# 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:**

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

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

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

**2. 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 paragraph c of subdivision one of section five thousand one of this chapter or any approved for-profit degree-granting institution pursuant to the department.**

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

(1) Any person who believes he or she has been aggrieved by a violation of this section, except a person aggrieved by the actions or omissions of a candidate school, shall have the right to file a written complaint within: (A) [~~two~~] **six** years of the alleged violation; or (B) one year of receiving notification from the higher education services corporation or any other guarantee agency that the student has defaulted 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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~~filed after three years from the date of the alleged violation~~]. The commissioner shall maintain a written record of each complaint that is made. The commissioner shall also send to the complainant a form acknowledging the complaint and requesting further information if necessary and shall advise the director of the school that a complaint has been made and, where appropriate the nature of the complaint.

(2) The commissioner shall within twenty days of receipt of such written complaint commence an investigation of the alleged violation and shall within ninety days of the receipt of such written complaint, issue a written finding. The commissioner shall furnish such findings to the person who filed the complaint and to the chief operating officer of the school cited in the complaint. If the commissioner finds that there has been a violation of this section, the commissioner shall take appropriate action. **If the commissioner shall find that there has been a violation of this section, the commissioner shall also place such a finding on a publicly accessible website disclosing the institution that was in violation and the substance of the complaint within thirty days of the commissioner's finding.**

§ 4. Paragraphs a and b of subdivision 6 of section 5003 of the education law, as amended by chapter 381 of the laws of 2012, are amended to read as follows:

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

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

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

10. Management of the tuition reimbursement account. a. As used in this subdivision, net balance is defined as the actual cash balance of the account as determined by the commissioner on June thirtieth, nineteen hundred ninety-three and every three months thereafter. For the purpose of calculating the net balance, the commissioner shall not take into consideration any refunds made from the account pursuant to paragraphs d and f of subdivision four of this section for the year immediately preceding the date on which the calculation is made.

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

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

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

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

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

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

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

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

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

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

**(2) Schools submitting student data pertaining to gainful employment outcomes shall attest to the completeness and accuracy of the information submitted to the commissioner under penalty for violation of fraudulent statements or representations to the department as outlined under section five thousand three of this article.**

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

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

§ 8. This act shall take effect on the one hundred eightieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.