

ARTICLE 1 ♦ GENERAL PROVISIONS

§ 94700 TITLE

This chapter shall be known, and may be cited, as the "Private Postsecondary and Vocational Education Reform Act of 1989."

§ 94705 LEGISLATIVE INTENT

It is the intent of the Legislature to promote the effective integration of private postsecondary education into all aspects of California's educational system and to foster and improve the educational programs and services of these institutions while protecting the citizens of the state from fraudulent or substandard operations. It is further the intent of the Legislature to recognize the enormous diversity of California's private postsecondary educational enterprise, with its approximately 2,300 privately supported institutions of academic and vocational education. It is further the intent of the Legislature to provide for the protection, education, and welfare of citizens of California, its postsecondary educational institutions, and its students by providing for all of the following:

- (a) Ensuring minimum standards of instructional quality and institutional stability for all students in all types of institutions, and thereby encouraging the recognition by public and private institutions of completed coursework and degrees and diplomas issued by private institutions, to the end that students will be provided equal opportunities for equal accomplishment and ability.
- (b) Establishing minimum standards concerning the quality of education, ethical and business practices, health and safety, and fiscal responsibility to provide protection against substandard, transient, unethical, deceptive, or fraudulent institutions and practices.
- (c) Prohibiting the granting of false or misleading educational credentials.
- (d) Prohibiting misleading literature, advertising, solicitation, or representations by private educational institutions or their agents.

- (e) Recognizing the importance of providing adequate funding through application and renewal fees and federal funding for the veteran's approval process to support the state's activities in implementing this chapter.
- (f) Protecting the consumer and students against fraud, misrepresentation, or other practices that may lead to an improper loss of funds paid for educational costs, whether financed through personal resources or state and federal student financial aid.
- (g) Establishing a path for the development of institutions offering fields of study or methods of instruction and innovative educational delivery systems not previously recognized in order to encourage them to become fully approved institutions.
- (h) Recognizing and encouraging quality nongovernmental accreditation, while not ceding to that or any other nongovernmental process the responsibility for state oversight for purposes of approval, if the accreditation process fails either to protect minimum standards of quality or to acknowledge legitimate innovative methods in postsecondary education.
- (i) Establishing an administrative agency staffed by individuals who are knowledgeable about private academic and vocational education, and charged with the responsibility of developing policies and procedures for the oversight and approval of private postsecondary and vocational education, including the responsibility for managing a broadly construed policy and planning process that seeks to improve state accountability for private postsecondary and vocational education as well as to improve the articulation of private postsecondary and vocational education with the public and independent postsecondary educational community. This new body should provide the leadership and planning needed to maintain and develop a strong private sector of this community.

ARTICLE 2 ♦ DEFINITIONS

§ 94710 DEFINITIONS

The definitions set forth in this article govern the construction of this chapter, unless the context requires otherwise.

§ 94711 ACADEMIC YEAR

"Academic Year" for a degree-granting institution means a period including a minimum of 30 weeks of instruction.

§ 94712 ACCREDITED

"Accredited" means that an institution has been recognized or approved as meeting the standards established by an accrediting agency recognized by the United States Department of Education, or the Committee of Bar Examiners for the State of California. It does not include those institutions that have applied for accreditation, or are identified by accrediting associations as candidates for accreditation or have provisional accreditation.

§ 94713 AGENCY

"Agency" means any person or business entity, regardless of the form of organization, that employs, or in any manner contracts with, one or more agents. "Agency" does not include an institution.

§ 94714 AGENCY APPROVAL

"Agency approval" means a written document issued by the council authorizing a business entity or an institution to engage in the recruitment of students for enrollment in private postsecondary and vocational institutions approved under this chapter.

§ 94715 AGENT

"Agent" means any person who, at a place away from the institution's premises or site of instruction, but within the United States, for consideration, solicits, promotes,

advertises, offers, or attempts to secure enrollment for an institution, refers any person to that institution, either for enrollment or to receive a solicitation for enrollment, or accepts application fees or admissions fees for education in that institution. Administrators and faculty who make informational public appearances, but whose primary task does not include service as a paid recruiter, are not agents. Publishers of directories that contain general information on institutions and their offerings and who do not otherwise engage in any of the activities described in this section are not agents.

§ 94716 AGENT'S PERMIT

"Agent's permit" means a nontransferable written document issued to an agent pursuant to this chapter by the council.

§ 94717 APPLICANT

"Applicant" means a new institution that has submitted an application but has not been evaluated by the council. An applicant institution shall not enroll students or offer educational services.

§ 94718 APPROVAL OR APPROVAL TO OPERATE

"Approval" or "approval to operate" means that the council has determined and certified that an institution meets minimum standards established by the council for integrity, financial stability, and educational quality, including the offering of bona fide instruction by qualified faculty and the appropriate assessment of students' achievement prior to, during, and at the end of its program.

§ 94719 BRANCH

"Branch" means a site other than the main location or a satellite. Only educational services approved at the main location may be offered at the branch.

§ 94719.5 BUREAU

"Bureau" means the Bureau for Private Postsecondary and Vocational Education in the Department of Consumer Affairs established pursuant to Section 94770.

§ 94720 CERTIFICATE OF AUTHORIZATION FOR SERVICE

"Certificate of authorization for service" means a written, nontransferable document issued by the council authorizing an individual to be an instructor or administrator in any private vocational postsecondary educational institution in California that is approved under Section 94915.

§ 94721 CHANGE OF LOCATION

"Change of location" means a move of up to 25 miles of the location at which an institution offers any education, training, or instruction. A change of location of 25 or more miles is deemed the establishment of a new location of instruction requiring a separate approval to operate, unless otherwise provided by the council.

§ 94722 CONTINUING EDUCATION

- (a) Except as provided in subdivision (b), "continuing education" means instruction in any of the following circumstances:
- (1) Only in subjects licensees are required to take as a condition of continued licensure and solely for that purpose.
 - (2) Only in subjects necessary to continue to practice or work in a profession such as law or medicine and solely for that purpose.
 - (3) To persons who are already in a particular profession, trade, or job category for the sole purpose of enhancing their skills or knowledge within that particular profession, trade, or job category.
- (b) "Continuing education" does not include any of the following:
- (1) Vocational diploma programs.
 - (2) Degree programs.
 - (3) An educational service any part of the charge for which is paid from the proceeds of a loan or grant subject to a governmental student financial aid program.

§ 94723 CORRESPONDENCE SCHOOL OR HOME STUDY SCHOOL

"Correspondence school" or "home study school" means any institution that provides correspondence lessons for study and completion by a student at a location separate from the institution, including those institutions which offer that instruction by correspondence in combination with in-residence instruction.

§ 94724 COUNCIL

"Council" means the Bureau for Private Postsecondary and Vocational Education in the Department of Consumer Affairs established pursuant to Section 94770.

§ 94725 COURSE OF STUDY

"Course of study" means either a single course or a set of related courses for which a student enrolls.

§ 94726 DEGREE

"Degree" means any type of degree or honorary degree or title of any designation, mark, appellation, series of letters or words such as, but not limited to, associate, bachelor, master, doctor, or fellow which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, educational, technological, or professional program of study beyond the secondary school level or is an honorary title conferred for recognition of some meritorious achievement.

§ 94727 DEGREE TITLE

"Degree title" means the designated subject area of study that also appears on the face of the document awarded to a student signifying the conferring of a "degree."

§ 94728 DIPLOMA

"Diploma" means any diploma, certificate, document, or other writing in any language other than a degree which signifies, purports, or is generally taken to signify satisfactory completion of the requirements of an academic, educational, technological, or professional program of study beyond the secondary school level.

§ 94728.5 DIRECTOR

"Director" means the Director of Consumer Affairs.

§ 94729 EDUCATION, EDUCATIONAL SERVICES, OR EDUCATIONAL PROGRAM

"Education," "educational services," or "educational program" includes, but is not limited to, any class, course, or program of training, instruction, or study.

§ 94729.3 FRANCHISE INSTITUTION

"Franchise institution" means a newly established location of an existing approved institution offering postsecondary education services leading to candidacy for psychology licensure that bears the same name as the existing approved institution and about which either of the following is true:

- (a) The newly established location is owned or financially controlled by an individual or individuals other than those who own or financially control the existing approved institution.
- (b) The newly established institution is administered by an individual or individuals other than those persons who administer the existing approved institution.

§ 94730 INSTITUTION

"Institution" means any private postsecondary educational institution. An "institution" includes its branch and satellite campuses, unless otherwise provided by the council.

§ 94731 INSTITUTIONAL APPROVAL

"Institutional approval" means an institution that has been evaluated by the council and has been found to be in compliance with the council's standards pursuant to this chapter.

§ 94732 INSTRUCTION

"Instruction" includes any specific, formal arrangement by an institution or its enrollees to participate in learning experiences in which the institution's faculty or contracted instructors present a planned curriculum appropriate to the enrollee's educational program.

§ 94733 INTENSIVE ENGLISH LANGUAGE PROGRAM

"Intensive English language program" means an educational service approved by the United States Immigration and Naturalization Service solely to provide English instruction to international students for a designated period of study in the United States and that offers instruction that is nondegree granting, nonvocational, and is not represented to lead to, or offered for the purpose of preparing a student for employment in, any occupation or job title. Additionally, the educational service shall meet all of the following criteria:

- (a) Students enrolling in this type of educational service are not residents of this state or citizens of the United States and are not eligible for federal or state financial aid, including loans.
- (b) Coursework in this type of educational service is limited to English instruction in all areas of language skills development, including reading, writing, speaking, listening, grammar, and test preparation.

§ 94734 LICENSE AND EXAM PREPARATION

"License and exam preparation" means that the educational program is either of the following:

- (a) Designed to assist students to prepare for an examination for licensure.
- (b) Offered for the sole purpose of providing continuing education in subjects licensees are required to take as a condition of continued licensure.

§ 94735 MAIN LOCATION OR MAIN SITE

"Main location" or "main site" means the institution's primary teaching location. If an institution operates at only one site, that site shall be considered its main location or main site.

§ 94736 OCCUPATIONAL ASSOCIATE DEGREE; ASSOCIATE OF OCCUPATIONAL STUDIES; ASSOCIATE OF APPLIED SCIENCE

"Occupational Associate Degree," "Associate of Occupational Studies," or "Associate of Applied Science" designated by terms including, but not limited to, AOS (Associate Occupational Studies), AAS (Associate Applied Science), AST (Associate Specialist Technical), or ASB (Associate Specialist Business) means an associate degree that may be awarded to students who complete an occupational program that provides preparation for employment in an occupational field.

§ 94737 OUT-OF-STATE SCHOOL

"Out-of-state school" means any private postsecondary or vocational educational institution offering career or job training programs, including both an in-residence institution and a home-study institution that has its place of instruction or its principal location outside the boundaries of the state, or that offers or conducts programs of instruction or subjects on premises maintained by the school outside the boundaries of the state, or that provides correspondence or home-study lesson materials from a location outside the boundaries of this state, or that evaluates completed lesson materials or otherwise conducts its evaluation service from a location outside the boundaries of this state, or that otherwise offers or provides California students with programs of instruction or subjects through activities engaged in or conducted outside the boundaries of the state.

§ 94738 PERSON

"Person" means a natural person or any business entity, regardless of the form or organization.

§ 94739 PRIVATE POSTSECONDARY EDUCATIONAL INSTITUTION

- (a) "Private postsecondary educational institution" means any person doing business in California that offers to provide or provides, for a tuition, fee, or other charge, any instruction, training, or education under any of the following circumstances:
- (1) A majority of the students to whom instruction, training, or education is provided during any 12-month period is obtained from, or on behalf of, students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.
 - (2) More than 50 percent of the revenue derived from providing instruction, training, or education during any 12-month period is obtained from, or on behalf of, students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.
 - (3) More than 50 percent of the hours of instruction, training, or education provided during any 12-month period is provided to students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.
 - (4) A substantial portion, as determined by the council, by regulation, of the instruction, training, or education provided is provided to students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.
- (b) The following are not considered to be private postsecondary educational institutions under this chapter:
- (1) Institutions exclusively offering instruction at any or all levels from preschool through the 12th grade.
 - (2) Institutions offering education solely avocational or recreational in nature, and institutions offering this education exclusively.

- (3) Institutions offering education sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.
- (4) Postsecondary or vocational educational institutions established, operated, and governed by the federal government or by this state, or its political subdivisions.
- (5) Institutions offering continuing education where the institution or the program is approved, certified, or sponsored by any of the following:
 - (A) A government agency, other than the bureau, that licenses persons in a particular profession, trade, or job category.
 - (B) A state-recognized professional licensing body, such as the State Bar of California, that licenses persons in a particular profession, trade, or job category.
 - (C) A bona fide trade, business, or professional organization.
- (6) A nonprofit institution owned, controlled, and operated and maintained by a bona fide church, religious denomination, or religious organization comprised of multi-denominational members of the same well-recognized religion, lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, if the education is limited to instruction in the principles of that church, religious denomination, or religious organization, or to courses offered pursuant to Section 2789 of the Business and Professions Code, and the diploma or degree is limited to evidence of completion of that education, and the meritorious recognition upon which any honorary degree is conferred is limited to the principles of that church, religious denomination, or religious organization. Institutions operating under this paragraph shall offer degrees and diplomas only in the beliefs and practices of the church, religious denomination, or religious organization. The enactment of this paragraph expresses the legislative intent that the state shall not involve itself in the content of degree programs awarded by any

institution operating under this paragraph, as long as the institution awards degrees and diplomas only in the beliefs and practices of the church, religious denomination, or religious organization. Institutions operating under this paragraph shall not award degrees in any area of physical science. Any degree or diploma granted in any area of study under these provisions shall contain on its face, in the written description of the title of the degree being conferred, a reference to the theological or religious aspect of the degree's subject area. Degrees awarded under this paragraph shall reflect the nature of the degree title, such as "Associate of Religious Studies," or "Bachelor of Religious Studies," or "Master of Divinity" or "Doctor of Divinity." The use of the degree titles "Associate of Arts" or "Associate of Science," "Bachelor of Arts" or "Bachelor of Science," "Master of Arts" or "Master of Science," or "Doctor of Philosophy" or "Ph.D." shall only be awarded by institutions approved to operate under Article 8 (commencing with Section 94900) or meeting the requirements for an exemption under Section 94750. The enactment of this paragraph is intended to prevent any entity claiming to be a nonprofit institution owned, controlled, and operated and maintained by a bona fide church, religious denomination, or religious organization comprised of multi-denominational members of the same well-recognized religion, lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, from marketing and granting degrees or diplomas that are represented as being linked to their church, religious denomination, or religious organization, but which, in reality, are degrees in secular areas of study. An institution operating under this paragraph shall file annually with the council evidence to demonstrate its status as a nonprofit religious corporation under the Corporations Code. A college or university operating under this paragraph shall file annually with the council evidence to demonstrate its status as a nonprofit religious corporation under the Corporation Code.

- (7) (A) Public institutions accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges.

- (B) Institutions accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges that are incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code and that are not managed by any entity for profit.
 - (C) For-profit institutions accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges.
 - (D) Institutions accredited by the Western Association of Schools and Colleges that do not meet all of the criteria in subparagraph (B) and that are incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, that have been in continuous operation since April 15, 1997, and that are not managed by any entity for profit. Notwithstanding this subdivision, institutions that meet the criteria in this subparagraph shall be subject to Section 94831, except subdivision (c) of that section, and Sections 94832, 94834, 94838, and 94985.
- (8) Institutions that exclusively offer programs that cost five hundred dollars (\$500) or less.

§ 94740 PROGRAM

“Program” or “program of instruction” means a program of training, set of related courses, or education for which a student enrolls.

§ 94740.3 NON-WASC REGIONAL ACCREDITING AGENCY

“Non-WASC regional accrediting agency” means a regional accrediting agency, other than the Western Association of Schools and Colleges, recognized by the United States Department of Education as possessing similar quality and rigor in accreditation standards, and limited to the following: (a) Middle States Association of Colleges and Schools, Commission on Higher Education. (b) New England Association of Schools and Colleges, Commission on Institutions of Higher Education. (c) North Central Association of Colleges and Schools, The Higher Learning Commission. (d) Northwest Association of Schools and of Colleges and Universities, Commission on Colleges and Universities. (e) Southern Association of Colleges and Schools, Commission on Colleges.

§ 94740.5 NON-WASC REGIONALLY ACCREDITED INSTITUTION

“Non-WASC regionally accredited institution” means a degree-granting institution that has been accredited by one of the non-WASC regional accrediting agencies listed in Section 94740.3. It does not include any of the following: (a) An institution within the meaning of paragraph (7) of subdivision (b) of Section 94739 that has been accredited by the Accrediting Commission for Senior Colleges and Universities or the accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges. (b) An institution that has provisional accreditation. (c) An institution that has applied for accreditation. (d) An institution that is identified by an accrediting agency as a candidate for accreditation.

§ 94740.7 REGISTERED, REGISTERED INSTITUTION

"Registered," "registered institution," or "registered educational service" means any individual or organization that offers an educational service and is registered to operate under Article 9.5 (commencing with Section 94931).

§ 94741 REPRESENTATIVE

"Representative" means an employee, an agent as defined in Section 2295 of the Civil Code, an agent subject to Section 94940, an agency subject to Section 94942, or any person who, for compensation, does either of the following:

- (a) Solicits, promotes, advertises, or refers or recruits students or prospective students for an institution.
- (b) Is involved with enrollment, admissions, student attendance, administration, financial aid, instruction, or job placement assistance on behalf of an institution.

§ 94742 SATELLITE

"Satellite" means an auxiliary classroom or a teaching site. All of the following apply to a satellite:

- (a) Only educational services that are approved at the main location shall be offered at the satellite.
- (b) The institution shall maintain no permanent records of attendance or academic progress at the satellite.
- (c) Advertisement of a satellite shall indicate that the satellite is an auxiliary classroom or a teaching site.

§ 94742.1 SHORT-TERM CAREER TRAINING

- (a) "Short-term career training" means an educational service consisting of all of the following:
 - (1) The total charge to the student is two thousand dollars (\$2,000) or less.
 - (2) The length of training is less than 250 hours.
 - (3) The course is represented as preparing the student for any occupation or job title.
- (b) "Short-term career training" does not include any of the following:
 - (1) Instruction leading to a degree.
 - (2) Instruction financed by a federal or state loan or grant.

- (3) Any educational service, other than provided for in subdivision (a), consisting of more than 250 hours of instruction or costing two thousand dollars (\$2,000) or more in total charges that is divided or structured into one or more segments that consists of 250 or fewer hours of instruction, the total charge for which is less than two thousand dollars (\$2,000).
- (4) Any educational service represented to lead to, or offered for the purpose of preparing a student for, employment as a certified nursing assistant, a private security guard, or a private patrol operator.
- (c) Short-term career training may include an educational service licensed by another state agency so long as that educational service complies with subdivision (a) and Article 9.5 (commencing with Section 94931).
- (d) This section shall become operative on January 1, 2005.

§ 94742.3 SHORT-TERM EDUCATION PROGRAM

“Short-term education program” means an educational service meeting all of the following criteria:

- (a) The total charge to the student is more than five hundred dollars (\$500) and not more than two thousand dollars (\$2,000).
- (b) The length of training is 250 hours or less.
- (c) The service is not any of the following:
 - (1) Instruction leading to a degree.
 - (2) Instruction financed by a federal or state loan or grant.
 - (3) Any educational service that was originally longer than 250 hours or cost more than two thousand dollars (\$2,000), but has been structured into segments to meet the requirement of subdivision (a).

- (d) The service is offered by approved institutions or institutions registered pursuant to Article 9.5 (commencing with Section 94931).

§ 94743 SITE

"Site" means a main location, branch, or satellite campus.

§ 94744 TO OFFER

"To offer" includes, in addition to its usual meanings, advertising, publicizing, soliciting, or encouraging any person, directly or indirectly, in any form, to perform the act described.

§ 94745 TO OPERATE

"To operate" an educational institution, or like term, means to establish, keep, or maintain any facility or location in this state where, or from or through which, educational services are offered or educational degrees or diplomas are offered or granted.

§ 94746 VOCATIONAL DIPLOMA PROGRAM

"Vocational diploma program" means an educational program having all of the following characteristics:

- (a) The educational program consists of a job-training program or other instruction, training, or education that the institution represents will lead to, fit, or prepare students for employment in any occupation.
- (b) The program is offered to students who do not possess a bachelor's or graduate degree in the field of training.
- (c) Students who complete all or a portion of the program are awarded a diploma, certificate, or occupational associate degree.

ARTICLE 3 ♦ EXEMPTIONS**§ 94750 SPECIFIED NATIONALLY ACCREDITED INSTITUTIONS**

Article 4 (commencing with Section 94770), Article 8 (commencing with Section 94900), the last sentence of paragraph (6) of subdivision (b) of Section 94739, subdivision (c) of Section 94831, and Sections 94802, 94830, 94835, 94836, 94840, 94846, 94934, 94942, 94944, 94945, 94946, 94947, 94965, and 94970 shall not apply to an institution that is a nationally accredited agency recognized by the United States Department of Education if the bureau has determined, subsequent to an onsite qualitative review and assessment of the institution conducted at least once every three years, as described in Section 94901, that the institution is in compliance with all of the following:

- (a) The institution meets the financial responsibility requirements set forth in subdivision (b) of Section 94804.
- (b) The faculty of the institution meets the requirements set forth in paragraph (2) of subdivision (a) of Section 94900.
- (c) The institution's cohort default rate on guaranteed student loans does not exceed 15 percent for the three most recent years as published by the United States Department of Education.
- (d) The institution has operated in this state for at least 15 years.
- (e) The institution submits to the bureau copies of the most recent IRS Form 990 and the Integrated Postsecondary Education Data System Report of the United States Department of Education and the accumulated default rate.
- (f) The institution pays fees in accordance with Section 94932.
- (g) The institution exclusively confers degrees upon the completion of a course of study of two or more years. Institutions that satisfy the requirements of this subdivision may also (1) teach state-mandated continuing education programs if the institution offers a degree for which the continuing education program is required, and (2) teach prerequisite courses for admission to a degree program offered at the institution.

- (h) The institution has offered a masters, doctorate, or first professional degree program for at least five years.
- (i) The institution is incorporated and lawfully operates as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code and is not managed or administered by an entity for profit.

ARTICLE 3.5 ♦ TRANSITION PROVISIONS

§ 94760 EFFECT OF PRIOR APPROVAL; APPLICABILITY OF PRIOR REGULATIONS

- (a) Any institution operating on December 31, 1997, with a full, conditional, or temporary approval to operate, may continue to operate under the terms of that approval until that full, conditional, or temporary approval to operate expires or a subsequent action is taken by the bureau that affects that approval to operate, whichever comes first.
- (b) Each regulation in Division 7.5 (commencing with Section 70000) of Title 5 of the California Code of Regulations in effect on June 29, 1997, shall be in full force and effect on and after January 1, 1998, to the extent the regulation is consistent with the relevant provisions in this chapter. The council may, by emergency regulation, designate which regulations are consistent with this chapter and which are not.

ARTICLE 4 ♦ ADMINISTRATION

§ 94770 BUREAU FOR PRIVATE POSTSECONDARY AND VOCATIONAL EDUCATION

There is a Bureau for Private Postsecondary and Vocational Education in the Department of Consumer Affairs. The bureau shall succeed to any and all rights and claims of the former Council for Private Postsecondary and Vocational Education that may have been asserted in any judicial or administrative action pending on January 1, 1998, and shall take any action reasonably necessary to assert and realize those rights and claims in its own name. The functions of the former council and the responsibilities the former council had for the administration of former Chapter 7 (commencing with Section 94700) on June 29, 1997, are transferred to the bureau, effective January 1, 1998, as provided by this act. It is the intent of the Legislature that there be no gap in the performance of functions or the administration of the law governing private postsecondary educational institutions. Notwithstanding any other provision of law, Section 19050.9 of the Government Code shall apply regardless of the date on which former Chapter 7 (commencing with Section 94700) became inoperative or was repealed.

The bureau shall have possession and control of all records, papers, offices, equipment, supplies, or other property, real or personal, held for the benefit or use by the former council in the performance of the duties, powers, purposes, responsibilities, and jurisdictions that are vested in the bureau. The bureau has the responsibility for approving and regulating private postsecondary educational institutions. The bureau shall have, as its objective, the development of a strong, vigorous, and widely respected sector of private postsecondary and vocational education.

§ 94770.1 PRIORITY; PROTECTION OF THE PUBLIC

Protection of the public shall be the highest priority for the Bureau for Private Postsecondary and Vocational Education in exercising its approval, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

§ 94771 DIRECTOR'S AUTHORITY; APPOINTMENT OF PROGRAM ADMINISTRATOR, STAFF, AND ADVISORY COMMITTEE

- (a) The duty of administering and enforcing this chapter is vested in the Director of Consumer Affairs, who may assign and delegate those duties to a bureau chief, subject to the other provisions of this section.
- (b) Every power granted to, or duty imposed upon, the bureau under this chapter may be exercised or performed in the name of the bureau, subject to any conditions and limitations the director may prescribe. The bureau chief may redelegate any of those powers or duties to his or her designee. The bureau chief shall be appointed by the Governor and confirmed by the Senate, and is exempt from the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code).
- (c) The director, in accordance with the State Civil Service Act, may appoint and fix the compensation of clerical, inspection, investigation, evaluation, and auditing personnel, as may be necessary to carry out this chapter.
- (d) The proceedings under this chapter shall be conducted by the bureau in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code. To the extent of any conflict between any of the provisions of this chapter and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that Chapter 5 shall prevail.
- (e) The director shall appoint an advisory committee that shall consist of representatives of institutions, student advocates, and employers who hire students, among other parties. The advisory committee shall be balanced to ensure that institutions and student advocates have approximate equal representation. Institutional representatives on the committee shall be in general proportion to the types of institutions approved or registered pursuant to this chapter and to the number of students served by each type of institution. The advisory committee shall advise the bureau concerning the bureau's administration, licensing, and enforcement functions under this chapter.

§ 94772 FUNDING SOURCES

It is the intent of the Legislature that the bureau's approval and regulating responsibilities be funded solely through approval fees and federal funding provided to implement the approval process for courses offered to veterans by approved institutions.

§ 94774 FUNCTIONS AND RESPONSIBILITIES

The bureau shall have the following functions and responsibilities in its capacity as the statewide private postsecondary and vocational educational planning and licensing agency:

- (a) The establishment of policies for the administration of this chapter.
- (b) The establishment of minimum criteria for the approval of private postsecondary or vocational educational institutions to operate in California and award degrees and diplomas, and for the approval of institutions that meet the criteria.
- (c) The adoption of regulations governing the conduct of institutions under this chapter, including, but not limited to, minimum state standards for refund policies, advertising, enrollment agreements and contracts, consumer information, attendance policies, and financial responsibility.
- (d) The adoption of regulations for the transaction of its own affairs, and procedures necessary or appropriate for the conduct of its work and the implementation of this chapter.
- (e) The publication of an Internet directory of all private postsecondary and vocational educational institutions approved to operate in California under this chapter.
- (f) The impaneling of special committees of technically qualified persons to assist the bureau in the development of standards for education and educational institutions and the evaluation of an application or institutions pursuant to this chapter. The members of the special committees shall receive no compensation but shall be reimbursed for their actual expenses

for attendance at official meetings and actual expenses when on official bureau business. The members of the special committees shall serve at no expense to the state. The actual travel and per diem expenses incurred by each member of a special committee shall be reimbursed by the institution that is the subject of inspection or investigation.

- (g) The bureau may design and administer a process for the approval of courses offered to veterans, and for the approval and supervision of the institutions offering courses to veterans, pursuant to any applicable act of Congress and the regulations adopted pursuant to such an act.
 - (1) For the purposes of this subdivision, the bureau:
 - (A) Is designated as the state approving agency for veterans' institutions and veterans' courses, and is authorized to be reimbursed for its services in this regard.
 - (B) Has the same powers conferred on the Director of Education by Article 6 (commencing with Section 12090) of Chapter 1 of Part 8, to enter into agreements and cooperate with the United States Department of Veterans Affairs, or any other federal agency, regarding approval of courses, and the approval and supervision of institutions that offer courses to veterans.
 - (C) May adopt regulations that are necessary and appropriate to exercise its authority under this subdivision.

§ 94774.5 POWERS AND AUTHORITY

- (a) For the purposes of administration and enforcement of this chapter, the Department of Consumer Affairs, the bureau, and the director and officers and employees of the department and the bureau, shall have all the powers and authority granted under this chapter and under Division 1 (commencing with Section 100) and Division 1.5 (commencing with Section 475) of the Business and Professions Code. In addition to satisfying the approval, compliance, and enforcement provisions of this chapter, the bureau shall also comply with and exercise all authority

granted by Division 1 (commencing with Section 100) and Division 1.5 (commencing with Section 475) of the Business and Professions Code.

- (b) The bureau shall establish a regular inspection program which shall include unannounced inspections.
- (c) If the bureau determines after an investigation that an institution has violated this chapter or any of the regulations adopted by the bureau, the bureau may do any or all of the following:
 - (1) Place the institution on probation.
 - (2) Issue an order prohibiting the enrollment of new students.
 - (3) Issue an administrative citation and impose an administrative fine as authorized by, and in accordance with, Section 94957 of this code or Section 146, 147, or 148 of the Business and Professions Code.
 - (4) Issue an order of abatement or citation pursuant to Section 125.9 or 148 of the Business and Professions Code.
 - (5) Initiate proceedings under the Administrative Procedure Act or this chapter to revoke or suspend the institution's approval to operate.
 - (6) With the consent of the institution, refer an adjudicative proceeding to mediation, or binding or nonbinding arbitration, in accordance with the regulations of the Office of Administrative Hearings, the department, or the bureau.
 - (7) Order reimbursement of the costs of the investigation and enforcement in accordance with Section 94935 of this code or Section 125.3 of the Business and Professions Code. An institution shall not be required to pay the same costs and expenses to more than one investigating entity.
 - (8) Notify the telephone company to disconnect the institution's telephone as authorized by Section 149 of the Business and Professions Code.

§ 94775 DEFENSE OR INDEMNIFICATION OF MEMBERS OF SPECIAL OR VISITING COMMITTEES

- (a) Any person, serving on a special committee of the bureau pursuant to subdivision (i) of Section 94774, a visiting committee pursuant to Section 94901, or any other peer review body impaneled by the bureau and who provides information to the bureau or its staff in the course and scope of evaluating any institution subject to this chapter or who testifies at any administrative hearing arising under this chapter, is entitled to a defense by, and indemnification from, the bureau to any action arising out of information or testimony to the bureau which that person would have if he or she were a public employee.
- (b) Any defense by, or indemnification from, the bureau, as specified in subdivision (a) shall be solely with respect to that claim or action pursuant to Article 4 (commencing with Section 825) of Chapter 1 of Part 2 of, and Part 7 (commencing with Section 995) of, Division 3.6 of Title 1 of the Government Code.

§ 94776 ANNUITY CONTRACTS FOR FORMER DEPARTMENT OF EDUCATION EMPLOYEES

The director may purchase annuity contracts for permanent employees of the bureau who formerly were permanent employees of the State Department of Education and who had similar state-purchased annuity contracts prior to January 1, 1998. The bureau shall reduce the salaries of the employees for whom the contracts are purchased by the amount of the costs of the contract if all of the following conditions are met:

- (a) The annuity contract is under an annuity plan that meets the requirements of subdivision (b) of Section 403 of the Internal Revenue Code.
- (b) The employee applies to the director for the purchase of the contract and reduction of salary.
- (c) All provisions of the Insurance Code and the Government Code applicable to the purchase of this type of annuity are satisfied.

§ 94777 USE OF ACCREDITING ASSOCIATIONS' RESOURCES

The bureau may utilize the resources of accrediting associations in gathering information about accredited postsecondary and vocational institutions, including participating as an observer on accreditation site visits. However, this section does not preclude or relieve the bureau of its responsibilities under this chapter and the bureau shall retain full authority for approving all private postsecondary and vocational institutions operating in California.

§ 94778 AUTHORITY TO ADOPT AND ENFORCE REGULATIONS

- (a) The bureau may adopt and enforce regulations that are necessary, appropriate, or useful to interpret and implement this chapter pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Pending the adoption of those regulations, the bureau may adopt emergency regulations that shall become effective immediately. The adoption of the emergency regulations shall be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and the emergency regulations shall only be effective until June 30, 1999, or on the effective date of the regulations adopted by the bureau to implement this chapter, whichever occurs first, at which time the emergency regulations shall be deemed to be repealed.
- (b) The bureau shall adopt regulations establishing a voluntary arbitration process similar to that set forth in Article 6.2 (commencing with Section 7085) of Chapter 9 of Division 3 of the Business and Professions Code for the resolution of disputes between an institution approved to operate under this chapter and a complainant or complainants.
- (c) The bureau may adopt regulations that provide for the approval of courses offered to veterans, and for the approval and supervision of institutions that offer courses to veterans, pursuant to federal law.

§ 94779 PUBLIC DISCLOSURE OF COMPLAINT DATA

The bureau shall make available to members of the public, upon request, the nature and disposition of all complaints on file with the bureau against an institution.

§ 94779.1 MANDATED REVISIONS TO STREAMLINE THIS CHAPTER AND EVALUATE ITS PROVISIONS

- (a) The bureau shall work together with the staff of the Joint Committee on Boards, Commissions, and Consumer Protection, along with representatives of regulated institutions, the California Postsecondary Education Commission, the California Student Aid Commission, students, and other interested parties to revise this chapter to streamline its provisions and eliminate contradictions, redundancies, ambiguities, conflicting provisions, and unnecessary provisions, including consideration of having accreditation by the United States Department of Education approved regional accrediting bodies replace some of the bureau's approval requirements of degree-granting institutions, educational programs, and instructors. In addition, the bureau, in conjunction with these various entities, shall evaluate the provisions of this chapter to determine what additional changes are advisable to improve the effectiveness of the state's regulation of private postsecondary and vocational education, including, but not limited to the need to regulate out-of-state postsecondary institutions that offer educational programs to California students via the Internet and the feasibility of that regulation, and the type and timeliness of information required to be provided to the bureau.
- (b) The bureau shall objectively assess the cost of meeting its statutory obligations, determine the staffing necessary to meet those obligations, determine whether the current fee structure allows for collection of revenue sufficient to support the necessary staffing, and report that information to the Director of Consumer Affairs and the Joint Committee on Boards, Commissions, and Consumer Protection by March 1, 2005.
- (c) The bureau shall continue to make additional improvements to its data collection and dissemination systems to that it will provide improved reporting of information regarding the private postsecondary and vocational education sector, and improved monitoring of reports, initial and renewal applications, complaint and enforcement records, and collection of fees

among other information necessary to serve the bureau's wide-ranging data management needs effectively.

§ 94779.2 APPOINTMENT OF AN OPERATIONS AND ADMINISTRATIVE MONITOR

- (a) (1) The Director of Consumer Affairs shall appoint a Bureau for Private Postsecondary and Vocational Education Operations and Administrative Monitor no later than January 3, 2005. The director may retain a person for this position by a personal services contract. In this connection, the Legislature finds, pursuant to Section 19130 of the Government Code, that this is a new state function.
- (2) The director shall supervise the operations monitor and may terminate or dismiss him or her from this position.
- (b) The director shall advertise the availability of this position. The requirements for this position shall include experience in conducting investigations, familiarity with state laws, rules, and procedures pertaining to the bureau, and familiarity with relevant administrative procedures.
- (c) (1) The operations monitor shall assess the bureau's administrative operations, including its school approval, applicant review, revenue collection, and complaint and enforcement processes and procedures with the primary goals of improving the bureau's overall efficiency, improving its effectiveness, and improving its compliance with state laws, particularly with respect to the bureau's approval, complaint, and enforcement processes.
- (2) This monitoring duty shall be on a continuing basis for a period of no more than two years from the date of the operations monitor's appointment and shall include, but not necessarily be limited to, all of the following:

- (A) Assessing the bureau's revenue collections and needs, and its staffing.
 - (B) Evaluating the relevant laws and regulations to identify revisions that would improve state regulation and maintain or improve student and public protection.
 - (C) Improving the quality and consistency of the bureau's processes and performance, including complaint processing and investigation, and reducing timeframes for each.
 - (D) Reducing any complaint backlog.
 - (E) Ensuring consistency in the application of sanctions or discipline imposed on regulated institutions and persons.
 - (F) Improving the quality and timeliness of application and approval processes for regulated institutions and persons, the collection of fees, and the collection of information from, and the ability to disseminate information regarding, those entities or persons regulated by the bureau.
 - (G) Improving the bureau's ability to perform outreach to prospective students of private postsecondary and vocational educational institutions.
- (3) The operations monitor shall exercise no authority over the bureau's management or staff; however, the bureau and its staff shall cooperate with him or her, and shall provide data, information, and files as requested by the monitor to perform all of his or her duties.
- (4) The director shall assist the operations monitor in the performance of his or her duties, and the operations monitor shall have the same investigative authority as the director.

- (d) The operations monitor shall submit an initial written report of his or her findings and conclusions to the director, the bureau, and the Legislature no later than October 1, 2005, and every six months thereafter, and shall be available to make oral reports to each if requested to do so. The operations monitor may also provide additional information to either the department or the Legislature at his or her discretion or at the request of either the department or the Legislature. The operations monitor shall make his or her reports available to the public and the media. The operations monitor shall make every effort to provide the department and the bureau with an opportunity to reply to any facts, finding, issues, or conclusions in his or her reports with which the department or the bureau may disagree.
- (e) The bureau shall reimburse the department for all of the costs associated with the employment of an operations manager.
- (f) This section shall become inoperative on April 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

§ 94779.3 EXPANDED OUTREACH PROGRAM

- (a) The bureau shall establish an expanded outreach program for prospective and current private postsecondary and vocational education students and high school students, to provide them with information on how best to select postsecondary or vocational schools, how to enter into contracts and student enrollment agreements, how to protect themselves in the postsecondary and vocational education marketplace, and how to contact the bureau for assistance if problems arise.
- (b) Notwithstanding subdivision (a), the bureau may not establish an expanded outreach program pursuant to that subdivision until the occurrence of the following events:
 - (1) The bureau reports to the Director of Consumer Affairs and to the Joint Committee on Boards, Commissions, and Consumer Protection

on its fee structure and revenues pursuant to subdivision (b) of Section 94779.1.

- (2) The Director of Consumer Affairs makes findings after submittal of that report that the bureau has sufficient revenues to meet its current obligations and that the cost of an outreach program will not further jeopardize the bureau's ability to meet those obligations.
- (3) The director reports those findings to the committee.

§ 94779.4 REPORT TO LEGISLATURE

The bureau shall report to the Legislature, no later than October 1, 2003, on its progress in accomplishing the corrective actions necessary to resolve the deficiencies found in the audit performed by the department's Internal Audit Office, and any remaining deficiencies found in the 2000 audit by the Bureau of State Audits. In particular, the bureau shall report on the status and timeliness of its complaint and enforcement, and application and renewal processes and procedures, the condition of the Student Tuition Recovery Fund and the status of any claims thereon, the status and timeliness of its various approval or registration processes, the status and capabilities of its data processing and dissemination system, its outreach efforts to current and prospective private postsecondary and vocational education students, and any recommendations for improvement to its operations, including any recommendations regarding revisions to this chapter.

ARTICLE 5 ♦ CLASSIFICATION OF EDUCATIONAL PROGRAMS OFFERED BY POSTSECONDARY INSTITUTIONS

§ 94780 APPLICABILITY OF SPECIFIED ARTICLES

No institution, subject to this chapter, shall offer any educational service unless the institution is first approved by the council and meets all of the requirements in the following articles:

- (a) This article, Article 6 (commencing with Section 94800) except as provided for institutions approved under Article 9.5 (commencing with Section 94931), Article 10 (commencing with Section 94932), Article 11 (commencing with Section 94940), and Article 12 (commencing with Section 94944).
- (b) Article 8 (commencing with Section 94900), if the institution offers degrees.
- (c) Article 9 (commencing with Section 94915), if the institution does not offer degrees.
- (d) Article 9.5 (commencing with Section 94931), if the institution is registered pursuant to that article.
- (e) Article 7 (commencing with Section 94850), if the educational programs are not exempt under Section 94790.

§ 94785 INAPPLICABILITY OF ARTICLE 7 TO SMALL INSTITUTIONS AND NONPROFIT RELIGIOUS INSTITUTIONS

- (a) Article 7 (commencing with Section 94850) does not apply to an institution during a calendar year if both of the following conditions are satisfied during that calendar year:
 - (1) The institution enrolls 100 or fewer students.
 - (2) No part of the charges for any educational service offered by the institution is paid from the proceeds of a loan or grant subject to a governmental student financial aid program.
- (b) If the conditions specified in subdivision (a) are not satisfied for the entire calendar year, Article 7 (commencing with Section 94850) shall apply to all students enrolled during that calendar year except to the extent that the institution or its educational services are otherwise exempt.
- (c) Article 7 (commencing with Section 94850) does not apply to an institution that is incorporated and has continuously lawfully operated for at least five

years as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110), or as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110), of Division 2 of Title 1 of the Corporations Code and is not managed or administered by any entity for profit.

§ 94786 INAPPLICABILITY OF ARTICLE 7 TO SMALL TRANSACTIONS

Article 7 (commencing with Section 94850) does not apply to an educational service if the total charge, as defined in subdivision (k) of Section 94852, for that educational service is one thousand dollars (\$1,000) or less, and no part of the total charge is paid from the proceeds of a loan or grant subject to a governmental student financial aid program.

§ 94787 LIMITED APPLICABILITY OF ARTICLE 7 TO SCHOOLS OFFERING INSTRUCTION FOR CIVIL SERVICE EXAMINATIONS

Article 7 (commencing with Section 94850) except Sections 94872 and 94873, applies to schools that offer instruction in how to prepare for, take, and pass civil service examinations or other tests qualifying a student for employment by a governmental entity. For the purpose of determining compliance with this article, schools described in this section shall be considered "institutions."

§ 94790 INAPPLICABILITY OF ARTICLE 7 TO SPECIFIED EDUCATIONAL SERVICES

Except as otherwise provided in this section, Article 7 (commencing with Section 94850) does not apply to any of the following educational services:

- (a) (1) Except as provided in paragraph (2), educational services that confer degrees upon the completion of a course of study of two or more academic years that are scheduled to be completed in not less than 17 months or that confer degrees, such as master's or doctorate degrees, on students who have completed a graduate course of study of one or more years at a college or university.

- (2) For educational services that consist of an AOS (Occupational Associate degrees or Associate of Occupational Studies degrees), AAS (Associate of Applied Science degrees), or any other occupational associate degree, if the institution confers diplomas or certificates to students who do not complete the degree program, Article 7 (commencing with Section 94850) shall apply to any student enrolled in any course that can be accepted to meet the requirements of the diploma or certificate program. Notwithstanding this paragraph, Article 7 (commencing with Section 94850) shall not apply to any student who continues to be enrolled in the institution one academic year after the student has commenced instruction or completed all of the courses in the diploma program or certificate program, whichever is later. Students enrolled in the degree program who are awarded a certificate or diploma after completing the certificate or diploma program, but prior to completing the degree program, may be counted by the institution towards the requirements in paragraph (1) of subdivision (a) of Section 94854 and paragraph (1) of subdivision (b) of Section 94854 for the diploma or certificate program.
 - (3) The requisite number of semester or quarter units for AOS, AAS, or any other occupational associate degree shall be 60 semester units or 90 quarter units. The bureau shall adopt regulations to specify the necessary classroom instruction and out-of-class learning experience for each unit or semester or quarter hour credit (combination of lecture, laboratory, practicum, or outside preparation), based on Carnegie Commission standards.
 - (4) This subdivision does not apply to any educational service for which a student enrolled before January 1, 1998.
- (b) The educational service, as defined in subdivision (b) of Section 94734, is offered as continuing education in subjects that licensees are required to take as a condition of continued licensure.
 - (c) The educational service is offered exclusively to assist students to prepare for an examination for entrance into an undergraduate or graduate course of study at an accredited or approved college or university.

- (d) The educational service, as defined in subdivision (a) of Section 94734, is offered exclusively to assist students, who have obtained, or who are in the process of obtaining, degrees after completing an undergraduate or graduate course of study at a college or university, to prepare for an examination for licensure in a recognized profession, such as medicine, dentistry, accounting, or law.
- (e) The educational service is three or more academic years, is scheduled to be completed in not less than 27 months, the institution does not admit students to the educational service more than four times during a year, and the institution confers a diploma upon the student's completion of the educational service.
- (f) The educational service offers training exclusively in the fine arts or performing arts, such as training to be an actor, dancer, author, vocal or instrumental musician, painter, sculptor, or photographer; in body arts, such as training in body piercing or massage; or in another similar field as designated by the council.
- (g) The educational service is more than 30 months in length, and the total charge for the educational service is payable by the student in equal monthly installments over the entire length of the course, and the institution does not receive, and the student is not obligated to pay, an advance payment for more than one month.
- (h) The educational service for all students enrolled is entirely and exclusively offered pursuant to a contract between the institution and a community college, a high school, or an employer who has the responsibility for applicable cost; and the students are not required to pay, or are not liable to pay, any part of the total charge for the educational service.
- (i) Any educational service identified in this section that is exempt from Article 7 (commencing with Section 94850) does not become subject to Article 7 (commencing with Section 94850) solely because the institution offers other educational services that are identified in this section and that are also exempt from Article 7 (commencing with Section 94850).

§ 94795 SEVERABILITY PROVISION

It is the intent of the Legislature that if any exception provided in this article is declared by a court to be invalid for any reason, all of the provisions of Article 7 (commencing with Section 94850) shall apply to the institutions, programs, or educational services that would otherwise be subject to that exception.

ARTICLE 6 • GENERAL STANDARDS FOR ALL POSTSECONDARY INSTITUTIONS APPROVED UNDER THIS CHAPTER

§ 94800 OPERATION AND MAINTENANCE STANDARDS FOR INSTITUTIONS

All institutions approved under this chapter shall be maintained and operated, or in the case of a new institution, shall demonstrate that it will be maintained and operated, in compliance with all of the following minimum standards:

- (a) That the institution is financially capable of fulfilling its commitments to its students.
- (b) That upon satisfactory completion of training, the student is given an appropriate degree, diploma, or certificate by the institution, indicating that the course or courses of instruction or the program or programs of instruction or study have been satisfactorily completed by the student.
- (c) That the institution provides instruction as part of its educational program. Instruction shall include any specific, formal arrangement by an institution for its enrollees to participate in learning experiences wherein the institution's faculty or contracted instructors present a planned curriculum appropriate to the enrollee's educational program.

§ 94802 APPLICATIONS FOR APPROVAL

- (a) Each institution desiring to operate in this state shall make application to the bureau, upon forms to be provided by the bureau. The application shall include, as a minimum, at least all of the following:

- (1) A catalog published, or proposed to be published, by the institution containing the information specified in the criteria adopted by the bureau. The catalog shall include specific dates as to when the catalog applies.
 - (2) A description of the institution's placement assistance, if any.
 - (3) Copies of media advertising and promotional literature.
 - (4) Copies of all student enrollment agreement or contract forms and instruments evidencing indebtedness.
 - (5) The name and California address of a designated agent upon whom any process, notice, or demand may be served.
 - (6) The information specified in Section 94808.
 - (7) The institution's most current financial report as described in Section 94806.
 - (8) An application submitted by a non-WASC regionally accredited institution, as defined in Section 94740.5, shall include a copy of the certificate of accreditation issued by the non-WASC regional accrediting agency, as defined in section 94740.3.
- (b) Each application shall be signed and certified under oath by the owners of the school or, if the school is incorporated, by the principal owners of the school (those who own at least 10 percent of the stock), or by the corporate officers or their designee.
- (c) Following review of the application and any other further information submitted by the applicant, or required in conformity with Article 8 (commencing with Section 94900) and Article 9 (commencing with Section 94915), and any investigation of the applicant as the bureau deems necessary or appropriate, the bureau either shall grant or deny approval to operate to the applicant.

§ 94804 FINANCIAL RESPONSIBILITY CRITERIA

- (a) The review of a private postsecondary educational institution's original application for approval, or a renewal application to the council, or an approved institution already in operation, shall include a determination of the institution's financial responsibility. An institution shall be considered financially responsible if it has sufficient assets to do all of the following:
 - (1) Provide the educational services stated in its official publications and statements.
 - (2) Comply with the standards and requirements specified in Article 8 (commencing with Section 94900), Article 9 (commencing with Section 94915), or Article 9.5 (commencing with Section 94931), whichever is applicable.
 - (3) Provide the administrative and financial resources to fully comply with this article.
 - (4) Comply with any applicable provisions of Section 94855.
- (b) An institution shall not be considered financially responsible under any of the following conditions:
 - (1) The institution fails to have available sufficient funds and accounts receivable to pay all operating expenses due within 30 days. For the purpose of this paragraph, "funds" means cash or assets that can be converted into cash within seven days.
 - (2) Under generally accepted accounting principles, the institution had, at the end of its latest fiscal year, a ratio of current assets to current liabilities of less than 1.25 to 1. For the purpose of this paragraph, "current assets" does not include any of the following: (A) intangible assets, including goodwill, going concern value, organization expense, startup costs, long-term prepayment of deferred charges, and nonreturnable deposits, or (B) state or federal grant funds that are not the property of the institution but are held for

future disbursement for the benefit of students. Unearned tuition shall be accounted for in accordance with generally accepted accounting principles. When another government agency requires an institution to file annual financial audit prepared by a certified public accountant, that agency's current ratio standard may apply in lieu of the ratio specified in this paragraph if the ratio of current assets to current liabilities under that standard is 1 to 1 or greater.

- (c) (1) In determining an institution's compliance with subdivision (a), the council, at the institution's request, may consider the financial resources of a parent corporation if the parent corporation files with the council, and at all times complies with, an irrevocable and unconditional agreement approved by its board of directors that satisfies all of the requirements of paragraph (2).
- (2) The agreement described in paragraph (1) shall provide that the parent corporation do all of the following:
 - (A) Consent to be sued in California.
 - (B) Consent to be subject to the administrative jurisdiction of the council and the Student Aid Commission in connection with the institution's compliance with this chapter.
 - (C) Appoint an agent for service of process in California and all notices required by this chapter.
 - (D) Agree to pay any refund, claim, penalty, or judgment that the institution is obligated to pay.
 - (E) File financial reports, maintain financial records, and permit the inspection and copying of financial records to the same extent as is required of the institution.
- (3) For the purposes of this subdivision, a "parent corporation" means a corporation that owns more than 80 percent of the stock of the institution whose financial resources are at issue.

- (d) If the council determines that an institution is not financially responsible, the council, under terms and conditions prescribed by the council, may require the institution to submit for its latest complete fiscal year and its current fiscal year, each of the following:
 - (1) A financial audit of the institution conducted by a licensed certified public accountant, in accordance with generally accepted auditing standards.
 - (2) The institution's financial plan for establishing financial responsibility.
 - (3) Any other information requested by the council. This subdivision does not prevent the council from taking any other actions authorized under this chapter.

§ 94806 FINANCIAL AUDITS AND REVIEWS

- (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.

§ 94808 ANNUAL REPORTS BY INSTITUTIONS

- (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.

**§ 94809 ACCREDITING AGENCY AND AUDIT REPORTS;
NOTIFICATION REQUIREMENTS**

Each institution approved under this chapter shall provide the council with copies of all accrediting agency reports, including preliminary reports and reports of visiting committees, all audit reports prepared by the United States Department of Education and student loan guaranty agencies, including all preliminary reports, and the institution's written responses to the reports described in this section, if applicable. The institution shall provide a copy of each report within 15 days of the institution's receipt of the report and a copy of the institution's response within 15 days of the institution's submission of its response.

§ 94810 CONTENTS OF CONTRACT FOR EDUCATIONAL SERVICES

- (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.

**§ 94812 OPERATIVE DATE OF STUDENT CONTRACT
CONCURRENT WITH START OF INSTRUCTION**

Any written contract or agreement signed by a prospective student shall not become operative until the student attends the first class or session of instruction. This provision does not apply to correspondence schools or other distance-learning programs.

§ 94814 CATALOG OR BROCHURE; REQUIRED CONTENTS

- (a) The institution shall provide to students and other interested persons, prior to enrollment, a catalog or brochure containing at a minimum the following information:
 - (1) Descriptions of the instruction provided under each course offered by the institution including the length of programs offered.

- (2) The number of credit hours or clock hours of instruction or training per unit or units required for completion of the educational degree or certificate program.
 - (3) The attendance, dropout, and leave-of-absence policies.
 - (4) The faculty and their qualifications.
 - (5) The schedule of tuition payments, fees, and all other charges and expenses necessary for the term of instruction and the completion of the course of study.
 - (6) The cancellation and refund policies.
 - (7) For institutions that participate in federal and state financial aid programs, all consumer information that the institution is required to disclose to the student.
 - (8) All other material facts concerning the institution and the program or course of instruction that are reasonably likely to affect the decision of the student to enroll, as prescribed by rules and regulations adopted by the council.
- (b) No written contract signed by the student shall be enforceable unless the information specified in subdivision (a) has been disclosed to the student.

§ 94814.5 DOCTORAL DEGREE IN PSYCHOLOGY OFFERED BY AN APPROVED INSTITUTION; DISCLOSURES

- (a) Each institution subject to this article, and offering a doctoral degree in psychology designed to prepare students for a license to practice psychology in California, shall provide to each prospective student in professional psychology a California Unaccredited Graduate Psychology School Disclosure Form that discloses all of the following information:
- (1) The number of graduates of the institution who have taken, and the number of graduates of the institution who have passed,

the psychology written licensing examination administered by the California Board of Psychology during the immediately preceding four years.

- (2) The number of graduates of the institution who have taken, and the number of graduates of the institution who have passed, the psychology oral licensing examination administered by the California Board of Psychology during the immediately preceding four years.
- (3) The number of graduates of the institution who have become licensed psychologists in the State of California during the immediately preceding four years.
- (4) The practice limitations imposed on graduates of the institution who hold doctoral degrees in psychology. This paragraph shall be in 14-point boldface type, and shall read as follows:

"Prospective students should be aware that as a graduate of an unaccredited school of psychology you may face restrictions that could include difficulty in obtaining licensing in a state outside of California and difficulty in obtaining a teaching job or appointment at an accredited college or university. It may also be difficult to work as a psychologist for some federal government or other public agencies, or to be appointed to the medical staff of a hospital. Some major managed care organizations, insurance companies, or preferred provider organizations may not reimburse individuals whose degrees are from unaccredited schools. Graduates of unaccredited schools may also face limitations in their abilities to be listed in the 'National Register of Health Service Providers' or to hold memberships in other major organizations of psychologists."

- (b) Annually, each institution shall provide to the bureau a copy of the disclosure form signed by each student who has enrolled in any course during the year that may be used in the graduate education leading to a

doctoral degree in psychology that qualifies the graduate as a candidate for the psychology licensure examination.

- (c) If an institution fails to satisfy any of the requirements of this section, the bureau may revoke the institution's approval to operate or to offer the psychology degree that leads to licensure as a psychologist, or may impose either an administrative penalty or a civil penalty not to exceed ten thousand dollars (\$10,000) per noted violation.

§ 94816 SCHOOL PERFORMANCE FACT SHEET; DISCLOSURE REQUIREMENTS

- (a) Each institution offering a degree or diploma program designed to prepare students for a particular vocational, trade, or career field shall provide to each prospective student a school performance fact sheet disclosing all of the following information:
 - (1) The number and percentage of students who begin the institution's program and successfully complete the entire program. The rate shall be calculated by determining the percentage of students enrolled in the program who were originally scheduled, at the time of enrollment, to complete the program in that calendar year and who successfully completed the program.
 - (2) The passage rates of graduates in the program for the most recent calendar year that ended not less than six months prior to the date of disclosure on any licensure or certificate examination required by the state for employment in the particular vocational, trade, or career field and for any licensing preparation examination as required under subdivision (a) of Section 94734 for which data is available.
 - (3) The number and percentage of students who begin the program and secure employment in the field for which they were trained. In calculating this rate, the institution shall consider as not having obtained employment, any graduate for whom the institution does not possess evidence, documented in his or her file, showing that he or she has obtained employment in the occupation for which the program is offered.

- (4) The average annual starting wages or salary of graduates of the institution's program, if the institution makes a claim to prospective students regarding the starting salaries of its graduates, or the starting salaries or local availability of jobs in a field. The institution shall disclose to the prospective student the objective sources of information necessary to substantiate the truthfulness of the claim.

Each school that offers or advertises placement assistance for any course of instruction shall file with the council its placement statistics for the 12-month period or calendar year immediately preceding the date of the school's application for annual review for every course of instruction.

The council shall develop standards and criteria to be used by each institution in determining the statistical information required by this paragraph.

- (b) In addition to the fact sheet required by subdivision (a), each institution offering a degree program designed to prepare students for a particular vocation, trade, or career field and each institution subject to Article 7 (commencing with Section 94850) shall provide to each prospective student a statement in at least 12-point type that contains the following statement:

"NOTICE CONCERNING TRANSFERABILITY OF UNITS
AND DEGREES EARNED AT OUR SCHOOL

Units you earn in our ____ (fill in name of program) program in most cases will probably not be transferable to any other college or university. For example, if you entered our school as a freshman, you will still be a freshman if you enter another college or university at some time in the future even though you earned units here at our school. In addition, if you earn a degree, diploma, or certificate in our ____ (fill in name of program) program, in most cases it will probably not serve as a basis for obtaining a higher level degree at another college or university."

The disclosures required by this section shall be signed by the institution and the student and be dated. If the solicitation or negotiation leading to the agreement for a course of instruction was in a language other than English, the disclosures shall be in that other language.

- (c) The council shall take into consideration the character of the educational program in determining whether specific programs may be excluded from application of this section.
- (d) Except as provided in subdivision (b), this section does not apply to educational programs subject to Article 7 (commencing with Section 94850).

§ 94818 AGENT FOR SERVICE OF PROCESS; ALTERNATIVE SERVICE

- (a) Every institution shall designate and maintain an agent for service of process within this state and provide the name, address, and telephone number of the agent to the council. The council shall furnish the agent's name, address, and telephone number to any person upon request.
- (b) If an institution is not operating in California when it applies for approval to operate, the institution shall set forth the name, address, and telephone number of its agent for service of process in the institution's application.
- (c) If an institution fails to designate or maintain an agent for service of process pursuant to subdivision (a) and if service on the institution cannot reasonably be effected in the manner provided in Section 415.10, 415.20, 415.30, or 415.40 of the Code of Civil Procedure, the institution may be served by leaving a copy of the process or any other document in an office of the council and by sending, by first-class mail, a notice of the service upon the council and a copy of the process or other document to the institution at its last address on file with the council. Service in this manner shall be deemed complete on the 10th day after that mailing to the institution. Proof of service may be made by a declaration showing compliance with this subdivision.

§ 94819 ACCREDITING AGENCY ACTION; NOTIFICATION REQUIREMENTS

Within 30 days of any action by any accrediting agency that establishes, reaffirms, or publicly sanctions the accreditation of any private postsecondary educational institution operating in the state, including those institutions that satisfy the requirements of paragraph (7) of subdivision (b) of Section 94739, the accrediting agency shall notify the bureau of that action and shall provide a copy of any public statements regarding the reasons for the accrediting agency's action.

§ 94820 TUITION REFUND POLICY; MINIMUM REQUIREMENTS

- (a) The institution shall have and maintain the policy set forth in this article for the refund of the unused portion of tuition fees and other charges if the student does not register for the period of attendance or withdraws therefrom at any time prior to completion of the courses, or otherwise fails to complete the period of enrollment. The institutional refund policy for students who have completed 60 percent or less of the course of instruction shall be a pro rata refund.
- b) Except as provided in subdivision (c), the refund shall be calculated as follows:
 - (1) Deduct a registration fee not to exceed one hundred dollars (\$100) from the total tuition charge.
 - (2) Divide this figure by the number of hours in the program.
 - (3) The quotient is the hourly charge for the program.
 - (4) The amount owed by the student for the purposes of calculating a refund is derived by multiplying the total hours attended by the hourly charge for instruction plus the amount of the registration fee specified in paragraph (1).
 - (5) The refund shall be any amount in excess of the figure derived in paragraph (4) that was paid by the student.

- (c) For an educational service offered by distance learning, home study, or correspondence, the refund shall be calculated as follows:
 - (1) Deduct a registration fee not to exceed one hundred (\$100) from the total tuition charge.
 - (2) Divide this figure by the number of lessons in the program.
 - (3) The quotient is the per-lesson charge.
 - (4) The amount owed by the student for the purposes of calculating a refund is derived by multiplying the total number of lessons received by the per-lesson charge calculated in paragraph (3) plus the amount of the registration fee specified in paragraph (1).
 - (5) The refund shall be any amount in excess of the figure derived in paragraph (4) that was paid by the student.
 - (5) The refund shall be any amount in excess of the figure derived in paragraph (4) that was paid by the student.
- (d) For the purposes of this section, institutions may specify in enrollment agreements the time limits within which students are required to complete the requirements of a course in a distance learning program.

**§ 94821 TUITION REFUND POLICY FOR DISTANCE LEARNING,
HOME STUDY, OR CORRESPONDENCE**

Institutions offering distance learning, home study, or correspondence instruction may petition the council for an alternative method of calculating tuition refunds if they can demonstrate all of the following:

- (a) The method of calculation set forth in subdivision (c) of Section 94820 cannot be utilized.
- (b) The proposed alternative method will result in the calculation of a refund that is monetarily equivalent to or greater than the results achieved by the pro rata calculations described in this subdivision.

§ 94822 TUITION REFUND UPON CANCELLATION PRIOR TO FIRST DAY OF INSTRUCTION

Institutions, for all students, without penalty or obligation, shall refund 100 percent of the amount paid for institutional charges, less a reasonable deposit or application fee not to exceed one hundred dollars (\$100), if notice of cancellation is made prior to or on the first day of instruction. If the first lesson in a home study or correspondence course is sent to the student by mail, the institution shall send it by first-class mail, postage prepaid, documented by a certificate of mailing, and the student shall have the right to cancel until midnight of the eighth business day after the first lesson was mailed. The institution shall advise each student that any notification of withdrawal or cancellation and any request for a refund is required to be made in writing.

§ 94823 TUITION REFUND POLICY; WRITTEN DISCLOSURE AND EXAMPLES

The institution shall provide a written statement containing its refund policy, together with examples of the application of the policy, to each student prior to signing the enrollment contract, and shall make its policy known to currently enrolled students.

§ 94824 TUITION REFUNDS; TIME FOR PAYMENT

The institution shall pay or credit refunds due on a reasonable or timely basis, not to exceed 30 days following the date upon which the student's withdrawal has been determined.

§ 94825 CURRENT SCHEDULE OF STUDENT CHARGES, PURPOSE FOR CHARGES; STATEMENT OF CANCELLATION/REFUND POLICY

- (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.

§ 94826 ALTERNATIVE REFUND CALCULATIONS FOR UNIQUE EDUCATIONAL PROGRAMS

Where the refund calculations set forth in this article cannot be utilized because of the unique way in which an educational program is structured, the council shall determine the details of an alternative refund policy, by regulation, and shall take into consideration the contract for educational services entered into with the student, as well as the length and character of the educational program in determining standards for refunds. The decision of the council shall be final. This section does not apply to the refunds subject to Sections 94869 and 94870.

§ 94828 RIGHT TO WITHHOLD TRANSCRIPTS AND GRADES FOR NONPAYMENT OF TUITION

In addition to withholding institutional services as described in Section 94948, an institution may withhold a student's transcript or grades if the student is in default on a student tuition contract. If the student has made partial payment of his or her tuition obligation, the institution may only withhold that portion of the grades or transcript that corresponds on a pro rata basis to the amount of tuition or loan obligation the student has not paid. If the course of study consists of only one course, the institution may withhold the grades or the transcript until the tuition or loan obligation is paid in full.

§ 94829 MAINTENANCE AND PRESERVATION OF STUDENT RECORDS

- (a) Adequate and accurate records shall be maintained by the institution, in accordance with regulations adopted by the council, and satisfactory standards shall be enforced relating to attendance, progress, and performance.
- (b) The institution shall maintain current records for a period of not less than five years at its principal place of business in California, that are immediately available during normal business hours for inspection and copying by the council or the Attorney General and showing all of the following:
 - (1) The name and addresses, both local and home, of each of its students.
 - (2) The programs of study offered by the institution.
 - (3) The names and addresses of its faculty, together with a record of the educational qualifications of each.
 - (4) The degrees or diplomas and honorary degrees and diplomas granted, the date of granting, together with the curricula upon which the diplomas and degrees were based.

§ 94830 GROUNDS FOR REFUSING TO ISSUE, RENEW, OR REVOKE APPROVAL TO OPERATE

The council may refuse to issue or renew any private postsecondary or vocational educational institution's approval to operate, or may revoke any approval to operate for any one, or any combination, of the following causes:

- (a) A violation of this chapter, or any standard, rule, or regulation established under this chapter, or an order of the council made under this chapter.
- (b) Furnishing false, misleading, or incomplete information to the council, or the failure to furnish information requested by the council or required by this chapter.
- (c) A finding that an owner, a person in control, a director, or an officer of an institution is not in compliance with this chapter or was not in compliance with applicable law while serving as an owner, person in control, director, or officer of an institution within the previous five-year period.
- (d) A finding that a signatory to an application for an approval to operate was responsible for the closure of any institution in which there were unpaid liabilities to any state or federal government, or uncompensated pecuniary losses suffered by students without restitution.
- (e) A finding that the applicant, owner, or persons in control have been found previously in any judicial or administrative procedure to have violated this chapter or admitted to having violated this chapter.
- (f) A finding that there was either a denial of a previous application submitted by the same institution to the council or a revocation of the institution's approval and that the conditions or violations that were the cause of the denial or revocation have not been corrected.
- (g) The failure of the institution to maintain the minimum educational standards prescribed by this chapter, or to maintain standards that are the same as, or substantially equivalent to, those represented in the school's applications and advertising.

- (h) Presenting to prospective students information that is false or misleading relating to the school, to employment opportunities, or to enrollment opportunities in institutions of higher learning after entering into or completing courses offered by the school.
- (i) The failure to maintain financial resources adequate for the satisfactory conduct of the courses of instruction offered as required by statute.
- (j) The failure to provide timely and correct refunds to students.
- (k) Paying a commission or valuable consideration to any persons for acts or services in violation of this chapter.
- (l) Attempting to confer a degree, diploma, or certificate to any student in violation of this chapter.
- (m) Misrepresenting to any students or prospective students that they are qualified, upon completion of any course, for admission to professional examination under any state occupational licensing provision.
- (n) The failure to correct any deficiency or act of noncompliance under this chapter, or the standards, rules, regulations, and orders established and adopted under this chapter within reasonable time limits set by the council.
- (o) The conducting of business or instructional services at any location not approved by the council.
- (p) Failure on the part of an institution to comply with provisions of law or regulations governing sanitary conditions of that institution specified in Division 2 (commencing with Section 500) and Division 3 (commencing with Section 5000) of the Business and Professions Code.
- (q) The failure to pay any fees, order for costs and expenses under Section 94935, assessments, or penalties owed to the council, as provided in this chapter.

§ 94831 PROHIBITED ACTIVITIES BY INSTITUTIONS OR REPRESENTATIVES

No institution, or representative of that institution shall do any of the following:

- (a) Operate in this state a postsecondary educational institution not exempted from this chapter, unless the institution is currently approved to operate pursuant to this chapter. The council may institute an action, pursuant to Section 94955, to prevent any individual or entity from operating an institution in this state that has not been approved to operate pursuant to this chapter and to obtain any relief authorized by that section.
- (b) Offer in this state, as or through an agent, enrollment or instruction in, or the granting of educational credentials from, an institution not exempted from this chapter, whether that institution is within or outside this state, unless that agent is a natural person and has a currently valid agent's permit issued pursuant to this chapter, or accept contracts or enrollment applications from an agent who does not have a current permit as required by this chapter. The council, however, may adopt regulations to permit the rendering of legitimate public information services without a permit.
- (c) Instruct or educate, or offer to instruct or educate, including soliciting for those purposes, enroll or offer to enroll, contract or offer to contract with any person for that purpose, or award any educational credential, or contract with any institution or party to perform any act, in this state, whether that person, agent, group, or entity is located within or without this state, unless that person, agent, group, or entity observes and is in compliance with the minimum standards set forth in this article and Article 7 (commencing with Section 94850), if it is applicable, the criteria established by the council pursuant to subdivision (b) of Section 94773, and the regulations adopted by the council pursuant to subdivision (c) of Section 94773.
- (d) Use, or allow the use of, any reproduction or facsimile of the Great Seal of the State of California on any diploma.
- (e) Promise or guarantee employment.

- (f) Advertise concerning job availability, degree of skill and length of time required to learn a trade or skill unless the information is accurate and in no way misleading.
- (g) Advertise, or indicate in any promotional material, that correspondence instruction, or correspondence courses of study are offered without including in all advertising or promotional material the fact that the instruction or programs of study are offered by correspondence or home study.
- (h) Advertise, or indicate in any promotional material, that resident instruction, or programs of study are offered without including in all advertising or promotional material the location where the training is given or the location of the resident instruction.
- (i) Solicit students for enrollment by causing any advertisement to be published in "help wanted" columns in any magazine, newspaper, or publication or use "blind" advertising that fails to identify the school or institution.
- (j) Advertise, or indicate in any promotional material, that the institution is accredited, unless the institution has been recognized or approved as meeting the standards established by an accrediting agency recognized by the United States Department of Education or the Committee of Bar Examiners for the State of California.
- (k) Fail to comply with federal requirements relating to the disclosure of information to students regarding vocational and career training programs, as described in Section 94816.

§ 94832 PROHIBITED CONTRACT SOLICITATION STATEMENTS AND PRACTICES

- (a) No institution or representative of an institution shall make or cause to be made any statement that is in any manner untrue or misleading, either by actual statement, omission, or intimation.

- (b) No institution or representative of an institution shall engage in any false, deceptive, misleading, or unfair act in connection with any matter, including the institution's advertising and promotion, the recruitment of students for enrollment in the institution, the offer or sale of a program of instruction, course length, course credits, the withholding of equipment, educational materials, or loan or grant funds from a student, training and instruction, the collection of payments, or job placement.
- (c) An institution is liable in any civil or administrative action or proceeding for any violation of this article committed by a representative of the institution. An institution is liable in a criminal action for violations of this article committed by a representative of the institution to the extent permitted by law.
- (d)
 - (1) No institution or representative of an institution shall induce a person to enter into an agreement for a program of instruction by offering to compensate that person to act as the institution's representative in the solicitation, referral, or recruitment of others for enrollment in the institution.
 - (2) No institution or representative of an institution shall offer to pay or pay any consideration to a student or prospective student to act as a representative of the institution with regard to the solicitation, referral, or recruitment of any person for enrollment in the institution in either of the following:
 - (A) During the 60-day period following the date on which the student began the program.
 - (B) At any subsequent time, if the student has not maintained satisfactory academic progress in acquiring the necessary level of education, training, skill, and experience to obtain employment in the occupation or job title to which the program is represented to lead. The institution shall have the burden of proof to establish that the student has maintained satisfactory academic progress.

- (e) No institution shall compensate a representative involved in recruitment, enrollment, admissions, student attendance, or sales of equipment to students on the basis of a commission, commission draw, bonus, quota, or other similar method except as follows:
 - (1) If the program of instruction is scheduled to be completed in 90 days or less, the institution shall pay compensation related to a particular student only if that student completes the course.
 - (2) If the program of instruction is scheduled to be completed in more than 90 days, the institution shall pay compensation related to a particular student as follows:
 - (A) No compensation shall be paid for at least 90 days after that student has begun the program.
 - (B) Up to one-half of the compensation may be paid before the student completes the program only if the student has made satisfactory academic progress, documented by the institution in the student's file, for more than 90 days.
 - (C) The remainder of the compensation shall be paid only after the student's completion of the program. This subdivision shall not prevent the payment at any time of an hourly, weekly, monthly, or annual wage or salary.
- (f) No institution or representative of an institution shall pay any consideration to a person to induce that person to sign an agreement for a program of instruction.
- (g) No institution shall use a misleading name in any manner implying any of the following:
 - (1) The institution is affiliated with any governmental agency, public or private corporation, agency, or association.
 - (2) The institution is a public institution.

- (3) The institution grants degrees.
- (h) (1) No institution or any representative of an institution shall in any manner make any untrue or misleading change in, or untrue or misleading statement related to, any test score, grade, record of grades, attendance record, record indicating student completion or employment, financial information, including any of the following:
 - (A) Any financial report required to be filed pursuant to Sections 94804 to 94808, inclusive.
 - (B) Any information or record relating to the student's eligibility for financial assistance or attendance at the institution.
 - (C) Any other record or document required by this chapter or by the council.
- (2) No institution or any representative of an institution shall falsify, destroy, or conceal any record or other item described in paragraph (1) while that record or item is required to be maintained by this chapter or by the council.
- (i) No institution or representative of an institution shall use the terms "approval," "approved," "approval to operate," or "approved to operate" without stating clearly and conspicuously that approval to operate means compliance with minimum state standards and does not imply any endorsement or recommendation by the state or by the council. If the council has granted an institution approval to operate, the institution or its representative may indicate that the institution is "licensed" or "licensed to operate" but may not state or imply any of the following:
 - (1) The institution or its programs of instruction are endorsed or recommended by the state or by the council.
 - (2) The council's grant to the institution of approval to operate indicates that the institution exceeds minimum state standards.
 - (3) The council or the state endorses or recommends the institution.

- (j) No institution offering programs or courses of instruction represented to lead to occupations or job titles requiring licensure shall enter into an agreement for a course of instruction with a person whom the institution knows or, by the exercise of reasonable care, should know, would be ineligible to obtain licensure in the occupation or job title to which the course of instruction is represented to lead, at the time of the scheduled date of course completion, for reasons such as age, physical characteristics, or relevant past criminal conviction.
- (k) No institution shall divide or structure a program of instruction or educational service to avoid the application of any provision of this chapter.
- (l) No institution or representative of an institution shall direct a representative to perform any unlawful act, to refrain from complaining or reporting unlawful conduct to the council or another government agency, or to engage in any unfair act to persuade a student not to complain to the council or another government agency.

§ 94834 CRIMINAL SANCTIONS FOR VIOLATIONS

- (a) Any person or business entity, regardless of the form of organization that willfully violates Section 94800, Sections 94810 to 94826, inclusive, or Section 94828, 94829, 94831, or 94832 is guilty of a crime and shall be subject to separate punishment for each violation either by imprisonment in a county jail not to exceed one year, by a fine not to exceed ten thousand dollars (\$10,000), or by both that imprisonment and fine; or by imprisonment in the state prison, by a fine not to exceed fifty thousand dollars (\$50,000), or by both that imprisonment and fine.
- (b) Notwithstanding any other law, any prosecution under this section shall be commenced within three years of the discovery of the facts constituting grounds for commencing the prosecution.
- (c) The penalties provided by this section supplement, but do not supplant, the remedies and penalties provided under other law.

- (d) In addition to any other fines or penalties imposed pursuant to this section, any person or business entity found guilty of a crime as described in subdivision (a) shall be ordered to pay the Attorney General, any district attorney, or any city attorney all of their costs and expenses in connection with any investigation incident to that prosecution. An institution shall not be required to pay the same costs and expenses to more than one investigating agency.

§ 94835 INVESTIGATION OF INSTITUTIONS; INSPECTION OF RECORDS; NONTRANSFERABILITY OF APPROVAL TO OPERATE

- (a) The council shall review and investigate all institutions, programs, and courses of instruction approved under this chapter. Consideration in the scheduling of reviews and investigations shall be afforded to student complaints and information collected by the Attorney General, the Student Aid Commission, any board within the Department of Consumer Affairs, or any other federal, state, or local agency. The council also shall conduct periodic unannounced reviews and investigations of institutions to determine compliance with this chapter.
- (b) At the council's request in connection with an investigation to determine compliance with this chapter, an institution, during its normal business hours, shall immediately make available for inspection and copying all records required to be maintained by this chapter or that relate to the institution's compliance with this chapter and permit the council's representatives to have immediate access to the institution's primary administrative location and sites of instruction during the institution's normal business hours to examine and copy these records, to inspect the institution's physical facilities, equipment, library and other learning resources, and to interview school administrators, faculty, and students.
- (c) The approval to operate shall be issued to the owners or the governing body of the applicant institution, and shall be nontransferable. Any person that makes a proper application and complies with this chapter and each standard and regulation pertaining to this chapter shall be qualified to receive an approval to operate or an approval of the transfer of ownership.

§ 94836 INVESTIGATION OF INSTITUTIONS; DUTY TO INVESTIGATE AND ENFORCE

- (a) If there is reasonable cause to believe that there has been a violation by a private postsecondary educational institution of the standards prescribed by this chapter, the council shall conduct an investigation of the institution.
- (b) Within a reasonable time after the commencement of the investigation required in subdivision (a), the council shall conclude its investigation and take action against the institution involved, as appropriate.

§ 94838 UNENFORCEABILITY OF CONTRACTS OF UNAPPROVED INSTITUTIONS OR CONTRACTS BY UNREGISTERED AGENTS; CREDIT CONTRACT DISCLOSURE; STUDENT CLAIMS AND DEFENSES

- (a) No note, other instrument of indebtedness, or contract relating to payment for educational services shall be enforceable by any institution within or outside this state governed by this chapter unless at the time of execution of that note, other instrument of indebtedness, or contract, the institution has a valid approval to operate pursuant to this chapter.
- (b) No note, other instrument of indebtedness, or contract relating to payment for educational services shall be enforceable by any institution within or outside this state governed by this chapter unless the agent, who enrolled persons to whom educational services were to be rendered or to whom degrees or diplomas were to be granted pursuant to this chapter, held a valid agent's permit at the time of execution of the note, other instrument of indebtedness, or contract.
- (c) Any school or institution governed by this chapter extending credit or lending money to any person for tuition, fees, or any charges whatever for educational services to be rendered or furnished shall cause any note, instrument, or other evidence of indebtedness taken in connection with that loan or extension of that credit to be conspicuously marked on the face thereof with the following notice:

"NOTICE

ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES THAT THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF, RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER."

In the event the school or institution fails to do so, it shall be liable for any damage or loss suffered or incurred by any subsequent assignee, transferee, or holder of that evidence of indebtedness on account of the absence of that notification.

- (d) Notwithstanding the presence or absence of that notification and notwithstanding any agreement in which the student waives the right to assert any claim or defense, the school or institution making that loan or extending that credit and the transferee, assignee, or holder of that evidence of indebtedness, shall be subject to all defenses and claims that could be asserted against the school or institution that was to render or furnish those educational services by any party to that evidence of indebtedness or by the person to whom these educational services were to be rendered or furnished up to the amount remaining to be paid thereon.
- (e) Institutions that participate in federal student assistance programs and that comply with the financial disclosure and notification requirements for those programs shall be deemed to be in compliance with the standards prescribed by this section.

§ 94840 APPLICATION FOR RENEWAL TO OPERATE

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.

§ 94841 RENEWAL OF APPROVAL TO OPERATE CONTINGENT ON PAYMENT TO STUDENT TUITION RECOVERY FUND

Before any institution may be considered for approval or renewal of approval to operate, the institution, at a minimum, shall pay all annual fees, assessments to the Student Tuition Recovery Fund, orders for costs and expenses under Section 94935, and penalties in arrears retroactive to January 1, 1990. If an institution that has failed to make timely payments of fees and assessments is approved, the approval shall be conditional, subject to any restrictions the council deems appropriate, and shall be valid for a period not to exceed two years.

§ 94842 EXTENSION OF APPROVAL EXPIRATION DATE PENDING APPROVAL OF RENEWAL APPLICATION

If a review and decision on a renewal application submitted pursuant to Section 94840 cannot be completed by the council prior to the expiration of the institution's current pending approval, that expiration date shall be extended until the date that the council notifies the institution of its decision.

§ 94846 APPROVAL TO OPERATE UPON CHANGE IN OWNERSHIP OR CONTROL

- (a) If a shift in control or change of ownership of an institution occurs, an application for a new approval to operate for the institution under the changed ownership or control shall be filed with the council at least 20 days prior to the shift in control or change in ownership. Whenever an institution is operated at different locations, an application for approval shall be filed for each location.
- (b) The application for approval to operate submitted in conjunction with a change of ownership may include pertinent portions of the institution's previous application prepared in connection with programs or courses of instruction that remain unchanged or unaffected by the change in ownership.

- (c) No application for ownership or transfer of ownership shall be approved for any applicant that has been found previously in any judicial or administrative proceeding to have violated this chapter, or if there exists any of the grounds for denial set forth in Section 480 of the Business and Professions Code.
- (d) No change in ownership of the institution shall be made until the application is approved. If an application for a new approval to operate is not timely filed as required by this section, the institution's approval to operate shall terminate. Upon approval of a change in ownership, the council shall give written notice to the Student Aid Commission.
- (e) For the purposes of this section, a change in ownership occurs when there is a change of control of the institution, or where a person that previously did not own at least 25 percent of the stock or controlling interest of an institution or its parent corporation, acquires ownership of at least 25 percent of the stock of the institution or its parent corporation, or when a for-profit business converts to nonprofit corporation status or forms a nonprofit corporation as a subsidiary to provide the educational services for which the for-profit business is approved to operate.

§ 94848 INAPPLICABILITY OF EXEMPTIONS CLAIMED FOR PURPOSE OF AVOIDING REGULATION

An institution may not claim an exception pursuant to Section 94739 or 94785 if the bureau finds, after notice and hearing as provided in Section 94975, that the institution adopted a form of organization or method of operation for the purpose of avoiding any provision of this chapter.

ARTICLE 7 ♦ MAXINE WATERS STUDENT PROTECTION ACT

§ 94850 LEGISLATIVE FINDINGS AND DECLARATIONS; INTENT AND PURPOSE OF ARTICLE

- (a) This article shall be known, and may be cited, as the Maxine Waters School Reform and Student Protection Act of 1989.

- (b) The Legislature finds and declares that students have been substantially harmed and the public perception of reputable institutions has been damaged because of the fraudulent, deceptive, and unfair conduct of some institutions that offer courses of instruction for a term of two years or less that are supposed to prepare students for employment in various occupations. Students have been induced to enroll in these schools through various misrepresentations including misrepresentations related to the quality of education, the availability and quality of equipment and materials, the language of instruction and employment and salary opportunities. Some of the most egregious misrepresentations are made by representatives who recruit students at places other than the institution's premises. Some students have been enrolled who do not have the ability to benefit from the instruction. In addition, the quality of the education offered is often inadequate to enable students to obtain jobs after the completion of instruction.
- (c) The Legislature further finds and declares that many students who enroll in these schools pay their tuition from the proceeds of loans and grants guaranteed or provided by the state and federal governments. Students who leave schools before the completion of instruction, often because of misrepresentations and inadequate instruction, do not receive adequate refunds of tuition for the instruction not received. Students remain liable to repay student loans but are frequently unable to do so in part because they were unable to obtain the proper educational preparation for jobs. Students are also harmed by the closure of institutions, often caused by the fraud or mismanagement of the institution's operators, because the students neither obtain the education promised nor a refund of tuition and the cost of materials. As a result of all of the foregoing, the state and federal governments spend many millions of dollars annually to satisfy loan guarantees for often inadequate and misrepresented vocational school courses.
- (d) It is the intent and purpose of this article to protect students and reputable institutions, ensure appropriate state control of business and operational standards, ensure minimum standards for educational quality, prohibit misrepresentations, require full disclosures, prohibit unfair dealing, and protect student rights. It is the intent and purpose of this article to save millions of dollars of taxpayer's funds from being misused to underwrite

the activities of institutions that depart from the standards of fair dealing and the requirements of this article.

- (e) This article shall be liberally construed to effectuate its intent and achieve its purposes.
- (f) To the extent of any conflict between any other law and this article, this article shall prevail.

§ 94851 LEGISLATIVE FINDINGS AND DECLARATIONS

- (a) The Legislature further finds and declares that students have been harmed by some institutions because of the financial improprieties and mismanagement of those institutions, their failure to fully disclose the student's financial and contractual obligations, and their failure to have sufficient resources to provide the promised training. The Legislature also finds that the tuition refund policies of institutions often encourage unfair practices by creating a financial benefit to the institution if a student drops out, and do not encourage institutions to provide adequate counseling or to adopt policies designed to curb student dropouts. In addition, the Legislature finds that many institutions have poor records of student completion and job placement, even though these institutions expressly or implicitly represent that students will receive sufficient training and skills to obtain well-paid employment in the field that is the subject of the training, and that a reputable institution is one that complies with this chapter. Consequently, the Legislature finds that the business of providing occupational training, instruction, and related equipment by commercial enterprises has a substantial impact on the economy of this state and the welfare of its citizens.
- (b) It is the further intent and purpose of this article to establish incentives to reduce student dropouts, minimum fiscal standards, minimum standards for admission based on the student's ability to be successfully trained, and minimum standards for institutional accountability for course completion and student employment in the occupations or job titles to which the training is represented to lead. The Legislature finds that the accountability standards for completion and employment reflect a reasonable tolerance for factors outside an institution's control. It is also

the intent and purpose of this article to ensure that the cost to taxpayers of loans and grants for vocational instruction is commensurate with the benefits obtained by students and flowing to the state's economy.

§ 94852 DEFINITIONS

The following definitions and provisions apply to this article:

- (a) "Class" means a subject, such as English or mathematics, that is taught as part of a course of instruction. "Class session" means the part of a day that an institution conducts instruction or training in a particular class, such as an hour of instruction in English or mathematics offered on a particular day of the week.
- (b) "Council" means the Council for Private Postsecondary and Vocational Education established pursuant to Section 94770.
- (c) "Educational service" means any education, training, or instruction offered by an institution, including any equipment.
- (d) "Equipment" includes all textbooks, supplies, materials, implements, tools, machinery, computers, electronic devices, or any other goods related to any education, training, or instruction, or an agreement for educational services or a course of instruction.
- (e) "Licensure" includes any license, certificate, permit, or similar credential that a person must hold to lawfully engage in any occupation or activity.
- (f) "Owner" means any person who has a legal or equitable interest in 10 percent or more of an institution's stock or assets.
- (g) "Person" means a natural person or any business entity, regardless of the form of organization.
- (h) "Person in control" means a person who has sufficient capacity, directly or indirectly, to direct or influence the management, policies, or conduct of the institution so that the person can cause or prevent violations of this

chapter. There is a rebuttable presumption affecting the burden of proof that an owner, director, or officer of an institution is a person in control.

- (i) "Private postsecondary educational institution" or "institution" means any person doing business in California who offers to provide or provides, for a tuition, fee, or other charge, any instruction, training or education primarily to people who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance. An "institution" includes its branch and satellite campuses, unless otherwise provided.
- (j) "Program" or "program of instruction" or "course" or "course of instruction," except as otherwise provided, means the program of instruction, training, set of related courses or education represented to lead to an occupation or job title.
- (k) "Total charge" means the total charge for a course of instruction or other education, instruction, or training, including the charge for tuition, equipment, finance charges, and all other fees, charges, costs, and expenses.
- (l) "Year" means a calendar year.

§ 94853 DISCLOSURE REQUIREMENTS BY AGENT SOLICITING OR RECRUITING OFF-PREMISES

- (a) In addition to making any other required disclosures, a representative of an institution who in any manner solicits or recruits any person in person at any place other than the institution's premises or by telephone for enrollment in a course of instruction shall disclose the following, orally, and, if the solicitation is in person, in a correctly dated written document given to the person and printed in at least 10-point type and signed by the representative.
 - (1) The representative is a paid recruiter for an institution and the institution is not a public school.
 - (2) The representative is not offering a job, making job referrals, or conducting a survey.

- (3) There is no guarantee of a job after a student graduates from the course of instruction.
- (4) The total charge for the course of instruction or if the solicitation or recruitment is for more than one course, the range of the total charges for the courses offered.
- (b) The representative shall make the disclosures required by paragraphs (1) to (3), inclusive, of subdivision (a) before attempting to solicit or recruit any person. The representative shall make the disclosure required by paragraph (4) of subdivision (a) before the end of a solicitation or attempt to recruit any person.
- (c) A representative who solicits or recruits any person as described in subdivision (a) shall provide the person with a copy of the institution's current catalog or brochure, containing the information described in paragraph (4) of subdivision (a) of Section 94859, which the person may obtain without charge. The institution or its representative shall provide the catalog or brochure required by this subdivision at the time of an in-person solicitation or recruitment or send the catalog brochure within two days of a telephonic solicitation or recruitment.
- (d) No institution shall enter an agreement for a course of instruction with, or prepare or assist in preparation of a student loan or grant application for, a person solicited or recruited as described in subdivision (a) within three days of the date on which the person was solicited or recruited.
- (e) This section does not apply to solicitations or presentations made at informational public appearances directed to five or more people or to advertisements in print or broadcast media.

§ 94854 MINIMUM PERFORMANCE STANDARDS; EFFECTS OF FAILURE TO MEET; RECORDS; AUDITS; INVESTIGATIONS

- (a) Every institution shall meet all of the following performance standards for each program offered during the applicable time period described in subdivision (l):

- (1) Sixty percent or more of the students who began the program, did not cancel pursuant to Section 94867, and were originally scheduled at the time of enrollment to complete the course during that period, shall complete it.
 - (2) Seventy percent or more of the students who completed the program within that period shall obtain employment starting within six months after completing the course in the occupations or job titles to which the course of instruction was represented to lead. For the purpose of this subdivision, "program" or "program of instruction" or "course" or "course of instruction" includes all courses of instruction, however denominated, that are represented to lead to the same or closely related occupations or job titles.
- (b) Every institution shall meet all of the following performance standards for all programs in the aggregate offered by the institution at each of its campuses during the applicable time period described in subdivision (1):
- (1) Sixty percent or more of all the students who began the programs did not cancel pursuant to Section 94867, and were originally scheduled at the time of enrollment to complete these programs during that time period, shall complete these programs.
 - (2) Seventy percent or more of all the students who completed the programs within that time period shall obtain employment, starting within six months after completing the programs, in the occupations or job titles to which the programs of instruction were represented to lead.
- (c) For the purposes of subdivisions (a) and (b), students who, as documented by the institution, have been prevented from completing the program or programs of instruction due to death, disability, illness, pregnancy, military service, or participation in the Peace Corps or Domestic Volunteer Service shall be excluded from the computations used to determine whether an institution has met the performance standards prescribed by those subdivisions. Except as provided in Section 94874, an institution shall not disclose the records maintained pursuant to this subdivision unless production of those records are required by any law, subpoena, or court

order, or are necessary for a certified public accountant to prepare a compliance report pursuant to subdivision (g) of Section 94870.

- (d) An institution shall meet the standards prescribed in subdivisions (a) and (b) at each site at which the program or programs are offered. A determination of whether a particular site meets the standards prescribed in subdivisions (a) and (b) shall be based only on students who attended that site. An institution shall be subject to subdivisions (f) and (g) only with respect to its sites that fail to meet the standards prescribed in subdivisions (a) and (b).
- (e)
 - (1) This subdivision applies only to institutions in which 15 or fewer students began a program or programs, did not cancel pursuant to Section 94867, and were originally scheduled to complete the program or programs within the applicable time period described in subdivision (l).
 - (2) If an institution described in paragraph (1) fails to meet any of the standards prescribed in subdivision (a) or (b), but would have met that standard if one additional student had completed or obtained employment, the institution shall be deemed to comply with this section. If an institution described in paragraph (1) fails to meet the standard for review established in subdivision (f), but would have met the standard if one additional student had completed or obtained employment, the institution shall be deemed subject to subdivision (f).
- (f)
 - (1) This subdivision applies only to an institution or any site that fails to meet any of the following:
 - (A) Any of the standards established in subdivision (a) or (b) by 10 percent or less.
 - (B) Any of the standards established in subdivision (a), but has a placement rate of 42 percent or more for the course in which the standard was failed.

- (C) Any of the standards established in subdivision (b), but has a placement rate of 42 percent or more for all courses in the aggregate.
- (2) If the institution's failure to meet the standards prescribed in subdivision (a) or (b) was not caused by a violation of this chapter, the council shall order, after notice and, if requested, after a hearing, that the institution implement a program to achieve compliance with subdivisions (a) and (b). The program may include any of the following:
- (A) Limitations on enrollment for specific courses of instruction.
 - (B) Revision of admission policies and screening practices to ensure that students have a reasonable expectation of completing courses and obtaining employment.
 - (C) Increased academic counseling and other student support services.
 - (D) Improved curricula, facilities, and equipment.
 - (E) Revisions to the qualifications and number of faculty.
 - (F) Improved job placement services, including revisions to the qualifications and number of job placement personnel and the expansion of contacts with employees and state and federal employment development agencies.
 - (G) Submission of a compliance report prepared by a certified public accountant, who is not an officer, director, shareholder, or employee of the institution, any parent corporation or any subsidiary, prepared pursuant to an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accounts, which states that the institution has complied with the performance standards in this section within the period set forth in paragraph (4).

- (H) Any other reasonable procedure required by the council.
- (3) If an institution is subject to an order pursuant to paragraph (2), the council may require that the institution file information or reports requested by the council. The council may also monitor the institution in the manner provided in subdivision (d) of Section 94878.
- (4)
 - (A) An institution subject to an order pursuant to paragraph (2) shall satisfy the standards established in subdivisions (a) and (b) within the period designated by the council. This period shall not extend more than one year beyond the length of the program for noncompliance with the standards prescribed by subdivision (a) or more than one year beyond the longest program for noncompliance with the standards prescribed in subdivision (b).
 - (B) If the institution fails to satisfy the standards of subdivision (a) within the period designated by the council, the council shall order the institution to cease offering the course of instruction at the campus where that program was offered. If the institution fails to satisfy the standards of subdivision (b) within the period designated by the council, the council shall revoke the institution's approval to operate, or approval to operate the branch or satellite campus where the programs were offered. No action shall be taken pursuant to this paragraph without notice, and, if requested by the institution, a hearing. In taking action pursuant to this subparagraph, the bureau shall consider the impact, if any, of changes in the employment rate in the area served by this institution.
- (g) If an institution fails to meet any of the standards established in subdivision (a) and does not have a placement rate of 42 percent or more for the program in which the standard was failed, the council shall order the institution to cease offering the program of instruction at the campus where the course was offered. If the institution fails to meet any of the standards prescribed in subdivision (b) and does not have a placement rate of 42

percent or more for all programs in the aggregate, the council shall revoke the institution's approval to operate, or approval to operate the branch or satellite campus where the programs were offered. No action shall be taken pursuant to this subdivision without notice and, if requested by the institution, a hearing.

- (h) (1) The institution shall have the burden of proving its compliance with this section.
- (2) The council shall investigate the institution whenever the council deems appropriate to verify the institution's compliance with this section. The investigation shall include an examination of the records maintained by the institution pursuant to subdivision (j) and contacts with the students and employers.
- (3) If an institution willfully falsifies, alters, destroys, conceals, or provides untrue or misleading information relating to compliance with this section, including records maintained pursuant to subdivision (j), the council shall revoke the institution's approval to operate. No action shall be taken pursuant to this paragraph without notice and, if requested by the institution, a hearing. This provision supplements but does not supplant any other penalty or remedy provided by law.
- (4) The institution shall pay all reasonable costs and expenses incurred by the council in connection with this section at a time designated by the council.
- (i) If the council, pursuant to subdivision (f) or (g), orders an institution to cease offering a program of instruction or revokes the approval of an institution to operate or operate a branch or satellite campus, the institution may apply, no sooner than two years after the order to cease or the revocation became effective, for approval to offer that program or for approval to operate. Before the council may grant any approval, the institution shall establish that it complies with this chapter, each program satisfies all of the minimum standards prescribed by this chapter, and the circumstances surrounding the institution's failure to meet the requirements

of this section have sufficiently changed so that the institution will be substantially likely to comply with this section.

- (j) An institution shall maintain records of the name, address, and telephone number of students who enroll in a program of instruction, including students who begin the program and students who cancel pursuant to Section 94867, and of students who graduate from that program of instruction. An institution shall inquire whether students who complete a program of instruction obtain employment starting within six months of completing the program in the occupation to which the program of instruction is represented to lead and continue in employment for a period of at least 60 days. The inquiry shall be documented by a list indicating each student's name, address, and telephone number; the employer's name, address, and telephone number; the name, address, and telephone number of the person who provided the information regarding the student's employment to the institution; the name, title, or description of the job; the date the student obtained employment; the duration of the student's employment; information concerning whether the student was employed full-time or part-time including the number of hours worked per week; and the names, addresses, and telephone numbers of students who choose not to seek employment and instead enroll in another program to earn a higher degree, as well as the name and address of the institution in which they enroll. If the student is self-employed, the list shall include reliable indices of self-employment such as contracts, checks for payment, tax returns, social security contribution records, records of accounts receivable or customer payments, invoices for business supplies, rent receipts, appointment book entries, business license, or any other information required by the bureau that is a reliable indicator of self-employment.
- (k) For the purposes of this section, the following definitions shall apply:
 - (1) "Annual report" means the report required to be filed pursuant to Section 94861.
 - (2) (A) "Employment" means either of the following:
 - (i) Full-time employment for at least 32 hours per week for a period of at least 60 days in the occupations or job

titles to which the program of instruction is represented to lead.

- (ii) Part-time employment for at least 17.5 hours, but less than 32 hours, per week for a period of at least 60 days in the occupations or job titles to which the program of instruction is represented to lead, provided the student completes a handwritten statement at the beginning of the program and at the end of the program which states that the student's educational objective is part-time employment. The institution shall not require that any student complete such a statement or provide any incentive, financial or otherwise, to any student for signing such a statement.
- (B) The bureau shall adopt regulations to specify the job tasks, other than those directly related to generating income, which may be counted towards meeting the hour requirements for full-time and part-time employment for students who are self employed.
- (3) "Hearing" means a hearing pursuant to the requirements of either Section 94965 or 94975.
- (4) "Placement rate" means the percentage of students who fulfilled the provisions of the following two subparagraphs:
 - (A) Began the program, did not cancel pursuant to Section 94867, and were originally scheduled at the time of enrollment to complete the program during the applicable time period described in subdivision (1).
 - (B) Completed the program, within the applicable time period described in subdivision (1) and started employment within six months of completing the program or, if employment requires taking a state licensure examination for which only graduates of the program may apply, then (i) started employment within six months of the date on which the state licensing agency

announces the results of the first licensure examination reasonably available to students who completed the program, or (ii) started employment within six months of the next reasonably available licensure examination date for any student who did not receive passing results on the first exam. The time period determined pursuant to this subparagraph shall not exceed 10 months beyond the date of completion of the program of instruction. The institution shall retain a record of the date of the first reasonably available licensure exam following the completion date of each student, the date the licensure agency announces the results of the first reasonably available licensure exam, and the date of the next reasonably available licensure exam for each student who did not pass the first exam.

- (5) "Reporting period" means the institution's fiscal year or any year period designated by the council to be covered in the institution's annual report.
 - (6) "Time period" means the two most recent calendar years that ended at least eight months before the end of the institution's applicable reporting period.
- (l) (1) An institution's compliance with the standards prescribed in subdivisions (a) and (b) shall be determined as of the date on which the institution's reporting period ends.
- (2) The institution shall report its determination of its compliance with the standards established in subdivisions (a) and (b) in each annual report.
 - (3) The council may adjust the meaning of "time period" if the council finds that an adjustment is necessary for the efficient administration of this section. If any adjustment is made in the annual reporting periods, the council may adjust when the time period commences but shall not alter the two-year length of the period.

- (m) In determining the placement rate for a particular time period as described in subdivision (l), an institution may exclude from the determination a student whose completion date was extended beyond that time period if the extension was requested by the student in writing on an enrollment agreement modification request form that meets specifications established by the council. The form shall include instructions to the student indicating that, when signed by both the student and the institution, the request modifies the existing agreement. The form shall not be valid unless it provides space for the student to complete a handwritten description, in the student's handwriting, of the reasons necessitating the extension that are distinctly personal to the student and unrelated to the provision of educational services or activities of the institution, contains the new expected completion date of the program, and is signed and dated by the student and the institution. The institution shall provide the student a copy of the signed modification request form. The institution shall retain the student's original written request to modify the enrollment agreement with the original enrollment agreement. A student excluded from the placement rate determination for a particular time period pursuant to this subdivision shall be included in the placement rate determination for the next immediately following time period. The institution shall state in the institution's annual report the number of students for whom an extension was granted.
- (n) In determining the placement rate for a particular time period as described in subdivision (l), an institution may exclude from the calculation a student who either:
- (1) Decides not to obtain employment and within six months of completing the program enrolls in a program to continue his or her education to obtain a higher level degree that is related to, or provides for the student to use, the same skills or knowledge obtained in the program the student completed.
 - (2) Is in possession at the completion of the program of a valid United States Immigration and Naturalization Service Form I-20.
- (o) In determining the placement rate for a particular time period as described in subdivision (l), an institution may count a student who drops out of the program after completing at least 75 percent of the program because the

student has obtained employment which lasts for a period of at least 60 days in the occupations or job titles to which the program of instruction is represented to lead. No more than 10 percent of the institution's total number of placed students may be counted pursuant to this subdivision.

- (p) If an order to cease offering a program or a revocation is issued pursuant to this section, the council may permit the institution to continue to offer the program or programs of instruction to the students who had begun the course or courses before the effective date of the order or revocation or may order the institution to cease instruction and provide a refund of tuition and all other charges to students.

§ 94855 FINANCIAL RESOURCE REQUIREMENTS

- (a) As a condition of maintaining its approval to operate, an institution offering any educational programs or educational services subject to this article shall meet the following financial resource requirements in addition to the financial requirements of Section 94804.
 - (1) Satisfy minimum standards prescribed by Section 94900, 94905, or 94915, whichever is applicable.
 - (2) Provide the education, training, skill, and experience that the institution, in any manner represented it would provide.
 - (3) Pay timely refunds as required by Sections 94867, 94869, 94870, 94873, and 94877.
- (b)
 - (1) In determining an institution's compliance with subdivision (a), the council, at the institution's request, may consider the financial resources of a parent corporation if the parent corporation files with the council, and at all times complies with, an irrevocable and unconditional agreement approved by its board of directors that satisfies all of the requirements of paragraph (2).
 - (2) The agreement described in paragraph (1) shall provide that the parent corporation do all of the following:

- (A) Consent to be sued in California.
 - (B) Consent to be subject to the administrative jurisdiction of the council and the Student Aid Commission in connection with the institution's compliance with this chapter.
 - (C) Appoint an agent for service of process in California and all notices required by this chapter.
 - (D) Agree to pay any refund, claim, penalty, or judgment that the institution is obligated to pay.
 - (E) File financial reports, maintain financial records, and permit the inspection and copying of financial records to the same extent as is required of the institution.
- (3) For the purposes of this subdivision, a "parent corporation" means a corporation that owns more than 80 percent of the stock of the institution whose financial resources are at issue.
- (d) If an institution does not comply with Section 94804, the council may do any or any combination of the following:
- (1) Require the institution to establish and implement a financial plan to ensure compliance with Section 94804.
 - (2) Require the institution to post satisfactory security for the performance of its financial obligations pursuant to Section 94804.
 - (3) Require the institution to furnish additional information such as an audit report of financial statements prepared by a California licensed certified public accountant who is not an employee, officer, or director of the institution.
 - (4) Proceed pursuant to Section 94879.
- (d) In any action or proceeding involving an institution's failure to comply with Section 94804, there shall be a presumption affecting the burden of

proof that the institution does not have sufficient financial resources if the institution fails to meet any of the standards set forth in Section 94804.

§ 94856 WILLFUL VIOLATION RESULTING IN CLOSURE OF INSTITUTION

If any person willfully violates this article and the violation results in the closure of an institution, that person shall pay to all students of the closed institution full refunds or full compensation for actual damages resulting from the closure that were not paid by the closed institution.

§ 94857 APPROVAL OF BRANCH OR SATELLITE CAMPUS

- (a) No institution shall establish a branch or satellite campus unless the council approves the branch or satellite campus before any students are enrolled for instruction, or any instruction is offered, at that campus.
- (b) The council shall not approve a branch or satellite campus if any of the following conditions exist:
 - (1) The institution or the branch or satellite campus fail to satisfy all of the standards and requirements of Sections 94900 and 94901, or Section 94915, whichever applies.
 - (2) The institution proposes to offer a course of instruction at the branch or satellite campus that could not be offered at another site operated by the institution because of the institution's failure to satisfy the standards prescribed in Section 94854.
 - (3) If the institution participates in a federal student loan program, the student loan default rate attributable to the institution for the two most recent years, as preliminarily announced or finally determined by the United States Department of Education, is 25 percent or more.
 - (4) The establishment of a branch or satellite campus would, in any manner, facilitate the institution's avoidance or evasion of this chapter or of any state or federal law applicable to a student financial aid program in which the institution participates.

§ 94859 PRECONTRACT DISCLOSURES TO PROSPECTIVE STUDENTS

- (a) Before a person executes an agreement obligating that person to pay any money to an institution for a program of instruction or related equipment, the institution shall provide the person with all of the following:
 - (1) A copy of the agreement containing all of the information required by Section 94871.
 - (2) If the institution has offered the course of instruction for at least one calendar year, it shall provide orally and in writing all of the following information:
 - (A) The percentage of students completing that program of instruction as determined pursuant to Section 94854, for the time period that is required to be covered in the last annual report that institution was required to file with the council pursuant to Section 94861.
 - (B) The percentage of students who completed the program of instruction and obtained employment as determined pursuant to Section 94854, for the time period that is required to be covered in the last annual report that the institution was required to file with the council pursuant to Section 94861.
 - (C) Any other information necessary to substantiate the truth of any claim made by the institution as to job placement.
 - (D) If the institution or a representative of the institution makes any express or implied claim about the salary that may be earned after completing a program of instruction, such as a claim that the student may be able to repay a student loan from the salary received at a job obtained following completion of the program of instruction, the following disclosures, orally and in writing:

- (i) The percentage of students who were originally scheduled, at the time of enrollment, to complete the program of instruction in the most recent calendar year that ended not less than six months prior to the date of disclosure who earn salaries at or above the claimed level.
 - (ii) The ranges of monthly salaries earned by these students in two hundred dollar (\$200) increments and the number of these students in each salary range.
- (E) If the institution or a representative of the institution in any manner represents that the program of instruction might lead to employment in an occupation or job title for which a state licensing examination is required, the following disclosures, orally and in writing:
 - (i) All licensure or certification requirements established by the state for the occupation or job title category.
 - (ii) The pass rate of graduates of the program of instruction offered by that institution for the most recent calendar year that ended not less than six months prior to the date of disclosure on any licensure or certification examination required by the state for the particular occupation or job title.
- (3) If the institution has offered the program of instruction for less than one calendar year, the following statement: "This program is new. We are not able to tell you how many students graduate, how many students find jobs, or how much money you can earn after finishing this course."
- (4) A current catalog or brochure containing information describing the courses offered, all of the occupations or job titles, if any, to which the program of instruction is represented to lead, length of program, faculty and their qualifications, schedule of tuition payments, fees, and all other charges and expenses necessary for completion of the course of instruction, cancellation and refund rights, the total cost of

tuition over the entire period, a description of the student's rights under the Student Tuition Recovery Fund established pursuant to Section 94944, and all other material facts concerning the institution and the program of instruction that might reasonably affect the student's decision to enroll.

- (5) If applicable, the following disclosures, orally and in writing:
 - (A) If the student obtains a loan to pay for the course of instruction, the student will have the responsibility to repay the full amount of the loan plus interest, less the amount of any refund.
 - (B) If the student is eligible for a loan guaranteed or reinsured by the state or federal government and the student defaults on the loan:
 - (i) The federal or state government or the loan guarantee agency can take action against the student, including applying any income tax refund to which the person is entitled to reduce the balance owed on the loan.
 - (ii) The student may not be eligible for any other federal financial assistance for education at a different school or for government housing assistance until the loan is repaid.
 - (C) The institution is not a public institution.
 - (D) The institution has filed, or has had filed against it, a petition in bankruptcy.
- (6) A written statement set forth in a table of the amount of the refund to which the student would be entitled if the student withdrew from the program after completing a period of days or weeks of instruction equivalent to 10 percent, 25 percent, 50 percent, 60 percent, and 75 percent of the program of instruction. The disclosures required by this paragraph may be set forth in the agreement for the course.

- (b) The information required by paragraph (2) of subdivision (a) shall be documented by the institution with all facts needed to substantiate that information. Any information regarding a student's employment shall be based on an inquiry by the institution and shall be documented by a list indicating the student's name, address, and telephone number; the employer's name, address, and telephone number; the name and address or telephone number of the person who provided the information regarding the student's employment to the institution; the name, title, or description of the job; the date the student obtained the job; the duration of the student's employment; and the amount of the salary, if any salary claim has been made. Except as provided in Section 94874, an institution shall not disclose the records maintained pursuant to this subdivision unless production of those records are required by any law or by subpoena or court order, or are necessary for a certified public accountant to prepare a compliance report pursuant to subdivision (g) of Section 94870.
- (c) No institution which has offered a course of instruction for less than one year shall make any express or implied claims about the salary that a student may earn after completing the course of instruction.
- (d) The institution shall provide the catalog or brochure described in paragraph (4) of subdivision (a) to any person upon request.
- (e) The written disclosure of information required by subparagraphs (A), (B), and (C) of paragraph (2) of subdivision (a) may be made in accordance with the chart in Appendix A of Part 668 of Title 34 of the Code of Federal Regulations, or any other similar form prescribed by law for the disclosure of that information.
- (f) No institution shall obtain the signature of any person to an agreement obligating that person to pay any money to the institution until the person has had a reasonable opportunity to read and review all of the items described in subdivision (a).
- (g) The disclosure of any information pursuant to Section 94853 shall not relieve any institution of any obligation to make any disclosure required under this section.

- (h) Notwithstanding any provision of this section, an institution offering a home study or correspondence course need not orally make the disclosures required by this section in connection with that course if the institution did not orally solicit or recruit the student for enrollment and the student enrolled by mail.

§ 94860 PRECONTRACT DISCLOSURES FOR COURSES THAT DIFFER FROM MINIMUM STATE REQUIREMENTS FOR LICENSURE

If a state board, bureau, department, or agency has established the minimum number of classes or class hours or the minimum criteria of a course of instruction necessary for licensure in an occupation and an institution offers a course of instruction differing from the state entity's minimum requirements, the institution shall disclose orally and in writing the state entity's minimum requirements and how the course of instruction differs from those criteria. The institution shall make this disclosure before a prospective student executes an agreement obligating that person to pay any money to the institution for the course of instruction.

§ 94861 ANNUAL REPORT BY INSTITUTIONS; ELECTRONIC SUBMISSION; COMPLIANCE REVIEW; PROBATION; ENFORCEMENT ACTION

- (a) Every institution shall file annually with the council, on July 1, or another date designated by the council, a report subscribed under penalty of perjury that contains all of the following:
 - (1) The information described in subdivisions (a) and (b) of Section 94854.
 - (2) The information described in paragraph (2) of subdivision (a) of Section 94859.
 - (3) A statement that the information is documented as provided in subdivision (c) of Section 94854 and subdivision (b) of Section 94859.

- (4) Financial information demonstrating compliance with Section 94855.
- (5) Any additional information that the council may prescribe.
- (b) The council shall maintain each report for 10 years and shall provide copies of the reports to any person upon request.
- (c) Based on the review of the information submitted pursuant to this section, the council may initiate a compliance review, may take action including placing the institution on probation as provided in Section 94878, or may require evidence of compliance with this article in a form satisfactory to the council.
- (d) The bureau shall develop standards and procedures for submission by institutions of the information pursuant to this section electronically or on computer disk, in a standardized format.
- (e) If the institution uses any of the categories identified in subparagraph (B) of paragraph (2) of subdivision (k) of, or subdivision (n) or (o) of, Section 94854 in determining compliance with that section, the information submitted pursuant to this section shall include the number of students that were included in each of the categories identified in those provisions.

§ 94862 BIENNIAL FINANCIAL REPORT BY INSTITUTIONS

The institution shall file biennially with the council a financial report prepared pursuant to Section 94806. The report shall include the financial information required by Section 94855 and average monthly expenditures. Work papers for the audit shall be retained for five years from the date of the audit report and shall be made available to the council upon request after the completion of the audit.

§ 94863 RECRUITMENT AGENTS OR AGENCIES; PROHIBITION OF PAYMENT OF CONSIDERATION OR CONSUMMATION OF STUDENT CONTRACTS

- (a) No institution shall pay any consideration to any agent subject to Section 94940 who has not complied with that section, or enter into an

agreement, as described in Section 94871, with any person who was recruited or solicited to enroll in that institution by an agent who was not in compliance with Section 94940 at the time of the recruitment or solicitation.

- (b) No institution shall pay any consideration to any agency subject to Section 94942 that has not complied with that section, or enter into an agreement, as described in Section 94871, with any person who was recruited or solicited to enroll in that institution by an agency or by an agent employed by or under contract with the agency if the agency was not in compliance with Section 94942 at the time of the recruitment or solicitation.

§ 94864 SPECIFIED COMPLIANCE DATA APPLICABLE TO SUCCESSOR INSTITUTION

The enrollment, course completion, and employment data used to determine compliance with subdivisions (a) and (b) of Section 94854 and paragraph (2) of subdivision (a) of Section 94859 shall continue to apply to an institution notwithstanding a change in the institution's ownership, name, or identification number.

§ 94865 APPROVAL OF ENGLISH AS A SECOND LANGUAGE (ESL) INSTRUCTION

- (a) As used in this section, "ESL instruction" means any educational service involving instruction in English as a second language.
- (b) No institution shall offer ESL instruction without the prior approval of the bureau.
- (c) The bureau shall not approve an institution's offering of ESL instruction unless that institution complies with the minimum standards established in subdivision (a) of Section 94915.
- (d) An institution that offers ESL instruction to a student shall not enroll the student in any educational service presented in the English language unless the student passes a test indicating that he or she has attained adequate

proficiency in oral and written English to comprehend instruction in English.

- (e) A student who has completed ESL instruction at an institution shall not be enrolled in any course of instruction presented in the English language at that institution unless the student passes a test indicating that he or she has attained adequate proficiency in oral and written English to be successfully trained by English language instruction to perform tasks associated with the occupations or job titles to which the educational program is represented to lead.
- (f) If an institution offers ESL instruction to a student to enable the student to use already existing knowledge, training, or skills in the pursuit of an occupation, the institution shall test the student after the student completes the ESL instruction to determine that the student has attained adequate proficiency in oral and written English to use his or her existing knowledge, training, or skills. Before enrolling the student in ESL instruction, the institution shall document the nature of the student's existing knowledge, training, or skills and that the ESL instruction is necessary to enable the student to use that existing knowledge, training, or skills.
- (g) If an institution offers ESL instruction to a student in connection with a course of instruction leading to employment in any occupation requiring licensure awarded after the passage of an examination offered in English, the institution shall test the student after the student completes the ESL instruction to determine that the student has attained a level of proficiency in English reasonably equivalent to the level of English in which the licensure examination is offered.
- (h) If the results of a test administered pursuant to subdivision (d), (e), (f), or (g) indicate that the student has not attained adequate English language proficiency after the completion of ESL instruction, the institution shall offer the student additional instruction without charge, for a period of up to 50 percent of the number of hours of instruction previously offered by the institution to the student, to enable the student to attain adequate English language proficiency.

- (i) This section does not apply to educational services exempted from this article under subdivision (c) of Section 94790 or to grantees funded under Section 1672 of Title 29 of the United States Code.
- (j) The institution, for five years, shall retain an exemplar of each language proficiency test administered pursuant to this section, an exemplar of the answer sheet for each test, a record of the score for each test, the answer sheets or other responses submitted by each person who took each test, and the documentation required by subdivision (f).
- (k)
 - (1) In addition to any applicable provisions of this chapter, this article, except for Section 94854, subparagraph (B) of paragraph (2) of subdivision (a) of Section 94859, and Section 94872, applies to any program in which ESL instruction is offered.
 - (2) For the purpose of determining compliance with this article, ESL instruction shall be deemed a course, and a charge shall be deemed to be made for ESL instruction if a student is obligated to make any payment in connection with the educational service, including, but not limited to, the ESL instruction that is offered by the institution.
- (l) The tests used by an institution pursuant to this section shall be tests that are approved by the United States Department of Education or tests such as the Test of English as a Foreign Language and the Comprehensive Adult Student Assessment System that are generally recognized by public and private institutions of higher learning in this state for the evaluation of English language proficiency. An institution shall demonstrate to the bureau that the tests and passing scores that it uses establish that students have acquired the degree of proficiency in oral and written English required by subdivision (d), (e), (f), or (g), whichever is applicable. The required level of proficiency in oral and written English shall not be lower than the sixth grade level.
- (m) All tests shall be independently administered, without charge to the student and in accordance with the procedures specified by the test publisher. The tests shall not be administered by a previous or current owner, director, consultant, or representative of the institution or by any person who previously had, or currently has, a direct or indirect financial interest in the

institution other than the arrangement to administer the test. The bureau shall adopt regulations that contain criteria to ensure independent test administration including the criteria established by the United States Department of Education and set forth on pages 52160 and 52161 of Volume 55 of the Federal Register, dated December 19, 1990.

- (n) The bureau shall adopt regulations concerning the manner of documenting the nature of a student's existing knowledge, training, and skill and that ESL instruction offered by the institution is necessary to enable the student to use that existing knowledge, training, and skill, as prescribed in subdivision (f). The regulations shall specify all of the following:
 - (1) Reliable sources of information, independent of the student and the institution, from which documentation of a student's existing knowledge, training, and skill shall be obtained.
 - (2) Circumstances that must be documented by the institution to establish that information from a designated reliable source of information cannot reasonably be obtained.
 - (3) Alternate acceptable sources of information if designated reliable sources are not available.
 - (4) The nature of all required types of documentation.
- (o) The bureau shall develop and distribute instructions, informational materials, or forms to assist institutions in developing the documentation described in this section. These instructions, materials, and forms shall not be subject to review or approval by the Office of Administrative Law pursuant to any provision of the Government Code.

§ 94866 NOTICE OF STUDENT'S RIGHT TO CANCEL CONTRACT

- (a) When a person executes an agreement obligating that person to pay any money to an institution for a course program of instruction or related equipment, the institution shall provide the person with a document containing only the following notice:

"NOTICE OF STUDENT RIGHTS (12-point bold type)

"1. You may cancel your contract for school, without any penalty or obligations on the fifth business day following your first class session as described in the Notice of Cancellation form that will be given to you at (insert "the first class you go to" or "with the first lesson in a home study or correspondence course," whichever is applicable). A different cancellation policy applies for home study or correspondence courses. Read the Notice of Cancellation form for an explanation of your cancellation rights and responsibilities. If you have lost your Notice of Cancellation form, ask the school for a sample copy.

"2. After the end of the cancellation period, you also have the right to stop school at any time, and you have the right to receive a refund for the part of the course not taken. Your refund rights are described in the contract. If you have lost your contract, ask the school for a description of the refund policy.

"3. If the school closes before you graduate, you may be entitled to a refund. Contact the Council for Private Postsecondary and Vocational Education at the address and telephone number printed below for information.

"4. If you have any complaints, questions, or problems that you cannot work out with the school, write or call the Council for Private and Postsecondary Education:

(insert address and telephone number of the Council for Private Postsecondary and Vocational Education)"

- (b) Except as otherwise provided in subdivision (a), the notice required by subdivision (a) shall be printed in 10-point type in English and, if any solicitation or negotiation leading to the agreement for a course of instruction was in a language other than English, in that other language.
- (c) A copy of the notice, in each language in which the notice was printed pursuant to subdivision (b), shall be posted at all times in a conspicuous

place at the main entrance of the institution, in each admissions office, and in each room used for instruction. The council may prescribe the size and format of the posted notice. This subdivision does not apply to an institution that exclusively offers correspondence or home study courses.

- (d) Upon request, the institution shall provide a student with a copy of a Notice of Cancellation form, a written description of the student's refund rights, a copy of the contract executed by the student, a copy of documents relating to loans or grants for the student, and a copy of any document executed by the student.
- (e) The council may provide for the inclusion of additional information in the notice set forth in subdivision (a).

§ 94867 STUDENT'S RIGHT TO CANCEL CONTRACT FOR EDUCATIONAL SERVICES

- (a) (1) In addition to any other right of rescission, for programs in excess of 50 days, the student shall have the right to cancel an agreement for a program of instruction including any equipment, until midnight of the fifth business day after the day on which the student did any of the following:
 - (A) Attended the first class of the program of instruction that is the subject of the agreement or received the first lesson in a home study or correspondence course.
 - (B) Received a copy of the notice of cancellation as provided in Section 94868.
 - (C) Received a copy of the agreement and the disclosures as required by subdivision (a) of Section 94859, whichever is later.
- (2) For programs of 50 or fewer days, the student shall have the right to cancel the agreement until midnight of the date that is one business day for every 10 days of scheduled program length, rounded up for any fractional increments thereof. If the first lesson in a home-

study or correspondence course is sent to the student by mail, the institution shall send it by first-class mail, postage prepaid, documented by a certificate of mailing, and the student shall have a right to cancel until midnight of the eighth business day after the first lesson was mailed.

- (b) Cancellation shall occur when the student gives written notice of cancellation to the institution at the address specified in the agreement.
- (c) The written notice of cancellation, if given by mail, is effective when deposited in the mail properly addressed with postage prepaid.
- (d) The written notice of cancellation need not take a particular form and, however expressed, is effective if it indicates the student's desire not to be bound by the agreement.
- (e) Except as provided in subdivision (f), if the student cancels the agreement, the student shall have no liability, and the institution shall refund any consideration paid by the student within 10 days after the institution receives notice of the cancellation.
- (f) If the institution gave the student any equipment, the student shall return the equipment within 10 days following the date of the Notice of Cancellation. If the student fails to return the equipment within this 10 day-period, the institution may retain that portion of the consideration paid by the student equal to the documented cost to the institution of the equipment and shall refund the portion of the consideration exceeding the documented cost to the institution of the equipment within 10 days after the period within which the student is required to return the equipment. The student may retain the equipment without further obligation to pay for it.
- (g) For the purpose of determining the time within which a student may cancel that student's agreement for a course, as described in Sections 94866, 94867, and 94868, "business day" means the following:
 - (1) Except as provided in paragraph (2), a day on which that student is scheduled to attend a class session.

- (2) For home-study or correspondence courses, any calendar day except Saturday, Sunday, or any holiday enumerated in Section 6700 of the Government Code.

§ 94868 PROVISION OF CANCELLATION FORMS AT FIRST CLASS

The institution shall provide the student with two cancellation forms at the first class attended by the student or with the first lesson in a home study course submitted by the student. The form shall be completed in duplicate, captioned "Notice of Cancellation," and shall contain the following statement:

"Notice of Cancellation

(Date)

(Enter date of first class, date first lesson received, or date first lesson was mailed, whichever is applicable)

"You may cancel this contract for school, without any penalty or obligation by the date stated below.

"If you cancel, any payment you have made and any negotiable instrument signed by you shall be returned to you within 30 days following the school's receipt of your cancellation notice.

"But, if the school gave you any equipment, you must return the equipment within 30 days of the date you signed a cancellation notice. If you do not return the equipment within this 30-day period, the school may keep an amount out of what you paid that equals the cost of the equipment. The total amount charged for each item of equipment shall be separately stated. The amount charged for each item of equipment shall not exceed the equipment's fair market value. The institution shall have the burden of proof to establish the equipment's fair market value. The school is required to refund any amount over that as provided above, and you may keep the equipment.

"To cancel the contract for school, mail or deliver a signed and dated copy of this cancellation notice, or any other written notice, or send a telegram to:

_____, at _____
(name of institution) (address of institution)

"NOT LATER THAN _____

(Enter midnight of the date that is the fifth business day following the day of the first class or the day the first lesson was received; or, if the program is fifty or fewer days, midnight of the date that is one business day for every 10 days of scheduled program length, rounded up for any fractional increment thereof; or, if the lesson was sent by mail, the eighth business day following the day of mailing, whichever is applicable)

"I cancel the contract for school.

(Date)

(Student's signature)

"REMEMBER, YOU MUST CANCEL IN WRITING. You do not have the right to cancel by just telephoning the school or by not coming to class.

"If you have any complaints, questions, or problems which you cannot work out with the school, write or call the Council for Private Postsecondary and Vocational Education:

(insert address and telephone number of the Council for Private Postsecondary and Vocational Education)"

§ 94869 STUDENT'S RIGHT TO WITHDRAW FROM PROGRAM OF INSTRUCTION; DUTY TO REFUND TUITION/EQUIPMENT PAYMENTS

- (a) Each student of an institution has the right to withdraw from a program of instruction at any time.
- (b) If a student withdraws from a program of instruction after the period described in subdivision (a) of Section 94867, the institution shall remit a

refund as provided in Section 94870 within 30 days following the student's withdrawal.

- (c) If any portion of the tuition was paid from the proceeds of a loan, the refund shall be sent to the lender or, if appropriate, to the state or federal agency that guaranteed or reinsured the loan. Any amount of the refund in excess of the unpaid balance of the loan shall be first used to repay any student financial aid program from which the student received benefits, in proportion to the amount of the benefits received, and any remaining amount shall be paid to the student.
- (d) Within 10 days of the day on which the refund is made, the institution shall notify the student in writing of the date on which the refund was made, the amount of the refund, the method of calculating the refund, and the name and address of the entity to which the refund was sent. The following statement shall be placed at the top of the notice in at least 10-point boldface type: "This Notice is Important. Keep It For Your Records."
- (e) Except for subdivision (a), this section shall not apply to a student if both of the following occur:
 - (1) All of that student's tuition and fees are paid by a third-party organization, such as a Job Training Partnership Act agency, a Regional Occupational Program or Regional Occupational Center, a Private Industry Council, or a vocational rehabilitation program, if the student is not obligated to repay the third-party organization or does not lose time-limited educational benefits.
 - (2) The third-party organization and the institution have a written agreement, entered into on or before the date the student enrolls, that no refund will be due to the student if the student withdraws prior to completion. The institution shall provide a copy of the written agreement to the bureau. The institution shall disclose to any student whose refund rights are affected by this agreement, in all disclosures required to be given to the student by this chapter, that the student is not entitled to a refund. It is the intent of the Legislature that this subdivision not apply to any student whose tuition and fees are paid with funds provided to the third-party organization for

the student's benefit as part of any program that provides funds for training welfare recipients or that is related to welfare reform.

§ 94870 CALCULATION OF AMOUNT OF TUITION/EQUIPMENT REFUND

- (a) (1) Except as provided in paragraph (2), the refund to be paid to a student for a program of instruction subject to this article shall be calculated as follows:
 - (A) Deduct a registration fee not exceeding seventy-five dollars (\$75) from the total tuition charge.
 - (B) Divide this figure by the number of hours in the program.
 - (C) The quotient is the hourly charge for the program.
 - (D) The amount owed by the student for purposes of calculating a refund is derived by multiplying the total hours attended by the hourly charge for instruction.
 - (E) The refund would be any amount in excess of the figure derived in subparagraph (D) that was paid by the student.
 - (F) The refund amount shall be adjusted as provided in subdivision (b) or (c) for equipment, if applicable.
- (2) For an educational service offered by home study or correspondence, the refund shall be the amount the student paid for lessons less a registration fee not exceeding seventy-five dollars (\$75), multiplied by a fraction, the numerator of which is the number of lessons for which the student has paid but which the student has not completed and submitted, and the denominator of which is the total number of lessons for which the student has paid. The refund amount shall be adjusted as provided in subdivision (b) or (c) for equipment and as provided in subdivision (d) for resident instruction, if applicable.

- (3) Notwithstanding any provision in any agreement, all of the following shall apply:
- (A) All amounts that the student has paid, however denominated, shall be deemed to have been paid for instruction, unless the student has paid a specific charge for equipment set forth in the agreement for the program of instruction.
 - (B) In the case of an educational service offered by home study or correspondence, all amounts that the student has paid, however denominated, shall be deemed to have been paid for lessons unless the student has paid a specific charge for equipment or resident instruction as set forth in the agreement for the educational service.
 - (C) The total number of hours necessary to complete each lesson of home study or correspondence instruction shall be substantially equivalent to each other lesson unless otherwise permitted by the council.
 - (D) An equal charge shall be deemed to have been made for each hour of instruction or each lesson.
- (b) If the institution specifies in the agreement a separate charge for equipment that the student actually obtains and the student returns that equipment in good condition, allowing for reasonable wear and tear, within 30 days following the date of the student's withdrawal, the institution shall refund the charge for the equipment paid by the student. If the student fails to return that equipment in good condition, allowing for reasonable wear and tear, within 30 days following the date of the student's withdrawal, the institution may offset against the refund calculated under subdivision (a) the documented cost to the institution of that equipment. The student shall be liable for the amount, if any, by which the documented cost for equipment exceeds the refund amount calculated under subdivision (a). For the purpose of this subdivision, equipment cannot be returned in good condition if the equipment cannot be reused because of clearly recognized health and sanitary reasons and this fact is clearly and conspicuously disclosed in the agreement.

- (c) If the institution specifies in the agreement a separate charge for equipment, which the student has not obtained at the time of the student's withdrawal, the refund also shall include the amount paid by the student that is allocable to that equipment.
- (d) If an agreement for educational service offered by home study or correspondence includes a separate charge for resident instruction, which the student has not begun at the time of the student's withdrawal, the institution shall refund the charge for the resident instruction paid by the student. If the student withdraws from the educational service after beginning the resident instruction, the institution shall pay a refund equal to the amount the student paid for the resident instruction multiplied by a fraction, the numerator of which is the number of hours of resident instruction which the student has not received but for which the student has paid, and the denominator of which is the total number of hours of resident instruction for which the student has paid.
- (e) For the purpose of determining a refund under this section, a student shall be deemed to have withdrawn from a program of instruction when any of the following occurs:
 - (1) The student notifies the institution of the student's withdrawal or of the date of the student's withdrawal, whichever is later.
 - (2) The institution terminates the student's enrollment as provided in the agreement.
 - (3) The student has failed to attend classes for a three-week period. For the purpose of subdivision (a) of Section 94869 and for determining the amount of the refund, the date of the student's withdrawal shall be deemed the last date of recorded attendance. For the purpose of determining when the refund must be paid pursuant to subdivision (b) of Section 94869, the student shall be deemed to have withdrawn at the end of the three-week period.
 - (4) The student has failed to submit three consecutive lessons or has failed to submit a completed lesson within 60 days of its due date as

set by an educational service offered by home study or correspondence. For the purpose of this paragraph, the date of the student's withdrawal shall be deemed to be the date on which the student submitted the last completed lesson.

- (f) An institution shall have the burden of proof to establish the validity of the amount of every refund. The institution shall maintain records for five years of all the evidence on which the institution relies.
- (g) Any institution that meets each of the criteria in paragraph (1) shall be subject to the refund requirements in this section only for those students who withdraw from a course of instruction after having completed 60 percent or less of the course of instruction.
 - (1) To qualify under this subdivision, an institution shall submit to the bureau a compliance report prepared by a certified public accountant, who is not an officer, director, shareholder, or employee of the institution, any parent corporation, or any subsidiary, prepared pursuant to an attestation engagement in accordance with the Statements on Standards for Attestation Engagements of the American Institute of Certified Public Accountants, which states that for a period of two years prior to the compliance report, the beginning and ending dates of which shall be determined by the bureau, the institution has:
 - (A) Complied with Section 94824 or subdivision (b) of Section 94869 and with this section for refunds owed by the institution.
 - (B) Complied with subdivision (b) of Section 94854 for each of the two years covered by the audit except that:
 - (i) The institution shall have an aggregate completion rate of 70 percent or more pursuant to paragraph (1) of subdivision (b) of Section 94854.

- (ii) The institution shall have an aggregate placement rate of 80 percent or more pursuant to paragraph (2) of subdivision (b) of Section 94854.
 - (iii) As an alternative to clauses (i) and (ii), the institution shall have a combined aggregate completion and placement rate of 56 percent or more.
 - (iv) In attesting to the institution's compliance with the requirements of this subparagraph, the certified public accountant, at a minimum, shall review a random statistically valid sample of the students to whom the institution owed a refund, the students counted by the institution towards its completion rate and its placement rate, and the students excluded from the calculation of the completion and placement rates, review the institution's placement log or files and contact students and employers to verify information in the placement records, whether the student was employed in the job for which the training was represented to lead, and whether the student was employed for at least 60 days.
- (2) (A) The bureau shall review the compliance report submitted by the institution pursuant to this subdivision.
- (B) The bureau shall review any complaints against the institution by current or former students, any civil lawsuit in which the institution is a defendant or any lawsuit, action, charges, proceeding, or investigation by any government agency or any accrediting agency in which the institution is a party which were filed, pending, or resolved during the two-year period covered by the compliance report. After reviewing such complaints, lawsuits, actions, charges, proceedings, or investigations, as well as any other information available to the bureau and performing whatever other investigation it deems appropriate, the bureau shall make a determination, in writing, of whether the institution has materially violated Section 94831, 94832, 94834, 94853, 94859, 94860, 94866, 94868,

94869, 94870, 94871, 94873, 94875, 94881, or their predecessor sections, based on a preponderance of the evidence. The bureau's determination shall contain a summary of the evidence relied upon in making the determination and the sections for which a material violation exists. The bureau's determination shall have no probative value in connection with any lawsuits, actions, charges, or proceedings pending before any court or any other agency.

- (C) If the bureau determines that the institution has met all of the criteria in paragraph (1) and that no material violation exists pursuant to subparagraph (B) of this paragraph, it shall notify the institution that it qualifies under this subdivision. Following such notification, the refund provisions of this subdivision shall apply to the institution for a period of two years, unless revoked by the bureau.
- (D) If the bureau determines that the institution has not met all of the criteria in paragraph (1) or that a material violation exists pursuant to subparagraph (B) of this paragraph, it shall notify the institution that it does not qualify under this subdivision.
- (E) The institution shall receive notice of any determination with a summary of evidence pursuant to this paragraph and, if requested in writing, a hearing. The institution may appeal the bureau's adverse decision under this paragraph. To the extent feasible, the bureau shall adopt regulations to provide for a streamlined appeal process for purposes of appeals pursuant to this subparagraph. Pending resolution of the appeal, the institution is not eligible to qualify under this subdivision. If the institution prevails on appeal, it may obtain relief limited to a determination that it is eligible for the refund provisions of this subdivision at the next time when it starts new students in its programs following the determination of the appeal. If the institution does not prevail on appeal, it may not seek to qualify under this subdivision for one year following the determination of the appeal.

- (3) Prior to notifying an institution pursuant to paragraph (2), the bureau shall adopt regulations to implement this subdivision, including regulations to establish the dates each year for submission of compliance reports by institutions, notification of institutions by the bureau of the applicable refund policy for the institution, the effective date of that refund policy, appropriate standards and procedures for conducting any review by a certified public accountant or any other person pursuant to this subdivision, including a description of the information and materials to be reviewed and appropriate standards for review which shall be based on the American Institute of Certified Public Accountants' Statements on Standards for Attestation Engagements.
- (4) (A) Any institution that has been notified by the bureau that it qualifies for the refund provisions in this subdivision shall lose its qualification if the bureau determines either of the following:
- (i) The institution has materially violated Section 94831, 94832, 94834, 94853, 94859, 94860, 94866, 94868, 94869, 94870, 94871, 94873, 94875, or 94881, or has failed to meet the criteria in paragraph (1) during the period covered by the compliance report upon which the bureau based its determination of qualification.
 - (ii) The institution has been found by any court or any other governmental agency in any proceeding, to have violated any of the provisions set forth in clause (i) and that violation was material or the institution has been found by any court or any other governmental agency in any proceeding, to have failed to meet the criteria in paragraph (1) during the period covered by the compliance report upon which the bureau based its determination of eligibility.
- (B) If the bureau, a court, or other government agency finds that the institution willfully supplied information required by this subdivision which it knew or should have known was

inaccurate or misleading, the institution's approval to operate may be subject to termination, suspension, or probation.

- (C) The institution shall receive notice of any determination with a summary of evidence and, if requested in writing, a hearing prior to any action being taken pursuant to this paragraph. To the extent feasible, the bureau shall adopt regulations to provide for a streamlined appeal process for purposes of appeals pursuant to this subparagraph. Pending resolution of the appeal, the institution may not reapply pursuant to paragraph (9). If the institution prevails on appeal, it may obtain relief limited to a determination that it continues to qualify under this subdivision for the period of time covered by the bureau's most recent determination of qualification. If the institution does not prevail on appeal, the institution may not seek to qualify for the refund provisions of this subdivision for three years following the determination of the appeal and shall be subject to the refund requirements in subdivision (a), and not the refund provisions in this subdivision, for all students who enrolled during the entire time period covered by the bureau's most recent determination of qualification.
 - (D) The penalties in this paragraph supplement, but do not supplant, any other sanction or remedy allowed by law.
- (5) If an institution does not qualify under this subdivision because it fails to meet the requirement of subparagraph (A) of paragraph (1) by three students out of all students to whom it owed refunds during the period examined by the compliance report or 1 percent of all students to whom it owed refunds during the period covered by the compliance report, whichever is greater, the bureau may determine that the institution qualifies under this subdivision.
- (6) The certified public accountant shall submit any initial compliance report prepared pursuant to this subdivision to both the institution and the bureau. The institution shall submit any comments, suggested corrections, or exceptions to the initial compliance report

to the certified public accountant and the bureau. The certified public accountant shall submit a final compliance report to both the institution and the bureau. The certified public accountant shall maintain possession of all work papers for a period of five years following completion of the final compliance report. The bureau shall make a copy of the compliance report available to any student, prospective student, or former student of the institution upon request.

- (7) If the bureau determines that the institution has met the criteria in this subdivision based on the information contained in a compliance report prepared by a certified public accountant pursuant to this subdivision, the following shall be deemed to be the intended beneficiaries of that compliance report:
 - (A) The bureau.
 - (B) The Student Aid Commission.
 - (C) The United States Department of Education.
 - (D) Any student who enrolls in the institution during the time period the institution qualifies under this subdivision.
- (8) In lieu of the attestation engagement referred to in paragraph (1), an institution that qualifies as a small institution under this paragraph may show that it has complied with each of the criteria in paragraph (1) pursuant to a review performed by the bureau, or any other alternative review that meets all of the requirements for an attestation by a certified public accountant pursuant to this subdivision which shall conform with the bureau's regulations. If the bureau performs the review requested by the institution, the institution shall pay the bureau all of its costs and expenses associated with conducting the review. The bureau shall, by regulation, define "small institution" for the purposes of this paragraph in terms of assets, number of students, gross revenues, other appropriate criteria, as determined by the bureau, or any combination thereof.

- (9) An institution may apply to the bureau for a renewal of the bureau's determination that the institution qualifies under this subdivision subject to the same terms and conditions as required for the bureau's initial determination.
- (10) If an institution qualifies under this subdivision, it shall disclose that refund policy in any disclosure, catalogue, notice, or agreement in which disclosure of a refund policy is required by this chapter. The institution may not state in any advertising, disclosure, catalogue, notice, or agreement that it qualifies for a "good school" or a "high performance" exemption, that it qualifies for a "good school" or "high performance" refund policy, or that it has been determined by the state to be a "good school" or a "high performing school," or use any similar words or phrases.
- (11) If a request for approval under this subdivision is filed concurrently with an initial or renewal application, no additional fees shall be charged. If a request for approval is not filed concurrently with an initial or renewal application, fees shall be charged as authorized by Section 94932 and the bureau's regulations.

§ 94871 WRITTEN AGREEMENT REQUIRED; REQUIRED CONTENTS

- (a) No institution shall offer any program of instruction to any person, or receive any consideration from any person for a course of instruction, except pursuant to a written agreement as described in this section. Every agreement for a program of instruction shall provide the following:
 - (1) A general description of the program of instruction and any equipment to be provided.
 - (2) The total number of classes, hours, or lessons required to complete the program of instruction.
 - (3) The total amount that the student is obligated to pay including all fees, charges, and expenses separately itemized that must be paid to complete the program of instruction. The total amount shall be underlined and shall appear immediately above the following notice,

which shall be printed above the space on the agreement that is reserved for the student's signature:

"YOU ARE RESPONSIBLE FOR THIS AMOUNT. IF YOU GET A STUDENT LOAN, YOU ARE RESPONSIBLE FOR REPAYING THE LOAN AMOUNT PLUS ANY INTEREST."

- (4) The total amount charged for each item of equipment shall be separately stated. The amount charged for each item of equipment shall not exceed the equipment's fair market value. The institution shall have the burden of proof to establish the equipment's fair market value.
- (5) A schedule of payments.
- (6) The student's right to withdraw from the program of instruction and obtain a refund and an explanation of refund rights and of how the amount of the refund will be determined including a hypothetical example.
- (7) A detailed explanation of the student's right to cancel the agreement as provided in Section 94867.
- (8) If the student is not a resident of California, a clear statement that the student is not eligible for protection under, and recovery from, the Student Tuition Recovery Fund.
- (9) The following statement shall be printed in 12-point boldface type on the first page of the agreement: "If you have any complaints, questions, or problems which you cannot work out with the school, write or call the Council for Private Postsecondary and Vocational Education:

(insert address and telephone number of the Council for Private Postsecondary and Vocational Education)"

- (b) Unless otherwise provided in subdivision (a), the institution shall provide the information required under Sections 94859, 94867, and 94868, in at least 10-point type in English and, if any solicitation or negotiation leading

to the agreement for a course of instruction was in a language other than English, in that other language.

- (c) When a student is a client of a third-party organization and that organization pays all of the student's tuition and fees, the institution may substitute for the enrollment agreement required by this section a form provided to the student that contains the information required by subdivision (b) and paragraphs (1), (2), and (9) of subdivision (a). The form also shall contain a statement that students whose entire tuition and fees are paid by a third party organization are not eligible for payments from the Student Tuition Recovery Fund.

§ 94872 TEST OF CAPACITY TO BENEFIT FROM INSTRUCTION

- (a) An institution shall not enter into an agreement for a program of instruction with a student unless the institution first administers to the student and the student passes a test as provided in subdivision (b).
- (b)
 - (1) The test required by subdivision (a) shall be a standardized test that is designed to measure and that reliably and validly measures the student's ability to be successfully trained to perform the tasks associated with the occupations or job titles to which the program of instruction is represented to lead. The student's performance on the test must demonstrate that ability.
 - (2) Nothing in paragraph (1) precludes an institution from using additional tests to determine a student's ability to be trained to perform tasks associated with the occupations and job titles for which training is offered as described in paragraph (1).
 - (3) (A) If no standardized test is available that satisfies paragraph (1), the institution shall use other appropriate tests to determine the student's ability to be trained to perform the tasks associated with the occupations and job titles for which training is offered as described in paragraph (1). Within 30 days of determining that no standardized test satisfies paragraph (1), the institution shall so inform the council and shall describe and, if possible,

furnish the council with the test to be used in lieu of the test required by paragraph (1).

- (B) Upon reasonable notice to the institution, the council may order the institution to demonstrate to the reasonable satisfaction of the council that the test and passing score are an appropriate measure of the student's ability to be trained to perform the tasks associated with the occupations or job titles to which the course is represented to lead. If the test is not an appropriate measure, the council, after notice, and if requested, a hearing as provided in Section 94965 or 94975, shall order that the institution cease administering the test.
- (c) The institution shall have the burden of proof that the test complies with subdivision (b). If no minimum passing score is established by the test developer or if the minimum passing score used by the institution is below the minimum passing score established by the test's developer, the institution shall have the burden of proof that the student's achievement of the minimum passing score reasonably measures the student's ability to be successfully trained to perform the tasks associated with the occupations and job titles to which the course of instruction is represented to lead. The test shall be administered in accordance with the test's instructions, rules, and time limits.
- (d)
 - (1) The test shall be completed solely by the student.
 - (2) No institution or any person in any manner associated with the institution shall do any of the following:
 - (A) Answer any of the test questions.
 - (B) Read any of the test questions to the student.
 - (C) Provide any assistance whatsoever to the student in answering test questions. Nothing in this subparagraph prevents an institution from providing nonsubstantive assistance to accommodate the disability of a handicapped person otherwise qualified to take the test.

- (3) The test shall be given by the institution on its premises or by an independent testing service. The site requirement does not apply to an institution offering a home study or correspondence course.
 - (4) If a prospective student has failed a test, the institution or the testing service that administered the test shall not administer another test to that prospective student for at least the period specified by the test developer or one week, whichever is longer. Any subsequent test administered by an institution to the same prospective student shall be a substantially different form of the same test or a substantially different test than the preceding test and shall satisfy the requirements of paragraph (1) or, if applicable, paragraph (3) of subdivision (b).
- (e) An institution's application for approval to operate shall do all of the following:
- (1) Identify the test used to comply with this section.
 - (2) State the minimum score, if any, that the test's developer indicates a prospective student must achieve to demonstrate an ability to be successfully trained to perform the tasks associated with the occupations or job titles to which the course is represented to lead.
 - (3) State the minimum passing score used by the institution.
 - (4) If the institution accepts a lower minimum passing score than is indicated by the test's developer, state an explanation of why the institution accepts a lower minimum passing score.
- (f) The institution shall, for five years, retain an exemplar of each test administered by the institution pursuant to this section, an exemplar of the answer sheet for each test, a record of the passing score for each test, and the answer sheets or other responses submitted by each person who took each test.

**§ 94873 PROHIBITION AGAINST ENROLLMENT OUT OF SEQUENCE;
CHANGES IN SCHEDULE AFTER ENROLLMENT**

- (a) If a program of instruction is based on a sequence of classes, class sessions, or lessons and the learning experience to be derived from any class, class sessions, or lesson within the sequence is based in any manner on a student's attendance at or completion of a prior class, class session, or lesson, an institution shall not enroll a student in that program of instruction unless the instruction begins with the first class, class session, or lesson and proceeds in the appropriate sequence.
- (b)
 - (1) If a program of instruction is based on a series of modules comprised of class sessions or lessons and the learning experience to be derived from any module is based in a manner on a student's attendance at, or completion of, any class sessions or lessons in any other module, an institution shall not enroll a student in that course of instruction unless the student begins and proceeds in the appropriate sequence.
 - (2) If a program of instruction is based on a series of modules comprised of class sessions or lessons and the learning experience to be derived from any module is not based on a student's attendance at, or completion of, any classes or lessons in any other module, an institution shall only enroll a student in the program of instruction if the student begins with the first class session or lesson in a module.
- (c) Notwithstanding subdivisions (a) and (b), if a class or a module consists of more than 60 days of instruction, the institution may enroll a student to begin no later than the fifth class session of the first class or the fifth class session in the appropriate module.
- (d) The council, at any time, may determine whether the learning experience to be derived from any class session or lesson in a sequence of class sessions or lessons or from any module is based in any manner on a student's attendance at, or completion of, a prior class session or lesson in the sequence or any class sessions or lessons in any other module. The council may make the determination described in this subdivision upon the application of any person or when the council deems that a determination

is appropriate. The institution shall have the burden to establish compliance with this section.

- (e) The institution shall not merge classes unless all of the students have received the same amount of instruction and training. This subdivision does not prevent the placement of students, who are enrolled in different programs of instruction, in the same class if that class is part of each of the courses and the placement in a merged class will not impair the students' learning of the subject matter of the class.
- (f) After a student has enrolled in a program of instruction, the institution shall not do any of the following:
 - (1) Make any unscheduled suspension of any class unless caused by circumstances completely beyond the institution's control.
 - (2) Change the day or time in which any class is offered to a day when the student is not scheduled to attend the institution or to a time that is outside of the range of time that the student is scheduled to attend the institution on the day for which the change is proposed unless at least 90 percent of the students who are enrolled consent to the change and the institution offers full refunds to the students who do not consent to the change. For the purpose of this paragraph, "range of time" means the period beginning with the time at which the student's first scheduled class session for the day is set to start and ending with the time the student's last scheduled class session for that day is set to finish.
- (g) If an institution enrolls a student in a program of instruction that is not offered or designed as a home study or correspondence course at the time of enrollment, the institution shall not convert the program of instruction from classroom instruction to a home study or correspondence course.
- (h) An institution shall not move the class instruction to a location more than five miles from the location of instruction at the time of enrollment unless any of the following occur:

- (1) The institution discloses orally and clearly and conspicuously in writing to each student before enrollment in the program that the location of instruction will change after the program begins and the address of the proposed location.
- (2) The institution applies for, and the council grants, approval to change the location. The council shall grant the application within 30 days if the council, after notice to affected students and an opportunity for them to be heard as prescribed by the council, concludes that the change in location would not be unfair or unduly burdensome to students. The council may grant approval to change the location which shall be subject to reasonable conditions, such as requiring the institution to provide transportation, transportation costs, or refunds to adversely affected students.
- (3) The institution offers a full refund to students enrolled in the program of instruction who do not voluntarily consent to the change.

**§ 94874 MAINTENANCE AND PRESERVATION OF RECORDS;
INSPECTION OF RECORDS; CONFIDENTIAL
INVESTIGATIONS; PENALTIES FOR WILLFUL FAILURE TO
COMPLY**

- (a) Every institution shall maintain for a period of not less than five years at its principal place of business in California accurate records that show all of the following:
 - (1) The names, telephone numbers, and home and local addresses of each student.
 - (2) The courses of instruction offered by the institution and the curriculum for each course.
 - (3) The name, address, and educational qualifications of each member of its faculty.
 - (4) The information required by subdivision (j) of Section 94854 and subdivision (b) of Section 94859.

- (5) All information and records required by this chapter or required by the council.
- (b) All records that an institution is required to maintain by this chapter or that relate to the institution's compliance with this chapter shall be made immediately available by the institution for inspection and copying during normal business hours by the council, the Attorney General, any district attorney or city attorney, and the Student Aid Commission.
- (c) An institution shall make available to a student, or a person designated by the student, all of the student's records, except for transcripts of grades as described in subdivision (d) and (e).
- (d) As provided in Section 94948, an institution may withhold a student's transcript or grades if the student is in default on a student tuition contract.
- (e) If the student has made partial payment of his or her tuition obligation, the institution may only withhold that portion of the grades or transcript that corresponds to the amount of tuition or loan obligation that the student has not paid. If the course of study consists of only one course, the institution may withhold the grades or the transcript until the tuition or loan obligation is paid in full.
- (f) Each institution shall be deemed to have authorized the accrediting agency that accredited the institution to provide to the council, the Attorney General, any district attorney or city attorney, or the Student Aid Commission, within 30 days of written notice, copies of all documents and other material concerning the institution that is maintained by the accrediting agency.
- (g) Within 30 days of receiving written notice from the council, the Attorney General, any district attorney or city attorney, or the Student Aid Commission, an accrediting agency shall provide the requesting official with all documents or other material concerning an institution accredited by that accrediting agency that are designated specifically or by category in the written notice.

- (h) If the council, the Attorney General, any district attorney or city attorney, or the Student Aid Commission is conducting a confidential investigation of an institution and so informs the accrediting agency, the accrediting agency shall not inform that institution of the investigation.
- (i) If an accrediting agency willfully fails to comply with this section, the accrediting agency shall be liable for a civil penalty of not less than two thousand five hundred dollars (\$2,500) or more than twenty-five thousand dollars (\$25,000) for each violation. Penalties awarded pursuant to this section shall be deposited in the Private Postsecondary and Vocational Education Administration Fund or any successor fund.

**§ 94875 DUTY TO PROVIDE APPROPRIATE INSTRUCTION
AND MATERIALS; ATTENDANCE, PROGRESS, AND
PERFORMANCE STANDARDS**

- (a) The institution shall provide sufficient instruction and materials pursuant to a planned curriculum appropriate to the student's educational program and establish sufficient student attendance, progress, and performance standards to reasonably ensure that students acquire the necessary level of education, training, skill, and experience to obtain employment in the occupation or job title to which the course of instruction is represented to lead.
- (b) The institution shall provide each student with sufficient materials, including current publications and equipment, not later than the time the materials are appropriate for use in the course of instruction.
- (c) If a student has begun a course of instruction and any portion of the student's tuition is to be paid from the proceeds of a loan or grant, the institution shall not withhold any instruction, equipment, or materials from the student pending approval of the loan or grant or the disbursement of any portion of the proceeds of the loan or grant.

§ 94876 WAIVER OF PROVISIONS BY STUDENTS PROHIBITED AND INVALID

No student may waive any provision of this article. Any waiver or limitation of any substantive or procedural right or remedy is in violation of this section and is void and unenforceable.

§ 94877 UNENFORCEABILITY OF CONTRACT THAT VIOLATES REQUIREMENTS; DAMAGES; CIVIL PENALTIES; LIMITATIONS OF ACTIONS; ASSIGNMENT OF CAUSE OF ACTION; GRIEVANCE PROCEDURES; NOTICE REQUIREMENTS FOR SECTION 17200 OR CLASS ACTIONS

- (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.

**§ 94878 AUTHORIZATION TO OFFER COURSE OF INSTRUCTION;
GROUNDS FOR PROBATION; SPECIAL ON-SITE
INSPECTIONS; PENALTIES; BONDS**

- (a) An institution is legally authorized to provide courses of instruction if the institution complies with both this article and Sections 94831, 94832, and 94985, or former Section 94320 as that section was in effect on January 1, 1991, has received approval from the council, and has not been found to be in violation of this article by the council, the Student Aid Commission, or a court. No institution shall offer any course of instruction if the institution's approval to offer that course of instruction has been suspended or revoked.

- (b) (1) The council, after notice and, if requested by the institution, a hearing as provided in Section 94965 or 94975, may suspend or revoke an institution's approval to operate or approval to operate a branch or satellite campus or may order that an institution cease offering a class or course of instruction because of any violation of this article, Section 94831, 94832, or 94985, or former Section 94320 as that section was in effect on January 1, 1991, or any regulation or order issued pursuant to this article.
- (2) If the council takes any of the actions described in paragraph (1), the council may permit the institution to continue to offer the class or course of instruction to students already enrolled or may order the institution to cease instruction and provide a refund of tuition and all other charges to students.
- (c) If the council determines after notice and if requested by the institution, a hearing, that an institution has violated this article, Section 94831, 94832, or 94985, or former Section 94320 as that section was in effect on January 1, 1991, but that the institution's approval to operate, or approval to operate a branch or satellite campus should not be suspended or revoked, or that the institution should not be ordered to cease offering a class or program of instruction, the council may do any or all of the following:
 - (1) Place the institution, or branch or satellite campus, on probation under reasonable terms and conditions for a specified period of time not to exceed two years.
 - (2) Order the institution to post a bond.
 - (3) Order the institution not to enter into new agreements for courses of instruction.
- (d) During the period of probation, the institution, or the branch or satellite or both the institution and the branch or satellite campus, shall be subject to monitoring that may include the required submission of periodic reports, as prescribed by the council and special onsite inspections to determine progress toward compliance. The onsite inspections may include an inspection of the institution's facilities and records, interviews of

administrators, faculty, and students, and observation of class instruction. The council shall order the institution to reimburse all reasonable costs and expenses incurred by the council in connection with this subdivision. The council may make the payment of the order for reimbursement a condition of probation.

- (e) If, at the period of probation, the council is not satisfied with the steps taken by the institution to eliminate the violations of this article, Sections 94831, 94832, and 94985, or former Section 94320 as that section was in effect on January 1, 1991, upon which the probation was based, the council may revoke the institution's approval to operate or the institution's approval to operate a branch or satellite campus.
- (f) The council may assess a penalty of up to ten thousand dollars (\$10,000) as part of a probation order for violations of this article, Sections 94831, 94832, and 94985, or former Section 94320 as that section was in effect on January 1, 1991. In determining the amount of that penalty, the council shall consider the number and gravity of the violations, the degree of the institution's good faith or culpability, the history of the institution's previous violations, and the institution's ability to pay. If the institution fails to pay a penalty within the time prescribed by the council the institution's approval to operate the institution, or approval to operate a branch or satellite campus, shall be automatically suspended until the penalty is paid in full.
- (g)
 - (1) Any bond ordered by the council shall be issued by an admitted surety insurer in an amount established at the discretion of the council that is sufficient to protect students from the potential consequences of the violation.
 - (2) The bond shall be in favor of the State of California for the indemnification of any person for any loss, including the loss of prepaid tuition, suffered as a result of the occurrence of any violation of this chapter during the period of coverage.
 - (3) Liability on the bond may be enforced after a hearing before the council, after 30 days' advance written notice to the principal and surety. The council shall adopt regulations establishing the

procedure for administrative enforcement of liability. This paragraph supplements, but does not supplant, any other rights or remedies to enforce liability on the bond.

- (4) The council may order the institution to file reports at any interval the council deems necessary to enable the council to monitor the adequacy of the bond coverage and to determine whether further action is appropriate.
- (h) The council shall determine an institution's compliance, including the compliance of its branch and satellite campuses, with this article, Sections 94831, 94832, and 94985, or former Section 94320 as that section was in effect on January 1, 1991, and shall not be bound by the findings or conclusions of any accrediting agency.
- (i) The council may revoke the approval to operate of any institution that fails to pay an order imposing a penalty or an order for the reimbursement of costs and expenses. The council may enforce any administrative order requiring the payment of money in the same manner as if it were a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 1 of the Code of Civil Procedure. All penalties and reimbursements paid pursuant to this section shall be deposited in the vocational education account in the Private Postsecondary and Vocational Education Administration Fund established pursuant to Section 94932.
- (j) Proceedings by the council under this section shall be conducted in accordance with regulations adopted by the council or, if there are no regulations establishing hearing procedures, Section 94965 or 94975, and the council shall have all of the powers granted therein.

**§ 94879 GROUNDS FOR SUSPENSION OR REVOCATION OF
 APPROVAL TO OPERATE, OR FOR POSTING OF BOND**

The council may suspend or revoke an institution's approval to operate or order probation or the posting of a bond, as provided in Section 94878, for any of the following reasons:

- (a) The institution has failed to make timely refunds to, or on behalf of students, as required by Sections 94867, 94869, 94870, and 94877, or has not satisfied, within 30 days of its issuance, a final judgment obtained by a student against the institution.
- (b) The institution or an owner, person in control, director, or officer of the institution is, or has been, found in any criminal, civil, or administrative proceeding, after notice and an opportunity to be heard, to have violated any law regarding the obtaining, maintenance, or disbursement of state or federal loan or grant funds, or any other law substantially related to the operation of the institution.
- (c) The institution, or a person in control of the institution is, or has been, found in any criminal, civil, or administrative proceeding, after notice and an opportunity to be heard, to have unpaid financial liabilities involving the refund or unlawful acquisition, use, or expenditure of state or federal financial aid funds.
- (d) (1) All of the following are, or have been, found in any criminal, civil, or administrative proceeding:
 - (A) A person in control of the institution was a person in control of another institution within one year before that institution's closure.
 - (B) While the person was acting as a person in control of the other institution, the person knew or, by the exercise of reasonable care, should have known that the institution violated this chapter.
 - (C) That violation was a cause of that institution's closure or of damage to students.
 - (D) That institution did not pay to all students refunds owed as a result of the closure and full compensation for actual damages from that violation.

- (E) The person in control has not paid to all students of the closed institution refunds owed and full compensation for actual damages resulting from the closure that were not paid by the closed institution. For the purpose of this subdivision, "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 continually enrolled in a course of instruction has been permitted to complete all the educational services, and the classes that comprise the course.

§ 94880 ACTION FOR EQUITABLE RELIEF FOR VIOLATION

- (a) The council may bring an action for equitable relief for any violation of this article in addition to, or instead of, any other remedy or procedure.
- (b) The suspension or revocation of an institution's approval to operate also may be embraced in any action otherwise proper in any court involving the institution's compliance with this chapter or performance of its legal obligations.

§ 94881 DEFINITIONS; GROUNDS FOR CRIMINAL ACTION; CRIMINAL PENALTIES

- (a) For the purposes of this section, the following definitions apply:
 - (1) "Document or record" means any test score, grade, record of grades, attendance record, record indicating student course completion or employment, financial information, including any financial report required to be filed pursuant to Sections 94861 and 94862, information or records relating to the student's eligibility for financial assistance or attendance at the institution, or any other record or document required by this chapter or by the council.

- (2) "Person" means a natural person and any business entity, regardless of the form of organization.
- (b) Any person who, in any manner, makes or causes to be made any untrue or misleading statement in connection with offering or providing a course of instruction, or who makes or causes to be made any untrue or misleading change in any document or record and who knows or, by the exercise of reasonable care, should know that the statement or change is untrue or misleading is guilty of a crime, punishable as provided in subdivision (e).
- (c) Any person who willfully falsifies, destroys, fails to maintain, or conceals any document or record that is required to be maintained by this chapter or by the council is guilty of a crime, punishable as provided in subdivision (e).
- (d) Any person who is required to file any report required by paragraph (3) of subdivision (f) of Section 94854, or Section 94861 or 94862 and who willfully fails to file that report as required, or willfully violates or causes the violation of subdivision (b) of Section 94874, is guilty of a crime and is subject to punishment for each violation as provided in paragraph (2) of subdivision (e).
- (e) Any person who violates subdivision (b) or (c), or who willfully violates Section 94831, 94832, 94853, or 94985, or former Section 94320 as that section was in effect January 1, 1991, is guilty of a crime and is subject to separate punishment for each violation either by:
- (1) Imprisonment in the state prison, by a fine not to exceed fifty thousand dollars (\$50,000), or by both that imprisonment and fine.
- (2) Imprisonment in a county jail not to exceed one year, by a fine not to exceed ten thousand dollars (\$10,000), or by both that imprisonment and fine.
- (f) Notwithstanding any other law, any prosecution under this section shall be commenced within three years of the discovery of the facts constituting grounds for commencing the prosecution.

- (g) The penalties provided by this section supplement, but do not supplant, the remedies and penalties provided under other law.

**§ 94882 POWER TO ADOPT AND ENFORCE REGULATIONS;
EMERGENCY REGULATIONS**

The council may adopt and enforce regulations as may be necessary, appropriate, or useful to interpret and otherwise implement this article. Pending the adoption of regulations, the council may adopt emergency regulations, which shall be immediately effective, notwithstanding any other provision of law, and which shall be superseded upon the adoption of subsequent regulations.

**ARTICLE 8 ♦ STANDARDS AND EVALUATION PROCEDURES
FOR DEGREE-GRANTING INSTITUTIONS**

**§ 94900 APPROVAL OF INSTITUTIONS OFFERING ACADEMIC OR
HONORARY DEGREES**

- (a) No private postsecondary educational institution may issue, confer, or award an academic or honorary degree unless the institution is approved by the council to operate in California and award degrees.

The council shall not issue an approval under paragraph (1) of subdivision (c) of Section 94901 or a conditional approval under paragraph (2) of subdivision (c) of Section 94901 until it has conducted a qualitative review and assessment of, and has approved, each degree program offered by the institution, and all of the operations of the institution, and has determined all of the following:

- (1) The institution has the facilities, financial resources, administrative capabilities, faculty, and other necessary educational expertise and resources to ensure its capability of fulfilling the program or programs for enrolled students.
- (2) The faculty are fully qualified to undertake the level of instruction that they are assigned and shall possess degrees or credentials

appropriate to the degree program and level they teach and have demonstrated professional achievement in the major field or fields offered, in sufficient numbers to provide the educational services.

- (3) The education services and curriculum clearly relate to the objectives of the proposed program or programs and offer students the opportunity for a quality education.
 - (4) The facilities are appropriate for the defined educational objectives and are sufficient to ensure quality educational services to the students enrolled in the program or programs.
 - (5) The program of study for which the degree is granted provides the curriculum necessary to achieve its professed or claimed academic objective for higher education, and the institution requires a level of academic achievement appropriate to that degree.
 - (6) The institution provides adequate student advisement services, academic planning and curriculum development activities, research supervision for students enrolled in Ph.D. programs, and clinical supervision for students enrolled in various health profession programs.
 - (7) If the institution offers credit for prior experiential learning it may do so only after an evaluation by qualified faculty and only in disciplines within the institution's curricular offerings that are appropriate to the degree to be pursued. The council shall develop specific standards regarding the criteria for awarding credit for prior experiential learning at the graduate level, including the maximum number of hours for which credit may be awarded.
- (b) The approval process shall include a qualitative review and assessment of all of the following:
- (1) Institutional purpose, mission, and objectives.
 - (2) Governance and administration.
 - (3) Curriculum.

- (4) Instruction.
 - (5) Faculty, including their qualifications.
 - (6) Physical facilities.
 - (7) Administrative personnel.
 - (8) Procedures for keeping educational records.
 - (9) Tuition, fee, and refund schedules.
 - (10) Admissions standards.
 - (11) Financial aid policies and practices.
 - (12) Scholastic regulations and graduation requirements.
 - (13) Ethical principles and practices.
 - (14) Library and other learning resources.
 - (15) Student activities and services.
 - (16) Degrees offered. The standards and procedures utilized by the council shall foster the development of high quality, innovative educational programs and emerging new fields of study within postsecondary education. In addition, the standards and procedures utilized by the council shall not unreasonably hinder educational innovation and competition.
- (c) (1) The Committee of Bar Examiners for the State of California, in lieu of the council, shall be responsible for the approval, regulation, and oversight of degree-granting law schools that (A) exclusively offer bachelor's, master's, or doctorate degrees in law, such as Juris Doctor, and (B) are not otherwise exempt under Section 94750. This paragraph does not apply to unaccredited law schools that remain subject to the jurisdiction of the bureau.
- (2) If a law school not exempt under Section 94750 offers educational services other than bachelor's, master's, or doctorate-degree programs in law, the law school and its nonlaw degree programs shall be subject to this chapter, and the law school's degree programs

in law shall be subject to the approval, regulation, and oversight of the Committee of Bar Examiners.

§ 94901 QUALITATIVE REVIEW AND ASSESSMENT OF ACADEMIC INSTITUTIONS; ON-SITE REVIEWS; EVALUATION CRITERIA

- (a) (1) Except as provided in Section 94905, the bureau shall conduct a qualitative review and assessment of the institution. It also shall conduct a qualitative review and assessment of all programs offered except continuing education programs and programs that are exclusively avocational or recreational in nature. The review shall include the items listed in subdivision (b) of Section 94900, through a comprehensive onsite review process, performed by a qualified visiting committee impaneled by the bureau for that purpose.
 - (2) An institution may include some or all of its separate operating sites under one application. Alternately, it may submit separate applications for any one site or combination of sites. The satellites or branches included in either an initial or renewal application shall be considered by the bureau to comprise a separate, single institution for purposes of regulation, approval, and compliance under this chapter.
 - (3) The application shall include a single fee based on the number of branches, satellites, and programs included within a single application in order to cover the costs involved for those multisite and multiprogram reviews. If the application is for renewal of an existing approval, the institution need only submit information necessary to document any changes made since the time its previous application was filed with the bureau. Fees for renewal applications will be based on the actual costs involved in the administrative review process.
- (b) The number of sites inspected by the bureau as part of its review process shall be subject to the following considerations:

- (1) If the application for approval includes branches and satellites, the bureau shall inspect each branch and may inspect any satellite campus.
 - (2) If the application is for approval to operate a branch or a satellite, the bureau, in addition to inspecting the branch or satellite, also may inspect the institution operating the branch or satellite campus.
- (c) The bureau may waive or modify the onsite inspection for institutions offering home study or correspondence courses. The visiting committee shall be impaneled by the bureau within 90 days of the date of the receipt of a completed application and shall be composed of educators, and other individuals with expertise in the areas listed in subdivision (b) of Section 94900, from degree-granting institutions legally operating within the state. Within 90 days of the receipt of the visiting committee's evaluation report and recommendations, or any reasonable extension of time not to exceed 90 days, the bureau shall take one of the following actions:
- (1) If the institution is in compliance with this chapter and has not operated within three years before the filing of the application in violation of this chapter then in effect, the bureau may grant an approval to operate not to exceed five years.
 - (2) If the institution is in compliance with this chapter, but has operated within three years before the filing of the application in violation of this chapter then in effect, or if the bureau determines that an unconditional grant of approval to operate is not in the public interest, the bureau may grant a conditional approval to operate subject to whatever restrictions the bureau deems appropriate. The bureau shall notify the institution of the restrictions or conditions, the basis for the restrictions or conditions, and the right to request a hearing to contest them. Conditional approval shall not exceed two years.
 - (3) The bureau may deny the application. If the application is denied, the bureau may permit the institution to continue offering the program of instruction to students already enrolled or may order the

institution to cease instruction and provide a refund of tuition and all other charges to students.

- (d) When evaluating an institution whose purpose is to advance postsecondary education through innovative methods, the visiting committee shall comprise educators who are familiar with, and receptive to, evidence bearing on the educational quality and accomplishments of those methods.
- (e) The standards and procedures utilized by the bureau shall not unreasonably hinder educational innovation and competition.
- (f) Each institution or instructional program offering education for entry into a health care profession in which the provider has primary care responsibilities shall offer that education within a professional degree program that shall be subject to approval by the bureau pursuant to this section.
- (g)
 - (1) If an institution is not operating in California when it applies for approval to operate for itself or a branch or satellite campus, the institution shall file with its application an operational plan establishing that the institution will satisfy the minimum standards set forth in subdivision (a) of Section 94900. The operational plan also shall include a detailed description of the institution's program for implementing the operational plan, including proposed procedures, financial resources, and the qualifications of owners, directors, officers, and administrators employed at the time of the filing of the application. The bureau may request additional information to enable the bureau to determine whether the operational plan and its proposed implementation will satisfy these minimum standards.
 - (2) If the bureau determines that the operational plan satisfies the minimum standards described in subdivision (a) of Section 94900, that the institution demonstrates that it will implement the plan, and that no ground for denial of the application exists, the bureau shall grant a temporary approval to operate, subject to any restrictions the bureau reasonably deems necessary to ensure compliance with this chapter, pending a qualitative review and assessment as provided in

subdivisions (a) and (b) of Section 94900. The bureau shall inspect, pursuant to subdivision (a) of this section, the institution, or branch or satellite campus if approval is sought for that campus between 90 days and 180 days after operation has begun under the temporary approval to operate. Following receipt of the visiting committee's or the bureau staff's report, the bureau shall act as provided in paragraph (1), (2), or (3) of subdivision (c).

- (h) If at any time the bureau determines that an institution has deviated from the standards for approval, the bureau, after identifying for the institution the areas in which it has deviated from the standards, and after giving the institution due notice and an opportunity to be heard, may place the institution on probation for a prescribed period of time, not to exceed 24 calendar months. During the period of probation, the institution shall be subject to special monitoring. The conditions for probation may include the required submission of periodic reports, as prescribed by the bureau, and special visits by authorized representatives of the bureau to determine progress toward total compliance. If, at the end of the probationary period, the institution has not taken steps to eliminate the cause or causes for its probation to the satisfaction of the bureau, the bureau may revoke the institution's approval to award degrees and provide notice to the institution to cease its operations.
- (i) An institution may not advertise itself as an approved institution unless each degree program offered by the institution has been approved in accordance with the requirements of this section. The bureau shall review all operations of the institution pertaining to California degrees, both within and outside of California. The bureau may conduct site visits outside of California, including the institution's foreign operations, when the bureau deems these visits to be necessary. The institution shall be responsible for the expenses of the visiting team members including the bureau's staff liaison. The bureau may authorize any institution approved to issue degrees under this section to issue certificates for the completion of courses of study that are within the institution's approved degree-granting programs.
- (j) An institution shall not offer any educational program or degree title that was not offered by the institution at the time the institution applied for

approval to operate, and shall not offer any educational program or degree title at a campus that had not offered the program or degree title at the time the institution applied for approval to operate that campus, unless the bureau first approves the offering of the program or degree title after determining that it satisfies the minimum standards established by this section.

§ 94905 APPROVAL OF REGIONALLY ACCREDITED INSTITUTIONS INCORPORATED IN ANOTHER STATE

- (a) (1) Any non-WASC regionally accredited institution, as defined in Section 94740.5, that is incorporated in another state and maintains its accredited status throughout the period of a student's course of study, and that is approved by the bureau to operate, may issue degrees, diplomas, or certificates. Except for continuing education programs and programs that are exclusively avocational or recreational in nature, accredited public or private postsecondary educational institutions incorporated in another state shall not offer degrees, diplomas, or certificates in California unless they comply with this section.
- (2) A non-WASC regionally accredited institution approved to operate pursuant to this section, and any and all of its program offerings, are subject to the requirements of Article 13 (commencing with Section 94950).
- (b) The bureau shall not approve a non-WASC regionally accredited institution to issue degrees, diplomas, or certificates pursuant to this section until the bureau has determined that the institution has complied with all of the following requirements:
 - (1) The institution meets the financial responsibility requirements set forth in paragraph (2) of subdivision (a) of Section 94804.
 - (2) The institution's cohort default rate on guaranteed student loans does not exceed 15 percent for the three most recent years, as published by the United States Department of Education.

- (3) The institution submits to the bureau copies of its most recent Integrated Postsecondary Education Data System Report of the United States Department of Education and its accumulated default rate.
 - (4) The institution pays fees in accordance with Section 94932.
 - (5) The institution has submitted an application to operate for itself or a branch or satellite campus pursuant to Section 94802 or an application for renewal pursuant to Section 94840.
- (c) A non-WASC regionally accredited institution shall be required to notify the bureau of the addition of a degree, diploma, or certificate program that is not included in the institution's initial or renewal application within 90 days of adding the program. If a non-WASC regional accrediting agency, as defined in Section 94740.3, requires approval of the additional degree, diploma, or certificate program, a copy of the certificate of accreditation or approval shall be included with the notice to the bureau, and no additional review or investigation of the program shall be required by the bureau. If the regional accrediting agency does not require approval of the additional degree, diploma, or certificate program, the institution shall include its most recent certificate of accreditation with the notice to the bureau, and no additional review or investigation of the program or institution shall be required by the bureau. Nothing in this subdivision shall be construed to limit the authority of the bureau to investigate student complaints.
- (d) A non-WASC regionally accredited institution approved to operate pursuant to this section shall be subject to disciplinary action by the bureau if the institution loses its accreditation or federal financial aid eligibility due to an action taken by a non-WASC regional accrediting agency or federal authority.
- (e) A non-WASC regionally accredited institution approved to operate pursuant to this section is exempt from the requirements of Sections 94900 and 94901, Article 9 (commencing with Section 94915), and Article 9.5 (commencing with Sections 94931), except for the applicable financial responsibility requirements referenced by paragraph (2) of subdivision (a) of Section 94804. Any non-WASC regionally accredited institution that is

not approved to operate pursuant to this section may apply for approval to operate pursuant to Sections 94900 and 94901.

- (f) The bureau shall annually include, in the report it prepares pursuant to Section 94995, its findings and recommendations relative to institutions that have secured institutional or programmatic approval pursuant to this section.

ARTICLE 9 ♦ STANDARDS AND EVALUATION PROCEDURES FOR NONDEGREE-GRANTING INSTITUTIONS

§ 94915 APPROVAL TO OPERATE NONDEGREE-GRANTING INSTITUTIONS; QUALITATIVE REVIEW; SITE VISITS; OPERATIONAL PLAN REQUIREMENT; COURSE AND PROGRAM REQUIREMENTS; QUALIFICATIONS OF INSTRUCTORS; STANDARDS OF OPERATION; AGREEMENT WITH THE FAA; PROBATION; REVOCATION OF APPROVAL

- (a) No private postsecondary educational institution, except those offering degrees and approved under Article 8 (commencing with Section 94900) or those registered under Article 9.5 (commencing with Section 94931), may offer educational services or programs unless the institution or locations at which these services or programs are offered have been approved by the council as meeting the requirements of this section. In addition, if the institution is regulated by any other state licensing agency, the institution shall have obtained and retained the approval of that agency.
- (b) If an institution is operating under the council's prior approval and the institution has applied for approval to operate for itself or a branch or satellite campus that is operating, the council shall not grant approval to operate until the council has conducted a qualitative review and assessment of the operations of the institution in California and determined that all of the following minimum standards have been satisfied.
 - (1) The quality and content of each course or program of instruction, training, or study may reasonably and adequately be expected to

achieve the objective for which the course or program is offered. Except for continuing education programs and programs that are exclusively avocational or recreational in nature, all programs offered by the institution shall meet the minimum standards prescribed by this subdivision. If an institution represents that a course or program leads to employment, the quality, content, and instruction of the course or program shall be sufficient to ensure that students may acquire the necessary level of education, training, skill, and experience to obtain employment in the occupation or job title to which the course or program of instruction is represented to lead.

- (2) The institution has adequate space, equipment, instructional material, and instructor personnel to provide training of the quality needed to attain the objective described in paragraph (1).
- (3) Every instructor and administrator possesses adequate academic, experiential, and professional qualifications to teach the course or to perform the duties that the person is assigned, satisfies all standards established by the council by regulation, and holds an applicable and valid certificate of authorization for service issued by the council in the specified competence area in which the individual will serve. No person shall serve as an instructor or member of the administrative staff if that person has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of federal or state funds, or who has been judicially or administratively determined to have committed any violation of this chapter or of any law involving state or federal funds.
- (4) The institution maintains for at least five years written records of each student's previous education and training, where applicable.
- (5) A copy of the course outline, description of the occupations or job titles, if any, to which the course of instruction is represented to lead, schedule of tuition, fees, and other charges, refund policy, regulations pertaining to tardiness, absences, and the grading policy, and rules of operation and conduct is given to students prior to enrollment.

- (6) The institution maintains and enforces adequate standards relating to, and maintains records of, attendance, satisfactory academic progress, and student performance to achieve the objective described in paragraph (1).
- (7) The institution complies with all local city, county, municipal, state, and federal regulations relative to the safety and health of all persons upon the premises such as fire, building, and sanitation codes. The council may require evidence of compliance.
- (8) The institution does not exceed enrollment that the facilities and equipment of the institution can reasonably handle.
- (9) The institution's officers, directors, and owners demonstrate financial and fiduciary responsibility, as prescribed by statute, or by regulations adopted by the council.
- (10) The institution is in compliance with this chapter and has developed policies and procedures designed to ensure that compliance.
- (11) No circumstances exist that may constitute grounds for the revocation or suspension of an approval to operate.
- (12) The institution complies with Article 7 (commencing with Section 94850) if that article is applicable to any educational program it offers.
- (13) Application for approval shall be made in writing on forms prescribed by the council. The application for approval shall include, if applicable to the institution, a statement of whether the institution claims that it is exempt or that a course or other educational service it offers is exempt from Article 7 (commencing with Section 94850), and the information required by subdivision (f) of Section 94873.

An institution may include some, or all, of its separate operating sites under one application. Alternately, it may submit separate applications for any one site or combination of sites. The satellites

or branches included in either an initial or renewal application shall be considered by the council to comprise a separate, single institution for purposes of regulation, approval, and compliance under this chapter. The application shall include a single fee based on the number of branches, satellites, and programs included within a single application in order to cover the costs involved for those multisite and multiprogram reviews.

- (c) Within 90 days following the receipt of an application from an institution and prior to granting any approval, a representative of the council shall personally inspect the institution and verify the institution's compliance with the standards prescribed by this chapter. The council may use a qualified visiting committee in the initial review of programs and in subsequent reviews. The visiting committee may include employers with expertise related to the program being reviewed. The institution seeking approval shall reimburse the council for the expenses of the visiting committee. The onsite inspection shall include an inspection of the institution's facilities and records, interviews of administrators, faculty, and students, and an observation of class instruction, as determined to be appropriate by the council.
- (1) If the application for approval includes branch or satellite campuses, the council shall inspect each branch campus and may inspect any satellite campus.
 - (2) If the application is for approval to operate a branch or a satellite, the council, in addition to inspecting the branch or satellite, also may inspect the institution operating the branch or satellite campus.
 - (3) The council may waive or modify the requirement for onsite inspections of branch campuses located outside of California or for an institution offering home study or correspondence courses.
 - (4) If the application is for reapproval of an existing approval, the institution need only submit information necessary to document any changes made since the time its previous application was filed with the council. Fees for reapproval applications shall be based on the actual costs involved in the administrative review process.

- (d) The council shall review all operations of the institution both within and outside of California. The council may conduct site visits outside of California, including the institution's foreign operations, when the council deems these visits to be necessary. The institution shall be responsible for the expenses of any visiting team members including the council's staff liaison.
- (e) Within 90 days following the inspection described in subdivision (c) or any reasonable extension of time not to exceed 90 days, the council shall reach a decision on the merits and shall do one of the following:
 - (1) If the institution is in compliance with this chapter and has not operated within three years before the filing of the application in violation of this chapter then in effect, the council may grant approval for a period not to exceed four years.
 - (2) If the institution is in compliance with this chapter, but has operated within three years before the filing of the application in violation of this chapter then in effect, or if the council determines that an unconditional grant of approval to operate is not in the public interest, the council may grant a conditional approval to operate subject to whatever restrictions the council deems appropriate. The council shall notify the institution of the restrictions, the basis for the restrictions, and the right to request a hearing to contest the restrictions.
 - (3) The council may deny the application if the institution does not comply with this chapter, including the minimum standards established in subdivision (b), or has operated within three years before the filing of the application in violation of this chapter then in effect. If the application is denied, the council may permit the institution to continue offering the course or courses of instruction to students already enrolled or may order the institution to cease all instruction and provide a refund of tuition and all other charges to students. The council shall notify the institution of the denial, the basis for the denial, and the right of the institution to request a hearing to contest the denial.

- (f) (1) If an institution is not operating in California when it applies for approval to operate for itself or a branch or satellite campus, the institution shall file with its application an operational plan establishing that the institution will satisfy the minimum standards set forth in subdivision (b). The operational plan also shall include a detailed description of the institution's program for implementing the operational plan, including proposed procedures, financial resources, and the qualifications of owners, directors, officers, and administrators employed at the time of the application's filing. The council may request additional information to enable the council to determine whether the operational plan and its proposed implementation will satisfy these minimum standards.
- (2) If the council determines that the operational plan satisfies the minimum standards described in subdivision (b), that the institution demonstrates that it will implement the plan, and that no ground for denial of the application exists, the council shall grant a temporary approval to operate, subject to any restrictions the council reasonably deems necessary to ensure compliance with this chapter, pending a qualitative review and assessment as provided in subdivisions (b) and (c). The council shall inspect the institution, or branch or satellite campus if approval is sought for that campus, between 90 days and 180 days after operation has begun under the temporary approval to operate. Within 90 days following the council's inspection of the institution, the council shall act as provided in subdivision (e).
- (g) If an institution approved to operate in California applies for approval to operate an additional site location that has not been previously approved by the council, the institution shall file an operational plan for the additional site location as described in subdivision (f). The council shall evaluate the additional site location as provided in subdivision (f). The council also may evaluate the institution as provided in subdivisions (b) and (c) before determining whether to grant to the institution temporary or final approval to operate the additional site location. If the institution or the additional site location does not meet the requirements of this chapter or if the institution has operated within three years before the filing of the

application in violation of this chapter then in effect, the council may deny the application for approval to operate the additional site location or may grant a conditional approval to operate the additional site location subject to any restrictions it deems appropriate. The provisions for notice and hearing described in paragraphs (2) and (3) of subdivision (e) shall apply.

- (h) No institution shall offer a course or program of instruction, training, or study at a campus that had not offered the course or program at the time the institution applied for approval to operate that campus unless the council first approves the offering of the course or program after determining that it satisfies the minimum standards established in subdivision (b).
- (i) The council may enter into an agreement for the regulation and oversight of nondegree-granting private postsecondary institutions with the Federal Aviation Administration or with the state agency responsible for administering Article 1 (commencing with Section 1250) of Chapter 2 of Division 2 of the Health and Safety Code.

The council may enter into a regulatory agreement only when the appropriate agency can demonstrate that its standards and procedures for the review of institutions encompass the standards and consumer protection requirements prescribed by this chapter and that these standards and procedures are rigorously enforced. Nothing in this section shall modify the existing authority of regulatory agencies within the Department of Consumer Affairs relating to schools or programs.

- (j) If at any time the council determines that an institution has deviated from the standards for approval, the council, after giving the institution due notice and an opportunity to be heard, may place the institution on probation for a specified period of time not to exceed 24 calendar months. During the period of probation, the institution shall be subject to special monitoring. The conditions for probation may include the required submission of periodic reports, as prescribed by the council, and special visits by authorized representatives of the council to determine progress toward total compliance. If at the end of the specified probationary period, the institution has not taken steps to eliminate the causes for its probation to the satisfaction of the council, the council

may revoke the institution's approval and provide notice to the institution to cease its operations.

§ 94920 APPLICATIONS BY INSTRUCTORS AND STAFF TO TEACH OR ADMINISTER

- (a) Each individual submitting an application for a certificate of authorization for service, pursuant to paragraph (3) of subdivision (b) of Section 94915, shall provide the council with the following information:
 - (1) A completed application as supplied by the council.
 - (2) Certified copies of educational transcripts, where applicable.
 - (3) Verified employment history.
 - (4) Other documentation of prior experience or education as required by the council for verification.

- (b) To be eligible for a certificate of authorization for service, the applicant shall fulfill the following requirements:
 - (1) Instructors shall have all of the following qualifications:
 - (A) No record of any violations of this chapter.
 - (B) Verification that he or she possesses a combination of at least three years' experience and training or education in the occupation or job title category for which the certification is sought.
 - (C) An instructor for a program that leads to a degree shall possess a degree of equal or higher level in the occupation for which certification is sought.
 - (2) Directors shall have both of the following qualifications:

- (A) Three years' experience in an administrative position in a public or an approved private postsecondary school.
 - (B) No record of any violations of this chapter.
- (3) Associate directors shall have both of the following qualifications:
- (A) Two years' experience in an administrative or other responsible position in a public or state approved private postsecondary school.
 - (B) No record of any violations of this chapter.
- (4) Financial aid directors shall have all of the following qualifications:
- (A) Five years' experience in an administrative position in the financial aid office of a public or approved private postsecondary school.
 - (B) Verification of completion within the previous two years of a training seminar or workshop certified by the Student Aid Commission as providing up-to-date comprehensive information on financial aid programs and policies.
 - (C) No record of any violations of this chapter.
 - (D) Any other requirements the council deems necessary.
- (5) Financial aid officers shall possess all of the following qualifications:
- (A) Verification of completion within the previous two years of a training seminar or workshop certified by the Student Aid Commission as providing up-to-date comprehensive information on financial aid programs and policies.
 - (B) No record of any violations of this chapter.

- (C) Other requirements the council deems necessary.
- (c) An individual who is the sole owner of an institution may serve in the capacity of director for three years prior to meeting the qualifications of subparagraph (A) of paragraph (2) of subdivision (b).
 - (d) Any individual filling a position left vacant by a previously certified financial aid director or financial aid officer shall verify with the council completion of the training referred to in subparagraph (A) of paragraph (5) of subdivision (b) within one year of accepting that position.
 - (e) Each individual certified for authorization for service in the positions listed in paragraphs (1), (4), and (5) of subdivision (b) shall maintain at each private postsecondary educational institution where he or she is employed a validated transcript evidencing the successful completion of three continuing education units of recognized in-service training in their education, job title category, or employment field during every period of certification. These units may be completed through in-service training offered by accrediting associations, professional organizations, or council-approved programs.
 - (f) Every certificate of authorization issued to a person who possesses the qualifications described in paragraphs (1), (4), and (5) of subdivision (b) shall be valid for a period of three years.
 - (g) In addition to the requirements set forth in this section, the council may impose additional requirements by regulation.

§ 94925 REQUIREMENTS FOR SCHOOLS PROVIDING INSTRUCTION ON DRIVING MOTORTRUCKS OF THREE OR MORE AXLES THAT ARE MORE THAN 6000 POUNDS

No person shall own or operate a school, or give instruction, for the driving of motortrucks of three or more axles that are more than 6,000 pounds unladen weight unless all of the following conditions are met:

- (a) The school or instruction has been approved by the council.

- (b) The school, at the time of application and thereafter, maintains both of the following:
 - (1) Proof of compliance with liability insurance requirements that are the same as those established by the Department of Motor Vehicles for a driving school owner, pursuant to Section 11103 of the Vehicle Code, unless the council deems it necessary to establish a higher level of insurance coverage.
 - (2) A satisfactory safety rating by the Department of the California Highway Patrol is established pursuant to Division 14.8 (commencing with Section 34500) of the Vehicle Code.
- (c) The school, at all times, shall maintain the vehicles used in driver training in safe mechanical condition. The school shall keep all records concerning the maintenance of the vehicles.
- (d) The driving instructors meet the requirements set forth in Section 11104 of the Vehicle Code.
- (e) Any other terms and conditions required by the council to protect the public safety or to meet the requirements of this chapter.

**§ 94930 INSTITUTIONS CERTIFIED BY FAA; BUREAU APPROVAL;
FAA REVIEW OF INSTITUTIONS WITH GROSS STUDENT
LOAN DEFAULT RATES**

- (a) All institutions that were certified to offer flight instruction by the Federal Aviation Administration (FAA) and that operated in California on December 31, 1990, pursuant to prior authority of subdivision (a) or (b) of former Section 94311, shall receive approval from the council for a period not to exceed three years. On or before June 30, 1999, the council shall work in cooperation with the FAA to review each of these institutions to determine whether the institution is in compliance with the requirements of this chapter. It is the intent of the Legislature that all institutions whose cumulative gross student loan default rate is above 40 percent, as determined by the Student Aid Commission, shall be reviewed by the FAA and the council to determine if these institutions are in compliance with the

requirements of this chapter and should continue to be approved to offer educational programs in California. It is further the intent of the Legislature that the bureau develop a memorandum of understanding with the FAA to delineate the responsibilities of each agency for the approval and monitoring of these institutions that were operating on December 31, 1990, under the prior authority of subdivision (a) or (b) of former Section 94311.

- (b) Institutions certified to offer flight instruction by the FAA, or its successor agency, shall comply with all of the requirements of Sections 94800, 94810, 94814, and 94816, Sections 94820 to 94826, inclusive, and Sections 94828 and 94829 and Article 7 (commencing with Section 94850) if applicable, but shall not be required to file any materials with the council that are not required by the FAA or its successor agency, except those minimally necessary to administer the Student Tuition Recovery Fund as determined by the council. The responsibility for monitoring and enforcing institutional compliance for these institutions shall be with the council.
- (c) This chapter does not apply to individual flight instructors not requiring any advance payments, who do not negotiate a formal contract of indebtedness, and who do not have an established place of business other than their residences.

ARTICLE 9.5 • REGISTERED INSTITUTIONS

§ 94931 EDUCATIONAL SERVICES THAT QUALIFY FOR REGISTRATION STATUS; REGISTRATION REQUIREMENTS; DISCLOSURE OF REGISTERED STATUS; APPLICABILITY OF OTHER PROVISIONS

- (a) No private postsecondary educational institution, except those offering degrees and approved under Article 8 (commencing with Section 94900) or offering vocational and nondegree granting programs and approved under Article 9 (commencing with Section 94915), or those that are exempt from this chapter, may offer educational services or programs or short-term

educational programs unless the institution has been registered by the bureau as meeting the requirements of this article.

- (b) An institution approved to offer degrees under Article 8 (commencing with Section 94900) or approved to offer vocational and nondegree granting programs under Article 9 (commencing with Section 94915) may offer registered short-term education programs without affecting its status under either of those articles so long as the registered short-term education program is disclosed in its approval to operate application or the institution completes a registration application and receives specific authorization for the program, maintains compliance for all registered programs in conformity with this article, and maintains a set of student records for registered programs separate from its approved programs. Any registered institution that offers an educational program not specified in subdivision (c) or not otherwise exempt from this chapter shall be approved under Article 8 (commencing with Section 94900) or Article 9 (commencing with Section 94915) and shall comply with this chapter.
- (c) Except as otherwise provided in this article, this chapter does not apply to an educational service that qualifies for registration status and that complies with this article. The educational services that qualify for registration status are limited to:
 - (1) An educational service, as described in Section 94733, that is offered to provide an intensive English language program.
 - (2) An educational service, as described in Section 94742.1, that is offered to provide short-term career training.
 - (3) An educational service, as described in Section 94742.3, that is offered to provide short-term seminar training.
 - (4) An educational service that is offered to assist students to prepare for an examination for licensure, except as provided in Section 94787.
 - (5) An educational service that consists of continuing education not otherwise exempt from this chapter.

- (d) An institution that qualifies under any of paragraphs (1) to (4), inclusive, of subdivision (c) shall complete a registration form provided by the bureau, including a signed declaration by the chief executive officer of the institution under penalty of perjury, and provide all of the following information for public disclosure:
- (1) The owner's legal name, headquarters address, and the name of an agent for the service of process within California.
 - (2) All names, whether real or fictitious, under which the owner is doing and will do business.
 - (3) The names and addresses of the principal officers of the institution.
 - (4) A list of all California locations at which the institution operates, its offerings, and, if previously registered, the number of students enrolled in California during the preceding year.
 - (5) A copy of the registration form or agreement that enrolls the student in the educational service that contains all of the following:
 - (A) The name and address of the location where instruction will be provided.
 - (B) The title of the educational program.
 - (C) The total amount the student is obligated to pay for the educational service.
 - (D) A clear and conspicuous statement that the enrollment form or agreement is a legally binding instrument when signed by the student and accepted by the institution.
 - (E) The refund policy developed by the institution unless this article specifies a different refund policy.

- (F) Unless this article specifies that the institution is required to participate in the Student Tuition Recovery Fund, a statement that the institution does not participate in that fund.
 - (G) In 10-point boldface type or larger, the following statement:
 - "Any questions or problems concerning this school that have not been satisfactorily answered or resolved by the school should be directed to the Bureau for Private Postsecondary and Vocational Education in the Department of Consumer Affairs, (insert city, address, CA ZIP Code number, and telephone number)."
 - (H) Schools approved under paragraph (1) of subdivision (c) of Section 94931 shall also include with the statement required by subparagraph (G) information referring the student to a consulate of his or her country and the United States Immigration and Naturalization Service.
- (6) A brochure or catalog and a sample advertisement used to promote the educational service.
 - (7) A copy of its certificate of completion.
 - (8) If the educational service offers short-term career training, the institution shall comply with the requirements of Sections 94804 and 94806.
 - (9) If the institution assists students in obtaining financing from a third party for the cost of the educational services at the institution, a copy of the contract or finance agreement reflecting that financing.
- (e) The bureau shall establish the initial registration fee and the annual fee to be paid by institutions registered under this article. No institution shall be registered pursuant to this article unless it has paid the appropriate fees required by the bureau. Upon receipt of an institution's initial application for registration for a program, the bureau may conduct a site visit pursuant to subdivision (c) of Section 94915.

- (f) For the purposes of communication with other state agencies, any organization or individual registered to offer short-term seminar training may state that he, she, or it is "authorized" by the State of California.
- (g)
 - (1) Except as provided by subdivision (f), any institution registered pursuant to this article shall be restricted to stating that its training is "registered" with the State of California and is prohibited from using the words "approval," "approved," "approval to operate," "approved to operate," "authorized," "licensed," or "licensed to operate."
 - (2) The institution shall place the following statement in all brochures, catalogues, enrollment agreements, and registration forms, in a conspicuous location in at least 12-point boldfaced type:

"We are registered with the State of California. Registration means we have met certain minimum standards imposed by the state for registered schools on the basis of our written application to the state. Registration does not mean we have met all of the more extensive standards required by the state for schools that are approved to operate or licensed or that the state has verified the information we submitted with our registration form."
- (h) The bureau may require, at least every three years following the initial registration date, that a registered institution verify all or part of the information required to be provided with the registration form under subdivision (d).
- (i) Sections 94812 and 94818, Sections 94822 to 94825, inclusive, Sections 94829 to 94838, inclusive, and Sections 94841 and 94846 apply to any institution registered pursuant to this article.
- (j) Article 1 (commencing with Section 94700), Article 2 (commencing with Section 94710), Article 3 (commencing with Section 94750), Article 3.5 (commencing with Section 94760), Article 4 (commencing with Section 94770), and Article 13 (commencing with Section 94950) apply to any institution registered pursuant to this article.

**§ 94931.1 ENROLLMENT AGREEMENT OR REGISTRATION FORM;
REQUIRED FORM AND CONTENTS; INVALIDITY OF
NONCONFORMING AGREEMENTS AND FORMS**

- (a) Before accepting any consideration from a student, an institution registered pursuant to this article shall provide the student with an enrollment agreement or registration form containing in a single document all of the terms related to the instruction and payment. The agreement or registration form shall contain all of the information set forth in paragraph (5) of subdivision (d) of Section 94931.
- (b) The enrollment agreement or registration form shall be printed in at least 10-point type in English and, except for educational services described in paragraph (1) of subdivision (c) of Section 94931, if any solicitation or negotiation leading to the student's enrollment was in a language other than English, in that other language. Institutions that provide educational services described in paragraph (1) of subdivision (c) of Section 94931 shall provide in a written agreement with any agent or representative that the agent or representative is required to disclose to each prospective student in writing, in the language of any solicitation or negotiation leading to the student's enrollment, all of the information described in paragraph (5) of subdivision (d) of Section 94931.
- (c) If the institution fails to comply with this section, any enrollment agreement or registration form shall be invalid and the institution shall refund to the student all of the tuition paid by the student to the institution.
- (d) In addition to any other requirement in this article, each institution registered under paragraph (2) of subdivision (c) of Section 94931 shall provide to each prospective student all of the information required by Section 94816 and shall be subject to Section 94820 and Article 12 (commencing with Section 94944).

ARTICLE 10 ♦ FEES AND COSTS

**§ 94932 PRIVATE POSTSECONDARY AND VOCATIONAL
EDUCATION FUND CONTINUED IN EXISTENCE**

- (a) The Private Postsecondary and Vocational Education Administration Fund is continued in existence. All fees collected pursuant to this section shall be credited to this fund along with any interest on the money, for the administration of this chapter. If the Legislature makes an appropriation for the support of the council in the Budget Act of any fiscal year, the amount for the support of the council expended from the fund during the fiscal year shall not exceed the amount appropriated by the Budget Act, unless that amount is modified in accordance with the Budget Act.

- (b) On and after January 1, 1998, a minimum of 50 percent of the funds appropriated to the council shall be used to cover the costs of enforcing all of the following:
 - (1) Enforcing the act and the council's regulations by taking actions against violators while ensuring due process for all institutions.
 - (2) Ensuring that independent onsite evaluations and random and targeted inspections and audits of institutions are conducted, and that students have easy access to information concerning their rights to contract cancellation, withdrawal, refunds, and remedies.
 - (3) Mediating student complaints to achieve balanced outcomes for students and institutions.

- (c) (1) For the approval of private institutions operating under this chapter, the council shall charge an amount not to exceed the actual costs of approving or renewing the approval of the private institutions. The council shall adopt a fee schedule for all institutions approved under this chapter, including the maximum amounts to be charged for an institution's initial application and annual renewal.

- (2) On January 1, 1998, the bureau shall reduce the application fees for approval and reapproval to operate and the annual fees, that are in effect on December 31, 1997, as follows:
 - (A) By 5 percent for institutions whose annual gross revenues or projected annual gross revenues are one million dollars (\$1,000,000) or more.
 - (B) By 10 percent for institutions whose annual gross revenues or projected annual gross revenues are one hundred thousand dollars (\$100,000) or more but less than one million dollars (\$1,000,000).
 - (C) By 15 percent for institutions whose annual gross revenues or projected annual gross revenues are less than one hundred thousand dollars (\$100,000).
- (3) The council may propose modifications to the fee schedule to the Governor and the Legislature to add or delete categories of fees related to work performed by the council and propose to the Governor and the Legislature the maximum amount to be charged for each fee category added to the fee schedule. The fee schedule shall provide adequate resources for the council to implement this chapter effectively. It is the intent of the Legislature that the council shall adopt a fee schedule that reflects the size of the institution, with institutions enrolling a larger number of students being required to pay a larger annual fee than those with smaller student enrollments. The fee schedule, consistent with this section, also may contain provisions for fees assessed in conjunction with the evaluation of an application for a certificate of authorization for service issued pursuant to paragraph (3) of subdivision (b) of Section 94915. The council shall annually present its proposed budget and fee schedule, penalty fees assessed for delinquent payments pursuant to regulations adopted by the council and additions and deletions of fee categories to the Department of Finance and the Joint Legislative Budget Committee for their review and approval as part of the annual budget process. The council shall annually publish a schedule of the current fees to be charged pursuant to this section

and shall make this schedule generally available to the public. The fees may be increased annually up to the maximum allowable level by a majority vote of the council, without any additional review and approval by the Office of Administrative Law. The adoption of the annual fee schedule, any modification of the fee schedule, and any increase in fees up to the maximum allowable level shall be subject to Article 5 (commencing with Section 11346) of Chapter 3.5 of Part 1 of Division 3 of Title 2 of the Government Code. Increases above the maximum level shall be changed through legislation enacted by the Legislature and signed by the Governor.

§ 94934 PENALTY FEE FOR DEFAULT IN PAYMENT OF FEE OR ORDER TO PAY COSTS

Any institution more than 30 days delinquent in the payment of any fee or order for the recovery of costs and expenses under Section 94935, may be assessed a penalty fee by the council.

§ 94935 PAYMENT OF INVESTIGATION COSTS

If the council determines after an investigation that an institution has violated this chapter, the council may order the institution to pay the costs and expenses incurred in connection with the investigation and any civil or administrative proceeding involving the violation that was investigated, including charges made by the Attorney General for his or her services, and any expenses incurred by a district attorney. Before any order for the payment of costs and expenses is made under this section, the council shall provide the institution with written notice, including notice of the institution's right to request a hearing within 15 days of service of the notice. If a hearing is not timely requested, the council may order payment. If a hearing is requested, the council shall comply with Section 94965, 94975, or 94980. Within 30 days after the effective date of the order, the council may enforce the order as if it were a money judgment pursuant to Title 9 (commencing with Section 680.10) of Part 2 of the Code of Civil Procedure. Alternatively, the council may seek the costs and expenses allowed under this section in a civil proceeding. An institution shall not be required to pay the same costs and expenses incurred in connection with the investigation and any civil or administrative proceeding to more than one investigating agency.

§ 94936 DELAY IN EFFECTIVE DATE OF AMENDMENTS AFFECTING REVENUES PAYABLE TO THE BUREAU

The effective date of any statutory amendment to this chapter affecting revenues payable to the council from any service shall be delayed for a period of 12 months in order to enable the council to make the necessary adjustments in its fee schedule through the regulatory adoption process.

ARTICLE 11 ♦ AGENTS AND AGENCIES

§ 94940 RECRUITMENT AGENT'S PERMIT; APPLICATION FOR PERMIT; REQUIREMENT FOR MULTIPLE PERMITS; CAUSES FOR NONISSUANCE; POSSESSION REQUIREMENTS; VIOLATIONS; PUNISHMENT; RECORDS RETENTION

- (a) Notwithstanding any other provision of this chapter concerning agents, the owner of at least 51 percent of the equitable interest in an institution shall be exempt from this section if the institution is approved to operate pursuant to Article 8 (commencing with Section 94900) or Article 9 (commencing with Section 94915).

No person may act as an agent, unless that person holds a valid permit issued by the council and maintains at all times a surety bond as described in paragraph (2). Administrators or faculty, or both, who make informational public appearance, but whose primary task is not to serve as a paid recruiter, are exempt from this section.

The application for a permit shall be furnished by the council and shall include the following:

- (1) A statement signed by the applicant that he or she has read this chapter and the regulations adopted pursuant thereto.
- (2) A surety bond issued by an admitted surety insurer in favor of the State of California for the indemnification of any person for any loss suffered as a result of the occurrence, during the period of coverage,

of any fraud or misrepresentation used in connection with the solicitation for the sale or the sale of any program of study, or as a result of any violation of this chapter. The term of the bond shall extend over the period of the permit. The bond may be supplied by the institution or by the person for whom the issuance of the permit is sought and may extend to cover individuals separately or to provide blanket coverage for all persons to be engaged as representatives of the institution. The bond shall provide for liability in the penal sum of twenty-five thousand dollars (\$25,000) for each agent to whom coverage is extended by its terms. Neither the principal nor the surety on a bond may terminate the coverage of the bond, except upon giving 30 days' prior written notice to the council, and contemporaneously surrendering the agent's permit. Liability on the bond may be enforced after a hearing before the council, after 30 days' advance written notice to the principal and surety. The council shall adopt regulations establishing the procedure for administrative enforcement of liability. This paragraph supplements, but does not supplant, any other rights or remedies to enforce liability on the bond.

- (3) A fee as required by Section 94932.
- (b) An agent representing more than one institution shall obtain a separate agent's permit and bond for each institution represented.
- (c) No person shall be issued a permit if he or she previously has been found in any judicial or administrative proceeding to have violated this chapter, or there exists any of the grounds for denial set forth in Section 480 of the Business and Professions Code.
- (d) A permit shall be valid for the calendar year in which it is issued, unless sooner revoked or suspended by the council for fraud or misrepresentation in connection with the solicitation for the sale of any course of study, for any violation of this chapter, or for the existence of any condition in respect to the permittee or the school he or she represents which, if in existence at the time the permit was issued, would have been grounds for denial of the permit.

- (e) The permittee shall carry the permit with him or her for identification purposes when engaged in the solicitation of sales and the selling of courses of study away from the premises of the school, and shall produce the permit for inspection upon the request of any person.
- (f) Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code or Section 94975 shall apply to any determination of the council made pursuant to this section.
- (g) The issuance of a permit pursuant to this section shall not be interpreted as, and it shall be unlawful for any individual holding any permit to expressly or impliedly represent by any means whatsoever, that the council has made any evaluation, recognition, accreditation, or endorsement of any course of study being offered for sale by the individual.
- (h) It is unlawful for any individual holding a permit under this section to expressly or impliedly represent, by any means whatsoever, that the issuance of the permit constitutes an assurance by the council that any course of study being offered for sale by the individual will provide and require of the student a course of education or training necessary to reach a professional, educational, or vocational objective, or will result in employment or personal earnings for the student.
- (i) No agent shall make any untrue or misleading statement or engage in sales, collection, credit, or other practices of any type that are false, deceptive, misleading, or unfair.
- (j) The council shall maintain records for five years of each application for a permit, each bond, and each issuance, denial, termination, suspension, and revocation of a temporary permit or permit.
- (k) A student may bring an action for an agent's violation of this chapter or any fraud or misrepresentation and, upon prevailing, is entitled to the recovery of damages, reasonable attorney's fees, and costs. If a court finds that the violation was willfully committed, the court, in addition to the award of damages, shall award a civil penalty of up to two times the amount of damages sustained by the student.

- (1) Any person who violates this section is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, by a fine not to exceed five thousand dollars (\$5,000), or by both that imprisonment and fine.

§ 94942 RECRUITMENT AGENCY AUTHORIZATION; APPLICATION CONTENTS; VIOLATIONS; PUNISHMENT

- (a) Except as provided in subdivision (g), any agency shall be required to hold a valid authorization issued by the council. The application for an authorization shall include all of the following:
 - (1) A current financial statement prepared by a California licensed certified public accountant who is not an employee, officer, or director of the institution.
 - (2) Evidence of a surety bond issued in favor of the State of California by an admitted surety insurer making provision for indemnification of any person for any loss suffered as a result of the occurrence, during the period of coverage, of any fraud or misrepresentation used in connection with the solicitation for the sale or the sale of any program of study, or as a result of any violation of this chapter. The term of the bond shall extend over the period of the authorization. The bond shall provide for liability in the penal sum of two hundred fifty thousand dollars (\$250,000) for each agency to which coverage is extended by its terms. Neither the principal nor the surety on a bond may terminate the coverage of the bond except upon giving 30 days' prior written notice to the council, and upon contemporaneously surrendering the agency's authorization to operate. Liability on the bond may be enforced after a hearing before the council, after 30 days' advance written notice to the principal and surety. The council shall adopt regulations establishing the procedure for administrative enforcement of liability and hearings under this section. This paragraph supplements, but does not supplant, any other rights or remedies to enforce liability on the bond.

- (3) A copy of the student disclosure statement to be read and signed by all prospective students referred to institutions by an agency. The student disclosure statement shall include, but shall not be limited to, all of the following:
- (A) A statement to the effect that no promise of employment has been made by the agency.
 - (B) A statement to the effect that repayment of any debt incurred by a student in connection with his or her education will be the sole responsibility of the student.
 - (C) The amount and terms of any fee to be paid by the student to the agency.
 - (D) A verbatim statement, as follows: "Any questions or problems concerning this agency should be directed to the Council for Private Postsecondary and Vocational Education, Sacramento, CA 95814."
 - (E) A statement to the effect that the institution or institutions to which the prospective student is referred by the agency have the obligation to make available to the student a catalog or brochure containing information describing all of the following:
 - (i) The courses offered.
 - (ii) Program objectives.
 - (iii) Length of program.
 - (iv) The faculty and their qualifications.
 - (v) A schedule of tuition, fees, and all other charges and expenses necessary for the completion of the course of study.
 - (vi) The cancellation and refund policies.
 - (vii) The total cost of tuition over the period needed to complete the student's education.

- (viii) For vocational training programs, placement data, including program completion rates, placement rates, and starting salaries.
 - (ix) Other material facts concerning the institution and the program or course of instruction that are reasonably likely to affect the decision of the student to enroll in the institution.
- (4) Identification of all employees of the agency and their titles, and of all agents with whom the agency contracts.
- (5) Identification of all owners, and if the entity is a corporation, the identification of all persons possessing an interest equal to, or in excess, of 10 percent.
- (6) Identification of all vendors of educational services for which the agency provides recruitment services.
- (7) A signed statement by the applicant that all employees engaged in recruitment activities will be required to read Sections 94831, 94832, and 94985 and, if the educational program for which the agency recruits is subject to Article 7 (commencing with Section 94850), Section 94853.
- (b) Within 30 days of receipt of a completed application and prior to issuance of an authorization a representative of the council shall inspect the applicant agency and verify the application. Within 30 days of the inspection, the council shall issue the authorization for a one-year period, subject to annual renewal at the end of that period, or deny the application. The council shall deny the authorization if the agency or any owner, officer, or director of the agency previously has been found in any judicial or administrative proceeding to have violated this chapter, or if there exists any of the grounds for denial set forth in Section 480 of the Business and Professions Code.

- (c) Any employee of an authorized agency engaged in student recruitment activities of an authorized agency is exempt from the bond requirements of Section 94940.
- (d) Neither the agency nor any of its employees shall make any untrue or misleading statement in the course of any solicitation or recruitment activity or engage in the sales, collection, credit, or other practices of any type that are false, deceptive, misleading, or unfair.
- (e) An agency or an employee of an agency shall provide a prospective student with the disclosure statement described in paragraph (3) of subdivision (a) and shall allow the prospective student a sufficient opportunity to read it before soliciting or recruiting him or her for enrollment or referring him or her to an institution. That disclosure statement shall be printed in 10-point type in English and, if the solicitation, recruitment, or referral is to be conducted in a language other than English, in that other language.
- (f) Any institution approved under this chapter shall cease any and all recruitment activities involving the agency upon action by the council to revoke or deny an agency's authorization. The failure of the institution to do so upon presentation of notice of the council's action shall be cause to deny or revoke any approval held by that institution.
- (g) This section does not apply to any agency recruiting solely for institutions described in Article 8 (commencing with Section 94900).
- (h) The council shall maintain records for five years of each application for an authorization, each verification by the council of an application, each bond, and each denial, issuance, and revocation of an authorization.
- (i) A student may bring any action against any agency if the agency or an employee of the agency violates this chapter or commits any fraud or misrepresentation and, upon prevailing, is entitled to the recovery of damages, reasonable attorney's fees, and costs. If a court finds that the violation was willfully committed, the court shall, in addition to the award of damages, award a civil penalty of up to two times the amount of damages sustained by the student.

- (j) Any person who violates this section is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, by a fine not to exceed five thousand dollars (\$5,000), or by both that imprisonment and fine.

ARTICLE 12 ♦ STUDENT TUITION RECOVERY FUND AND STUDENT OBLIGATIONS

94944 STUDENT TUITION RECOVERY FUND CONTINUED IN EXISTENCE; CONDITIONS FOR RECOVERY

- (a) The Student Tuition Recovery Fund is continued in existence. All assessments collected pursuant to Section 94945 shall be credited to this fund, along with any interest on the moneys, for the administration of this article. Notwithstanding Section 13340 of the Government Code, the moneys in the fund are 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.

**§ 94945 STUDENT TUITION RECOVERY FUND ASSESSMENTS;
ADMINISTRATIVE COSTS; EXPENDITURE PLANS;
EXEMPTION; ENFORCEMENT PROCEDURES**

- (a) The bureau shall assess each institution, including a non-WASC regionally accredited institution, as defined in Section 94740.5, except for an institution that receives all of its students' total charges, as defined in subdivision (k) of Section 94852, from third-party payers for the purpose of compliance with the provisions of this chapter that are related to the Student Tuition Recovery Fund. 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) (A) 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, and shall

be assessed as tuition is paid or loans are funded on behalf of the student, based upon academic term. The amount of the assessment on an institution shall be determined in accordance with paragraphs (2) and (3).

- (B) 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, or from loans funded on behalf of the students, except that an institution may waive collection of the Student Tuition Recovery Fund fee and assume the fee as a debt of the institution. The student's subsequent disenrollment at the institution shall not relieve the institution of the obligation to pay the fee to the bureau, nor be the basis for refund of the fee to the student. 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.
 - (C) For the purposes of this section, a "new student" means a student who signs his or her enrollment agreement on or after January 1, 2002. Those students who sign their enrollment agreement prior to January 1, 2002, are not "new students" for purposes of this section, and shall be assessed the Student Tuition Recovery Fund fee in effect prior to January 1, 2002, except that an institution may waive collection of the Student Tuition Recovery Fund fee in effect prior to January 1, 2002. Institutions electing to waive collection of the Student Tuition Recovery Fund fee shall disclose this fact to the student in the enrollment agreement, along with the amount of the fee paid on the student's behalf to the bureau.
- (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, based upon the assessment rate in effect when the student enrolled at the institution, without regard to the length of

time the student's program of instruction lasts. 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 charged, rounded to the nearest thousand dollars. For new students signing enrollment agreements between January 1, 2002 and December 31, 2002, inclusive, the assessment rate of three dollars (\$3) per thousand dollars of tuition paid, rounded to the nearest thousand dollars, as provided in subparagraph (A) of this paragraph, shall remain the assessment rate for the duration of the student's enrollment agreement.
- (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, including any non-WASC regionally accredited institution, as defined in Section 94740.5, 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.

**§ 94946 EFFECT OF VIOLATIONS OF ASSESSMENT PROVISIONS;
UNENFORCEABILITY OF CONTRACT; REFUND OF TUITION
TO STUDENTS**

- (a) Any institution that willfully violates Section 94945 shall be subject to all of the following:
 - (1) The institution shall lose all rights to enforce the terms of any contract or agreement arising from the transaction in which the violation occurred.

- (2) The institution shall refund to the student any fees that it has collected from that student.
- (b) An institution's willful violation of Section 94945 may be grounds for the revocation of that institution's approval to operate in this state.

§ 94947 DISCLOSURE OF SOURCES OF GUARANTEED OR INSURED LOANS

Students enrolling in institutions that come under Sections 94944 and 94945, shall disclose in writing, if applicable, the source of any and all guaranteed or insured loans granted for the purposes of paying tuition to that institution. In the event of a closure of any institution, the council shall provide any lending institution that is the source of any guaranteed or insured student loan with the names of students maintaining loans with that lending institution.

§ 94948 DEFAULT ON STUDENT LOANS; MANDATORY WITHHOLDING OF INSTITUTION'S SERVICES

- (a) The governing board or other governing authority of any private postsecondary or vocational educational institution shall adopt rules providing for the withholding of institutional services from students or former students who have been notified, in writing, at the student's or former student's last known address, that he or she is in default on a loan or loans under either of the following loan programs:
 - (1) The Stafford Student Loan program.
 - (2) The Supplemental Loans for Students program.
 - (3) Any program directly or indirectly financed by the California Educational Facilities Authority.

"Default," as used in this section, with respect to a loan under the Stafford Student Loan program or Supplemental Loans for Students program means the failure of a borrower to make an installment payment when due, or to meet other terms of the promissory note under circumstances where the guarantee agency finds it reasonable to conclude that the borrower no longer intends to honor the

obligation to repay, provided that this failure persists for 180 days for a loan repayable in monthly installments, or 240 days for a loan repayable in less frequent installments.

"Default," as used in this section, with respect to a program directly or indirectly financed by the California Educational Facilities Authority, means the failure of a borrower to make an installment payment when due, or to meet other terms of the loan, within that period and under the circumstances determined by the California Educational Facilities Authority with respect to that program.

- (b) The rules adopted pursuant to subdivision (a) shall provide that the services withheld may be provided during a period when the facts are in dispute and when the student or former student demonstrates to either the governing board or other appropriate governing authority of the institution, or the Student Aid Commission and the appropriate entity or its designee, that reasonable progress has been made to repay the loan or that there exists a reasonable justification for the delay as determined by the institution. The rules shall specify the services to be withheld from the student and may include, but are not limited to, the following:
 - (1) The provision of grades.
 - (2) The provision of transcripts.
 - (3) The provision of diplomas. The rules shall not include the withholding of registration privileges.
- (c) When it has been determined that an individual is in default on a loan or loans under either of the loan programs specified in subdivision (a), the Student Aid Commission shall give notice of the default to all institutions through which that individual acquired the loan or loans.
- (d) Guarantors, or those who act as their agents or act under their control, who provide information to institutions pursuant to this section, shall defend, indemnify, and hold harmless the governing board or other governing authority of the institutions from action resulting from compliance with this section when the action arises as a result of incorrect, misleading, or

untimely information provided to the institution by the guarantors, their agents, or those acting under the control of the guarantors.

ARTICLE 13 ♦ ADMINISTRATIVE AND JUDICIAL PROCEDURES

§ 94950 AUTHORIZED ADMINISTRATIVE ENFORCEMENT ACTIONS

- (a) The procedures set forth in Section 94965 or, alternatively, in Section 94975 govern the following types of administrative actions:
 - (1) Denial of an application for an approval or renewal of an approval.
 - (2) Suspension or revocation of an existing approval.
 - (3) Appeals of conditional approvals.
- (b) In lieu of the procedures set forth in Section 94965 or 94975, an institution may voluntarily elect to utilize the procedures set forth in Section 94980 if it appeals a conditional approval by the bureau.
- (c) The procedures set forth in Section 94970 govern emergency suspensions of an institution's approval to operate initiated by the bureau.
- (d) Sections 94952 and 94955 authorize the bureau and the Attorney General to seek various forms of judicial relief in order to enforce this chapter.
- (e) Section 94960 governs actions based on student complaints.
- (f) Section 94985 authorizes civil remedies for individual students in addition to those available under other provisions of law.
- (g) Procedures established pursuant to regulations adopted by the bureau shall govern the following types of administrative appeals:
 - (1) Probationary actions.

- (2) Decisions by the bureau denying an institution's claim for an exemption or exclusion from this chapter or any provision thereof.

§ 94952 ENFORCEMENT OF CHAPTER; INVESTIGATIONS AND LAW ENFORCEMENT ACTION

- (a) The Attorney General, or any district attorney, or city attorney, may make investigations as may be necessary to carry out this chapter, including, but not necessarily limited to, investigations of complaints. The bureau may jointly bring actions as necessary to enforce this chapter, including, but not necessarily limited to, civil actions for injunctive relief. In actions brought pursuant to this subdivision, the bureau shall be represented by the Attorney General.
- (b) The Attorney General shall represent the bureau in the following administrative proceedings arising under this chapter:
 - (1) Suspension or revocation of an institution's approval.
 - (2) Denial of an institution's application for approval.
 - (3) An appeal of a conditional approval to operate issued following a review of an institution's application for approval.
- (c) Nothing in this section or this chapter shall preclude the Attorney General, or any district attorney or city attorney, from any of the following:
 - (1) Bringing any action on behalf of the people as he or she is empowered by law to bring, including, but not necessarily limited to, actions based upon alleged violations of Chapter 5 (commencing with Section 17200) of Part 2, and Chapter 1 (commencing with Section 17500) of Part 3, of Division 7 of the Business and Professions Code.
 - (2) Conducting investigations necessary to determine whether there have been violations of law specified in paragraph (1).

- (3) Conducting any investigations that he or she is authorized to conduct, including, but not necessarily limited to, investigations authorized under Section 11180 of the Government Code.
- (4) In the case of the Attorney General, delegating his or her representation authority under subdivision (b) to staff attorneys of the bureau.
- (5) Entering into an agreement or understanding with the bureau with respect to representation in any judicial or administrative proceeding not expressly enumerated herein.

§ 94955 AUTHORITY TO MAINTAIN ACTION FOR EQUITABLE RELIEF FOR VIOLATIONS

- (a) The bureau may bring an action for equitable relief for any violation of this chapter. The equitable relief may include restitution, a temporary restraining order, the appointment of a receiver, and a preliminary or permanent injunction. The action may be brought in the county in which the defendant resides or in which any violation has occurred or may occur.
- (b) The remedies provided in this section supplement, and do not supplant, the remedies and penalties under other provisions of law.
- (b) In actions brought pursuant to this section, the bureau shall be represented by the Attorney General.

§ 94957 AUTHORITY TO ISSUE ADMINISTRATIVE CITATIONS AND IMPOSE FINES

- (a) In addition to or in lieu of any other remedy or penalty, the bureau may issue a citation to an institution for committing any violation of this chapter or regulation adopted under this chapter.
- (b) The citation may contain an order of abatement or the assessment of an administrative fine. The administrative fine may not exceed two thousand five hundred dollars (\$2,500) for each violation. The bureau shall base its

assessment of the administrative fine on the nature and seriousness of the violation, the persistence of the violation, the good faith of the institution, the history of previous violations, and the purposes of this chapter.

- (c) The citation shall be in writing and shall describe the nature of the violation and the specific provision of law determined to have been violated. The citation shall inform the institution of its right to request a hearing in writing within 15 days of the date that the citation was issued. If a hearing is not requested, payment of the administrative fine shall not constitute an admission of the violation charged. If a hearing is requested, the bureau shall provide a hearing as described in Section 94965, 94975, or 94980. Payment of the administrative fine is due 15 days after the citation was issued if a hearing is not requested, or when a final order is entered if a hearing is requested. The bureau may enforce the administrative fine as if it were a money judgment pursuant to Title 9 (commencing with Section 680.10) of Part 2 of the Code of Civil Procedure.
- (d) All administrative fines shall be deposited in the Private Postsecondary and Vocational Education Administration Fund.

§ 94960 VIOLATIONS; COMPLAINTS; TRANSMITTAL OF INFORMATION TO ACCREDITING AGENCIES; REVOCATION

- (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.

§ 94960.5 SUMMARY OF COMPLAINTS; REPORT TO THE LEGISLATURE

The bureau shall include in its annual report to the Legislature made pursuant to Section 94995, a statistical summary of complaints filed pursuant to Section 94960, that includes, but is not necessarily limited to, all of the following:

- (a) The number of complaints filed.
- (b) The nature of the complaint, by appropriate categories.
- (c) The disposition of the complaints.
- (d) The actions taken by the bureau, under subdivision (c) of Section 94960, to enforce a prevailing complaint.

§ 94965 APPLICATION OF, AND PREEMPTION BY, ADMINISTRATIVE PROCEDURES ACT; NOTIFICATION OF OTHER AGENCIES

- (a) Proceedings in connection with the denial of an application to operate, the grant of a conditional approval to operate, or the revocation of an approval to operate shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the bureau shall have all of the powers granted in that chapter. Any action by the bureau to place an institution on probation shall be subject to appeal, and the bureau shall establish procedures that provide the institution with adequate notice and an opportunity to be heard and to present evidence as to why the action recommended by staff or by a visiting committee shall not be taken.

- (b) Upon taking any action to suspend or revoke an institution's approval to operate, or to deny an application for renewal of an approval to operate, the bureau shall provide written notice to the Student Aid Commission, the United States Department of Education, and to any appropriate accrediting association.

§ 94970 EMERGENCY ACTION TO SUSPEND APPROVAL

- (a) If an institution has violated this chapter and determines that immediate action is necessary to protect students, prevent misrepresentations to the public, or prevent the loss of public funds, tuition, or other money paid by students, the council may institute an emergency action to suspend the approval of an institution to operate, or the approval to operate a branch or satellite campus, for not more than 30 days unless the council initiates a proceeding to suspend or revoke the approval to operate within that period.
- (b)
 - (1) The council shall provide notice of the emergency action to the institution by certified mail, if the effective date of the emergency action is 10 or more working days after mailing, or personal service, if the effective date of the emergency action is five or more days after service.
 - (2) The notice shall specify all of the following:
 - (A) The violations upon which the emergency action is based.
 - (B) The nature and grounds of the emergency action, including whether the action applies to the continuation of instruction to enrolled students or to the enrollment of new students.
 - (C) The effective date of the action, which shall not be less than five days after the notice is provided.
 - (D) The institution's right to show cause that the emergency action is unwarranted by submitting to the council, at least two days before the effective date of the emergency action, declarations, documentary evidence, and written arguments demonstrating

that the violations did not occur or that immediate action is not required.

- (E) The right of the institution to request, in writing, within 30 days of the service of the notice, a hearing.
- (c) The council may (1) continue the effective date of an emergency action or (2) terminate the emergency action at any time if the council concludes that the institution has shown cause that the emergency action is unwarranted or that the grounds for instituting the emergency action no longer remain. The council shall provide written notice of a continuance or termination of an emergency action to the institution.
- (d) (1) If the institution does not take the opportunity to show cause why the emergency action is unwarranted, the emergency action shall become effective on the date specified in the notice or notice of continuance.
- (2) If the institution takes the opportunity to show cause and the council decides, after a consideration of the declarations, documentary evidence and written argument submitted by the institution, that the emergency action should become effective, the emergency action shall be effective on the date specified in the notice or notice of continuance. The council shall notify the institution of the decision at least one day before the effective date, and the institution may thereafter seek judicial relief upon notice to the council and the Attorney General.
- (e) (1) If a hearing is requested within the 30-day period specified in subdivision (b) the council shall set a date for the hearing within 20 days after receipt of the request.
- (2) If the institution does not request a hearing within the 30-day period specified in subdivision (b) or if the council concludes after a hearing requested by the institution that grounds exist for the suspension or revocation of the institution's approval to operate or approval to operate a branch or satellite campus, the council may extend the suspension or revoke the institution's approval to operate or approval to operate a branch or satellite campus, order probation

and a penalty, order the posting of a bond, or condition the institution's approval to operate or approval to operate a branch or satellite campus as the council deems appropriate.

- (f) During the pendency of an emergency action, the council may investigate the institution's compliance with this chapter, including an onsite inspection, and may institute a proceeding pursuant to Section 94878, if applicable, or Section 94965 or 94975 to suspend or revoke an institution's approval to operate or approval to operate a branch or satellite campus, order a bond, or order probation and a penalty, based on any violation of this chapter.
- (g) This section supplements, but does not supplant, the authority of the council to seek judicial relief, including a temporary restraining order and injunction, to redress any violation of this chapter.

§ 94975 ALTERNATIVE NOTICE AND HEARING PROCEDURE

- (a) This section establishes the procedure for notice and hearing required under this chapter and, except as provided in Section 94970, may be used in lieu of other notice or hearing requirements provided in this chapter.
- (b) If notice of administrative action is required by this chapter, the bureau shall serve notice stating the following:
 - (1) The action, including the penalties and administrative sanctions sought.
 - (2) The grounds for the action with sufficient particularity to give notice of the transactions, occurrences, violations, or other matters on which the action is based.
 - (3) The right to a hearing and the time period within which the party subject to the notice may request a hearing in writing. The time period shall not be less than 15 days after service of the notice unless a longer period is provided by statute.

- (4) The right to be present at the hearing, to be represented by counsel, to cross-examine witnesses, and to present evidence.
 - (5) That, if the party subject to the notice does not request a hearing in writing within the time period expressed in the notice, he or she will waive or forfeit his or her right to an administrative hearing and the action will become final.
- (c) If a party subject to a notice provided pursuant to subdivision (b) requests a hearing in writing within the time period specified in subparagraph (3) of paragraph (b), then within 30 days of receiving this request, the bureau shall schedule a hearing. The hearing shall be held in a location determined pursuant to Section 11508 of the Government Code. The bureau shall serve reasonable notice of the time and place for the hearing at least 10 days before the hearing. The bureau may continue the date of the hearing upon a showing of good cause.
- (d) (1) Any party, including the bureau, may submit a written request to any other party before the hearing to obtain the names and addresses of any person who has personal knowledge, or who the party receiving the request claims to have personal knowledge, of any of the transactions, occurrences, violations, or other matters that are the basis of the administrative action. In addition, the requesting party shall have the right to inspect and copy any written statement made by that person and any writing, as defined by Section 250 of the Evidence Code, or thing that is in the custody, or under the control, of the party receiving the request and that is relevant and not privileged. This subdivision shall constitute the exclusive method for prehearing discovery. However, nothing in this paragraph shall affect the bureau's authority, at any time, to investigate, inspect, monitor, or obtain and copy information under any provision of this chapter.
- (2) The written request described in paragraph (1) shall be made before the hearing and within 30 days of the service of the notice described in subdivision (b). Each recipient of a request shall comply with the request within 15 days of its service by providing the names and addresses requested and by producing at a reasonable time at the

bureau's office, or other mutually agreed reasonable place, the requested writings and things. The bureau may extend the time for response upon a showing of good cause.

- (3) Except as provided in this paragraph, no party may introduce the testimony or statement of any person or any writing or thing into evidence at the hearing if that party failed to provide the name and address of the person or to produce the writing or thing for inspection and copying as provided by this subdivision. A party may introduce the testimony, statement, writing, or thing that was not identified or produced as required herein only if there is no objection or if the party establishes that the person, writing, or thing was unknown at the time when the response was made to the written request, the party could not have informed other parties within a reasonable time after learning of the existence of the person, writing, or thing, and no party would be prejudiced by the introduction of the evidence.
- (e) Before the hearing has commenced, the bureau shall issue subpoenas at the written request of any party for the attendance of witnesses or the production of documents or other things in the custody or under the control of the person subject to the subpoena. Subpoenas issued pursuant to this section are subject to Section 11510 of the Government Code.
- (f) (1) The bureau shall designate an impartial hearing officer to conduct the hearing. The hearing officer may administer oaths and affirmations, regulate the course of the hearing, question witnesses, and otherwise investigate the issues, take official notice according to the procedure provided in Division 4 (commencing with Section 450) of the Evidence Code of any technical or educational matter in the bureau's special field of expertise and of any matter that may be judicially noticed, set the time and place for continued hearings, fix the time for the filing of briefs and other documents, direct any party to appear and confer to consider the simplification of issues by consent, and prepare a statement of decision.

- (2) Neither a hearing officer nor any person who has a direct or indirect interest in the outcome of the hearing shall communicate directly or indirectly with each other regarding any issue involved in the hearing while the proceeding is pending without notice and opportunity for all parties to participate in the communication. A hearing officer who receives any ex parte communication shall immediately disclose the communication to the bureau and all other parties. The bureau may disqualify the hearing officer if necessary to eliminate the effect of the ex parte communication. If the bureau finds that any party willfully violated, or caused the violation of, this paragraph, the bureau shall enter that party's default and impose the administrative sanction set forth in the notice provided pursuant to subdivision (b).
- (g)
 - (1) Each party at the hearing shall be afforded an opportunity to present evidence, respond to evidence presented by other parties, cross-examine, and present written argument or, if permitted by the hearing officer, oral argument on the issues involved in the hearing. The bureau may call any party as a witness who may be examined as if under cross-examination.
 - (2) Each party may appear through its representative or through legal counsel.
 - (3) The technical rules relating to evidence and witnesses shall not apply. However, only relevant evidence is admissible.
 - (4) Oral evidence shall be taken only upon oath or affirmation. The hearing shall be conducted in the English language. The proponent of any testimony to be offered by a witness who is not proficient in English shall provide, at the proponent's cost, an interpreter proficient in English and the language in which the witness will testify.
 - (5) The hearing shall be recorded by tape recording or other phonographic means unless all parties agree to another method of recording the proceedings.

- (6) (A) At any time 10 or more days before the hearing, any party may serve on the other parties a copy of any declaration that the party proposes to introduce in evidence.
 - (B) The declaration shall be accompanied by a notice indicating the date of service of the notice and stating that the declarations will be offered into evidence, the declarants will not be called as witnesses, and there will be no right of cross-examination unless the party receiving the notice requests the right to cross-examine, in writing, within seven days of the service of the declarations and notice.
 - (C) If no request for cross-examination is served within seven days of the service of the declarations and notice described in subparagraph (B), the right to cross-examination is deemed waived and the declaration shall have the same effect as if the declarant testified orally. Notwithstanding this paragraph, a declaration may be admitted as hearsay evidence without cross-examination.
- (7) Disposition of any issues involved in the hearing may be made by stipulation or settlement.
 - (8) If a party fails to appear at a hearing, that party's default shall be taken and the party shall be deemed to have waived the hearing and agreed to the administrative action and the grounds for that action described in the notice given pursuant to subdivision (b). The bureau shall serve the party with an order of default including the administrative action ordered. The order shall be effective upon service or at any other time designated by the bureau. The bureau may relieve a party from an order of default if the party applies for relief within 15 days after the service of an order of default and establishes good cause for relief. An application for relief from default shall not stay the effective date of the order unless expressly provided by the bureau.
- (h) (1) At any time before the matter is submitted for decision, the bureau may amend the notice provided pursuant to subdivision (b) to set

forth any further grounds for the originally noticed administrative action or any additional administrative action and the grounds therefor. The statement of the further grounds for the originally noticed administrative action, or of the grounds for any additional administrative action, shall be made with sufficient particularity to give notice of the transactions, occurrences, violations, or other matters on which the action or additional action is based. The amended notice shall be served on all parties. All parties affected by the amended notice shall be given reasonable opportunity to respond to the amended notice as provided in this section.

- (2) The bureau may amend the notice after the case is submitted for decision. The bureau shall serve each party with notice of the intended amendment, and shall provide the party with an opportunity to show that the party will be prejudiced by the amendment unless the case is reopened to permit the party to introduce additional evidence. If prejudice is shown, the bureau shall reopen the case to permit the introduction of additional evidence.
- (i) (1) Within 30 days after the conclusion of the hearing or at another time established by the bureau, the hearing officer shall submit a written statement of decision setting forth a recommendation for a final decision and explaining the factual and legal basis for the decision as to each of the grounds for the administrative action set forth in the notice or amended notice. The bureau shall serve the hearing officer's statement of decision on each party and its counsel within 10 days of its submission by the hearing officer.
- (2) The director shall make the final decision which shall be based exclusively on evidence introduced at the hearing. The final decision shall be supported by substantial evidence in the record. The director also shall issue a statement of decision explaining the factual and legal basis for the final decision as to each of the grounds for the administrative action set forth in the notice or amended notice. The director shall issue an order based on its decision which shall be effective upon service or at any other time designated by the director. The director, or his or her agent, shall

serve a copy of the final decision and order, within 10 days of their issuance, on each party and its counsel.

- (3) The bureau shall serve a certified copy of the complete record of the hearing, or any part thereof designated by a party, within 30 days after receiving the party's written request and payment of the cost of preparing the requested portions of the record. The complete record shall include all notices and orders issued by the bureau, a transcript of the hearing, the exhibits admitted or rejected, the written evidence and any other papers in the case, the hearing officer's statement of decision, and the final decision and order.
- (j) The bureau shall serve all notices and other documents that are required to be served by this section on each party by personal delivery, by certified mail, return receipt requested, or by any other means designated by the bureau.
 - (k)
 - (1) Any party aggrieved by the director's final decision and order may seek judicial review by filing a petition for a writ of mandate pursuant to Section 1085 of the Code of Civil Procedure within 30 days of the issuance of the final decision and order. If review is not sought within that period, the party's right to review shall be deemed waived.
 - (2) The aggrieved party shall present the complete record of the hearing or all portions of the record necessary for the court's review of the director's final decision and order. The court shall deny the petition for a writ of mandate if the record submitted by the party is incomplete. The court shall not consider any matter not contained in the record. The director's findings of fact and legal conclusions supporting the final decision shall be conclusive if supported by substantial evidence on the record considered as a whole.
 - (3) The final order shall not be stayed or enjoined during review except upon the court's grant of an order on a party's application after due notice to the director and the Attorney General. The order shall be granted only if the party establishes the substantial likelihood that it

will prevail on the merits and posts a bond sufficient to protect fully the interests of the students, the bureau, and the fund, from any loss.

- (l) The bureau may adopt regulations establishing alternative means of providing notice and an opportunity to be heard in circumstances in which a full hearing is not required by law.
- (m) For the purposes of this section, "good cause" shall require sufficient ground or reason for the determination to be made by the bureau.

**§ 94980 ALTERNATIVE NOTICE AND HEARING PROCEDURE FOR
SUSPENSION, REVOCATION, OR GRANTING OF
CONDITIONAL APPROVAL**

- (a) If the bureau, through the director, denies an institution's application for approval, grants a conditional approval, or initiates a proceeding to suspend or revoke an institution's approval to operate, the institution may request a hearing pursuant to this section in lieu of the hearing procedure designated by the bureau under Section 94965 or 94975.
- (b) At the time the bureau provides notice to an institution of its right to a hearing under Section 94965 or 94975 in connection with the denial of an application for approval to operate, the issuance of a conditional approval to operate, or a proposed suspension or revocation of approval to operate, the bureau also shall provide notice of the provisions of this section.
- (c) Within 15 days after service of the notice described in subdivision (b), the institution may request in writing a hearing under this section in lieu of the hearing procedure in Section 94965 or 94975. The request shall acknowledge that, by electing to proceed under this section, the institution is knowingly waiving all rights under the hearing procedure otherwise provided by the bureau.
- (d) After receiving the institution's request for a hearing under this section, the bureau shall provide the institution or its representative with copies of all the documents, testimony in declaration form, and written arguments on which the bureau relies to support its proposed administrative action.

- (e) The institution shall have 30 days from the service of the bureau's written evidence and arguments to submit all the documents, testimony in declaration form, and written arguments on which the institution relies in opposition to the bureau's proposed administrative action.
- (f) Neither the bureau nor the institution has any right to discovery or to compel the production of documents or the testimony of witnesses by subpoena.
- (g) The director shall review all of the documents, declarations, and arguments and shall render a proposed decision in writing, based solely on the written evidence and arguments that set forth the proposed administrative action and the factual and legal bases for it.
- (h) The bureau shall serve the institution with a written decision setting forth the administrative action taken and the legal and factual bases for it. The decision shall become final within 30 days unless another time is specified by the bureau.
- (i) The bureau shall serve a certified copy of the complete record, or any part thereof designated by an institution, within 30 days after receiving the institution's written request and payment of the cost of preparing the requested record or portions thereof. The complete record shall consist of all notices and orders of the bureau, the documents, declarations, and written argument submitted, a transcript of any oral argument, and the final decision and order.
- (j) Any party aggrieved by the bureau's final decision and order may seek judicial review as provided in, and subject to, the requirements of subdivision (k) of Section 94975.
- (k) All documents required by this section to be served by the bureau shall be served on the institution, its counsel, or authorized representative by any means authorized for service pursuant to Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of Civil Procedure.

§ 94985 WILLFUL VIOLATION; REMEDIES; LIMITATIONS OF ACTIONS; UNENFORCEABILITY OF STUDENT'S MANDATORY USE OF GRIEVANCE PROCEDURES; ASSIGNMENT OF CAUSE OF ACTION; NOTICE REQUIREMENTS FOR SECTION 17200 OR CLASS ACTIONS

- (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.

ARTICLE 14 ♦ BUREAU REPORTS**§ 94990 SUNSET REVIEW PROCESS**

The bureau is subject to the sunset review process conducted by the Joint Committee on Boards, Commissions, and Consumer Protection pursuant to Division 1.2 (commencing with Section 473) of the Business and Professions Code. Notwithstanding that this chapter does not specify that it will become inoperative on a specified date, the analyses, reports, public hearings, evaluations, and determinations required to be prepared, conducted, and made pursuant to Division 1.2 (commencing with Section 473) of the Business and Professions Code shall be prepared, conducted, and made in 2002 and every four years thereafter as long as this chapter is operative.

§ 94995 ANNUAL REPORT TO LEGISLATURE AND POSTSECONDARY EDUCATION COMMISSION

- (a) Notwithstanding Section 7550.5 of the Government Code, on or before January 31 of each calendar year, the bureau shall submit a written report to the Legislature and to the California Postsecondary Education Commission, summarizing its activities during the previous fiscal year.
- (b) Annual reports prepared pursuant to this section shall include, but shall not necessarily be limited to, all of the following:
 - (1) Timely information relating to the enforcement activities of the bureau pursuant to this chapter.
 - (2) Statistics providing a composite picture of the private postsecondary educational community, including data on how many schools, as classified by subject matter, and how many students there are within the scope of the activities of the bureau.
- (c) Any reports submitted by the bureau to the Joint Committee on Boards, Commissions, and Consumer Protection pursuant to Division 1.2 (commencing with Section 473) of the Business and Professions Code during any calendar year shall satisfy the reporting requirements of this section for that year.

§ 94995.3 ANNUAL REPORT ON SPECIAL ASSESSMENTS

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.

ARTICLE 15 ♦ SEVERABILITY

§ 94998 SEVERABILITY PROVISION

The provisions of this chapter are severable. If any provision of this chapter or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

ARTICLE 16 ♦ TERMINATION

§ 94999 SUNSET PROVISION

This chapter shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

**APPENDIX 1.0 ♦ SELECTED PROVISIONS OF THE
BUSINESS AND PROFESSIONS CODE**

GENERAL PROVISIONS

§ 22 DEFINITION; BOARD; BUREAU

- (a) "Board," as used in any provision of this code, refers to the board in which the administration of the provision is vested, and unless otherwise expressly provided, shall include "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."
- (b) Whenever the regulatory program of a board that is subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection, as provided for in Division 1.2 (commencing with Section 473), is taken over by the department, that program shall be designated as a "bureau."

**DIVISION 1
DEPARTMENT OF CONSUMER AFFAIRS**

**CHAPTER 1
THE DEPARTMENT**

§ 108 FUNCTION AND POWER OF BOARDS

Each of the boards comprising the department exists as a separate unit, and has the functions of setting standards, holding meetings, and setting dates thereof, preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction, issuing citations and holding hearings for the revocation of licenses, and the imposing of penalties following such hearings, in so far as these powers are given by statute to each respective board.

**§ 118 EFFECT OF WITHDRAWAL OF APPLICATION;
SUSPENSION, FORFEITURE**

- (a) The withdrawal of an application for a license after it has been filed with a board in the department shall not, unless the board has consented in writing to such withdrawal, deprive the board of its authority to institute or continue a proceeding against the applicant for the denial of the license upon any ground provided by law or to enter an order denying the license upon any such ground.
- (b) The suspension, expiration, or forfeiture by operation of law of a license issued by a board in the department, or its suspension, forfeiture, or cancellation by order of the board or by order of a court of law, or its surrender without the written consent of the board, shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground.
- (c) As used in this section, “board” includes an individual who is authorized by any provision of this code to issue, suspend, or revoke a license, and “license” includes “certificate,” “registration”, and “permit.”

§ 119 USE OF LICENSES; MISDEMEANORS

Any person who does any of the following is guilty of a misdemeanor:

- (a) Displays or causes or permits to be displayed or has in his or her possession either of the following:
 - (1) A canceled, revoked, suspended, or fraudulently altered license.
 - (2) A fictitious license or any document simulating a license or purporting to be or have been issued as a license.
- (b) Lends his or her license to any other person or knowingly permits the use thereof by another.

- (c) Displays or represents any license not issued to him or her as being his or her license.
- (d) Fails or refuses to surrender to the issuing authority upon its lawful written demand any license, registration, permit, or certificate which has been suspended, revoked, or canceled.
- (e) Knowingly permits any unlawful use of a license issued to him or her.
- (f) Photographs, photostats, duplicates, manufactures, or in any way reproduces any license or facsimile thereof in a manner that it could be mistaken for a valid license, or displays or has in his or her possession any such photograph, photostat, duplicate, reproduction, or facsimile unless authorized by this code.
- (g) Buys or receives a fraudulent, forged, or counterfeited license knowing that it is fraudulent, forged, or counterfeited. For purposes of this subdivision, "fraudulent" means containing any misrepresentation of fact.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code or referred to in Section 1000 or 3600.

§ 121 LICENSEE'S STATUS WHEN GOOD FAITH RENEWAL NOT TIMELY

No licensee who has complied with the provisions of this code relating to the renewal of his or her license prior to expiration of such license shall be deemed to be engaged illegally in the practice of his or her business or profession during any period between such renewal and receipt of evidence of such renewal which may occur due to delay not the fault of the applicant.

As used in this section, "license" includes "certificate," "permit," "authorization," and "registration," or any other indicia giving authorization, by any agency, board, bureau, commission, committee, or entity within the Department of Consumer Affairs, to engage in a business or profession regulated by this code or by the board referred to in the Chiropractic Act or the Osteopathic Act.

§ 122 FEE FOR DUPLICATE COPIES OF CERTIFICATE OF LICENSURE OR RENEWAL

Except as otherwise provided by law, the department and each of the boards, bureaus, committees, and commissions within the department may charge a fee for the processing and issuance of a duplicate copy of any certificate of licensure or other form evidencing licensure or renewal of licensure. The fee shall be in an amount sufficient to cover all costs incident to the issuance of the duplicate certificate or other form but shall not exceed twenty-five dollars (\$25).

§ 123.5 EQUITABLE REMEDIES FOR VIOLATIONS

Whenever any person has engaged, or is about to engage, in any acts or practices which constitute, or will constitute, a violation of Section 123, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction, or other appropriate order, restraining such conduct on application of a board, the Attorney General or the district attorney of the county.

The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

The remedy provided for by this section shall be in addition to, and not a limitation on, the authority provided for in any other provision of law.

§ 124 SERVICE OF NOTICES; MANNER OF NOTIFICATION

Notwithstanding subdivision (c) of Section 11505 of the Government Code, whenever written notice, including a notice, order, or document served pursuant to Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), or Chapter 5 (commencing with Section 11500), of Part 1 of Division 3 of Title 2 of the Government Code, is required to be given by any board in the department, the notice may be given by regular mail addressed to the last known address of the licentiate or by personal service, at the option of the board.

§ 125.3 COSTS OF INVESTIGATION AND ENFORCEMENT

- (a) Except as otherwise provided by law, in any order issued in resolution of a disciplinary proceeding before any board within the department or before the Osteopathic Medical Board, upon request of the entity bringing the

proceeding may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

- (b) In the case of a disciplined licentiate that is a corporation or a partnership, the order may be made against the licensed corporate entity or licensed partnership.
- (c) A certified copy of the actual costs, or a good faith estimate of costs where actual costs are not available, signed by the entity bringing the proceeding or its designated representative shall be prima facie evidence of reasonable costs of investigation and prosecution of the case. The costs shall include the amount of investigative and enforcement costs up to the date of the hearing, including, but not limited to, charges imposed by the Attorney General.
- (d) The administrative law judge shall make a proposed finding of the amount of reasonable costs of investigation and prosecution of the case when requested pursuant to subdivision (a). The finding of the administrative law judge with regard to costs shall not be reviewable by the board to increase the cost award. The board may reduce or eliminate the cost award, or remand to the administrative law judge where the proposed decision fails to make a finding on costs requested pursuant to subdivision (a).
- (e) Where an order for recovery of costs is made and timely payment is not made as directed in the board's decision, the board may enforce the order for repayment in any appropriate court. This right of enforcement shall be in addition to any other rights the board may have as to any licentiate to pay costs.
- (f) In any action for recovery of costs, proof of the board's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.
- (g) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the license of any licentiate who has failed to pay all of the costs ordered under this section.

- (2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or reinstate for a maximum of one year the license of any licentiate who demonstrates financial hardship and who enters into a formal agreement with the board to reimburse the board within that one-year period for the unpaid costs.
- (h) All costs recovered under this section shall be considered a reimbursement for costs incurred and shall be deposited in the fund of the board recovering the costs to be available upon appropriation by the Legislature.
- (i) Nothing in this section shall preclude a board from including the recovery of the costs of investigation and enforcement of a case in any stipulated settlement.
- (j) This section does not apply to any board if a specific statutory provision in that board's licensing act provides for recovery of costs in an administrative disciplinary proceeding.
- (k) Notwithstanding the provisions of this section, the Medical Board of California shall not request nor obtain from a licentiate, investigation and prosecution costs for a disciplinary proceeding against the licentiate. The board shall ensure that this subdivision is revenue neutral with regard to it and that any loss of revenue or increase in costs resulting from this subdivision is offset by an increase in the amount of the initial license fee and the biennial renewal fee, as provided in subdivision (e) of Section 2435.

§ 125.5 VIOLATIONS OF THE BUSINESS AND PROFESSIONS CODE; INJUNCTIONS, RESTRAINING ORDERS; RESTITUTION

- (a) The superior court for the county in which any person has engaged or is about to engage in any act which constitutes a violation of a chapter of this code administered or enforced by a board within the department may, upon a petition filed by the board with the approval of the director, issue an injunction or other appropriate order restraining such conduct. The proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil

Procedure. As used in this section, "board" includes commission, bureau, division, agency and a medical quality review committee.

- (b) The superior court for the county in which any person has engaged in any act which constitutes a violation of a chapter of this code administered or enforced by a board within the department may, upon a petition filed by the board with the approval of the director, order such person to make restitution to persons injured as a result of such violation.
- (c) The court may order a person subject to an injunction or restraining order, provided for in subdivision (a) of this section, or subject to an order requiring restitution pursuant to subdivision (b), to reimburse the petitioning board for expenses incurred by the board in its investigation related to its petition.
- (d) The remedy provided for by this section shall be in addition to, and not a limitation on, the authority provided for in any other section of this code.

§ 125.6 UNLAWFUL DISCRIMINATION; DISCIPLINARY ACTIONS

Every person who holds a license under the provisions of this code is subject to disciplinary action under the disciplinary provisions of this code applicable to such person if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she refuses to perform the licensed activity or aids or incites the refusal to perform such licensed activity by another licensee, or if, because of the applicant's race, color, sex, religion, ancestry, disability, marital status, or national origin, he or she makes any discrimination, or restriction in the performance of the licensed activity. Nothing in this section shall be interpreted to apply to discrimination by employers with regard to employees or prospective employees, nor shall this section authorize action against any club license issued pursuant to Article 4 (commencing with Section 23425) of Chapter 3 of Division 9 because of discriminatory membership policy. The presence of architectural barriers to an individual with physical disabilities which conform to applicable state or local building codes and regulations shall not constitute discrimination under this section.

Nothing in this section requires a person licensed pursuant to Division 2 (commencing with Section 500) to permit an individual to participate in, or benefit

from, the licensed activity of the licensee where that individual poses a direct threat to the health or safety of others. For this purpose, the term "direct threat" means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures or by the provision of auxiliary aids and services.

"License," as used in this section, includes "certificate," "permit," "authority," and "registration" or any other indicia giving authorization to engage in a business or profession regulated by this code.

"Applicant," as used in this section means a person applying for licensed services provided by a person licensed under this code.

"Disability" means any of the following with respect to an individual:

- (a) A physical or mental impairment that substantially limits one or more of the major life activities of the individual.
- (b) A record of such an impairment.
- (c) Being regarded as having such an impairment.

§ 125.9 CITATIONS TO LICENSEES; CONTENTS AND FINES

- (a) Except with respect to persons regulated under Chapter 11 (commencing with Section 7500), and Chapter 11.6 (commencing with Section 7590) of Division 3, any board, bureau, or commission within the department, the board created by the Chiropractic Initiative Act, and the Osteopathic Medical Board of California, may establish, by regulation, a system for the issuance to a licensee of a citation which may contain an order of abatement or an order to pay an administrative fine assessed by the board, bureau, or commission where the licensee is in violation of the applicable licensing act or any regulation adopted pursuant thereto.
- (b) The system shall contain the following provisions:

- (1) Citations shall be in writing and shall describe with particularity the nature of the violation, including specific reference to the provision of law determined to have been violated.
 - (2) Whenever appropriate, the citation shall contain an order of abatement fixing a reasonable time for abatement of the violation.
 - (3) In no event shall the administrative fine assessed by the board, bureau, or commission exceed five thousand dollars (\$5000) for each inspection or each investigation made with respect to the violation, or five thousand dollars (\$5000) for each violation or count if the violation involves fraudulent billing submitted to an insurance company, the Medi-Cal program, or Medicare. In assessing a fine, the board, bureau, or commission shall give due consideration to the appropriateness of the amount of the fine with respect to factors such as the gravity of the violation, the good faith of the licensee, and the history of previous violations.
 - (4) A citation or fine assessment issued pursuant to a citation shall inform the licensee that if he or she desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board, bureau, or commission within 30 days of the date of issuance of the citation or assessment. If a hearing is not requested pursuant to this section, payment of any fine shall not constitute an admission of the violation charged. Hearings shall be held pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
 - (5) Failure of a licensee to pay a fine within 30 days of the date of assessment, unless the citation is being appealed, may result in disciplinary action being taken by the board, bureau, or commission. Where a citation is not contested and a fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of the license. A license shall not be renewed without payment of the renewal fee and fine.
- (c) The system may contain the following provisions:

- (1) A citation may be issued without the assessment of an administrative fine.
- (2) Assessment of administrative fines may be limited to only particular violations of the applicable licensing act.
- (d) Notwithstanding any other provision of law, if a fine is paid to satisfy an assessment based on the finding of a violation, payment of the fine shall be represented as satisfactory resolution of the matter for purposes of public disclosure.
- (e) Administrative fines collected pursuant to this section shall be deposited in the special fund of the particular board, bureau, or commission.

§ 129 COMPLAINT PROCEDURES

- (a) As used in this section, "board" means every board, bureau, commission, committee and similarly constituted agency in the department which issues licenses.
- (b) Each board shall, upon receipt of any complaint respecting a licentiate thereof, notify the complainant of the initial administrative action taken on his complaint within 10 days of receipt. Each board shall thereafter notify the complainant of the final action taken on his complaint. There shall be a notification made in every case in which the complainant is known. If the complaint is not within the jurisdiction of the board or if the board is unable to dispose satisfactorily of the complaint, the board shall transmit the complaint together with any evidence or information it has concerning the complaint to the agency, public or private, whose authority in the opinion of the board will provide the most effective means to secure the relief sought. The board shall notify the complainant of such action and of any other means which may be available to the complainant to secure relief.
- (c) The board shall, when the board deems it appropriate, notify the person against whom the complaint is made of the nature of the complaint, may request appropriate relief for the complainant, and may meet and confer with the complainant and the licentiate in order to mediate the complaint.

Nothing in this subdivision shall be construed as authorizing or requiring any board to set or to modify any fee charged by a licentiate.

- (d) It shall be the continuing duty of the board to ascertain patterns of complaints and to report on all actions taken with respect to such patterns of complaints to the director and to the Legislature at least once a year. The board shall evaluate those complaints dismissed for lack of jurisdiction or no violation and recommend to the director and to the Legislature at least once a year such statutory changes as it deems necessary to implement the board's functions and responsibilities under this section.
- (e) It shall be the continuing duty of the board to take whatever action it deems necessary, with the approval of the director, to inform the public of its functions under this section.

§ 136 CHANGE OF ADDRESS NOTIFICATION; CITATION AND FINE FOR FAILURE TO COMPLY

- (a) Each person holding a license, certificate, registration, permit, or other authority to engage in a profession or occupation issued by a board within the department shall notify the issuing board at its principal office of any change in his or her mailing address within 30 days after the change, unless the board has specified by regulations a shorter time period.
- (b) Except as otherwise provided by law, failure of a licentiate to comply with the requirement in subdivision (a) constitutes grounds for the issuance of a citation and administrative fine, if the board has the authority to issue citations and administrative fines.

§ 137 REGULATIONS PERTAINING TO DISCLOSURE OF LICENSE NUMBERS IN ADVERTISING AND OTHER ACTIVITIES

Any agency within the department may promulgate regulations requiring licensees to include their license numbers in any advertising, soliciting, or other presentments to the public.

However, nothing in this section shall be construed to authorize regulation of any person not a licensee who engages in advertising, solicitation, or who makes any other presentment to the public on behalf of a licensee. Such a person shall incur no liability pursuant to this section for communicating in any advertising, soliciting, or other presentment to the public a licensee's license number exactly as provided to him by the licensee or for failure to communicate such number if none is provided to him by the licensee.

**§ 141 GROUNDS FOR DISCIPLINARY ACTION BY STATE
 LICENSING BOARD FOR DISCIPLINARY ACTION TAKEN IN
 ANOTHER JURISDICTION**

- (a) For any licensee holding a license issued by a board under the jurisdiction of the department, a disciplinary action taken by another state, by any agency of the federal government, or by another country for any act substantially related to the practice regulated by the California license, may be a ground for disciplinary action by the respective state licensing board. A certified copy of the record of the disciplinary action taken against the licensee by another state, an agency of the federal government, or another country shall be conclusive evidence of the events related therein.
- (b) Nothing in this section shall preclude a board from applying a specific statutory provision in the licensing act administered by that board that provides for discipline based upon a disciplinary action taken against the licensee by another state, an agency of the federal government, or another country.

**§ 143 PROOF OF LICENSE AS A CONDITION OF BRINGING
 ACTION FOR COLLECTION OF COMPENSATION**

- (a) No person engaged in any business or profession for which a license is required under this code governing the department or any board, bureau, commission, committee, or program within the department, may bring or maintain any action, in any court of this state for the collection of compensation for the performance of any act or contract for which a license is required without alleging and proving that he or she was fully licensed at all times during the performance of that act or contract, all times during the performance of that act or contract, regardless of the merits of the cause of action brought by the person.

- (b) The judicial doctrine of substantial compliance shall not apply to this section.
- (c) This section shall not apply to an act or contract that is considered to qualify as lawful practice of a licensed occupation or professional pursuant to Section 121.

CHAPTER 1.5
UNLICENSED ACTIVITY ENFORCEMENT

§ 146 VIOLATIONS AUTHORIZED AS INFRACTIONS

- (a) Notwithstanding any other provision of law, a violation of any code section listed in subdivision (c) or (d) is an infraction subject to the procedures described in Sections 19.6 and 19.7 of the Penal Code when:
 - (1) A complaint or a written notice to appear in court pursuant to Chapter 5c (commencing with Section 853.5) of Title 3 of Part 2 of the Penal Code is filed in court charging the offense as an infraction unless the defendant, at the time he or she is arraigned, after being advised of his or her rights, elects to have the case proceed as a misdemeanor, or
 - (2) The court, with the consent of the defendant and the prosecution, determines that the offense is an infraction in which event the case shall proceed as if the defendant has been arraigned on an infraction complaint.
- (b) Subdivision (a) does not apply to a violation of the code sections listed in subdivisions (c) and (d) if the defendant has had his or her license, registration, or certificate previously revoked or suspended.
- (c) The following sections require registration, licensure, certification, or other authorization in order to engage in certain businesses or professions regulated by this code:
 - (1) Sections 2052 and 2054.

- (2) Section 2630.
- (3) Section 2903.
- (4) Section 3660.
- (5) Sections 3760 and 3761.
- (6) Section 4080.
- (7) Section 4825.
- (8) Section 4935.
- (9) Section 4980.
- (10) Section 4996.
- (11) Section 5536.
- (12) Section 6704.
- (13) Section 6980.10.
- (14) Section 7317.
- (15) Section 7502 or 7592.
- (16) Section 7520.
- (17) Section 7617 or 7641.
- (18) Subdivision (a) of Section 7872.
- (19) Section 8016.
- (20) Section 8505.
- (21) Section 8725.
- (22) Section 9681.
- (23) Section 9840.
- (24) Subdivision (c) of Section 9891.24.
- (25) Section 19049.

- (d) Institutions that are required to register with the Bureau for Private Postsecondary and Vocational Education pursuant to Section 94931 of the Education Code.
- (e) Notwithstanding any other provision of law, a violation of any of the sections listed in subdivision (c) or (d), which is an infraction, is punishable by a fine of not less than two hundred fifty dollars (\$250) and not more than one thousand dollars (\$1,000). No portion of the minimum fine may be suspended by the court unless as a condition of that suspension the defendant is required to submit proof of a current valid license, registration, or certificate for the profession or vocation which was the basis for his or her conviction.

§ 148 ADMINISTRATIVE CITATION SYSTEM

Any board, bureau, or commission within the department may, in addition to the administrative citation system authorized by Section 125.9, also establish, by regulation, a similar system for the issuance of an administrative citation to an unlicensed person who is acting in the capacity of a licensee or registrant under the jurisdiction of that board, bureau, or commission. The administrative citation system authorized by this section shall meet the requirements of Section 125.9 and may not be applied to an unlicensed person who is otherwise exempted from the provisions of the applicable licensing act. The establishment of an administrative citation system for unlicensed activity does not preclude the use of other enforcement statutes for unlicensed activities at the discretion of the board, bureau, or commission.

**CHAPTER 2
THE DIRECTOR OF CONSUMER AFFAIRS**

§ 160 STATUS OF CERTAIN INVESTIGATORS AS PEACE OFFICERS

The Chief and all investigators of the Division of Investigation of the department and all investigators of the Medical Board of California and the Board of Dental Examiners have the authority of peace officers while engaged in exercising the powers granted or performing the duties imposed upon them or the division in investigating the laws administered by the various boards comprising the department or commencing directly or indirectly any criminal prosecution arising from any

investigation conducted under these laws. All persons herein referred to shall be deemed to be acting within the scope of employment with respect to all acts and matters in this section set forth.

§ 161 CHARGE FOR THE SALE OF COPIES OF PUBLIC RECORDS

The Department, or any board in the department, may sell copies of any part of its respective public records, or compilations, extracts, or summaries of information contained in its public records, at a charge sufficient to pay the actual cost thereof. Such charge, and the conditions under which sales may be made, shall be determined by the director with the approval of the Department of General Services.

§ 162 CERTIFICATE OF OFFICER IN CHARGE OF RECORDS AS EVIDENCE

The certificate of the officer in charge of the records of any board in the department that any person was or was not on a specified date, or during a specified period of time, licensed, certified or registered under the provisions of law administered by the board, or that the license, certificate or registration of any person was revoked or under suspension, shall be admitted in any court as prima facie evidence of the facts therein recited.

§ 163 FEE FOR CERTIFICATION OF COPIES OF RECORDS, DOCUMENTS OR PAPERS UNDER THE DEPARTMENT OR BOARDS' CUSTODY

Except as otherwise expressly provided by law, the department and each board in the department shall charge a fee of two dollars (\$2) for the certification of a copy of any record, document, or paper in its custody or for the certification of any document evidencing the content of any such record, document or paper.

**CHAPTER 7
LICENSEE**

**§ 461 PROHIBITION AGAINST REQUESTING REVELATION OF
ARREST RECORD (S) ON AN INITIAL APPLICATION**

No public agency, state or local, shall, on an initial application form for any license, certificate or registration, ask for or require the applicant to reveal a record of arrest that did not result in a conviction or a plea of nolo contendere. A violation of this section is a misdemeanor.

This section shall apply in the case of any license, certificate or registration provided for by any law of this state or local government, including, but not limited to, this code, the Corporations Code, the Education Code, and the Insurance Code.

§ 473.2 SUBMISSION OF ANALYSIS AND REPORT TO COMMITTEE

All boards to which this chapter applies shall, with the assistance of the Department of Consumer Affairs, prepare an analysis and submit a report to the Joint Committee on Boards, Commissions, and Consumer Protection no later than 22 months before that board shall become inoperative. The analysis and report shall include, at a minimum, all of the following:

- (a) A comprehensive statement of the board's mission, goals, objectives and legal jurisdiction in protecting the health, safety, and welfare of the public.
- (b) The board's enforcement priorities, complaint and enforcement data, budget expenditures with average-and median-costs per case, and case aging data specific to post and preaccusation cases at the Attorney General's office.
- (c) The board's fund conditions, sources of revenues, and expenditure categories for the last four fiscal years by program component.
- (d) The board's description of its licensing process including the time and costs required to implement and administer its licensing examination, ownership of the license examination, relevancy and validity of the licensing examination, and passage rate and areas of examination.

- (e) The board's initiation of legislative efforts, budget change proposals, and other initiatives it has taken to improve its legislative mandate.

DIVISION 1.2
LEGISLATIVE SUNSET REVIEW COMMITTEE

§ 473.3 SUNSET REVIEW REQUIREMENT OF BOARDS AND BUREAUS; PUBLIC HEARINGS PERTAINING TO THE BUREAU FOR PRIVATE POSTSECONDARY AND VOCATIONAL EDUCATION

- (a) Prior to the termination, continuation, or reestablishment of any board or any of the board's functions, the Joint Committee on Boards, Commissions, and Consumer Protection shall, during the interim recess preceding the date upon which a board becomes inoperative, hold public hearings to receive testimony from the Director of Consumer Affairs, the board involved, and the public and regulated industry. In that hearing, each board shall have the burden of demonstrating a compelling public need for the continued existence of the board or regulatory program, and that its licensing function is the least restrictive regulation consistent with the public health, safety, and welfare.
- (b) In addition to subdivision (a), in 2002 and every four years thereafter, the committee, in cooperation with the California Postsecondary Education Commission, shall hold a public hearing to receive testimony from the Director of Consumer Affairs, the Bureau for Private Postsecondary and Vocational Education, private postsecondary educational institutions regulated by the bureau, and students of those institutions. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued existence of the bureau and its regulatory program, and that its function is the least restrictive regulation consistent with the public health, safety, and welfare.
- (c) The committee, in cooperation with the California Postsecondary Education Commission, shall evaluate and review the effectiveness and efficiency of the Bureau for Private Postsecondary and Vocational

Education, based on factors and minimum standards of performance that are specified in Section 473.4. The committee shall report its findings and recommendations as specified in Section 473.5. The bureau shall prepare an analysis and submit a report to the committee as specified in Section 473.2.

- (d) In addition to subdivision (a), in 2003 and every four years thereafter, the committee shall hold a public hearing to receive testimony from the Director of Consumer Affairs and the Bureau of Automotive Repair. In those hearings, the bureau shall have the burden of demonstrating a compelling public need for the continued existence of the bureau and its regulator program, and that its function is the least restrictive regulation consistent with the public health, safety, and welfare.
- (e) The committee shall evaluate and review the effectiveness of the Bureau of Automotive Repair based on factors and minimum standards of performance that are specified in Section 473.4. The committee shall report its findings and recommendations as specified in Section 473.5. The bureau shall prepare an analysis and submit a report to the committee as specified in Section 473.2.

(Added by Stats.1994, c.908 (S.B.2036), § 5. Amended by Stats. 1997, c. 78 (A.B.71), § 3.7; Stats.2000, c. 393 (S.B.2028), § 5; Stats.2001, c. (A.B.1720), § 1; Stats.2003, c. 789 (S.B.364), § 5.)

**§ 473.4 EVALUATION OF BOARDS AND REGULATORY PROGRAMS;
DETERMINATION OF NEED FOR CONTINUED EXISTENCE**

- (a) The Joint Committee on Boards, Commissions, and Consumer Protection shall evaluate and determine whether a board or regulatory program has demonstrated a public need for the continued existence of the board or regulatory program and for the degree of regulation the board or regulatory program implements based on the following factors and minimum standards of performance:
 - (1) Whether regulation by the board is necessary to protect the public health, safety, and welfare.

- (2) Whether the basis or facts that necessitated the initial licensing or regulation of a practice or profession have changed.
- (3) Whether other conditions have arisen that would warrant increased, decreased, or the same degree of regulation.
- (4) If regulation of the profession or practice is necessary, whether existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms, and whether the board rules enhance the public interest and are within the scope of legislative intent.
- (5) Whether the board operates and enforces its regulatory responsibilities in the public interest and whether its regulatory mission is impeded or enhanced by existing statutes, regulations, policies, practices, or any other circumstances, including budgetary, resource, and personnel matters.
- (6) Whether an analysis of board operations indicates that the board performs its statutory duties efficiently and effectively.
- (7) Whether the composition of the board adequately represents the public interest and whether the board encourages public participation in its decisions rather than participation only by the industry and individuals it regulates.
- (8) Whether the board and its laws or regulations stimulate or restrict competition, and the extent of the economic impact the board's regulatory practices have on the state's business and technological growth.
- (9) Whether complaint, investigation, powers to intervene, and disciplinary procedures adequately protect the public and whether final dispositions of complaints, investigations, restraining orders, and disciplinary actions are in the public interest; or if it is, instead, self-serving to the profession, industry or individuals being regulated by the board.

- (10) Whether the scope of practice of the regulated profession or occupation contributes to the highest utilization of personnel and whether entry requirements encourage affirmative action.
- (11) Whether administrative and statutory changes are necessary to improve board operations to enhance the public interest.
- (b) The Joint Committee on Boards, Commissions, and Consumer Protection shall consider alternatives to placing responsibilities and jurisdiction of the board under the Department of Consumer Affairs.
- (c) Nothing in this section precludes any board from submitting other appropriate information to the Joint Committee on Boards, Commissions and Consumer Protection.

§ 473.5 REPORT

The Joint Committee on Boards, Commissions, and Consumer Protection shall report its findings and preliminary recommendations to the department for its review, and, within 90 days of receiving the report, the department shall report its findings and recommendations to the Joint Committee on Boards, Commissions, and Consumer Protection during the next year of the regular session that follows the hearings described in Section 473.3. The committee shall then meet to vote on final recommendations. A final report shall be completed by the committee and made available to the public and the Legislature. The report shall include final recommendations of the department and the committee and whether each board or function scheduled for repeal shall be terminated, continued, or reestablished, and whether its functions should be revised. If the committee or the department deems it advisable, the report may include proposed bills to carry out its recommendations.

DIVISION 1.5
DENIAL, SUSPENSION AND REVOCATION OF LICENSES

CHAPTER 1 ♦ GENERAL PROVISIONS

§ 475 GROUNDS FOR DENIAL OF LICENSES

- (a) Notwithstanding any other provisions of this code, the provisions of this division shall govern the denial of licenses on the grounds of:
 - (1) Knowingly making a false statement of material fact, or knowingly omitting to state a material fact, in an application for a license.
 - (2) Conviction of a crime.
 - (3) Commission of any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another.
 - (4) Commission of any act which, if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.
- (b) Notwithstanding any other provisions of this code, the provisions of this division shall govern the suspension and revocation of licenses on grounds specified in paragraphs (1) and (2) of subdivision (a).
- (c) A license shall not be denied, suspended, or revoked on the grounds of a lack of good moral character or any similar ground relating to an applicant's character, reputation, personality, or habits.

§ 477 DEFINITIONS; BOARD; LICENSE

As used in this division:

- (a) "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency."

- (b) "License" includes certificate, registration or other means to engage in a business or profession regulated by this code.

§ 478 DEFINITIONS; APPLICATION; MATERIAL

- (a) As used in this division, "application" includes the original documents or writings filed and any other supporting documents or writings including supporting documents provided or filed contemporaneously, or later, in support of the application whether provided or filed by the applicant or by any other person in support of the application.
- (b) As used in this division, "material" includes a statement or omission substantially related to the qualifications, functions, or duties of the business or profession.

**CHAPTER 2
DENIAL OF LICENSES**

**§ 480 GROUNDS FOR DENIAL; CERTIFICATE OF
REHABILITATION**

- (a) A board may deny a license regulated by this code on the grounds that the applicant has one of the following:
 - (1) Been convicted of a crime. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.
 - (2) Done any act involving dishonesty, fraud or deceit with the intent to substantially benefit himself or another, or substantially injure another; or

- (3) Done any act which if done by a licentiate of the business or profession in question, would be grounds for suspension or revocation of license.

The board may deny a license pursuant to this subdivision only if the crime or act is substantially related to the qualifications, functions or duties of the business or profession for which application is made.

- (b) Notwithstanding any other provision of this code, no person shall be denied a license solely on the basis that he has been convicted of a felony if he has obtained a certificate of rehabilitation under Section 4852.01 and following of the Penal Code or that he has been convicted of a misdemeanor if he has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license under subdivision (a) of Section 482.
- (c) A board may deny a license regulated by this code on the ground that the applicant knowingly made a false statement of fact required to be revealed in the application for such license.

§ 481 SUBSTANTIAL RELATIONSHIP CRITERIA

Each board under the provisions of this code shall develop criteria to aid it, when considering the denial, suspension or revocation of a license, to determine whether a crime or act is substantially related to the qualifications, functions, or duties of the business or profession it regulates.

§ 482 CRITERIA TO EVALUATE REHABILITATION

Each board under the provisions of this code shall develop criteria to evaluate the rehabilitation of a person when:

- (a) Considering the denial of a license by the board under Section 480; or
- (b) Considering suspension or revocation of a license under Section 490.

Each board shall take into account all competent evidence of rehabilitation furnished by the applicant or licensee.

§ 485 PROCEDURE UPON DENIAL OF AN APPLICATION

Upon denial of an application for a license under this chapter or Section 496, the board shall do either of the following:

- (a) File and serve a statement of issues in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.
- (b) Notify the applicant that the application is denied, stating (1) the reason for the denial, and (2) that the applicant has the right to a hearing under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code if written request for hearing is made within 60 days after service of the notice of denial. Unless written request for hearing is made within the 60-day period, the applicant's right to a hearing is deemed waived.

Service of the notice of denial may be made in the manner authorized for service of summons in civil actions, or by registered mail addressed to the applicant at the latest address filed by the applicant in writing with the board in his or her application or otherwise. Service by mail is complete on the date of mailing.

§ 486 DECISION OR NOTICE OF DENIAL; CONTENTS

Where the board has denied an application for a license under this chapter or Section 496, it shall, in its decision, or in its notice under subdivision (b) of Section 485, inform the applicant of the following:

- (a) The earliest date on which the applicant may reapply for a license which shall be one year from the effective date of the decision, or service of the notice under subdivision (b) of Section 485, unless the board prescribes an earlier date or a later date is prescribed by another statute.

- (b) That all competent evidence of rehabilitation presented will be considered upon a reapplication.

Along with the decision, or the notice under subdivision (b) of Section 485, the board shall serve a copy of the criteria relating to rehabilitation formulated under Section 482.

§ 487 TIME FOR SCHEDULING A HEARING

If a hearing is requested by the applicant, the board shall conduct such hearing within 90 days from the date the hearing is requested unless the applicant shall request or agree in writing to a postponement or continuance of the hearing. Notwithstanding the above, the Office of Administrative Hearings may order, or on a showing of good cause, grant a request for, up to 45 additional days within which to conduct a hearing, except in cases involving alleged examination or licensing fraud, in which cases the period may be up to 180 days. In no case shall more than two such orders be made or requests be granted.

§ 488 ACTION FOLLOWING A HEARING

Except as otherwise provided by law, following a hearing requested by an applicant pursuant to subdivision (b) of Section 485, the board may take any of the following actions:

- (a) Grant the license effective upon completion of all licensing requirements by the applicant.
- (b) Grant the license effective upon completion of all licensing requirements by the applicant, immediately revoke the license, stay the revocation, and impose probationary conditions on the license, which may include suspension.
- (c) Deny the license.
- (d) Take other action in relation to denying or granting the license as the board in its discretion may deem proper.

§ 489 GROUNDS FOR DENIAL OF AN APPLICATION WITHOUT HEARING

Any agency in the department which is authorized by law to deny an application for a license upon the grounds specified in Section 480 or 496, may without a hearing deny an application upon any of those grounds, if within one year previously, and after proceedings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, that agency has denied an application from the same applicant upon the same ground.

**CHAPTER 3
SUSPENSION AND REVOCATION OF LICENSES**

§ 490 SUSPENSION OR REVOCATION BASED ON CRIMINAL CONVICTION

A board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued. A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.

§ 490.5 SUSPENSION – CHILD SUPPORT ORDERS

A board may suspend a license pursuant to Section 11350.6 of the Welfare and Institutions Code if a licensee is not in compliance with a child support order or judgment.

§ 491 PROCEDURE – SUSPENSION OR REVOCATION

Upon suspension or revocation of a license by a board on one or more of the grounds specified in Section 490, the board shall:

- (a) Send a copy of the provisions of Section 11522 of the Government Code to the ex-licensee.
- (b) Send a copy of the criteria relating to rehabilitation formulated under Section 482 to the ex-licensee.

§ 493 EVIDENTIARY EFFECT OF RECORD OF CRIMINAL CONVICTION

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, "license" includes "certificate," "permit," "authority," and "registration."

§ 494 INTERIM ORDER FOR SUSPENSION OR RESTRICTION(S)

- (a) A board or an administrative law judge sitting alone, as provided in subdivision (h), may, upon petition, issue an interim order suspending any licentiate or imposing license restrictions, including, but not limited to, mandatory biological fluid testing, supervision, or remedial training. The petition shall include affidavits that demonstrate, to the satisfaction of the board, both of the following:
 - (1) The licentiate has engaged in acts or omissions constituting a violation of this code or has been convicted of a crime substantially related to the licensed activity.

- (2) Permitting the licentiate to continue to engage in the licensed activity, or permitting the licentiate to continue in the licensed activity without restrictions, would endanger the public health, safety, or welfare.
- (b) No interim order provided for in this section shall be issued without notice to the licentiate unless it appears from the petition and supporting documents that serious injury would result to the public before the matter could be heard on notice.
- (c) Except as provided in subdivision (b), the licentiate shall be given at least 15 days' notice of the hearing on the petition for an interim order. The notice shall include documents submitted to the board in support of the petition. If the order was initially issued without notice as provided in subdivision (b), the licentiate shall be entitled to a hearing on the petition within 20 days of the issuance of the interim order without notice. The licentiate shall be given notice of the hearing within two days after issuance of the initial interim order, and shall receive all documents in support of the petition. The failure of the board to provide a hearing within 20 days following the issuance of the interim order without notice, unless the licentiate waives his or her right to the hearing, shall result in the dissolution of the interim order by operation of law.
- (d) At the hearing on the petition for an interim order, the licentiate may:
 - (1) Be represented by counsel.
 - (2) Have a record made of the proceedings, copies of which shall be available to the licentiate upon payment of costs computed in accordance with the provisions for transcript costs for judicial review contained in Section 11523 of the Government Code.
 - (3) Present affidavits and other documentary evidence.
 - (4) Present oral argument.
- (e) The board, or an administrative law judge sitting alone as provided in subdivision (h), shall issue a decision on the petition for interim order

within five business days following submission of the matter. The standard of proof required to obtain an interim order pursuant to this section shall be a preponderance of the evidence standard. If the interim order was previously issued without notice, the board shall determine whether the order shall remain in effect, be dissolved, or modified.

- (f) The board shall file an accusation within 15 days of the issuance of an interim order. In the case of an interim order issued without notice, the time shall run from the date of the order issued after the noticed hearing. If the licensee files a Notice of Defense, the hearing shall be held within 30 days of the agency's receipt of the Notice of Defense. A decision shall be rendered on the accusation no later than 30 days after submission of the matter. Failure to comply with any of the requirements in this subdivision shall dissolve the interim order by operation of law.
- (g) Interim orders shall be subject to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure and shall be heard only in the superior court in and for the Counties of Sacramento, San Francisco, Los Angeles, or San Diego. The review of an interim order shall be limited to a determination of whether the board abused its discretion in the issuance of the interim order. Abuse of discretion is established if the respondent board has not proceeded in the manner required by law, or if the court determines that the interim order is not supported by substantial evidence in light of the whole record.
- (h) The board may, in its sole discretion, delegate the hearing on any petition for an interim order to an administrative law judge in the Office of Administrative Hearings. If the board hears the noticed petition itself, an administrative law judge shall preside at the hearing, rule on the admission and exclusion of evidence, and advise the board on matters of law. The board shall exercise all other powers relating to the conduct of the hearing but may delegate any or all of them to the administrative law judge. When the petition has been delegated to an administrative law judge, he or she shall sit alone and exercise all of the powers of the board relating to the conduct of the hearing. A decision issued by an administrative law judge sitting alone shall be final when it is filed with the board. If the administrative law judge issues an interim order without notice, he or she shall preside at the noticed hearing, unless unavailable, in which case

another administrative law judge may hear the matter. The decision of the administrative law judge sitting alone on the petition for an interim order is final, subject only to judicial review in accordance with subdivision (g).

- (i) Failure to comply with an interim order issued pursuant to subdivision (a) or (b) shall constitute a separate cause for disciplinary action against any licentiate, and may be heard at, and as a part of, the noticed hearing provided for in subdivision (f). Allegations of noncompliance with the interim order may be filed at any time prior to the rendering of a decision on the accusation. Violation of the interim order is established upon proof that the licentiate was on notice of the interim order and its terms, and that the order was in effect at the time of the violation. The finding of a violation of an interim order made at the hearing on the accusation shall be reviewed as a part of any review of a final decision of the agency.

If the interim order issued by the agency provides for anything less than a complete suspension of the licentiate from his or her business or profession, and the licentiate violates the interim order prior to the hearing on the accusation provided for in subdivision (f), the agency may, upon notice to the licentiate and proof of violation, modify or expand the interim order.

- (j) A plea or verdict of guilty or a conviction after a plea of nolo contendere is deemed to be a conviction within the meaning of this section. A certified record of the conviction shall be conclusive evidence of the fact that the conviction occurred. A board may take action under this section notwithstanding the fact that an appeal of the conviction may be taken.
- (k) The interim orders provided for by this section shall be in addition to, and not a limitation on, the authority to seek injunctive relief provided in any other provision of law.
- (l) In the case of a board, a petition for an interim order may be filed by the executive officer. In the case of a bureau or program, a petition may be filed by the chief or program administrator, as the case may be.
- (m) "Board," as used in this section, shall include any agency described in Section 22, and any allied health agency within the jurisdiction of the

Medical Board of California. Board shall also include the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. The provisions of this section shall not be applicable to the Medical Board of California, the Board of Podiatric Medicine, or the State Athletic Commission.

**CHAPTER 4
PUBLIC REPROVALS**

**§ 495 PUBLIC REPROVAL OF LICENTIATE OR CERTIFICATE
HOLDER**

Notwithstanding any other provision of law, any entity authorized to issue a license or certificate pursuant to this code may publicly reprove a licentiate or certificate holder thereof, for any act that would constitute grounds to suspend or revoke a license or certificate. Any proceedings for public reproof, public reproof and suspension, or public reproof and revocation shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, or, in the case of a licensee or certificate holder under the jurisdiction of the State Department of Health Services, in accordance with Section 100171 of the Health and Safety Code.

**CHAPTER 5
EXAMINATION SECURITY**

**§ 498 REVOCATION, SUSPENSION OR RESTRICTION OF A
LICENSE BASED ON FRAUD OR DECEIT**

A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee secured the license by fraud, deceit, or knowing misrepresentation of a material fact or by knowingly omitting to state a material fact.

**§ 499 REVOCATION, SUSPENSION OR RESTRICTION OF A
LICENSE FOR ACTIONS PERTAINING TO ANOTHER'S
APPLICATION**

A board may revoke, suspend, or otherwise restrict a license on the ground that the licensee, in support of another person's application for license, knowingly made a false statement of a material fact or knowingly omitted to state a material fact to the board regarding the application.

**DIVISION 2
HEALING ARTS**

**CHAPTER 6.6
PSYCHOLOGISTS**

**ARTICLE 1
GENERAL PROVISIONS**

§ 2914 APPLICANTS FOR LICENSURE AS A PSYCHOLOGIST

Each applicant for licensure shall comply with all of the following requirements:

- (a) Is not subject to denial of licensure under Division 1.5.
- (b) Possess an earned doctorate degree (1) in psychology, (2) in educational psychology, or (3) in education with the field of specialization in counseling psychology or educational psychology. Except as provided in subdivision (g), this degree or training shall be obtained from an accredited university, college, or professional school. The board shall make the final determination as to whether a degree meets the requirements of this section

No educational institution shall be denied recognition as an accredited academic institution solely because its program is not accredited by any professional organization of psychologists, and nothing in this chapter or in the administration of this chapter shall require the registration with the

board by educational institutions of their departments of psychology or their doctoral programs in psychology.

An applicant for licensure trained in an educational institution outside the United States or Canada shall demonstrate to the satisfaction of the board that he or she possesses a doctorate degree in psychology that is equivalent to a degree earned from a regionally accredited university in the United States or Canada.

These applicants shall provide the board with a comprehensive evaluation of the degree performed by a foreign credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES), and any other documentation the board deems necessary.

- (c) Have engaged for at least two years in supervised professional experience under the direction of a licensed psychologist, the specific requirements of which shall be defined by the board in its regulations, or under suitable alternative supervision as determined by the board in regulations duly adopted under this chapter, at least one year of which shall be after being awarded the doctorate in psychology. If the supervising licensed psychologist fails to provide verification to the board of the experience required by this subdivision within 30 days after being so requested by the applicant, the applicant may provide written verification directly to the board.

If the applicant sends verification directly to the board, the applicant shall file with the board a declaration of proof of service, under penalty of perjury, of the request for verification. A copy of the completed verification forms shall be provided to the supervising psychologist and the applicant shall prove to the board that a copy has been sent to the supervising psychologist by filing a declaration of proof of service under penalty of perjury, and shall file this declaration with the board when the verification forms are submitted.

Upon receipt by the board of the applicant's verification and declarations, a rebuttable presumption affecting the burden of producing evidence is created that the supervised, professional experience requirements of this subdivision have been satisfied. The supervising psychologist shall have 20 days from the day the board receives the verification and declaration to

file a rebuttal with the board. The authority provided by this subdivision for an applicant to file written verification directly shall apply only to an applicant who has acquired the experience required by this subdivision in the United States.

The authority provided by this subdivision for an applicant to file written verification directly shall apply only to an applicant who has acquired the experience required by this subdivision in the United States.

The board shall establish qualifications by regulation for supervising psychologists and shall review and approve applicants for this position on a case-by-case basis.

- (d) Take and pass the examination required by Section 2941 unless otherwise exempted by the board under this chapter.
- (e) Show by evidence satisfactory to the board that he or she has completed training in the detection and treatment of alcohol and other chemical substance dependency. This requirement applies only to applicants who matriculate on or after September 1, 1985.
- (f)
 - (1) Show by evidence satisfactory to the board that he or she has completed coursework in spousal or partner abuse assessment, detection, and intervention. This requirement applies to applicants who began graduate training during the period commencing on January 1, 1995, and ending on December 31, 2003.
 - (2) An applicant who began graduate training on or after January 1, 2004, shall show by evidence satisfactory to the board that he or she has completed a minimum of 15 contact hours of coursework in spousal or partner abuse assessment, detection, and intervention strategies, including knowledge of community resources, cultural factors, and same gender abuse dynamics. An applicant may request an exemption from this requirement if he or she intends to practice in an area that does not include the direct provision of mental health services.

- (3) Coursework required under this subdivision may be satisfactory if taken either in fulfillment of other educational requirements for licensure or in a separate course. This requirement for coursework shall be satisfied by, and the board shall accept in satisfaction of the requirement, a certification from the chief academic officer of the educational institution from which the applicant graduated that the required coursework is included within the institution's required curriculum for graduation.

- (g) An applicant holding a doctoral degree in psychology from an approved institution is deemed to meet the requirements of this section if all of the following are true:
 - (1) The approved institution offered a doctoral degree in psychology designed to prepare students for a license to practice psychology and was approved by the Bureau for Private Postsecondary and Vocational Education on or before July 1, 1999.
 - (2) The approved institution has not, since July 1, 1999, had a new location, as described in Section 94721 of the Education Code.
 - (3) The approved institution is not a franchise institution, as defined in Section 94729.3 of the Education Code.

APPENDIX 2.0
CALIFORNIA UNEMPLOYMENT INSURANCE CODE

§ 1095 AUTHORITY FOR USE OF INFORMATION

The director shall permit the use of any information in his or her possession to the extent necessary for any of the following purposes and may require reimbursement for all direct costs incurred in providing any and all information specified in this section, except information specified in subdivisions (a) to (e), inclusive:

- (a) To enable the director or his or her representative to carry out his or her responsibilities under this code.

- (b) To properly present a claim for benefits.
- (c) To acquaint a worker or his or her authorized agent with his or her existing or prospective right to benefits.
- (d) To furnish an employer or his or her authorized agent with information to enable him or her to fully discharge his or her obligations or safeguard his or her rights under this division or Division 3 (commencing with Section 9000).
- (e) To enable an employer to receive a reduction in contribution rate.
- (f) To enable federal, state, or local government departments or agencies, subject to federal law, to verify or determine the eligibility or entitlement of an applicant for, or a recipient of, public social services provided pursuant to Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, or Part A of Title IV of the Social Security Act, where the verification or determination is directly connected with, and limited to, the administration of public social services.
- (g) To enable county administrators of general relief or assistance, or their representatives, to determine entitlement to locally provided general relief or assistance, where the determination is directly connected with, and limited to, the administration of general relief or assistance.
- (h) To enable state or local governmental departments or agencies to seek criminal, civil, or administrative remedies in connection with the unlawful application for, or receipt of, relief provided under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code or to enable the collection of expenditures for medical assistance services pursuant to Part 5 (commencing with Section 17000) of Division 9 of the Welfare and Institutions Code.
- (i) To provide any law enforcement agency with the name, address, telephone number, birth date, social security number, physical description, and names and addresses of present and past employers, of any victim, suspect, missing person, potential witness, or person for whom a felony arrest

warrant has been issued, when a request for this information is made by any investigator or peace officer as defined by Sections 830.1 and 830.2 of the Penal Code, or by any federal law enforcement officer to whom the Attorney General has delegated authority to enforce federal search warrants, as defined under Sections 60.2 and 60.3 of Title 28 of the Code of Federal Regulations, as amended, and when the requesting officer has been designated by the head of the law enforcement agency and requests this information in the course of and as a part of an investigation into the commission of a crime when there is a reasonable suspicion that the crime is a felony and that the information would lead to relevant evidence. The information provided pursuant to this subdivision shall be provided to the extent permitted by federal law and regulations, and to the extent the information is available and accessible within the constraints and configurations of existing department records. Any person who receives any information under this subdivision shall make a written report of the information to the law enforcement agency that employs him or her, for filing under the normal procedures of that agency.

- (1) This subdivision shall not be construed to authorize the release to any law enforcement agency of a general list identifying individuals applying for or receiving benefits.
 - (2) The department shall maintain records pursuant to this subdivision only for periods required under regulations or statutes enacted for the administration of its programs.
 - (3) This subdivision shall not be construed as limiting the information provided to law enforcement agencies to that pertaining only to applicants for, or recipients of, benefits.
 - (4) The department shall notify all applicants for benefits that release of confidential information from their records will not be protected should there be a felony arrest warrant issued against the applicant or in the event of an investigation by a law enforcement agency into the commission of a felony.
- (j) To provide public employee retirement systems in California with information relating to the earnings of any person who has applied for or is

receiving a disability income, disability allowance, or disability retirement allowance, from a public employee retirement system. The earnings information shall be released only upon written request from the governing board specifying that the person has applied for or is receiving a disability allowance or disability retirement allowance from its retirement system. The request may be made by the chief executive officer of the system or by an employee of the system so authorized and identified by name and title by the chief executive officer in writing.

- (k) To enable the Division of Labor Standards Enforcement in the Department of Industrial Relations to seek criminal, civil, or administrative remedies in connection with the failure to pay, or the unlawful payment of, wages pursuant to Chapter 1 (commencing with Section 200) of Part 1 of Division 2 of, and Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of, the Labor Code.
- (l) To enable federal, state, or local governmental departments or agencies to administer child support enforcement programs under Title IV of the Social Security Act (42 U.S.C. Sec. 651 et seq.).
- (m) To provide federal, state, or local governmental departments or agencies with wage and claim information in its possession that will assist those departments and agencies in the administration of the Victims of Crime Program or in the location of victims of crime who, by state mandate or court order, are entitled to restitution that has been or can be recovered.
- (n) To provide federal, state, or local governmental departments or agencies with information concerning any individuals who are or have been:
 - (1) Directed by state mandate or court order to pay restitution, fines, penalties, assessments, or fees as a result of a violation of law.
 - (2) Delinquent or in default on guaranteed student loans or who owe repayment of funds received through other financial assistance programs administered by those agencies. The information released by the director for the purposes of this paragraph shall not include unemployment insurance benefit information.

- (o) To provide an authorized governmental agency with any or all relevant information that relates to any specific workers' compensation insurance fraud investigation. The information shall be provided to the extent permitted by federal law and regulations. For the purposes of this subdivision, "authorized governmental agency" means the district attorney of any county, the office of the Attorney General, the Department of Industrial Relations, and the Department of Insurance. An authorized governmental agency may disclose this information to the State Bar, the Medical Board of California, or any other licensing board or department whose licensee is the subject of a workers' compensation insurance fraud investigation. This subdivision shall not prevent any authorized governmental agency from reporting to any board or department the suspected misconduct of any licensee of that body.
- (p) To enable the Director of the Bureau for Private Postsecondary and Vocational Education, or his or her representatives, to access unemployment insurance quarterly wage data on a case-by-case basis to verify information on school administrators, school staff, and students provided by those schools who are being investigated for possible violations of Chapter 7 (commencing with Section 94700) of Part 59 of the Education Code.
- (q) To provide employment tax information to the tax officials of Mexico, if a reciprocal agreement exists. For purposes of this subdivision, "reciprocal agreement" means a formal agreement to exchange information between national taxing officials of Mexico and taxing authorities of the State Board of Equalization, the Franchise Tax Board, and the Employment Development Department. Furthermore, the reciprocal agreement shall be limited to the exchange of information that is essential for tax administration purposes only. Taxing authorities of the State of California shall be granted tax information only on California residents. Taxing authorities of Mexico shall be granted tax information only on Mexican nationals.
- (r) To enable city and county planning agencies to develop economic forecasts for planning purposes. The information shall be limited to businesses within the jurisdiction of the city or county whose planning agency is

requesting the information, and shall not include information regarding individual employees.

- (s) To provide the State Department of Developmental Services with wage and employer information that will assist in the collection of moneys owed by the recipient, parent, or any other legally liable individual for services and supports provided pursuant to Chapter 9 (commencing with Section 4775) of Division 4.5 of, and Chapter 2 (commencing with Section 7200) and Chapter 3 (commencing with Section 7500) of Division 7 of, the Welfare and Institutions Code.
- (t) Nothing in this section shall be construed to authorize or permit the use of information obtained in the administration of this code by any private collection agency.
- (u) The disclosure of the name and address of an individual or business entity that was issued an assessment that included penalties under Section 1128 or 1128.1 shall not be in violation of Section 1094 if the assessment is final. The disclosure may also include any of the following:
 - (1) The total amount of the assessment.
 - (2) The amount of the penalty imposed under Section 1128 or 1128.1 that is included in the assessment.
 - (3) The facts that resulted in the charging of the penalty under Section 1128 or 1128.1.
- (v) To enable the Contractors' State License Board to verify the employment history of an individual applying for licensure pursuant to Section 7068 of the Business and Professions Code.
- (w) To provide any peace officer with the Division of Investigation in the Department of Consumer Affairs information pursuant to subdivision (i) when the requesting peace officer has been designated by the Chief of the Division of Investigations and requests this information in the course of and in part of an investigation into the commission of a crime or act may

be connected to the information requested and would lead to relevant information regarding the crime or unlawful act.