform its operation.

(23) "Telecommunications or electronic media technology" means a delivery mode which utilizes but is not limited to television, video cassette or disc, film, radio, computer, or other supportive devices which build upon the audio-video format.

(24) "To grant" means awarding, selling, conferring, bestowing, or giving.

(25) "To offer" means, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form, to perform the act described.

(26) "To operate" an educational institution, or like term, means to establish, keep, or maintain any facility or location in this state where, from which, or through which education is offered or given or educational credentials are offered or granted and includes contracting with any person, group, or entity to perform any such act and to conduct postsecondary activities within this state or from a location outside of this state by correspondence or by any telecommunications or electronic media technology, provided that such educational institution specifically recruits

persons located within this state or has a physical presence within this state.

(27) "Tuition guaranty fund" or "fund" means the Tuition Guaranty Trust Fund provided for in *Code Section 20-3-250.27*.

HISTORY: Code 1981, § 20-3-250.2, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1991, p. 687, § 1; Ga. L. 1992, p. 6, § 20; Ga. L. 1992, p. 1657, § 1; Ga. L. 1992, p. 2615, § 1; Ga. L. 1993, p. 91, § 20; Ga. L. 1994, p. 1282, § 1; Ga. L. 1995, p. 728, § 1; Ga. L. 2002, p. 1414, § 1; Ga. L. 2015, p. 83, § 1/ HB 353.

NOTES: THE 2015 AMENDMENT, effective July 1, 2015, added "while such residents reside in this state" at the end of paragraph (11.1); inserted "Specialist," in the introductory language of paragraph (16); and added ", provided that such educational institution specifically recruits persons located within this state or has a physical presence within this state" at the end of paragraph (26).

CODE COMMISSION NOTES. --Pursuant to *Code Section 28-9-5*, in 1991, a comma was deleted following "provided that" in subparagraph (16)(C).

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O.C.G.A. § 20-3-250.3 (2015)

§ 20-3-250.3. Educational institutions exempted from application of part

(a) The following education and postsecondary educational institutions are exempted from this part except as expressly provided to the contrary:

(1) Institutions exclusively offering instruction at any or all levels from preschool through the twelfth grade regardless of the age of the student;

(2) Education sponsored by a bona fide trade, business, professional, or fraternal organization, so recognized by the commission, solely for that organization's membership or offered on a no-fee basis, not granting degrees;

(3) Education solely avocational or recreational in nature, as determined by the commission, and institutions, not granting degrees, offering such education exclusively;

(4) Postsecondary educational institutions established, operated, governed, or licensed by this state, its agencies, or its political subdivisions, as determined by the commission;

(5) Any flight school which holds an applicable federal air agency certificate issued by the administrator of the Federal Aviation Administration;

(6) Nonpublic, nonprofit, postsecondary educational institutions which demonstrate annually to the satisfaction of the commission that their purposes are solely to provide programs of study in theology, divinity, religious education, and ministerial training, and that they do not grant postsecondary degrees of a nonreligious nature and that such institutions:

(A) Accept no federal or state funds; and

(B) Accept no student who has a federal or state education loan to attend such institutions;

(7) Subject to the requirements of subsection (c) of *Code Section 20-3-250.6*, nonpublic law schools not accredited by the American Bar Association which are subject to the regulations and standards established by the Georgia Supreme Court for such schools;

(8) Nonpublic postsecondary educational institutions conducting postsecondary activity on the premises of military installations located in this state which are solely for military personnel stationed on active duty at such military installations, their dependents, or Department of Defense employees and other civilian employees of that installation;

(9) A school where the sole purpose of the instructional program is review or preparation for a specific occupational examination recognized by a government agency or bona fide trade, business, or fraternal organization and where the student's occupational training received from another school already makes the student eligible to sit for the examination;

(10) Subject to the requirements of subsection (c) of *Code Section 20-3-250.6*, any nonpublic, nonprofit college or university granting baccalaureate degrees whose principal office and campus are located in this state and its related graduate and professional programs, which have been in existence ten or more years as a nonpublic, nonprofit college or university and is accredited by a national or regional accrediting agency recognized by the United States Department of Education; provided, however, that such nonpublic, nonprofit college or university shall be subject to the provisions of *Code Section 20-3-250.14* for the purposes of satisfying the requirements of *34 C.F.R. Section 668.43(b)* and shall designate the commission as the recipient of complaints from students of such nonpublic, nonprofit college or university as a prerequisite for such nonpublic, nonprofit college's or university's acceptance of federal student financial aid funds; and provided, further, that the designation provided for under this paragraph shall be provided solely to the extent necessary for institutional compliance of such nonpublic, nonprofit college or university with the laws and regulations governing federal student financial aid and shall not affect, rescind, or supersede any preexisting authorizations, charters, or recognition;

(11) Subject to the requirements of subsection (c) of *Code Section 20-3-250.6*, any liberal arts college or university whose principal office and campus are located in this state and its related graduate and professional programs, if any, which was chartered prior to 1955 as a nonpublic, nonprofit, degree-granting institution, provided that it is accredited by a regional or national accrediting agency recognized by the United States Department of Education; and provided, further, that such liberal arts college or university shall be subject to the provisions of *Code Section 20-3-250.14* for the purposes of satisfying the requirements of *34 C.F.R. Section 668.43(b)* and shall designate the commission as the recipient of complaints from students of such liberal arts college or university as a prerequisite for such liberal arts college's or university's acceptance of federal financial aid funds; and provided, further, that the designation provided for under this paragraph shall be provided solely to the extent necessary for institutional compliance of such liberal arts college or university with the laws and regulations governing federal student financial aid and shall not affect, rescind, or supersede any preexisting authorizations, charters, or recognition;

(12) Any institution offering only education or training in income tax theory or income tax return preparation when the total contract price for such education or training does not exceed \$1,000.00, provided that the total charges incurred by any student for all instruction, other than instruction which is solely avocational or recreational in nature as provided in paragraph (3) of this subsection, do not exceed \$1,000.00 in any one calendar year;

(13) Subject to the requirements of subsection (c) of *Code Section 20-3-250.6*, any nonpublic medical school accredited by the Liaison Committee on Medical Education and a national or regional accrediting agency recognized by the United States Department of Education; and

(14) Any college or university that confers both associate and baccalaureate or higher degrees, that is accredited by the Southern Association of Colleges and Schools, College Division, that is operated in a proprietary status, that

provides a \$200,000.00 surety bond, and that contributes to the Tuition Guaranty Trust Fund pursuant to *Code Section 20-3-250.27*; provided, however, that such college or university shall be subject to the provisions of *Code Section 20-3-250.14* for the purposes of satisfying the requirements of *34 C.F.R. Section 668.43(b)* and shall designate the commission as the recipient of complaints from students of such college or university as a prerequisite for such college's or university's acceptance of federal student financial aid funds; and provided, further, that the designation provided for under this paragraph shall be provided solely to the extent necessary for institutional compliance of such college or university with the laws and regulations governing federal student financial aid and shall not affect, rescind, or supersede any preexisting authorizations, charters, or recognition.

(b) Except as otherwise provided in subsection (a) of this Code section, any nonpublic postsecondary educational institution whose students participate in either state or federally funded student financial aid programs is specifically covered by this part.

(c) A postsecondary educational institution which is also regulated pursuant to the provisions of Title 43 shall be exempted only from the provisions of paragraph (2) of subsection (b) of *Code Section 20-3-250.5*, subsections (a) and (b) of *Code Section 20-3-250.6*, and *Code Section 20-3-250.11*.

(d) A postsecondary educational institution which has been granted an exemption from provisions of this part pursuant to paragraph (6) of subsection (a) of this Code section shall subsequently submit an annual statement to the commission which affirms that the institution continues to meet the requirements for exempt status as listed in paragraph (6) of subsection (a) of this Code section. The statement shall be submitted using a form provided by the commission. The commission may request information on the form concerning the names of programs of study offered and the titles of degrees, diplomas, certificates, or other credentials conferred. Institutions which qualify for exempt status may include class components or subjects which are nonreligious in nature but relate to the church related work being performed by the institution. The commission may also authorize an annual visitation by the commission staff to the institution.

HISTORY: Code 1981, § 20-3-250.3, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1991, p. 980, § 1; Ga. L. 1991, p. 1165, § 1; Ga. L. 1992, p. 2198, § 1; Ga. L. 1992, p. 2615, § 2; Ga. L. 1994, p. 1282, § 2; Ga. L. 2002, p. 1414, § 2; Ga. L. 2015, p. 83, § 2/HB 353; Ga. L. 2015, p. 103, § 2-1/HB 372.

NOTES: THE 2015 AMENDMENTS. --The first 2015 amendment, effective July 1, 2015, added "regardless of the age of the student" at the end of paragraph (a)(1); substituted "operated, governed, or licensed" for "operated, and governed" in the middle of paragraph (a)(4); added the proviso at the end of paragraph (a)(10); deleted former paragraph (a)(11), which read: "Subject to the requirements of subsection (c) of *Code Section 20-3-250.6*, any nonpublic institute of paper science and technology offering graduate degrees and which is allied with a public research university and accredited by a national or regional accrediting agency recognized by the United States Department of Education;"; redesignated former paragraphs (a)(12) through (a)(15) as present paragraphs (a)(11) through (a)(14), respectively; added the last two provisos in paragraph (a)(11); substituted "\$1,000.00" for "\$400.00" twice in paragraph (a)(12); and added the last two provisos in paragraph (a)(14). The second 2015 amendment, effective July 1, 2015, deleted "prior to July 1, 1989," preceding "and is accredited" near the end of paragraph (a)(10).

CODE COMMISSION NOTES. --Pursuant to *Code Section 28-9-5*, "*Code Section 20-3-250.27*" was substituted for "*Code Section 209-3-250.27*" in paragraph (a)(15).

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OPINIONS OF THE ATTORNEY GENERAL

RECOGNITION BY U.S. DEPARTMENT OF EDUCATION. --College or university which met the other requirements of paragraph (7) of former § 20-3-102 (see paragraph (a)(10) of *O.C.G.A. § 20-3-250.3*) was exempt from the provisions of *O.C.G.A. Art. 7, Ch. 3, T. 20* upon being recognized for more than ten years by a national or regional accrediting agency recognized by the U.S. Department of Education. 1986 Op. Att'y Gen. No. U86-10.

STATE BOARD CANNOT APPLY STATUTORY PROHIBITIONS TO EXEMPT INSTITUTIONS. --In its administration of the Postsecondary Educational Authorization Act of 1978, the State Board of Education cannot apply the prohibitions of the Act to institutions which are exempted from the Act's coverage. 1978 Op. Att'y Gen. No. 78-67.

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O.C.G.A. § 20-3-250.4 (2015)

§ 20-3-250.4. Nonpublic Postsecondary Education Commission; membership

(a) There is established the Nonpublic Postsecondary Education Commission consisting of 15 members who shall be appointed by the Governor and confirmed by the Senate. One member shall be appointed from each congressional district and the remaining member shall be appointed as an at-large member. Members serving a term of appointment on January 1, 2015, shall complete their terms of appointment, thereafter members of the commission shall be appointed for terms of three years each. Each member shall serve for the term of office to which the person is appointed and until a successor is appointed, confirmed, and qualified. Members may be appointed to succeed themselves but shall not serve for more than two full consecutive terms.

(b) Two members of the commission shall be appointed to represent degree-granting nonpublic postsecondary educational institutions and two members shall be appointed to represent nonpublic postsecondary educational institutions which grant certificates only. The remaining members shall not be employed by or otherwise represent or have an interest in any nonpublic postsecondary educational institution.

(c) The commission shall elect from its members a chairperson, a vice chairperson, and such other officers as are considered necessary, each to serve for a one-year term. Officers may be elected to succeed themselves.

(d) Vacancies on the commission, except those caused by expiration of term, shall be filled by the Governor's appointing a successor who meets the requirement for the vacated position and who shall be confirmed by the Senate to serve for the remainder of the unexpired term of office.

(e) The commission shall meet at least quarterly on the call of the chairperson or upon the written petition of a majority of the commission.

(f) The members of the commission shall serve without compensation, but on presentation of a voucher authorized

by the chairperson of the commission and approved by the executive director, each member shall be entitled to receive for each day's expenses incurred while carrying out official commission business the same daily expense allowance and travel or mileage allowance as that authorized for members of the General Assembly.

(g) A majority of the currently appointed commission shall constitute a quorum for the conduct of business.

(h) Any person appointed to the commission when the Senate is not in session may serve on the commission without Senate confirmation until the Senate acts on that appointment.

HISTORY: Code 1981, § 20-3-250.4, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1994, p. 1282, § 3; Ga. L. 2002, p. 1414, § 3; Ga. L. 2015, p. 83, § 3/HB 353.

NOTES: THE 2015 AMENDMENT, effective July 1, 2015, substituted the present provisions of subsection (a) for the former provisions, which read: "There is established the Nonpublic Postsecondary Education Commission consisting of 14 members who shall be appointed by the Governor and confirmed by the Senate. One member shall be appointed from each congressional district and the remaining members shall be appointed as at-large members. The first members appointed to the commission shall be appointed for terms of office beginning July 1, 1991, with four of those members to serve initial terms of one year each, four of those members to serve initial terms of two years each, and four of those members to serve initial terms of three years each. The initial terms of office shall be specified in the appointment. After these initial terms, members of the commission shall be appointed for terms of three years each. Each member shall serve for the term of office to which the person is appointed and until a successor is appointed, confirmed, and qualified. Members may be appointed to succeed themselves but shall not serve for more than two full consecutive terms."; substituted "a majority" for "at least seven members" near the end of subsection (e); and, in subsection (g), inserted "currently appointed" near the beginning, and deleted ", but not less than seven voting members must concur in order for the commission to take official action" following "business" at the end.

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O.C.G.A. § 20-3-250.5 (2015)

§ 20-3-250.5. Administration; general powers and duties

(a) The commission shall be assigned to the Georgia Student Finance Commission for administrative purposes only. The commission shall be a budget unit of the executive branch of the state government.

(b) The commission shall have the following powers and duties:

(1) To establish and promulgate standards, rules, regulations, and policies for carrying out the provisions of this part and for the orderly operation of the commission. To effectuate the purposes of this part, the commission may request from any department, division, board, bureau, commission, or other agency of the state, and such agency shall provide such information as will enable the commission to exercise properly its powers and perform its duties under this part;

(2) To establish minimum criteria in conformity with *Code Section 20-3-250.6*, including quality of education, ethical and business practices, health and safety, and fiscal responsibility which applicants for authorization to operate or for an agent's permit shall meet before such authorization or permit may be issued, and to continue such authorization or permit in effect. The criteria to be developed under this paragraph shall be such as will effectuate the purposes of this part but will not unreasonably hinder legitimate educational innovation;

(3) To negotiate and enter into interstate reciprocity agreements with similar agencies in other states and with the United States Department of Education if, in the judgment of the commission, such agreements are or will be helpful in effectuating the purposes of this part; but nothing contained in any such reciprocity agreement shall be construed as limiting the commission's or the executive director's powers, duties, and responsibilities with respect to investigating independently or acting upon any application for authorization to operate or for renewal of such authorization to operate a nonpublic postsecondary educational institution, or upon an application for issuance or renewal of any agent's permit, or with respect to the enforcement of any provision of this part, or of any of the rules or regulations promulgated under

this part;

(4) To promulgate rules, regulations, and procedures necessary or appropriate for the conduct of its work and the implementation of this part, and to hold such hearings as it may deem advisable or as required by law in developing such rules, regulations, and procedures, or in aid of any investigation or inquiry;

(5) To delegate to the executive director such administrative powers and duties, in addition to those powers and duties of the executive director otherwise specified in this part, as may be reasonably necessary to carry out effectively this part and to establish such administrative organization and procedures as may be reasonably necessary to carry out this part;

(6) To exercise other powers and duties implied but not enumerated in this subsection but in conformity with this part which, in the judgment of the commission, are necessary in order to carry out this part;

(7) To submit annually to the House Higher Education Committee, to the House Education Committee and the Senate Education and Youth Committee, and to the Senate Higher Education Committee an annual written report summarizing the activities of the commission in regard to its responsibilities, activities, and administration of this part;

(8) To receive and hold title to property, equipment, money, and materials;

(9) To contract with other state, federal, or local public or private schools and other entities, individuals, or other legal entities for the provision of services or activities the commission deems necessary; and

(10) To establish and promulgate regulations for qualified proprietary institutions whose students receive tuition equalization grants in accordance with the criteria set forth in subparagraph (B) of paragraph (2) of *Code Section 20-3-411*.

(c) The executive director of the Nonpublic Postsecondary Education Commission shall be appointed by the Governor. The executive director shall administer the provisions of this part as provided in this subsection and as provided by rules, regulations, and policies of the commission. The executive director shall have the following powers and duties:

(1) To employ such personnel as may be necessary to carry out the provisions of this part and in connection therewith to develop job descriptions for such personnel;

(2) To receive, investigate as he may deem necessary, and act upon applications for authorization to operate nonpublic postsecondary educational institutions and upon applications for agents' permits;

(3) To maintain separate lists of degree-granting nonpublic postsecondary educational institutions, nondegree-granting postsecondary educational institutions, and agents authorized to operate in this state under this part. Such lists shall be available for the information of the public;

(4) To receive and cause to be maintained as a permanent file copies of academic records in conformity with *Code Section 20-3-250.17*;

(5) To investigate as he may deem necessary on his own initiative or in response to any complaint lodged with him any person, group, or entity subject to, or reasonably believed by him to be subject to, the jurisdiction of this part; and, in connection therewith, to subpoena any persons, books, records, or documents pertaining to such investigation, which subpoenas shall be enforceable by any court of this state; to require answers in writing under oath to questions propounded by him; and to administer an oath or affirmation to any person in connection with any investigation; and

(6) To administer compliance with this part in accordance with standards, rules, regulations, and policies of the commission.

(d) The commission shall establish separate listings for degree-granting institutions and nondegree-granting institutions. All standards, rules, regulations, and policies adopted by the commission pursuant to this part shall identify the listings to which such standards, rules, regulations, and policies are applicable.

(e) The commission shall be authorized to provide for biennial review of a previously authorized program of instruction at any institution which has received accreditation by a national or regional accrediting agency recognized by the United States Department of Education. The commission shall promulgate guidelines which shall be followed by the executive director in recommending such biennial program reviews to the commission.

HISTORY: Code 1981, § 20-3-250.5, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1992, p. 1657, § 2; Ga. L. 1995, p. 265, § 1; Ga. L. 1995, p. 728, §§ 2, 3; Ga. L. 2001, p. 4, § 20; Ga. L. 2009, p. 303, § 7/ HB 117; Ga. L. 2011, p. 1, § 9/ HB 326; Ga. L. 2015, p. 83, § 4/ HB 353.

NOTES: THE 2011 AMENDMENT, effective March 15, 2011, substituted "subparagraph (B)" for "subparagraph (C)" at the end of paragraph (b)(10). See editor's note for applicability.

THE 2015 AMENDMENT, effective July 1, 2015, in subsection (d), substituted "listings" for "divisions" in the first and second sentences.

EDITOR'S NOTES. --Ga. L. 2009, p. 303, § 20/ HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

Ga. L. 2011, p. 1, § 17/ HB 326, not codified by the General Assembly, provides, in part, that the 2011 amendment shall be applicable to postsecondary students beginning in the fall of 2011.

LexisNexis 50 State Surveys, Legislation & Regulations

50 State Surveys - Career & Vocational Schools

OPINIONS OF THE ATTORNEY GENERAL

EDITOR'S NOTES. --In light of the similarities of the statutory provisions, an opinion under former Code Section 20-3-103, which was subsequently repealed but was succeeded by provisions in this Code section, is included in the annotations for this Code section.

AUTHORITY OF DEPARTMENT OF EDUCATION TO TAKE LEGAL ACTION FOR NONCOMPLIANCE.

--Department of Education may take legal action against an institution found not to be in compliance with former Article 3 of this chapter (now *O.C.G.A. § 20-3-250.1* et seq.) without specific approval of or direction from the State Board of Education so long as that authority has been delegated to the Department of Education. 1986 Op. Att'y Gen. No. U86-10 (decided under former § 20-3-103).

RESEARCH REFERENCES

C.J.S. --78 C.J.S., Schools and School Districts, § 112 et seq.

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O.C.G.A. § 20-3-250.6 (2015)

§ 20-3-250.6. Minimum standards for educational institutions

(a) In establishing the criteria required by paragraph (2) of subsection (b) of *Code Section 20-3-250.5*, the commission shall observe and shall require compliance with the following minimum standards:

(1) A nonpublic postsecondary educational institution must be maintained and operated, or, in the case of a new institution, it must demonstrate that it can be maintained and operated in compliance with the following minimum standards:

(A) That the quality and content of each course or program of instruction, training, or study are such as may reasonably and adequately achieve the stated objective for which the course or program is offered;

(B) That the institution has adequate space, equipment, library and physical facilities, instructional materials, and personnel to provide education of good quality;

(C) That the education and experience qualifications of directors, administrators, supervisors, and instructors are such as may reasonably ensure that the students will receive education consistent with the objectives of the course or program of study and that each director and instructor shall satisfactorily meet educational qualifications and other requirements established by the commission;

(D) That the institution provides students and other interested persons with a catalog or other written description containing information describing the programs offered; program objectives; length of program; schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study; cancellation and refund policies consistent with standards adopted by the commission; prior year's enrollment, graduation, and job placement rates; and such other material facts concerning the institution and the program or course of instruction as are reasonably likely to affect the decision of the student to enroll therein, together with any other disclosures specified by the

executive director or defined in the rules and regulations of the commission; and that such information is provided to prospective students prior to enrollment;

(E) That upon satisfactory completion of training, the student is given appropriate educational credentials by such institution indicating that such course or courses of instruction or study have been satisfactorily completed by said student;

(F) That adequate records are maintained by the institution to show attendance, progress, or grades and that satisfactory standards are enforced relating to attendance, progress, and performance;

(G) That the institution is maintained and operated in compliance with all pertinent ordinances and laws, including rules and regulations, relative to the safety and health of all persons upon the premises;

(H) That the institution is financially sound and capable of fulfilling its commitments to students;

(I) That neither the institution nor its agents engage in advertising, sales, collection, credit, or other practices of any type which are false, deceptive, misleading, or unfair;

(J) That the chief executive officer, trustees, directors, owners, administrators, supervisors, staff, and instructors are of good reputation and character and that each institution has an education director who meets the requirements established by the commission for such position which requirements shall be substantially related to the predominant course offerings at that institution;

(K) That the student housing owned, maintained, or approved by the institution, if any, is appropriate, safe, and adequate and meets all local fire, safety, and health codes;

(L) That the institution has and maintains a reasonable and proper policy, consistent with standards adopted by the commission, for the refund of the unused portion of tuition, fees, housing or dormitory fees, and any other charges in the event a student enrolled by the institution fails to begin a course or withdraws or is discontinued therefrom prior to completion, which policy shall take into account those costs to the institution that are not diminished by the failure of the student to enter or complete the course of instruction;

(M) That the institution maintains a policy of allowing any student a minimum of 72 hours from the date of the contract or agreement to cancel any contract or rescind any agreement to become a student at the institution and that in the event of any such cancellation or rescission, the student shall receive a refund of the total tuition and fees, if any, paid to the institution at the time of or in connection with the execution of the contract or agreement and that such policy shall be a clearly stated part of any written contract or agreement required of students attending the institution; and

(N) That the institution posts continuously in a conspicuous place a notice, in such form as required by the commission, which sets forth the procedures for filing a complaint with the commission for any alleged violation of this part.

(2) An applicant for an agent's permit shall be an individual of good reputation and character and shall represent only a nonpublic postsecondary educational institution or institutions which meet the minimum standards established in this Code section and the criteria established under paragraph (2) of subsection (b) of *Code Section 20-3-250.5*.

(b) In lieu of the criteria set forth in subsection (a) of this Code section, or in addition thereto, the executive director, for good cause shown and with the advice of the commission, may amend, modify, substitute, or alter the terms of such criteria as necessary and advisable because of the specialized nature and objective of the operation of the postsecondary educational institution.

(c) Institutions otherwise exempt from certain provisions of this part under paragraphs (7), (10), (11), (12), and (14) of subsection (a) of *Code Section 20-3-250.3* shall be required to meet the standards of financial soundness and being capable of fulfilling commitments to students as provided in subparagraph (a)(1)(H) of this Code section, and, because of such requirement, each such institution shall provide the commission with audited financial statements as performed by an independent certified public accountant and at such times as the commission shall require. The commission may impose a fee to be paid by such institutions to offset the cost of receiving and reviewing such audited financial statements. Institutions otherwise exempt from certain provisions of this part under subsection (c) of *Code Section 20-3-250.3* shall be required to submit annual financial reports to the commission when applying for annual renewal of exemption or authorization using the reporting format provided by the commission. In addition thereto, institutions otherwise exempt from certain provisions of this part under paragraph (10) of subsection (a) of *Code Section 20-3-250.3* shall be subject to the requirements of *Code Sections 20-3-250.8, 20-3-250.10, and 20-3-250.27*. The reports to the Governor and to the General Assembly required by subsection (h) of *Code Section 20-3-250.27* shall include a summary of the commission's findings from its review of audited financial statements required by this subsection.

(d) The commission shall be authorized to adopt rules pertaining to the content and format of financial reports to be submitted by postsecondary educational institutions applying for authorization to operate in this state.

HISTORY: Code 1981, § 20-3-250.6, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1991, p. 687, § 2; Ga. L. 1992, p. 1657, § 3; Ga. L. 1992, p. 2615, § 3; Ga. L. 1993, p. 91, § 20; Ga. L. 1994, p. 1282, § 4.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

50 State Surveys - Career & Vocational Schools

OPINIONS OF THE ATTORNEY GENERAL

EDITOR'S NOTES. --In light of the similarities of the statutory provisions, an opinion under former O.C.G.A. § 20-3-104, which was subsequently repealed but was succeeded by provisions in this Code section, is included in the annotations for this Code section.

REASONABLE CHANGES IN BROCHURE'S TUITION AND GRADUATION REQUIREMENTS ALLOWED.

--Reasonable changes in tuition charges and graduation requirements by a private college that has reserved the right to do so in the college's brochure do not violate the Postsecondary Educational Authorization Act of 1978 (former Article 3 of this chapter, now this part). 1984 Op. Att'y Gen. No. 84-35 (decided under former O.C.G.A. § 20-3-104).

RESEARCH REFERENCES

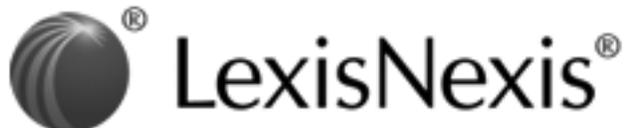
C.J.S. --14A C.J.S., Colleges and Universities, § 3. 78 C.J.S., Schools and School Districts, § 103 et seq.

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GO TO GEORGIA STATUTES ARCHIVE DIRECTORY

O.C.G.A. § 20-3-250.7 (2015)

§ 20-3-250.7. Prohibited activities of persons, agents, groups, or entities

(a) No person, agent, group, or entity of whatever kind, alone or in concert with others, shall:

(1) Operate in this state a nonpublic postsecondary educational institution or conduct postsecondary activities in this state unless issued a current certificate of valid authorization by the executive director;

(2) Offer postsecondary instruction leading to a postsecondary degree or certificate to Georgia residents from a location outside this state by correspondence or any telecommunications or electronic media technology unless issued a current certificate of valid authorization;

(3) Solicit prospective students without being authorized by the executive director to do so and without being bonded if required to do so by *Code Section 20-3-250.10*;

(4) Offer, as or through an agent, enrollment or instruction in, or the granting of educational credentials from, a postsecondary educational institution not exempted from this part, whether such institution is within or outside this state, unless such agent is a natural person and has a currently valid agent's permit issued pursuant to this part; or accept contracts or enrollment applications from an agent who does not have a current permit as required by this part; but the commission may promulgate rules and regulations to permit the rendering of legitimate public information services without such permit;

(5) Make or cause to be made any statement or representation, oral, written, or visual, in connection with the offering or publicizing of a course, if such person knows or reasonably should have known the statement or representation to be false, deceptive, substantially inaccurate, or misleading;

(6) Instruct or educate, or offer to instruct or educate, including advertising or soliciting for such purpose, enroll

or offer to enroll, contract or offer to contract with any person for such purpose, or award any educational credential, or contract with any institution or party to perform any such act, in this state, whether such person, agent, group, or entity is located within or outside this state, unless such person, agent, group, or entity observes and is in compliance with the minimum standards set forth in *Code Section 20-3-250.6*, the criteria established by the commission pursuant to paragraph (2) of subsection (b) of *Code Section 20-3-250.5*, and the rules and regulations adopted by the commission;

(7) Promise or guarantee employment utilizing information, training, or skill purported to be provided or otherwise enhanced by a course, unless the promisor or guarantor offers the student or prospective student a bona fide contract of employment agreeing to employ said student or prospective student for a specified period of time in a business or other enterprise regularly conducted by him or her where such information, training, or skill is a normal condition of employment;

(8) Do any act constituting part of the conduct or administration of a course or the obtaining of students thereof, if such person knows or reasonably should know that any phase or incident of the conduct or administration of the course is being carried on by the use of fraud, deception, other misrepresentation, or by any person soliciting students without a permit; or

(9) Grant, or offer to grant, postsecondary degrees, diplomas, certificates, or honorary or unearned degrees without authorization to do so from the commission.

(b) No person, agent, group, or entity of whatever kind shall use the term "college" or "university" without authorization to do so from the commission unless it was doing so prior to July 1, 1985, or is otherwise authorized to do so under this part. Nonpublic postsecondary educational institutions operating in this state which are otherwise exempted from this part pursuant to *Code Section 20-3-250.3* shall be subject to the provision of this subsection.

(c) No person, firm, or institution shall sell, barter, or exchange for any consideration or attempt to sell, barter, or exchange for any consideration any postsecondary degree, diploma, or certificate.

(d) No person, firm, or institution shall use, or attempt to use, in connection with any business, trade, profession, or occupation any postsecondary certificate, degree, or certification of degree or degree credit including, but not limited to, a transcript of course work, which the person, firm, or institution knows was fraudulently issued, obtained, forged, or materially altered.

(e) Any contract entered into with any person for any course of instruction by or on behalf of any owner, employee, agent, or other representative of a nonpublic postsecondary educational institution subject to this part to which a certificate of authorization has not been issued shall be unenforceable in any action brought thereon.

(f) Any person, group, or entity or any owner, officer, agent, or employee thereof who willfully violates this Code section, *Code Section 20-3-250.8*, or willfully fails or refuses to deposit with the executive director the records required by *Code Section 20-3-250.17* shall be guilty of a misdemeanor. Each day's failure to comply with such Code sections shall be a separate violation. Such criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the Attorney General or a district attorney pursuant to *Code Section 20-3-250.18*.

HISTORY: Code 1981, § 20-3-250.7, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1992, p. 1657, § 4; Ga. L. 1994, p. 1282, § 5.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

50 State Surveys - Career & Vocational Schools

OPINIONS OF THE ATTORNEY GENERAL

EDITOR'S NOTES. --In light of the similarities of the statutory provisions, an opinion under former Ga. L. 1972, p. 156, which was subsequently repealed but was succeeded by provisions in this Code section, is included in the annotations for this Code section.

STATE BOARD CANNOT APPLY STATUTORY PROHIBITIONS TO EXEMPT INSTITUTIONS. --In its administration of former Article 3, the State Board of Education could not apply the prohibitions of former Ga. L. 1972, p. 156 (which was substantially similar to this section) to institutions which were exempted from the law's coverage (see *O.C.G.A. § 20-3-250.3*). 1978 Op. Att'y Gen. No. 78-67 (decided under former Ga. L. 1972, p. 156).

RESEARCH REFERENCES

C.J.S. --14A C.J.S., Colleges and Universities, § 3. 78 C.J.S., Schools and School Districts, § 103 et seq.

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O.C.G.A. § 20-3-250.8 (2015)

§ 20-3-250.8. Application to operate or conduct postsecondary activities

(a) Each nonpublic postsecondary educational institution desiring to operate or conduct postsecondary activities in this state shall make application to the commission, upon forms to be provided by the commission. Such application shall be accompanied by a catalog or other written description published, or proposed to be published, by the institution, containing the information specified in subparagraph (a)(1)(D) of *Code Section 20-3-250.6*, including information required by rules and regulations of the commission. Such application shall also be accompanied by evidence of a surety bond if required by *Code Section 20-3-250.10* and subsection (c) of *Code Section 20-3-250.27* and shall be accompanied by payment of the fees specified in *Code Section 20-3-250.11*; provided, however, that when making application to the commission for authorization to operate, those institutions exempt from certain provisions of this part pursuant to the provisions of paragraph (10) of subsection (a) of *Code Section 20-3-250.3* or subsection (c) of *Code Section 20-3-250.3* shall be required to submit only those documents pertaining to provisions of this part from which such institutions are not exempt.

(b) A nonpublic postsecondary educational institution shall not operate or conduct postsecondary activities in any building in which that institution did not previously operate or conduct postsecondary activities unless the institution obtains authorization to operate or conduct those activities in that building as a branch facility. An application for authorization to operate any branch facility shall be accompanied by catalogs, other written documents, evidence of bond, and payment of fees as required for an initial application pursuant to subsection (a) of this Code section.

(c) Following review of such application and any further information submitted by the applicant or required by the executive director, an on-site inspection of the physical facility at which the institution will be operating, if located in this state, and such investigation of the applicant as the executive director may deem necessary or appropriate, the executive director shall either grant or deny authorization to operate to the applicant. A grant of authorization to operate may be on such terms and conditions as the executive director may specify.

(d) The authorization to operate shall be in a form recommended and approved by the commission and shall state in a clear and conspicuous manner at least the following information:

(1) The date of issuance, effective date, and term of authorization;

(2) The correct name and address of the institution so authorized;

(3) The authority for authorization and conditions thereof;

(4) Any limitation of the authorization, as deemed necessary by the executive director;

(5) The signature of the executive director or such person as may have been designated by the executive director;
and

(6) Any other fair and reasonable representations consistent with this part and deemed necessary by the executive director.

(e) The term for which authorization is given shall not extend for more than one year and may be issued for a lesser period of time.

(f) The authorization to operate shall be issued to the owner or governing body of the applicant institution and shall be nontransferable. In the event of a change in ownership of the institution, a new owner or governing body shall within ten days after the change in ownership notify the commission in writing and shall within 30 days after the change in ownership make application to the commission for a new authorization to operate; and in the event of failure to do so, the institution's authorization to operate shall terminate. Application for a new authorization to operate by reason of change in ownership of the institution shall, for purposes of subsection (b) of *Code Section 20-3-250.12*, be deemed an application for renewal of the institution's authorization to operate.

(g) At least 60 days prior to the expiration of an authorization to operate, the institution shall complete and file with the executive director an application form for renewal of its authorization to operate. Such renewal application shall be reviewed and acted upon as provided in subsections (c) through (f) of this Code section.

(h) An institution not yet in operation when its application for authorization to operate is filed may not begin operation or conduct any postsecondary activities until receipt of authorization.

(i) Each nonpublic postsecondary educational institution which has been granted an authorization to operate or conduct postsecondary activities in this state shall obtain authorization from the executive director before it offers any course not offered by the institution at the time its most recent authorization was granted. The commission by regulation shall establish procedures and standards for authorization of such additional course offerings.

HISTORY: Code 1981, § 20-3-250.8, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1992, p. 1657, § 5; Ga. L. 1994, p. 1282, § 6; Ga. L. 2015, p. 83, § 5/HB 353.

NOTES: THE 2015 AMENDMENT, effective July 1, 2015, in the second sentence of subsection (f), substituted "shall" for "must," and substituted "notify the commission in writing and shall within 30 days after the change in ownership make application to the commission" for ", apply".

LexisNexis 50 State Surveys, Legislation & Regulations

50 State Surveys - Career & Vocational Schools

RESEARCH REFERENCES

C.J.S. --14A C.J.S., Colleges and Universities, §§ 3, 4. 78 C.J.S., Schools and School Districts, § 103 et seq.

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O.C.G.A. § 20-3-250.9 (2015)

§ 20-3-250.9. Application by persons to solicit or perform services of agent

(a) Each person desiring to solicit or perform the services of an agent in this state shall make application to the executive director upon forms to be provided by the commission. Such application shall be accompanied by evidence of the good reputation and character of the applicant in a form to be prescribed by the commission and shall state the institution or institutions which the applicant intends to represent. An agent representing more than one institution must obtain a separate agent's permit for each institution represented, but when an agent represents institutions having a common ownership, only one agent's permit shall be required with respect to such institutions. No postsecondary educational institution shall employ or otherwise retain the services of an agent who has not been issued an agent's permit by the commission. In the event any institution which the applicant intends to represent does not have authorization to operate in this state, such application shall be accompanied by the information required of institutions making application for such authorization. Such application for an agent's permit shall also be accompanied by payment of the agent's permit fee specified by *Code Section 20-3-250.11*.

(b) Following review of such application and any further information submitted by the applicant or required by the executive director and such investigation of the applicant as the executive director may deem necessary or appropriate, the executive director shall either grant or deny an agent's permit to the applicant.

(c) The agent's permit shall be in a form approved by the commission and shall state in a clear and conspicuous manner at least the following information:

- (1) The date of issuance, effective date, and term;
- (2) The correct name and address of the agent; and
- (3) The institution or institutions which such agent is authorized to represent.

(d) The term for which an agent's permit is issued shall not extend for more than one year and may be issued for a lesser period of time.

(e) At least 60 days prior to the expiration of an agent's permit, the agent shall complete and file with the executive director an application form for renewal of the permit. Such renewal application shall be reviewed and acted upon as provided in subsections (b) through (d) of this Code section.

HISTORY: Code 1981, § 20-3-250.9, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1991, p. 687, § 3; Ga. L. 1992, p. 1657, § 6.

NOTES: CODE COMMISSION NOTES. --Pursuant to *Code Section 28-9-5*, in 1992, a second "the" was deleted preceding "agent's" in the last sentence of subsection (a).

LexisNexis 50 State Surveys, Legislation & Regulations

50 State Surveys - Career & Vocational Schools

RESEARCH REFERENCES

AM. JUR. 2D. --*51 Am. Jur. 2d, Licenses and Permits, §§ 7, 9, 45, 50, 51.*

C.J.S. --*53 C.J.S., Licenses, §§ 8 et seq., 33, 58 et seq.*

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O.C.G.A. § 20-3-250.10 (2015)

§ 20-3-250.10. Surety bonds; filing; amount; release of surety; suspension upon release of surety

(a) At the time an initial application or application for a branch facility is made for authorization to operate, the executive director shall require the nonpublic postsecondary educational institution making such application to file with the executive director a good and sufficient surety bond in such sum as determined by subsection (b) of this Code section. Such bond shall be executed by the applicant as principal and by a surety company qualified and authorized to do business in this state. The bond shall be conditioned to provide indemnification to the Tuition Guaranty Trust Fund established in *Code Section 20-3-250.27* and to any student or enrollee or that person's parent or guardian or class thereof determined to have suffered loss or damage as a result of any act or practice which is a violation of this part or of rules and regulations promulgated pursuant thereto by such nonpublic postsecondary educational institution and that the bonding company shall pay any final, nonappealable judgment rendered by the commission or any court of this state having jurisdiction, upon receipt of written notification thereof. Regardless of the number of years that such bond is in force, the aggregate liability of the surety thereon shall in no event exceed the penal sum of the bond. The bond may be continuous.

(b) The minimum amount of the bond required by subsection (a) of this Code section shall be based on the gross tuition of the nonpublic postsecondary educational institution during the previous year or on the estimated gross tuition for the current year, whichever is larger, and shall be as follows:

Gross Tuition	Minimum Bond
\$ 0.00 -- \$ 50,000.00.....	\$ 20,000.00
50,001.00 -- 100,000.00.....	30,000.00

O.C.G.A. § 20-3-250.10

100,001.00 -- 200,000.00.....	50,000.00
200,001.00 -- 300,000.00.....	75,000.00
300,001.00 -- 400,000.00.....	100,000.00
400,001.00 -- 500,000.00.....	150,000.00
500,001.00 and over.....	200,000.00

For situations where a nonpublic postsecondary educational institution is unable to secure a bond amount provided for by this subsection, a bank standby letter of credit secured from a federally insured financial institution shall be accepted pursuant to rules and regulations of the commission.

(c) If the bond filed with the initial application to operate remains in effect, it shall be sufficient when an application is made for the renewal of authorization to operate, unless the amount of the bond must be increased because of increased gross tuition to comply with requirements of subsection (b) of this Code section.

(d) The surety bond to be filed under this Code section shall cover the period of the authorization to operate except when a surety shall be released as provided in this Code section. A surety on any bond filed under this Code section may be released therefrom after such surety shall serve written notice thereof on the executive director at least 90 days prior to such release; but such release shall not discharge or otherwise affect any claim theretofore or thereafter filed by a student or enrollee or that person's parent or guardian or class thereof for loss or damage resulting from any act or practice which is a violation of this part or of rules and regulations promulgated pursuant thereto alleged to have occurred while such bond was in effect or from an institution's ceasing operations during the term for which tuition has been paid while such bond was in force.

(e) Authorization for an institution to operate shall be suspended by operation of law when such institution is no longer covered by a surety bond as required by this Code section, but the executive director shall cause such institution to receive at least 30 days' written notice prior to the release of the surety to the effect that such authorization or permit shall be suspended by operation of law until another surety bond shall be filed in the same manner and like amount as the bond being terminated.

HISTORY: Code 1981, § 20-3-250.10, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1991, p. 687, § 4; Ga. L. 1992, p. 1657, § 7; Ga. L. 1994, p. 1282, § 7; Ga. L. 1995, p. 728, § 4; Ga. L. 2002, p. 1414, § 4; Ga. L. 2015, p. 83, § 6/HB 353.

NOTES: THE 2015 AMENDMENT, effective July 1, 2015, rewrote subsection (b); and deleted former subsection (f), which read: "In lieu of the surety bond provided for in subsections (a) and (b) of this Code section, the commission by rule or regulation may authorize the executive director to accept a property bond when a principal of the nonpublic postsecondary educational institution owns property within the State of Georgia with sufficient equity therein to satisfy the requirements of subsection (b) of this Code section."

CODE COMMISSION NOTES. --Pursuant to *Code Section 28-9-5*, in 1995, "nonpublic postsecondary educational institution" was substituted for "Nonpublic Postsecondary Educational Institutions" in subsection (f).

LexisNexis 50 State Surveys, Legislation & Regulations

50 State Surveys - Career & Vocational Schools

OPINIONS OF THE ATTORNEY GENERAL

EDITOR'S NOTES. --In light of the similarities of the statutory provisions, decisions under former Ga. L. 1978, p. 1571 et seq., which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

CERTIFICATE OF DEPOSIT NOT ACCEPTED IN LIEU OF SURETY BOND. --Executive director is not authorized to accept a certificate of deposit in lieu of a surety bond from a nonpublic postsecondary institution. In addition, if the commission authorizes the executive director to substitute a property bond in lieu of a surety bond by rule or regulation, the commission may require the owner of the property to provide proof of equity and other assurances of ownership. 1991 Op. Att'y Gen. U91-21.

BOARD WITHOUT AUTHORITY TO WAIVE FEE AND BOND REQUIREMENTS for any institution which is otherwise subject to the law's coverage. 1980 Op. Att'y Gen. No. 80-33 (decided under former Ga. L. 1978, p. 1571 et seq.).

RESEARCH REFERENCES

AM. JUR. 2D. --*51 Am. Jur. 2d, Licenses and Permits, § 55. 74 Am. Jur. 2d, Suretyship, § 28.*

C.J.S. --*53 C.J.S., Licenses, § 67 et seq.*

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O.C.G.A. § 20-3-250.11 (2015)

§ 20-3-250.11. Collection of fees established by commission

(a) Fees shall be collected by the executive director in such amounts as shall be established by the commission. The commission is authorized to establish the following fees and fee schedules:

(1) Separate initial application and renewal fee schedules for degree-granting and nondegree-granting nonpublic postsecondary educational institutions based upon the commission's relative cost of performing its duties and responsibilities with regard to those categories of institutions and, within those categories, based upon actual or projected gross tuition of those institutions;

(2) Initial and renewal fees for agents' permits;

(3) Special fees for the evaluation of postsecondary educational institutions;

(4) Fees authorized pursuant to *Code Section 20-3-250.27*; and

(5) Special fees to offset other identified administrative costs.

All fees collected pursuant to this part, except fees collected pursuant to *Code Section 20-3-250.27*, shall be deposited in the state treasury to the credit of the general fund, and no fees collected under this part shall be subject to refund, except as provided in *Code Section 20-3-250.27*. Except as otherwise indicated in this part, the fees to be collected by the commission under this part shall accompany an application for authorization to operate or an agent's permit.

(b) The commission will pay all costs for evaluation committees that may be necessary to implement this part.

HISTORY: Code 1981, § 20-3-250.11, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1992, p. 1005, § 1; Ga. L. 1992, p.

1657, § 8; Ga. L. 1994, p. 1282, § 8.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

50 State Surveys - Career & Vocational Schools

OPINIONS OF THE ATTORNEY GENERAL

EDITOR'S NOTES. --In light of the similarity of the statutory provisions, an opinion under former Ga. L. 1978, p. 1571 et seq., which was subsequently repealed but was succeeded by provisions in this Code section, is included in the annotations for this Code section.

BOARD WITHOUT AUTHORITY TO WAIVE FEE AND BOND REQUIREMENTS of former article 3 for any institution which is otherwise subject to the article's coverage. 1980 Op. Att'y Gen. No. 80-33 (decided under former Ga. L. 1978, p. 1571 et seq.).

RESEARCH REFERENCES

C.J.S. --53 C.J.S., Licenses, § 105 et seq.

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O.C.G.A. § 20-3-250.12 (2015)

§ 20-3-250.12. Denial of application for agent's permit

(a) If the executive director, upon review and consideration of an application for authorization to operate or for an agent's permit or for renewal thereof, shall determine that the applicant fails to meet the criteria established as provided in this part, the executive director shall so notify the applicant, setting forth the reasons therefor in writing, and shall deny the application.

(b) The executive director may grant to an applicant for renewal an extension of time of reasonable duration in which the applicant may eliminate the reason or reasons for denial contained in the statement of denial, if the applicant has demonstrated to the satisfaction of the executive director its or his desire to meet the requirements of *Code Section 20-3-250.6* and the criteria established pursuant to paragraph (2) of subsection (b) of *Code Section 20-3-250.5*, and if in the judgment of the executive director it would be reasonably possible for the applicant to meet such requirements and criteria within such time.

(c) In the event the executive director denies an application for an agent's permit or for renewal thereof, he shall notify the institution or institutions which such agent represented or proposed to represent, according to the records of the commission, including the reasons therefor.

HISTORY: Code 1981, § 20-3-250.12, enacted by Ga. L. 1990, p. 1166, § 3.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

50 State Surveys - Career & Vocational Schools

RESEARCH REFERENCES

AM. JUR. 2D. --*51 Am. Jur. 2d, Licenses and Permits, § 37.*

C.J.S. --14A C.J.S., Colleges and Universities, §§ 3, 4. 53 C.J.S., Licenses, §§ 38, 39. 78 C.J.S., Schools and School Districts, § 103 et seq.

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O.C.G.A. § 20-3-250.13 (2015)

§ 20-3-250.13. Revocation of agent's permit; conditional permits; hearing

(a) An authorization to operate or an agent's permit may be revoked or made conditional after its issuance if the executive director has reasonable cause to believe that the holder of such authorization or permit has violated or is violating this part or any rules and regulations promulgated pursuant thereto. Prior to such revocation or imposition of condition, the executive director shall notify the holder of the authorization or permit in writing of the impending action, setting forth the grounds for the action contemplated to be taken and advising the holder of a permit that if a hearing is requested, in writing, within ten days of receipt of such notice, the executive director shall set a time and place for a hearing at which the holder of the authorization or permit may be heard in response to the allegation of noncompliance with this part or rules and regulations promulgated pursuant to this part.

(b) If a hearing is requested as provided in subsection (a) of this Code section, such hearing shall be conducted as provided in subsection (d) of *Code Section 20-3-250.15*, and the holder of the authorization or permit shall have the rights set forth in that Code section. The decision of the commission shall be made as provided in subsection (e) of *Code Section 20-3-250.15* and shall be deemed final, subject to the right of judicial review provided for by *Code Section 20-3-250.16*. In the event an agent's permit is revoked or a condition is imposed thereon, the executive director shall notify the institution or institutions which such agent was permitted to represent, as shown in the records of the commission, in addition to the notice required to be given to the agent and any other parties to the hearing.

HISTORY: Code 1981, § 20-3-250.13, enacted by Ga. L. 1990, p. 1166, § 3.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

50 State Surveys - Career & Vocational Schools

RESEARCH REFERENCES

AM. JUR. 2D. --51 *Am. Jur. 2d, Licenses and Permits*, §§ 56, 60 et seq.

C.J.S. --14A C.J.S., Colleges and Universities, §§ 3, 4. 53 C.J.S., Licenses, § 50 et seq. 78 C.J.S., Schools and School Districts, § 103 et seq.

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O.C.G.A. § 20-3-250.14 (2015)

§ 20-3-250.14. Filing complaint against institution or agent

(a) Any person claiming damage or loss as a result of any act or practice by a nonpublic postsecondary educational institution or its agent, or both, which is a violation of this part or of the rules and regulations promulgated pursuant thereto may file with the executive director a complaint against such institution or against its agent, or both. A complaint shall be filed with the executive director within a reasonable period of time, as determined by regulations of the commission, after the event giving rise to the complaint. The complaint shall set forth the alleged violation and shall contain such other information as may be required by the commission. A complaint may also be filed with the executive director by the commission's representatives or by the Attorney General. A complainant may also file with the executive director as a representative of a class of complainants.

(b) The executive director shall investigate any such complaint and may, at his or her discretion, attempt to effectuate a settlement by persuasion and conciliation. The executive director shall consider a complaint pursuant to rules, regulations, and procedures promulgated by the commission.

(c) If, based upon all the evidence at a hearing or other procedure, the executive director shall find that a nonpublic postsecondary educational institution or its agent, or both, have engaged in or are engaging in any act or practice which violates this part or the rules and regulations promulgated pursuant thereto, the executive director shall issue and cause to be served upon such institution or agent, or both, an order requiring such institution or agent, or both, to cease and desist from such act or practice. Additionally, if the executive director shall find that the complainant or class of complainants has suffered loss or damage as a result of such act or practice, the executive director may, at his or her discretion, award the complainant or class of complainants full or partial restitution for such damage or loss and may impose the penalties provided for in *Code Section 20-3-250.21*. The executive director may also, as appropriate, based on his or her own investigation or the evidence adduced at such hearing or on the basis of such investigation and evidence, commence an action to revoke an institution's authorization to operate or revoke an agent's permit.

HISTORY: Code 1981, § 20-3-250.14, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1991, p. 687, § 5; Ga. L. 2000, p. 1589, § 3; Ga. L. 2015, p. 83, § 7/HB 353.

NOTES: THE 2015 AMENDMENT, effective July 1, 2015, deleted "verified" following "director a" near the end of the first sentence of subsection (a); in subsection (b), inserted "or her" near the middle of the first sentence, substituted the present provisions of the second sentence for the former provisions, which read: "The executive director may consider a complaint after ten days' written notice sent by registered or certified mail or statutory overnight delivery, return receipt requested, to such institution or to such agent, or both, as appropriate, giving notice of a time and place for hearing thereon.", and deleted the last sentence, which read: "Such hearing shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'"; and, in subsection (c), inserted "or other procedure" in the first sentence, and inserted "or her" in the middle of the second sentence and near the beginning of the last sentence.

EDITOR'S NOTES. --Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the Act was applicable to notices delivered on or after July 1, 2000.

LexisNexis 50 State Surveys, Legislation & Regulations

50 State Surveys - Career & Vocational Schools

RESEARCH REFERENCES

C.J.S. --14A C.J.S., Colleges and Universities, § 3. 78 C.J.S., Schools and School Districts, § 103 et seq.
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O.C.G.A. § 20-3-250.15 (2015)

§ 20-3-250.15. Hearing and review by commission of denial of permit

(a) Any person aggrieved by a decision of the executive director respecting denial of an authorization to operate or of an agent's permit or the placing of conditions thereon, whether on initial application or on application for renewal, or by a decision of the executive director revoking an institution's authorization to operate or an agent's permit and any person aggrieved by the imposition of a penalty by the executive director under *Code Section 20-3-250.21* shall have the right to a hearing and review of such decision by the commission as provided in this Code section.

(b) If, upon written notification of any such action taken by the executive director, the aggrieved party desires a hearing and review, such party shall notify the executive director, in writing, within ten days after the giving of notice of such action; otherwise such action shall be deemed final.

(c) Upon receiving such notice from the aggrieved party, the executive director, after consultation with the commission, shall within 30 days fix the time and place for a hearing by the commission and shall notify the aggrieved party thereof.

(d) At such hearing the party may employ counsel, shall have the right to hear the evidence upon which the action is based, and may present evidence in opposition or in extenuation. The commission as a whole may conduct such hearing and render a decision or the commission may appoint a hearing officer to conduct such hearing and render a decision on behalf of the commission. Such hearing officer may be a member of the commission or any other person, other than the executive director or his or her staff, as designated by the commission. The commission by rules and regulations shall provide for the rules of evidence and order and procedure which is to be followed for such hearings. Any member of the commission may participate in such hearing pursuant to this part except where a clear conflict of interest may be designated.

(e) A decision of the commission following a hearing, or on expiration of the time for demand of a hearing if no

such demand is filed, shall be deemed final, subject to the right of judicial review provided for by *Code Section 20-3-250.16*. All matters presented by hearing as provided in this Code section shall be acted upon promptly by the commission, and the commission shall notify all parties in writing of its decision, which shall include a statement of findings and conclusions upon all material issues of fact, law, or discretion presented at the hearing and the appropriate rule, order, sanction, relief, or denial thereof.

HISTORY: Code 1981, § 20-3-250.15, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 2015, p. 83, § 8/HB 353.

NOTES: THE 2015 AMENDMENT, effective July 1, 2015, in subsection (c), inserted "within 30 days", and deleted "within 30 days" following "by the commission" near the end; and, in subsection (d), added the second through fifth sentences, and deleted the former last two sentences, which read: "The hearing shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' Any member of the commission may preside except where a clear conflict of interest may be demonstrated."

LexisNexis 50 State Surveys, Legislation & Regulations

50 State Surveys - Career & Vocational Schools

RESEARCH REFERENCES

C.J.S. --78 C.J.S., Schools and School Districts, §§ 103 et seq., 112 et seq.

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O.C.G.A. § 20-3-250.16 (2015)

§ 20-3-250.16. Judicial review of final commission action

(a) Any person aggrieved or adversely affected by any final action of the commission may obtain judicial review of such action as provided in this Code section.

(b) An action for judicial review may be commenced in any court of competent jurisdiction within 30 days after the commission's action becomes effective.

(c) Upon a finding that irreparable injury would otherwise result, the commission, upon application therefor, shall postpone the effective date of its action pending judicial review, or the reviewing court, upon application therefor and upon such terms and upon such security, if any, as the court shall find necessary, shall issue appropriate process to postpone the effective date of the commission's action or to preserve the rights of the parties pending conclusion of the review proceedings.

(d) The record on review, unless otherwise stipulated by the parties, shall include the original or certified copies of all pleadings, applications, evidence, exhibits, and other papers presented to or considered by the commission and the decision, findings, and action of the commission. As to alleged procedural irregularities, evidence may be taken independently by the court.

(e) If the court finds no error, it shall affirm the commission's action. If it finds that such action was:

- (1) Arbitrary or capricious;
- (2) A denial of a statutory right;
- (3) Contrary to constitutional right, power, privilege, or immunity;

(4) In excess of statutory jurisdiction, authority, purposes, or limitation;

(5) Not in accord with the procedures or procedural limitations of this part or otherwise required by law;

(6) An abuse or clearly unwarranted exercise of discretion, unsupported by substantial evidence when the record is considered as a whole; or

(7) Otherwise contrary to law,

then the court shall hold unlawful and set aside the commission's action and afford such relief as may be appropriate.

(f) The decision of the trial court shall be subject to appellate review in the same manner and with the same effect as in appeals from a final judgment or decree in any other civil action.

HISTORY: Code 1981, § 20-3-250.16, enacted by Ga. L. 1990, p. 1166, § 3.

NOTES:

LexisNexis 50 State Surveys, Legislation & Regulations

50 State Surveys - Career & Vocational Schools

RESEARCH REFERENCES

AM. JUR. 2D. --68 *Am. Jur. 2d, Schools*, § 80 et seq.

C.J.S. --78 C.J.S., *Schools and School Districts*, § 112 et seq.

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O.C.G.A. § 20-3-250.17 (2015)

§ 20-3-250.17. Discontinuation of operations of nonpublic postsecondary educational institution

In the event any nonpublic postsecondary educational institution now or hereafter operating in this state proposes to discontinue its operations, the chief administrative officer, by whatever title designated, of such institution shall cause to be filed with the executive director the original or legible true copies of all such academic records of such institution as may be specified by the executive director. Such records shall include, at a minimum, such information as is customarily required by colleges or other postsecondary educational institutions when considering students for transfer or advanced study and, as a separate document, the academic record of each former student. In the event it appears to the executive director that any such records of an institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the executive director, the executive director may, with court order, seize and take possession of such records, subject to the confidentiality accorded normal school records. The executive director shall maintain or cause to be maintained a permanent file of such records coming into his or her possession.

HISTORY: Code 1981, § 20-3-250.17, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1994, p. 1282, § 9.

NOTES:

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50 State Surveys - Career & Vocational Schools

RESEARCH REFERENCES

C.J.S. --14A C.J.S., Colleges and Universities, § 3. 78 C.J.S., Schools and School Districts, § 103 et seq.
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O.C.G.A. § 20-3-250.18 (2015)

§ 20-3-250.18. Initiation of court proceedings by executive director

(a) The Attorney General of this state or the district attorney of any judicial circuit in which a nonpublic postsecondary educational institution or an agent thereof is found, at the request of the executive director or on his own motion, may bring any appropriate action or proceeding in any court of competent jurisdiction for the enforcement of this part.

(b) Whenever it shall appear to the executive director that any person, agent, group, or entity is about to violate or has been violating any of the provisions of this part or any of the lawful rules, regulations, or orders of the executive director, the executive director may, on his own motion or on the written complaint of any person, file a petition for injunction in the name of the commission in any court of competent jurisdiction in this state against such person, group, or entity for the purpose of enjoining such violation or for an order directing compliance with this part and all rules, regulations, and orders issued pursuant thereto. It shall not be necessary that the executive director allege or prove that he has no adequate remedy at law. The right of injunction provided in this Code section shall be in addition to any other legal remedy which the executive director has and shall be in addition to any right of criminal prosecution provided by law, but the executive director shall not obtain a temporary restraining order without notice to the person, group, or entity affected. The existence of an action of the executive director with respect to alleged violations of this part shall not operate as a bar to an action for injunctive relief pursuant to this Code section.

HISTORY: Code 1981, § 20-3-250.18, enacted by Ga. L. 1990, p. 1166, § 3.

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50 State Surveys - Career & Vocational Schools

RESEARCH REFERENCES

AM. JUR. 2D. --42 *Am. Jur. 2d, Injunctions*, §§ 25, 228, 229. 51 *Am. Jur. 2d, Licenses and Permits*, § 74. 72 *Am. Jur. 2d, States, Territories, and Dependencies*, § 92 et seq.

C.J.S. --43 C.J.S., *Injunctions*, § 11. 43A C.J.S., *Injunctions*, §§ 189, 190. 81A C.J.S., *States*, § 311.

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O.C.G.A. § 20-3-250.19 (2015)

§ 20-3-250.19. Jurisdiction

Any nonpublic postsecondary educational institution not exempt from this part, whether or not a resident of or having a place of business in this state, which conducts postsecondary activities or which instructs or educates or offers to instruct or educate, enrolls or offers to enroll, or contracts or offers to contract to provide instructional or educational services in this state, whether such instruction or services are provided in person or by correspondence or by telecommunications or electronic media technology, to a resident of this state or which offers to award or awards any educational credentials to a resident of this state submits such institution and, if a natural person, his personal representative to the jurisdiction of the courts of this state concerning any cause of action arising therefrom and for the purpose of enforcement of this part by injunction pursuant to *Code Section 20-3-250.18*. Service of process upon any such institution subject to the jurisdiction of the courts of this state may be made by personally serving the summons upon the defendant within or outside this state, in the manner prescribed by Chapter 11 of Title 9, the "Georgia Civil Practice Act," with the same force and effect as if the summons had been personally served within this state. Nothing contained in this Code section shall limit or affect the right to serve any process as prescribed by Chapter 11 of Title 9.

HISTORY: Code 1981, § 20-3-250.19, enacted by Ga. L. 1990, p. 1166, § 3.

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O.C.G.A. § 20-3-250.20 (2015)

§ 20-3-250.20. Funding for administration of part

The commission, through the executive director, shall request funds for the administration of this part, and the General Assembly shall appropriate such funds as deemed adequate and necessary.

HISTORY: Code 1981, § 20-3-250.20, enacted by Ga. L. 1990, p. 1166, § 3.

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O.C.G.A. § 20-3-250.21 (2015)

§ 20-3-250.21. Fines for violations

Any person, group, or entity or any owner, officer, agent, or employee thereof who shall willfully violate *Code Section 20-3-250.7* or *20-3-250.8* or who shall fail or refuse to deposit with the executive director the records required by *Code Section 20-3-250.17* shall be subject to a civil penalty not to exceed \$1,000.00 for each violation. Each day's failure to comply with such Code sections shall be a separate violation. Such fine may be imposed by the executive director in an administrative proceeding or by any court of competent jurisdiction. The commission shall adopt a schedule of regularly imposed fines for violations of this part and shall have such schedule published by the executive director.

HISTORY: Code 1981, § *20-3-250.21*, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1991, p. 687, § 6.

NOTES:

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RESEARCH REFERENCES

AM. JUR. 2D. --*51 Am. Jur. 2d, Licenses and Permits, § 74 et seq.*

C.J.S. --*53 C.J.S., Licenses, § 87 et seq.*

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O.C.G.A. § 20-3-250.22 (2015)

§ 20-3-250.22. Prohibited activities; violation

Reserved. Repealed by Ga. L. 1994, p. 1282, § 10, effective July 1, 1994.

NOTES: EDITOR'S NOTES. --This Code section was based on Ga. L. 1990, p. 1166, § 3.

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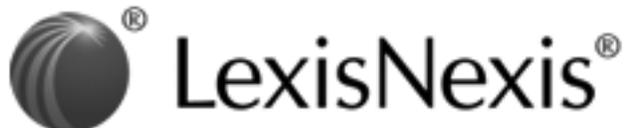
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O.C.G.A. § 20-3-250.23 (2015)

§ 20-3-250.23. Validity of certificates of authorization previously issued

All certificates of authorization previously issued under either Article 3 of this chapter, the "Postsecondary Educational Authorization Act of 1978," or Article 4 of Chapter 4 of this title, the "Georgia Proprietary School Act," as such articles and provisions existed immediately prior to July 1, 1991, shall remain valid until their expiration date or until such certificate can be renewed in accordance with the terms of this part and the rules, regulations, and standards of the commission. The commission is authorized to adopt interim rules and regulations to allow for the transition to this part for institutions regulated under the aforementioned articles.

HISTORY: Code 1981, § 20-3-250.23, enacted by Ga. L. 1990, p. 1166, § 3.

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*** Current Through the 2015 Regular Session ***

TITLE 20. EDUCATION
CHAPTER 3. POSTSECONDARY EDUCATION
ARTICLE 7. SCHOLARSHIPS, LOANS, AND GRANTS
PART 1A. NONPUBLIC POSTSECONDARY EDUCATIONAL INSTITUTIONS

GO TO GEORGIA STATUTES ARCHIVE DIRECTORY

O.C.G.A. § 20-3-250.24 (2015)

§ 20-3-250.24. Compensation and benefits of commission employees

(a) All employees of the commission shall be subject to and covered by Article 1 of Chapter 20 of Title 45, but the position of executive director and such other employee positions as may be determined by the commission to be exempt from the classified service pursuant to that article shall be exempt unclassified positions, and the commission shall determine and fix the salary and other compensation and benefits to be paid or provided to the employees occupying those positions. All full-time employees of the commission shall be members of the Employees' Retirement System of Georgia, except for members of the Teachers Retirement System of Georgia who, without any break in service, become full-time employees of the commission. Such employees shall continue as members of the Teachers Retirement System of Georgia.

(b) Those positions and employees of the Department of Education which are assigned the sole responsibility for management, professional, and clerical services to nonpublic postsecondary schools and proprietary schools programs are transferred to the commission. All such employees transferred to the commission shall retain all existing rights under the rules of the State Personnel Board, the Employees' Retirement System of Georgia, and the Teachers Retirement System of Georgia.

HISTORY: Code 1981, § 20-3-250.24, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1991, p. 687, § 7; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-25/HB 642.

NOTES: THE 2012 AMENDMENT, effective July 1, 2012, substituted "the rules of the State Personnel Board" for "the State Personnel Administration" in the last sentence of subsection (b).

EDITOR'S NOTES. --Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became

effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in *Code Section 45-12-90*."

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O.C.G.A. § 20-3-250.25 (2015)

§ 20-3-250.25. Transfer of records, files, and accounts from State Board of Education to commission

All records, files, accounts, and related items utilized in the administration of the "Georgia Proprietary School Act," or the "Postsecondary Educational Authorization Act of 1978," are transferred from the State Board of Education to the commission and executive director.

HISTORY: Code 1981, § 20-3-250.25, enacted by Ga. L. 1990, p. 1166, § 3.

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O.C.G.A. § 20-3-250.26 (2015)

§ 20-3-250.26. No limitation by this part on professional licensing board's authority

Nothing in this part shall be construed to limit a professional licensing board's authority, as granted by Title 43, to regulate and govern the curriculum, course requirements, instructor qualifications, and other educational activities of nonpublic postsecondary educational institutions.

HISTORY: Code 1981, § 20-3-250.26, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 2000, p. 1706, § 19.

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O.C.G.A. § 20-3-250.27 (2015)

§ 20-3-250.27. Tuition Guaranty Trust Fund

(a) It is the purpose of this Code section to create a trust fund from participation fees from postsecondary educational institutions to enable such institutions, collectively, to protect students against financial loss when a postsecondary educational institution closes without reimbursing its students and without completing its educational obligations to its students and to provide consumer information, as necessary in the determination of the commission, to prospective and currently enrolled students.

(b)(1) Effective on July 1, 1992, the Tuition Guaranty Trust Fund is created. The participation fees received by the commission from postsecondary educational institutions pursuant to the provisions of subsections (c) and (d) of this Code section shall be deposited in a special account designated "Tuition Guaranty Trust Fund" and shall be held in trust by the board of trustees provided for in paragraph (2) of this subsection for the purpose of carrying out the provisions of this Code section. The money in the fund may be invested by said board of trustees in any bonds and other securities of agencies of the government of the United States and bonds and other securities of state and local governments. The earnings from such investments shall be deposited to the credit of the Tuition Guaranty Trust Fund and shall be available for the same purposes as other money deposited in the fund.

(2) The fund shall be administered by the Board of Trustees of the Tuition Guaranty Trust Fund. The board of trustees shall consist of five members of the commission designated by majority vote of the commission, but one of such members shall be a representative of a nonpublic nondegree-granting postsecondary educational institution, and one of such members shall be a representative of a nonpublic degree-granting postsecondary educational institution. The five members of the commission who are so designated shall serve for such terms of office as members of the board as the commission shall establish by rule or regulation. The commission shall appoint one of the members so designated as chairman of the board. The executive director shall also serve as executive director and secretary of the board. Three members of the board must vote in agreement in order for the board to take official action. The commission may by rule or regulation provide for another member of the commission to serve in the place of a member of the board who is

absent from a meeting of the board.

(c)(1) All postsecondary educational institutions operating in this state, except those which are exempt from the provisions of this Code section pursuant to *Code Section 20-3-250.3*, shall participate in the tuition guaranty fund. Those postsecondary educational institutions specified in paragraphs (10) and (15) of subsection (a) of *Code Section 20-3-250.3* and in subsection (c) of *Code Section 20-3-250.3* shall participate in the tuition guaranty fund.

(2) Postsecondary educational institutions which were authorized to operate in this state prior to July 1, 1990, and which have maintained continuous authorization in this state since July 1, 1990, and institutions which have been continuously licensed since July 1, 1990, pursuant to the provisions of Title 43 and were authorized by the commission prior to July 1, 1992, shall participate in the fund and shall not be required to provide surety bonds as provided in *Code Section 20-3-250.10*; provided, however, that any surety bond provided by an institution before July 1, 1992, shall remain in effect for one full year after the effective date of such surety bond.

(3) Postsecondary educational institutions which are currently authorized to operate in this state and which were first authorized to operate in this state on or after July 1, 1990, shall participate in the fund for five years of continuous authorized operation and shall provide the surety bonds required in *Code Section 20-3-250.10*; provided, however, that such surety bonds shall no longer be required of any such institutions which have maintained five full years of continuous authorized operation to the present. Any institution which fails to maintain continuous authorization in this state, and which subsequently applies for reinstatement of its certificate of authorization, must provide a surety bond for five full years following reinstatement of authorization.

(d)(1) In addition to any other fees required by this part, the commission shall by regulation establish fees to be paid annually by postsecondary educational institutions for participation in the tuition guaranty fund. The fees shall be based on gross tuition collected during a year by each postsecondary educational institution. If an institution has not operated for a full year, its participation fee shall be based initially on its projected gross tuition for the first full year of operation. At the conclusion of the first year, the fee for that year shall be adjusted to reflect actual gross tuition. The annual fee established by the commission shall be sufficient, when added to the earnings of the fund, to create a balance in the fund of at least \$500,000.00 by July 1, 1997. The board of trustees shall notify the commission when the fund balance exceeds \$500,000.00, and, except as otherwise provided in paragraph (2) of this subsection, upon receiving such notification, the commission shall cease collection of participation fees from postsecondary educational institutions which have contributed to the fund for at least five years. The commission, upon notification from the board of trustees, shall reestablish collection of participation fees from such participating postsecondary educational institutions at any time the fund balance is less than \$475,000.00. At such time, fees shall be collected from such participating institutions according to a schedule adopted by the commission based on gross tuition in amounts sufficient to raise the fund balance to \$500,000.00.

(2) Each postsecondary educational institution which is first authorized to operate in this state after July 1, 1992, and is required to participate in the fund for five years of continuous authorized operation under the provisions of paragraph (3) of subsection (c) of this Code section shall be required to pay participation fees for such period of time notwithstanding the amount in the tuition guaranty fund. If the balance in the fund exceeds \$500,000.00, participation fees shall be collected from each such institution according to the fee schedule adopted by the commission pursuant to paragraph (1) of this subsection.

(3) If earnings from investments, participation fees required under paragraph (2) of this subsection, and claims experience ever cause the balance in the fund to exceed \$7,750,000.00, the commission, upon being notified by the board of trustees, shall make refunds to postsecondary educational institutions which have participated in the fund for at least five years, so that the fund balance is reduced to \$7.5 million. Any such refund shall be determined by the commission in proportion to the total participation fees paid by a postsecondary educational institution until the time of the refund; provided, however, no reimbursement shall be made to any postsecondary educational institution whose students have been reimbursed from the fund or from bond forfeiture as provided in subsection (g) of this Code section. The commission shall establish by regulation the time and other procedures and requirements for making any such refund, but refunds shall be issued no more than once during a fiscal year.

(e) The annual cost incurred by the commission and by the board of trustees in administering the Tuition Guaranty Trust Fund and providing consumer information as necessary for prospective and currently enrolled students, including expenses incurred in collecting from defaulting postsecondary educational institutions the amounts paid from the fund to or on behalf of students pursuant to the provisions of subsection (g) of this Code section, shall be paid from the fund; provided, however, such annual administrative costs shall not exceed 2.5 percent of the fund during the fiscal year. The commission shall issue a report annually to each postsecondary educational institution participating in the fund. The report shall provide an evaluation of the financial condition of the fund and a summary of claims paid or other expenditures from the fund during the immediately preceding fiscal year.

(f) The commission shall establish by regulation a late payment fee for the failure of a postsecondary educational institution to pay its participation fee at the time established by regulation of the commission for the payment of such fees. An application for authorization to operate or for the renewal thereof may be denied under *Code Section 20-3-250.12* for failure to pay participation fees. Late payment fees shall be paid into the fund. Any authorization to operate may be revoked, suspended, or made conditional under *Code Section 20-3-250.13* for failure to pay participation fees.

(g)(1) Except as otherwise provided in paragraph (2) of this subsection, in the event a postsecondary educational institution participating in the fund goes into bankruptcy or ceases operations without fulfilling its educational obligations to its students or without reimbursing its students, the board of trustees may reimburse from the fund valid claims of students for tuition paid to that institution in accordance with guidelines and procedures adopted by regulations of the board. If a student who attended the defaulting postsecondary educational institution received financial aid under either a state or federal student loan program, the board shall direct payment to the financial institution or other entity who made the loan to the student, rather than directly to the student. If the fund reimburses a student or a financial institution or other entity which made a loan to a student, the fund, to the extent of the amount reimbursed and without the necessity of any further act by any party, shall have an independent claim for recovery against the defaulting postsecondary educational institution and any surety issuing a bond pursuant to *Code Section 20-3-250.10*; provided, however, that if the reimbursement from the fund is insufficient fully to cover the amount due the student or the entity making the loan to the student, then such student or entity shall retain the right of recovery against the defaulting institution and the surety for the unreimbursed amount. Payments from the fund shall be made by warrant of the state treasurer on the order of the board of trustees.

(2) Until surety bonds are no longer required of a participating postsecondary educational institution under the provisions of paragraph (3) of subsection (c) of this Code section, the reimbursement of tuition to students or to financial institutions or other entities on behalf of students, in the event of the default of the postsecondary educational institution, shall be accomplished by bond forfeiture proceedings and not from the tuition guaranty fund unless the full amount of the bond is paid in reimbursements and such amount is insufficient to cover all reimbursements; provided, however, that if a student, financial institution, or other lending entity is entitled to reimbursement of tuition paid for a term which concluded before the expiration of the surety bond, the Tuition Guaranty Trust Fund may make reimbursements to the students or to the financial institutions or other entities on behalf of the students prior to initiating bond forfeiture proceedings.

(3) If the board of trustees pays a claim to or on behalf of a student of a defaulting postsecondary educational institution or if such a claim is paid as a result of a bond forfeiture, the authorization to operate of the defaulting postsecondary educational institution shall be automatically revoked as of the date of such payment, if the authorization to operate has not been previously revoked by the commission pursuant to other provisions of this part. If a defaulting postsecondary educational institution reimburses the fund for any claims paid on behalf of its students, the commission shall be authorized to issue a new authorization to operate to such postsecondary educational institution if the commission finds that the institution is then qualified to operate as a postsecondary educational institution. Such an institution shall provide the surety bond required in *Code Section 20-3-250.10* for two years and shall pay participation fees to the tuition guaranty fund for five years as provided in paragraph (2) of subsection (d) of this Code section.

(4) If at any time the money available in the tuition guaranty fund is insufficient to satisfy tuition reimbursement

claims then pending against the fund, the board of trustees may require each participating postsecondary educational institution to pay a special assessment to the fund. The special assessment shall be in addition to the participation fee provided for in paragraph (1) of subsection (d) of this Code section but the total amount which may be collected in such special assessments in any one fiscal year shall not exceed either the total amount paid during the immediately preceding fiscal year in participation fees or \$100,000.00, whichever is greater. The maximum amount that may be paid from the fund in claims on behalf of the students of any single defaulting postsecondary educational institution is \$250,000.00, regardless of the fact that total claims may exceed that amount.

(5) As an alternative to paying claims to or on behalf of students of a defaulting postsecondary educational institution, the board of trustees may arrange for another postsecondary educational institution to complete the educational obligations to the students of the defaulting postsecondary educational institution, provided that the program offered by the other institution is substantially equivalent to the program for which the students had paid tuition and provided, further, that attendance at the other institution does not cause unreasonable hardship or inconvenience to the students. The commission shall have the authority to adopt rules or regulations which shall govern the board of trustees in the administration of the provisions of this paragraph. As a part of any such program, the board of trustees may reimburse the other postsecondary educational institution from the fund for expenses incurred by the institution in providing educational services for the students of the defaulting postsecondary educational institution. The Tuition Guaranty Trust Fund shall have an independent claim for recovery against the defaulting postsecondary educational institution and any surety issuing a bond pursuant to *Code Section 20-3-250.10* to the extent that the fund has reimbursed a postsecondary educational institution from the fund for expenses pursuant to this paragraph and without the necessity of any further act by any party.

(6) It shall not be necessary to claim a loss or damage pursuant to the provisions of *Code Section 20-3-250.14* in order for the board of trustees to pay claims to or on behalf of students pursuant to the provisions of this Code section. Procedures and requirements for filing claims under this Code section shall be as provided by rules or regulations adopted for that purpose by the commission.

(7) Any person aggrieved by a decision of the board of trustees to pay or deny a claim pursuant to the provisions of this Code section may appeal to the commission. A decision of the board of trustees shall be in writing and shall be sent by certified mail or statutory overnight delivery to the claimant and to the owner of the defaulting postsecondary educational institution. If the whereabouts of the owner of the defaulting postsecondary educational institution is not known and cannot reasonably be ascertained by the board of trustees, a notice of the decision shall be published in the legal organ of the county where the student claimant attended the defaulting postsecondary educational institution or a facility of such institution. The appeal to the commission shall be commenced by filing a written notice of such appeal to the commission within 30 days after receiving the written decision of the board of trustees. Within 30 days after receiving a notice of appeal, the commission shall affirm the decision of the board of trustees, modify and affirm the decision of the board of trustees, or overrule the decision of the board of trustees. Any person aggrieved by the action of the commission shall have the right to judicial review pursuant to the provisions of *Code Section 20-3-250.16*. The commission shall adopt rules or regulations providing procedures for the conduct of appeals from the board of trustees, but such rules or regulations shall be consistent with the provisions of this paragraph.

(h) The board of trustees shall issue a biennial report to the Governor and members of the General Assembly providing a summary of the financial condition of the fund and claims experience during the preceding biennium. Such reports shall be issued during the regular session of the General Assembly held during each even-numbered year beginning in 1994.

(i) The tuition guaranty fund shall be exempt from all license fees or income, franchise, privilege, occupation, or other taxes levied or assessed by the state or by any county, municipality, or other political subdivision of the state. Any payment of claims or refund of participation fees from the tuition guaranty fund shall not be exempt from taxation unless such payment or refund is exempt from taxation pursuant to the provisions of law independent of the provisions of this part.

HISTORY: Code 1981, § 20-3-250.27, enacted by Ga. L. 1992, p. 2615, § 4; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 1282, § 11; Ga. L. 1995, p. 10, § 20; Ga. L. 2000, p. 1589, § 3; Ga. L. 2002, p. 1414, § 5; Ga. L. 2010, p. 863, § 3/SB 296; Ga. L. 2015, p. 83, § 9/HB 353.

NOTES: THE 2010 AMENDMENT, effective July 1, 2010, substituted "state treasurer" for "director of the Office of Treasury and Fiscal Services" in the last sentence of paragraph (g)(1).

THE 2015 AMENDMENT, effective July 1, 2015, added "and to provide consumer information, as necessary in the determination of the commission, to prospective and currently enrolled students" at the end of subsection (a); in the first sentence of paragraph (d)(3), substituted "\$7,750,000.00" for "\$5,025,000.00" in the middle, and substituted "\$7.5 million" for "\$5 million" at the end; and, in the first sentence of subsection (e), inserted "and providing consumer information as necessary for prospective and currently enrolled students" near the beginning, and substituted "fund" for "participation fees collected from postsecondary educational institutions" near the end.

CODE COMMISSION NOTES. --Pursuant to *Code Section 28-9-5*, in 1993, "of subsection (a)" was inserted in the second sentence of paragraph (c)(1).

Pursuant to *Code Section 28-9-5*, in 2002, in subsection (g), "reimbursements; provided" was substituted for "reimbursements. Provided" in paragraph (g)(2) and "Tuition Guaranty Trust Fund" was substituted for "Tuition Guaranty Trust fund" in the last sentence of paragraph (g)(5).

EDITOR'S NOTES. --Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the Act was applicable to notices delivered on or after July 1, 2000.

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