

Introduced by Senator WrightFebruary 18, 2011

An act to add Article 22 (commencing with Section 94951) to Chapter 8 of Part 59 of Division 10 of Title 3 of the Education Code, relating to private postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

SB 675, as introduced, Wright. Private postsecondary education: non-English speaking students.

Existing law, the California Private Postsecondary Education Act of 2009 (act) provides, among other things, for student protections and regulatory oversight of private postsecondary schools (institutions) in the state. The act is enforced by the Bureau for Private Postsecondary Education within the Department of Consumer Affairs.

This bill would provide that an institution is prohibited from entering into an agreement for a program or course of instruction given in English with a nonnative speaker of English, as defined, unless the prospective student first takes and passes an English proficiency test, as specified. The bill would require that English proficiency tests be given to prospective students at a place off campus by an independent test administrator without charge to the student and in accordance with all procedures and requirements specified by the test publisher. The bill would require that the tests be paid for by the institution and graded off campus by an independent test administrator. The bill would prohibit employees or representatives of the school from influencing the giving, monitoring, or scoring of the tests. The bill would provide, if a prospective student is unable to pass the tests, that it may be readministered only as specified.

The bill would prohibit a student from waiving any requirement of the act, and provides that if an institution violates any provision of the act, the enrollment agreement and any other contract with the institution is unenforceable. The bill would specify further remedies and damage provisions. The bill would specify the bureau’s authority and powers to enforce the act.

This bill would require any written contract or agreement for educational services signed by a nonnative speaker of English with an institution to include an enrollment agreement containing specified information. The bill would require that the test and the score be placed in the student’s file after enrollment.

The bill would declare that its provisions are severable, and make legislative declarations and findings.

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

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

- 1 SECTION 1. (a) The Legislature finds and declares all of the
- 2 following:
- 3 (1) Many immigrants with limited English proficiency, who
- 4 either have no high school diploma and limited education in their
- 5 native country or who have a high school diploma and have
- 6 received some of their schooling in the United States, are induced
- 7 to enroll in diploma or degree courses of instruction conducted in
- 8 English at private postsecondary schools.
- 9 (2) The vast majority of these students are poor or of moderate
- 10 income, and therefore will qualify for the maximum amount of
- 11 federal student grants and loans.
- 12 (3) The vast majority of these students will not benefit from a
- 13 course of instruction in English which they do not understand.
- 14 Many of these students will not obtain employment from their
- 15 training and will default on their student loans. The subsequent
- 16 loan defaults will prevent them from obtaining Pell grants and
- 17 federal and state financial aid in the future which would have
- 18 allowed them to obtain English-as-a-second-language instruction
- 19 and job or educational training from which they could benefit.
- 20 (4) Some private postsecondary schools help these prospective
- 21 immigrant students get counterfeit high school diplomas so they
- 22 can get federal financial aid without having to take an

1 ability-to-benefit test which would reveal their limited education
2 or limited English proficiency. The result is that these students are
3 barred from qualifying for federal financial aid without remedial
4 and English-as-a-second-language (ESL) instruction.

5 (5) The enrolling of students with limited English proficiency
6 in courses taught in English was prohibited by the Legislature with
7 respect to diploma programs given by private postsecondary
8 schools but these abusive practices have returned since the
9 expiration of the Maxine Waters School Reform Act on June 30,
10 2007.

11 (6) When immigrant students default on their student loans,
12 their tax refunds and earned income tax credit are seized and their
13 paychecks and social security benefits, including retirement or
14 disability benefits, are garnished until the debt is paid. The debt
15 often continues unsatisfied into retirement.

16 (b) It is the intent and purpose of this article:

17 (1) To protect immigrant students from being enrolled in a
18 course of instruction conducted in English at private postsecondary
19 institutions when they are not sufficiently proficient in English to
20 benefit from the instruction.

21 (2) To protect immigrant students from incurring student loan
22 debt they are unlikely to be able to pay off in order to receive
23 training which is of no benefit to them.

24 (3) To prevent private postsecondary schools from profiting
25 from enrolling limited-English-proficient students who are not
26 likely to complete or benefit from the training or education offered
27 in English and getting these immigrant students' federal financial
28 aid on the basis of counterfeit high school diplomas.

29 SEC. 2. Article 22 (commencing with Section 94951) is added
30 to Chapter 8 of Part 59 of Division 10 of Title 3 of the Education
31 Code, to read:

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Article 22. Nonnative Speakers of English

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35 94951. For the purposes of this article, the following terms
36 have the following meanings:

37 (a) "Class" means a subject, such as English or mathematics,
38 which is taught as part of a course or program of instruction.

39 (b) "High school diploma" means a diploma received from a
40 public high school or private high school that is accredited by a

1 federally recognized regional accrediting agency or a high school
2 diploma from a school that has a University of California approved
3 course list. This definition shall remain in effect as long as it does
4 not conflict with any definition of high school diploma enacted by
5 the United States Department of Education.

6 (c) “Independent test administrator” is a person who gives,
7 monitors, and grades English proficiency tests given to nonnative
8 speakers of English to determine whether their English language
9 skills are sufficient to enable them to successfully take and
10 complete the classes in a program of instruction and participate in
11 all classroom activities as well as benefit from a program of
12 instruction provided in English. For these purposes, “independent”
13 means that the test administrator is not a previous or current owner,
14 director, consultant, employee, or representative of any private
15 postsecondary institution or a previous, or current employee of a
16 corporation or subsidiary which is affiliated with a private
17 postsecondary institution, and has no previous or current, direct
18 or indirect, financial interest in any private postsecondary
19 institution, including those exempt from this chapter.

20 (d) “Instruction in English” means a program or course of
21 instruction in which any of the following activities takes place,
22 either in the course or program of instruction itself or in any of the
23 classes that make up the course or program of instruction:

24 (1) The written instruction, including any of the books provided,
25 is in English.

26 (2) The instructors speak or lecture in English or conduct
27 demonstrations during any class or classes in English.

28 (3) Student work assignments must be written in English.

29 (4) A test or quiz is given in English or the student is required
30 to respond in English.

31 (5) The syllabus, brochure, or catalog given to a prospective
32 student describing the program of instruction or the requirements
33 of the course is in English.

34 (6) A license or certification test is given in English.

35 (e) “Limited-English proficient,” when used with respect to an
36 individual, student, or prospective student, means a nonnative
37 speaker of English whose difficulties in speaking, reading, writing,
38 or understanding the English language may be sufficient to deny
39 the individual any of the following:

- 1 (1) The ability to successfully complete the course work and
2 activities in the classes making up the course or program of
3 instruction where the language of instruction is English.
- 4 (2) The training and skills to obtain jobs in areas in which the
5 training was represented to lead to jobs in the field of training.
- 6 (3) The opportunity to participate fully in society.
- 7 (f) “Nonnative speaker of English” is any of the following:
- 8 (1) A person who was not born in the United States and whose
9 first language was not English.
- 10 (2) A person whose primary language spoken at home is other
11 than English or whose native language is a language other than
12 English.
- 13 (3) A person who has not completed kindergarten and grades 1
14 to 12, inclusive, in the United States and graduated from high
15 school in the United States.
- 16 (4) A person who comes from an environment or a family where
17 a language other than English has had a significant impact on the
18 individual’s level of English proficiency.
- 19 (g) “Program or course of instruction” means a set of vocational
20 or other related educational classes that prepare students for a job
21 or set of jobs or for a degree. A course or program of instruction
22 can result in a diploma or a degree, the latter often requires general
23 education classes.
- 24 (h) “Prospective student” means a nonnative speaker of English
25 who seeks to enroll in a program of instruction taught in English
26 or who has inquired about a program of instruction given or taught
27 in English.
- 28 (i) “Student” means a person who is a nonnative speaker of
29 English who has enrolled in or signed an enrollment agreement
30 for a program of instruction conducted in English at a private
31 postsecondary institution.
- 32 (j) “Successful completion of a course or program of instruction”
33 means that a nonnative speaker of English has English language
34 proficiency sufficient to participate in and complete all class
35 activities, other requirements necessary for graduation or to obtain
36 a degree or diploma, and sufficient to complete all the classes that
37 make up the course of instruction, including any general education
38 requirements, with a grade of “C” or better.
- 39 94952. (a) An institution shall not enter into an agreement for
40 a program or course of instruction given in English with a

1 prospective student unless the prospective student first takes and
2 passes an English proficiency test as provided in subdivision (b)
3 or authorized by regulation of the Bureau of Private Postsecondary
4 Education. Any English proficiency tests authorized by the bureau
5 shall be given by an independent test administrator. English
6 proficiency tests and their cutoff scores shall demonstrate that the
7 student is English proficient and not limited English proficient and
8 has the necessary English language proficiency which includes
9 the ability to understand verbal and written English and to speak
10 and write English well enough to successfully complete a
11 postsecondary course of instruction and particularly the course or
12 program of instruction into which the prospective student seeks
13 to enroll.

14 (b) A student may show proficiency in English sufficient to
15 meet the requirements of subdivision (a) by doing any of the
16 following:

17 (1) Taking the Test of English as a Foreign Language (TOEFL)
18 and scoring a minimum of 450 for the paper-based test, 133 for
19 the computer-based test, or 45 for the Internet-based test.

20 (2) Taking the International English Language Testing System
21 (IELTS) test and scoring a minimum of 4.5.

22 (3) Taking a test and meeting or exceeding the cutoff score or
23 scores designated by the bureau per regulation as provided in
24 subdivision (a).

25 (c) (1) The English proficiency test or tests shall be given to
26 prospective students off campus by an independent test
27 administrator without charge to the student and in accordance with
28 all procedures and requirements specified by the test publisher.
29 The English proficiency test or tests shall be paid for by the
30 institution and shall be scored by an independent test administrator
31 off campus.

32 (2) No employee or representative of the school shall be present
33 at the test location or shall in any way influence the giving,
34 monitoring, or scoring of the English proficiency test or tests.

35 (3) (A) The student alone shall complete the test without any
36 assistance from any person or institution, except as provided in
37 subparagraph (B).

38 (B) Nothing in this paragraph prevents an institution from
39 providing nonsubstantive assistance to accommodate the disability
40 of a handicapped person otherwise qualified to take the test.

1 (d) If a prospective student fails to achieve a score as required
2 by subdivision (b), then another English proficiency test shall not
3 be administered to the prospective student for at least one week
4 or the period specified by the test developer, whichever is longer.
5 Any subsequent English proficiency test given to the same
6 prospective student shall be a substantially different form of the
7 same test or a substantially different test than the test which the
8 prospective student failed.

9 94953. If a student does not have a high school diploma, he or
10 she may take an ability-to-benefit test as required by federal law
11 and regulation (34 C.F.R. 668 et seq.) in order to qualify for federal
12 and state financial aid. A nonnative speaker of English must take
13 and pass an English proficiency test as indicated in subdivision
14 (a) of Section 94952 whether or not the student is a high school
15 graduate and has a high school diploma.

16 94953.1. A student may not waive any provision of any section
17 of this article. Any waiver or limitation of any substantive or
18 procedural right or remedy or provision or section set forth in this
19 article is in violation of this section and is void and unenforceable.

20 94953.2. (a) If an institution violates any provision of this
21 article, the enrollment agreement and any other contract with the
22 institution shall be unenforceable, and the institution shall refund
23 all payment by or on behalf of the student as well as any fees,
24 penalties, or interest associated with the educational loans the
25 student obtained to attend the institution and enroll in the course
26 of instruction.

27 (b) Notwithstanding any provision in an agreement with the
28 institution, a student may bring an action for a violation of any
29 section or subdivision of this article or for an institution's failure
30 to comply with any section or subdivision of this article which
31 requires that nonnative speakers of English take and pass an
32 English proficiency test or tests prior to enrolling in a course of
33 instruction given in English. Upon prevailing, the student shall be
34 entitled to the recovery of damages, equitable relief, any other
35 relief authorized by any section of this article, or any other
36 provision of law, and reasonable attorney's fees and costs.

37 (c) If a court or judge or trier of fact finds that a violation was
38 willfully committed or that the institution or any representative or
39 employee thereof failed to refund all payment and other costs as
40 required by subdivision (a), on the student's request or written

1 demand, the court, the judge, or trier of fact, in addition to the
2 relief awarded under subdivision (a) shall award a civil penalty of
3 up to three times the amount of the tuition and loan-related charges
4 indicated in subdivision (a).

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

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

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

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

19 94954. (a) Any violation of this article shall not be considered
20 a minor violation within the meaning of Section 94935.

21 (b) The bureau shall have the authority pursuant to Section
22 94932 and this article to investigate any institution’s compliance
23 with this article.

24 (c) The bureau may compel compliance with the provisions of
25 this article and order restitution as provided in subdivision (a) of
26 Section 94953.2 for the students with respect to whom the
27 violations occurred. The bureau is not limited to the remedies set
28 forth in Sections 94933 and 94937 or any other provision of this
29 chapter and such remedies shall include issuing an order prohibiting
30 the future enrollment of nonnative speakers of English until the
31 institution has come into compliance with this article.

32 (d) The bureau shall investigate any claim or complaint that an
33 institution has violated this article. If it finds a violation, the bureau
34 shall order restitution in accordance with subdivision (a) of Section
35 94953.2 to any student or prospective student. If the complaint
36 involves a student or students who are no longer attending the
37 institution, the bureau shall have up to 120 days to order restitution
38 and compliance, up to six months if the practice was systemic or
39 happened to more than one student, and up to nine months if other
40 campuses of the institution were violating this article. If the

1 violation involved more than one student, the enrollment of
2 nonnative speakers of English shall be suspended until the bureau
3 is satisfied that the institution is in compliance with this article.
4 For good cause the bureau can extend the deadlines in this section
5 by 30 days.

6 (e) The bureau shall investigate whether the violation was
7 systemic or ongoing at the campus where the initial violation
8 occurred. If the bureau finds that violation was systemic or
9 ongoing, the bureau shall order restitution for those students who
10 were enrolled in violation of this article in accordance with the
11 provisions of subdivision (a) of Section 94953.2.

12 (f) The bureau shall also investigate the institution's compliance
13 with this article at its other campuses if noncompliance has been
14 found at any campus. If the bureau finds multiple or systemic
15 violations of this article at one campus of an institution, the bureau
16 shall issue an order immediately which prohibits the institution
17 from enrolling new nonnative speakers of English until restitution
18 is provided to the students with respect to whom the violations
19 occurred and a remedial program is in place so that similar
20 violations do not happen in the future.

21 (g) The bureau may use the citation process described in Section
22 94936 but it is not limited by the provisions in that section or the
23 time limits in this section. The hearing process set forth in Sections
24 94936 and 94940 and elsewhere in this chapter apply but the
25 requesting of a hearing by the institution shall not stop or delay
26 the decision or order to suspend the enrollment of nonnative
27 speakers of English prospectively.

28 (h) The decision and findings in an administrative proceeding
29 conducted by the bureau shall not have any preclusive effect on
30 any claim or issue, nor be entitled to any deference, nor shall any
31 inference be drawn from the decision and findings in any action
32 brought by a student for a violation of this article. The court,
33 however, may consider all admissible evidence in that action
34 regardless of whether that evidence was presented in the
35 administrative proceeding.

36 94955. Any written contract or agreement for educational
37 services signed by a nonnative speaker of English with an
38 institution shall include an enrollment agreement which discloses
39 that nonnative speakers of English must take a test as provided in
40 Section 94952. The agreement must also include what test the

1 individual, student, or prospective student took, his score, and the
2 required passing score. The test the individual, student, or
3 prospective student took and his score must also be put in the
4 student's file after he enrolls.

5 94956. The provisions of this article or the provisions of
6 sections within this article are severable. If any provision of this
7 article or provision of a section in this article or its application is
8 held invalid, that invalidity shall not affect other provisions or
9 applications that can be given effect without the invalid provision
10 or application.