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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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

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

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

14 2. IN ORDER TO BE REGISTERED, THE PERSON OR ENTITY SHALL SUBMIT TO THE
15 APPROPRIATE SUPERINTENDENT AN APPLICATION CONTAINING THE FOLLOWING
16 INFORMATION, ACCOMPANIED BY A REASONABLE APPLICATION FEE TO BE DETER-
17 MINED BY THE SUPERINTENDENT:

18 A. THE NAME AND ADDRESS OF THE APPLICANT. IF THE APPLICANT IS AN ENTI-
19 TY OR CORPORATION, THE NAME AND ADDRESS OF ITS CHIEF EXECUTIVE OFFICER
20 AND OTHER OFFICERS;

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

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

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

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

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

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1 F. THE NAMES OF THE INSTRUCTORS AND THEIR QUALIFICATIONS;

2 G. HOURS OF INSTRUCTION;

3 H. THE TUITION AND OTHER FEES, AND THE TUITION REFUND POLICY, APPROVED
4 BY THE SUPERINTENDENT; AND

5 I. ANY OTHER INFORMATION OR REQUIREMENTS REQUESTED BY THE SUPERINTEN-
6 DENT.

7 3. WITHIN FOURTEEN DAYS OF THE RECEIPT OF THE APPLICATION, THE SUPER-
8 INTENDENT SHALL INTERVIEW THE APPLICANT AND INSPECT THE PREMISES WHERE
9 THE SUPPLEMENTAL EDUCATIONAL SERVICES AND LEARNING ARE TO BE OFFERED OR
10 PROVIDED IN ORDER TO DETERMINE WHETHER THE APPLICANT IS QUALIFIED TO
11 PROVIDE THE EDUCATIONAL SERVICES AND PROGRAMS DESCRIBED IN ITS APPLICA-
12 TION.

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

18 5. A. ANY PERSON OR, IF THE PERSON IS A CHILD OF COMPULSORY SCHOOL
19 AGE, THE CHILD'S PARENT OR LEGAL GUARDIAN, WHO BELIEVES THAT THE REGIS-
20 TRANT HAS ENGAGED IN THE FOLLOWING ACTIONS SHALL HAVE THE RIGHT TO FILE
21 A COMPLAINT WITHIN ONE YEAR OF THE ALLEGED VIOLATION TO THE APPROPRIATE
22 SUPERINTENDENT:

23 (I) OPERATING WITHOUT A VALID REGISTRATION;

24 (II) USE OF FALSE, MISLEADING, DECEPTIVE OR FRAUDULENT ADVERTISING;

25 (III) MAKING FRAUDULENT STATEMENTS OR REPRESENTATIONS TO ANY STUDENT,
26 A STUDENT'S PARENT OR LEGAL GUARDIAN, OR THE PUBLIC IN CONNECTION WITH
27 ANY ACTIVITY OF THE REGISTRANT;

28 (IV) FAILURE TO MAKE A TUITION REFUND, PURSUANT TO A REFUND POLICY
29 APPROVED BY THE SUPERINTENDENT;

30 (V) VIOLATION OF ANY PROVISIONS OF THIS SECTION, OR ANY OTHER
31 PROVISIONS OF LAW, RULES OR REGULATIONS WHEN SUCH VIOLATION CONSTITUTES
32 A PATTERN OF MISCONDUCT WHICH SIGNIFICANTLY IMPAIRS THE LEARNING OBJEC-
33 TIVES OF THE REGISTRANT'S INSTRUCTIONAL PROGRAM; OR

34 (VI) THE INCOMPETENCE OR LACK OF QUALIFICATIONS OF THE REGISTRANT, ANY
35 TEACHER, OR OPERATOR OF THE PROGRAM.

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

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

42 B. THE SUPERINTENDENT MAY IMPOSE A CIVIL PENALTY NOT TO EXCEED SEVEN-
43 TY-FIVE THOUSAND DOLLARS OR DOUBLE THE DOCUMENTED AMOUNT FROM WHICH THE
44 REGISTRANT OR AN OFFICER OR EMPLOYEE THEREOF BENEFITED. IN ADDITION TO
45 THE CIVIL PENALTY, ANY PERSON WHO KNOWINGLY VIOLATES ANY PROVISIONS OF
46 THIS SECTION, INCLUDING KNOWINGLY OPERATING WITHOUT A VALID REGISTRA-
47 TION, SHALL BE GUILTY OF A CLASS A MISDEMEANOR, PUNISHABLE IN ACCORDANCE
48 WITH THE PENAL LAW. THE SUPERINTENDENT SHALL REFER SUCH DETERMINATION TO
49 THE ATTORNEY GENERAL OR TO THE APPROPRIATE DISTRICT ATTORNEY FOR APPRO-
50 PRIATE ACTION. THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY MAY BRING AN
51 ACTION ON HIS OR HER OWN INITIATIVE.

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

1 S 2. Section 349 of the general business law is amended by adding a
2 new subdivision (i) to read as follows:
3 (I) WHERE THE DECEPTIVE ACTS AND PRACTICES INVOLVE THE OFFER OR
4 PROVISION OF SUPPLEMENTAL EDUCATIONAL, LEARNING OR INSTRUCTIONAL
5 SERVICES OR ACTIVITIES TO CHILDREN OF COMPULSORY AGE OUTSIDE OF THE
6 REGULAR CURRICULUM OF A PUBLIC OR PRIVATE SCHOOL, INCLUDING BUT NOT
7 LIMITED TO: 1. OFFERING OR PROVIDING EDUCATIONAL OR LEARNING SERVICES
8 WITHOUT OFFICIAL APPROVAL OR REGISTRATION AS REQUIRED BY LAW; 2. MAKING
9 FRAUDULENT STATEMENTS OR REPRESENTATIONS TO THE STUDENT, A STUDENT'S
10 PARENT OR LEGAL GUARDIAN OR TO THE PUBLIC IN CONNECTION WITH ANY SERVICE
11 OR ACTIVITY PROVIDED BY THE PERSON, FIRM OR CORPORATION; OR 3. USING
12 FALSE, MISLEADING, DECEPTIVE OR FRAUDULENT ADVERTISING, THE ATTORNEY
13 GENERAL MAY SEEK A CIVIL PENALTY NOT TO EXCEED SEVENTY-FIVE THOUSAND
14 DOLLARS OR DOUBLE THE AMOUNT FROM WHICH THE PERSON, FIRM OR CORPORATION
15 BENEFITED, WHICHEVER IS GREATER. IN ADDITION TO THE CIVIL PENALTY, ANY
16 PERSON WHO KNOWINGLY VIOLATES ANY PROVISIONS OF THIS SUBDIVISION SHALL
17 BE GUILTY OF A CLASS A MISDEMEANOR, PUNISHABLE IN ACCORDANCE WITH THE
18 PENAL LAW.
19 S 3. This act shall take effect immediately.