

AMENDED IN SENATE JUNE 12, 2006

AMENDED IN ASSEMBLY MAY 3, 2006

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2381

Introduced by Assembly Member Dymally

February 23, 2006

An act to amend Section 94985 of the Education Code, relating to private postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 2381, as amended, Dymally. Private postsecondary education: Private Postsecondary and Vocational Education Reform Act of 1989.

~~(1)~~ Existing law, known as the Private Postsecondary and Vocational Education Reform Act of 1989, generally sets minimum standards of instructional quality, ethical and business practices, health and safety, and fiscal responsibility for private postsecondary and vocational educational institutions, as defined. The act establishes the Bureau for Private Postsecondary and Vocational Education, which, among other things, is required to review and investigate all institutions, programs, and courses of instruction approved under the act. A provision of the act provides for it to become inoperative on July 1, 2007, and provides for its repeal on January 1, 2008.

~~An existing provision of the act authorizes any person who claims that an institution is operating in violation of any of several specified provisions of the act to bring an action, in a court of competent jurisdiction, for the recovery of damages, in accordance with specified procedures.~~

~~This bill would specify that the act authorizes any person who claims that an institution is operating without an approval to operate, as defined, in violation of specified provisions of the act, to bring an action, as prescribed.~~

~~(2) An existing provision of the act requires that any institution that willfully violates any of several specified provisions of the act is prohibited from enforcing any contract or agreement arising from the transaction in which the violation occurred. That provision also authorizes a student to bring an action for the violation of, among other things, the portion of the act relating to administrative and judicial procedures.~~

~~This bill would instead provide that an institution that violates any of the specified provisions shall refund all consideration paid by or on behalf of the student. The bill would also change this provision to authorize a student to bring an action for the violation of the portions portion of the act relating to general standards for all postsecondary institutions approved under the act and relating to consumer protection for students.~~

~~This bill would also make related technical and conforming changes.~~

~~Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.~~

The people of the State of California do enact as follows:

1 SECTION 1. Section 94985 of the Education Code is
2 amended to read:
3 94985. (a) Any institution that willfully violates any
4 provision of Section 94800, 94810, 94814, or 94816, Sections
5 94820 to 94826, inclusive, or Section 94829, 94831, or 94832
6 may not enforce any contract or agreement arising from the
7 transaction in which the violation occurred, and ~~any the~~
8 *institution shall refund all consideration paid by or on behalf of*
9 *the student. Any willful violation is a ground for revoking an*
10 *approval to operate in this state or for denying a renewal*
11 *application.*
12 ~~(b) Any person who claims that an institution is operating~~
13 ~~without an approval to operate in violation of subdivision (a) of~~
14 ~~Section 94831, subdivision (a) of Section 94900, or Section~~
15 ~~94915, or an institution is operating a branch or satellite campus~~

1 in violation of subdivision (a) of Section 94857, may bring an
2 action, in a court of competent jurisdiction, for the recovery of
3 actual and or statutory damages as well as an equity proceeding
4 to restrain and enjoin those violations, or both.

5 (1) ~~At least 35 days prior to the commencement of an action~~
6 ~~pursuant to this subdivision, the plaintiff shall do all of the~~
7 ~~following:~~

8 (A) ~~Notify the institution alleged to have violated subdivision~~
9 ~~(a) of Section 94831, subdivision (a) of Section 94900, Section~~
10 ~~94915, or subdivision (a) of Section 94857, of the particular~~
11 ~~alleged violations.~~

12 (B) ~~Demand that the institution apply for the bureau's~~
13 ~~approval to operate as required by subdivision (a) of Section~~
14 ~~94831, subdivision (a) of Section 94900, Section 94915, or~~
15 ~~subdivision (a) of Section 94857, whichever is applicable.~~

16 (C) ~~The notice shall be in writing, and shall be sent by regular~~
17 ~~mail and certified or registered mail, return receipt requested, to~~
18 ~~the location of the institution that is allegedly operating in~~
19 ~~violation of subdivision (a) of Section 94831, subdivision (a) of~~
20 ~~Section 94900, Section 94915, or subdivision (a) of Section~~
21 ~~94857, whichever is applicable.~~

22 (D) ~~The institution shall have 30 working days, from receipt of~~
23 ~~the notice, to file an application for approval to operate with the~~
24 ~~bureau.~~

25 (E) ~~No action pursuant to this subdivision may be filed if the~~
26 ~~institution, within 30 working days after receipt of the notice,~~
27 ~~applies for the bureau's approval to operate as required by~~
28 ~~subdivision (a) of Section 94831, subdivision (a) of Section~~
29 ~~94900, Section 94915, or subdivision (a) of Section 94857,~~
30 ~~whichever is applicable.~~

31 (F) ~~If, within 35 days after receipt of the notice, the bureau has~~
32 ~~not received an application from the institution, the bureau shall~~
33 ~~mail the plaintiff a certification that the institution has not~~
34 ~~applied or been approved to operate pursuant to subdivision (a)~~
35 ~~of Section 94831, subdivision (a) of Section 94900, Section~~
36 ~~94915, or subdivision (a) of Section 94857, whichever is~~
37 ~~applicable.~~

38 (G) ~~The plaintiff shall also notify the bureau by mail and by~~
39 ~~certified or registered mail, return receipt requested, that he or~~
40 ~~she intends to bring an action pursuant to this section against the~~

1 institution. Upon receipt of this notice, the bureau shall
2 immediately investigate the institution's compliance with
3 subdivision (a) of Section 94831, subdivision (a) of Section
4 94900, Section 94915, or subdivision (a) of Section 94857,
5 whichever is applicable, and, if the bureau determines that the
6 institution has violated the applicable section, the bureau shall
7 immediately order the institution to cease and desist operations.
8 For each day that the institution continues to operate in violation
9 of the bureau's cease and desist order, the institution shall be
10 fined one thousand dollars (\$1,000).

11 (2) If the court finds that the institution has violated
12 subdivision (a) of Section 94831, subdivision (a) of Section
13 94900, Section 94915, or subdivision (a) of Section 94857, all of
14 the following shall occur:

15 (A) The court shall order the institution to cease all operations
16 and to comply with all procedures set forth in this code
17 pertaining to the closure of institutions.

18 (B) The court shall order the institution to pay all students who
19 enrolled while the school was in violation of subdivision (a) of
20 Section 94831, subdivision (a) of Section 94900, Section 94915,
21 or subdivision (a) of Section 94857 a refund of all tuition and
22 fees paid to the institution and a statutory penalty of one
23 thousand dollars (\$1,000).

24 (C) The court shall order the institution to pay the prevailing
25 party's attorneys' fees and costs.

26 (D) The court shall order the institution to pay to the bureau all
27 fines incurred pursuant to subparagraph (E) of paragraph (1).

28 (E) Any instrument of indebtedness, enrollment agreement, or
29 contract for educational services is unenforceable pursuant to
30 Section 94838. The court shall order the institution to mail a
31 notice to all students who were enrolled while the school was in
32 violation of subdivision (a) of Section 94831, subdivision (a) of
33 Section 94900, Section 94915, or subdivision (a) of Section
34 94857, stating that instruments of indebtedness, enrollment
35 agreements, and contracts for educational services are not
36 enforceable. If the institution fails to provide adequate proof to
37 the court and to the bureau that it has mailed this notice within 30
38 days of the court's order, the bureau shall mail the notice to the
39 students and the court shall order the institution to pay the

1 bureau's costs of generating and mailing the notices, in no case
2 less than five thousand dollars (\$5,000):

3 ~~(3) Any violation of subdivision (a) of Section 94831,~~
4 ~~subdivision (a) of Section 94900, Section 94915, and subdivision~~
5 ~~(a) of Section 94857 shall constitute an unfair business practice~~
6 ~~within the meaning of Section 17200 of the Business and~~
7 ~~Professions Code.~~

8 ~~(4) A certification, issued by the bureau, that the institution~~
9 ~~has not applied for approval to operate and has not been~~
10 ~~approved to operate as required by subdivision (a) of Section~~
11 ~~94831, subdivision (a) of Section 94900, Section 94915, or~~
12 ~~subdivision (a) of Section 94857, whichever is applicable, shall~~
13 ~~establish a conclusive presumption that the institution has~~
14 ~~violated this subdivision.~~

15 ~~(5) All fines and other monetary amounts that an institution is~~
16 ~~ordered to pay pursuant to this subdivision may be collected from~~
17 ~~the institution itself and from the individuals who own the~~
18 ~~institution, whether or not the institution is organized as a~~
19 ~~corporation.~~

20 ~~(e)~~

21 ~~(b) Notwithstanding any provision of the contract or~~
22 ~~agreement, a student may bring an action for a violation of this~~
23 ~~article or for an institution's failure to perform its legal~~
24 ~~obligations and, upon prevailing thereon, is entitled to the~~
25 ~~recovery of damages, equitable relief, or any other relief~~
26 ~~authorized by Article 6 (commencing with Section 94800) or~~
27 ~~Article 7 (commencing with Section 94850), and reasonable~~
28 ~~attorney's fees and costs.~~

29 ~~(d)~~

30 ~~(c) If a court finds that a violation was willfully committed or~~
31 ~~that the institution failed to refund all consideration as required~~
32 ~~by subdivision ~~(b)~~ (a) on the student's written demand, the court,~~
33 ~~in addition to the relief authorized under subdivision (b), shall~~
34 ~~award a civil penalty of up to two times the amount of the~~
35 ~~damages sustained by the student.~~

36 ~~(e)~~

37 ~~(d) The remedies provided in this article supplement, but do~~
38 ~~not supplant, the remedies provided under any other provision of~~
39 ~~law.~~

40 ~~(f)~~

1 (e) An action brought under this section shall be commenced
2 within three years of the discovery of the facts constituting
3 grounds for commencing the action.

4 ~~(g)~~

5 (f) Any provision in any agreement that purports to require a
6 student to invoke any grievance dispute procedure established by
7 the institution before enforcing any right or remedy is void and
8 unenforceable.

9 ~~(h)~~

10 (g) A student may assign his or her cause of action for a
11 violation of this article to the bureau, or to any state or federal
12 agency that guaranteed or reinsured a loan for the student or that
13 provided any grant or other financial aid.

14 ~~(i)~~

15 (h) This section applies to any action pending on the effective
16 date of this section.

17 ~~(j)~~

18 (i) This section supplements, but does not supplant, the
19 authority granted the Division of Labor Standards Enforcement
20 under Chapter 4 (commencing with Section 79) of Division 1 of
21 the Labor Code to the extent that placement activities of trade
22 schools are subject to regulation by the division under the Labor
23 Code.

24 ~~(k)~~

25 (j) If a student commences an action or asserts any claim in an
26 existing action for recovery on behalf of a class of persons, or on
27 behalf of the general public, under Section 17200 of the Business
28 and Professions Code, the student shall notify the bureau of the
29 existence of the lawsuit, the court in which the action is pending,
30 the case number of the action, and the date of the filing of the
31 action or of the assertion of the claim. The student shall notify
32 the bureau as required by this subdivision within 30 days of the
33 filing of the action or of the first assertion of the claim,
34 whichever is later. The student shall also notify the court that he
35 or she has notified the bureau pursuant to this subdivision.
36 Notwithstanding any other provision of law, no judgment may be
37 entered pursuant to this section until the student has notified the
38 bureau of the suit and notified the court that the bureau has been
39 notified. This subdivision only applies to a new action filed or to
40 a new claim asserted on or after January 1, 2002.

1 (k) Any person who claims that an institution is operating in
2 violation of subdivision (a) of Section 94831, subdivision (a) of
3 Section 94900, or Section 94915, or an institution is operating a
4 branch or satellite campus in violation of subdivision (a) of
5 Section 94857, may bring an action, in a court of competent
6 jurisdiction, for the recovery of actual and or statutory damages
7 as well as an equity proceeding to restrain and enjoin those
8 violations, or both.

9 (1) At least 35 days prior to the commencement of an action
10 pursuant to this subdivision, the plaintiff shall do all of the
11 following:

12 (A) Notify the institution alleged to have violated subdivision
13 (a) of Section 94831, subdivision (a) of Section 94900, Section
14 94915, or subdivision (a) of Section 94857, of the particular
15 alleged violations.

16 (B) Demand that the institution apply for the bureau's
17 approval to operate as required by subdivision (a) of Section
18 94831, subdivision (a) of Section 94900, Section 94915, or
19 subdivision (a) of Section 94857, whichever is applicable.

20 (C) The notice shall be in writing, and shall be sent by regular
21 mail and certified or registered mail, return receipt requested, to
22 the location of the institution that is allegedly operating in
23 violation of subdivision (a) of Section 94831, subdivision (a) of
24 Section 94900, Section 94915, or subdivision (a) of Section
25 94857, whichever is applicable.

26 (D) The institution shall have 30 working days, from receipt of
27 the notice, to file an application for approval to operate with the
28 bureau.

29 (E) No action pursuant to this subdivision may be filed if the
30 institution, within 30 working days after receipt of the notice,
31 applies for the bureau's approval to operate as required by
32 subdivision (a) of Section 94831, subdivision (a) of Section
33 94900, Section 94915, or subdivision (a) of Section 94857,
34 whichever is applicable.

35 (F) If, within 35 days after receipt of the notice, the bureau
36 has not received an application from the institution, the bureau
37 shall mail the plaintiff a certification that the institution has not
38 applied or been approved to operate pursuant to subdivision (a)
39 of Section 94831, subdivision (a) of Section 94900, Section

1 94915, or subdivision (a) of Section 94857, whichever is
2 applicable.

3 (G) The plaintiff shall also notify the bureau by mail and by
4 certified or registered mail, return receipt requested, that he or
5 she intends to bring an action pursuant to this section against the
6 institution. Upon receipt of this notice, the bureau shall
7 immediately investigate the institution's compliance with
8 subdivision (a) of Section 94831, subdivision (a) of Section
9 94900, Section 94915, or subdivision (a) of Section 94857,
10 whichever is applicable, and, if the bureau determines that the
11 institution has violated the applicable section, the bureau shall
12 immediately order the institution to cease and desist operations.
13 For each day that the institution continues to operate in violation
14 of the bureau's cease and desist order, the institution shall be
15 fined one thousand dollars (\$1,000).

16 (2) If the court finds that the institution has violated
17 subdivision (a) of Section 94831, subdivision (a) of Section
18 94900, Section 94915, or subdivision (a) of Section 94857, all of
19 the following shall occur:

20 (A) The court shall order the institution to cease all operations
21 and to comply with all procedures set forth in this code
22 pertaining to the closure of institutions.

23 (B) The court shall order the institution to pay all students
24 who enrolled while the school was in violation of subdivision (a)
25 of Section 94831, subdivision (a) of Section 94900, Section
26 94915, or subdivision (a) of Section 94857 a refund of all tuition
27 and fees paid to the institution and a statutory penalty of one
28 thousand dollars (\$1,000).

29 (C) The court shall order the institution to pay the prevailing
30 party's attorneys' fees and costs.

31 (D) The court shall order the institution to pay to the bureau
32 all fines incurred pursuant to subparagraph (E) of paragraph
33 (1).

34 (E) Any instrument of indebtedness, enrollment agreement, or
35 contract for educational services is unenforceable pursuant to
36 Section 94838. The court shall order the institution to mail a
37 notice to all students who were enrolled while the school was in
38 violation of subdivision (a) of Section 94831, subdivision (a) of
39 Section 94900, Section 94915, or subdivision (a) of Section
40 94857, stating that instruments of indebtedness, enrollment

1 *agreements, and contracts for educational services are not*
2 *enforceable. If the institution fails to provide adequate proof to*
3 *the court and to the bureau that it has mailed this notice within*
4 *30 days of the court's order, the bureau shall mail the notice to*
5 *the students and the court shall order the institution to pay the*
6 *bureau's costs of generating and mailing the notices, in no case*
7 *less than five thousand dollars (\$5,000).*

8 *(3) Any violation of subdivision (a) of Section 94831,*
9 *subdivision (a) of Section 94900, Section 94915, and subdivision*
10 *(a) of Section 94857 shall constitute an unfair business practice*
11 *within the meaning of Section 17200 of the Business and*
12 *Professions Code.*

13 *(4) A certification, issued by the bureau, that the institution*
14 *has not applied for approval to operate and has not been*
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16 *94831, subdivision (a) of Section 94900, Section 94915, or*
17 *subdivision (a) of Section 94857, whichever is applicable, shall*
18 *establish a conclusive presumption that the institution has*
19 *violated this subdivision.*

20 *(5) All fines and other monetary amounts that an institution is*
21 *ordered to pay pursuant to this subdivision may be collected*
22 *from the institution itself and from the individuals who own the*
23 *institution, whether or not the institution is organized as a*
24 *corporation.*