

FIRST REGULAR SESSION

HOUSE BILL NO. 1167

103RD GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE LEWIS.

2146H.01I

JOSEPH ENGLER, Chief Clerk

AN ACT

To amend chapter 407, RSMo, by adding thereto one new section relating to commercial cheating services, with a penalty provision.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto one new section, to be known as section 407.2351, to read as follows:

407.2351. 1. As used in this section, the following terms mean:

(1) "Assigned task", any task assigned, directed, or otherwise given to a learner by a sponsor or such sponsor's representatives, the performance on which will be evaluated for credit including, but not limited to:

- (a) Writing a term paper, thesis, dissertation, essay, or report;
- (b) Providing responses to, participating in, or otherwise engaging in an exam;
- (c) Preparing any other work product in response to an assignment; or
- (d) Attending classes or other instructional interactions;

(2) "Assignment", anything in written, electronic, recorded, pictorial, artistic, or any other form issued by a sponsor or such sponsor's representatives setting forth, conveying, or soliciting learner performance of or on one or more assigned tasks including, but not limited to:

- (a) Materials, whether presented on paper or a computer, setting forth problems for the learner to solve;
- (b) Questions for the learner's response;
- (c) Exam content;
- (d) Scenarios to which the learner is to react; or

EXPLANATION — Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 (e) Similar tasks;

19 (3) "Confidential exam or assignment", any assignment including, but not
20 limited to, any exam that a sponsor provides to a learner under confidential conditions;

21 (4) "For credit", for evaluation by a sponsor or such sponsor's representatives in
22 connection with issuance of any grade, evaluation, degree, diploma, certification,
23 certificate, credential, exam score, or professional license;

24 (5) "Learner", an individual whose performance on one or more assigned tasks
25 will be evaluated for credit including, but not limited to, students, candidates for
26 professional certification and licensure, test takers, examinees, and workforce skills
27 trainees;

28 (6) "Organization", a company, partnership, corporation, institution,
29 association, body, state department, or other entity;

30 (7) "Prepare", to put into condition for use or assist another in doing so;

31 (8) "Sale" or "sell", any transfer, exchange, or barter, in any manner, for any
32 consideration or by any agreement;

33 (9) "Sponsor", any of the following:

34 (a) A public school or private school in this state;

35 (b) A public or nonpublic institution of higher education operating in this state
36 that provides an educational program:

37 a. For which such institution grants, awards, or otherwise issues an associate's
38 degree, bachelor's degree, graduate degree, professional degree, or any other degree,
39 credential, certification, or certificate; or

40 b. That is acceptable for credit toward an associate's degree, bachelor's degree,
41 graduate degree, professional degree, or any other degree, credential, certification, or
42 certificate;

43 (c) An organization that owns, sponsors, grants, awards, or otherwise issues
44 professional licenses to individuals or organizations in this state bearing such
45 organization's name or trademark and signifying completion of a set of requirements
46 associated with such license;

47 (d) An organization that owns, sponsors, grants, awards, or otherwise issues
48 credentials or certifications bearing such organization's name or trademark to
49 individuals or organizations in this state and signifying completion of a set of
50 requirements associated with such credential or certification; or

51 (e) An organization that owns, sponsors, administers, or otherwise delivers
52 exams bearing such organization's name or trademark to individuals or organizations
53 in this state;

54 (10) "Work product", anything in written, electronic, recorded, pictorial,
55 artistic, or any other form that is submitted to a sponsor showing full or partial
56 completion of an assigned task including, but not limited to, a term paper, thesis,
57 dissertation, essay, report, or response to an exam.

58 2. No organization or individual shall, for a fee or other compensation, whether
59 in whole or in part, with the knowledge or under circumstances in which such
60 organization or individual should reasonably have known that such work product or the
61 completion of such assigned task will be submitted by or on behalf of the learner as the
62 learner's own work for credit, perform the following:

63 (1) Prepare, advertise to prepare, offer to prepare, or cause to be prepared any
64 work product for or on behalf of a learner;

65 (2) Sell, advertise to sell, offer to sell, or cause to be sold any work product to a
66 learner; or

67 (3) Complete or otherwise perform an assigned task for or on behalf of a learner.

68 3. No organization or individual shall advertise the sale or other distribution of,
69 or sell or otherwise distribute, a confidential exam or assignment, any portion thereof,
70 or any detailed description of the contents thereof, with the knowledge or under
71 circumstances in which such organization or individual should reasonably have known
72 that such actions are in violation of the rights of a sponsor.

73 4. No disclaimers or contractual language between an organization or individual
74 providing services to a learner under this section shall exempt such organization or
75 individual from being deemed in violation of this section. Such disclaimers or
76 contractual language includes, but is not limited to, statements that:

77 (1) The learner will not use any work product in completing all or part of the
78 assigned tasks;

79 (2) The learner has not been required to complete the assigned tasks personally;
80 or

81 (3) The provision of the work product or completion of the assigned tasks by
82 such individual or organization has been approved by the sponsor.

83 5. No provision of this section shall prevent any individual or organization from
84 providing tutorial assistance, research material, information, or other assistance to
85 learners, provided that the provision of such items is expressly permitted by the sponsor
86 and the individual or organization providing such assistance has reasonable belief that
87 the work product will not be represented as the learner's own work.

88 6. (1) Actions for violations of this section may be brought:

89 (a) In the name of the people of the state, by the attorney general or by the
90 prosecuting attorney or circuit attorney for the judicial district in which the violation

91 took place and an organization or individual found in such action to have violated any
92 provision of this section shall be:

93 a. Subject to a civil penalty of no more than five thousand dollars per violation;
94 and

95 b. At the discretion of the court, guilty of a misdemeanor, except that if the
96 organization or individual has been previously convicted under this section or a statute
97 of another state of similar content and purpose, violation of this section may, at the
98 discretion of the court, be deemed a felony; or

99 (b) By any sponsor aggrieved by a violation of this section in a state court or as a
100 supplemental claim in federal district court against an offending organization or
101 individual.

102 (2) The prevailing party may recover the following for each violation against an
103 individual or organization that violates a provision of this section:

104 (a) Liquidated damages of two thousand five hundred dollars or actual damages,
105 whichever is greater;

106 (b) Reasonable attorney's fees and costs including, but not limited to, expert
107 witness fees and other litigation expenses; and

108 (c) Such other relief including, but not limited to, an injunction and punitive
109 damages, as the state or federal court may deem appropriate.

110 (3) Any court of competent jurisdiction may grant such relief as is necessary to
111 enforce the provisions of this section including, but not limited to, the issuance of an
112 injunction to prevent ongoing violations and disrupt the operations of violators.

113 (4) In an action brought under this section, a court shall preserve the secrecy of
114 an alleged confidential exam or assignment by reasonable means, which may include,
115 but are not limited to:

116 (a) Granting protective orders in connection with discovery proceedings;

117 (b) Holding in camera hearings;

118 (c) Sealing the records of the action; or

119 (d) Ordering any individual or entity involved in the litigation not to disclose an
120 alleged confidential exam or assignment without prior court approval.

121 7. The provisions of this section are not exclusive. Nothing in this section shall be
122 construed to preempt or in any other way limit, diminish, or imply the absence of rights
123 of any party, public or private, against any individual or entity in connection with any of
124 the acts described in this section.