

A8773 Glick No Same as
State Education Department # 14
Education Law

TITLE....Relates to licensure of private proprietary schools; and provides for the repeal of certain provisions of the education law upon expiration thereof
06/08/09 referred to higher education

GLICK

Amd Art 101 Art head, SS5001 - 5004 & 5006 - 5010, Ed L

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Education Department

STATE OF NEW YORK

8773

2009-2010 Regular Sessions

IN ASSEMBLY

June 8, 2009

Introduced by M. of A. GLICK -- (at request of the State Education Department) -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to the licensure of private proprietary schools; and providing for the repeal of certain provisions of the education law upon expiration thereof

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

1 Section 1. The article heading of article 101 of the education law is
2 amended to read as follows:

3 ARTICLE 101

4 LICENSED PRIVATE [~~TRADE~~
5 ~~AND CORRESPONDENCE~~]
6 CAREER
7 SCHOOLS

8 § 2. Section 5001 of the education law, as added by chapter 817 of the
9 laws of 1972, the section heading, subdivision 1, paragraph h of subdivi-
10 sion 2 and paragraph b of subdivision 4 as amended and paragraphs i,
11 j, k, l and m of subdivision 2 and subdivisions 2-a and 2-b as added by
12 chapter 434 of the laws of 1999, paragraph b of subdivision 2 as amended
13 by chapter 887 of the laws of 1990 and subdivisions 5, 6, 7, 8 and 9 as
14 added by chapter 887 of the laws of 1990 and renumbered by chapter 604
15 of the laws of 1993, paragraph d of subdivision 2 and subdivision 4 as
16 amended and paragraphs a, b, c and d of subdivision 9 as added by chap-
17 ter 604 of the laws of 1993 and paragraphs e and f of subdivision 2 as
18 amended by chapter 439 of the laws of 1980, is amended to read as
19 follows:

20 § 5001. Licensed private career schools [~~and registered business~~
21 ~~schools/computer training facilities~~]. 1. Schools required to be
22 licensed [~~or registered~~]. No private school [~~or computer training~~

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

1 ~~facility~~] which charges tuition or fees [~~for~~] related to instruction and
2 which is not exempted hereunder shall be operated by any person or
3 persons, firm, corporation, or private organization for the purpose of
4 teaching or giving instruction in any subject or subjects, unless it is
5 licensed [~~or registered~~] by the department. As used in this article, the
6 following terms shall have the following meanings:

7 a. [~~"Licensed~~] "licensed private career school" or "licensed private
8 school" shall mean any entity offering to instruct or teach any subject
9 by any plan or method including written, visual or audio-visual methods,
10 and shall include any institution licensed or registered as a registered
11 business school or computer training facility on the effective date of
12 the chapter of the laws of two thousand nine which amended this subdivi-
13 sion. Following such effective date, there shall be no distinction
14 between institutions previously defined as "registered business schools"
15 or "computer training facilities" and other licensed private schools,
16 and any reference in law to a registered business school or computer
17 training facility shall be deemed a reference to a licensed private
18 career school. Institutions holding a valid business school registration
19 on such effective date, including computer-training facilities, shall
20 have such registrations replaced by the commissioner, at no cost, with
21 licenses valid until the expiration date listed on such previous regis-
22 tration.

23 b. [~~"Registered business school" shall mean a school in which a~~
24 ~~curriculum primarily provides a sequence of courses that may include~~
25 ~~accounting or bookkeeping, marketing, business arithmetic, business law,~~
26 ~~business English, shorthand, typing, computer business~~
27 ~~applications/programming, or substantially all said courses, for the~~
28 ~~purpose of preparing an individual to pursue a business occupation;~~
29 ~~provided, however, that a registered business school program may include~~
30 ~~instruction in English as a second language at a beginning or basic~~
31 ~~level, provided such instruction shall not constitute more than fifty~~
32 ~~percent of such program. Such authorization shall apply to all students~~
33 ~~who commence instruction in a registered business school program prior~~
34 ~~to July first, nineteen hundred ninety-one. A business school registered~~
35 ~~under this section shall employ only teachers licensed by the depart-~~
36 ~~ment, whose qualifications are substantially equivalent to those~~
37 ~~required of teachers of equivalent subjects in public secondary schools.~~

38 c. [~~"Computer training facility" shall mean any entity primarily~~
39 ~~engaged in providing training on the use, language, programs, applica-~~
40 ~~tion, networking and technical repair of computers.] "certified English
41 as a second language school" or "certified ESL school" shall mean a
42 language school conducted for-profit which provides instruction in
43 English as a second language and which accepts no public funds and is
44 certified pursuant to paragraph f of subdivision four of this section.~~

45 2. Exempt schools. The following schools are exempted from the licens-
46 ing requirement of this section:

- 47 a. institutions authorized to confer degrees in this state;
- 48 b. schools[~~, other than correspondence schools,~~] providing kindergar-
49 ten, nursery, elementary or secondary education, except schools
50 conducted for profit which provide instruction in English as a second
51 language or preparation for high school equivalency examinations to
52 out-of-school youth or adults;
- 53 c. schools operated by governmental agencies or authorities;
- 54 d. schools which engage exclusively in training of students with disa-
55 bilities as defined in section forty-four hundred one of this chapter;

- 1 e. schools conducted on a not-for-profit basis by firms or organiza-
2 tions for the training of their own employees only, provided that such
3 instruction is offered at no charge to such employees, or by a fraternal
4 society or benevolent order for its members or their immediate relatives
5 only;
- 6 f. schools which provide instruction in the following subjects only:
7 religion, dancing, music, painting, drawing, sculpture, poetry, dramatic
8 art, languages, reading comprehension, mathematics, recreation and
9 athletics, except schools conducted for the purpose of training teachers
10 in these vocational subjects;
- 11 g. schools in which the course of instruction is licensed, registered
12 or approved under any other section of this chapter or by any other
13 department or agency of the state;
- 14 h. schools which provide instruction designed solely for giving flight
15 training and/or related ground school instruction;
- 16 i. schools in which instruction designed solely to prepare applicants
17 for admission to professional licensing examinations administered by the
18 department pursuant to title eight of this chapter, and applicants for
19 examination for admission to the practice of law;
- 20 j. schools which offer continuing education courses exclusively for
21 individuals licensed by the department pursuant to title eight of this
22 chapter and for individuals admitted to the practice of law;
- 23 k. schools which provide instruction given exclusively to employees of
24 a person or organization which has contracted with another person or
25 organization to provide such instruction at no cost to the employees;
- 26 l. conferences, trade shows, workshops, seminars, institutes or cours-
27 es of study offered and sponsored either jointly or individually by
28 recognized trade, business or professional organizations for the benefit
29 of their membership; [~~or those offered to the general public by individ-~~
30 ~~uals, firms or organizations which neither conduct such activities for a~~
31 ~~duration of more than five consecutive days nor more frequently than~~
32 ~~twice in any one calendar year;]~~
- 33 m. schools that limit their total conferences, trade shows, work-
34 shops, seminars, institutes or other course offerings to no more than
35 twice in one calendar year with each of those offerings for no more than
36 five days;
- 37 n. schools which provide instruction exclusively to persons employed
38 full-time or part-time in the field in which instruction is being
39 offered, where the instruction is provided to meet continuing education
40 standards required for professional licensure as defined by law in this
41 state; and
- 42 o. schools in candidacy status pursuant to subparagraph (iii) of para-
43 graph b of subdivision four of this section.
- 44 2-a. Schools exempted pursuant to subdivision two of this section may
45 waive such exemption and apply for a license [~~or registration~~];
46 provided, however, that the review of such applications shall be left to
47 the discretion of the commissioner.
- 48 2-b. Programs offered by licensed private career schools [~~or regis-~~
49 ~~tered business schools to private businesses where there is no tuition~~
50 ~~liability] to employees of a person or organization which has contracted
51 with another person or organization to provide such instruction at no
52 cost to the employees shall be exempt from the requirements of this
53 article, provided that the following requirements are met:~~
- 54 a. Only employees of the [~~private business~~] employer for which the
55 program is being offered may enroll in classes that make up the program.

1 b. Certificates or diplomas awarded to students in the program may not
2 reference in any way the department.

3 c. Prior to the commencement of the program, such schools shall submit
4 to the department a disclosure form, prescribed by the commissioner,
5 copies of which shall be provided to all students in such exempt
6 program, which shall include but not be limited to the following infor-
7 mation:

8 (i) a description of the location and time period in which the program
9 will be offered;

10 (ii) a statement that the students enrolled in the program shall not
11 be subject to any tuition liability for the program, even if such
12 students do not complete the program;

13 (iii) a statement that the program being provided to the [~~private~~
14 ~~business~~] employer has not been approved by the department and is not
15 under the department's jurisdiction and that the students in the program
16 have been advised of the fact; and

17 (iv) the signatures of the school director or owner of the school and
18 the representative of the [~~private—business~~] employer for which the
19 program is being offered certifying the accuracy of the statements on
20 the form.

21 d. Any additional student openings in a program deemed exempt by the
22 department may be made available to students not affiliated with the
23 [~~private—business~~] employer on the condition that such students execute
24 a disclosure form as prescribed in paragraph c of this subdivision. Such
25 admitted students shall only constitute up to ten percent of the exempt
26 program's total capacity.

27 4. Application, renewal application and application fees. a. Applica-
28 tion and renewal application for a license as a private career school
29 [~~or registration as a business school~~] required by the commissioner
30 shall be filed on forms prescribed and provided by the department.
31 Except as provided in subparagraph (iii) of paragraph e of this subdivi-
32 sion, each renewal application for [~~a private business school registered~~
33 ~~pursuant to this section or for~~] a private career school licensed pursu-
34 ant to this section shall include an audited financial statement audited
35 according to generally accepted auditing standards by an independent
36 certified public accountant or an independent public accountant and
37 statistical reports certified by the owner or operator of the school, as
38 required by the commissioner; provided, however, that the commissioner
39 shall accept a copy of a current financial statement previously filed by
40 a school with any other governmental agency in compliance with the
41 provisions of any federal or state laws, or rules or regulations if such
42 statement contains all of the information required under this subdivi-
43 sion and conforms to this subdivision's requirements of auditing, review
44 and certification. Any required audit of the financial statement shall
45 be a condition of licensure [~~or registration~~] and shall be paid for by
46 the school, and the results of the audit shall be forwarded to the
47 commissioner. Applications not accompanied by the audits and reports
48 required pursuant to this subdivision shall not be considered for
49 approval by the commissioner. Initial applications shall be accompanied
50 by financial reports as required by the commissioner. [~~The commissioner~~
51 ~~shall act on an initial application for a license or registration within~~
52 ~~one hundred twenty days of receipt of a complete application.~~] The
53 applicant shall receive a written approval or denial together with the
54 reasons for a denial of such application.

55 b. (i) An initial license [~~or registration~~] issued pursuant to the
56 provisions of this article shall be valid for a period of two years. A

1 renewal of license [~~or registration~~] issued pursuant to the provisions
2 of this article shall be valid for a period of four years. [~~All license
3 and registration fees for a renewal shall be double the amounts listed
4 in paragraph g of this subdivision.~~]

5 (ii) Each school shall display, near the entrance to the school [~~and
6 under glass~~], the license [~~or registration~~] which has been issued to it.
7 Such authorization shall be displayed only during the period of its
8 validity.

9 (iii) A school which has applied for a private career school license
10 may request candidacy status for one time only. Candidacy status will
11 not be issued to schools offering programs to train students to pass
12 licensure examinations such as appearance enhancement tests, achieve
13 nurse aide or nurse assistant certification, or pass examinations lead-
14 ing to licensure in any other profession or occupation determined by the
15 commissioner to require full licensure status. Candidacy status shall
16 allow a school to operate unlicensed for an initial period of twelve
17 months during the licensure application process, which may be extended
18 to a maximum, non-renewable period of eighteen months, under the follow-
19 ing conditions:

20 (1) The prospective school submits a candidate school application fee,
21 separate from the school application fee, of five thousand dollars which
22 shall accrue to the credit of the proprietary vocational school super-
23 vision account;

24 (2) The school may in no way represent that it is licensed or that its
25 programs are approved through the department;

26 (3) To every prospective student, the school must disseminate a state-
27 ment, provided by the department, that the facilities, instructors, and
28 programs being provided have not been approved and are not under the
29 department's jurisdiction during the candidacy period. Such statement
30 shall indicate that students attending candidate schools will have no
31 recourse through the department's student complaint process nor have any
32 restitution available from the tuition reimbursement account. Students
33 must sign an attestation to the receipt of this statement. The school
34 must retain the signed attestation and provide the student with a copy
35 of that signed statement;

36 (4) The school must demonstrate financial viability through means
37 deemed appropriate by the commissioner. Such means may include submit-
38 ting an audited financial statement based on the most recently completed
39 fiscal year; securing and maintaining a performance bond, payable to the
40 commissioner, in an amount appropriate to eliminate any liability to the
41 tuition reimbursement account in the event the school ceases operation;
42 limiting the collection of tuition funds until each student completes
43 the program of study; or other means acceptable to the commissioner; and

44 (5) Any breach of the above conditions will result in the disapproval
45 of the school's licensure application and the forfeiture of candidate
46 status. Continued operation after this disapproval will subject the
47 school to the disciplinary action prescribed under paragraph b of subdivi-
48 sion six of section five thousand three of this article.

49 (6) On or before the end of the initial twelve-month period of candi-
50 dacy status, the commissioner shall review the school's application for
51 licensure and documentation relating to the school's candidacy status
52 and determine whether such candidacy status should be extended to the
53 full eighteen months and whether the school may continue to enroll
54 students beyond the eighteen-month period or the school's application
55 for licensure will be initially disapproved for failure to meet required
56 standards.

1 c. An application for renewal of any license [~~or registration~~] shall
2 be submitted at least one hundred twenty days prior to the expiration
3 date of the current authorization to operate accompanied by the nonre-
4 fundable application fee and such certified statistical reports and
5 annual financial statements required pursuant to this subdivision.

6 d. When complete and timely application has been made for renewal of
7 any license [~~or registration~~], the school shall receive a written
8 approval or denial, together with the reasons for denial of renewal,
9 from the commissioner no less than thirty days prior to the date such
10 license [~~or registration~~] expires.

11 e. Financial statements and statistical reports. (i) Licensed private
12 career schools and [~~registered business~~] candidate schools shall submit
13 such certified statistical reports and annual financial statements as
14 required by the commissioner. The commissioner may require audited
15 statistical reports upon a determination that a school has provided
16 false or inaccurate certified statistical reports. The financial state-
17 ments shall be based on the fiscal year of the school and shall also
18 include an itemized account of tuition refunds due and owing to past or
19 presently enrolled students. Statistical reports shall include, but not
20 be limited to, enrollment, completion and placement data. The commis-
21 sioner shall use such financial statements and statistical reports
22 submitted for the purposes of licensure [~~and registration~~] of schools,
23 establishing fees or assessments pursuant to this article and determin-
24 ing standards pursuant to paragraph b of subdivision five of section
25 five thousand two of this article. The attorney general, the comptroller
26 and the president of the higher education services corporation shall
27 have access to this information when it is necessary to perform their
28 duties as required by state law.

29 (ii) [~~Any school which received in excess of two hundred fifty thou-~~
30 ~~sand dollars in gross tuition in a school fiscal year~~] Schools shall be
31 required to submit to the commissioner an annual audited financial
32 statement [~~to the commissioner~~] prepared in accordance with generally
33 accepted accounting principles for [~~that~~] each fiscal year. [~~In addi-~~
34 ~~tion, any school which has a gross tuition of two hundred fifty thousand~~
35 ~~dollars or less in a school fiscal year but whose combined state and~~
36 ~~federal student financial aid in such year exceeds one hundred thousand~~
37 ~~dollars shall also submit an annual audited financial statement to the~~
38 ~~commissioner for that fiscal year.~~]

39 (iii) [~~Schools~~] Notwithstanding the provisions of subparagraph (ii) of
40 this paragraph, for fiscal years relating to the initial two year licen-
41 sure period, any schools having an annual gross tuition income of two
42 hundred fifty thousand dollars or less may submit a reviewed financial
43 statement rather than an audited financial statement. In addition, any
44 school licensed prior to the effective date of the chapter of the laws
45 of two thousand nine which amended this subparagraph, whose gross
46 tuition is two hundred fifty thousand dollars or less in a school fiscal
47 year and which receive less than one hundred thousand dollars in state
48 and federal student financial aid in a school fiscal year shall be
49 permitted to continue to file with the commissioner an unaudited finan-
50 cial statement in a format prescribed by the commissioner, provided,
51 however, that any such school [~~with gross tuition in excess of fifty~~
52 ~~thousand dollars shall have filed at least one audited financial state-~~
53 ~~ment after the first year of its operation. The statement shall be~~
54 ~~signed by the president or chief executive officer and the chief fiscal~~
55 ~~officer of the school who shall certify that the statements are true and~~
56 ~~accurate~~] shall begin filing audited financial statements as of the

1 school's fiscal year ending three years or more after the effective date
 2 of the chapter of the laws of two thousand nine which amended this
 3 subparagraph. Upon a determination by the commissioner that a school has
 4 submitted false or inaccurate statements or that a significant, unsub-
 5 stantiated decline in gross tuition has occurred, the commissioner may
 6 require any such school to file an audited financial statement pursuant
 7 to this paragraph.

8 f. Alternate licensing provision. The commissioner shall issue regu-
 9 lations which define alternate licensing or certification requirements
 10 for the following:

11 (1) correspondence schools in which all approved programs and courses
 12 are under three hundred hours;

13 (2) schools which are eligible for exemption under this section but
 14 which elect to be licensed;

15 (3) non-profit schools exempt from taxation under section 501(c)(3) of
 16 the internal revenue code whose programs are funded entirely through
 17 donations from individuals or philanthropic organizations, or endow-
 18 ments, and interest accrued thereon; and

19 (4) language schools conducted for-profit which provide instruction in
 20 English as a second language and which accept no public funds.

21 g. Application fee. (i) Every applicant and renewal applicant shall
 22 pay to the department a nonrefundable, nontransferable application fee.
 23 The application fee for new schools shall be five thousand dollars, of
 24 which three thousand dollars shall accrue to the credit of the proprie-
 25 tary vocational school supervision account and two thousand dollars
 26 shall accrue to the tuition reimbursement account. For additional
 27 licensed locations of currently operating schools, the application fee
 28 shall be two thousand five hundred dollars, which shall accrue to the
 29 credit of the proprietary vocational school supervision account.

30 (ii) For renewal applications, the fee shall be based on gross annual
 31 tuition income as determined by the annual financial statements required
 32 in paragraph a of this subdivision for the most recent school fiscal
 33 year, according to the following schedule:

34 GROSS ANNUAL TUITION INCOME	FEE
35 0-\$199,999	\$[250.00] <u>750.00</u>
36 \$200,000-\$499,999	\$[500.00] <u>1,500.00</u>
37 \$500,000-\$999,999	\$[750.00] <u>2,250.00</u>
38 \$1,000,000-\$4,999,999	\$[1,500.00] <u>4,500.00</u>
39 \$5,000,000-\$9,999,999	\$[3,000.00] <u>9,000.00</u>
40 \$10,000,000 or above	\$[6,000.00] <u>18,000.00</u>

41 Such renewal fees shall accrue to the credit of the proprietary voca-
 42 tional school supervision account. If the evaluation of a particular
 43 course or facility requires the services of an expert not employed by
 44 the department, the department shall retain such expert and the school
 45 shall reimburse the department for the reasonable cost of such services.

46 5. Required disclosure for licensure. a. The commissioner shall
 47 require that each applicant for a license for the operation of a private
 48 [~~vocational or business~~] career school disclose the following informa-
 49 tion:

50 (1) Whether the applicant, or any corporation, partnership, associ-
 51 ation or organization or person holding an ownership or control interest
 52 in such school, or any employee responsible in a supervisory capacity
 53 for the administration of student funds or governmental funds, has been

1 convicted of a crime defined in this article, or any other crime involv-
2 ing the operation of any educational or training program, or, in
3 connection with the operation of any such program, a crime involving the
4 unlawful acquisition, use, payment or expenditure of educational or
5 training program funds; and

6 (2) Whether the applicant, or any corporation, partnership, associ-
7 ation or organization or person holding an ownership or control interest
8 in such school, or any employee responsible in a supervisory capacity
9 for the administration of student funds or governmental funds has been
10 convicted:

11 (A) in this state of any of the following felonies defined in the
12 penal law: bribery involving public servants; commercial bribery; perju-
13 ry in the second degree; rewarding official misconduct; larceny, in
14 connection with the provision of services or involving the theft of
15 governmental funds; offering a false instrument for filing, falsifying
16 business records; tampering with public records; criminal usury; scheme
17 to defraud; or defrauding the government; or

18 (B) in any other jurisdiction of an offense which is substantially
19 similar to any of the felonies defined in clause (A) of this subpara-
20 graph and for which a sentence to a term of imprisonment in excess of
21 one year was authorized and is authorized in this state regardless of
22 whether such sentence was imposed; and

23 (3) Whether the applicant, or any corporation, partnership, associ-
24 ation or organization or person holding an ownership or control interest
25 in such school, or any employee responsible in a supervisory capacity
26 for the administration of student funds or governmental funds, has been
27 finally determined in any administrative or civil proceeding to have
28 committed a violation of any provision of this article or any rules and
29 regulations promulgated pursuant thereto, or any related order or deter-
30 mination of the commissioner, or of any similar statute, rule, regu-
31 lation, order or determination of another jurisdiction pertaining to the
32 licensure and operation of any educational or training program; and

33 (4) Whether any school owned or operated by the applicant closed or
34 ceased operation and, if so, whether at the time of the closing the
35 applicant was subject to a pending disciplinary action, disallowance,
36 fine or other penalty and whether it owed refunds to any government
37 agency or students.

38 b. No application for any license pursuant to this article shall be
39 denied by reason of disclosure pursuant to this subdivision of the
40 applicant, or any corporation, partnership, association or organization
41 or person holding an ownership or control interest in such school, or
42 any employee responsible in a supervisory capacity for the adminis-
43 tration of student funds or governmental funds unless the commissioner
44 makes a written determination that there is a direct relationship
45 between one or more of such previous offenses and the license sought, or
46 that issuance of the license would create an unreasonable risk to prop-
47 erty or to the safety, education or welfare of specific individuals or
48 the general public. In making such determination, the commissioner shall
49 be guided by the factors set forth in section seven hundred fifty-three
50 of the correction law. For purposes of this subdivision, "ownership or
51 control interest" means: with respect to a school that is organized as
52 or owned by a corporation, a position as an officer or director of such
53 corporation; or, with respect to a school that is organized as or owned
54 by a partnership, a position as a partner; or any other interest total-
55 ing ten percent or more, whether direct or indirect, in the total equity
56 or assets of such school.

1 c. The commissioner may deny, suspend, revoke or decline to renew any
2 license: (1) if the significance of the convictions or administrative
3 violations warrant such action; or (2) if the commissioner determines
4 that a school did not make any disclosure required by this subdivision;
5 or (3) if the commissioner determines that a school's financial condi-
6 tion may result in the interruption or cessation of instruction or jeop-
7 ardize student tuition funds.

8 6. If, during the [~~two-year~~] period for which a license [~~or registra-~~
9 ~~tion~~] is granted, the commissioner determines that a school's financial
10 condition may result in the interruption or cessation of instruction or
11 jeopardize student tuition funds, the commissioner may, upon notice to
12 the school, place the school on probation for a period of no more than
13 [~~thirty days~~] one year, during which time the school and the department
14 must make efforts to resolve the problems at the school. The school
15 shall submit a report on its financial condition to the commissioner
16 within the time prescribed by the commissioner. Such report shall be in
17 the form and shall include content prescribed by the commissioner and
18 shall be reviewed by the commissioner to determine the school's finan-
19 cial viability. The commissioner may suspend or revoke the school's
20 license, as well as require the cessation of student enrollment, upon a
21 determination that the school's financial condition continues to threat-
22 en its ability to educate students and/or the student tuition funds.
23 Alternatives for the school to demonstrate a fiscally sound operation
24 may include securing and maintaining a performance bond, payable to the
25 commissioner, in an appropriate amount to eliminate any liability to the
26 tuition reimbursement account should the school cease operation, limit-
27 ing the collection of tuition funds until each student completes the
28 program of study, or other means acceptable to the commissioner. If no
29 resolution can be attained, a hearing, pursuant to subdivisions two and
30 three of section five thousand three of this article will be scheduled.
31 Such probation may include additional monitoring, inspections, limita-
32 tions on enrollment, teaching out some or all of a school's present
33 students or temporary cessation of instruction.

34 7. No license [~~or registration~~] granted under this section shall be
35 transferable or assignable without the approval of the commissioner.
36 [~~Any~~] Upon transfer or assignment of any interest totaling [~~ten~~] twen-
37 ty-five percent or more, whether direct or indirect, in the total equity
38 or assets of a school, such school shall be deemed a [~~transfer of such~~
39 ~~school's license or registration. The commissioner shall approve or deny~~
40 ~~a transfer or assignment based on the requirements set forth in subdivi-~~
41 ~~sions three and four of this section. Such approval or denial, together~~
42 ~~with the reasons for denial, shall be transmitted in writing within~~
43 ~~ninety days of the receipt of the complete application by the commis-~~
44 ~~sioner. Upon a showing of good cause as to why the applicant could not~~
45 ~~obtain the commissioner's approval prior to a transfer or assignment,~~
46 ~~the commissioner shall temporarily approve the transfer or assignment~~
47 ~~for a period not to exceed forty-five days and for such additional peri-~~
48 ~~ods as the commissioner may deem appropriate] new school required to
49 submit a new school application and obtain a new license pursuant to
50 this article. Provided, however that upon such a substantial change in
51 interest, the previous school license shall remain in effect until the
52 new license is issued or denied or the previous license expires or is
53 revoked, whichever occurs first.~~

54 8. No licensed [~~or registered~~] school shall discontinue operation or
55 surrender its license [~~or registration~~] unless thirty days written
56 notice of its intention to do so and a plan for maintenance of safe

1 keeping of the records of the school is provided to the commissioner.
2 However, upon good cause shown, the commissioner may waive the thirty
3 days notice requirement.

4 9. Annual supervision fund and tuition reimbursement [~~fund~~] account
5 assessment. a. The commissioner shall annually assess each school a
6 total percentage of that school's gross tuition pursuant to subdivision
7 three of section five thousand two of this article, as determined by the
8 annual [~~financial statement or annual~~] audited financial statement
9 required by this article. This assessment shall be based upon each
10 school's gross tuition from the previous year, and shall be payable to
11 the commissioner in equal quarterly installments which shall be due on
12 June first, September first, December first and March first.

13 b. (i) [~~Beginning April first, nineteen hundred ninety-one, such~~] Such
14 annualized assessment shall be one percent for schools which have paid
15 less than sixteen quarters of assessments, but such annual assessment
16 shall not fall below five hundred dollars.

17 (ii) [~~Beginning July first, nineteen hundred ninety-four, such~~] Such
18 annualized assessment shall be [~~nine-tenths~~] eight-tenths of one percent
19 for schools which have paid sixteen or more quarters of assessments, but
20 such annual assessment shall not fall below five hundred dollars.

21 [~~(iii) Beginning April first, nineteen hundred ninety-five, and in~~
22 ~~each succeeding year, such annualized assessment shall be eight-tenths~~
23 ~~of one percent.~~]

24 c. (i) Of the total assessment provided for herein, five-tenths of one
25 percent shall accrue to the credit of the tuition reimbursement account
26 pursuant to section five thousand seven of this article for those
27 schools which have paid less than sixteen quarters of assessments. Of
28 the total assessment provided for schools which have paid sixteen or
29 more quarters of assessments, three-tenths of one percent shall accrue
30 to the credit of the tuition reimbursement [~~fund~~] account pursuant to
31 section five thousand seven of this article. For schools paying the
32 minimum five hundred dollars annual assessment, none shall accrue to the
33 tuition reimbursement account.

34 (ii) The balance of the total assessment provided for herein shall be
35 dedicated to fund the department's supervision and regulation of
36 licensed private schools [~~and registered business schools~~] pursuant to
37 an annual appropriation and an annual plan of expenditure prepared by
38 the commissioner and approved by the director of the budget. [~~Following~~
39 ~~the close of each fiscal year, the commissioner, in consultation with~~
40 ~~the director of the budget, shall determine if the balance in the~~
41 ~~proprietary vocational school supervision fund for such fiscal year~~
42 ~~exceeded the amount required for the support of the department's super-~~
43 ~~visory activities taking into account projected revenues and expendi-~~
44 ~~tures for the subsequent fiscal year. To the extent that a surplus is~~
45 ~~identified, the commissioner, with the approval of the director of the~~
46 ~~budget, shall direct the transfer of such surplus to the tuition~~
47 ~~reimbursement fund.~~]

48 d. Payments made within thirty days following the due date shall be
49 subject to interest at one percent above the prevailing prime rate.
50 Thereafter, late payments may result in suspension of licensure by the
51 commissioner. Payments required by this subdivision shall be considered
52 a condition of licensure [~~or registration~~].

53 § 3. Section 5002 of the education law, as added by chapter 887 of the
54 laws of 1990, subparagraph 3 of paragraph b and paragraph d of subdivi-
55 sion 1, subparagraph 2 of paragraph g of subdivision 3 and subdivision 6
56 as amended and paragraph c of subdivision 1 and paragraph d of subdivi-

1 sion 2 as added by chapter 604 of the laws of 1993, paragraph c of
2 subdivision 2, paragraph a of subdivision 4 and subdivision 7 as amended
3 and paragraph e of subdivision 4 and paragraph c of subdivision 6 as
4 added by chapter 434 of the laws of 1999, paragraph f of subdivision 4
5 as added by chapter 457 of the laws of 2003 and subparagraph 2 of para-
6 graph b of subdivision 5 as amended by chapter 301 of the laws of 1996,
7 is amended to read as follows:

8 § 5002. Standards for licensed private career schools [~~and registered~~
9 ~~business schools~~]. Any school licensed [~~or registered~~] pursuant to
10 section five thousand one of this article shall be organized and
11 conducted only as a school and shall be subject to the jurisdiction of
12 the department exclusively, or in conjunction with such other state
13 agency or department or district attorney upon which jurisdiction has
14 also been conferred by law. Such schools shall be subject to and comply
15 with the provisions of this section.

16 1. Standards. a. No program of such schools shall be conducted in a
17 factory or commercial establishment, except where the use of facilities
18 or equipment of such factory or commercial establishment is permitted
19 for necessary or desirable educational purposes and objectives.

20 b. For every such school, the commissioner shall set forth in regu-
21 lation standards governing all of the following:

22 (1) criteria for admission, which shall provide that students at least
23 possess a high school diploma or its equivalent or demonstrate the abil-
24 ity to benefit from the instruction, except that in the case of students
25 who do not possess a high school diploma or its equivalent, certifi-
26 cation of the students' ability to benefit from instruction shall be
27 provided to the commissioner as provided in paragraph c of this subdivi-
28 sion;

29 (2) the standards and the methods of instruction;

30 (3) the equipment available for instruction with the maximum enroll-
31 ment that such equipment and physical plant will accommodate;

32 (4) the qualifications and experience of teaching and management
33 personnel;

34 (5) the form and content of the student enrollment agreement or
35 contract, provided that such agreement or contract shall be written in
36 the same language as that principally used in the sales presentation;

37 (6) the methods of collecting tuition;

38 (7) eligibility criteria for programs that will require licensure;

39 (8) the sufficiency and suitability of the resources available for the
40 support of such school; and

41 (9) counseling provided to students.

42 b-1. Student loans and financial aid. (1) Student loans or other
43 financial aid funds received from federal, state, or local governments
44 or administered under the federal student financial assistance programs
45 governed by Title IV of the Higher Education Act of nineteen hundred
46 sixty-five, 20 U.S.C. section 1070 et seq., as amended, must be
47 collected and applied in the manner as controlled by the applicable
48 federal, state or local regulations.

49 (2) Student loans or other financial aid funds received from private
50 entities including, but not limited to, banks, financing companies, and
51 other lending sources must be collected or disbursed in the following
52 manner:

53 (A) Loans or other financial aid payments for amounts of five thousand
54 dollars or less may be disbursed as a single disbursement, regardless of
55 course length.

1 (B) Loans or other financial aid payments for amounts greater than
2 five thousand dollars that reflect a class term of less than six months
3 shall have two equal disbursements. The disbursement schedule for such
4 loans or payments shall be as follows: one-half of the tuition amount
5 released initially, and the remainder released halfway through the
6 course term.

7 (C) Loans or other financial aid payments for amounts greater than
8 five thousand dollars that reflect a class term of greater than six
9 months, but less than twelve months must have three equal disbursements.
10 The disbursement schedule for such loans or payments shall be as
11 follows: one-third of the tuition amount released initially, the second
12 disbursement shall be released one-third of the way through the length
13 of the training, and the remainder released two-thirds of the way
14 through the course term.

15 (D) Loans of other financial aid payments for amounts greater than
16 five thousand dollars that reflect a class term greater than twelve
17 months shall have four equal disbursements. The disbursement schedule
18 for such loans or payments shall be as follows: one-quarter of the
19 tuition amount released initially, the second disbursement shall be
20 released one quarter of the way through the length of the training; the
21 third disbursement shall be released halfway through the length of the
22 training, and the remainder shall be released three-quarters of the way
23 through the training.

24 (3) No school may enter into any contract or agreement with, or
25 receive any student loan or financial aid funds from, private entities
26 including, but not limited to, banks, financing companies, and any other
27 private lending sources unless the private entity has a disbursement
28 policy that, at a minimum, meets the requirements of subparagraph two of
29 this paragraph.

30 c. Notwithstanding any other provisions of this article to the contra-
31 ry, the commissioner shall define alternative educational and curriculum
32 standards for any program of less than forty hours designed exclusively
33 for non-occupational, personal enrichment purposes.

34 d. Admission of students under the ability to benefit provision.

35 (1) Certification. Each school admitting students who do not possess
36 at least a high school diploma or its equivalent shall certify to the
37 satisfaction of the commissioner that such prospective students have
38 been administered and passed an examination which has been approved by
39 the commissioner to determine their ability to benefit from the chosen
40 curriculum prior to admission to the curriculum or course of study. Such
41 examination shall, whenever possible, be a nationally recognized test
42 appropriate for the course of instruction which has been approved by the
43 commissioner. The examination results of each such student who is admit-
44 ted shall be made available to the commissioner at a time prescribed by
45 the commissioner and, together with the student's original answer sheet,
46 shall be maintained by the school in the student's permanent record. For
47 any student failing to achieve the necessary score on such examination
48 for enrollment, the school shall be required to provide such student
49 with a listing of appropriate counseling and educational opportunities
50 available to the student at no cost, as determined by the commissioner.
51 Where appropriate, the commissioner may accept such other entrance
52 requirement documentation such as prerequisite coursework, professional
53 or vendor certifications, personal interviews, and/or attestations of
54 equivalent knowledge in lieu of the examination requirement.

55 (2) Counseling. Each school [~~admitting~~] offering curricula which admit
56 students who do not possess a high school diploma or its equivalent

1 shall develop a plan to be approved by the commissioner for the coun-
2 seling of such students on an individual basis on matters including but
3 not limited to the student's ability to progress in the curriculum, the
4 student's financial aid rights and responsibilities, the availability of
5 programs to earn a high school equivalency diploma, including programs
6 provided at no cost to the student, and the potential of the training to
7 prepare the student for available employment opportunities within the
8 region.

9 (3) Compliance. (A) The commissioner shall monitor compliance with
10 this paragraph and verify the examination and counseling process and
11 student examination scores. Such procedures may include but not be
12 limited to an annual, statistically significant, random sampling of the
13 examinations taken by prospective students of each school administering
14 such examinations.

15 (B) [~~Such procedures shall provide that the examinations of each~~
16 ~~school be inspected on site at least once annually.~~

17 ~~(C)~~] In the event that the commissioner determines that the school is
18 out of compliance with the examination process and counseling, the
19 commissioner shall require that examinations and counseling for students
20 admitted under the ability to benefit provision and the counseling
21 required by subparagraph two of this paragraph be conducted off the
22 premises of the school by an entity approved by the commissioner for
23 such period of time as the commissioner deems appropriate, the cost of
24 which shall be incurred by the school.

25 2. Inspections. a. Every school licensed pursuant to this article
26 shall maintain adequate and accurate records for a period of not less
27 than [~~six~~] seven years at its principal place of business within this
28 state. Such records shall be maintained in a manner and form prescribed
29 by the commissioner and shall be made available to the department and
30 the higher education services corporation upon request.

31 b. In addition to other requirements in this article, the information
32 to be made a part of the record shall include, but not be limited to:

33 (1) names and addresses of each enrolled student;

34 (2) the course of study offered by the institution;

35 (3) the name and address of its faculty, together with a record of the
36 educational qualifications of each;

37 (4) the graduation date of each student; and

38 (5) for each student who fails to complete his or her program, the
39 student's last date of attendance and, if applicable, the amount of any
40 refund paid to, or on behalf of, the student and the date the refund was
41 made.

42 c. The commissioner shall conduct periodic unscheduled inspections of
43 licensed private career schools [~~and registered business schools~~] to
44 monitor compliance with the provisions of this article or the rules or
45 regulations promulgated thereunder or any final order or decision of the
46 commissioner made pursuant to this article. The department shall conduct
47 an inspection of each school at least once every [~~three years. The~~
48 ~~department shall annually inspect schools: (1) having a high percentage~~
49 ~~of students admitted under ability to benefit criteria as determined by~~
50 ~~the commissioner; (2) having a high student loan default rate as deter-~~
51 ~~mined by the commissioner in a manner consistent with federal standards;~~
52 ~~or (3) which are the subject of a high volume of complaints by students~~
53 ~~or other parties~~] licensure period. All schools shall provide upon
54 request of the department, any and all records necessary to review
55 compliance with the provisions of this article.

1 d. Student permanent records, as defined in the regulations of the
2 commissioner, shall be maintained for a period of twenty years.

3 3. Tuition liability. a. The tuition charge for programs approved for
4 participation in student financial aid general award programs pursuant
5 to articles thirteen and fourteen of this chapter shall be apportioned
6 on the basis of terms, quarters or semesters. For the purposes of this
7 section, the terms "term", "quarter" and "semester" shall be defined in
8 regulations by the commissioner.

9 b. The tuition refund policy for the first term or quarter of any
10 program at schools licensed [~~or-registered~~] pursuant to section five
11 thousand one of this article shall be as follows:

12 (1) For programs which are divided into quarters of up to fourteen
13 weeks, the school shall evenly divide the total tuition charges among
14 the number of quarters. After instruction is begun in a school, if a
15 student withdraws or is discontinued, the school may retain no more
16 than:

17 (i) zero percent of the quarter's tuition if the termination is during
18 the first week of instruction; or

19 (ii) twenty-five percent of the quarter's tuition if the termination
20 is during the second week of instruction; or

21 (iii) fifty percent of the quarter's tuition if the termination is
22 during the third week of instruction; or

23 (iv) seventy-five percent of the quarter's tuition if the termination
24 is during the fourth week of instruction; or

25 (v) one hundred percent of the quarter's tuition if the termination
26 occurs after the fourth week of instruction.

27 (2) For programs organized by terms of fifteen, sixteen, seventeen or
28 eighteen weeks apiece, the school shall evenly divide the total tuition
29 charges among the number of terms. After instruction is begun in a
30 school, if a student withdraws or is discontinued, the school may retain
31 no more than:

32 (i) zero percent of the term's tuition if the termination is during
33 the first week of instruction; or

34 (ii) twenty percent of the term's tuition if the termination is during
35 the second week of instruction; or

36 (iii) thirty-five percent of the term's tuition if the termination is
37 during the third week of instruction; or

38 (iv) fifty percent of the term's tuition if the termination is during
39 the fourth week of instruction; or

40 (v) seventy percent of the term's tuition if the termination is during
41 the fifth week of instruction; or

42 (vi) one hundred percent of the term's tuition if the termination
43 occurs after the completion of the fifth week of instruction.

44 c. (1) The tuition refund policy for the second term or quarter of any
45 program at schools licensed [~~or-registered~~] pursuant to section five
46 thousand one of this article shall be as follows:

47 (A) For programs which are divided into quarters of up to fourteen
48 weeks, the school shall evenly divide the total tuition charges among
49 the number of quarters. After instruction is begun in a school, if a
50 student withdraws or is discontinued, the school may retain no more
51 than:

52 (i) twenty-five percent of the quarter's tuition if the termination is
53 during the first week of instruction; or

54 (ii) fifty percent of the quarter's tuition if the termination is
55 during the second week of instruction; or

1 (iii) seventy-five percent of the quarter's tuition if the termination
2 is during the third week of instruction; or~~[-]~~

3 (iv) one hundred percent of the quarter's tuition if the termination
4 occurs after the third week of instruction.

5 (B) For programs organized by terms of fifteen, sixteen, seventeen or
6 eighteen weeks apiece, the school shall evenly divide the total tuition
7 charges among the number of terms. After instruction is begun in a
8 school, if a student withdraws or is discontinued, the school may retain
9 no more than:

10 (i) twenty percent of the term's tuition if the termination is during
11 the first week of instruction; or

12 (ii) thirty-five percent of the term's tuition if the termination is
13 during the second week of instruction; or

14 (iii) fifty percent of the term's tuition if the termination is during
15 the third week of instruction; or

16 (iv) seventy percent of the term's tuition if the termination is
17 during the fourth week of instruction; or

18 (v) one hundred percent of the term's tuition if the termination
19 occurs after the completion of the fourth week of instruction.

20 (2) Notwithstanding the provisions of subparagraph one of this para-
21 graph, the tuition refund policy set forth in paragraph b of this subdi-
22 vision shall apply unless the school demonstrates that there are no
23 significant educational changes in the educational program of the
24 student, such changes as defined in regulations of the commissioner.

25 d. The tuition refund policy for the third and any subsequent term or
26 quarter of any program licensed ~~[or registered]~~ pursuant to section five
27 thousand one of this article shall be the policy set forth in subpara-
28 graph one of paragraph c of this subdivision.

29 e. No program shall have a term in excess of eighteen weeks.

30 f. The amount of the refund shall be calculated based on the last day
31 of student attendance.

32 g. (1) Any refund due to a student shall be paid by the school within
33 forty-five days of the date on which the student withdraws from the
34 program. For the purposes of this article, such date shall be the earli-
35 est of (i) the date on which the student gives written notice to the
36 school or (ii) the date on which the student is deemed to have withdrawn
37 pursuant to subparagraph two of this paragraph.

38 (2) If a student has failed to attend classes for a period of thirty
39 calendar days, the school shall send by regular mail a notice to the
40 student that the student shall be deemed to have withdrawn from the
41 program if the student does not notify the school to the contrary within
42 twelve days from the date on which the letter is sent. If the student
43 fails to respond within such twelve-day period, the student shall be
44 deemed to have withdrawn and the school shall notify the higher educa-
45 tion services corporation that the student has withdrawn and the date of
46 the withdrawal.

47 h. Schools shall submit, for approval by the commissioner, the school
48 catalog with a weekly tuition liability chart for each program that
49 indicates the amount of refund due the student in the event of with-
50 drawal.

51 i. Upon payment of a refund to a lender, the school shall forthwith
52 send a notice to a person designated by the president of the higher
53 education services corporation upon a form approved by the president
54 that such refund was made.

55 ~~[i-]~~ j. If the higher education services corporation fails to receive
56 the notice required by paragraph ~~[h]~~ i of this subdivision, it shall

1 forthwith notify the student of his or her right to a refund and the
2 commissioner of such failure. Upon receipt of such notification, the
3 commissioner shall take appropriate action against the school.

4 4. Curriculum approval. a. An application and fee shall be made for
5 the initial approval of a curriculum or course and shall include such
6 information as the commissioner may require by regulation. Approval
7 shall be valid for a period not to exceed four years. The application
8 fee for any curriculum of one hundred clock hours or more shall be two
9 hundred fifty dollars. The application fee for any course of less than
10 one hundred clock hours shall be one hundred dollars. Such application
11 fees shall accrue to the credit of the proprietary vocational school
12 supervision account.

13 b. In approving curriculum, the commissioner shall take into consider-
14 ation the following:

15 (1) that the entrance requirements demonstrate that students possess
16 the skills, competencies and prerequisite knowledge needed to progress
17 in the curriculum;

18 (2) that the content will enable the student to develop those skills
19 and competencies required for employment in the occupational area for
20 which the curriculum was developed;

21 (3) that the school will utilize appropriate instructional methods;
22 [~~and~~]

23 (4) that the instructional equipment used within the curriculum is
24 comparable to the equipment currently used by business or industry in
25 the occupational area for which the curriculum was developed; and

26 (5) that a curriculum may include instruction in English as a second
27 language at a beginning or basic level, provided such instruction shall
28 not constitute more than fifty percent of such program.

29 c. (1) If the evaluation of a particular course or facility requires
30 the services of an expert not employed by the department, the department
31 shall retain such expert [~~and the school shall reimburse the department~~
32 ~~for the reasonable cost of such services~~] at the school's expense in
33 addition to the application fees prescribed in paragraph a of this
34 subdivision.

35 (2) If, in the interest of expediting the approvals, a school requests
36 the department to employ an outside consultant, the school shall [~~reim-~~
37 ~~burse the department for~~] pay the [~~reasonable~~] cost of such services in
38 addition to the application fees prescribed in paragraph a of this
39 subdivision.

40 d. The commissioner shall act on applications for approval of a course
41 or curriculum within one hundred twenty days of receipt of a complete
42 application and, in the case of a denial, shall set forth in writing the
43 reasons for such denial.

44 e. Notwithstanding paragraphs b, c and d of this subdivision, curric-
45 ulum certified by a nationally recognized vendor as defined in commis-
46 sioner's regulations shall be recognized by the department in lieu of an
47 expert evaluation when such curriculum is adopted by a school in the
48 original format provided by the vendor as long as the proposed curric-
49 ulum is a stand alone program and not part of a larger comprehensive
50 course.

51 f. Notwithstanding any other provision of the law, a [~~not-for-profit~~
52 ~~registered business~~] school[, ~~that is eligible for participation in the~~
53 ~~tuition assistance program and~~] which has national accreditation, may,
54 for the purpose of calculation of federal financial aid amounts only,
55 measure students' academic progress in an approved curriculum in non-de-
56 gree granting credit hours, based upon a national accrediting agency's

1 conversion and approval of clock hours to non-degree credit hours. For
2 the purposes of this paragraph, "national accreditation" shall mean
3 accreditation by a national accrediting agency as defined in the commis-
4 sioner's regulations.

5 5. Application for reapproval. a. An application and fee shall be made
6 for reapproval of a curriculum or course. Such application shall be
7 considered timely if submitted at least one hundred twenty days prior to
8 the expiration of the current approval. The application fee for any
9 curriculum of one hundred clock hours or more shall be two hundred fifty
10 dollars. The application fee for any course of less than one hundred
11 clock hours shall be one hundred dollars, provided that no fee shall be
12 assessed for the submission of a reapproval application without change.
13 Such application fees shall accrue to the credit of the proprietary
14 vocational school supervision account.

15 b. Curriculum reapproval standards. (1) The commissioner shall
16 prescribe by regulation, standards for reapproval after the first year
17 of licensure, of any curriculum or course based upon factors including
18 but not limited to the following, as appropriate:

19 (i) for each curriculum or course, the percentage of students who have
20 dropped out;

21 (ii) the acquisition of a specified minimum level of skills by the
22 students; and

23 (iii) for each curriculum or course, the percentage of students placed
24 in occupations related to the instruction, where applicable.

25 (2) Such standards shall be consistent with those applied to all non-
26 degree career education programs.

27 c. Reapproval contingency. Reapproval of a curriculum or course shall
28 be contingent upon a demonstration by the applicant that the curriculum
29 or course has met the curriculum reapproval standards set forth in this
30 subdivision. Except as otherwise provided in paragraph d of this subdivi-
31 sion, no such curriculum or course or substantially similar curriculum
32 or course may be given without reapproval by the commissioner.

33 d. When timely and complete application is made for the reapproval of
34 a curriculum or course, and no written denial is made thirty days prior
35 to the date of expiration of the existing approval, the curriculum or
36 course shall be deemed to be approved for the period of the curriculum.
37 If the application is denied, the commissioner shall set forth in writ-
38 ing the reasons for such denial.

39 e. The commissioner may provide in regulations for reapproval proce-
40 dures, consistent with this subdivision, for applications submitted less
41 than one hundred twenty days from the expiration date.

42 f. The commissioner shall act upon enrollment agreements and catalogs
43 within ninety days of receipt, and, in the case of denial, shall set
44 forth in writing the reasons for such denial. If the commissioner fails
45 to act within ninety days, a catalog shall be deemed approved for one
46 year and an enrollment agreement shall be deemed approved until the
47 commissioner acts upon it.

48 6. a. Teachers and directors. No person shall be employed by a private
49 career school as a director or teacher who is not licensed in such
50 capacity by the department pursuant to regulations of the commissioner,
51 which shall take into consideration such factors as moral character,
52 educational qualifications and practical experience. The application
53 shall include a statement, signed by the president or chief executive
54 officer of the school, certifying that to the best of his or her know-
55 ledge, the applicant is able to meet the educational qualifications and
56 practical experience set forth in the commissioner's regulations. Such

1 application shall be considered timely if mailed to the commissioner and
2 postmarked four days prior to employment at the school and must be
3 completed within twenty days thereafter; provided, however, that the
4 commissioner may, for good cause shown, extend the time within which to
5 complete the application. When a complete application is made, the
6 commissioner shall act upon such application within thirty days. If no
7 written denial is made within the thirty days, the application shall be
8 deemed to be approved until the commissioner acts upon it or until the
9 end of the term or semester, whichever occurs first. If a written denial
10 is made after the thirty day period, the commissioner may allow the
11 applicant to teach at the school for the remainder of the term or semes-
12 ter if the commissioner determines that the removal of the teacher would
13 not be in the best educational interest of the students. This subdivi-
14 sion shall not apply to directors or teachers employed on or before July
15 first, nineteen hundred seventy-two. Teachers' licenses issued on or
16 after ~~[January first, nineteen hundred eighty-seven]~~ the effective date
17 of the chapter of the laws of two thousand nine which amended this para-
18 graph shall be valid at all ~~[registered-business]~~ licensed private
19 career schools for the courses, curricula, or occupations indicated on
20 the license. Teachers holding valid private school teacher licenses
21 valid at only one school location shall have them replaced, at no cost,
22 with licenses valid at any licensed school in the same subject or
23 subjects and with the same expiration date as was listed on the previous
24 teaching license.

25 b. A school director shall have access to all student and school
26 records which shall be maintained in accordance with this article and
27 the regulations of the commissioner and shall make such records avail-
28 able to the commissioner or the commissioner's designee upon request
29 during an on-site school inspection.

30 c. Notwithstanding paragraph a of this subdivision, a teacher who has
31 been certified as an instructor by a nationally recognized vendor as
32 defined in commissioner's regulations may be deemed qualified as an
33 instructor by the department, provided such teacher shall only provide
34 instruction in the course or courses for which he or she holds vendor's
35 certification. A teacher authorized by this paragraph will be subject to
36 all licensing fees required by the department for licensed teachers.

37 7. Advertising. a. The commissioner is authorized to commence a disci-
38 plinary proceeding pursuant to this article for false, misleading,
39 deceptive or fraudulent advertising pursuant to regulations promulgated
40 by the commissioner which shall be consistent with article twenty-two-A
41 of the general business law. The department shall issue guidelines as to
42 appropriate advertising content. In developing such guidelines, the
43 department shall consider advertising for similar programs offered by
44 various educational institutions. In a disciplinary action or other
45 proceeding, such guidelines shall not be presumptive evidence that
46 particular advertising is appropriate.

47 b. Beginning on January first, two thousand, all schools shall include
48 in their advertising, promotional material, or letterhead the statement
49 "Licensed by the State of New York" ~~[or "Registered by the State of New~~
50 ~~York", as appropriate]~~, and an accompanying symbol to indicate such
51 status, issued by the commissioner pursuant to section five thousand
52 nine of this article.

53 8. The higher education services corporation shall adopt rules and
54 regulations to effectuate the cessation of collection activities by
55 lenders or by the corporation in cases in which a licensed private
56 ~~[vocational]~~ career school ~~[or a registered business school]~~ at which

1 the student enrolled has closed or ceased its teaching activities during
2 the academic period for which the loan was made or guaranteed.

3 § 4. Section 5003 of the education law, as added by chapter 887 of the
4 laws of 1990, subparagraph 1 of paragraph c of subdivision 1 and para-
5 graphs d and e of subdivision 6 as amended by chapter 604 of the laws of
6 1993, paragraphs b and f of subdivision 6 as amended and paragraph d of
7 subdivision 1 as added by chapter 434 of the laws of 1999, is amended to
8 read as follows:

9 § 5003. Disciplinary actions, hearings and penalties. 1. Disciplinary
10 action. a. The commissioner for good cause, after affording a school an
11 opportunity for a hearing, may take disciplinary action as hereinafter
12 provided against any school authorized to operate under this article.

13 b. Good cause shall include, but not be limited to, any of the follow-
14 ing:

15 (1) fraudulent statements or representations to the department, the
16 public or any student in connection with any activity of the school;

17 (2) violation of any provision of this article or regulation of the
18 commissioner;

19 (3) conviction or a plea of no contest on the part of any owner, oper-
20 ator, director or teacher:

21 (A) of any of the following felonies defined in the penal law: bribery
22 involving public servants; commercial bribery; perjury in the second
23 degree; rewarding official misconduct; larceny, in connection with the
24 provision of services or involving the theft of governmental funds;
25 offering a false instrument for filing, falsifying business records;
26 tampering with public records; criminal usury; scheme to defraud; or
27 defrauding the government; or

28 (B) in any other jurisdiction of an offense which is substantially
29 similar to any of the felonies defined in clause (A) of this subpara-
30 graph and for which a sentence to a term of imprisonment in excess of
31 one year was authorized and is authorized in this state regardless of
32 whether such sentence was imposed; or

33 (4) incompetence of any owner or operator to operate a school.

34 c. (1) Any person who believes he or she has been aggrieved by a
35 violation of this section, except a person aggrieved by the actions or
36 omissions of a candidate school, shall have the right to file a written
37 complaint within: (A) two years of the alleged violation; or (B) one
38 year of receiving notification from the higher education services corpo-
39 ration or any other guarantee agency that the student has defaulted on a
40 student loan payment; provided, however, that no complaint may be filed
41 after three years from the date of the alleged violation. The commis-
42 sioner shall maintain a written record of each complaint that is made.
43 The commissioner shall also send to the complainant a form acknowledging
44 the complaint and requesting further information if necessary and shall
45 advise the director of the school that a complaint has been made and,
46 where appropriate the nature of the complaint.

47 (2) The commissioner shall within [~~twenty~~] thirty days of receipt of
48 such written complaint commence an investigation of the alleged
49 violation and shall within [~~ninety~~] one hundred twenty days of the
50 receipt of such written complaint, issue a written finding. The commis-
51 sioner shall furnish such findings to the person who filed the complaint
52 and to the chief operating officer of the school cited in the complaint.
53 If the commissioner finds that there has been a violation of this
54 section, the commissioner shall take appropriate action.

55 (3) The commissioner may initiate an investigation without a
56 complaint.

1 ~~[d. During the initial two year licensing period, before the commis-~~
2 ~~sioner may bring enforcement proceedings against a licensed entity, the~~
3 ~~following shall be taken into consideration:~~

4 ~~(1) whether such entity has demonstrated that the regulations promul-~~
5 ~~gated under this chapter are unduly burdensome given the nature of the~~
6 ~~instruction provided by such entity;~~

7 ~~(2) whether such entity has identified potential areas of noncompli-~~
8 ~~ance with this chapter and any such regulation within sixty days of the~~
9 ~~licensing or registration date of such entity;~~

10 ~~(3) whether such entity has engaged in good faith discussions with the~~
11 ~~department to resolve such violations and/or promulgate regulations~~
12 ~~which further the goals of this chapter.]~~

13 (4) Notwithstanding the provisions of subparagraph one of this para-
14 graph or any other provision of this article to the contrary, a student
15 at a candidate school shall have the right to file a written complaint
16 from an alleged violation of the provisions of clause three of subpara-
17 graph (iii) of paragraph b of subdivision four of section five thousand
18 one of this article that require disclosure of candidacy status and its
19 implications and a signed attestation by the student, within two years
20 of such violation. Upon a finding that such a violation has occurred,
21 the candidate school shall be required to provide a refund of all monies
22 and fees received from or on behalf of the student. Appropriate action
23 shall also be taken against the candidate school pursuant to the
24 provisions of subparagraph (iii) of paragraph b of subdivision four of
25 section five thousand one of this article.

26 2. Hearing procedures. a. Upon a finding that there is good cause to
27 believe that a candidate school under the provisions of subparagraph
28 (iii) of paragraph b of subdivision four of section five thousand one of
29 this article, or a licensed school, or an officer, agent, employee,
30 partner or teacher, has committed a violation of this article, the
31 commissioner shall initiate proceedings by serving a notice of hearing
32 upon each and every such party subject to the administrative action. The
33 school or such party shall be given reasonable notice of hearing,
34 including the time, place, and nature of the hearing and a statement
35 sufficiently particular to give notice of the transactions or occur-
36 rences intended to be proved, the material elements of each cause of
37 action and the civil penalties and/or administrative sanctions sought.

38 b. Opportunity shall be afforded to the party to respond and present
39 evidence and argument on the issues involved in the hearing including
40 the right of cross examination. In a hearing, the school or such party
41 shall be accorded the right to have its representative appear in person
42 or by or with counsel or other representative. Disposition may be made
43 in any hearing by stipulation, agreed settlement, consent order, default
44 or other informal method.

45 c. (1) The commissioner shall designate an impartial hearing officer
46 to conduct the hearing, who shall be empowered to:

47 (A) administer oaths and affirmations; and

48 (B) regulate the course of the hearings, set the time and place for
49 continued hearings, and fix the time for filing of briefs and other
50 documents; and

51 (C) direct the school or such party to appear and confer to consider
52 the simplification of the issues by consent; and

53 (D) grant a request for an adjournment of the hearing only upon good
54 cause shown.

55 (2) The strict legal rules of evidence shall not apply, but the deci-
56 sion shall be supported by substantial evidence in the record.

1 3. Decision after hearing. The hearing officer shall make written
2 findings of fact and conclusions of law, and shall also recommend in
3 writing to the commissioner a final decision including penalties. The
4 hearing officer shall mail a copy of his or her findings of fact,
5 conclusions of law and recommended penalty to the party and his or her
6 attorney, or representative. The commissioner shall make the final
7 decision, which shall be based exclusively on evidence and other materi-
8 als introduced at the hearing. If it is determined that a party has
9 committed a violation, the commissioner shall issue a final order and
10 shall impose penalties in accordance with this section. The commissioner
11 shall send by certified mail, return receipt requested, a copy of the
12 final order to the party and his or her attorney, or representative. The
13 commissioner shall, at the request of the school or such party, furnish
14 a copy of the transcript or any part thereof upon payment of the cost
15 thereof.

16 4. Judicial review. Any order imposed under this section shall be
17 subject to judicial review under article seventy-eight of the civil
18 practice law and rules, but no such determination shall be stayed or
19 enjoined except upon application to the court after notice to the
20 commissioner.

21 5. Enforcement proceedings. The attorney general, in his or her own
22 capacity, or at the request of the commissioner, may bring an appropri-
23 ate action or proceeding in any court of competent jurisdiction to
24 recover a fine or otherwise enforce any provision of this article.

25 6. Civil penalties and administrative sanctions. a. A hearing officer
26 may recommend, and the commissioner may impose, a civil penalty not to
27 exceed [~~two~~] three thousand five hundred dollars for any violation of
28 this article. In the case of a second or further violation committed
29 within [~~the previous~~] five years of the previous violation, the liabil-
30 ity shall be a civil penalty not to exceed [~~five~~] seven thousand five
31 hundred dollars for each such violation.

32 b. Notwithstanding the provisions of paragraph a of this subdivision,
33 a hearing officer may recommend, and the commissioner may impose a civil
34 penalty not to exceed [~~fifty~~] seventy-five thousand dollars or double
35 the documented amount from which the school benefited, whichever is
36 greater, for any of the following violations: (1) operation of a school
37 without a license in violation of section five thousand one of this
38 article; (2) operation of a school knowing that the school's license has
39 been suspended or revoked; (3) use of false, misleading, deceptive or
40 fraudulent advertising; (4) employment of recruiters on the basis of a
41 commission, bonus or quota, except as authorized by the commissioner;
42 (5) directing or authorizing recruiters to offer guarantees of jobs upon
43 completion of a course; (6) failure to make a tuition refund when such
44 failure is part of a pattern of misconduct; (7) the offering of a course
45 or program that has not been approved by the commissioner; (8) failure
46 to offer a course or program as approved by the commissioner; (9) admit-
47 ting students, who subsequently drop out, who were admitted in violation
48 of the admission standards established by the commissioner, where such
49 admissions constitute a pattern of misconduct and where the drop out
50 resulted at least in part from such violation; [~~(9)~~] (10) failure to
51 provide the notice of discontinuance and the plan required by subdivi-
52 sion seven of section five thousand one of this article; or [~~(10)~~] (11)
53 violation of any other provision of this article, or any rule or regu-
54 lation promulgated pursuant thereto, when such violation constitutes
55 part of a pattern of misconduct which significantly impairs the educa-
56 tional quality of the program or programs being offered by the school.

1 For each enumerated offense, a second or further violation committed
2 within [~~the previous~~] five years, shall be subject to a civil penalty
3 not to exceed [~~seventy-five thousand dollars~~] one and one-half times the
4 amount of the previous violation for each such violation.

5 c. In addition to the penalties authorized in paragraphs a and b of
6 this subdivision, a hearing officer may recommend and the commissioner
7 may impose any of the following administrative sanctions: (1) a cease
8 and desist order; (2) a mandatory direction; (3) a suspension or revoca-
9 tion of a license; (4) a probation order; or (5) an order of restitu-
10 tion.

11 d. Penalty factors. In the recommendation of any penalty, a hearing
12 officer shall, at a minimum, give due consideration, where applicable,
13 to the good faith of the violator; [~~the performance of the school with~~
14 ~~respect to student placement and retention rates, and students' acquisi-~~
15 ~~tion of skills;~~] and the gravity of the violation[~~; and the harm caused~~
16 ~~to the student~~].

17 e. The commissioner may suspend a license [~~or registration~~] upon the
18 failure of a school to pay any fee, fine, penalty, settlement or assess-
19 ment as required by this article unless such failure is determined by
20 the commissioner to be for good cause.

21 f. All civil penalties, fines and settlements received after April
22 first, nineteen hundred ninety shall accrue to the credit of the tuition
23 reimbursement account established pursuant to section ninety-seven-hh of
24 the state finance law.

25 7. Criminal penalties. In addition to any other penalties elsewhere
26 prescribed:

27 a. Any person who knowingly violates any of the provisions of this
28 article shall be guilty of a class B misdemeanor punishable in accord-
29 ance with the penal law. If the conviction is for a second offense
30 committed within five years of the first conviction under this para-
31 graph, such person shall be guilty of a class A misdemeanor punishable
32 in accordance with the penal law.

33 b. Any person who knowingly (1) falsifies or destroys school or other
34 business records relating to the operation of the school with intent to
35 defraud; (2) fails to make a tuition refund as required by section five
36 thousand two of this article with the intent to defraud more than one
37 person; or (3) operates a school without a valid license required by
38 section five thousand one of this article shall be guilty of a class A
39 misdemeanor punishable in accordance with the penal law.

40 c. Any person who, having been convicted within the past five years of
41 failing to make a tuition refund in violation of subparagraph two of
42 paragraph b of this subdivision, knowingly and intentionally engages in
43 a scheme constituting a systematic ongoing course of conduct involving
44 the wrongful withholding of refunds in violation of section five thou-
45 sand two of this article with the intent to defraud ten or more persons,
46 and so withholds tuition refunds in excess of one thousand dollars,
47 shall be guilty of a class E felony punishable in accordance with the
48 penal law.

49 d. Upon a determination that there exist reasonable grounds to believe
50 that a violation of this article has been committed, or that any other
51 crime has been committed in connection with the operation of a school
52 required to be licensed pursuant to this article, the commissioner shall
53 refer such determination, and the information upon which it is based, to
54 the attorney general or to the appropriate district attorney. The attor-
55 ney general or a district attorney may bring an action on his or her own
56 initiative.

1 8. Private right of action. A student injured by a violation of this
2 article may bring an action against the owner or operator of a licensed
3 private career school [~~or registered business school~~] for actual damages
4 or one hundred dollars, whichever is greater. A court may, in its
5 discretion, award reasonable attorney's fees to a prevailing plaintiff.

6 § 5. Subdivisions 3 and 4 of section 5004 of the education law, as
7 amended by chapter 604 of the laws of 1993, are amended and a new subdivi-
8 sion 4-a is added to read as follows:

9 3. Exempted from the requirements of this section are persons acting
10 solely for schools which are not required to be licensed or are specif-
11 ically exempted from the licensing [~~or registration~~] requirements of
12 this article. Persons who are paid to procure, solicit or enroll
13 students on the premises of schools required to be licensed [~~or regis-~~
14 ~~tered~~] shall not be exempt from the provisions of this section. The
15 certification requirements of this section shall not apply to persons
16 receiving gifts or other non-monetary considerations valued at not more
17 than [~~twenty-five~~] seventy-five dollars from a school from which they
18 have graduated or are currently enrolled for each student referred for
19 enrollment at the school.

20 4. Application and renewal application for a private school agent's
21 certificate shall be filed on forms to be prescribed and provided by the
22 commissioner. Said certificate shall be valid for [~~two~~] three years from
23 the date of issuance. Certificates which have been renewed shall be
24 valid for a period of [~~two~~] three years from the expiration date of the
25 certificate which has been renewed. Every applicant and renewal appli-
26 cant shall pay to the department a fee of [~~one~~] two hundred dollars.

27 4-a. Notwithstanding the provisions of subdivision four of this
28 section, the school director may apply for a private school agent's
29 certificate on forms to be prescribed and provided by the commissioner
30 without incurring the agent application fee.

31 § 6. Section 5006 of the education law, as added by chapter 887 of the
32 laws of 1990, is amended to read as follows:

33 § 5006. Teachout plans. 1. A school may submit a teachout plan to the
34 commissioner for approval pursuant to regulations established by the
35 commissioner. A teachout plan shall consist of a contract between a
36 [~~registered business or~~] licensed private career school, with another
37 school, hereinafter called the teachout school, so that in the event
38 that the [~~registered business or~~] licensed private career school ceases
39 instruction, the teachout school will provide the necessary instruction
40 specified in a student's original enrollment agreement with the school
41 ceasing instruction. A teachout plan may employ more than one teachout
42 school to provide instruction to students in the school ceasing instruc-
43 tion. Schools under common ownership but having separate licenses [~~or~~
44 ~~registrations~~] may, subject to the approval of the commissioner, enter
45 into teachout agreements. A teachout plan may be contracted between the
46 commissioner and one or more teachout schools in the event that the
47 closing school is unable or unwilling to do so.

48 2. A teachout plan shall include the following provisions: (a) the
49 teachout school must offer courses of study that are substantially simi-
50 lar to those offered in the school ceasing instruction;

51 (b) teachout schools must be located in the geographic area in which
52 the school ceasing instruction was located unless the school ceasing
53 instruction provided distance learning or on-line training;

54 (c) all provisions for a teachout plan must be included in the enroll-
55 ment agreement signed by the student; and

1 (d) the teachout school shall agree to fulfill the enrollment agree-
2 ment signed by the student at the school ceasing instruction.

3 3. The [~~registered business or~~] licensed school shall provide to the
4 teachout school and to the department [~~immediately upon closure~~] the
5 following information prior to closure:

6 (a) Copies of the academic and financial records for all students in
7 attendance at the school at the projected time of closure;

8 (b) A listing of all such students presently in attendance including
9 their names, addresses, social security numbers, curriculum that each
10 student is enrolled in and the number of hours the students will have
11 completed at the time of the school closure.

12 4. The department will provide to the teachout school, immediately
13 upon notification of a school closing, a copy of each approved curric-
14 ulum that the closing school is presently offering.

15 5. The commissioner shall require all teachout schools to address the
16 following issues:

17 (a) Integration of students into a curriculum which may be different
18 from the curriculum in which they are currently receiving instruction;

19 (b) Assessments of students' progress so that they may be placed into
20 an appropriate course;

21 (c) Provision of remedial instruction to students who are found to be
22 deficient in one or more course areas upon their initial assessment;

23 (d) Provision by the teachout school to adhere to the required
24 student/teacher ratios and room capacities; and

25 (e) Compliance with statutory and regulatory requirements during the
26 teachout.

27 6. The student shall not be subject to any costs beyond the total
28 costs identified in the original enrollment agreement.

29 7. A student may decline to pursue instruction at the teachout school
30 and may instead seek a refund pursuant to section five thousand seven of
31 this article.

32 § 7. Section 5007 of the education law, as added by chapter 887 of the
33 laws of 1990, the section heading, subdivision 1, and subdivision 10 as
34 amended by chapter 434 of the laws of 1999, paragraph a of subdivision
35 3, paragraphs c and d of subdivision 4, subparagraphs 1 and 3 of para-
36 graph a and paragraph b of subdivision 5, paragraph b of subdivision 9
37 as amended and paragraphs e and f of subdivision 4 as added by chapter
38 604 of the laws of 1993, is amended to read as follows:

39 § 5007. Tuition reimbursement account. 1. Except as otherwise provided
40 in subdivision six of this section, the portion of the annual assessment
41 of schools [~~registered and~~] licensed pursuant to section five thousand
42 one of this article as prescribed in subdivision eight of such section
43 and all fines, penalties and settlements received pursuant to this arti-
44 cle shall be transferred upon receipt into the tuition reimbursement
45 account.

46 3. a. The commissioner shall develop a complaint form and provide such
47 form to students. In order to claim a refund, a student shall apply to
48 the fund with a complaint form pursuant to the requirements of section
49 five thousand three of this article. Except as otherwise provided in
50 this article, the commissioner shall compute the refund, if any, using
51 the refund formula established by subdivision three of section five
52 thousand two of this article.

53 b. Claimants who had been enrolled in schools which have not closed or
54 ceased operation shall be required to show in a manner determined by the
55 commissioner that:

56 (1) the student is eligible for a refund;

1 (2) the student has made a request to the school for a refund; and
2 (3) the school has failed to make the refund within the time period
3 required by this article.

4 c. The commissioner shall act on each refund request within [~~thirty~~
5 forty-five] business days of such request.

6 4. Students may be eligible for refunds under this section as follows:

7 a. A student who is offered a teachout plan for the curriculum in
8 which the student was enrolled at the time the school closed or ceased
9 operation, which has been approved by the department, may elect to
10 continue instruction pursuant to the teachout plan or may decline to
11 continue instruction and may instead apply for a full refund of all
12 tuition, fees and book charges paid for by or on behalf of the student
13 in cash or in loans, excluding funding provided by any government agen-
14 cies under this section. The option to apply for a refund shall extend
15 to the end of the first week of instruction at the teachout school.

16 b. A student who was enrolled in a school which has not closed or
17 ceased operation is entitled to a refund computed in accordance with the
18 refund policy established by subdivision three of section five thousand
19 two of this article.

20 c. A student who was enrolled in a school at the time the school closes
21 or ceases operation is entitled to a refund of the full amount of
22 prepaid tuition. In addition, commencing September first, nineteen
23 hundred ninety-three, a student who drops out of a school, where such
24 school closes within [~~fourteen~~] thirty days of the student's termination
25 and prior to completion of such student's program as specified in the
26 enrollment agreement, shall be entitled to a full refund of [~~the full~~
27 ~~amount of prepaid tuition~~] all tuition, fees and book charges paid for
28 by or on behalf of the student in cash or in loans, excluding funding
29 provided by any government agencies.

30 d. A student who was enrolled in a school which has not closed or
31 ceased operation, and who has dropped out, is entitled to a full refund
32 of all tuition, fees and other required costs paid by the student if the
33 student has submitted a complaint form to the commissioner and the
34 commissioner has determined that a violation of this article has
35 occurred which warrants a refund. The commissioner shall promulgate
36 regulations identifying those violations that warrant a refund.

37 e. Commencing September first, nineteen hundred ninety-three, a
38 student who drops out of a school, which subsequently closes, and who is
39 owed a refund for the failure of such school to follow the provisions
40 enumerated in subdivision three of section five thousand two of this
41 article shall be eligible for a refund from the tuition reimbursement
42 fund according to the provisions of subdivision three of section five
43 thousand two of this article.

44 f. Commencing September first, nineteen hundred ninety-three, any
45 student enrolled in a school based upon an ability to benefit examina-
46 tion shall be eligible for a full refund, regardless of whether the
47 student is currently enrolled, graduated or dropped out, if the school
48 enrolled the student contrary to the provisions of the approved entrance
49 requirements and the student complies with the requirements of subdivi-
50 sion one of section five thousand three of this article.

51 5. a. For a student who had been enrolled in a school that has not
52 closed or ceased operation, the refund shall be paid as follows:

53 (1) guaranteed student loans, if any, in which case the commissioner
54 shall notify the student of such payment and shall be paid directly to
55 the lender or guarantee agency where appropriate;

56 (2) actual personal tuition expenditures, if any; and

1 (3) tuition assistance program awards and other governmental aid.
2 b. For schools that have closed or ceased operation, the commissioner
3 shall refund actual personal tuition, fees and book expenditures to the
4 student. The repayment of any loans incurred by the student as part of
5 the actual personal tuition, fees and book expenditures shall be paid
6 directly to the lender or the guarantee agency where appropriate.

7 6. a. Where a claim is paid to a student of an operating school, the
8 commissioner shall immediately notify the school.

9 b. Within ten days of the receipt of the notice, the school shall
10 either request a hearing to challenge the commissioner's determination
11 that a refund was owed to the student or reimburse the fund the amount
12 paid to the claimant plus a penalty up to two times such amount. This
13 payment shall also incur interest for each day it remains unpaid at an
14 annual interest rate of one percent above the prime rate. The commis-
15 sioner may promulgate streamlined procedures for conducting hearings
16 pursuant to this paragraph. Any penalty assessed under this paragraph
17 shall be in addition to any other penalties assessed pursuant to this
18 article. Notwithstanding any other provision of law, penalties and
19 interest paid pursuant to this paragraph shall accrue to the credit of
20 the proprietary vocational school supervision account to support the
21 costs associated with the hearings authorized in this subdivision.

22 7. Notwithstanding the notice procedures described in subdivision
23 three of this section, in the event of a school closing, the commis-
24 sioner on his or her own initiative may take appropriate action in accord-
25 ance with this section to process refund claims on behalf of all of the
26 students of the closed school.

27 8. Assignment of rights. Persons and entities receiving refunds under
28 this section shall be deemed to have assigned or subrogated their
29 tuition reimbursement rights to the commissioner on behalf of the
30 tuition reimbursement fund only for the amount refunded by the tuition
31 reimbursement fund. Within [~~thirty~~] ninety days of any refund made
32 pursuant to this section, the commissioner or the attorney general shall
33 take appropriate action to recover the total amount of the refunds made,
34 plus administrative costs, from the school.

35 9. a. A student whose loan liability is exempted pursuant to section
36 six hundred eighty-three of this chapter and is entitled to or owed a
37 refund shall transfer to the higher education services corporation the
38 right to claim the refund owed and due from the tuition reimbursement
39 fund. In such event, the corporation shall be entitled to receive a
40 refund for that portion of the claim not paid to the corporation by the
41 United States Secretary of Education pursuant to the federal guaranteed
42 loan program.

43 b. Any amounts remaining in the tuition reimbursement fund as of June
44 first, nineteen hundred ninety-three and on every March thirty-first
45 thereafter, shall be made available to the higher education services
46 corporation for payment of student loans on which collection activity
47 has ceased pursuant to the provisions of subdivision six of section six
48 hundred eighty-three of this chapter. No amounts shall be paid to the
49 higher education services corporation for loans on which collection
50 activity has ceased because of the operation of section 437 of the High-
51 er Education Act of 1965, as amended.

52 10. Management of the tuition reimbursement account. a. As used in
53 this subdivision, net balance is defined as the actual cash balance of
54 the account as determined by the commissioner on June thirtieth, nine-
55 teen hundred ninety-three and every three months thereafter. For the
56 purpose of calculating the net balance, the commissioner shall not take

1 into consideration any refunds made from the account pursuant to para-
2 graphs d and f of subdivision four of this section for the year imme-
3 diately preceding the date on which the calculation is made.

4 b. In the event that the account has accumulated a net balance in
5 excess of one million eight hundred thousand dollars, the commissioner
6 shall, with the approval of the director of the budget, waive an amount
7 not to exceed the amount due for the next quarterly assessment pursuant
8 to this section and subdivision nine of section five thousand one of
9 this article for schools which have paid sixteen quarters or more of
10 assessments only. In such event, payment of future quarterly assess-
11 ments shall be suspended for schools which have paid sixteen quarters or
12 more of assessments until the net balance of the account falls below one
13 million three hundred thousand dollars.

14 c. In the event the net balance of the account falls below one million
15 three hundred thousand dollars, if the quarterly assessment has been
16 suspended for schools which have paid sixteen quarters or more of
17 assessments pursuant to paragraph b of this subdivision, it shall be
18 reinstated for the next quarterly assessment and all subsequent quarter-
19 ly assessments until the account has accumulated a net balance in excess
20 of one million eight hundred thousand dollars.

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

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

34 g. ~~In the event that the balance of the tuition reimbursement account~~
35 ~~is equal to or in excess of one million five hundred thousand dollars,~~
36 ~~the amounts assessed the schools in accordance with the provisions of~~
37 ~~paragraphs d and e of this subdivision shall be deposited directly to~~
38 ~~the proprietary vocational school supervision account] In the event the~~
39 account has accumulated a net balance in excess of two million dollars,
40 any funds in the tuition reimbursement fund in excess of two million
41 dollars shall be transferred to the proprietary school supervision
42 account.

43 e. The commissioner may annually apportion from the account an amount
44 up to two hundred thousand dollars for the purpose of securing, scanning
45 and otherwise making student records from closed schools available to
46 students who attended such schools. Provided, however, that in no case
47 shall such apportionment cause the account to fall below the balance set
48 forth in paragraph c of this subdivision, nor shall such apportionment
49 cause schools whose quarterly assessments have been suspended to pay
50 additional quarterly assessments.

51 11. Fund audit. The state comptroller shall [~~annually~~] audit or cause
52 to be audited the tuition reimbursement fund once every two years and
53 produce an [~~annual~~] audited financial statement according to generally
54 accepted accounting principles.

55 12. New schools. Within the first [~~six months~~] year that a school
56 begins licensed operation, the commissioner shall assess such school an

1 amount to be deposited into the fund in an amount to be determined by
2 the commissioner.

3 § 8. Section 5008 of the education law, as added by chapter 887 of the
4 laws of 1990, is amended to read as follows:

5 § 5008. Trust accounts. 1. If the commissioner determines that a
6 school has demonstrated a pattern or practice of failing to make tuition
7 refunds in a timely manner consistent with this article and/or the
8 school's financial condition may result in the interruption or cessation
9 of instruction or jeopardize student tuition funds, the commissioner
10 shall require a school to establish a trust account in a form or manner
11 which the commissioner [~~, after consultation with the advisory council,~~]
12 shall [~~prescribe in regulations~~] determine to be appropriate. The assets
13 or funds contained in the trust account shall be maintained for the sole
14 and exclusive benefit of the students.

15 2. In making this determination, the commissioner shall consider the
16 following factors: the number of refunds not paid by the school in a
17 timely manner; the number of claims made to, or paid by, the tuition
18 reimbursement [~~fund~~] account; [~~and~~] a pattern of misconduct which
19 substantially affects the financial interests of students or the state,
20 potential liability to the tuition reimbursement account, current assets
21 as opposed to current liabilities, and such other measures as may be
22 appropriate.

23 § 9. Section 5009 of the education law, as amended by chapter 434 of
24 the laws of 1999, is amended to read as follows:

25 § 5009. Duties of the commissioner. In addition to all other duties
26 assigned in this article, the duties of the commissioner shall include,
27 but not be limited to:

28 [~~(a) submitting a report to the governor, the temporary president of~~
29 ~~the senate, the speaker of the assembly, the minority leader of the~~
30 ~~senate and the minority leader of the assembly beginning the fifteenth~~
31 ~~day of January after this section shall have become effective, and annu-~~
32 ~~ally thereafter on that date, on the implementation and enforcement of~~
33 ~~this article, which shall include but not be limited to (i) curriculum~~
34 ~~approval and reapproval standards, (ii) student complaints, (iii) the~~
35 ~~resolution of disciplinary actions brought by the department or other~~
36 ~~appropriate state agency, (iv) the audited financial statements submit-~~
37 ~~ted by the schools, (v) tuition reimbursement account activity, (vi)~~
38 ~~data regarding retention and completion rates for students enrolled in~~
39 ~~nondegree, appropriate degree or certificate programs of two years or~~
40 ~~less at registered business schools, licensed private schools, proprie-~~
41 ~~tary degree-granting schools and independent and public colleges, (vii)~~
42 ~~the extent to which the department has met the timelines mandated by~~
43 ~~this article, (viii) entrance standards, (ix) the number of schools~~
44 ~~inspected annually, and (x) the number of trust accounts imposed.~~

45 (b)] 1. ensuring that up-to-date, accurate information is available to
46 the public, via the internet and other appropriate media, regarding
47 every duly licensed proprietary school in this state, as well as disci-
48 plinary actions decided by the state.

49 [(c)] 2. developing and issuing to duly licensed [~~and registered~~]
50 proprietary schools a symbol to indicate such status; provided that such
51 symbol shall be developed and made available to such schools no later
52 than September thirtieth, nineteen hundred ninety-nine.

53 [(d)] 3. administering a public information campaign aimed at increas-
54 ing awareness about the importance of attending licensed [~~or registered~~]
55 proprietary vocational schools. Such campaign shall be targeted to popu-
56 lations at risk of enrolling in unlicensed [~~or unregistered~~] schools,

1 and shall be conducted using means including, but not limited to, public
 2 service announcements on commercial radio and television stations,
 3 public access television, and print media.

4 ~~[(e)]~~ 4. providing for the orderly maintenance of any student records
 5 which may be transferred to the department pursuant to any school's plan
 6 developed pursuant to subdivision eight of section five thousand one of
 7 this article; including responding to student requests for transcripts
 8 and records within twenty days of receiving a request. The commissioner
 9 is hereby authorized to impose an appropriate fee for such transcripts
 10 pursuant to a schedule approved by the director of the budget.

11 § 10. Section 5010 of the education law, as added by chapter 887 of
 12 the laws of 1990, subdivision 1 as amended and subdivision 4 as added by
 13 chapter 604 of the laws of 1993 and subdivision 5 as added by chapter
 14 434 of the laws of 1999, is amended to read as follows:

15 § 5010. Advisory council. 1. An advisory council for ~~[registered busi-~~
 16 ~~ness and]~~ licensed ~~[trade]~~ private career schools is hereby created for
 17 the purpose of advising the board of regents and the commissioner as
 18 provided herein. The council shall be composed of eleven members
 19 appointed by the governor, two of whom shall be upon the recommendation
 20 of the temporary president of the senate, two of whom shall be upon the
 21 recommendation of the speaker of the assembly, one of whom shall be upon
 22 the recommendation of the minority leader of the senate and one of whom
 23 shall be upon the recommendation of the minority leader of the assembly.
 24 Of the five remaining members, one shall be an owner or director of a
 25 school regulated pursuant to this article, ~~[one shall be a currently~~
 26 ~~enrolled student at the time of appointment or a graduate of such a~~
 27 ~~school who graduated within three years of appointment]~~ and one shall be
 28 a student advocate. The governor shall designate a chairperson from such
 29 members. The commissioner ~~[of education]~~, the president of the higher
 30 education services corporation, the chair of the consumer protection
 31 board, the comptroller, the director of the division of the budget, and
 32 the executive director of the job training partnership council, or their
 33 designees, shall serve as ex-officio, non-voting members of the council.

34 2. The council shall meet no less than four times a year. Members of
 35 the council shall receive no compensation for their services but shall
 36 be reimbursed for reasonable expenses actually and necessarily incurred
 37 by them in the performance of their duties. Council member terms of
 38 office shall be limited to three years, provided that members may be
 39 reappointed. All appointments to the council to fill vacancies in exist-
 40 ence on the effective date of the chapter of the laws of two thousand
 41 nine which amended this subdivision shall be made within ninety days of
 42 such effective date.

43 3. The council shall advise the commissioner on ~~[the following]~~ such
 44 matters[:

- 45 ~~(a) trust accounts;~~
- 46 ~~(b) performance standards;~~
- 47 ~~(c) the effectiveness and utilization of the tuition reimbursement~~
 48 ~~fund;~~
- 49 ~~(d) the efficacy of instituting a fee-for-service system;~~
- 50 ~~(e) the effectiveness of the timelines mandated by this article;~~
- 51 ~~(f) the impact of assessments on schools;~~
- 52 ~~(g) recruitment bonuses; and~~
- 53 ~~(h) such other matters]~~ as the council determines are appropriate.

54 ~~[4. The proprietary school advisory council shall conduct a study~~
 55 ~~concerning the methodologies used to determine student refunds. Such~~
 56 ~~study shall include, but not be limited to, refund policies promulgated~~

1 ~~pursuant to federal statute or regulation, state statute or regulation~~
2 ~~and the policies of national accrediting organizations as they relate to~~
3 ~~term-based and clock hour-based programs. Not later than July first,~~
4 ~~nineteen hundred ninety-four, the advisory council shall make recommen-~~
5 ~~dations to the commissioner and the board of regents for any changes in~~
6 ~~legislation, regulations, policy or practice needed to improve and~~
7 ~~simplify the student refund process. The commissioner shall submit a~~
8 ~~report of the findings of the advisory council together with the recom-~~
9 ~~mendations of the department to the legislature and the governor not~~
10 ~~later than the first day of October, nineteen hundred ninety-four.~~

11 ~~5. The advisory council shall report to the governor, the temporary~~
12 ~~president of the senate, the speaker of the assembly, and the commis-~~
13 ~~sioner on the status of unlicensed proprietary schools in this state.~~
14 ~~The report shall also contain a statement on the effectiveness of the~~
15 ~~change in the tuition reimbursement fund and any recommendations for an~~
16 ~~extension of the changes or the consideration of different changes when~~
17 ~~such changes are repealed. Such report is to be delivered on April~~
18 ~~first, two thousand two.]~~

19 § 11. This act shall take effect on the one hundred twentieth day
20 after it shall have become a law; provided that subparagraph (iii) of
21 paragraph b of subdivision 4 of section 5001 of the education law, as
22 added by section two of this act, shall expire and be deemed repealed
23 three years after the effective date of section two of this act; and
24 provided, further, that effective immediately, the commissioner of
25 education is authorized and directed to promulgate any regulations need-
26 ed to implement the provisions of this act on such effective date.

NEW YORK STATE ASSEMBLY
MEMORANDUM IN SUPPORT OF LEGISLATION
submitted in accordance with Assembly Rule III, Sec 1(f)

BILL NUMBER: A8773

SPONSOR: Glick| | | | | | | | | | | | | | | | | | | | | |

TITLE OF BILL: An act to amend the education law, in relation to the licensure of private proprietary schools; and providing for the repeal of certain provisions of the education law upon expiration thereof

Purpose of the Bill: The purpose of this bill is to ensure that non-degree granting proprietary institutions in New York State comply with current best practices for this sector and to require that these institutions pay a fee to fund New York State Education Department (NYSED) oversight of this compliance and the tuition reimbursement account. Additionally, this bill would allow a new category of candidate schools: those that are in the application process but have not perfected their license.

Summary of the Provisions of the Bill: This bill would amend Article 101 of the Education Law (sections 5001 through 5010) to eliminate the distinction between licensed private schools and registered business schools, replace the phrase "licensed private schools" with the more descriptive "licensed private career schools", adjust fees, which have not changed since 1990, and establish a candidate school category that would allow a school to operate legally while it is in the process of obtaining a nondegree-granting, proprietary school license.

Section 5001 would be amended to provide for the consolidation of registered business schools and licensed private schools into one designation, eliminating the artificial distinction between these types of schools and reflecting the current heterogeneous nature of training programs offered at these schools. The language on exempt schools in paragraph f of subdivision 2 would be made more consistent with other sections of law and with the intent of the law, by clarifying that schools that provide instruction in subjects such as dancing, music, painting, drawing, languages, reading comprehension and mathematics would not be exempt if they offer vocational training to teachers in such vocational subjects. For greater clarity, the language of existing §5001(2)(0) exempting conferences, trade shows, workshops and other such courses of study from such licensing requirements would be divided into two separate paragraphs l and m without substantive change. Subdivision 2-b on the exemption for programs for private businesses with no tuition liability would be amended to clarify that it would apply to employees of a person or organization that has contracted with another person or organization to provide instruction at no cost. Candidate school status would be established by adding a new §5001(4)(b)(iii) to allow a practical means for prospective schools to operate legally prior to meeting all the requirements of full licensure. Section 5001(4)(e) on annual audited financial statements would be amended to require such statements on a phased-in schedule for all schools, bringing the non-degree sector into parity with schools in the degree-granting and public school sectors. Section 5001(4)(g) on private career school license applications would be amended to increase application fees to reflect NYSED's current cost of supervising schools and to meet prospective increased costs for reimbursing tuition for a significant number' of students when these students' schools close due to fiscal failure or non-compliance. For initial applications, the fee would be increased to \$5,000 and for additional licensed locations, the fee would be increased to \$2,500. For renewal applications, the fee, which is based on a school's gross annual

tuition income, would be increased by 50 percent, i.e.; a fee of \$500 would be increased to \$750, \$1,500 increased to \$2,250, and \$12,000 increased to \$18,000. Procedures in §5001(6) for working with schools that are not financially viable would be formalized to protect the tuition reimbursement account. School transfer requirements in §5001(7) would be adjusted to be more consistent with how other states handle school transfers. The method of assessing schools in §5001(9) would be changed from more complicated regular and special assessment formulas to one based on the number of quarterly assessments paid, whereby newer schools with the potential to fail would pay a higher assessment than schools with a history of satisfactory licensed operation.

Section 5002 would be amended by adding a new paragraph b-1 to subdivision 1 to restrict the amount of private loan payments that a school could receive on behalf of a student prior to their completing a program, thereby limiting students' loan liability as well as the tuition reimbursement account's liability for payment of loan funds. This would formally recognize that the tuition reimbursement account is to be used for student protection and not as a substitute for guaranteed student loans. Section 5002(1)(d)(1) on admission of students under the ability to benefit provision would be amended to authorize the Commissioner to accept other entrance requirement documentation, such as prerequisite coursework, professional or vendor certifications, personal interviews and/or attestations of equivalent knowledge in lieu of the examination requirement. Section 5002(3)(h) would be amended to require schools to submit for approval a school catalog that contains a weekly tuition liability chart for each program that indicates the amount of refund due a student upon withdrawal. Section 5002(4)(c)(1) and (2) would be amended to emphasize that in addition to paying the curriculum application fee, provided in section 5002(4)(a), schools would be required to pay the cost of an outside evaluation of a particular course or facility of the school. Section 5002(5) would also be amended to establish a curriculum/course application fee to fund the NYSED's curriculum unit. Fees from school and personnel license applications do not cover the cost of curriculum review, as some schools have only a handful of courses or curricula that require approval while others have between 400 and 700. Schools requiring the most evaluation would pay more, those with few programs would pay less. Section 5001(6) would be amended so that all teacher licenses would no longer be restricted to a single school location, as private career school teacher licenses currently are. This would result in a more mobile and efficient teacher pool for schools to draw from for faculty members, reduced expense for processing teacher applications and a reduced workload for the State Education Department's Bureau of Proprietary School Supervision ("the Bureau").

Section 5003 would be amended to establish more practical timeframes for disciplinary proceedings. Section 5003(1)(c) would be amended so that the Commissioner would commence investigations within 30 days, rather than 20 days, and would be required to issue a written finding within 120 days, rather than 90 days. A new subparagraph (4) would be added to §5003(1)(c) to establish procedures for handling written complaints by students attending candidacy schools alleging failure of the school to disclose its candidacy status and the implications and to obtain the required attestation from the student. If such a violation is found, the school would be required to provide the student a full refund of all monies received from the student. Section 5003(6) would be amended, to increase the fines established in 1990 so they reflect NYSED's current cost of school oversight. Section 5003(6)(b) would be amended to expand

the list of violations that may result in the imposition of a civil penalty, including failure to offer an approved course or program.

Subdivision 3 of section 5004 would be amended to increase the amount of gifts and other non-monetary consideration a school may provide to

students or former students from \$25 to \$75. Subdivision 4 of section 5004 would be amended to increase private school agent fees from \$100 to \$200, while extending the term of a private school agent's certificate from 2 years to 3 years.

Section 5005 would not be amended.

Section 5006 on teachout plans would be amended to allow NYSED to intervene more effectively when a private career education school ceases instruction. Currently, schools that are closing are required to develop teachout plans that arrange to have students continue to receive instruction from other private career schools upon closure of the school. NYSED's experience is that schools that must close have little incentive to establish teachouts, so authorizing NYSED to arrange for a teachout plan would provide greater protection for students.

Section 5007 on refunds to students enrolled in schools that are closing would be amended to expand expenses eligible for reimbursement. Section 5007(4)(a) and (c) on refunds to students would be amended to provide for refunds of tuition, fees and book charges paid by or on behalf of the students in cash or through loans, excluding funding obtained through government agencies. Section 5007(5)(b) would be amended to authorize the Commissioner to refund expenditures for fees, books and tuition to students of schools that have closed. Section 5007(8) would be amended to provide more realistic timeframes for providing restitution to students from the tuition reimbursement account by extending the time within which the Commissioner or the Attorney General may seek recovery of a refund from a school from 30-days to 90 days from payment of the refund by the tuition reimbursement account. The provisions for special assessments for new schools in section 5007(10) would be amended to be consistent with the assessment changes in section 5001, and to reflect NYSED's experience with assessing schools that have not been in operation for an entire year. The requirement in section 5007(11) for an annual fund audit of the tuition reimbursement account would be changed to mandate a two-year audit.

Section 5008 would be amended to provide details regarding trust accounts for schools determined to be in financial jeopardy.

Section 5009 would be amended to remove the annual reporting requirement.

Section 5010 would be amended to remove the requirement to have a student representative on the advisory council. NYSED has been unable to find a student willing to serve in this capacity. Term limits for members would be mandated, although members could be reappointed. This would ensure that members of the advisory council continue to be affiliated with schools in the non-degree proprietary sector. Provisions that are no longer relevant to the council, including limiting the scope of its advisory responsibilities, would be deleted:

Statement in Support of the Bill: The law pertaining to non-degree proprietary schools was last amended substantially in 1990. Since then, the number of these schools has increased and their nature has changed. Only one-tenth of licensed schools currently receive federal Title IV funds for students in strictly business or trade programs. Schools today offer hybrid programs such as medical office assisting, where coding and recordkeeping are combined with clinical service such as phlebotomy. Most schools have ceased to rely on Title IV, state TAP or other similar funding sources and have turned to private sources such as Sallie Mae, banks, etc.

The Bureau of Proprietary School Supervision of the State Education Department needs the increased revenue that this bill would provide so it can adequately continue to supervise proprietary schools. With

slightly over 450 currently licensed, registered, or certified schools, approximately 200 pending schools, and 1,000 or more schools currently operating unlicensed (some may be operating under a legal exemption), NYSED needs to maintain its ability to regulate the industry and provide an even playing field for all non-degree schools subject to regulation. This additional funding would provide more stability for the tuition reimbursement account, which is used to repay students at schools that refuse to issue refunds or those that close prior to meeting their contractual commitments for training. The account nearly faced bankruptcy during summer 2003 when a chain of schools on Long Island closed. The additional funding for the tuition reimbursement account and the amendments pertaining to financial probation, financial viability, and trust accounts are intended to prevent a recurrence of that situation.

Current law limits private career school teachers to teaching a particular subject only at a single school location. Removing that limitation would allow these teachers to teach that subject at any licensed school in the state. The schools would benefit by being able to transfer teachers from one location of a school chain to another without the teachers needing to be dually licensed and they would have a larger 'supply of substitute teachers. Given that teachers would have the freedom to move from school to school, salary schedules could become more competitive within this sector. The students would have the same access to teachers previously licensed at only one school. Teachers with a record of successful student course completion and high placement rates could become more in demand from other schools.

Budgetary Implications of the Bill: This bill would generate approximately \$2.8 million in revenue during the first year of its implementation based on current school figures and estimates, representing an approximate \$800,000 increase over the 2007-08 year, the last completed fiscal year for which figures are available.

Prior Legislative History: In 2008 this bill was introduced in the Senate as 5.7592, referred to the Senate Education Committee, discharged and committed to the Senate Higher Education Committee, and then reported and committed to the Senate Finance Committee. No further action was taken.

Effective Date: This bill would take effect on the one hundred twentieth day after it shall have become a law; provided that subparagraph (iii) of paragraph b of subdivision 4 of section 5001 of the Education Law, which relates to candidacy status, would expire and be deemed repealed three years after such effective date; and provided further, however, that effective immediately, the Commissioner of education would be authorized and directed to promulgate' any rules or regulations deemed necessary to implement the provisions of this act on such effective date.

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