

5104

2009-2010 Regular Sessions

I N   A S S E M B L Y

February 10, 2009

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Introduced by M. of A. BRODSKY -- read once and referred to the Committee on Education

AN ACT to amend the education law, in relation to providing for the appropriate oversight of private trade and business schools that are unlicensed in violation of article 101 of the education law, and making an appropriation therefor

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. Legislative findings and declarations. The legislature  
2 finds and declares that although the department of education has effectively implemented chapter 887 of the laws of 1990 in regulating and  
3 monitoring licensed trade and business schools, an industry of unlicensed and illegally operating institutions has developed. The legislature  
4 further finds that many of these approximately 880 such schools  
5 (over three times the number of licensed and exempt institutions)  
6 provide sub-standard programs with no oversight or review to prevent the  
7 commission of fraud and abuse against the students seeking such training. In order to address this problem, it is the intent of the legislature  
8 to provide a supplemental state appropriation in the amount of  
9 \$620,000 to the department of education to support the investigation,  
10 monitoring, and pursuit of appropriate disciplinary and enforcement  
11 action against those schools that are found to be operating without a  
12 license in violation of section 5001 of the education law and to further  
13 the overall service to licensed schools and their students. To create a  
14 deterrent to illegal operation of schools, the legislature further finds  
15 that it is necessary to authorize the imposition of more substantial  
16 civil penalties on such unlicensed schools.

17     S 2. Paragraph b of subdivision 6 of section 5003 of the education  
18 law, as amended by chapter 434 of the laws of 1999, is amended to read  
19 as follows:

20     b. Notwithstanding the provisions of paragraph a of this subdivision,  
21 a hearing officer may recommend, and the commissioner may impose, a  
22 civil penalty not to exceed fifty thousand dollars for any of the  
23 following violations: (1) [operation of a school without a license in  
24  
25  
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EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [ ] is old law to be omitted.

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1 violation of section five thousand one of this article; (2)] operation  
2 of a school knowing that the school's license has been suspended or  
3 revoked; [(3)] (2) use of false, misleading, deceptive or fraudulent  
4 advertising; [(4)] (3) employment of recruiters on the basis of a  
5 commission, bonus or quota, except as authorized by the commissioner;  
6 [(5)] (4) directing or authorizing recruiters to offer guarantees of  
7 jobs upon completion of a course; [(6)] (5) failure to make a tuition  
8 refund when such failure is part of a pattern of misconduct; [(7)] (6)  
9 the offering of a course or program that has not been approved by the  
10 commissioner; [(8)] (7) admitting students, who subsequently drop out,  
11 who were admitted in violation of the admission standards established by  
12 the commissioner, where such admissions constitute a pattern of miscon-  
13 duct and where the drop out resulted at least in part from such  
14 violation; [(9)] (8) failure to provide the notice of discontinuance and  
15 the plan required by subdivision [seven] EIGHT of section five thousand  
16 one of this article; or [(10)] (9) violation of any other provision of  
17 this article, or any rule or regulation promulgated pursuant thereto,  
18 when such violation constitutes part of a pattern of misconduct which  
19 significantly impairs the educational quality of the program or programs  
20 being offered by the school. For each enumerated offense, a second or  
21 further violation committed within the previous five years, shall be  
22 subject to a civil penalty not to exceed seventy-five thousand dollars  
23 for each such violation.

24 S 3. Subdivision 6 of section 5003 of the education law is amended by  
25 adding a new paragraph b-1 to read as follows:

26 B-1. NOTWITHSTANDING THE PROVISIONS OF PARAGRAPH A OF THIS SUBDIVI-  
27 SION, A HEARING OFFICER MAY RECOMMEND, AND THE COMMISSIONER MAY IMPOSE,  
28 A CIVIL PENALTY NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS FOR OPERATION  
29 OF A SCHOOL WITHOUT A LICENSE IN VIOLATION OF SECTION FIVE THOUSAND ONE  
30 OF THIS ARTICLE. FOR EACH ENUMERATED OFFENSE, A SECOND OR FURTHER  
31 VIOLATION COMMITTED WITHIN THE PREVIOUS FIVE YEARS, SHALL BE SUBJECT TO  
32 A CIVIL PENALTY NOT TO EXCEED ONE HUNDRED THOUSAND DOLLARS FOR EACH SUCH  
33 VIOLATION.

34 S 4. Paragraph c of subdivision 6 of section 5003 of the education  
35 law, as added by chapter 887 of the laws of 1990, is amended to read as  
36 follows:

37 c. In addition to the penalties authorized in paragraphs a [and], b,  
38 AND B-1 of this subdivision, a hearing officer may recommend, and the  
39 commissioner may impose, any of the following administrative sanctions:  
40 (1) a cease and desist order; (2) a mandatory direction; (3) a suspen-  
41 sion or revocation of a license; (4) a probation order; or (5) an order  
42 of restitution.

43 S 5. The sum of six hundred twenty thousand dollars (\$620,000), or so  
44 much thereof as may be necessary, is hereby appropriated to the depart-  
45 ment of education out of any moneys in the state treasury in the general  
46 fund, to the credit of the state purposes account, not otherwise appro-  
47 priated, for its services and expenses in carrying out the purposes of  
48 this act. Such sum shall be payable on vouchers certified or approved  
49 by the commissioner of education upon audit and warrant of the state  
50 comptroller in the manner prescribed by law.

51 S 6. This act shall take effect immediately, provided that section  
52 five of this act shall be deemed to have been in full force and effect  
53 on and after April 1, 2009.