STATE OF NEW YORK

100--A

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

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:

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

(a) Deceptive **or unfair** acts or practices in the conduct of any business, trade or commerce or in the furnishing of any service in this state are hereby declared unlawful.

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

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

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

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

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

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

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

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

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

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

§ 3. This act shall take effect immediately.