

**Assembly Bill No. 201**

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Passed the Assembly    September 13, 2001

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*Chief Clerk of the Assembly*

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Passed the Senate    September 10, 2001

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*Secretary of the Senate*

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This bill was received by the Governor this \_\_\_\_\_ day of  
\_\_\_\_\_, 2001, at \_\_\_\_\_ o'clock \_\_M.

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*Private Secretary of the Governor*



## CHAPTER \_\_\_\_\_

An act to amend Sections 94806, 94808, 94810, 94825, 94840, 94877, 94944, 94945, 94960, and 94985 of, and to add Section 94995.3 to, the Education Code, relating to private postsecondary education, and making an appropriation therefor.

## LEGISLATIVE COUNSEL'S DIGEST

AB 201, 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 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 and to provide prescribed information to its students.

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. The bill would also require institutions to provide to their students prescribed data relating to the purposes, operation, and eligibility requirements of 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.

(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.

(5) Existing law requires the bureau to assess, for the purposes of the Student Tuition Recovery Fund 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 3rd-party payers, as defined. The bill would revise, as prescribed, the formula for calculating the amount of this assessment.

(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 require the bureau to adopt regulations that specify its procedures for complaint handling and complaint disclosure. The 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.

Appropriation: yes.

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

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

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

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

(1) An institution that collected seven hundred fifty thousand dollars (\$750,000) or more in total student charges in its preceding fiscal year shall file financial reports prepared in accordance with generally accepted accounting principles established by the



American Institute of Certified Public Accountants, and audited or reviewed by an independent certified public accountant who is not an employee, officer, or corporate director or member of the governing board of the institution.

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

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

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

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

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

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

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



(e) Any audit or financial report shall contain a statement signed by the individual who has prepared the report stating that the institution has paid or has not paid to the bureau all amounts owed under Section 94945. 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 section. The bureau shall be deemed an intended beneficiary of that statement in any audit or financial report. An institution that has not paid all amounts owed to the bureau under Section 94945 shall report to the bureau within 30 days on its plan to become current in these payments. This subdivision shall not be construed to require the institution to prepare a separate audit or report on the Student Tuition Recovery Fund.

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

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

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

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

(3) The degree levels offered.

(4) Program completion rates.

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

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

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

(8) A statement indicating whether the institution is or is not current on its payments to the Student Tuition Recovery Fund.

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

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



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

SEC. 3. Section 94810 of the Education Code is amended to read:

94810. (a) Any written contract or agreement for educational services with an institution shall include all of the following:

(1) On the first page of the agreement or contract, in 12-point boldface print or larger, the following statement:

“Any questions or problems concerning this school which have not been satisfactorily answered or resolved by the school should be directed to the Bureau for Private Postsecondary and Vocational Education, (address), Sacramento, California 95814.”

(2) In underlined capital letters on the same page of the contract or agreement in which the student’s signature is required, the total amount that the student is obligated to pay for the course of instruction and all other services and facilities furnished or made available to the student by the school, including any charges made by the school for tuition, room and board, books, materials, supplies, shop and studio fees, and any other fees and expenses that the student will incur upon enrollment.

(3) A list of any charges and deposits that are nonrefundable clearly identified as nonrefundable charges.

(4) The name and address of the school and the addresses where instruction will be provided.

(5) The name and description of the program of instruction, including the total number of credits, classes, hours, or lessons required to complete the program of instruction.

(6) A clear and conspicuous statement that the agreement or contract is a legally binding instrument when signed by the student and accepted by the school.

(7) A clear and conspicuous caption, “BUYER’S RIGHT TO CANCEL” under which it is explained that the student has the



right to cancel the enrollment agreement and obtain a refund, the form and means of notice that the student should use in the event that he or she elects to cancel the enrollment agreement, and the title and address of the school official to whom the notice should be sent or delivered.

(8) A clear statement of the refund policy written in plain English.

(9) The signature of the student under the following statement that is presented in 12-point boldface or larger print: “My signature below certifies that I have read, understood, and agreed to my rights and responsibilities, and that the institution’s cancellation and refund policies have been clearly explained to me.”

(10) If the student is not a resident of California or is the recipient of third-party payor tuition and course costs, such as workforce investment vouchers or rehabilitation funding, a clear statement that the student is not eligible for protection under and recovery from the Student Tuition Recovery Fund.

(11) A statement that the student is responsible for paying the state assessment amount for the Student Tuition Recovery Fund.

(b) All contracts and enrollment agreements signed by the student shall be written in language that is capable of being easily understood. If English is not the primary language spoken by the student, the student shall have the right to obtain a clear explanation of the terms and conditions of the agreement and all cancellation and refund policies in his or her primary language.

SEC. 4. Section 94825 of the Education Code is amended to read:

94825. (a) The institution shall publish a current schedule of all student charges, a statement of the purpose for those charges, and a statement of the cancellation and refund policies with examples of the application of the policies, and shall provide the schedule to all current and prospective students prior to enrollment. The schedule shall clearly indicate and differentiate all mandatory and optional student charges. The institution shall include a clear statement written in English describing the procedures that a student is required to follow to cancel the contract or agreement and obtain a refund. If the institution solicited the student or negotiated the agreement in a language other than English, the notice to the student shall be in that same



language. The schedule shall specify the total costs of attendance which shall include, but not necessarily be limited to, tuition, fees, assessments for the Student Tuition Recovery Fund, equipment costs, housing, transportation, books, necessary supplies, materials, shop and studio fees, and any other fees and expenses that the student will incur upon enrollment.

The schedule shall clearly identify all charges and deposits that are nonrefundable.

(b) The schedule shall also contain both of the following:

(1) A statement, to be provided by the bureau, specifying that it is a state requirement that a resident California student who pays his or her own tuition, either directly or through a loan, is required to pay a state-imposed fee for the Student Tuition Recovery Fund.

(2) A statement, to be provided by the bureau, describing the purposes, operation, and eligibility requirements of the Student Tuition Recovery Fund.

SEC. 5. Section 94840 of the Education Code is amended to read:

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

SEC. 6. Section 94877 of the Education Code is amended to read:

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

(b) Notwithstanding any provision in an agreement, a student may bring an action for a violation of this article or Section 94832 or an institution's failure to perform its legal obligations and, upon prevailing, shall be entitled to the recovery of damages, equitable



relief, any other relief authorized by this article, and reasonable attorney's fees and costs.

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

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

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

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

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

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

(i) If a student commences 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 Section 17200 of the Business and Professions Code, the student shall 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. The student shall notify the bureau as required by this subdivision within 30 days of the filing of the action or of the first assertion of the claim, whichever is later. The student shall also notify the court that he or she has notified the bureau pursuant to this subdivision. Notwithstanding any other provision of law, no judgment may be entered pursuant to this section until the student has notified the bureau of the suit and notified the court that the bureau has been notified. This subdivision only applies to a new action filed or to a new claim asserted on or after January 1, 2002.



SEC. 7. Section 94944 of the Education Code is amended to read:

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

(1) (A) The student was enrolled in an institution, prepaid tuition, and suffered loss as a result of any of the following:

(i) The closure of the institution.

(ii) The institution's failure to pay refunds or charges on behalf of a student to a third party for license fees or any other purposes, or to provide equipment or materials for which a charge was collected within 180 days before the closure of the institution.

(iii) The institution's failure to pay or reimburse loan proceeds under a federally guaranteed student loan program as required by law or to pay or reimburse proceeds received by the institution prior to closure in excess of tuition and other costs.

(iv) The institution's breach or anticipatory breach of the agreement for the course of instruction.

(v) A decline in the quality or value of the course of instruction within the 30-day period before the closure of the institution or, if the decline began before that period, the period of decline determined by the bureau.

(vi) The commission of a fraud by the institution during the solicitation or enrollment of, or during the program participation of, the student.

(B) For the purposes of this section, "closure" includes closure of a branch or satellite campus, the termination of either the



correspondence or residence portion of a home study or correspondence course, and the termination of a course of instruction for some or all of the students enrolled in the course before the time these students were originally scheduled to complete it, or before a student who has been continuously enrolled in a course of instruction has been permitted to complete all the educational services and classes that comprise the course.

(2) The student obtained a judgment against the institution for any violation of this chapter, and the student certifies that the judgment cannot be collected after diligent collection efforts. A court judgment obtained under this paragraph shall be paid in accordance with paragraph (1) of subdivision (f), unless the judgment indicates that a lesser amount is due.

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

(c) (1) (A) The institution shall provide to the bureau, at the time of the institution's closure, the names and addresses of persons who were students of an institution within 60 days prior to its closure, and shall notify these students, within 30 days of the institution's closure, of their rights under the fund and how to apply for payment. If the institution fails to comply with this subdivision, the bureau shall attempt to obtain the names and addresses of these students and shall notify them, within 90 days of the institution's closure, of their rights under the fund and how to apply for payment. This notice shall include the explanation and the claim form described in subparagraph (B).

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

(2) (A) If an institution fails to comply with paragraph (1), the bureau shall order the institution, or any person responsible for the failure to provide notice as required by paragraph (1), to reimburse the bureau for all reasonable costs and expenses incurred in notifying students as required in paragraph (1). In addition, the



bureau may impose a penalty of up to five thousand dollars (\$5,000) against the institution and any person found responsible for the failure to provide notice. The amount of the penalty shall be based on the degree of culpability and the ability to pay. Any order may impose joint and several liability. Before any order is made pursuant to this paragraph, the bureau shall provide written notice to the institution and any person from whom the bureau seeks recovery of the bureau's claim and of the right to request a hearing within 30 days of the service of the notice.

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

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

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

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

(C) The amount of the paid tuition, the amount and description of the student's loss, and the amount of the student's claim.

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

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

(F) If the student ceased attending because of a breach or anticipatory breach or because of the decline in the quality or value of the course of instruction as described in clause (v) of subparagraph (A) of paragraph (1) of subdivision (a), a statement



describing in detail the nature of the loss incurred. The application shall be filed within one year from the date of the notice, as described in paragraph (1) of subdivision (c). If no notice is received by the student from the bureau soon after the school closes, the application shall be filed within four years of the institution's closure, or within two years of the student's or former student's receipt of an explanation of his or her rights and a claim form, whichever of those claim periods expires later. The two-year claim period shall begin on the day the student or former student receives from the bureau both an explanation regarding how to file a claim and a claim application, as provided in subparagraph (B) of paragraph (1) of subdivision (c), or on the day the second of the two documents is received, if they are received on different dates. If the claimant's primary language is Spanish, the notice and explanation shall be sent in Spanish.

(G) Nothing in this subdivision shall preclude the filing of a single, unified application that aggregates the claims of similarly situated students.

(2) (A) Students entitled to payment as provided in paragraph (2) of subdivision (a) shall file with the bureau a verified application indicating the student's name, address, telephone number, and social security number, the amount of the judgment obtained against the institution, a statement that the judgment cannot be collected, and a description of the efforts attempted to enforce the judgment. The application shall be accompanied by a copy of the judgment and any other documents indicating the student's efforts made to enforce the judgment.

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

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

(4) Nothing in this subdivision shall be construed to preclude the filing of a single, unified application that aggregates the claims of similarly situated students.

(e) Within 60 days of the bureau's receipt of a completed application for payment, the bureau shall pay the claim from the



Student Tuition Recovery Fund or deny the claim. The bureau, for good cause, may extend the time period for up to an additional 90 days to investigate the accuracy of the claim.

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

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

(3) No reduction shall be made to the amount specified in paragraph (1) if (A) the student did not receive adequate instruction to obtain the training, skills, or experience, or employment to which the instruction was represented to lead, (B) credit for the instruction obtained by the student is not generally transferable to other institutions approved by the bureau, or (C) the institution or one of its representatives fraudulently



misrepresented to students the likely starting salary or job availability, or both, after training.

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

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

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

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

(3) Notwithstanding subdivision (e), the bureau may delay the payment of a claim pending the resolution of the bureau's attempt to obtain a compromise or writeoff of the claimant's student loan obligation. However, the bureau shall immediately pay the claim if any adverse action that is not stayed is taken against the claimant, including the commencement of a civil or administrative action, tax offset, the enforcement of a judgment, or the denial of any government benefit.

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

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

(h) (1) If the bureau denies the claim, or reduces the amount of the claim pursuant to paragraph (2) of subdivision (f), the bureau shall notify the student of the denial or reduction and of the student's right to request a hearing within 60 days or any longer



period permitted by the bureau. If a hearing is not requested within 60 days or any additional period reasonably requested by the student, the bureau's decision shall be final. If a hearing is requested, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall apply.

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

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

(j) Once the bureau has determined that a student claim is eligible for payment under this section and intends to use the Student Tuition Recovery Fund, in whole or in part, to satisfy the eligible claim, the bureau shall document its negotiations with the relevant lender, holder or guarantee agency, the United States Department of Education, or the applicable state agency. The bureau shall prepare a written summary of the parties and results of the negotiations, including the amounts offered and accepted, the discounts requested and granted, and any other information that is available to any party that files a request for this information with the bureau.

SEC. 8. Section 94945 of the Education Code is amended to read:

94945. (a) The bureau shall assess each institution, except for an institution that receives all of its students' total charges, as defined in subdivision (k) of Section 94852, from third-party payers. A third-party payer, for the purposes of this section, means an employer, government program, or other payer that pays a student's total charges directly to the institution when no separate agreement for the repayment of that payment exists between the third-party payer and the student. A student who receives third-party payer benefits for his or her institutional charges is not eligible for benefits from the Student Tuition Recovery Fund.



(1) The amount assessed each institution shall be calculated only for those students who are California residents and who are eligible to be reimbursed from the fund. It shall be based on the actual amount charged each of these students for total tuition cost, regardless of the portion that is prepaid. The amount of the assessment on an institution shall be determined in accordance with paragraph (2) and (3). Each institution shall collect the amount assessed by the bureau in the form of a Student Tuition Recovery Fund fee from its new students, and remit these fees to the bureau during the quarter immediately following the quarter in which the fees were collected from the students. An institution may not charge a fee of any kind for the collection of the Student Tuition Recovery Fund fee. An institution may refuse to enroll a student who has not paid, or made provisions to pay, the appropriate Student Tuition Recovery Fund fee.

(2) The amount collected from a new student by an institution shall be calculated on the basis of the course tuition paid over the current calendar year. For purposes of annualized payment, a new student enrolled in a course of instruction that is longer than one calendar year in duration shall pay fees for the Student Tuition Recovery Fund based on the amount of tuition collected during the current calendar year.

(3) The assessment made pursuant to this section shall be made in accordance with both of the following:

(A) Each new student shall pay a Student Tuition Recovery Fund assessment for the period of January 1, 2002, to December 31, 2002, inclusive, at the rate of three dollars (\$3) per thousand dollars of tuition paid, rounded to the nearest thousand dollars.

(B) Commencing January 1, 2003, Student Tuition Recovery Fund fees shall be collected from new students at the rate of two dollars and fifty cents (\$2.50) per thousand dollars of tuition paid, rounded to the nearest thousand dollars.

(4) The bureau may levy additional reasonable special assessments on an institution under this section only if these assessments are required to ensure that sufficient funds are available to satisfy the anticipated costs of paying student claims pursuant to Section 94944.

(5) (A) The bureau may not levy a special assessment unless the balance in any account in the Student Tuition Recovery Fund falls below two hundred fifty thousand dollars (\$250,000), as



certified by the Secretary of the State and Consumer Services Agency.

(B) A special assessment is a surcharge, collected by each institution from newly enrolled students, of up to 100 percent of that institution's regular assessment for four consecutive quarters. The affected student shall pay the surcharge simultaneously with his or her regular quarterly payment to the Student Tuition Recovery Fund.

(C) The bureau shall provide at least 90 days' notice of an impending special assessment to each affected institution. This notice shall also be posted on the bureau's Internet Web site.

(D) The bureau may apply any special assessment payments that it receives from an institution as a credit toward that institution's current or future obligations to the Student Tuition Recovery Fund.

(6) The assessments shall be paid into the Student Tuition Recovery Fund and credited to the appropriate account in the fund, and the deposits shall be allocated, except as otherwise provided for in this chapter, solely for the payment of valid claims to students. Unless additional reasonable assessments are required, no assessments for the degree-granting postsecondary educational institution account shall be levied during any fiscal year if, as of June 30 of the prior fiscal year, the balance in that account of the fund exceeds one million five hundred thousand dollars (\$1,500,000). Unless additional reasonable assessments are required, no assessments for the vocational educational institution account shall be levied during any fiscal year if, as of June 30 of the prior fiscal year, the balance in that account exceeds four million five hundred thousand dollars (\$4,500,000). However, regardless of the balance in the fund, assessments shall be made on any newly approved institution. Notwithstanding Section 13340 of the Government Code, the moneys so deposited in the fund are continuously appropriated to the bureau for the purpose of paying claims to students pursuant to Section 94944.

(b) The bureau may deduct from the fund the reasonable costs of administration of the tuition recovery program authorized by Section 94944 and this section. The maximum amount of administrative costs that may be deducted from the fund, in a fiscal year, shall not exceed one hundred thousand dollars (\$100,000) from the degree-granting postsecondary educational institution



account and three hundred thousand dollars (\$300,000) from the vocational educational institution account, plus the interest earned on money in the fund that is credited to the fund. Prior to the bureau's expenditure of any amount in excess of one hundred thousand dollars (\$100,000) from the fund for administration of the tuition recovery program, the bureau shall develop a plan itemizing that expenditure. The plan shall be subject to the approval of the Department of Finance. Institutions, except for schools of cosmetology licensed pursuant to Article 8 (commencing with Section 7362) of Chapter 10 of Division 3 of the Business and Professions Code and institutions that offer vocational or job training programs, that meet the student tuition indemnification requirements of a California state agency, that secure a policy of surety or insurance from an admitted insurer protecting their students against loss of paid tuition, or that demonstrate to the bureau that an acceptable alternative method of protecting their students against loss of prepaid tuition has been established, shall be exempted from this section.

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

(1) To make and maintain copies of student records from institutions that close.

(2) To reimburse the bureau or a third party serving as the custodian of records.

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

(e) In addition to civil remedies, the bureau may order an institution to pay previously unpaid assessments or to reimburse the bureau for any payments made from the fund in connection with the institution. Before any order is made pursuant to this section, the bureau shall provide written notice to the institution and notice of the institution's right to request a hearing within 30 days of the service of the notice. If a hearing is not requested within 30 days of the service of the notice, the bureau may order payment. If a hearing is requested, Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code



shall apply, and the bureau shall have all powers prescribed in that chapter. Within 30 days after the effective date of the issuance of the order, the bureau may enforce the order in the same manner as if it were a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

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

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

SEC. 9. Section 94960 of the Education Code is amended to read:

94960. (a) Any person claiming damage or loss 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 this chapter or of the regulations adopted pursuant to this chapter, may file with the bureau a verified complaint against that institution or its agent, or both.

The complaint shall set forth the alleged violation, and shall contain any other information as may be required by the bureau.

(b) (1) Pursuant to regulations that specify its procedures regarding complaint handling and disclosure, the bureau shall investigate any complaint, and document its findings and its determination of the appropriate course of action and disposition of the complaint.

(2) The bureau shall adopt regulations that specify its procedures for complaint handling and complaint disclosure. The bureau shall make every reasonable attempt to ensure that the first public hearing on its proposed regulations is convened prior to June 30, 2002. The requirements of this subdivision shall not preclude the bureau from fulfilling its complaint handling responsibilities pending adoption of the regulations.

(3) The regulations adopted pursuant to paragraph (2) shall include, but not necessarily be limited to, both of the following:



(A) A procedure for handling the original student complaints by mail that affords the institution that is the subject of the complaint an opportunity to respond.

(B) Additional options, including teleconferencing and an administrative law hearing and a complaint resolution hearing conducted by the bureau program administrator or his or her designee. Participation in this hearing shall not prevent any party to the complaint from exercising any other means of redress available under the law.

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

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

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

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

SEC. 10. Section 94985 of the Education Code is amended to read:

94985. (a) Any institution that willfully violates any provision of Section 94800, 94810, 94814, or 94816, Sections 94820 to 94826, inclusive, Section 94829, 94831, or 94832 may not enforce any contract or agreement arising from the transaction in which the violation occurred, and any willful violation is a ground for revoking an approval to operate in this state or for denying a renewal application.

(b) Any person who claims that an institution is operating in violation of subdivision (a) of Section 94831, subdivision (a) of



Section 94900, or Section 94915, or an institution is operating a branch or satellite campus in violation of subdivision (a) of Section 94857, may bring an action, in a court of competent jurisdiction, for the recovery of actual and or statutory damages as well as an equity proceeding to restrain and enjoin those violations, or both.

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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



and mailing the notices, in no case less than five thousand dollars (\$5,000).

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

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

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

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

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

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

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

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



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

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

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

(k) If a student commences 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 Section 17200 of the Business and Professions Code, the student shall 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. The student shall notify the bureau as required by this subdivision within 30 days of the filing of the action or of the first assertion of the claim, whichever is later. The student shall also notify the court that he or she has notified the bureau pursuant to this subdivision. Notwithstanding any other provision of law, no judgment may be entered pursuant to this section until the student has notified the bureau of the suit and notified the court that the bureau has been notified. This subdivision only applies to a new action filed or to a new claim asserted on or after January 1, 2002.

SEC. 11. Section 94995.3 is added to the Education Code, to read:

94995.3. The Bureau for Private Postsecondary and Vocational Education shall submit an annual report on the collection and expenditure of moneys collected as special assessments pursuant to the act adding this section. The bureau shall submit copies of this report to the chairpersons of the Assembly Committee on Higher Education, the Senate Committee on Education, the Senate Committee on Business and Professions, the Assembly Committee on Budget, and the Senate Committee on Budget and Fiscal Review. The report required by this section may be incorporated in the bureau's annual report to the Legislature.



Approved \_\_\_\_\_, 2001

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*Governor*

