

Article 8.

Proprietary Schools.

**§ 115D-87. Definitions.**

The following definitions apply in this Article:

- (1) Person. – Any individual, association, partnership or corporation, and includes any director, receiver, referee, trustee, executor, or administrator as well as a natural person.
- (2) Proprietary school. – An educational institution having a physical presence within North Carolina that meets all of the following conditions:
  - a. It is privately owned by a sole proprietorship, partnership, limited liability company, or corporation.
  - b. It is established as a business entity or as a nonprofit charitable organization.
  - c. It offers instruction to individuals who (i) have completed their elementary and secondary education or (ii) are beyond the age of compulsory secondary school attendance and have demonstrated an ability to benefit from that instruction for the attainment of educational objectives, vocational objectives, or both.
  - d. It charges tuition or receives any consideration from a student for any portion of the instruction in any form, including written or audiovisual material.
  - e. It educates, trains, or claims or offers to educate or train students in a program leading toward (i) examinations for licensing in a profession or vocation, (ii) employment at a beginning or advanced level, or (iii) a postsecondary educational credential below the associate degree level.

The term includes a branch or extension of a private postsecondary educational institution of another state that is located in this State or that offers educational services or education at a physical location within this State. Delivery systems employed may include, but are not limited to, (i) correspondence, (ii) classrooms, (iii) hotels or other temporary dwelling units or areas, or (iv) electronic communications such as those used in distance education. Distance education is education, training courses, or programs delivered to a student who is geographically separate from the instructor. It does not include institutions licensed by G.S. 116-15.

If a school has physical locations and offers classes in more than one county, the school's operation in each county shall constitute a separate proprietary school, as defined in this section. (1955, c. 1372, art. 30, ss. 1, 2; 1957, c. 1000; 1961, c. 1175, s. 1; 1981, c. 423, s. 1; 1987, c. 442, s. 2; 1989 (Reg. Sess., 1990), c. 877, s. 1; 1993, c. 553, s. 32.2; 2011-21, s. 1; 2011-326, s. 16(a).)

**§ 115D-88. Exemptions.**

It is the purpose of this Article to include all private schools operated for profit: Provided, that the following schools shall be exempt from the provisions of this Article:

- (1) Nonprofit schools conducted by (i) charities that are exempt from taxation under section 501(c)(3) of the Internal Revenue Code where no fee or tuition is charged to the student or (ii) religious institutions.

- (2) Schools maintained or classes conducted by employers for their own employees where no fee or tuition is charged to the student.
- (3) Courses of instruction given by any fraternal society, civic club, or benevolent order, which courses are not operated for profit.
- (4) Any school for which there is another legally existing licensing or approving board or agency in this State.
- (4a) Classes or schools that are equipment-specific to purchasers, users, classes, or schools offering training or instruction to acquaint purchasers or users with equipment capabilities.
- (4b) Repealed by Session Laws 2011-21, s. 2, effective July 1, 2011.
- (4c) Classes or schools that the State Board, acting by and through the State Board of Proprietary Schools determines are avocational, recreational, self-improvement, or continuing education for already trained and occupationally qualified individuals.
- (5) Any established university, professional, or liberal arts college, public or private school regulated or recognized pursuant to Chapter 115C of the General Statutes or by any other State Agency, or any State institution which has heretofore offered, or which may hereinafter offer one or more courses covered in this Article: Provided, that the tuition fees and charges, if any, made by such university, college, high school, or State institution shall be collected by their regular officers in accordance with the rules prescribed by the board of trustees or governing body of such university, college, high school, or State institution; but provisions of the Article shall apply to all proprietary schools as defined in this Article, and operated within the State of North Carolina as such institutions, except schools for which there are other legally existing licensing boards or agencies.
- (6) Any institution that is exempt from licensure pursuant to G.S. 116-15(c). (1955, c. 1372, art. 30, ss. 1, 2; 1957, c. 1000; 1961, c. 1175, s. 2; 1981, c. 423, s. 1; 1983, c. 768, s. 10; 1987, c. 442, s. 2; 1989 (Reg. Sess., 1990), c. 877, s. 2; 2011-21, s. 2; 2011-308, s. 2.)

**§ 115D-89. State Board of Community Colleges to administer Article; issuance of diplomas by schools; investigation and inspection; rules.**

(a) The State Board of Community Colleges, acting by and through the State Board of Proprietary Schools, shall have authority to administer and enforce this Article and to grant and issue licenses to proprietary schools whose sustained curriculum is of a grade equal to that prescribed for similar public schools and educational institutions of the State and which have met the standards set forth by the Board, including but not limited to course offerings, adequate facilities, financial stability, competent personnel and legitimate operating practices.

(b) Any such proprietary school may by and with the approval of the State Board of Community Colleges issue certificates and diplomas.

(c) The State Board, acting by and through the State Board of Proprietary Schools, shall formulate the criteria and the standards evolved thereunder for the approval of such schools or educational institutions, provide for adequate investigations of all schools applying for a license and issue licenses to those applicants meeting the standards fixed by the State Board, maintain a list of schools approved under the provisions of this Article which list shall be available for the

information of the public, and provide for periodic inspection of all schools licensed under the provisions of this Article. Through periodic reports required of licensed schools and by inspections made by authorized representatives, the State Board of Community Colleges, acting by and through the State Board of Proprietary Schools, shall have general supervision over proprietary schools in the State, the object of said supervision being to protect the health, safety and welfare of the public by having the proprietary schools maintain adequate, safe and sanitary school quarters, sufficient and proper facilities and equipment, sufficient and qualified teaching and administrative staff, and satisfactory programs of operation and instruction, and to have the school carry out its advertised promises and contracts made with its students and patrons. To this end, the State Board of Community Colleges, acting by and through the State Board of Proprietary Schools, is authorized to issue such rules not inconsistent with the provisions of this Article as are necessary to administer the provisions of this Article.

The State Board, acting by and through the State Board of Proprietary Schools, may request any occupational licensing or approving board or agency in this State to adopt rules requiring the approval of that board or agency for a course of study. Under these rules, the board or agency shall pass on the adequacy of equipment, curricula, and instructional personnel. The State Board of Community Colleges may deny approval to a course of study that is not approved by such board or agency. (1955, c. 1372, art. 30, s. 4; 1957, c. 1000; 1961, c. 1175, s. 3; 1981, c. 423, s. 1; 1987, c. 442, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 877, s. 3; 2011-21, s. 3; 2011-308, s. 3.)

#### **§ 115D-89.1. State Board of Proprietary Schools.**

(a) The State Board of Proprietary Schools is established in the North Carolina Community Colleges System Office.

(b) The State Board of Proprietary Schools shall consist of seven members as follows:

- (1) The President of the North Carolina Community College System or the President's designee.
- (2) Two members appointed by the Governor.
- (3) Two members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate, one of whom shall be the owner or director of a proprietary school licensed in the State with less than 100 total annual enrollment of students and one the owner or director of a proprietary school or group of proprietary schools licensed in the State with more than 750 total annual enrollment of students.
- (4) Two members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, one of whom shall be the owner or director of a proprietary school licensed in the State with between 100 and 750 total annual enrollment of students and one the owner or director of a proprietary school licensed in the State.

The appointing authorities shall appoint members who have a demonstrated history of experience in proprietary or public postsecondary education, an understanding of standards of quality in postsecondary education, and leadership beyond a particular institution.

(c) No member of the General Assembly, spouse of a member of the General Assembly, or officer or employee of the State shall be eligible to serve on the State Board of Proprietary Schools as appointed members.

(d) One initial member appointed by each appointing authority shall be appointed for a term ending December 30, 2014; the other member shall be appointed for a term ending December

30, 2017. Subsequent appointments shall be for six-year terms beginning on January 1. No person shall be appointed or elected to more than two consecutive six-year terms.

Vacancies in appointments made by the Governor shall be filled by the Governor. Vacancies in the appointments made by the General Assembly shall be filled in accordance with G.S. 120-122.

(e) The State Board of Proprietary Schools may declare vacant the office of a member who does not attend three consecutive scheduled meetings without justifiable excuse. The Chair of the State Board of Proprietary Schools shall notify the appropriate appointing authority of any such vacancy.

(f) The State Board of Proprietary Schools shall elect from its membership a chair and such other officers as it may deem necessary. Officers shall serve for a term of two years.

(g) The State Board of Proprietary Schools shall meet at stated times established by the State Board of Proprietary Schools but not less frequently than four times a year. Special meetings of the State Board of Proprietary Schools may be set at any regular meeting or may be called by the chair. A majority of the qualified members of the State Board of Proprietary Schools shall constitute a quorum for the transaction of business. (2011-308, s. 1.)

### **§ 115D-89.2. Office of Proprietary Schools; staff.**

The Office of Proprietary Schools shall be the principal administrative unit under the direction of the State Board of Proprietary Schools. Unless otherwise specified in G.S. 115D-89.3, the State Board of Proprietary Schools has authority to recommend for adoption and to administer all policies, regulations, and standards which it deems necessary for the operation of the Office of Proprietary Schools.

The State Board of Proprietary Schools shall hire an executive director of the Office of Proprietary Schools, who shall serve as chief administrative officer of the Office of Proprietary Schools, or contract with an outside consultant to serve as the executive director. The compensation of this position shall be fixed by the State Board of Proprietary Schools from funds provided by fees deposited in the Commercial Education Fund.

The State Board of Proprietary Schools may hire other employees as it deems necessary to carry out the provisions of this Article. The compensation of the staff members hired by the State Board of Proprietary Schools shall be fixed by the State Board of Proprietary Schools upon recommendation of the Executive Director of the Office of Proprietary Schools. The Executive Director shall provide an annual projected operating budget to the State Board of Proprietary Schools at a time each year designated by the State Board of Proprietary Schools. The budget will be approved by the State Board of Proprietary Schools from funds provided by fees deposited in the Commercial Education Fund. (2011-308, s. 1; 2012-142, s. 8.9A(b).)

### **§ 115D-89.3. State Board of Proprietary Schools and State Board of Community Colleges; licensing authority and coordination of responsibilities to administer Article.**

The State Board of Community Colleges, having the authority under G.S. 115D-89 to grant and issue licenses to proprietary schools by and through the State Board of Proprietary Schools, shall receive written recommendation from the State Board of Proprietary Schools concerning applicants for licenses and annual renewal applications for licenses. The State Board of Proprietary Schools shall prepare and have approved by the State Board of Community Colleges a certificate of license that reflects the recommendation of the State Board of Proprietary Schools and approval by the State Board of Community Colleges. The State Board of Community Colleges shall also receive from the State Board of Proprietary Schools and have authority concerning proposed

changes to the General Statutes and rules affecting proprietary schools. The State Board of Community Colleges shall receive a written report annually from the State Board of Proprietary Schools to include the number of schools receiving initial licenses during the previous year, a list of currently licensed proprietary schools, school closures during the previous year, including a complete report of actions concerning any catastrophic closures, complaints received and resulting decisions or actions, total fees received, and balances of the Commercial Education Fund and the Student Protection Fund. The State Board of Proprietary Schools shall provide the State Board of Community Colleges with any information requested. (2011-308, s. 1.)

**§ 115D-89.4. Powers of the State Board of Proprietary Schools.**

(a) In order to carry out the purposes of this Article, the State Board of Proprietary Schools, subject to other provisions of this Article, shall:

- (1) Have the powers of a body corporate, including the power to make contracts and to alter the same as may be deemed expedient;
- (2) Be authorized and empowered to rent and lease such property, real or personal, as the State Board of Proprietary Schools may deem proper to carry out the purposes and provisions of this Article, all or any of them;
- (3) Establish an office for the transaction of its business at such place or places as, in the opinion of the State Board of Proprietary Schools, shall be advisable or necessary in carrying out the purposes of this Article;
- (4) Be authorized and empowered to pay from the Commercial Education Fund all necessary costs and expenses involved in and incident to the formation, organization, and administration of the State Board of Proprietary Schools and all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the purposes of this Article; and
- (5) Be authorized and empowered to do any and all other acts and things in this Article authorized or required to be done, whether or not included in the general powers listed in this section.

(b) The purchase of goods and services by the State Board of Proprietary Schools shall be exempt from the requirements of Article 3 of Chapter 143 of the General Statutes. (2012-142, s. 8.9A(a).)

**§ 115D-90. License required; application for license; school bulletins; requirements for issuance of license; license restricted to courses indicated; supplementary applications.**

(a) No person shall operate, conduct or maintain or offer to operate in this State a proprietary school unless a license is first secured from the State Board of Community Colleges granted in accordance with the provisions of this Article and the rules adopted by the Board under the authority of G.S. 115D-89. The license, when issued, shall constitute the formal acceptance by the Board of the educational programs and facilities of each school approved.

(b) Application for a license shall be filed in the manner and upon the forms prescribed and furnished by the State Board of Proprietary Schools for that purpose. Such application shall be signed by the applicant and properly verified and shall contain such of the following information as may apply to the particular school for which a license is sought:

- (1) The title or name of the school or classes, together with the name and address of the owners and of the controlling officers thereof.

- (2) The general field of instruction.
- (3) The place or places where such instruction will be given.
- (4) A specific listing of the equipment available for instruction in each field.
- (5) The qualifications of instructors and supervisors.
- (6) Financial resources available to equip and to maintain the school or classes.
- (7) Such additional information as the State Board, acting by and through the State Board of Proprietary Schools, may deem necessary to enable it to determine the adequacy of the program of instruction and matters pertaining thereto. Each application shall be accompanied by a copy of the current bulletin or catalog of the school which shall be in published form and certified by an authorized official of the school as being current, true, and correct in content and policy. The school bulletin shall contain the following information:
  - a. Identifying data, such as volume number and date of publication.
  - b. Names of the institution and its governing body, officials and faculty.
  - c. A calendar of the institution showing legal holidays, beginning and ending date of each quarter, term or semester, and other important dates.
  - d. Institution's policy and regulations relative to leave, absences, class cuts, make-up work, tardiness and interruptions for unsatisfactory attendance.
  - e. Institution's policy and regulations on enrollment with respect to enrollment dates and specific entrance requirements for each course.
  - f. Institution's policy and regulations relative to standards of progress required of the student by the institution. This policy will define the grading system of the institution; the minimum grades considered satisfactory; conditions for interruption for unsatisfactory grades or progress and description of the probationary period, if any, allowed by the institution; and conditions of reentrance for those students dismissed for unsatisfactory progress. A statement will be made regarding progress records kept by the institution and furnished the student.
  - g. Institution's policy and regulations relating to student conduct and conditions for dismissal for unsatisfactory conduct.
  - h. Detailed schedule for fees, charges for tuition, books, supplies, tools, student activities, laboratory fees, service charges, rentals, deposits, and all other charges.
  - i. Policy and regulations of the institution relative to the refund of the unused portion of tuition, fees and other charges in the event the student does not enter the course or withdraws or is discontinued therefrom. The policy and regulations shall provide for, at a minimum, a full refund if a student withdraws before the first day of class or the school cancels the class and a seventy-five percent (75%) refund if the student withdraws within the first twenty-five percent (25%) of the period of enrollment for which the student was charged.
  - j. A description of the available space, facilities and equipment.
  - k. A course outline for each course for which approval is requested, showing:
    1. Subjects or units in the course,

2. Type of skill to be learned, and
  3. Approximate (i) time; (ii) clock hours, and (iii) credit hours or credit hours equivalent, as appropriate, to be spent on each subject or unit.
1. Policy and regulations of the institution relative to granting credit for previous educational training.

(c) After due investigation and consideration on the part of the State Board, acting by and through the State Board of Proprietary Schools, as provided herein, a license shall be granted to the applicant when it is shown to the satisfaction of the State Board that said applicant, school, programs of study or courses are found to have met the following criteria:

- (1) The courses, curriculum and instruction are consistent in quality, content and length with similar courses in public schools and other private schools in the State, with recognized accepted standards.
- (2) There is in the institution adequate space, equipment, instructional material and instructor personnel to provide training of good quality.
- (3) Education and experience qualifications of director, administrators and instructors are adequate.
- (4) The institution maintains a written record of the previous education and training of the student.
- (5) A copy of the course outline, schedule of tuition, fees and other charges, regulations pertaining to absences, grading policy and rules of operation and conduct will be furnished the student upon enrollment.
- (6) Upon completion of training, the student is given a certificate or diploma by the institution indicating the approved course or subjects and indicating that training was satisfactorily completed.
- (7) Adequate records as prescribed by the State Board of Community Colleges, acting by and through the State Board of Proprietary Schools, are kept to show attendance and progress or grades and satisfactory standards relating to attendance, progress and conduct are enforced.
- (8) The school complies with all local, city, county, municipal, State and federal regulations, such as fire codes, building and sanitation codes. The State Board of Community Colleges may require such evidence of compliance as is deemed necessary.
- (9) The school is financially sound and capable of fulfilling its commitments for training.
- (10) The school does not exceed its enrollment limitation as established by the State Board of Community Colleges.
- (11) The school does not utilize advertising of any type which is erroneous or misleading, either by actual statement, omission or intimation.
- (12) The school's administrators, directors, owners and instructors are of good reputation and character.
- (13) Such additional criteria as may be deemed necessary by the State Board of Community Colleges.

(d) Any license issued shall be restricted to the programs of instruction or courses or subjects specifically indicated in the application for a license. The holder of a license shall present a supplementary application as may be directed by the State Board of Proprietary Schools for

approval of additional programs of instruction, courses, or subjects, in which it is desired to offer instruction during the effective period of the license. (1955, c. 1372, art. 30, ss. 3, 4; 1957, c. 1000; 1961, c. 1175, s. 4; 1981, c. 423, s. 1; 1987, c. 442, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 877, s. 4; 1991, c. 636, s. 11; 2011-21, ss. 4, 5; 2011-308, s. 4.)

**§ 115D-91. Duration and renewal of licenses; notice of change of ownership, administration, etc.; license not transferable.**

- (a) All licenses issued shall expire on June 30.
- (b) Unless a duration is otherwise prescribed by the State Board of Community Colleges, licenses shall be renewable annually on July 1 if all of the following conditions are met:
  - (1) An application for the renewal of the license has been filed in the form and manner prescribed by the State Board, acting by and through the State Board of Proprietary Schools.
  - (2) The renewal fee has been paid.
  - (3) The school and its courses, facilities, faculty and all other operations are found to meet the criteria set forth in the requirements for a school to secure an original license.
- (c) After a license is granted to any school by the State Board of Community Colleges on the basis of its application, it shall be the responsibility of said school to notify immediately the State Board of any changes in the ownership, administration, location, faculty, the instructional program or other changes as may affect significantly the course of instruction offered.
- (d) In the event of the sale of such school, the license already granted to the original owner or operators thereof shall not be transferable to the new ownership or operators. Provided, however, the State Board of Proprietary Schools may issue a 90-day, temporary operating license to a school upon its sale if the school held a valid, current license prior to the sale, and if the State Board of Proprietary Schools finds that the school is likely to qualify after the sale for a license under this Article. (1955, c. 1372, art. 30, s. 4; 1957, c. 1000; 1961, c. 1175, s. 5; 1981, c. 423, s. 1; 1987, c. 442, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 877, s. 5; 2011-21, s. 6; 2011-308, s. 5.)

**§ 115D-92. Authority to establish fees; Commercial Education Fund established; refund of fees.**

The State Board of Proprietary Schools, as provided in G.S. 115D-89.3, shall establish reasonable fees for licenses, renewals, and approvals granted, and for inspections performed pursuant to this Article in accordance with Article 2A of Chapter 150B of the General Statutes.

The fees and licenses collected under this section shall be placed in a special fund to be designated the "Commercial Education Fund" and shall be used under the supervision and direction of the State Board of Proprietary Schools for the administration of this Article. No license fee shall be refunded in the event the application is rejected or the license suspended or revoked. (1961, c. 1175, s. 6; 1981, c. 423, s. 1; 1987, c. 442, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 877, s. 6; 2011-308, s. 6.)

**§ 115D-93. Suspension, revocation or refusal of license; notice and hearing; judicial review; grounds.**

- (a) A refusal to issue, refusal to renew, suspension of, or revocation of a license under this section shall be made in accordance with Chapter 150B of the General Statutes.

(b) A decision under this section to refuse to grant, refuse to renew, suspend, or revoke a license is subject to judicial review in accordance with Article 4 of Chapter 150B of the General Statutes.

(c) The State Board, acting by and through the State Board of Proprietary Schools, shall have the power to refuse to issue or renew any such license and to suspend or revoke any such license theretofore issued in case it finds one or more of the following:

- (1) That the applicant for or holder of such a license has violated any of the provisions of this Article or any of the rules promulgated thereunder.
- (2) That the applicant for or holder of such a license has knowingly presented to the State Board of Community Colleges false or misleading information relating to approval or license.
- (3) That the applicant for or holder of such a license has failed or refused to permit authorized representatives of the State Board of Community Colleges to inspect the school, or has refused to make available to them at any time upon request full information pertaining to matters within the purview of the State Board of Community Colleges under the provisions of this Article.
- (4) That the applicant for or holder of such a license has perpetrated or committed fraud or deceit in advertising the school or in presenting to the prospective students written or oral information relating to the school, to employment opportunities, or to opportunities for enrollment in other institutions upon completion of the instruction offered in the school.
- (5) That the applicant or licensee has pleaded guilty, entered a plea of nolo contendere or has been found guilty of a crime involving moral turpitude by a judge or jury in any state or federal court.
- (6) That the applicant or licensee has failed to provide or maintain premises, equipment or conditions which are adequate, safe and sanitary, in accordance with such standards of the State of North Carolina or any of its political subdivisions, as are applicable to such premises and equipment.
- (7) That the licensee is employing teachers, supervisors or administrators who have not been approved by the State Board, acting by and through the State Board of Proprietary Schools.
- (8) That the licensee has failed to provide and maintain adequate premises, equipment, materials or supplies, or has exceeded the maximum enrollment for which the school or class was licensed.
- (9) That the licensee has failed to provide and maintain adequate standards of instruction or an adequate and qualified administrative, supervisory or teaching staff.
- (10) That the applicant for or a holder of a license has failed to provide a required bond or bond alternative.
- (11) That the applicant for or holder of a license has failed to pay assessments into the Student Protection Fund. (1961, c. 1175, s. 7; 1973, c. 1331, s. 3; 1981, c. 423, s. 1; 1987, c. 442, ss. 1, 2; c. 827, s. 53; 1989 (Reg. Sess., 1990), c. 877, s. 7; 2009-562, s. 1; 2011-308, s. 7.)

**§ 115D-94: Repealed by Session Laws 1983 (Regular Session, 1984), c. 995, s. 17.**

**§ 115D-95. Bonds required.**

(a) Requirement. – An applicant for a license must comply with the bond requirements in this section. The bond covers the potential loss by students of the school of prepaid tuition and other payments made by them to a school licensed under this Article by reason of the school ceasing to operate for any reason, including the suspension, revocation, or nonrenewal of a school's license, bankruptcy, or foreclosure.

(b) Amount. – An applicant for a license must file a bond with the North Carolina State Board of Community Colleges executed by the applicant as a principal and by a bonding company authorized to do business in this State. The bond must be payable to the State Board of Community Colleges, must be conditioned on fulfillment of the school's obligations, and must remain in effect until cancelled by the bonding company. The bonding company may cancel the bond upon 30 days' notice to the State Board of Community Colleges.

The application must set out calculations made by the applicant to determine the amount of bond required with the application. The required amount is determined as follows:

- (1) Initial licensure. – For an applicant for initial licensure of a school, the bond amount is the amount determined by the State Board that is adequate to provide indemnification to any student, or the student's parent or guardian who has suffered a loss of tuition, fees, or any other instructional-related expenses paid to the school. A bond amount shall be at least twenty-five thousand dollars (\$25,000).
- (2) First four renewals. – For a school that has been licensed for one year but less than six years, the bond shall be in an amount equal to the greatest amount of unearned paid tuition in the school's possession at anytime during the prior fiscal year. The bond amount shall be evaluated by the school quarterly and reported to the State Board or its representative. A quarterly evaluation requiring an increase of five percent (5%) or more in the amount of the bond held by the school shall require an immediate increase in the bond amount. Bond amounts also shall be evaluated pursuant to this subdivision and the rules of the State Board of Community Colleges and State Board of Proprietary Schools at the time of the school's annual license renewal and increased if necessary regardless of the amount of the change.
- (3) Schools in operation more than five years. – A guaranty bond shall be required for license renewal for a school that has been continuously licensed to operate for more than five years in the State, as follows:
  - a. If the balance of the Student Protection Fund in G.S. 115D-95.1 is below the catastrophic loss amount, the school shall file a guaranty bond in an amount equal to the maximum amount of prepaid tuition held by the school during the prior fiscal year multiplied by the percentage amount the fund is deficient.
  - b. If the school held prepaid tuition in excess of the Student Protection Fund catastrophic loss amount during the prior fiscal year, in addition to any bond amount required by sub-subdivision a. of this subdivision, the school shall file a guaranty bond for the difference between the prepaid tuition amount held in the previous fiscal year and the Fund catastrophic loss amount.

(c) An applicant that is unable to secure a bond may seek a waiver of the guaranty bond from the State Board of Community Colleges and approval of one of the guaranty bond alternatives set forth in this subsection. With the approval of the State Board, an applicant may obtain in lieu of a bond:

- (1) An assignment of a savings account in an amount equal to the bond required (i) which is in a form acceptable to the State Board of Community Colleges; (ii) which is executed by the applicant; and (iii) which is executed by a state or federal savings and loan association, state bank, or national bank, that is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; and (iv) for which access to the account in favor of the State of North Carolina is subject to the same conditions as for a bond in subsection (b) of this section.
- (2) A certificate of deposit (i) which is executed by a state or federal savings and loan association, state bank, or national bank, which is doing business in North Carolina and whose accounts are insured by a federal depositors corporation; and (ii) which is either payable to the State of North Carolina, unrestrictively endorsed to the State Board of Community Colleges; in the case of a negotiable certificate of deposit, is unrestrictively endorsed to the State Board of Community Colleges; or in the case of a nonnegotiable certificate of deposit, is assigned to the State Board of Community Colleges in a form satisfactory to the State Board; and (iii) for which access to the certificate of deposit in favor of the State of North Carolina is subject to the same conditions as for a bond in subsection (b) of this section. (1955, c. 1372, art. 30, s. 5; 1957, c. 1000; 1961, c. 1175, s. 9; 1981, c. 423, s. 1; 1987, c. 442, ss. 1, 2; 1989 (Reg. Sess., 1990), c. 824, s. 1; 2009-562, s. 2; 2011-308, s. 8.)

#### **§ 115D-95.1. Student Protection Fund.**

(a) Definitions. – As used in this section:

- (1) "Catastrophic loss amount" means the amount of funds required to protect prepaid student tuition in case of a large-scale event that would draw against the Student Protection Fund. The amount is one million dollars (\$1,000,000).
- (2) "Fund cap amount" means the catastrophic loss amount plus a reserve amount. The amount is one million five hundred thousand dollars (\$1,500,000).

(b) Student Protection Fund. – The Student Protection Fund is established in the Department of State Treasurer as a statewide fee-supported fund. Interest accruing to the Fund is credited to the Fund. The State Board of Proprietary Schools administers the Fund. The purpose of the Fund is to compensate students enrolled in a proprietary school licensed under this Article who have suffered a loss of tuition, fees, or any other instructional-related expenses paid to the school by reason of the failure of the school to offer or complete student instruction, academic services, or other goods and services related to course enrollment if the school ceases to operate for any reason, including the suspension, revocation, or nonrenewal of a school's license, bankruptcy, or foreclosure.

(c) Student Protection Fund Advisory Committee. – The State Board of Proprietary Schools shall serve as the Student Protection Advisory Committee. The Committee shall advise the State Board of Community Colleges on matters related to the Fund, including, but not limited to, the adjustment of the catastrophic loss amount and Fund cap amount.

(d) Initial Payment. – Prior to its first year of operation in the State, each proprietary school shall pay an initial amount of one thousand two hundred fifty dollars (\$1,250) into the Fund.

(e) Annual Revenue Payment. – Each proprietary school operating in the State shall pay annually into the Fund an amount based on its annual gross tuition revenue generated in the State as follows:

Annual Gross Tuition Revenue	Amount of Assessment
\$1.00 – \$25,000	\$200.00
\$25,001 – \$50,000	\$250.00
\$50,001 – \$100,000	\$300.00
\$100,001 – \$200,000	\$400.00
\$200,001 – \$300,000	\$500.00
\$300,001 – \$400,000	\$600.00
\$400,001 – \$500,000	\$700.00
\$500,001 – \$750,000	\$1,000
\$750,001 – \$1,000,000	\$1,250
\$1,000,001 – \$1,500,000	\$1,500
\$1,500,001 – \$2,000,000	\$2,000
Greater than \$2,000,000	\$2,000 plus one-twentieth of one percent (.05%) of annual gross tuition revenue over \$2,000,000.

(f) Suspension of Payments. – If the Student Protection Fund balance is equal to or exceeds the Fund cap amount, the State Board of Proprietary Schools shall suspend payments into the Fund for schools that have been continuously licensed in the State for more than eight years. The State Board of Proprietary Schools shall require schools to resume payments into the Fund if the balance of the Fund is less than the catastrophic loss amount.

(g) Catastrophic Assessments. – If claims against the Student Protection Fund exceed the catastrophic loss amount, the State Board of Proprietary Schools may assess additional fees to the extent necessary to compensate students qualified for repayment under the Fund. The amount of the catastrophic assessment shall not exceed one-half of the amount of the annual revenue payment required by subsection (e) of this section. If the amount of the catastrophic assessment will be insufficient to cover qualified claims, the State Board shall develop a method of allocating funds among claims.

(h) Payment Required for Proprietary School Licensure. – The full and timely payment into the Fund pursuant to this section is a condition of licensure.

(i) Payments Nonrefundable. – No payment to the Student Protection Fund shall be refunded in the event that a school's license application is rejected or a school's license is suspended or revoked.

(j) Student Repayment. – A student, or the student's parent or guardian, who has suffered a loss of tuition, fees, or any other instructional-related expenses paid to a proprietary school licensed under this Article by reason of the school ceasing to operate for any reason, including the suspension, revocation, or nonrenewal of a school's license, bankruptcy, or foreclosure, may qualify for repayments under the Student Protection Fund. The State Board of Community Colleges first must issue repayment from the bonds issued under G.S. 115D-95. If the Student Protection Fund is insufficient to cover the qualified claims, the State Board must develop a method of allocating funds among claims.

(k) Rules. – The State Board of Proprietary Schools shall adopt rules for the implementation of this section. (2009-562, s. 4; 2011-308, s. 9.)

**§ 115D-96. Operating school without license or bond made misdemeanor.**

Any person, or each member of any association of persons or each officer of any corporation who opens and conducts a proprietary school without first having obtained the license herein required, and without first having executed the bond, paid the assessments into the Student Protection Fund, or both, as required by law, shall be guilty of a Class 3 misdemeanor, and each day the school continues to be open and operated shall constitute a separate offense. (1955, c. 1372, art. 30, s. 7; 1957, c. 1000; 1961, c. 1175, s. 10; 1981, c. 423, s. 1; 1987, c. 442, s. 2; 1989 (Reg. Sess., 1990), c. 877, s. 8; 1993, c. 539, s. 894; 1994, Ex. Sess., c. 24, s. 14(c); 2009-562, s. 3; 2011-21, s. 7.)

**§ 115D-97. Contracts with unlicensed schools and evidences of indebtedness made null and void.**

All contracts entered into by proprietary schools with students or prospective students, and all promissory notes or other evidence of indebtedness taken in lieu of cash payments by such schools shall be null and void unless such schools are duly licensed as required by this Article. (1957, c. 1000; 1961, c. 1175, s. 11; 1981, c. 423, s. 1; 1987, c. 442, s. 2; 1989 (Reg. Sess., 1990), c. 877, s. 9; 2011-21, s. 8.)