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

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I N A S S E M B L Y

April 20, 2016

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

AN ACT to amend the education law and the general business law, in relation to supplemental educational and learning programs

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

Section 1. The education law is amended by adding a new section 817 to read as follows:

S 817. SUPPLEMENTAL EDUCATIONAL AND LEARNING PROGRAMS; REGISTRATION. 1. ANY PERSON OR ENTITY THAT SEEKS TO OFFER OR PROVIDE EDUCATIONAL SERVICES, SUCH AS TUTORING, TEST-PREPARATORY OR SUPPLEMENTAL LEARNING OR INSTRUCTION, OUTSIDE OF THE REGULAR PUBLIC OR PRIVATE SCHOOL CURRICULUM TO THREE OR MORE UNRELATED CHILDREN OF COMPULSORY SCHOOL AGE SHALL REGISTER WITH THE SUPERINTENDENT OF THE LOCAL SCHOOL DISTRICT OR, IN THE CITY SCHOOL DISTRICT OF THE CITY OF NEW YORK, THE SUPERINTENDENT OF THE COMMUNITY SCHOOL DISTRICT, IN WHICH THE EDUCATIONAL SERVICES OR INSTRUCTION WILL BE PROVIDED. NO PERSON OR ENTITY MAY OFFER OR PROVIDE THE SERVICES DESCRIBED IN THIS SECTION WITHOUT OBTAINING A REGISTRATION FROM THE SUPERINTENDENT.

2. IN ORDER TO BE REGISTERED, THE PERSON OR ENTITY SHALL SUBMIT TO THE APPROPRIATE SUPERINTENDENT AN APPLICATION CONTAINING THE FOLLOWING INFORMATION, ACCOMPANIED BY A REASONABLE APPLICATION FEE TO BE DETERMINED BY THE SUPERINTENDENT:

A. THE NAME AND ADDRESS OF THE APPLICANT. IF THE APPLICANT IS AN ENTITY OR CORPORATION, THE NAME AND ADDRESS OF ITS CHIEF EXECUTIVE OFFICER AND OTHER OFFICERS;

B. THE ADDRESS OF THE BUILDING, HOUSE, PREMISES OR PRINCIPAL PLACE OF BUSINESS WHERE THE SERVICES OR INSTRUCTION WILL BE PROVIDED;

C. A STATEMENT IDENTIFYING THE SPECIFIC OBJECTIVES OF THE PROGRAM OR SERVICES;

D. A DETAILED OUTLINE OR DESCRIPTION OF THE CURRICULUM, CLASSES, SUBJECTS, INSTRUCTION OR PROGRAMS TO BE PROVIDED;

E. THE INSTRUCTIONAL PLAN, INCLUDING CURRICULUM MATERIALS, TEXTBOOKS, ELECTRONIC DEVICES AND SOFTWARE;

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

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F. THE NAMES OF THE INSTRUCTORS AND THEIR QUALIFICATIONS;
G. HOURS OF INSTRUCTION;
H. THE TUITION AND OTHER FEES, AND THE TUITION REFUND POLICY, APPROVED BY THE SUPERINTENDENT; AND
I. ANY OTHER INFORMATION OR REQUIREMENTS REQUESTED BY THE SUPERINTENDENT.

3. WITHIN FOURTEEN DAYS OF THE RECEIPT OF THE APPLICATION, THE SUPERINTENDENT SHALL INTERVIEW THE APPLICANT AND INSPECT THE PREMISES WHERE THE SUPPLEMENTAL EDUCATIONAL SERVICES AND LEARNING ARE TO BE OFFERED OR PROVIDED IN ORDER TO DETERMINE WHETHER THE APPLICANT IS QUALIFIED TO PROVIDE THE EDUCATIONAL SERVICES AND PROGRAMS DESCRIBED IN ITS APPLICATION.

4. IF THE SUPERINTENDENT IS SATISFIED THAT THE APPLICANT IS QUALIFIED TO OFFER OR PROVIDE THE EDUCATIONAL SERVICES, LEARNING OR INSTRUCTION, A REGISTRATION SHALL BE ISSUED FOR A PERIOD OF NO MORE THAN TWO YEARS. THE SUPERINTENDENT SHALL VISIT AND INSPECT THE REGISTRANT AT LEAST ONCE EVERY THREE MONTHS.

5. A. ANY PERSON OR, IF THE PERSON IS A CHILD OF COMPULSORY SCHOOL AGE, THE CHILD'S PARENT OR LEGAL GUARDIAN, WHO BELIEVES THAT THE REGISTRANT HAS ENGAGED IN THE FOLLOWING ACTIONS SHALL HAVE THE RIGHT TO FILE A COMPLAINT WITHIN ONE YEAR OF THE ALLEGED VIOLATION TO THE APPROPRIATE SUPERINTENDENT:
(I) OPERATING WITHOUT A VALID REGISTRATION;
(II) USE OF FALSE, MISLEADING, DECEPTIVE OR FRAUDULENT ADVERTISING;
(III) MAKING FRAUDULENT STATEMENTS OR REPRESENTATIONS TO ANY STUDENT, A STUDENT'S PARENT OR LEGAL GUARDIAN, OR THE PUBLIC IN CONNECTION WITH ANY ACTIVITY OF THE REGISTRANT;
(IV) FAILURE TO MAKE A TUITION REFUND, PURSUANT TO A REFUND POLICY APPROVED BY THE SUPERINTENDENT;
(V) VIOLATION OF ANY PROVISIONS OF THIS SECTION, OR ANY OTHER PROVISIONS OF LAW, RULES OR REGULATIONS WHEN SUCH VIOLATION CONSTITUTES A PATTERN OF MISCONDUCT WHICH SIGNIFICANTLY IMPAIRS THE LEARNING OBJECTIVES OF THE REGISTRANT'S INSTRUCTIONAL PROGRAM; OR
(VI) THE INCOMPETENCE OR LACK OF QUALIFICATIONS OF THE REGISTRANT, ANY TEACHER, OR OPERATOR OF THE PROGRAM.

B. THE SUPERINTENDENT OF THE SCHOOL DISTRICT IN WHICH THE REGISTRANT IS LOCATED MAY INITIATE AN INVESTIGATION WITHOUT A COMPLAINT.

6. A. THE SUPERINTENDENT SHALL WITHIN TEN DAYS OF RECEIPT OF THE WRITTEN COMPLAINT COMMENCE AN INVESTIGATION OF THE ALLEGED MISCONDUCT OR VIOLATION, AND SHALL WITHIN THIRTY DAYS OF SUCH RECEIPT ISSUE A WRITTEN FINDING.

B. THE SUPERINTENDENT MAY IMPOSE A CIVIL PENALTY NOT TO EXCEED SEVENTY-FIVE THOUSAND DOLLARS OR DOUBLE THE DOCUMENTED AMOUNT FROM WHICH THE REGISTRANT OR AN OFFICER OR EMPLOYEE THEREOF BENEFITED. IN ADDITION TO THE CIVIL PENALTY, ANY PERSON WHO KNOWINGLY VIOLATES ANY PROVISIONS OF THIS SECTION, INCLUDING KNOWINGLY OPERATING WITHOUT A VALID REGISTRATION, SHALL BE GUILTY OF A CLASS A MISDEMEANOR, PUNISHABLE IN ACCORDANCE WITH THE PENAL LAW. THE SUPERINTENDENT SHALL REFER SUCH DETERMINATION TO THE ATTORNEY GENERAL OR TO THE APPROPRIATE DISTRICT ATTORNEY FOR APPROPRIATE ACTION. THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY MAY BRING AN ACTION ON HIS OR HER OWN INITIATIVE.

7. ANY PERSON INJURED BY A VIOLATION OF THIS SECTION MAY BRING AN ACTION AGAINST THE REGISTRANT OR ANY OFFICERS OF THE REGISTRANT FOR ACTUAL DAMAGES OR TEN THOUSAND DOLLARS, WHICHEVER IS GREATER. A COURT MAY, IN ITS DISCRETION, AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

S 2. Section 349 of the general business law is amended by adding a new subdivision (i) to read as follows:

(I) WHERE THE DECEPTIVE ACTS AND PRACTICES INVOLVE THE OFFER OR PROVISION OF SUPPLEMENTAL EDUCATIONAL, LEARNING OR INSTRUCTIONAL SERVICES OR ACTIVITIES TO CHILDREN OF COMPULSORY AGE OUTSIDE OF THE REGULAR CURRICULUM OF A PUBLIC OR PRIVATE SCHOOL, INCLUDING BUT NOT LIMITED TO: 1. OFFERING OR PROVIDING EDUCATIONAL OR LEARNING SERVICES WITHOUT OFFICIAL APPROVAL OR REGISTRATION AS REQUIRED BY LAW; 2. MAKING FRAUDULENT STATEMENTS OR REPRESENTATIONS TO THE STUDENT, A STUDENT'S PARENT OR LEGAL GUARDIAN OR TO THE PUBLIC IN CONNECTION WITH ANY SERVICE OR ACTIVITY PROVIDED BY THE PERSON, FIRM OR CORPORATION; OR 3. USING FALSE, MISLEADING, DECEPTIVE OR FRAUDULENT ADVERTISING, THE ATTORNEY GENERAL MAY SEEK A CIVIL PENALTY NOT TO EXCEED SEVENTY-FIVE THOUSAND DOLLARS OR DOUBLE THE AMOUNT FROM WHICH THE PERSON, FIRM OR CORPORATION BENEFITED, WHICHEVER IS GREATER. IN ADDITION TO THE CIVIL PENALTY, ANY PERSON WHO KNOWINGLY VIOLATES ANY PROVISIONS OF THIS SUBDIVISION SHALL BE GUILTY OF A CLASS A MISDEMEANOR, PUNISHABLE IN ACCORDANCE WITH THE PENAL LAW.

S 3. This act shall take effect immediately.