

AMENDED IN SENATE JULY 19, 2001

AMENDED IN ASSEMBLY MAY 14, 2001

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 201

Introduced by Assembly Member Wright

February 9, 2001

An act to amend Sections 94806, ~~94840, 94877, 94944~~ 94808, 94840, 94877, 94944, 94945, 94960, and 94985 of the Education Code, relating to private postsecondary education, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 201, as amended, Wright. Private postsecondary education: Bureau for Private Postsecondary and Vocational Education.

(1) The existing Private Postsecondary and Vocational Education Reform Act of 1989 generally sets minimum standards of instructional quality, ethical and business practices, health and safety, and fiscal responsibility for private postsecondary and vocational educational institutions, as defined. The act establishes the Bureau for Private Postsecondary and Vocational Education, which, among other things, is required to review and investigate all institutions, programs, and courses of instruction approved under the act.

The existing act sets forth standards applicable to every audit, review, statement, or financial report that the act requires to be prepared or filed.

This bill would require that any audit or financial report required to be prepared under the act contain a statement signed by the individual who has prepared the report ~~certifying~~ *stating* that the institution has

paid or has not paid to the bureau all amounts owed to the Student Tuition Recovery Fund under a prescribed provision of the act. The bill would provide that, if the institution is a corporation that is publicly traded on a national stock exchange, the submission of the corporation's annual report shall be deemed to comply with this requirement. The bill would also require an institution that has not paid all amounts owed to the bureau under this provision to report to the bureau within 30 days on its plan to become current in these payments.

(2) *The act requires each institution approved to operate under its provisions to annually report prescribed data to the bureau.*

This bill would add to the data required to be included in that annual report a statement indicating that the institution is current on its payments to the Student Tuition Recovery Fund.

(3) Under a portion of the act that is known as the Maxine Waters School Reform and Student Protection Act of 1989, an institution that violates those provisions in connection with an agreement for a course of instruction is required to refund all consideration paid by or on behalf of the student. Other prescribed provisions of the Private Postsecondary and Vocational Education Reform Act of 1989 also authorize the bringing of civil actions against institutions that are alleged to violate these provisions.

This bill would require a student who brings an action or asserts any claim in an existing action for recovery on behalf of a class of persons, or on behalf of the general public, under prescribed provisions of law, to notify the bureau of the existence of the lawsuit, the court in which the action is pending, the case number of the action, and the date of the filing of the action or of the assertion of the claim, within 30 days of the filing of the action or of the first assertion of the claim, whichever is later. The bill would also require the student to notify the court that he or she has notified the bureau pursuant to this provision, and would prohibit judgment from being entered pursuant to this provision until the student has thus complied.

~~(3)~~

(4) Existing provisions of the act establish the Student Tuition Recovery Fund, and continuously appropriate the money in the fund to the bureau for the purposes of the act.

This bill would require the bureau to send to each student who applies for payment from the fund a written notice specifying the rights of a student under these provisions. *The bill would require that, once the bureau has determined that a student claim is eligible for payment and*



intends to use the fund, in whole or in part, to satisfy the eligible claim, the bureau document its negotiations with the relevant lender, holder or guarantee agency, the United States Department of Education, or the applicable state agency, as prescribed.

The bill would make an appropriation by authorizing a new purpose for expenditures from the fund.

~~(4)~~

(5) Existing law requires the bureau to assess, as prescribed, each institution that collects any moneys in advance of rendering services.

This bill would exempt from this assessment an institution that receives all of its students' total charges, as defined, from third-party payors, as defined.

(6) Existing law requires the bureau to investigate complaints from any person claiming damage as a result of any act or practice by a postsecondary or vocational educational institution or its agent, or both, that is a violation of the act.

This bill would specify procedures and timelines for the processing of these complaints and responses received pursuant thereto. The bill would authorize a person who claims that an institution is operating in violation of specified provisions of the act to bring an action, in small claims court or a court of competent jurisdiction, for the recovery of actual or statutory damages, or both, in accordance with specified procedures. The bill would authorize courts to order fines and other prescribed remedies against institutions found to violate these provisions of the act.

(7) The bill would require the bureau to submit an annual report on the collection and expenditure of moneys collected as special assessments under the bill, as prescribed.

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

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

1 SECTION 1. Section 94806 of the Education Code is
2 amended to read:

3 94806. (a) This section applies to every audit, review, and
4 statement prepared by an independent accountant and to every
5 financial report required to be prepared or filed by this chapter.



1 (b) Institutional audits and reviews of financial data, including
2 the preparation of financial statements, shall comply with all of the
3 following:

4 (1) An institution that collected seven hundred fifty thousand
5 dollars (\$750,000) or more in total student charges in its preceding
6 fiscal year shall file financial reports prepared in accordance with
7 generally accepted accounting principles established by the
8 American Institute of Certified Public Accountants, and audited or
9 reviewed by an independent certified public accountant who is not
10 an employee, officer, or corporate director or member of the
11 governing board of the institution.

12 (2) An institution that collected less than seven hundred fifty
13 thousand dollars (\$750,000) in total student charges in its
14 preceding fiscal year shall file financial reports prepared in
15 accordance with generally accepted accounting principles
16 established by the American Institute of Certified Public
17 Accountants. These financial reports may be prepared by an
18 individual with sufficient training to adhere to the required
19 accounting principles.

20 (3) Financial reports prepared on an annual basis shall include
21 a balance sheet, statement of operations, statement of cash-flow,
22 and statement of retained earnings or capital. Nonprofit
23 institutions shall provide this information in the manner required
24 under generally accepted accounting principles for nonprofit
25 organizations.

26 (4) The financial report shall establish whether the institution
27 complies with subdivision (a) of Section 94804 or subdivision (a)
28 of Section 94855, if applicable, and whether any of the
29 circumstances described in subdivision (b) of Section 94804 or
30 subdivision (b) of Section 94855, if applicable, exist.

31 (5) If an audit that is performed to determine compliance with
32 any federal or state student financial aid program reveals any
33 failure to comply with the requirements of the program, and the
34 noncompliance creates any liability or potential liability for the
35 institution, the financial report shall reflect the liability or potential
36 liability.

37 (6) Work papers for the financial statements shall be retained
38 for five years from the date of the reports, and shall be made
39 available to the bureau upon request after completion of the report.



1 (c) Any audits shall be conducted in accordance with generally
2 accepted auditing standards, and shall include the matters
3 described in subdivision (d).

4 (d) If an audit is conducted, the accountant shall obtain an
5 understanding of the institution's internal financial control
6 structure, assess any risks, and report any material deficiencies in
7 the internal controls.

8 (e) Any audit or financial report shall contain a statement
9 signed by the individual who has prepared the report ~~certifying~~
10 *stating* that the institution has paid or has not paid to the bureau
11 all amounts owed under Section 94945. If the institution is a
12 corporation that is publicly traded on a national stock exchange,
13 the submission of the corporation's annual report shall be deemed
14 to comply with this section. The bureau shall be deemed an
15 intended beneficiary of that statement in any audit or financial
16 report. An institution that has not paid all amounts owed to the
17 bureau under Section 94945 shall report to the bureau within 30
18 days on its plan to become current in these payments.

19 SEC. 2. *Section 94808 of the Education Code is amended to*
20 *read:*

21 94808. (a) Each institution approved to operate under this
22 chapter shall be required to report to the ~~council~~ *bureau*, by July
23 1 of each year, or another date designated by the ~~council~~ *bureau*,
24 the following information for educational programs offered in the
25 prior fiscal year:

26 (1) The total number of students enrolled, by level of degree or
27 type of diploma program.

28 (2) The number of degrees and diplomas awarded, by level of
29 degree.

30 (3) The degree levels offered.

31 (4) Program completion rates.

32 (5) The schedule of tuition and fees required for each term,
33 program, course of instruction, or degree offered.

34 (6) Financial information demonstrating compliance with
35 subdivisions (b) and (c) of Section 94804 and subdivisions (b) and
36 (c) of Section 94855, if applicable.

37 (7) Institutions having a probationary or conditional status
38 shall submit an annual report reviewing their progress in meeting
39 the standards required for approval status.

1 (8) *A statement indicating that the institution is current on its*
2 *payments to the Student Tuition Recovery Fund.*

3 (9) Any additional information that the council may prescribe.

4 (b) Colleges and universities operating under paragraph (6) of
5 subdivision (b) of Section 94739 shall comply with the reporting
6 requirements of paragraphs (1), (2), (3), and (5) of subdivision (a).

7 (c) Program completion rates and placement data shall be
8 reported in accordance with the standards and criteria prescribed
9 by the ~~council~~ *bureau* pursuant to paragraphs (1) to (4), inclusive,
10 of subdivision (a) of Section 94816 and Section 94859, if
11 applicable. Based on the review of information submitted to fulfill
12 the requirements of this section, the ~~council~~ *bureau* may initiate
13 a compliance review and may place the institution on probation
14 pursuant to subdivision (h) of Section 94901 and subdivision (i)
15 of Section 94915, and may require evidence of financial stability
16 and responsibility pursuant to Sections 94804 and 94855, if
17 applicable.

18 *SEC. 3.* Section 94840 of the Education Code is amended to
19 read:

20 94840. At least 90 days prior to the expiration of an approval
21 to operate, the institution shall complete and file with the ~~council~~
22 *bureau* an application form for renewal of its approval to operate.
23 The renewal application need only contain a description of any
24 changes made by the institution since the time its last application
25 was reviewed by the council. Fees for processing the renewal
26 application shall be based on the number and types of changes it
27 contains. The renewal application may be reviewed and acted
28 upon as provided in Sections 94802, 94804, and 94835, and
29 Section 94900 or 94915, whichever is applicable.

30 ~~SEC. 3.~~

31 *SEC. 4.* Section 94877 of the Education Code is amended to
32 read:

33 94877. (a) If an institution violates this article or Section
34 94832 or commits an act as set forth in Section 94830 in
35 connection with an agreement for a course of instruction, that
36 agreement shall be unenforceable, and the institution shall refund
37 all consideration paid by or on behalf of the student.

38 (b) Notwithstanding any provision in an agreement, a student
39 may bring an action for a violation of this article or Section 94832
40 or an institution's failure to perform its legal obligations and, upon



1 prevailing, shall be entitled to the recovery of damages, equitable
2 relief, any other relief authorized by this article, and reasonable
3 attorney's fees and costs.

4 (c) If a court finds that a violation was willfully committed or
5 that the institution failed to refund all consideration as required by
6 subdivision (a) on the student's written demand, the court, in
7 addition to the relief awarded under subdivision (b), shall award
8 a civil penalty of up to two times the amount of the damages
9 sustained by the student.

10 (d) The remedies provided in this article supplement, but do not
11 supplant, the remedies provided under other provisions of law.

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

15 (f) Any provision in any agreement that purports to require a
16 student to invoke any grievance dispute procedure established by
17 the institution or any other procedure before bringing an action to
18 enforce any right or remedy is void and unenforceable.

19 (g) A student may assign his or her causes of action for a
20 violation of this article to the bureau, or to any state or federal
21 agency that guaranteed or reinsured a loan for the student or
22 provided any grant or other financial aid.

23 (h) This section applies to any action pending under former
24 Chapter 7 (commencing with Section 94700) on January 1, 1990.

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



1 ~~SEC. 4.~~

2 SEC. 5. Section 94944 of the Education Code is amended to
3 read:

4 94944. (a) The Student Tuition Recovery Fund is continued
5 in existence. All assessments collected pursuant Section 94945
6 shall be credited to this fund, along with any interest on the money,
7 for the administration of this article. Notwithstanding Section
8 13340 of the Government Code, the money in the fund is
9 continuously appropriated to the bureau without regard to fiscal
10 years for the purposes of this chapter. The fund shall consist of a
11 degree-granting postsecondary educational institution account, a
12 vocational educational institution account, and an account for
13 institutions approved under any provision of this chapter that
14 charge each enrolled student a total charge, as defined in
15 subdivision (k) of Section 94852, of less than one thousand dollars
16 (\$1,000), for the purpose of relieving or mitigating pecuniary
17 losses suffered by any California resident who is a student of an
18 approved institution and who meets either of the following
19 conditions:

20 (1) The student was enrolled in an institution, prepaid tuition,
21 and suffered loss as a result of, (A) the closure of the institution,
22 (B) the institution’s failure to pay refunds or charges on behalf of
23 a student to a third party for license fees or any other purposes, or
24 to provide equipment or materials for which a charge was collected
25 within 180 days before the institution’s closure, (C) the
26 institution’s failure to pay or reimburse loan proceeds under a
27 federally guaranteed student loan program as required by law or
28 to pay or reimburse proceeds received by the institution prior to
29 closure in excess of tuition and other costs, (D) the institution’s
30 breach or anticipatory breach of the agreement for the course of
31 instruction, or (E) a decline in the quality or value of the course of
32 instruction within the 30-day period before the institution’s
33 closure or, if the decline began before that period, the period of
34 decline determined by the bureau. For the purpose of this section,
35 “closure” includes closure of a branch or satellite campus, the
36 termination of either the correspondence or residence portion of a
37 home study or correspondence course, and the termination of a
38 course of instruction for some or all of the students enrolled in the
39 course before the time these students were originally scheduled to
40 complete it, or before a student who has been continuously



1 enrolled in a course of instruction has been permitted to complete
2 all the educational services and classes that comprise the course.

3 (2) The student obtained a judgment against the institution for
4 any violation of this chapter, and the student certifies that the
5 judgment cannot be collected after diligent collection efforts. A
6 *judgment obtained under this paragraph shall be paid in*
7 *accordance with subdivision (f).*

8 (b) Payments from the fund to any student shall be made from
9 the appropriate account within the fund, as determined by the type
10 of institution into which the student has paid his or her fees, and
11 shall be subject to any regulations and conditions prescribed by the
12 bureau.

13 (c) (1) (A) The institution shall provide to the bureau, at the
14 time of the institution's closure, the names and addresses of
15 persons who were students of an institution within 60 days prior
16 to its closure, and shall notify these students, within 30 days of the
17 institution's closure, of their rights under the fund and how to
18 apply for payment. If the institution fails to comply with this
19 subdivision, the bureau shall attempt to obtain the names and
20 addresses of these students and shall notify them, within 90 days
21 of the institution's closure, of their rights under the fund and how
22 to apply for payment.

23 (B) The bureau shall develop a form in English and Spanish
24 fully explaining a student's rights, which shall be used by the
25 institution or the bureau to comply with this paragraph. The form
26 shall include, or be accompanied by, a claim application and an
27 explanation of how to complete the application.

28 (2) (A) If an institution fails to comply with paragraph (1), the
29 bureau shall order the institution, or any person responsible for the
30 failure to provide notice as required by paragraph (1), to reimburse
31 the bureau for all reasonable costs and expenses incurred in
32 notifying students as required in paragraph (1). In addition, the
33 bureau may impose a penalty of up to five thousand dollars
34 (\$5,000) against the institution and any person found responsible
35 for the failure to provide notice. The amount of the penalty shall
36 be based on the degree of culpability and the ability to pay. Any
37 order may impose joint and several liability. Before any order is
38 made pursuant to this paragraph, the bureau shall provide written
39 notice to the institution and any person from whom the ~~council~~



1 *bureau* seeks recovery of the bureau's claim and of the right to
2 request a hearing within 30 days of the service of the notice.

3 (B) If a hearing is not requested within 30 days of service of the
4 notice, the bureau may order payment in the amount of the claim.
5 If a hearing is requested, Chapter 5 (commencing with Section
6 11500) of Part 1 of Division 3 of Title 2 of the Government Code
7 shall apply, and the bureau shall have all of the powers therein
8 prescribed. Within 30 days after the effective date of the issuance
9 of an order, the bureau may enforce the order in the same manner
10 as if it were a money judgment pursuant to Title 9 (commencing
11 with Section 680.010) of Part 2 of the Code of Civil Procedure. All
12 penalties and reimbursements paid pursuant to this section shall be
13 deposited in the Private Postsecondary and Vocational Education
14 Administration Fund established pursuant to Section 94932 or any
15 successor fund.

16 (d) (1) Students entitled to payment as provided in paragraph
17 (1) of subdivision (a) shall file with the bureau a verified
18 application indicating each of the following:

19 (A) The student's name, address, telephone number, and social
20 security number.

21 (B) If any portion of the tuition was paid from the proceeds of
22 a loan, the name of the lender, and any state or federal agency that
23 guaranteed or reinsured the loan.

24 (C) The amount of the ~~prepaid~~ *paid* tuition, the amount and
25 description of the student's loss, and the amount of the student's
26 claim.

27 (D) The date the student started and ceased attending the
28 institution.

29 (E) A description of the reasons the student ceased attending
30 the institution.

31 (F) If the student ceased attending because of a breach or
32 anticipatory breach or because of the decline in the quality or value
33 of the course of instruction as described in subparagraph (E) of
34 paragraph (1) of subdivision (a), a statement describing in detail
35 the nature of the loss incurred. The application shall be filed within
36 one year of the bureau's service on the student of the notice
37 described in paragraph (1) of subdivision (c) or, if no notice is
38 served, within four years of the institution's closure.

39 (2) (A) Students entitled to payment as provided in paragraph
40 (2) of subdivision (a) shall file with the bureau a verified



1 application indicating the student's name, address, telephone
2 number, and social security number, the amount of the judgment
3 obtained against the institution, a statement that the judgment
4 cannot be collected, and a description of the efforts attempted to
5 enforce the judgment. The application shall be accompanied by a
6 copy of the judgment and any other documents indicating the
7 student's efforts made to enforce the judgment.

8 (B) The application shall be filed within two years after the date
9 upon which the judgment became final.

10 (3) The bureau may require additional information designed to
11 facilitate payment to entitled students. The bureau shall waive the
12 requirement that a student provide all of the information required
13 by this subdivision if the bureau has the information or the
14 information is not reasonably necessary for the resolution of a
15 student's claim.

16 (e) Within 60 days of the bureau's receipt of a completed
17 application for payment, the bureau shall pay the claim from the
18 Student Tuition Recovery Fund or deny the claim. The bureau, for
19 good cause, may extend the time period for up to an additional 90
20 days to investigate the accuracy of the claim.

21 (f) (1) If the bureau pays the claim, the amount of the payment
22 shall be (A) the greater of either (i) the total guaranteed student
23 loan debt incurred by the student in connection with attending the
24 institution, or (ii) the total of the student's tuition and the cost of
25 equipment and materials related to the course of instruction, less
26 (B) the amount of any refund, reimbursement, indemnification,
27 restitution, compensatory damages, settlement, debt forgiveness,
28 discharge, cancellation, or compromise, or any other benefit
29 received by, or on behalf of, the student before the bureau's
30 payment of the claim in connection with the student loan debt or
31 cost of tuition, equipment, and materials. The payment also shall
32 include the amount the institution collected and failed to pay to
33 third parties on behalf of the student for license fees or any other
34 purpose. However, if the claim is based solely on the
35 circumstances described in subparagraph (B) or (C) of paragraph
36 (1) of subdivision (a), the amount of the payment shall be the
37 amount of the loss suffered by the student. In addition to the
38 amount determined under this paragraph, the amount of the
39 payment shall include all interest and collection costs on all student



1 loan debt incurred by the student in connection with attending the
2 institution.

3 (2) The bureau may reduce the total amount specified in
4 paragraph (1) by the value of the benefit, if any, of the education
5 obtained by the student before the closure of the institution. If the
6 bureau makes any reduction pursuant to this paragraph, the bureau
7 shall notify the claimant in writing at the time the claim is paid of
8 the basis of its decision and provide a brief explanation of the
9 reasons upon which the bureau relied in computing the amount of
10 the reduction.

11 (3) No reduction shall be made to the amount specified in
12 paragraph (1) if (A) the student did not receive adequate
13 instruction to obtain the training, skills, or experience, or
14 employment to which the instruction was represented to lead, or
15 (B) credit for the instruction obtained by the student is not
16 generally transferable to other institutions approved by the bureau.

17 (4) The amount of the payment determined under this
18 subdivision is not dependent on the amount of the refund to which
19 the student would have been entitled after a voluntary withdrawal.

20 (5) Upon payment of the claim, all of the student's rights
21 against the institution shall be deemed assigned to the bureau to the
22 extent of the amount of the payment.

23 (g) (1) ~~The director of the bureau may~~ *bureau shall* negotiate
24 with a lender, holder, guarantee agency, or the United States
25 Department of Education for the full compromise or writeoff of
26 student loan obligations to relieve students of loss and thereby
27 reduce the amount of student claims.

28 (2) The director of the bureau, with the student's permission,
29 may pay a student's claim directly to the lender, holder, guarantee
30 agency, or the United States Department of Education under a
31 federally guaranteed student loan program only if the payment of
32 the claim fully satisfies all of the student's loan obligations related
33 to attendance at the institution for which the claim was filed.

34 (3) Notwithstanding subdivision (e), the bureau may delay the
35 payment of a claim pending the resolution of the bureau's attempt
36 to obtain a compromise or writeoff of the claimant's student loan
37 obligation. However, the bureau shall immediately pay the claim
38 if any adverse action that is not stayed is taken against the claimant,
39 including the commencement of a civil or administrative action,



1 tax offset, the enforcement of a judgment, or the denial of any
2 government benefit.

3 (4) The bureau shall make every reasonable effort to obtain a
4 loan discharge for an eligible student in lieu of reimbursing that
5 student in whole or in part from the fund pursuant to federal
6 student loan laws and regulations.

7 (5) Whenever the bureau receives from a student a completed
8 application for payment from the Student Tuition Recovery Fund,
9 the bureau shall, as soon as is practicable, cause to be delivered to
10 that student a written notice specifying, in plain English, the rights
11 of a student under this section.

12 (h) (1) If the bureau denies the claim, or reduces the amount
13 of the claim pursuant to paragraph (2) of subdivision (f), the
14 bureau shall notify the student of the denial or reduction and of the
15 student's right to request a hearing within 60 days or any longer
16 period permitted by the bureau. If a hearing is not requested within
17 60 days or any additional period reasonably requested by the
18 student, the bureau's decision shall be final. If a hearing is
19 requested, Chapter 5 (commencing with Section 11500) of Part 1
20 of Division 3 of Title 2 of the Government Code shall apply.

21 (2) It is the intent of the Legislature that, when a student is
22 enrolled in an institution that closes prior to the completion of the
23 student's program, the student shall have the option for a teach-out
24 at another institution approved by the bureau. The bureau shall
25 seek to promote teach-out opportunities wherever possible and
26 shall inform the student of his or her rights, including payment
27 from the fund, transfer opportunities, and available teach-out
28 opportunities, if any.

29 (i) This section applies to all claims filed or pending under
30 former Chapter 7 (commencing with Section 94700) after January
31 1, 1990.

32 ~~SEC. 5.—~~

33 (j) *Once the bureau has determined that a student claim is*
34 *eligible for payment under this section and intends to use the*
35 *Student Tuition Recovery Fund, in whole or in part, to satisfy the*
36 *eligible claim, the bureau shall document its negotiations with the*
37 *relevant lender, holder or guarantee agency, the United States*
38 *Department of Education, or the applicable state agency. The*
39 *bureau shall prepare a written summary of the parties and results*
40 *of the negotiations, including the amounts offered and accepted,*



1 *the discounts requested and granted, and any other information*
2 *that is available to any party that files a request for this*
3 *information with the bureau.*

4 *SEC. 6. Section 94945 of the Education Code is amended to*
5 *read:*

6 94945. (a) The ~~council~~ *bureau* shall assess each institution
7 ~~that collects any moneys in advance of rendering services, except~~
8 *for an institution that receives all of its students' total charges, as*
9 *defined in subdivision (k) of Section 94852, from third-party*
10 *payors. A third-party payor, for the purposes of this section, means*
11 *an employer, government program, or other payor that pays a*
12 *student's total charges directly to the institution when no separate*
13 *agreement for the repayment of that payment exists between the*
14 *third-party payor and the student.*

15 (1) The amount assessed each institution shall be calculated
16 only for those students who are California residents and who are
17 eligible to be reimbursed from the fund. It shall be based on the
18 actual amount charged each of these students for total course cost,
19 regardless of the portion that is prepaid. The assessment shall be
20 as follows:

21 (A) For a total course cost of one cent (\$0.01) to two thousand
22 nine hundred ninety-nine dollars and ninety-nine cents
23 (\$2,999.99), inclusive, the assessment is two dollars and fifty cents
24 (\$2.50) per student.

25 (B) For a total course cost of three thousand dollars (\$3,000) to
26 five thousand nine hundred ninety-nine dollars and ninety-nine
27 cents (\$5,999.99), inclusive, the assessment is three dollars and
28 fifty cents (\$3.50) per student.

29 (C) For a total course cost of six thousand dollars (\$6,000) to
30 eight thousand nine hundred ninety-nine dollars and ninety-nine
31 cents (\$8,999.99), inclusive, the assessment is four dollars and
32 fifty cents (\$4.50) per student.

33 (D) For a total course cost of nine thousand dollars (\$9,000) or
34 more, the assessment is five dollars and fifty cents (\$5.50) per
35 student.

36 (2) The ~~council~~ *bureau* shall levy additional reasonable
37 assessments only if they are required to ensure that sufficient funds
38 are available to satisfy the anticipated costs of paying student
39 claims pursuant to Section 94944.



1 (3) The assessments shall be paid into the Student Tuition
2 Recovery Fund and credited to the appropriate account in the fund,
3 and the deposits shall be allocated, except as otherwise provided
4 for in this chapter, solely for the payment of valid claims to
5 students. Unless additional reasonable assessments are required,
6 no assessments for the degree-granting postsecondary educational
7 institution account shall be levied during any fiscal year if, as of
8 June 30 of the prior fiscal year, the balance in that account of the
9 fund exceeds one million dollars (\$1,000,000). Unless additional
10 reasonable assessments are required, no assessments for the
11 vocational educational institution account shall be levied during
12 any fiscal year if, as of June 30 of the prior fiscal year, the balance
13 in that account exceeds three million dollars (\$3,000,000).
14 However, regardless of the balance in the fund, assessments shall
15 be made on any newly approved institution. Notwithstanding
16 Section 13340 of the Government Code, the moneys so deposited
17 in the fund are continuously appropriated to the ~~council~~ *bureau* for
18 the purpose of paying claims to students pursuant to Section
19 94944.

20 (b) The ~~council~~ *bureau* may deduct from the fund the
21 reasonable costs of administration of the tuition recovery program
22 authorized by Section 94944 and this section. The maximum
23 amount of administrative costs that may be deducted from the
24 fund, in a fiscal year, shall not exceed one hundred thousand
25 dollars (\$100,000) from the degree-granting postsecondary
26 educational institution account and three hundred thousand dollars
27 (\$300,000) from the vocational educational institution account,
28 plus the interest earned on money in the fund that is credited to the
29 fund. Prior to the ~~council's~~ *bureau's* expenditure of any amount in
30 excess of one hundred thousand dollars (\$100,000) from the fund
31 for administration of the tuition recovery program, the ~~council~~
32 *bureau* shall develop a plan itemizing that expenditure. The plan
33 shall be subject to the approval of the Department of Finance.
34 Institutions, except for schools of cosmetology licensed pursuant
35 to Article 8 (commencing with Section 7362) of Chapter 10 of
36 Division 3 of the Business and Professions Code and institutions
37 that offer vocational or job training programs, that meet the student
38 tuition indemnification requirements of a California state agency,
39 or that demonstrate to the ~~council~~ *bureau* that an acceptable
40 alternative method of protecting their students against loss of



1 prepaid tuition has been established, shall be exempted from this
2 section.

3 (c) Reasonable costs in addition to those permitted under
4 subdivision (b) may be deducted from the fund for any of the
5 following purposes:

6 (1) To make and maintain copies of student records from
7 institutions ~~which~~ *that* close.

8 (2) To reimburse the ~~council~~ *bureau* or a third party serving as
9 the custodian of records.

10 (d) In the event of a closure by any approved institution under
11 this chapter, any assessments that have been made against those
12 institutions, but have not been paid into the fund, shall be
13 recovered. Any payments from the fund made to students on
14 behalf of any institution shall be recovered from that institution.

15 (e) In addition to civil remedies, the ~~council~~ *bureau* may order
16 an institution to pay previously unpaid assessments or to reimburse
17 the ~~council~~ *bureau* for any payments made from the fund in
18 connection with the institution. Before any order is made pursuant
19 to this section, the ~~council~~ *bureau* shall provide written notice to
20 the institution and notice of the institution's right to request a
21 hearing within 30 days of the service of the notice. If a hearing is
22 not requested within 30 days of the service of the notice, the
23 ~~council~~ *bureau* may order payment. If a hearing is requested,
24 Chapter 5 (commencing with Section 11500) of Part 1 of Division
25 3 of Title 2 of the Government Code shall apply, and the ~~council~~
26 *bureau* shall have all powers prescribed in that chapter. Within 30
27 days after the effective date of the issuance of the order, the ~~council~~
28 *bureau* may enforce the order in the same manner as if it were a
29 money judgment pursuant to Title 9 (commencing with Section
30 680.010) of Part 2 of the Code of Civil Procedure.

31 (f) In addition to any other action that the ~~council~~ *bureau* may
32 take under this chapter, the ~~council~~ *bureau* may suspend or revoke
33 an institution's approval to operate because of the institution's
34 failure to pay assessments when due or failure to pay
35 reimbursement for any payments made from the fund within 30
36 days of the ~~council's~~ *bureau's* demand for payment.

37 (g) The moneys deposited in the fund shall be exempt from
38 execution and shall not be the subject of litigation or liability on
39 the part of creditors of those institutions or students.

40 ~~(h) This section shall become operative on January 1, 1999.~~



1 *SEC. 7. Section 94960 of the Education Code is amended to*
2 *read:*

3 94960. (a) Any person claiming damage or loss as a result of
4 any act or practice by a postsecondary or vocational educational
5 institution or its agent, or both, that is a violation of this chapter or
6 of the regulations adopted pursuant to this chapter, may file with
7 the ~~council~~ *bureau* a verified complaint against that institution or
8 its agent, or both.

9 ~~The~~ *The* complaint shall set forth the alleged violation, and shall
10 contain any other information as may be required by the ~~council~~
11 *bureau*.

12 (b) ~~The council shall investigate any complaint and may~~
13 ~~attempt to effectuate settlement by persuasion and conciliation.~~
14 *bureau shall resolve the complaint in accordance with all of the*
15 *following:*

16 (1) *Within 10 days after receiving the complaint, the bureau*
17 *shall mail a copy of the complaint to the institution against which*
18 *the complaint is asserted, along with a written notice advising the*
19 *institution of its right to respond to the complaint in writing within*
20 *30 days from the date of the notice.*

21 (2) *The institution shall have 30 days from the date of the notice*
22 *to respond, in writing, to the complaint.*

23 (3) *If the bureau does not receive a timely written response from*
24 *the institution within 20 days after the institution's 30-day period*
25 *to respond to the complaint has elapsed, the bureau shall mail a*
26 *written decision regarding the complaint to the complainant and*
27 *the institution.*

28 (4) *If the bureau receives a timely written response from the*
29 *institution, the bureau shall, within 10 days after receiving the*
30 *response, mail a copy of the response to the complainant along*
31 *with a written notice advising the complainant of his or her right*
32 *to respond in writing within 30 days of the date of the notice. Within*
33 *60 days of receiving the response from the institution, the bureau*
34 *shall mail a written decision regarding the complaint to the*
35 *complainant and the institution.*

36 (5) *The student shall have 30 days from the date of the notice*
37 *to respond, in writing, to the institution's response.*

38 (6) *The bureau shall review the facts of the complaint, the*
39 *institution's response to the complaint, if any, and the*



1 complainant's response, for violations of this chapter or of a
2 regulation adopted pursuant to this chapter.

3 (7) Any written decision issued pursuant to this section shall set
4 forth a summary of each party's contentions, a summary of the
5 facts, and specific reasons and factual bases for the bureau's
6 decision.

7 (8) If the complaint is resolved in the complainant's favor, the
8 institution shall have 30 days to provide a statement to the bureau
9 certifying that it has complied with the bureau's decision and
10 setting forth how it has complied with the bureau's decision. If the
11 institution fails to comply with this paragraph, the bureau may
12 revoke the institution's approval to operate pursuant to Section
13 94879.

14 (9) Nothing in this section shall be construed to prevent a
15 complainant, institution, or the bureau from using additional
16 appeals that are available under state law.

17 (c) If, upon all the evidence at a hearing, the ~~council~~ bureau
18 finds that an institution or its agent, or both, have engaged in, or
19 are engaging in, any act or practice that violates this chapter or the
20 regulations adopted pursuant to this chapter, the ~~council~~ bureau
21 shall report that evidence to the Attorney General. The ~~council~~
22 bureau, based on its own investigation or the evidence adduced at
23 a hearing, or both, also may commence an action to revoke an
24 institution's approval to operate or an agent's permit.

25 (d) Complaints received by the ~~council~~ bureau pertaining to
26 institutions accredited by the Western Association of Schools and
27 Colleges shall be forwarded to the association. Actions by the
28 ~~council~~ bureau relating to complaints against these institutions
29 shall be limited to the transmittal of this information.

30 (e) A person entitled to bring an action for the recovery of
31 damages or other relief shall not be required to file a complaint
32 pursuant to this section, or to pursue or exhaust any administrative
33 process or remedy before bringing the action.

34 SEC. 8. Section 94985 of the Education Code is amended to
35 read:

36 94985. (a) Any institution that willfully violates any
37 provision of Section 94800, 94810, 94814, or 94816, Sections
38 94820 to 94826, inclusive, Section 94829, 94831, or 94832 may
39 not enforce any contract or agreement arising from the transaction
40 in which the violation occurred, and any willful violation is a



1 ground for revoking an approval to operate in this state or for
2 denying a renewal application.

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

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

14 (A) *Notify the institution alleged to have violated subdivision*
15 *(a) of Section 94831, subdivision (a) of Section 94900, Section*
16 *94915, or subdivision (a) of Section 94857, of the particular*
17 *alleged violations.*

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

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

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

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

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



1 94831, subdivision (a) of Section 94900, Section 94915, or
2 subdivision (a) of Section 94857, whichever is applicable.

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

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

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

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

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

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

33 (E) Any instrument of indebtedness, enrollment agreement, or
34 contract for educational services is unenforceable pursuant to
35 Section 94838. The court shall order the institution to mail a notice
36 to all students who were enrolled while the school was in violation
37 of subdivision (a) of Section 94831, subdivision (a) of Section
38 94900, Section 94915, or subdivision (a) of Section 94857, stating
39 that instruments of indebtedness, enrollment agreements, and
40 contracts for educational services are not enforceable. If the



1 *institution fails to provide adequate proof to the court and to the*
2 *bureau that it has mailed this notice within 30 days of the court's*
3 *order, the bureau shall mail the notice to the students and the court*
4 *shall order the institution to pay the bureau's costs of generating*
5 *and mailing the notices, in no case less than five thousand dollars*
6 *(\$5,000).*

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

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

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

24 *(6) Notwithstanding any provision of the contract or*
25 *agreement, a student may bring an action for a violation of this*
26 *article or for an institution's failure to perform its legal obligations*
27 *and, upon prevailing thereon, is entitled to the recovery of*
28 *damages, equitable relief, or any other relief authorized by this*
29 *article, and reasonable attorney's fees and costs.*

30 ~~(e)~~

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

37 ~~(d)~~

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

40 ~~(e)~~



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

4 ~~(f)~~

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

9 ~~(g)~~

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

14 ~~(h)~~

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

17 ~~(i)~~

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

24 ~~(j)~~

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



1 ~~SEC. 6.~~

2 *SEC. 9.* The Bureau for Private Postsecondary and Vocational
3 Education shall submit an annual report on the collection and
4 expenditure of moneys collected as special assessments pursuant
5 to the act adding this section. The bureau shall submit copies of this
6 report to the chairpersons of the Assembly Committee on Higher
7 Education, the Senate Committee on Education, the Assembly
8 Committee on Budget, and the Senate Committee on Budget and
9 Fiscal Review.

O

