

7088

I N S E N A T E

April 27, 2012

Introduced by Sen. LAVALLE -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to pre and post test reporting requirements and test site registration and sign in; and to amend the penal law, in relation to establishing the crimes forgery of an educational test, criminal facilitation of educational testing fraud, and scheme to defraud educational testing

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

- 1 Section 1. Subdivision 3 of section 340 of the education law, as
2 amended by chapter 813 of the laws of 1980, is amended and five new
3 subdivisions 10, 11, 12, 13 and 14 are added to read as follows:
4 3. "Test subject" means an individual to whom a test is administered
5 OR AN INDIVIDUAL WHO HAS REGISTERED TO TAKE A TEST.
6 10. "HOME HIGH SCHOOL" MEANS THE HIGH SCHOOL AT WHICH A TEST SUBJECT
7 IS OR WAS A MATRICULATED STUDENT AT THE TIME OF TESTING.
8 11. "TESTING SITE" MEANS ANY LOCATION WHERE A STANDARDIZED TEST IS
9 ADMINISTERED TO A TEST SUBJECT.
10 12. "TEST SITE PERSONNEL" MEANS A PERSON PRESENT AT A TESTING SITE WHO
11 SIGNS IN TEST SUBJECTS WHO ARE REGISTERED TO TAKE THE TEST AT THAT SITE
12 AND WHO OVERSEES THE ADMINISTRATION OF A STANDARDIZED TEST. FOR PURPOSES
13 OF THIS DEFINITION, TESTING SITE PERSONNEL MAY INCLUDE, BUT NOT BE
14 LIMITED TO, A PROCTOR, TEST CENTER SUPERVISOR, ASSISTANT SUPERVISOR OR A
15 ROOM PROCTOR. EACH MAY HAVE A DIFFERENT ROLE IN TEST ADMINISTRATION
16 OVERSIGHT.
17 13. "ACCEPTABLE PHOTO IDENTIFICATION" MEANS A SCHOOL IDENTIFICATION
18 CARD, A SCHOOL IDENTIFICATION FORM PREPARED BY THE HOME HIGH SCHOOL, A
19 STATE-ISSUED DRIVER'S LICENSE, A STATE-ISSUED NON-DRIVER'S LICENSE, A
20 PASSPORT, A MILITARY IDENTIFICATION CARD OR A GOVERNMENT ISSUED IDENTIFICATION CARD. THE PHOTOGRAPH ON ANY SUCH IDENTIFICATION CARD MUST BE
21 A CURRENT REPRESENTATION OF THE TEST TAKER'S IMAGE.
22 14. "PHOTO ADMISSION TICKET" MEANS A TICKET ASSIGNED TO A TEST REGISTRANT, UPON REGISTERING TO TAKE THE ACT ASSESSMENT (ACT) OR THE SCHOLAS-

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets [] is old law to be omitted.

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1 TIC APTITUDE TEST (SAT) WHICH IS PRODUCED BY THE TEST AGENCY ACCORDING
2 TO SUCH AGENCY'S RULES, REGULATIONS OR PROTOCOLS.

3 S 2. Section 344 of the education law is amended by adding a new clos-
4 ing paragraph to read as follows:

5 NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT THE TESTING
6 AGENCY FROM REPORTING THE CANCELLATION OF A TEST SCORE PURSUANT TO
7 SUBDIVISION EIGHT-A OF SECTION THREE HUNDRED FORTY-FOUR-B OF THIS ARTI-
8 CLE.

9 S 3. Paragraph (e) of subdivision 3 of section 344-b of the education
10 law, as added by chapter 845 of the laws of 1992, is amended to read as
11 follows:

12 (e) the potential consequences which may result from the investi-
13 gation, such as withholding or invalidating the test score; OR REPORTING
14 THE CANCELLATION OF SUCH SCORE TO THE TEST SUBJECT'S HOME HIGH SCHOOL
15 AND/OR ANY COLLEGES, UNIVERSITIES, OR OTHER ENTITIES WHO WERE DESIGNATED
16 OR ARE OTHERWISE AUTHORIZED TO RECEIVE THE SCORE REPORT.

17 S 4. Section 344-b of the education law is amended by adding a new
18 subdivision 5-a to read as follows:

19 5-A. (A) IF THE TEST AGENCY FINDS SUBSTANTIAL EVIDENCE TO SUPPORT A
20 FINDING THAT A TEST SUBJECT MAY HAVE COMMITTED FORGERY OF AN EDUCATIONAL
21 TEST AS DEFINED IN SECTION 170.80 OF THE PENAL LAW, THE TEST AGENCY
22 SHALL BE AUTHORIZED TO TEMPORARILY SUSPEND THE SCORE AND SHALL BE OBLI-
23 GATED TO TURN SUCH TEST SUBJECT'S CASE OVER TO THE PROPER AUTHORITIES
24 PURSUANT TO SUBDIVISION EIGHT-A OF THIS SECTION.

25 (B) AT SUCH TIME, THE TEST AGENCY SHALL NOTIFY THE TEST SUBJECT OF THE
26 DECISION TO TURN OVER THE CASE, AND THE AUTHORITIES TO WHOM THE CASE HAS
27 BEEN REFERRED.

28 S 5. Subdivision 6 and paragraph (c) of subdivision 7 of section 344-b
29 of the education law, as added by chapter 845 of the laws of 1992, is
30 amended to read as follows:

31 6. The test subject shall have thirty days following receipt of the
32 notice by registered mail to respond to the notice of inauthenticity or
33 irregularity, PROVIDED HOWEVER, IF THE TEST AGENCY HAS TEMPORARILY
34 SUSPENDED SUCH TEST PURSUANT TO SUBDIVISION FIVE-A OF THIS SECTION, A
35 TEST SUBJECT SHALL HAVE THE OPTION TO RAISE ANY CLAIM OR CLAIMS OF INNO-
36 CENCE WITH THE PROPER AUTHORITIES ASSIGNED TO HIS OR HER CASE.

37 (c) Nothing in this section precludes the parties from seeking resol-
38 ution of the testing problems by either judicial review or arbitration.
39 The test agency and the test subject shall make a good faith effort to
40 complete an arbitration process in no more than thirty days after the
41 election of such option, PROVIDED, HOWEVER, IF THE TEST AGENCY HAS
42 TEMPORARILY SUSPENDED SUCH TEST PURSUANT TO SUBDIVISION FIVE-A OF THIS
43 SECTION, A TEST SUBJECT SHALL HAVE THE OPTION TO TAKE UP ANY CLAIMS OF
44 INNOCENCE WITH THE PROPER AUTHORITIES ASSIGNED TO HIS OR HER CASE.

45 S 6. Subdivision 8 of section 344-b of the education law, as added by
46 chapter 845 of the laws of 1992, is amended and two new subdivisions 8-a
47 and 8-b are added to read as follows:

48 8. The test agency shall not release confidential information to any
49 authorized test score recipients regarding a test subject under pending
50 investigation, unless authorized to do so by the test subject OR AUTHOR-
51 IZED TO DO SO PURSUANT TO SUBDIVISION EIGHT-A OF THIS SECTION.

52 8-A. WHEN A TEST AGENCY FINDS SUBSTANTIAL EVIDENCE TO SUPPORT A FIND-
53 ING THAT A TEST SUBJECT MAY HAVE COMMITTED FORGERY OF AN EDUCATIONAL
54 TEST AS DEFINED IN SECTION 170.80 OF THE PENAL LAW, THE TEST AGENCY
55 SHALL BE AUTHORIZED TO TEMPORARILY SUSPEND THE SCORE AND SHALL BE OBLI-
56 GATED TO TURN SUCH TEST SUBJECT OR TEST REGISTRANT OVER TO THE PROPER

1 AUTHORITIES. WHILE THE CASE IS PENDING BEFORE THE PROPER AUTHORITIES,
2 THE TESTING AGENCY SHALL NOTIFY SUCH TEST SUBJECT OF THE DECISION TO
3 TURN HIS OR HER CASE OVER TO THE PROPER AUTHORITIES, SHALL INFORM THE
4 TEST SUBJECT'S HOME HIGH SCHOOL OF THE DECISION TO TURN SUCH CASE OVER
5 TO THE PROPER AUTHORITIES AND SHALL INFORM ANY COLLEGES, UNIVERSITIES OR
6 OTHER ENTITIES AUTHORIZED TO RECEIVE SUCH SCORE REPORT OF THE TEMPORARY
7 SUSPENSION OF THE TEST SCORE. IF THE PROPER AUTHORITY LATER DETERMINES
8 THAT THE TEST SUBJECT WAS NOT GUILTY OF FORGERY OF AN EDUCATIONAL TEST
9 AS DEFINED IN SECTION 170.80 OF THE PENAL LAW, THE TEST AGENCY SHALL
10 NOTIFY THE TEST SUBJECT'S HOME HIGH SCHOOL, LIFT THE TEMPORARY SUSPEN-
11 SION AND REINSTATE THE SCORE AND REPORT SUCH SCORE TO ANY COLLEGES,
12 UNIVERSITIES OR OTHERWISE AUTHORIZED RECIPIENTS.

13 8-B. ANY TEST SUBJECT WHO IS FOUND GUILTY OF FORGERY OF AN EDUCATIONAL
14 TEST, IN ADDITION TO ANY PENALTIES UNDER THE PENAL LAW, SHALL NOT BE
15 AUTHORIZED TO SIT FOR ANOTHER STANDARDIZED TEST WITHIN ONE YEAR FROM THE
16 DATE OF CONVICTION.

17 S 7. The education law is amended by adding a new section 344-d to
18 read as follows:

19 S 344-D. PRE AND POST TEST REPORTING REQUIREMENTS AND TESTING SITE
20 REGISTRATION AND SIGN IN REQUIREMENTS. 1. THIS SECTION SHALL ONLY APPLY
21 TO POST SECONDARY SCHOOL ADMISSION EXAMS SUCH AS THE SCHOLASTIC APTITUDE
22 TEST (SAT) OR THE ACT ASSESSMENT (ACT).

23 2. (A) UPON REGISTERING TO SIT FOR THE SAT OR ACT A TEST SUBJECT SHALL
24 REPORT TO THEIR HOME HIGH SCHOOL THE TESTING SITE AT WHICH THEY ARE
25 REGISTERED TO TAKE THE EXAM;

26 (B) UPON COMPLETION OF THE EXAM AND RECEIPT OF THEIR SCORE, THE TEST
27 SUBJECT MUST REPORT SUCH SCORE TO THEIR HOME HIGH SCHOOL.

28 3. IN ORDER FOR A TEST SUBJECT TO SIT FOR SAT OR ACT THE TEST SUBJECT
29 UPON SIGN IN, MUST PROVIDE TO THE APPROPRIATE TEST SITE PERSONNEL AT THE
30 TESTING SITE, THE FOLLOWING:

31 (A) IF A TEST SUBJECT IS REGISTERED TO TAKE AND IS TAKING THE TEST AT
32 THEIR HOME HIGH SCHOOL OR IF THE TEST SUBJECT IS REGISTERED TO TAKE THE
33 EXAM AND IS TAKING THE EXAM AT A SITE THAT IS NOT THE TEST SUBJECT'S
34 HOME HIGH SCHOOL, THE TEST SUBJECT MUST PROVIDE ONE FORM OF ACCEPTABLE
35 PHOTO IDENTIFICATION AND A PHOTO ADMISSION TICKET.

36 (B) A TEST SUBJECT MUST PRE-REGISTER TO TAKE THE EXAM AND MUST TAKE
37 THE EXAM AT THE TESTING SITE AT WHICH THEY ARE REGISTERED. WALK-INS TO A
38 DIFFERENT SITE SHALL NOT BE ALLOWED TO SIT FOR THE EXAM.

39 4. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT ANY OTHER TEST
40 DAY OR POST TEST DAY POLICIES AND PROCEDURES REQUIRED BY THE TEST AGEN-
41 CY.

42 S 8. The penal law is amended by adding a new section 170.80 to read
43 as follows:

44 S 170.80 FORGERY OF AN EDUCATIONAL TEST.

45 A PERSON IS GUILTY OF FORGERY OF AN EDUCATIONAL TEST WHEN, WITH INTENT
46 TO DEFRAUD, DECEIVE OR INJURE ANOTHER, HE OR SHE FALSELY MAKES,
47 COMPLETES OR ALTERS AN APPLICATION, REGISTRATION OR EXAMINATION OF A
48 STANDARDIZED TEST AS DEFINED BY SECTION THREE HUNDRED FORTY OF THE
49 EDUCATION LAW; MISREPRESENTS HIS OR HER IDENTITY IN TAKING SUCH A STAND-
50 ARDIZED TEST FOR OR ON BEHALF OF ANOTHER PERSON; OR SOLICITS, REQUESTS,
51 COMMANDS, IMPORTUNES OR INTENTIONALLY AIDS ANOTHER PERSON TO ENGAGE IN
52 SUCH CONDUCT.

53 FORGERY OF AN EDUCATIONAL TEST IS A CLASS A MISDEMEANOR.

54 S 9. Section 190.25 of the penal law is amended by adding a new subdi-
55 vision 5 to read as follows:

5. IMPERSONATES ANOTHER PERSON WHO IS REGISTERED TO TAKE A STANDARDIZED TEST AS DEFINED BY SECTION THREE HUNDRED FORTY OF THE EDUCATION LAW, TO TAKE SUCH EDUCATIONAL TEST, OR SOLICITS, REQUESTS, COMMANDS, IMPORTUNES OR INTENTIONALLY AIDS ANOTHER PERSON TO ENGAGE IN SUCH CONDUCT.

S 10. The penal law is amended by adding a new section 170.85 to read as follows:

S 170.85 CRIMINAL FACILITATION OF EDUCATIONAL TESTING FRAUD.

A PERSON IS GUILTY OF CRIMINAL FACILITATION OF EDUCATIONAL TESTING FRAUD, WHEN BEING TWENTY ONE YEARS OF AGE OR OLDER, HE OR SHE PROVIDES A BENEFIT TO ANOTHER TO ENTICE THE OTHER TO COMMIT THE CRIME OF FORGERY OF AN EDUCATIONAL TEST PURSUANT TO SECTION 170.80 OF THIS ARTICLE, OR THE CRIME OF CRIMINAL IMPERSONATION IN THE SECOND DEGREE PURSUANT TO SUBDIVISION FIVE OF SECTION 190.25 OF THIS TITLE.

CRIMINAL FACILITATION OF EDUCATIONAL TESTING FRAUD IS A CLASS E FELONY.

S 11. The penal law is amended by adding a new section 190.71 to read as follows:

S 190.71 SCHEME TO DEFRAUD EDUCATIONAL TESTING.

A PERSON IS GUILTY OF SCHEME TO DEFRAUD EDUCATIONAL TESTING WHEN HE OR SHE COMMITS THE CRIME OF FORGERY OF AN EDUCATIONAL TEST PURSUANT TO SECTION 170.80 OF THIS TITLE ON THREE OR MORE OCCASIONS; OR COMMITS THE CRIME OF CRIMINAL IMPERSONATION IN THE SECOND DEGREE PURSUANT TO SUBDIVISION 5 OF SECTION 190.25 OF THIS ARTICLE, IMPERSONATING MORE THAN TWO OTHER PERSONS; OR COMMITS A COMBINATION OF THESE CRIMES INVOLVING THREE OR MORE DIFFERENT INCIDENTS OR THREE OR MORE OTHER IDENTITIES.

SCHEME TO DEFRAUD EDUCATIONAL TESTING IS A CLASS E FELONY.

S 12. a. Oversight panel. The commissioner of education shall establish within the office of higher education, a testing integrity oversight panel that shall review the policies and procedures of test agencies that administer post secondary standardized tests in New York state.

b. Membership. The panel shall consist of three experts from the testing industry to be appointed by the commissioner of education and approved by a vote of the higher education committees in each house at a committee meeting designated by the chairs in each respective house. Each panel member shall serve for a four year term. The commissioner shall have the authority to remove a panel member if he or she deems it appropriate.

c. Reporting. The panel shall annually report to the higher education subcommittee of the board of regents. Such report shall include but not be limited to:

(i) a review of security procedures and any recommendations for improvement;

(ii) the number of canceled test scores per year and the number of cases referred to the proper authorities as proscribed by this act;

(iii) the number and type of convictions of any crimes created by this act; and

(iv) a review of the test site personnel training procedures and any recommendations for improvement.

d. Question review. The panel may also review a random sampling of previously released test questions to be provided to the panel by the test agencies to ensure they are fair and unbiased.

e. Report to the higher education committees. Subsequent to the presentation of the report to the higher education subcommittee of the board

1 of regents, the oversight panel shall submit such report to the chairs
2 of the higher education committees in each house.
3 S 13. This act shall take effect on the first of November next
4 succeeding the date on which it shall have become a law.