

DEPARTMENT OF CONSUMER AFFAIRS
TITLE 5. BUREAU FOR PRIVATE POSTSECONDARY EDUCATION

PROPOSED REGULATORY LANGUAGE
Unapproved Activity

Legend: Added text is indicated with an underline.
 Omitted text is indicated by (* * * *)
 Deleted text is indicated by ~~strikeout~~.

1. Amend section 75020 of Division 7.5 of Title 5 of the California Code of Regulations to read as follows:

§ 75020. Issuance of Citations

(a) The Bureau Chief, or their designee, or the Director's designee, is authorized to issue citations containing orders of abatement or administrative fines or both, pursuant to section 94936 of the Code against institutions approved under the Act that have committed any acts or omissions that are in violation of the Act or any regulation adopted pursuant thereto.

(b) The Bureau Chief, or their designee, or the Director's designee, is authorized to issue citations containing orders of abatement or administrative fines or both, ~~not to exceed \$100,000 pursuant to section 94944 of the Code~~ against persons who are without proper approval to operate as required under the Act. In addition, the citation may contain an order of abatement pursuant to section 149 of the Business and Professions Code that requires the unapproved person to cease any unlawful advertising and to notify the telephone company furnishing services to the cited person: (1) to disconnect the telephone services furnished to any telephone number contained in the unlawful advertising, and (2) that subsequent calls to that number shall not be referred by the telephone company to any new number obtained by that person. The provisions of section 75040 shall apply to this subsection.

(c) In addition to the requirements of section 94936 of the Code, each citation shall inform the cited institution or person that:

(1) If a hearing pursuant to the Administrative Procedure Act (APA) is not requested, payment of the administrative fine is due 30 calendar days from the date of service, and shall not constitute an admission of the violation charged.

(2) If a hearing pursuant to the APA is conducted and payment of an administrative fine is ordered, the administrative fine is due 30 calendar days from when the order is effective;

(3) If the cited institution or person desires an informal conference to contest the finding of a violation prior to an APA hearing, the informal conference shall be requested by written notice to the Bureau within 30 calendar days from service of the citation;

(4) Failure to comply with any order of abatement within the time set forth in the citation, unless the citation is being appealed, may result in disciplinary action being taken by the Bureau; and

(5) The Bureau may enforce the administrative fine as if it were a money judgment pursuant to the California Code of Civil Procedure (beginning with section 680.010).

(d) Each citation shall be served on the cited institution or person, in person, or by certified and regular mail at the address of record on file with the Bureau. Citations served by certified and regular mail shall be deemed "served" on the date of mailing.

(e) The sanction authorized under this section shall be separate from, and in addition to, any civil, criminal, or other administrative remedies.

Note: Authority cited: Sections 94877 and 94936, Education Code. Reference: Section 149, Business and Professions Code; and Sections 94936, 94944, and 94949.8, Education Code.

2. Amend section 75030 of Division 7.5 of Title 5 of the California Code of Regulations to read as follows:

§ 75030. Assessment of Administrative Fines

(a) Where citations pursuant to section 94936 of the Code and section 75020, subsection (a) include an assessment of an administrative fine, the fine shall be not less than \$50 or exceed \$5,000 for each violation. Each violation shall be classified according to the nature of the violation and shall indicate the classification on the face thereof as follows:

(a)(1) A "Class A" violation shall not be less than \$2,501 nor more than \$5,000. A Class A violation is one that the Bureau has, in its discretion, determined to be more serious in nature, deserving the maximum fine. A Class A violation may, in the Bureau's discretion, be issued to an institution that has committed one or more prior, separate Class B violations.

(b)(2) A "Class B" violation shall not be less than \$1,001 nor more than \$2,500. A Class B violation is one that the Bureau has, in its discretion, determined to be less serious in nature and may include, but is not limited to, a violation that could have resulted in student harm. Typically some degree of mitigation will exist. A Class B violation may be issued to an institution that has committed one or more prior, separate Class C violations.

(c)(3) A "Class C" violation shall not be less than \$501 nor more than \$1,000. A Class C violation is one that the Bureau has, in its discretion, determined to be a minor or technical violation, which may be directly or potentially detrimental to students or potentially impacts their education.

(d)(4) A "Class D" violation shall not be less than \$50 nor more than \$500. A Class D violation is one that the Bureau has, in its discretion, determined to be a minor or technical violation, which is neither directly or potentially detrimental to students nor potentially impacts their education.

(b)(1) Where citations pursuant to section 94944 of the Code and section 75020, subsection (b) include an assessment of an administrative fine, the fine shall not exceed \$100,000.

(2) In determining the administrative fine amount, the Bureau shall consider the following:

(A) Actual or potential harm to any consumer, student, or the general public.

(B) Prior knowledge of Bureau approval requirements, as demonstrated through the issuance of prior citations for unapproved activity, the granting of approvals to operate to the institution or any of its owners or managers or issuance of written notification from the Bureau about its regulatory authority.

(C) Recognition by the institution of its wrongdoing and demonstration of corrective action to prevent recurrence.

(D) Any explanation of the facts and circumstances surrounding the unapproved activity and any remediation efforts the institution took to correct the violation.

(E) Whether or not the institution cooperated with the Bureau's investigation, other law enforcement, regulatory agencies, or the injured parties, or any combination of these entities.

(F) The purposes and goals of this chapter and other matters as may be appropriate.

(3) The administrative fine is separate and not inclusive of any amounts an institution is ordered to refund students who enrolled in the institution during a period in which the institution did not hold approval to operate.

Note: Authority cited: Sections 94877, and 94936, and 94944, Education Code. Reference: Sections 94936 and 94944, Education Code.