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*Final Analysis*  
*Legislative Service Commission*

**Am. Sub. S.B. 266**  
124th General Assembly  
(As Passed by the General Assembly)

**Sens. Robert Gardner, Armbruster, Randy Gardner, Harris, Shoemaker, Prentiss**

**Reps. Callender, Calvert, Hartnett, Distel, Carano, Fedor, Schmidt, Carey, Flowers, Hughes, Hagan, Hoops, Niehaus**

**Effective date: April 3, 2003; Sections 3 and 4 effective July 1, 2003**

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**ACT SUMMARY**

- Changes the name of the State Board of Proprietary School Registration to the State Board of Career Colleges and Schools (Board).
- Directs the Board to specify the period of time for which a career school must maintain a surety bond.
- Allows the Board to establish the amount of the surety bond maintained by a career school in Ohio beginning July 1, 2003.
- Authorizes the Board to permit the cancellation of a career school's surety bond if the school is approved to participate in certain federal student financial assistance programs or satisfies other standards of financial responsibility established by the Board.
- Specifies that private career school students are eligible for reimbursement of prepaid tuition losses only in the event of school closure.
- Requires reimbursements for prepaid tuition losses generally to be paid by the surety on a career school's bond rather than from the Student Tuition Recovery Fund beginning July 1, 2003.
- Eliminates the requirement that the Board conduct an on-site visit of a career school proposing to offer an associate degree program prior to the Board issuing or renewing authorization for such program.

- Abolishes the requirement that the Ohio Board of Regents recommend whether to approve applications for the issuance or renewal of program authorizations for associate degree programs at career schools.
- Eliminates the requirement that agents for career schools be covered by a surety bond.
- Adds an additional voting member with a background in career school administration or management to the Board and makes the representative of students on the Board a nonvoting member.
- Provides a fixed rate of compensation for all Board members appointed by the Governor.
- Exempts from regulation by the Board employee training courses that are paid for by employers and conducted by outside service providers.
- Effective July 1, 2003, creates the Career Colleges and Schools Operating Fund to support the Board's administrative and enforcement responsibilities.
- Makes legislative members of the Student Tuition Recovery Authority nonvoting ex officio members.
- Makes other changes to the oversight of career schools.
- Permits students enrolled in eligible institutions prior to July 1, 2000, to receive student workforce development grants.
- Permits the Chancellor of the Ohio Board of Regents to grant Capital Scholarships to students enrolled in Kent State University's Columbus Program in Intergovernmental Issues in FY 2003.

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## TABLE OF CONTENTS

### CAREER SCHOOL REGULATION

Background .....	2
State Board of Career Colleges and Schools.....	4
Maintenance of surety bonds by career schools .....	5
Reimbursement of students for tuition losses .....	6
Membership of Student Tuition Recovery Authority .....	7
Program authorizations for associate degree programs at career schools.....	7



Surety bonds for career school agents .....	8
Career Colleges and Schools Operating Fund .....	8
Other changes made by the act .....	8

**CHANGES REGARDING CERTAIN SCHOLARSHIP PROGRAMS**

Student Workforce Development Grant Program .....	9
Capital Scholarship Programs .....	10

**CONTENT AND OPERATION**

**CAREER SCHOOL REGULATION**

**Background**

Chapter 3332. of the Revised Code governs proprietary schools, also known as private career schools. Any course, school, or college that is not specifically exempt from the provisions of Chapter 3332. of the Revised Code is regulated by what previously was known as the State Board of Proprietary School Registration but which the act renames the State Board of Career Colleges and Schools (hereafter referred to as the Board). State colleges and universities as well as nonprofit private educational institutions, the programs of which are approved by the Ohio Board of Regents, are among the schools exempted from Chapter 3332.<sup>1</sup> In addition, certain schools designed to prepare students for specified licensed professions (such as barber and cosmetology schools) are regulated by the state boards that license the practitioners of those professions. However, most for-profit institutions designed to prepare students for a career are *not* exempt from regulation under Chapter 3332. (See **COMMENT 1**.) The kinds of career schools regulated by the Board include such programs and schools as paralegal programs, business technology programs, some professional modeling schools, secretarial schools, and alternative medicine programs, to name only a few.

In its role as overseer, the Board monitors various aspects of the operations of career schools, including admissions and recruitment practices, faculty qualifications, and long-term financial viability. Among its primary responsibilities is the issuance of certificates of registration to any nonexempt career school that maintains a program in Ohio. In addition, the Board issues individual program authorizations for each type of diploma offered by a career school. The State Board of Career Colleges and Schools and the Board of Regents

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<sup>1</sup> *Private institutions exempt from regulation by the State Board of Career Colleges and Schools are those that are regionally accredited, operated by for-profit corporations, and that on February 20, 2002, offer bachelor's or master's degrees approved by the Ohio Board of Regents (see **COMMENT 1**).*



work together to approve program authorizations for career schools that seek to offer baccalaureate, master's, or doctoral degree programs.

Career schools regulated by the State Board of Career Colleges and Schools, unlike public and private nonprofit colleges and universities, are subject to the Student Tuition Recovery Authority. This body protects students from financially unstable or fraudulent career schools by reimbursing students for tuition losses. Reimbursements are currently paid from the Student Tuition Recovery Fund, into which career schools make annual payments. However, as discussed in "*Reimbursement of students for tuition losses*," below, the act modifies this reimbursement provision, effective July 1, 2003.

### *State Board of Career Colleges and Schools*

(sec. 3332.03; Section 8)

Under continuing law, membership of the Board consists of the Superintendent of Public Instruction or a designee, the Chancellor of the Board of Regents or a designee, two members who have been in an executive or managerial position in a career school regulated by the Board for the five years immediately preceding appointment, two representatives of the general public, and one graduate of a career school who represents students. These latter five members are appointed to five-year terms by the Governor, with the advice and consent of the Senate. The act requires the Governor to appoint, for a five-year term and with the advice and consent of the Senate, an additional member to the Board with a background in career school administration or management for the past five years, thereby increasing the total number of Board members to eight.<sup>2</sup> While prior law provided that all members of the Board had full voting powers, the student representative under the act is a nonvoting member. The other seven members continue to have full voting powers.

Under prior law, board members appointed by the Governor were only compensated for their necessary expenses incurred in attending meetings or performing other services. Under the act, all members appointed by the Governor, including the student representative, receive, in addition to compensation for expenses, a fixed rate of compensation for each day they are engaged in the discharge of official duties at a rate established by the Director of Administrative

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<sup>2</sup> *Uncodified law in the act directs the Governor to make the additional appointment within 60 days after the effective date of the act. The new member will serve until November 20, 2003, at which time the member will be eligible for reappointment to a full five-year term.*

Services in accordance with the pay schedules for other exempt employees.<sup>3</sup> However, they do not receive step advancements.

**Maintenance of surety bonds by career schools**

(sec. 3332.08; Section 3)

Until June 30, 2003, current law provides that when a career school applies for a certificate of registration from the Board, the school must also supply a surety bond in the amount of \$10,000. The surety on the bond must be a corporate bonding company approved by the Department of Insurance. The purpose of the bond is to provide for the indemnification of any student who suffers loss due to fraud or misrepresentation used to procure the student's enrollment in the school, including repayment of tuition paid in advance.

The act makes two changes to this surety bond requirement, which take effect on July 1, 2003 (Section 3). First, the dollar amounts of bonds maintained by career schools are to be designated by the Board rather than mandated in statute. This change grants the Board flexibility in setting the bond amount, presumably including the flexibility to establish different bond amounts for different categories of schools. Board rules establishing bond amounts must be adopted in accordance with the Administrative Procedure Act.

Second, the act specifies that the application for a certificate of registration must be accompanied by a surety bond *only if the school is located in Ohio*. Presumably, then, career schools that are located in another state but wish to be authorized to solicit students in Ohio will not be obligated to provide a bond in order to register their agents with the Board (see "**Surety bonds for career school agents**," below).

Prior law also required a career school to maintain its surety bond for five years after its original registration with the Board and for five years after any change of ownership. In a third change, which takes effect April 3, 2003, the act eliminates the five-year requirement regarding the length of time that a career school must maintain a surety bond and stipulates instead that the Board must establish by rule the period that a bond must remain in effect. In addition, the Board may allow a school to cancel its bond earlier if the school is approved to participate in a federal student financial assistance program authorized under Title

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<sup>3</sup> See R.C. 124.152 for the pay schedules for exempt employees (not in the act).

IV of the Higher Education Act of 1965 or if the school meets other standards of financial responsibility established by the Board.<sup>4</sup>

**Reimbursement of students for tuition losses**

(secs. 3332.081 and 3332.082; Section 3)

As noted above, the Student Tuition Recovery Authority protects students from tuition losses to career schools that fail to provide the students with the training for which they paid. The Board plays a role in this protection through its day-to-day oversight responsibilities, but continuing law also authorizes the Board to pursue legal sanctions against schools or individuals that may be liable for the default. Both reimbursements for tuition losses and expenses incurred by the Board in pursuing legal remedies are paid from the Student Tuition Recovery Fund.

Students were protected under prior law against tuition loss resulting from "business failure or any other reason for which the student is not legally responsible." The act, however, limits this protection solely to *prepaid* tuition loss for an academic term due to the closure of the career school in which the student is enrolled. Consequently, the Board is authorized to seek legal remedies from only schools that close. The act further specifies that students seeking reimbursement from the Fund for a prepaid tuition loss must submit a claim to the Board no later than one year after the school's closure.

Another change regarding reimbursements for tuition losses becomes effective under the act on July 1, 2003. Beginning on that date, all reimbursements to students deemed eligible by the Student Tuition Recovery Authority are to be paid by the surety on the bond maintained by the career school rather than from the Student Tuition Recovery Fund. Legal expenses for the Board also are to be paid from the surety bond. If, however, the bond proceeds are insufficient to cover all necessary payments, or the school is not required to maintain a bond, then additional reimbursements or expenses must be paid from the Fund. Any money recovered by the Board from the surety on a bond in excess of the total costs for tuition reimbursements and legal expenses must be deposited into the Fund.

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<sup>4</sup> *Title IV of the Higher Education Act of 1965 includes such financial assistance programs as Pell Grants, Perkins Loans, the William D. Ford Direct Loan Program, and the Family Education Loan Program. See 20 U.S.C. 1070 et seq.*

### **Membership of Student Tuition Recovery Authority**

(sec. 3332.081)

Continuing law provides that members of the Student Tuition Recovery Authority consist of the executive director of the Board, the executive director of the Ohio Association of Career Colleges and Schools, and the Treasurer of State or a designee. All members have voting privileges and must take an oath prior to assuming their duties. Prior law also included the chairpersons of the House and Senate education committees as full-voting members who were required to take an oath of office prior to assuming duties associated with Authority membership. The election of a chairperson and vice-chairperson from among the five members was required under the law as it existed prior to the act.

The act changes the status of the legislative members of the Authority to nonvoting ex officio members (see **COMMENT 2**). Correspondingly, they are not required to take an oath and are not eligible to serve as chairperson or vice-chairperson of the Authority. Thus, the election of a chairperson and a vice-chairperson may only be made from among the other three members.

### **Program authorizations for associate degree programs at career schools**

(sec. 3332.05)

Under prior law, before the issuance or renewal of a program authorization for an associate degree program, the State Board of Proprietary School Registration was required to furnish the Ohio Board of Regents with a copy of the career school's application for the program authorization and conduct a joint on-site visit of the school with a representative from the Board of Regents. The Board of Regents then had 21 days to provide the State Board of Proprietary School Registration with a written statement recommending approval or disapproval of the school's application.

The act eliminates these requirements entirely. This change effectively removes the Board of Regents from any role in providing input to the State Board of Career Colleges and Schools as to whether to grant individual program authorizations for associate degree programs at career schools. Also, under the act, the State Board of Career Colleges and Schools is no longer required to visit a school before making a decision about an application to offer an associate degree program.

### **Surety bonds for career school agents**

(sec. 3332.10)

Agents for career schools inform prospective students about the schools and solicit their enrollment. Prior law required agents to obtain a permit from the Board prior to contacting prospective students. Each applicant for a permit was required to supply a \$1,000 surety bond acceptable to the Board. This bond provided indemnification to students suffering loss as a result of fraud or misrepresentation on the part of the agent in securing the students' enrollment.

The act eliminates the requirement that agents for career schools maintain surety bonds.

### **Career Colleges and Schools Operating Fund**

(sec. 3332.04 as amended in Section 3)

Effective July 1, 2003, the act creates the Career Colleges and Schools Operating Fund in the state treasury. All receipts of the Board must be deposited in the Fund and used solely for the administration and enforcement of the Board's oversight responsibilities. Investment earnings on the Fund must be credited to the Fund. Until July 1, 2003, receipts of the Board are to continue to be deposited in the General Revenue Fund.

### **Other changes made by the act**

The act makes the following other changes related to the Board's regulation of career schools:

---Continuing law exempts tuition-free courses conducted by employers exclusively for their own employees from regulation by the Board. The act expands this exemption to include training courses for employees that are paid for by their employers and conducted by outside service providers. (Sec. 3332.02.)

---Under prior law, the Board was authorized to limit, suspend, revoke, or refuse to issue or renew a certificate of registration or program authorization for a career school or impose a civil penalty on the school if the school gave monetary or other incentives to students in exchange for procuring the enrollment of new students. The act specifies that a school faces sanctions for offering student incentives only if it engages in this practice *without Board approval*. (Sec. 3332.09(M).)

---When the Board issues a formal complaint to a career school for an alleged violation, the Board must grant the person who holds the school's

certificate of registration an *opportunity* to appear before the Board at a public hearing. Prior law required the certificate holder to appear before the Board. (Sec. 3332.091(A)(2).)

---The act clarifies that tuition losses for which students may be reimbursed do not include money not yet received by the students or otherwise credited to their accounts, but held by career schools in escrow accounts for tuition or fees for future terms, as uncommitted grants, loans, or Pell grant money. (Sec. 3332.082, second paragraph.)

---The act clarifies that as used in Chapter 3332. of the Revised Code, "program" means "a course of study, whether offered in a specific place, by correspondence using the mails, or by any other means of communication, designed to prepare students for potential employment in a recognized vocation, occupation, or profession at the certificate, diploma, or degree level" (sec. 3332.01(C)).

## **CHANGES REGARDING CERTAIN SCHOLARSHIP PROGRAMS**

### **Student Workforce Development Grant Program**

(sec. 3333.29)

The Student Workforce Development Grant Program provides grants to Ohio students who satisfy certain academic criteria and are enrolled full-time in two- or four-year degree programs at either private career schools registered by the State Board of Career Colleges and Schools or certain private institutions exempt from regulation by the Board. Administered by the Board of Regents, the program provides grants paid directly to the school where the student is enrolled. The Board of Regents must determine the amount of the grants based on the amount of funds available. A student may receive assistance under the program for no more than five academic years. Assistance under the program may be combined with assistance under other state programs, but the combined assistance from the state cannot exceed the total of the student's instructional and general fees.

Prior law restricted the award of grants to students who enrolled in eligible institutions after July 1, 2000. The act removes this limitation and allows the award of such a grant to any eligible student regardless of the student's first enrollment date.



### Capital Scholarship Programs

(Section 94.10 of Am. Sub. H.B. 94 of the 124th General Assembly, amended in Sections 5 and 6)

The budget act for the 2001-2003 biennium authorizes the Chancellor of the Ohio Board of Regents to grant up to 125 "Capital Scholarships" in each fiscal year of the biennium in the amount of \$2,000 each to any student enrolled in a public or private institution of higher education for participation in the Washington Center Internship Program. The Washington Center offers internships and academic seminars for all undergraduate majors in Washington, D.C., for which students may earn academic credit at the institution in which they are enrolled. Reportedly, 17 Ohio colleges and universities currently participate in that internship program.<sup>5</sup> The total aggregate amount of all the Capital Scholarships awarded must not exceed \$250,000 in any fiscal year. The scholarships are to be matched by the Washington Center's scholarship funds.

The act amends this provision to permit the Chancellor to provide a \$2,000 Capital Scholarship in fiscal year 2003 to any student enrolled in the Kent State University "Columbus Program in Intergovernmental Issues" if adequate funds are available. Under that program, a select group of students from a variety of academic disciplines serve as interns in governmental offices in Columbus.<sup>6</sup> The requirement for matching funds that applies to Washington Center Internship participants does not apply to students enrolled in the Columbus Program in Intergovernmental Issues.

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### COMMENT

1. Sub. S.B. 116 of the 124th General Assembly, effective February 20, 2002, provides that any regionally accredited for-profit institution that on that effective date granted bachelor's or master's degrees approved by the Ohio Board of Regents is also exempt from regulation under Chapter 3332. of the Revised Code. Reportedly, the exemption prescribed in that act applies to "approximately five in-state institutions and . . . four out-of-state institutions" that formerly were regulated by the State Board of Proprietary School Registration.<sup>7</sup>

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<sup>5</sup> See the Center's web site at [www.twc.edu](http://www.twc.edu).

<sup>6</sup> See the Program's web site at [www.kent.edu/CPH](http://www.kent.edu/CPH).

<sup>7</sup> See, *LSC Fiscal Note and Local Impact Statement, Sub. S.B. 116 of the 124th General Assembly, as enacted, November 14, 2001.*



2. Article II, § 4 of the Ohio Constitution prohibits a member of the General Assembly from holding any "public office" of the United States, Ohio, or a political subdivision while serving as a state legislator. Although no court has ruled on the legality of legislators serving as members of the Student Tuition Recovery Authority, the Ohio Supreme Court has issued several opinions describing the characteristics of a "public office."<sup>8</sup> According to this judicial doctrine, a "public office" is a position created by law, with independent and continuing duties prescribed by statute and involving the exercise of some portion of the sovereign power. The court has further clarified that sovereign powers include police powers, the disposition of public property, the incurring of financial obligations upon the state, and political or business dealings in which the public acts through a state agency.<sup>9</sup> It is possible that the statutory responsibilities of the Student Tuition Recovery Authority could be construed to be those of a public office, in which case members of the General Assembly could not constitutionally serve as members of the Authority. Presumably, the act alleviates this concern by making the legislative members of the Authority nonvoting members.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	05-14-02	pp. 1766-1767
Reported, S. Education	06-19-02	pp. 1921-1922
Passed Senate (33-0)	06-19-02	pp. 1925-1926
Reported, H. Education	11-13-02	p. 2050
Passed House (96-0)	12-04-02	pp. 2184-2185
Concurrence (30-0)	12-05-02	pp. 2279-2280

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<sup>8</sup> See *State ex rel. Landis v. Bd. of County Commrs. (1917)*, 95 *Ohio St.* 157; *State ex rel. Herbert v. Ferguson (1944)*, 142 *Ohio St.* 496; and *State ex rel. Meshel v. Keip (1981)*, 66 *Ohio St.2d* 379.

<sup>9</sup> 66 *Ohio St.2d*, at 387-388.