

# STATE OF NEW YORK

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100--A

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

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Introduced by Sen. THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to unfair practices of proprietary institutions of higher education

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

1 Section 1. Subdivisions (a) and (g) of section 349 of the general  
2 business law, as added by chapter 43 of the laws of 1970, are amended to  
3 read as follows:

4 (a) Deceptive or unfair acts or practices in the conduct of any busi-  
5 ness, trade or commerce or in the furnishing of any service in this  
6 state are hereby declared unlawful.

7 (g) This section shall apply to all deceptive or unfair acts or prac-  
8 tices declared to be unlawful, whether or not subject to any other law  
9 of this state, and shall not supersede, amend or repeal any other law of  
10 this state under which the attorney general is authorized to take any  
11 action or conduct any inquiry.

12 § 2. The general business law is amended by adding a new section 349-g  
13 to read as follows:

14 § 349-g. Proprietary institutions of higher education; unlawful unfair  
15 practices. 1. For purposes of this section, "proprietary institution"  
16 shall be defined as any licensed private career school, certified  
17 English as a Second Language school, or online education marketplace as  
18 defined in article one hundred one of the education law, or a for-profit  
19 degree-granting institution approved pursuant to the department of  
20 education, including any such institution with a physical presence in  
21 the state or enrolling New York state students in an online distance  
22 education program.

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

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1 2. In addition to the protections afforded to consumers in this arti-  
2 cle for students that are attending or at one time attended a proprie-  
3 tary institution in this state, the attorney general whenever he or she  
4 believes from evidence satisfactory to him or her that any proprietary  
5 institution, an agent or employee thereof, or a private third party  
6 operating in concert with or at the direction of the proprietary insti-  
7 tution, has engaged in any of the acts or practices deemed to be unfair  
8 under this section, the attorney general may bring an action in the name  
9 and on behalf of the people of the state of New York to enjoin such  
10 unfair acts or practices, obtain restitution of any moneys or property  
11 obtained directly or indirectly by any such unfair acts or practices,  
12 and/or obtain civil penalties for violations of this section. In such  
13 action preliminary relief may be granted under article sixty-three of  
14 the civil practice law and rules.

15 3. An act or practice shall be deemed unfair under this section if:

16 (a) it causes or is likely to cause substantial injury to students  
17 that are attending or at one time attended a proprietary institution  
18 that cannot be reasonably avoided by students that are attending or at  
19 one time attended a proprietary institution; or

20 (b) it is not outweighed by countervailing benefits to students that  
21 are attending or at one time attended a proprietary institution, or to  
22 competition.

23 4. Nothing in this section shall supersede, amend or repeal any other  
24 law of this state under which the attorney general is authorized to take  
25 any action or conduct any inquiry.

26 5. In addition to the right of action granted to the attorney general  
27 pursuant to this section, any person or class or persons who have been  
28 injured by reason of any violation of this section may bring an action  
29 to enjoin such unlawful act or practice, an action to recover actual  
30 damages, or both such actions. The court may, in its discretion,  
31 increase the award damages to an amount not to exceed three times the  
32 actual damages. The court may award reasonable attorney's fees to a  
33 prevailing plaintiff.

34 § 3. This act shall take effect immediately.