

# STATE OF NEW YORK

2364

2021-2022 Regular Sessions

## IN ASSEMBLY

January 19, 2021

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

AN ACT to amend the education law, in relation to enacting the "Non-Degree Proprietary School Supervision and Student Protection Act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "Non-Degree Proprietary School Supervision and Student Protection  
3 Act".

4 § 2. The education law is amended by adding a new section 239-c to  
5 read as follows:

6 § 239-c. Arbitration clauses in proprietary institution enrollment  
7 contracts. 1. No proprietary institution of higher education shall  
8 include any provision requiring mandatory binding arbitration of  
9 disputes regarding any student enrollment contract or agreement.

10 2. For purposes of this section, "proprietary institution" shall be  
11 defined as any licensed private career school, certified English as a  
12 second language school, or online education marketplace as defined in  
13 paragraph c of subdivision one of section five thousand one of this  
14 chapter or any approved for-profit degree-granting institution pursuant  
15 to the department.

16 § 3. Subparagraphs 1 and 2 of paragraph c of subdivision 1 of section  
17 5003 of the education law, as amended by chapter 381 of the laws of  
18 2012, are amended to read as follows:

19 (1) Any person who believes he or she has been aggrieved by a  
20 violation of this section, except a person aggrieved by the actions or  
21 omissions of a candidate school, shall have the right to file a written  
22 complaint within: (A) [~~two~~ **six**] years of the alleged violation; or (B)  
23 one year of receiving notification from the higher education services  
24 corporation or any other guarantee agency that the student has defaulted  
25 on a student loan payment[~~, provided, however, that no complaint may be~~

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

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1 ~~filed after three years from the date of the alleged violation~~. The  
2 commissioner shall maintain a written record of each complaint that is  
3 made. The commissioner shall also send to the complainant a form  
4 acknowledging the complaint and requesting further information if neces-  
5 sary and shall advise the director of the school that a complaint has  
6 been made and, where appropriate the nature of the complaint.

7 (2) The commissioner shall within twenty days of receipt of such writ-  
8 ten complaint commence an investigation of the alleged violation and  
9 shall within ninety days of the receipt of such written complaint, issue  
10 a written finding. The commissioner shall furnish such findings to the  
11 person who filed the complaint and to the chief operating officer of the  
12 school cited in the complaint. If the commissioner finds that there has  
13 been a violation of this section, the commissioner shall take appropri-  
14 ate action. If the commissioner shall find that there has been a  
15 violation of this section, the commissioner shall also place such a  
16 finding on a publicly accessible website disclosing the institution that  
17 was in violation and the substance of the complaint within thirty days  
18 of the commissioner's finding.

19 § 4. Paragraphs a and b of subdivision 6 of section 5003 of the educa-  
20 tion law, as amended by chapter 381 of the laws of 2012, are amended to  
21 read as follows:

22 a. A hearing officer may recommend, and the commissioner may impose, a  
23 civil penalty not to exceed [~~three~~] five thousand [~~five hundred~~] dollars  
24 for any violation of this article, including a school's failure to offer  
25 a course or program as approved by the commissioner. In the case of a  
26 second or further violation committed within five years of the previous  
27 violation, the liability shall be a civil penalty not to exceed [~~seven~~]  
28 ten thousand [~~five hundred~~] dollars for each such violation.

29 b. Notwithstanding the provisions of paragraph a of this subdivision,  
30 a hearing officer may recommend, and the commissioner may impose a civil  
31 penalty not to exceed [~~seventy-five~~] one hundred thousand dollars or  
32 double the documented amount from which the school benefited, whichever  
33 is greater, for any of the following violations: (1) operation of a  
34 school without a license in violation of section five thousand one of  
35 this article; (2) operation of a school knowing that the school's  
36 license has been suspended or revoked; (3) use of false, misleading,  
37 deceptive or fraudulent advertising; (4) employment of recruiters on the  
38 basis of a commission, bonus or quota, except as authorized by the  
39 commissioner; (5) directing or authorizing recruiters to offer guaran-  
40 tees of jobs upon completion of a course; (6) failure to make a tuition  
41 refund when such failure is part of a pattern of misconduct; (7) the  
42 offering of a course or program that has not been approved by the  
43 commissioner; (8) admitting students, who subsequently drop out, who  
44 were admitted in violation of the admission standards established by the  
45 commissioner, where such admissions constitute a pattern of misconduct  
46 and where the drop out resulted at least in part from such violation;  
47 (9) failure to provide the notice of discontinuance and the plan  
48 required by subdivision seven of section five thousand one of this arti-  
49 cle; or (10) violation of any other provision of this article, or any  
50 rule or regulation promulgated pursuant thereto, when such violation  
51 constitutes part of a pattern of misconduct which significantly impairs  
52 the educational quality of the program or programs being offered by the  
53 school. For each enumerated offense, a second or further violation  
54 committed within five years, shall be subject to a civil penalty not to  
55 exceed one and one-half times the amount of the previous violation for  
56 each such violation.

1 § 5. Subdivision 10 of section 5007 of the education law, as amended  
2 by chapter 381 of the laws of 2012, is amended to read as follows:

3 10. Management of the tuition reimbursement account. a. As used in  
4 this subdivision, net balance is defined as the actual cash balance of  
5 the account as determined by the commissioner on June thirtieth, nine-  
6 teen hundred ninety-three and every three months thereafter. For the  
7 purpose of calculating the net balance, the commissioner shall not take  
8 into consideration any refunds made from the account pursuant to para-  
9 graphs d and f of subdivision four of this section for the year imme-  
10 diately preceding the date on which the calculation is made.

11 b. In the event that the account has accumulated a net balance in  
12 excess of [~~one~~] two million eight hundred thousand dollars, the commis-  
13 sioner shall, with the approval of the director of the budget, waive an  
14 amount not to exceed the amount due for the next quarterly assessment  
15 pursuant to this section and subdivision nine of section five thousand  
16 one of this article for schools which have paid sixteen quarters or more  
17 of assessments only. In such event, payment of future quarterly assess-  
18 ments shall be suspended for schools which have paid sixteen quarters or  
19 more of assessments until the net balance of the account falls below  
20 [~~one~~] two million three hundred thousand dollars.

21 c. In the event the net balance of the account falls below [~~one~~] two  
22 million three hundred thousand dollars, if the quarterly assessment has  
23 been suspended for schools which have paid sixteen quarters or more of  
24 assessments pursuant to paragraph b of this subdivision, it shall be  
25 reinstated for the next quarterly assessment and all subsequent quarter-  
26 ly assessments until the account has accumulated a net balance in excess  
27 of [~~one~~] two million eight hundred thousand dollars.

28 d. Notwithstanding the provisions of paragraph b of this subdivision,  
29 in the event that the balance of the account is in excess of [~~one~~] two  
30 million three hundred thousand dollars, all schools licensed after June  
31 thirtieth, nineteen hundred ninety-nine shall be required to pay into  
32 the account the equivalence of three years of annual assessments over a  
33 five year period.

34 e. Notwithstanding the provisions of paragraph b of this subdivision  
35 all schools licensed after June thirtieth, nineteen hundred ninety-three  
36 and before July first, nineteen hundred ninety-nine will be required to  
37 pay into the account the equivalence of three years of annual assess-  
38 ments within four years of the effective date of this paragraph. This  
39 amount to be assessed shall be determined based upon the school's gross  
40 tuition in its first three years of licensure.

41 f. In the event that the balance of the tuition reimbursement account  
42 is equal to or in excess of three million dollars, up to five hundred  
43 thousand dollars of the amounts assessed to schools in accordance with  
44 the provisions of paragraphs d and e of this subdivision shall be appro-  
45 riated to the department for the hiring of additional staff to perform  
46 regulatory oversight of the schools covered under this article.

47 g. In the event that the balance of the tuition reimbursement account  
48 is equal to or in excess of [~~two~~] three million five hundred one  
49 dollars, the amounts assessed the schools in accordance with the  
50 provisions of paragraphs d and e of this subdivision shall be deposited  
51 directly to the proprietary vocational school supervision account.

52 h. The commissioner may annually apportion from the account an amount  
53 up to two hundred thousand dollars for the purpose of securing, scanning  
54 and otherwise making student records from closed schools available to  
55 students who attended such schools. Provided, however, that in no case  
56 shall such apportionment cause the account to fall below the balance set

1 forth in paragraph c of this subdivision, nor shall such apportionment  
2 cause schools whose quarterly assessments have been suspended to pay  
3 additional quarterly assessments.

4 § 6. Subdivision 5 of section 5002 of the education law is amended by  
5 adding a new paragraph g to read as follows:

6 g. (1) The commissioner shall require annually, that available data be  
7 submitted on the gainful employment outcomes of students for each  
8 curriculum, course, or program of any school licensed pursuant to  
9 section five thousand one of this article. The commissioner shall be  
10 authorized to promulgate rules and regulations that define and detail  
11 what shall be required as part of such submission. The submission must,  
12 at a minimum include the average amount of student debt a student has  
13 incurred through a school's curriculum, course, or program and the aver-  
14 age adjusted gross income that students attain three years after the  
15 students have completed the curriculum, course, or program.

16 (2) Schools submitting student data pertaining to gainful employment  
17 outcomes shall attest to the completeness and accuracy of the informa-  
18 tion submitted to the commissioner under penalty for violation of frau-  
19 dulent statements or representations to the department as outlined under  
20 section five thousand three of this article.

21 (3) For the purpose of this section, a school shall have satisfied the  
22 completeness and accuracy of the information submitted if they reported  
23 the average adjusted gross income of applicable former students through  
24 such school's available access to tax data of such applicable former  
25 students. However, if the school does not have available access to tax  
26 data of such applicable former students then the school can satisfy the  
27 completeness and accuracy of the information submitted requirement by  
28 conducting a survey of applicable former students related to their  
29 earned income. Such survey shall be done pursuant to regulations and  
30 guidance promulgated by the commissioner.

31 § 7. If any clause, sentence, paragraph, or part of this act or the  
32 application thereof to any person or circumstances, shall, for any  
33 reason, be adjudged by a court of competent jurisdiction to be invalid,  
34 such judgment shall not affect, impair, or invalidate the remainder of  
35 this act, and the application thereof to other person or circumstances,  
36 but shall be confined in its operation to the clause, sentence, para-  
37 graph, or part thereof directly involved in the controversy in which  
38 such judgment shall have been rendered and to the person or circum-  
39 stances involved. It is hereby declared to be the legislative intent  
40 that this act would have been adopted had such invalid provisions not  
41 been included.

42 § 8. This act shall take effect on the one hundred eightieth day after  
43 it shall have become a law. Effective immediately, the addition, amend-  
44 ment and/or repeal of any rule or regulation necessary for the implemen-  
45 tation of this act on its effective date are authorized to be made and  
46 completed on or before such effective date.