



State of Tennessee

PUBLIC CHAPTER NO. 1044

SENATE BILL NO. 2843

By Lundberg

Substituted for: House Bill No. 2606

By Gillespie

AN ACT to amend Tennessee Code Annotated, Title 49, Chapter 7, relative to regulation of proprietary institutions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 49-7-207, is amended by deleting the section.

SECTION 2. Tennessee Code Annotated, Section 49-7-2002(a)(2)(B), is amended by deleting the subdivision and substituting instead the following:

(B) Establishing minimum standards concerning the provision of education, ethical business practices, and fiscal responsibility to protect against substandard, transient, unethical, deceptive, or fraudulent institutions and practices;

SECTION 3. Tennessee Code Annotated, Section 49-7-2002(a)(2)(E), is amended by deleting the subdivision and substituting instead the following:

(E) Providing formal authorization to postsecondary educational institutions that meet minimum standards and operate lawfully in compliance with this part.

SECTION 4. Tennessee Code Annotated, Section 49-7-2002(b), is amended by deleting the subsection.

SECTION 5. Tennessee Code Annotated, Section 49-7-2003, is amended by deleting subdivisions (2), (3), (7), (8), (12), (13), and (14).

SECTION 6. Tennessee Code Annotated, Section 49-7-2003, is further amended by adding the following as new subdivisions:

() "Authorization" means approval of a postsecondary educational institution by the commission for the institution to engage in activities or operations otherwise prohibited by § 49-7-2007;

() "Optional expedited authorization" means the alternative optional authorization available under this part to accredited postsecondary educational institutions;

() "Postsecondary educational institution" includes, but is not limited to, a school, college, university, or other type of entity offering educational credentials, instruction, educational services, or other activities as described in § 49-7-2007, primarily to persons who have completed or terminated their secondary education, or who are beyond the age of compulsory high school attendance, for the attainment of educational, professional, or vocational objectives;

SECTION 7. Tennessee Code Annotated, Section 49-7-2004(a)(6)(E), is amended by deleting the subdivision and substituting instead the following:

(E) Does not engage in supervised field experiences in Tennessee without a physical location in Tennessee.

SECTION 8. Tennessee Code Annotated, Section 49-7-2004(a)(7)(B), is amended by deleting the subdivision.

SECTION 9. Tennessee Code Annotated, Section 49-7-2004(a)(9), is amended by deleting the subdivision and substituting instead the following:

(9) Health-related educational programs conducted by state-licensed healthcare institutions;

SECTION 10. Tennessee Code Annotated, Section 49-7-2004(a)(12), is amended by deleting the subdivision and substituting instead the following:

(12) Education offered as intensive review courses of instruction previously received by students that is designed solely to prepare students for graduate or professional school entrance examinations or licensure examinations.

SECTION 11. Tennessee Code Annotated, Section 49-7-2004, is amended by deleting subsections (b), (c), and (d), and substituting instead the following:

(b) A postsecondary educational institution exempt from this part pursuant to subdivision (a)(6) or (a)(11) loses the exemption upon the occurrence of one (1) of the following events, subject to appeal to the commission as provided in § 49-7-2012:

(1) Loss or failure to meet any of the listed criteria for exemption;

(2) Loss of Title IV federal student aid funding; or

(3) A three-year federal financial aid cohort default rate of thirty percent (30%) or higher for three (3) consecutive years or any single year over forty percent (40%), as reported by the United States department of education's office of postsecondary education's Integrated Postsecondary Education Data System.

(c) Notwithstanding any provision of this section to the contrary, an institution that has lost its exemption due to the occurrence of one (1) of the conditions listed in subsection (b) shall not be required to reestablish the twenty (20) consecutive year standards in order to regain the institution's exempt status. Instead, the commission may reinstate the exemption once the condition that caused the loss of exemption has, in the opinion of the commission, been remedied.

(d) The general assembly recognizes that an institution that meets the requirements of subdivisions (a)(6) and (a)(11) is established by name as an educational institution and is authorized to operate educational programs beyond secondary education. The commission shall provide notification of same to an institution upon completion of an exemption determination request. The commission shall maintain and publish on its website a list of postsecondary educational institutions meeting the requirements of subdivision (a)(6) with its primary campus domiciled in this state or subdivision (a)(11).

SECTION 12. Tennessee Code Annotated, Section 49-7-2005(a), is amended by deleting the subsection and substituting instead the following:

(a) The commission has the power and duty to:

(1) Establish minimum standards in conformity with § 49-7-2006, concerning the provision of education, ethical business practices, and fiscal responsibility, that applicants for authorization must meet before the authorization may be issued, and to continue the authorization in effect. The standards must effectuate the purposes of this part, but the standards shall not unreasonably hinder legitimate educational innovation;

(2) Receive, investigate as the commission deems necessary, and act upon applications for authorization of postsecondary educational institutions;

(3) Maintain a list of postsecondary educational institutions authorized to operate in this state under this part. This list must be available to the public;

(4) Negotiate and enter into interstate reciprocity agreements with similar agencies in other states, if, in the judgment of the commission, the agreements are, or may be, helpful in effectuating the purposes of this part; provided, that nothing contained in the reciprocity agreement must be construed as limiting the commission's powers, duties, and responsibilities with respect to independently

investigating, or acting upon, an application for authorization or an application for renewal of the authorization for a postsecondary educational institution, or with respect to the enforcement of any provision of this part or any of the rules or regulations promulgated pursuant to this part;

(5) Receive, maintain as a permanent file, and distribute pursuant to a lawful request for, copies of academic records in conformity with § 49-7-2016;

(6) Promulgate rules, performance standards, and procedures necessary or appropriate for the conduct of its work and for the implementation of this part, and to hold hearings as it deems advisable or as required by law in developing the rules and procedures. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commission may, through rulemaking, delegate its powers and duties, as described in this part, to the executive director or to the commission's staff;

(7) Investigate, as it deems necessary, on its own initiative, or in response to a complaint lodged with it, any person, group, or entity subject to, or reasonably believed by the commission to be subject to, the jurisdiction of this part, and in connection with the investigation; to subpoena any persons, books, records, or documents pertaining to the investigation, which subpoenas must be enforceable by a court of this state; to require answers in writing under oath to questions propounded by the commission; to administer an oath or affirmation to a person in connection with an investigation; and to hold hearings as it deems advisable or as required by law in aid of an investigation or inquiry; and

(8) Exercise other powers and duties implied, but not enumerated in this subsection (a), but in conformity with this part that, in the judgment of the commission, are determined necessary to carry out this part.

SECTION 13. Tennessee Code Annotated, Section 49-7-2006(a), is amended by deleting the subsection and substituting instead the following:

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

(1) The content of each course or program of instruction, training, or study may reasonably and adequately achieve the stated objective for which the course or program is offered;

(2) The institution has adequate space, equipment, instructional materials, and personnel;

(3) The education and experience qualifications of directors, administrators, supervisors, and instructors may reasonably ensure that the students will receive education consistent with the objectives of the course or the program of study;

(4) Prior to signing an enrollment agreement, the institution provides prospective students a catalog containing information describing the programs offered by the institution; the objectives of the programs; the length of the programs; the schedule of tuition, fees, and all other charges and expenses necessary for completion of a course of study; the institution's cancellation and refund policies; and other material facts concerning the institution and the programs or courses of study that are reasonably likely to affect the decision of the student to enroll in the institution, together with any other disclosures specified by the commission or defined in the commission's rules;

(5) Upon satisfactory completion of instruction, the student is given appropriate educational credentials by the institution, indicating that the student has satisfactorily completed the course or program of study;

(6) 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;

(7) The institution is maintained and operated in compliance with all pertinent ordinances and laws, including any rules and regulations adopted pursuant to the ordinances and laws, relative to zoning and the safety and health of persons upon the premises;

(8) The institution is financially sound and capable of fulfilling its commitments to students;

(9) Neither the institution nor its agents engage in advertising, sales, collection, credit, or other practices of any type that are false, deceptive, misleading, or unfair;

(10) The institution has a fair and equitable cancellation and refund policy; and

(11) No principal party involved in the applicant institution has ever been associated as a principal party or owner in any postsecondary educational institution that ceased its activities or operations with a resulting loss of time or money for enrollees in the institution.

SECTION 14. Tennessee Code Annotated, Section 49-7-2006, is further amended by adding the following as a new subsection:

(c) The commission is not required to authorize an institution under this chapter, if, in its judgment, adequate provisions for the institution or its programs exist within the proposed service area. The commission is not required to authorize an institution, if, in its judgment, there is insufficient evidence that adequate employment opportunities exist in the related occupations for persons successfully completing the institution's programs, or if the costs of a program are unreasonable in relation to the reasonably expected earnings in occupations for which the program is designed.

SECTION 15. Tennessee Code Annotated, Section 49-7-2007, is amended by deleting the section and substituting instead the following:

A postsecondary educational institution, alone or in concert with any person, agent, group, or entity, shall not:

(1) Operate a postsecondary educational institution in this state that is not exempted from this part, unless the postsecondary educational institution has a current and valid authorization issued pursuant to this part;

(2) Offer as, or through an agent, enrollment or instruction in, or the granting of educational credentials from, a postsecondary educational institution outside this state that is not exempted from this part, unless the postsecondary educational institution has a current and valid authorization issued pursuant to this part;

(3) 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 a person for such purpose; or award an educational credential or contract with an institution or party to award an educational credential in this state, regardless of whether the agent or postsecondary educational institution is located within this state, unless the agent or postsecondary educational institution observes and is in compliance with the minimum standards set forth in § 49-7-2006(a), the standards established by the commission pursuant to § 49-7-2005(a)(1), and the rules promulgated by the commission pursuant to § 49-7-2005(a)(6);

(4) Use "university" or other terminology, without authorization to do so from the commission, that could mislead the general public; or

(5) Grant, or offer to grant, educational credentials, unless the postsecondary educational institution has a current and valid authorization issued pursuant to this part.

SECTION 16. Tennessee Code Annotated, Section 49-7-2008, is amended by deleting the section and substituting instead the following:

(a)(1) Each postsecondary educational institution creating a physical presence in Tennessee must apply for authorization with the commission on forms provided by the commission pursuant to this section or § 49-7-2022(a). When physical presence activities or operation is not the result of instruction at a postsecondary educational institution location as determined by the commission, such as supervised field experiences or similar activities or operations, then the postsecondary educational institution location from which the educational credential is awarded must be the authorized location.

(2) The application must be accompanied by a catalog published or proposed to be published by the institution containing the information specified in § 49-7-2006(a)(4), including information required by the rules of the commission.

(3) The application must be accompanied by evidence of a surety bond, as required by this part, and payment of the fees specified in the bond.

(b)(1) After reviewing the application and any additional information submitted by the applicant or required by the commission, and after the investigation of the applicant as the commission deems necessary or appropriate, the commission shall either grant or deny authorization to the applicant.

(2) A grant of authorization may be on the terms and conditions specified by the commission.

(c) The authorization must be in a form approved by the commission and must state in a clear and conspicuous manner, at a minimum, the following:

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

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

(3) The authority for approval and conditions of approval, if any; and

(4) Any limitation of the authorization, as deemed necessary by the commission.

(d) The term for which authorization is given shall not extend for more than six (6) years, and may be issued for a lesser period of time as provided in subdivision (b)(2) or as otherwise determined by the commission. An institution that receives multi-year authorization shall annually submit a certification of compliance on a form provided by the commission, and pay the requisite fee by the date established by the commission.

(e)(1) The authorization must be issued to the owner or governing body of the applicant institution and is nontransferable.

(2) In the event of a change in ownership of the institution, the new owner or governing body shall, within five (5) business days after the change in ownership, apply for a new authorization as provided for by the commission, and in the event of a failure to do so, the institution's authorization is terminated.

(3) As used in this section, "ownership" means:

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

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

(C) In the case of a postsecondary educational institution owned by a corporation or other for-profit legal entity, the individuals or entities with an immediate controlling interest in the corporation or for-profit legal entity; and

(D) In the case of a postsecondary educational institution owned by a not-for-profit or nonprofit entity, the executive committee of the governing board of each respective entity.

(f)(1) Prior to an authorization's expiration, the institution shall complete and file an application for renewal of its authorization with the commission on forms provided by the commission.

(2) Before an authorization is renewed, the commission may require the institution to submit the results of an institutional self study, as defined by the commission.

(3) The commission may require an institution to publish placement rates and other information indicating actual employment and earnings in relevant occupations post successful completion of the institution's offered programs.

(g)(1) An institution that is not yet engaged in activities or operating when its application for authorization is filed with the commission shall not begin to engage in activities or operate until receipt of authorization.

(2) An institution engaged in activities or operating when its application for authorization is filed may continue its activities or operation until its application is acted upon by the commission; provided, that the institution's activities or operations are governed by the action of the commission.

(3) Provisional initial authorization may be granted by the executive director subject to review and ratification by the commission. Provisional initial authorization must list any limitations as to time, procedures, functions, or other conditions as deemed necessary by the commission.

SECTION 17. Tennessee Code Annotated, Section 49-7-2009, is amended by deleting the section.

SECTION 18. Tennessee Code Annotated, Section 49-7-2010, is amended by deleting the section and substituting instead the following:

(a)(1) If the commission, upon review and consideration of an application for institutional authorization, program registration, or other application, determines that the applicant fails to meet the criteria established as provided in this part or as provided in the rules promulgated pursuant to this part, then the commission shall notify the applicant, provide, in writing, the reasons for which the applicant failed to meet the criteria, and defer or deny the application.

(2) The commission may grant an applicant an extension of time, of reasonable duration, in which the applicant may eliminate the reasons for deferral contained in the statement of deferral, if the applicant has demonstrated, to the satisfaction of the commission, the applicant's desire to meet the requirements of this part or the rules promulgated pursuant to this part to the satisfaction of the commission and if, in the judgment of the commission, the applicant may reasonably meet the requirements and criteria within that time.

(b)(1) Institution authorization or program registration may be revoked or made conditional as necessary to achieve compliance, or to protect the public interest, at any time after its issuance, if the commission or executive director has reasonable cause to believe that the holder of the institution authorization or program registration has violated, or is violating, this part or any rules promulgated pursuant to this part.

(2) The commission may direct the institution to cease admission of additional students at the institution, or may direct other action as necessary, until, in the judgment of the commission, the institution is being maintained and operated in compliance with minimum standards. This section shall not be construed to absolve institutions of their educational and financial obligations to prospective or enrolled students.

SECTION 19. Tennessee Code Annotated, Section 49-7-2011, is amended by deleting the section and substituting instead the following:

(a)(1) A person claiming damage or loss as a result of an act or practice of an authorized postsecondary educational institution or its agent, or both, that is a violation of this part or of the rules promulgated pursuant to this part, may file with the commission a verified complaint against the institution or against its agent, or both. A student who files a complaint pursuant to this subsection (a) must first exhaust the grievance process at the institution.

(2) The complaint must set forth the alleged violation and must contain any other information required by the commission.

(3) The commission may open a complaint at its discretion or upon a request from the attorney general and reporter whenever it appears to the commission that a person, agent, group, or entity is, is about to, or has been violating this part or any of the rules promulgated pursuant to this part.

(b)(1) Commission staff shall investigate all complaints filed or opened pursuant to subsection (a) and shall attempt to effectuate resolution of the complaint by persuasion and conciliation.

(2) When resolution is not reached and if, based on all of the evidence obtained through the investigation, commission staff finds that a person, agent, group, or entity is, is about to, or has been violating this part or any of the rules promulgated pursuant to this part, commission staff may recommend that the executive director take action as provided for in §§ 49-7-2010 and 49-7-2017. A party to the complaint must be provided an opportunity to show cause why the recommendations, if any, should not be forwarded to the executive director. The opportunity to show cause must detail the basis for the findings and provide a party with no fewer than ten (10) days to respond.

(3) The executive director shall act on the recommendation after the time for response in subdivision (b)(2) has expired by providing written notice of the decision to all parties to the complaint. The notice must explain the right to a hearing and review of the decision by the commission as provided in § 49-7-2012(a).

(c) This section shall not be construed to prohibit the use of nonbinding mediation to settle disputes arising between a postsecondary educational institution and its enrollees, nor the inclusion of a nonbinding mediation clause in enrollment contracts or agreements.

SECTION 20. Tennessee Code Annotated, Section 49-7-2012(a), is amended by deleting the subsection and substituting instead the following:

(a)(1) A person, agent, group, or entity aggrieved or adversely affected by a decision of the executive director that results in adverse action, as described in §§ 49-7-2010, 49-7-2011, and 49-7-2017, being taken has the right to a hearing and review of the decision by the commission as provided in this subsection (a).

(2) If, upon written notification of an adverse action being taken by the executive director, the aggrieved party desires a hearing and review by the commission, then the party must notify the commission, in writing, within ten (10) days of the date of the adverse action, otherwise the action is deemed the final action and no further review is available.

(3) Upon receiving notice from the aggrieved party, the commission shall fix the time and place for a hearing and notify the aggrieved party of the time and place of the hearing.

(4) At the hearing, the party may employ counsel, has the right to hear the evidence upon which the adverse action is based, and present evidence in opposition or in extenuation. The commission may request that a hearing officer from the secretary of state be appointed to issue an initial order or a member of the commission may preside, except where a clear conflict of interest may be demonstrated.

(5) A decision of the commission or of a hearing officer following a hearing is not a final decision until it is final under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5. The commission shall promptly act on all matters presented at the hearing, as provided in this subsection (a). The commission shall notify all parties in writing of the decision, which must 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.

SECTION 21. Tennessee Code Annotated, Section 49-7-2012, is amended by designating the language of subsection (b) as subsection (c) and adding the following as a new subsection (b):

(b) A person, agent, group, or entity aggrieved or adversely affected by a final commission action may obtain judicial review of the action as provided in this section.

SECTION 22. Tennessee Code Annotated, Section 49-7-2013, is amended by deleting the section and substituting instead the following:

(a)(1) At the time an application is made for authorization, or for renewal of the authorization, the commission may require the postsecondary educational institution making the application to file with the commission a good and sufficient surety bond in a penal sum in the amount of ten thousand dollars (\$10,000) or another sum as provided by the commission. The bond must be executed by the applicant as principal and by a corporate surety company qualified and authorized to do business in this state.

(2) A cash surety bond in the applicable amount on deposit in this state in a bank or savings and loan association that is federally insured may be filed instead of the corporate bond, subject to approval by the commission. The cash surety bond must be payable upon demand by the commission under the same conditions specified in this section for corporate bonds and not subject to withdrawal without the approval of the commission.

(3) The bond must be conditioned to:

(A) Initially provide indemnification to a student or enrollee, or the student's or enrollee's parent or guardian, or a class thereof, determined to have suffered loss or damage as a result of an act or practice by the postsecondary educational institution that is a violation of this part, and the bonding company shall pay a final, nonappealable judgment rendered by the commission or a court of this state having jurisdiction, upon receipt of written notification of the judgment; and

(B) Subsequent to the initial conditions outlined in subdivision (a)(3)(A), pay any remaining funds to the special agency account established pursuant to § 49-7-2014 in an amount to be assessed by the commission for the administrative costs associated with maintaining academic records pursuant to § 49-7-2016, including the collection, conversion, and retention of all academic records.

(4) Regardless of the number of years that the bond is in force, the aggregate liability of the surety on the bond shall not exceed the penal sum of the bond.

(5) The bond must be continuous.

(b)(1) The corporate surety bond required to be filed under this section must cover the period of the authorization, except when a surety is released as provided in this section.

(2) A surety on a bond filed under this section may be released from the bond after the surety serves written notice of the release to the commission sixty (60) days prior to the release. The release shall not discharge or otherwise affect a claim filed by a student or enrollee, or the student's or enrollee's parent or guardian, for loss or damage resulting from an act or practice that is a violation of this part that is alleged to have occurred while the bond was in effect, or affect an institution's ceasing activities or operations during the term for which tuition has been paid while the bond was in force.

(3) A cash surety bond must remain on file for one (1) year after the expiration of the period of authorization. The expiration or withdrawal of the cash bond shall not serve to diminish or nullify the rights of claimants. The claimants have the same rights as claimants have against a postsecondary educational institution that filed a corporate surety bond that was subsequently released, as described in this section.

(c) Authorization is conditional, subject to revocation, by operation of law when the institution is no longer covered by a surety bond as required by this section. The commission shall cause the institution to receive at least thirty (30) days' written notice that the authorization is to become conditional, subject to revocation, by operation of law until another surety bond is filed in the same manner, and in a like amount, as the bond being terminated; however, absent exceptional circumstances, a postsecondary educational institution shall not continue to engage in activities or operations without a surety bond for more than ninety (90) days.

SECTION 23. Tennessee Code Annotated, Section 49-7-2014(a), is amended by deleting the subsection and substituting the following:

(a) The commission is authorized to set fees annually based on the intent to collect revenues sufficient to fully fund all costs of this regulatory function.

SECTION 24. Tennessee Code Annotated, Section 49-7-2014(c), is amended by deleting the subsection and substituting instead the following:

(c) The fees collected by the commission must accompany an application for authorization of an institution, or other application or request, in accordance with the schedule set out in the rules promulgated pursuant to this chapter. All fees must be stated as a flat fee.

SECTION 25. Tennessee Code Annotated, Section 49-7-2015(a)(3), is amended by deleting the subdivision and substituting instead the following:

(3) A note, instrument, or other evidence of indebtedness or contract relating to payment for education or educational services shall not be enforceable in the courts of this state by any postsecondary educational institution engaged in activities or operations in this state unless the institution is authorized under this part.

SECTION 26. Tennessee Code Annotated, Section 49-7-2016, is amended by deleting the section and substituting instead the following:

(a) If a postsecondary educational institution engaged in activities or operating in this state proposes to discontinue its activities or operations in this state, then the owner or chief administrative officer, by whatever title designated, of the institution shall file with the commission the original, or legible true copies, of all academic records of the institution as specified by the commission.

(b) The academic records must include, at a minimum, the transcripts or certificates in a format that is customarily required by postsecondary educational institutions when considering students for transfer or advanced study, or by other third parties, such as employers.

(c) If it appears to the commission that the academic records of an institution that is discontinuing its activities or operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable, then the commission may seize and take possession of the records, on its own motion, and with or without order of a court.

(d) The commission shall maintain, or cause to be maintained, a permanent file of the transcripts or certificates provided by subsection (b) that come into its possession.

(e) As an alternative to the deposit of the records with the commission, the institution may propose a plan to the commission for permanent retention of the records. The plan must be put into effect if it is approved by the commission.

(f) When a postsecondary educational institution engaged in activities or operations in this state proposes to discontinue its activities or operations in this state, the institution shall create a teach-out plan that is acceptable to the commission, by which the institution's educational obligations to its students may be fulfilled, and shall provide any material requested by the commission, such as the institution's current catalog, student list, and unearned tuition data.

SECTION 27. Tennessee Code Annotated, Section 49-7-2017(a), is amended by deleting the subsection and substituting instead the following:

(a)(1) A person, group, or entity, or any owner, officer, agent, or employee of a person, group, or entity, that violates a provision of this part or the rules promulgated pursuant to this part is subject to a civil penalty not to exceed five hundred dollars (\$500) for the violation.

(2) Each day's failure to comply is a separate violation.

(3) The fine may be imposed by the commission, as otherwise provided for in this part, or by a court of competent jurisdiction.

SECTION 28. Tennessee Code Annotated, Section 49-7-2017, is amended by adding the following language as a new subsection:

(f) If a person, agent, group, or entity fails to comply with this part or with the rules promulgated pursuant to this part, then the person, agent, group, or entity may be ordered to cease and desist from the noncompliant act or practice and may be required to reimburse a complainant full or partial restitution for the damage or loss resulting from the noncompliant action.

SECTION 29. Tennessee Code Annotated, Section 49-7-2018, is amended by deleting subsections (c) through (f) and substituting instead the following:

(c) There is established the board of directors of the tuition guaranty fund, which must be composed of the comptroller of the treasury, the commissioner of finance and administration, the state treasurer, the executive director of the Tennessee higher education commission, and a representative of the private postsecondary education industry named by

the chair of the commission, or their respective designees, if so designated in writing. The state treasurer or the state treasurer's designee serves as the chair. The board may take any actions necessary to administer the fund, including the promulgation of rules and bylaws. The board shall report annually to the general assembly and governor on the condition of the fund.

(d)(1) There is imposed on each postsecondary educational institution authorized under this part, unless the institution is exempt under § 49-7-2004, a tuition guaranty fund fee in accordance with the schedule set out in the rules promulgated pursuant to this chapter.

(2) The fee must be based on tuition collections, however described, in the previous fiscal year, unless the board determines that a different time measure is more appropriate for an institution. The fee must be paid to the tuition guaranty fund by May 15 each year; provided, that the board may establish an alternative date to account for variations in institutional programs and schedules. The board may also establish late payment penalties by rule.

(e) At such time as the board, in its discretion, determines that the fund is adequately funded to insure against institutional closure, the board may suspend collection of the fee, but may institute it at such time as the fund balance drops below a predetermined minimum balance. For a new postsecondary educational institution that begins engaging in activities or operations in this state after July 1, 2006, the institution must meet bonding requirements, as specified in § 49-7-2013, and pay guaranty fund assessments as specified in subsection (d), for at least six (6) years.

(f) If an institution participating in the fund goes into bankruptcy or ceases activities or operations in this state without completing its educational obligations or reimbursing its students, then the board may reimburse valid claims of students for tuition paid to that institution, in accordance with guidelines and rules established by the board. As a condition of receiving reimbursement from the fund, a student must agree to subrogate the student's right of recovery against the institution to the board.

SECTION 30. Tennessee Code Annotated, Section 49-7-2019, is amended by deleting the section and substituting instead the following:

(a) Information related to graduation, job placement, and tuition costs that institutions are required to provide the commission must also be provided, in writing, to a prospective student for the specific field of study in which the student is considering enrolling.

(b) An institution shall post on the institution's website tuition cost information and a link to the commission's webpage that provides graduation rates and statistics on credential attainment for institutions along with a reference to the availability of graduation rates and statistics on credential attainment.

SECTION 31. Tennessee Code Annotated, Section 49-7-2020(a), is amended by deleting the subsection and substituting instead the following:

(a)(1) Authorized postsecondary educational institutions shall provide an addendum to any enrollment contract or agreement entered into on or after notification is received by the institution of a final decision by the commission that its authorization or reauthorization is on a conditional basis; provided, that the final decision includes a determination by the commission that public disclosure is necessary to protect the public interest. A final decision of the commission may be reviewed as provided for in § 49-7-2012. The addendum must notify the student of the conditional authorization. The addendum must be entitled "Notice of Conditional Authorization" and must be signed and dated by the student.

(2) If the institution has been notified of a final decision to place it on conditional authorization as provided in subdivision (a)(1), then the statement must explicitly set forth the standards that the institution failed to meet and the conditions under which the executive director or the commission placed the institution on conditional authorization. The commission shall specify in the final decision the matters required to be disclosed in the statement. The statement must also state that continued failure to meet the conditions may result in revocation of authorization. All information concerning conditional authorization must be in bold face type.

SECTION 32. Tennessee Code Annotated, Section 49-7-2022, is amended by deleting the section and substituting instead the following:

(a)(1) Postsecondary educational institutions accredited by an institutional accrediting agency recognized by the United States department of education may apply for optional expedited authorization as provided for in this part.

(2) Provisional initial optional expedited authorization may be granted by the executive director or commission staff subject to review and ratification by the commission. Provisional authorization must contain limitations as to time, procedures, functions, and other conditions as deemed necessary.

(3) The term for which authorization is given shall not extend for more than six (6) years and may be issued for a lesser period of time on terms and conditions specified by, or otherwise determined by, the commission. An institution that receives multi-year authorization shall annually submit a certification of compliance on a form provided by the commission, and shall pay the requisite fee by the date established by the commission.

(b) Optional expedited authorization is available to postsecondary educational institutions that submit the following documentation to the commission:

(1) Evidence of accreditation from an institutional accrediting agency recognized by the United States department of education indicating that the location for which authorization is being sought is accredited or properly recognized by the accreditor;

(2) Documentation evidencing an established, clearly articulated, and comprehensive process for the resolution of consumer complaints;

(3) Documentation evidencing that the institution is authorized or exempt from authorization in the state where it is primarily located, if the institution is not authorized in this state;

(4) A signed application for optional expedited authorization on a form provided by the commission;

(5) Documentation evidencing all requisite program approvals from other state licensing boards or commissions, if applicable; and

(6) Documentation evidencing that the institution meets and maintains financial standards and institutional stability acceptable by the accreditor for the purpose of maintaining accreditation or by the United States department of education for the purpose of being a Title IV eligible institution.

(c) Upon the receipt of an institution's application, the commission shall conduct a detailed review and verification and, upon satisfactory examination of all submitted documentation, issue an optional expedited authorization subject to this section.

(d) If the commission, upon review and consideration of the application, determines that the applicant is not eligible and fails to meet the optional expedited authorization criteria established in this section, then the commission shall notify the applicant of its decision to deny the application and set forth the reasons for the denial in writing.

(e) Issuance of optional expedited authorization must demonstrate full compliance with the minimum standards established under this part and fulfill all of the requirements for the institution's state authorization.

(f) Institutions satisfying the requirements of this section and receiving optional expedited authorization shall not be subject to any other authorization requirements under this part, but remain subject to §§ 49-7-2012, 49-7-2013, 49-7-2014, 49-7-2015, 49-7-2016, and 49-7-2018.

(g) To assist the commission with its duty of consumer protection, any institution receiving optional expedited authorization under this section shall:

(1) Timely report to the commission any illegal or unethical conduct by employees, agents, contractors, or third-party service providers related to the delivery of educational programs and services to students, including any corrective action and remedies taken by the institution;

(2) Notify the commission, within five (5) business days, of:

(A) An action taken by an accrediting agency with regard to the institution's accreditation status, including revocation, suspension, probation, warning, or similar action;

(B) The institution's receipt of notice of legal action involving the institution, or its parent entity if applicable, and Tennessee students, related to the delivery of educational programming or student or consumer practices, including class action lawsuits;

(C) The institution's use of a letter of credit or a cash management agreement with the United States department of education;

(D) A governmental agency's public announcement of an investigation of the institution. The institution shall notify the commission whether the investigation is related to the institution's academic quality, financial stability, or student or consumer practices;

(E) A change of ownership; or

(F) A change of institutional director;

(3) Provide any information requested by the commission necessary to monitor the institution's eligibility for optional expedited authorization;

(4) Provide complaint resolution policies and procedures to the institution's students, and cooperate with the commission in the investigation or resolution of student complaints; and

(5) Provide the following data, subject to the commission's requirements:

(A) Student-level data on enrollment and credential attainment;

(B) Job placement data;

(C) Costs of attendance;

(D) Federal student cohort default rates; and

(E) A comprehensive list of all programs offered at the institution.

(h) Optional expedited authorization remains available only to those institutions maintaining the eligibility standards required under this section. Optional expedited authorization must be issued to the owner or governing body of the applicant institution and is nontransferable. If the institution's ownership changes, then the new owner or governing body must apply for a new authorization as provided for by the commission. The commission shall terminate an institution's authorization if the institution fails to apply for a new authorization following a change in the institution's ownership.

(i) The commission may revoke, or make conditional, an issued optional expedited authorization for:

(1) Loss of, or failure to meet, any of the listed criteria for authorization in subsection (b);

(2) Just cause; or

(3) Failure to fulfill the requirements in subsection (g).

(j) Immediately upon the commission's revocation of an institution's optional expedited authorization, the institution is subject to all remaining provisions of this part, applicable administrative rules and procedures for issuance of authorization, and must reapply for authorization under § 49-7-2008. An institution for which the commission revokes an optional expedited authorization is ineligible to reapply for optional expedited authorization until the commission determines that the institution has resolved each of the grounds for revocation.

(k) The commission may investigate any signed student complaint involving postsecondary educational institutions authorized under this section; provided, however, that initial responsibility for the investigation and resolution of complaints resides with the institution against which the complaint is made. Once the institution's complaint process is

exhausted, the commission may investigate and coordinate resolution of any student complaint with the assistance of other government agencies, as necessary.

(l) The commission shall develop, and make available on its website, graduation rates and statistics on credential attainment for institutions authorized under this section and include a hyperlink on its website to each institution's website.

(m) An institution authorized under this section shall develop and make available to the public on the institution's website the most up-to-date version of the following information:

(1) Costs of attendance;

(2) Information on whether academic credits attained are transferable to other institutions operating in Tennessee;

(3) Executed articulation and transfer of credit agreements with other institutions operating in Tennessee, if applicable; and

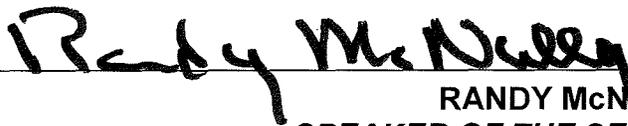
(4) Federal student cohort default rates.

SECTION 33. Tennessee Code Annotated, Section 49-7-2023, is amended by deleting the section.

SECTION 34. For purposes of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes, this act takes effect on July 1, 2022, the public welfare requiring it.

SENATE BILL NO. 2843

PASSED: April 21, 2022



RANDY McNALLY
SPEAKER OF THE SENATE



CAMERON SEXTON, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 11th day of May 2022



BILL LEE, GOVERNOR