

AMENDED IN SENATE APRIL 5, 2011

SENATE BILL

No. 675

Introduced by Senator Wright

February 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 amended, 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.

~~(4) Some private postsecondary schools help these prospective immigrant students get counterfeit high school diplomas so they can get federal financial aid without having to take an ability-to-benefit test which would reveal their limited education or limited English proficiency. The result is that these students are barred from qualifying for federal financial aid without remedial and English-as-a-second-language (ESL) instruction.~~

~~(5)~~

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

~~(6)~~

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

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

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

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

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

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

Article 22. Nonnative Speakers of English

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

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

(b) “High school diploma” means a diploma received from a public high school or private high school that is accredited by a federally recognized regional accrediting agency or a high school diploma from a school that has a University of California approved course list. This definition shall remain in effect as long as it does not conflict with any definition of high school diploma enacted by the United States Department of Education.

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

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

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

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

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

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

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

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

5 (e) ~~“Limited-English proficient,”~~ “*English learner*,” when used
6 with respect to an individual, student, or prospective student, means
7 a nonnative speaker of English whose difficulties in speaking,
8 reading, writing, or understanding the English language may be
9 sufficient to deny the individual any of the following:

10 (1) The ability to successfully complete the course work and
11 activities in the classes making up the course or program of
12 instruction where the language of instruction is English.

13 (2) The training and skills to obtain jobs in areas in which the
14 training was represented to lead to jobs in the field of training.

15 (3) The opportunity to participate fully in society.

16 (f) “Nonnative speaker of English” is any of the following:

17 (1) A person who was not born in the United States and whose
18 first language was not English.

19 (2) A person whose primary language spoken at home is other
20 than English or whose native language is a language other than
21 English.

22 ~~(3) A person who has not completed kindergarten and grades 1~~
23 ~~to 12, inclusive, in the United States and graduated from high~~
24 ~~school in the United States.~~

25 ~~(4) A person who comes from an environment or a family where~~
26 ~~a language other than English has had a significant impact on the~~
27 ~~individual’s level of English proficiency.~~

28 (3) *A person who was born in a country other than the United*
29 *States and who attended kindergarten or any grades 1 to 12,*
30 *inclusive, in a United States school for three or fewer years.*

31 (g) “Program or course of instruction” means a set of vocational
32 or other related educational classes that prepare students for a job
33 or set of jobs or for a degree. A course or program of instruction
34 can result in a diploma or a degree, the latter often requires general
35 education classes.

36 (h) “Prospective student” means a nonnative speaker of English
37 who seeks to enroll in a program of instruction taught in English
38 or who has inquired about a program of instruction given or taught
39 in English.

(i) “Student” means a person who is a nonnative speaker of English who has enrolled in or signed an enrollment agreement for a program of instruction conducted in English at a private postsecondary institution.

(j) “Successful completion of a course or program of instruction” means that a nonnative speaker of English has English language proficiency sufficient to participate in and complete all class activities, other requirements necessary for graduation or to obtain a degree or diploma, and sufficient to complete all the classes that make up the course of instruction, including any general education requirements, with a grade of “C” or better.

94952. (a) An institution shall not enter into an agreement for a program or course of instruction given in English with a prospective student unless the prospective student first takes and passes an English proficiency test as provided in subdivision ~~(b)~~ or authorized by regulation of the Bureau of Private Postsecondary Education. Any English proficiency tests authorized by the bureau shall be given by an independent test administrator. English ~~(b)~~. English proficiency tests and their cutoff scores shall demonstrate that the student is English proficient and not limited English proficient and has the necessary English language proficiency which includes the ability *student has the necessary English language proficiency* to understand verbal and written English and to speak and write English well enough to successfully complete a postsecondary course of instruction and particularly the course or program of instruction into which the prospective student seeks to enroll.

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

(1) Taking the Test of English as a Foreign Language (TOEFL) and scoring a minimum of 450 for the paper-based test, 133 for the computer-based test, or 45 for the Internet-based test. *and meeting or exceeding the cutoff score or scores designated by the bureau per regulation.*

(2) Taking the International English Language Testing System (IELTS) test and scoring a minimum of 4.5 *meeting or exceeding the cutoff score or scores designated by the bureau per regulation.*

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

4 (c) (1) The English proficiency test or tests shall be given to
5 prospective students off campus by an independent test
6 administrator without charge to the student and in accordance with
7 all procedures and requirements specified by the test publisher.
8 The English proficiency test or tests shall be paid for by the
9 institution and shall be scored by an independent test administrator
10 off campus.

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

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

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

20 (d) If a prospective student fails to achieve a score as required
21 by subdivision (b), then another English proficiency test shall not
22 be administered to the prospective student for at least one week
23 or the period specified by the test developer, whichever is longer.
24 Any subsequent English proficiency test given to the same
25 prospective student shall be a substantially different form of the
26 same test or a substantially different test than the test which the
27 prospective student failed.

28 94953. If a student does not have a high school diploma, *as*
29 *defined in subdivision (b) of Section 94951*, he or she may take an
30 ability-to-benefit test as required by federal law and regulation (34
31 C.F.R. 668 et seq.) in order to qualify for federal and state financial
32 aid. A nonnative speaker of English must take and pass an English
33 proficiency test as indicated in subdivision (a) of Section 94952
34 whether or not the student is a high school graduate and has a high
35 school diploma.

36 94953.1. A student may not waive any provision of any section
37 of this article. Any waiver or limitation of any substantive or
38 procedural right or remedy or provision or section set forth in this
39 article is in violation of this section and is void and unenforceable.

1 94953.2. (a) If an institution violates any provision of this
2 article, the enrollment agreement and any other contract with the
3 institution shall be unenforceable, and the institution shall refund
4 all payment by or on behalf of the student as well as any fees,
5 penalties, or interest associated with the educational loans the
6 student obtained to attend the institution and enroll in the course
7 of instruction.

8 (b) Notwithstanding any provision in an agreement with the
9 institution, a student may bring an action for a violation of any
10 section or subdivision of this article or for an institution's failure
11 to comply with any section or subdivision of this article which
12 requires that nonnative speakers of English take and pass an
13 English proficiency test or tests prior to enrolling in a course of
14 instruction given in English. Upon prevailing, the student shall be
15 entitled to the recovery of damages, equitable relief, any other
16 relief authorized by any section of this article, or any other
17 provision of law, and reasonable attorney's fees and costs.

18 (c) If a court or judge or trier of fact finds that a violation was
19 willfully committed or that the institution or any representative or
20 employee thereof failed to refund all payment and other costs as
21 required by subdivision (a), on the student's request or written
22 demand, the court, the judge, or trier of fact, in addition to the
23 relief awarded under subdivision (a) shall award a civil penalty of
24 up to three times the amount of the tuition and loan-related charges
25 indicated in subdivision (a).

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

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

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

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

1 94954. (a) Any violation of this article shall not be considered
2 a minor violation within the meaning of Section 94935.

3 (b) The bureau shall have the authority pursuant to Section
4 94932 and this article to investigate any institution's compliance
5 with this article.

6 (c) The bureau may compel compliance with the provisions of
7 this article and order restitution as provided in subdivision (a) of
8 Section 94953.2 for the students with respect to whom the
9 violations occurred. The bureau is not limited to the remedies set
10 forth in Sections 94933 and 94937 or any other provision of this
11 chapter and such remedies shall include issuing an order prohibiting
12 the future enrollment of nonnative speakers of English until the
13 institution has come into compliance with this article.

14 (d) The bureau shall investigate any claim or complaint that an
15 institution has violated this article. If it finds a violation, the bureau
16 shall order restitution in accordance with subdivision (a) of Section
17 94953.2 to any student or prospective student. If the complaint
18 involves a student or students who are no longer attending the
19 institution, the bureau shall have up to 120 days to order restitution
20 and compliance, up to six months if the practice was systemic or
21 happened to more than one student, and up to nine months if other
22 campuses of the institution were violating this article. If the
23 violation involved more than one student, the enrollment of
24 nonnative speakers of English shall be suspended until the bureau
25 is satisfied that the institution is in compliance with this article.
26 For good cause the bureau can extend the deadlines in this section
27 by 30 days.

28 (e) The bureau shall investigate whether the violation was
29 systemic or ongoing at the campus where the initial violation
30 occurred. If the bureau finds that violation was systemic or
31 ongoing, the bureau shall order restitution for those students who
32 were enrolled in violation of this article in accordance with the
33 provisions of subdivision (a) of Section 94953.2.

34 (f) The bureau shall also investigate the institution's compliance
35 with this article at its other campuses if noncompliance has been
36 found at any campus. If the bureau finds multiple or systemic
37 violations of this article at one campus of an institution, the bureau
38 shall issue an order immediately which prohibits the institution
39 from enrolling new nonnative speakers of English until restitution
40 is provided to the students with respect to whom the violations

1 occurred and a remedial program is in place so that similar
2 violations do not happen in the future.

3 (g) The bureau may use the citation process described in Section
4 94936 but it is not limited by the provisions in that section or the
5 time limits in this section. The hearing process set forth in Sections
6 94936 and 94940 and elsewhere in this chapter apply but the
7 requesting of a hearing by the institution shall not stop or delay
8 the decision or order to suspend the enrollment of nonnative
9 speakers of English prospectively.

10 (h) The decision and findings in an administrative proceeding
11 conducted by the bureau shall not have any preclusive effect on
12 any claim or issue, nor be entitled to any deference, nor shall any
13 inference be drawn from the decision and findings in any action
14 brought by a student for a violation of this article. The court,
15 however, may consider all admissible evidence in that action
16 regardless of whether that evidence was presented in the
17 administrative proceeding.

18 94955. Any written contract or agreement for educational
19 services signed by a nonnative speaker of English with an
20 institution shall include an enrollment agreement which discloses
21 that nonnative speakers of English must take a test as provided in
22 Section 94952. The agreement must also include what test the
23 individual, student, or prospective student took, his score, and the
24 required passing score. The test the individual, student, or
25 prospective student took and his score must also be put in the
26 student's file after he enrolls.

27 94956. The provisions of this article or the provisions of
28 sections within this article are severable. If any provision of this
29 article or provision of a section in this article or its application is
30 held invalid, that invalidity shall not affect other provisions or
31 applications that can be given effect without the invalid provision
32 or application.