

S T A T E O F N E W Y O R K

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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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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 crime of criminal facilitation of educational testing fraud

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

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

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1 14. "PHOTO ADMISSION TICKET" MEANS A TICKET ASSIGNED TO A TEST REGIS-
2 TRANT, UPON REGISTERING TO TAKE THE ACT ASSESSMENT (ACT) OR WHICH IS
3 PRODUCED BY THE TEST AGENCY ACCORDING TO SUCH AGENCY'S RULES, REGU-
4 LATIONS OR PROTOCOLS.

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

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

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

14 (e) the potential consequences which may result from the investi-
15 gation, such as withholding or invalidating the test score; OR REPORTING
16 THE CANCELLATION OF SUCH SCORE TO THE TEST SUBJECT'S HOME HIGH SCHOOL.

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 OF TEST IRREGULARITY, AND SUSPECTS THAT SUCH TEST SUBJECT'S
21 CONDUCT ROSE TO THE LEVEL OF A CRIME, THE TEST AGENCY SHALL BE AUTHOR-
22 IZED TO TEMPORARILY SUSPEND SUCH TEST SUBJECT'S SCORE AND TURN SUCH TEST
23 SUBJECT'S CASE OVER TO THE PROPER AUTHORITIES.

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

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

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

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

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

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

51 8-A. WHEN A TEST AGENCY FINDS SUBSTANTIAL EVIDENCE EXISTS TO SUPPORT
52 A FINDING OF TEST IRREGULARITY, WHICH LEADS SUCH AGENCY TO TURN A TEST
53 SUBJECT'S CASE OVER TO THE PROPER AUTHORITIES, SUCH AGENCY SHALL BE
54 AUTHORIZED TO TEMPORARILY SUSPEND A TEST SUBJECT'S SCORE AND SHALL
55 INFORM THE TEST SUBJECT'S HOME HIGH SCHOOL OF THE DECISION TO TURN SUCH
56 CASE OVER TO THE PROPER AUTHORITIES. IF THE TEST SUBJECT'S SCORE IS

SUBSEQUENTLY CANCELLED AND IT IS DETERMINED THAT THE TEST SUBJECT'S CONDUCT ROSE TO THE LEVEL OF A CRIME, THE TEST AGENCY SHALL INFORM SUCH TEST SUBJECT'S HOME HIGH SCHOOL. IF THE PROPER AUTHORITIES DETERMINE THAT THERE WAS NOT ENOUGH EVIDENCE TO SUPPORT A FINDING OF TEST IRREGULARITY OR CRIMINAL CONDUCT, THEN THE TEST AGENCY SHALL LIFT THE TEMPORARY SUSPENSION, REINSTATE THE TEST SUBJECT'S SCORE AND INFORM THE TEST SUBJECT'S HOME HIGH SCHOOL OF SUCH REINSTATEMENT.

8-B. ANY TEST SUBJECT WHOSE CASE HAS BEEN TURNED OVER TO THE PROPER AUTHORITIES AND IT IS FOUND THAT TEST IRREGULARITY DOES EXIST AND SUCH TEST SUBJECT'S CONDUCT ROSE TO THE LEVEL OF A CRIME, SUCH TEST SUBJECT SHALL NOT BE AUTHORIZED TO SIT FOR ANOTHER UNDERGRADUATE COLLEGE ADMISSIONS EXAM FOR ONE YEAR FROM THE DATE OF CONVICTION.

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

S 344-D. PRE AND POST TEST REPORTING REQUIREMENTS AND TESTING SITE REGISTRATION AND SIGN IN REQUIREMENTS. 1. THIS SECTION SHALL ONLY APPLY TO UNDERGRADUATE COLLEGE ADMISSION EXAMS SUCH AS THE SAT OR THE ACT ASSESSMENT (ACT).

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

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

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

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

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

4. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT ANY OTHER TEST DAY OR POST TEST DAY POLICIES AND PROCEDURES REQUIRED BY THE TEST AGENCY.

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

S 170.80 CRIMINAL FACILITATION OF EDUCATIONAL TESTING FRAUD.

A PERSON IS GUILTY OF CRIMINAL FACILITATION OF EDUCATIONAL TESTING FRAUD WHEN, WITH INTENT TO DEFRAUD, DECEIVE OR INJURE ANOTHER, HE OR SHE PROVIDES A BENEFIT TO ANOTHER PERSON TO ENTICE SUCH PERSON TO COMMIT THE CRIME OF CRIMINAL IMPERSONATION IN THE SECOND DEGREE IN VIOLATION OF SECTION 190.25 OF THIS TITLE BY IMPERSONATING ANOTHER PERSON AS A TEST SUBJECT OF A STANDARDIZED TEST AS THAT TERM IS DEFINED IN SUBDIVISION ONE OF SECTION THREE HUNDRED FORTY OF THE EDUCATION LAW AND THE PERSON BEING IMPERSONATED IS THE CHILD OF THE PERSON PROVIDING THE BENEFIT.

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

S 9. Reporting. The test agencies administering the SAT and ACT shall report to the higher education committees in the senate and assembly one year from the effective date of this act. Any further reports shall be given upon request of either committee chair, after a reasonable time has been given for such test agencies to compile such report. Such report shall include but not be limited to:

1 (a) a review of current security procedures;
2 (b) the number of cases of suspected test score irregularity;
3 (c) the number of canceled test scores per year and the number of
4 cases referred to the proper authorities; and
5 (d) a review of test site personnel training procedures.
6 S 10. This act shall take effect on the first of November next
7 succeeding the date on which it shall have become a law.