
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair

2015 - 2016 Regular

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Subject: Private postsecondary education: California Private Postsecondary Education Act of 2009

SUMMARY

This bill makes various changes to the Private Postsecondary Education Act of 2009 to improve the effectiveness of the Bureau for Private Postsecondary Education (Bureau); It:

- 1) Establishes the Office of Student Assistance and Relief.
- 2) Provides for an enforcement monitor to evaluate the Bureau's enforcement efforts.
- 3) Authorizes the Bureau to give extensions for obtaining accreditation according based on specified criteria.
- 4) Requires certain out-of-state institutions offering distance education to California students to register with the Bureau, among other things.

BACKGROUND

Existing law:

Establishes the California Private Postsecondary Education Act of 2009 (Act) until January 1, 2017, and requires the Bureau for Private Postsecondary Education (Bureau) within the Department of Consumer Affairs (DCA) to, among other things, review, investigate and approve private postsecondary institutions, programs and courses of instruction pursuant to the Act and authorizes the Bureau to take formal actions against an institution/school to ensure compliance with the Act and even seek closure of an institution/school if deemed necessary.

The Act requires unaccredited degree granting institutions to be accredited by an accrediting agency recognized by the United States Department of Education (USDE) by 2020. The Act also provides for specified disclosures and enrollment agreements for students, requirements for cancellations, withdrawals and refunds, and that the BPPE

shall administer the Student Tuition Recovery Fund (STRF) to provide refunds to students affected by the possible closure of an institution/school.
(Education Code § 94800, et seq.)

ANALYSIS

This bill:

Office of Student Assistance and Relief

- 1) Establishes an Office of Student Assistance and Relief to serve as the primary contact to address the needs of private postsecondary students and:
 - a) Specifies that the duties of the Office include but are not limited to:
 - i) Providing assistance to private postsecondary students.
 - ii) Conducting proactive outreach to these students.
 - iii) Administering the Student Tuition Recovery Fund.
 - iv) Overseeing the registration of private postsecondary institutions that do not have a physical presence in California but offer distance education to California students. These institutions are required to register with the Bureau and file a surety bond, as specified.
 - b) Requires the Office to:
 - i) Establish and maintain a website to provide information to students about their rights and protections available to them.
 - ii) Provide information on its website about free services offered by a local nonprofit community service organization with demonstrated experience in assisting students in areas related to legal services and student loan matters.
 - iii) Work, in consultation with state and federal agencies to determine the resources and protections available to private postsecondary students in the event of a school closure as specified.

Student Tuition Recovery Fund (STRF)

- 2) Makes changes to STRF provisions. Specifically it,
 - a) Removes the Bureau's authority to establish regulations related to STRF.
 - b) Makes specified California students enrolled at a campus or in an out-of-state online program of a Corinthian Colleges Inc., institution eligible for STRF.

- c) Declares the intent of the Legislature to require a private postsecondary education institution that does not maintain a physical presence in this state and offers distance education to California students to file a surety bond for the benefit of students suffering from economic loss.

Enforcement Monitor

- 3) Requires the Department of Consumer Affairs to supervise and appoint an enforcement monitor for a period of two years in order to:
 - a) Monitor Bureau for Private Postsecondary Education's (Bureau) enforcement efforts with a specific concentration on the adequacy of bureau compliance inspections, handling and processing of student complaints and timely application of sanctions or discipline imposed on institutions and persons.
 - b) Submit specified reports to the Director of Consumer Affairs and Legislature and be available to deliver oral reports.
- 4) Sunsets the provisions related to the enforcement monitor on March 1, 2019.

Licensure

- 5) Expands licensure specifications to include required certification or registration that a person must hold to lawfully engage in a profession, occupation, trade, or career field and makes related conforming changes throughout the act.

Compliance, Enforcement, Process, and Penalties

- 6) Expands the authority of the Bureau to enforce the provisions of the Act:
 - a) Authorizes Bureau staff to issue citations, with a fine not to exceed \$5,000 before leaving an institution when non-minor violations of the Act are found during an inspection, as specified.
 - b) Provides due process procedures for institutions contesting alleged violations.
- 7) Increases the penalty for operating an institution without Bureau approval from \$50,000 to \$100,000.
- 8) Provides the Bureau the authority to give extensions on deadlines for unaccredited degree granting institutions to become accredited according to certain evidentiary criteria being met.
- 9) Makes other various technical changes.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, this bill is necessary in order to ensure continued oversight of private postsecondary institutions that supports quality, innovative programs, which are approved in a timely manner, while also ensuring a robust regulatory structure to prevent predatory practices and promotes student success. The author asserts that it is important to ensure that students are provided proper recourse through the Bureau for Private Postsecondary Education (Bureau) and the vast array of tools the Bureau has to assist students, in the event that they are not provided all the opportunities afforded to them. This bill seeks to incorporate changes as outlined in the Business, Professions and Economic Development Committee (BPED Committee) background paper for the recent Bureau Sunset Hearing.

- 2) ***California Private Postsecondary Education Act.*** The state's program for regulation of private postsecondary and vocational education institutions has historically been plagued with problems. During the late 1980's, California developed a reputation as the "diploma mill capital of the world."

After numerous legislative attempts to remedy the laws and structure governing regulation of private postsecondary institutions, AB 48 (Portantino, Chapter 310, Statutes of 2009) was enacted to establish the California Private Postsecondary Education Act of 2009 (Act), which took effect January 1, 2010. The Act provided the regulatory framework for oversight of private postsecondary educational institutions operating with a physical presence in California.

The Act requires all unaccredited colleges in California to be approved by the Bureau, and all nationally accredited colleges to comply with numerous student protections. It also establishes prohibitions on false advertising and inappropriate recruiting. The Act requires disclosure of critical information to students such as program outlines, graduation and job placement rates, and license examination information, and ensures colleges justify those figures. The Act also guarantees students can complete their educational objectives if their institution closes its doors while providing the Bureau with enforcement powers necessary to protect consumers.

In 2014, SB 1247 (Lieu, Chapter 840, Statutes of 2014) amended the Act to require degree-granting institutions to be accredited, prohibit an institution that participates in federal veterans' aid funding from claiming an exemption from the Act, and expanded the use of Student Tuition Recovery Fund payments to cover economic loss.

This bill makes changes to the Act based upon information from a Joint oversight hearing of the BPED Committee, Senate Education, Assembly Committees on Higher Education and Business, Professions and Consumer Protection. Staff notes that the act is currently scheduled to sunset on January 1, 2017. This bill makes no provisions for the extension of the sunset date.

3) ***Joint Oversight Hearing.*** On March 28, 2016, the Business, Professions and Economic Development Committee (BPED Committee) convened a joint hearing that included the specified committees in both houses. The background paper for the hearing identified 18 different issues for consideration at the hearing, including administrative, budget, licensing, and exemption, enforcement, outreach and accountability issues. Recommendations relevant to the provisions in this bill include the following:

- a) *Provide Bureau the discretionary authority to extend the deadline for accreditation.* Accreditation is a baseline measure used to determine academic quality for educational or professional institutions and programs. During prior sunset reviews, concerns were raised about the ongoing approval by the Bureau for Private Postsecondary Education (Bureau) of unaccredited institutions offering degrees as these institutions are unlikely to be recognized by accredited institutions for purpose of transfer, or by many employers. In response to these concerns, SB 1247 amended the Act to require degree granting institutions to be accredited by an agency recognized by the United States Department of Education by July 1, 2020. Institutions are required to submit an accreditation plan to obtain pre-accreditation and full accreditation by specified dates.

Numerous unaccredited intuitions expressed concerns with the 2020 timeframe citing that it is “too short,” for the lengthy and rigorous accreditation process. The Bureau attempted to establish regulations for those schools close to achieving the stated goal but needing a few more months. The limitations in the Act prevented the Bureau from establishing the regulation.

This bill provides the Bureau the authority to give a 2-year extension on the timeline if certain evidence is provided, including documentation from an accrediting agency demonstrating the institution’s ability to achieve accreditation.

- b) *Establish a single point of contact for students of private postsecondary education institutions.* The background paper notes that the Bureau has focused significant efforts to provide outreach to schools, including new workshops to assist with application completion and web-based tools to inform institutions how to be compliant with the Act and Bureau regulations. The Bureau does not appear to focus similar efforts on student outreach to inform students about the Bureau’s work and available resources for students.

During the closure of Corinthian Colleges Inc., institutions for example, thousands of California students were faced with confusing choices, pressure from private loan companies to begin paying off loans, and the possibility that credits earned at these schools would yield few meaningful educational opportunities. In response to this issue, proposed legislation AB 573 (Medina, 2015) which was ultimately vetoed by the Governor, attempted to simplify and streamline the process by creating an ongoing

dedicated single point of contact to coordinate efforts of state and federal agencies to assist any student harmed by a for-profit institution's closure. During the closure, the Bureau for Private Postsecondary Education (Bureau) dispatched staff to provide students with information about Student Tuition Recovery Fund (STRF) and how to access transcripts. Of the approximately 4,000 Corinthian (WyoTech, Everest) college students eligible for repayment under STRF, 300 filed an application with the Bureau. Outside of these efforts, it appears that no other attempts were made to communicate or follow-up with these students.

This bill establishes an Office of Student Assistance and Relief to serve as a primary point of contact and work with various state agencies to address the needs of private postsecondary education students thereby emphasizing the Bureau's responsibility to provide support to students.

- c) *Require online institutions to obtain a surety bond to protect against unlawful activities or closure.* There is no structure in California to monitor the online offerings of out-of-state institutions. The Bureau is only authorized to regulate institutions that have a physical presence in California. As such, California students enrolled in online programs offered by institutions based in other states do not benefit from the oversight provided by the Act, including access to the STRF.

In recognition of this regulatory gap for online education programs, the United States Department of Education issued federal regulations (75 FR 66831) that among other things, required distance education programs to have authorization in the student's state. This specific regulation was vacated by a court ruling based on a technicality. Institutions, however, are required to comply with the laws and regulations of the states in which they operate.

To address this challenge, a group of institutions, states, and policy organizations developed the State Authorization Reciprocity Agreement (SARA) whereby institutions approved to operate in one participating state will be deemed automatically to have met approval requirements in other participating states. The state has not chosen to participate in SARA as concerns have been raised that the agreement would undermine California's ability to regulate online profit programs and provide adequate protection to California students.

As an alternative to SARA, this bill requires out-of-state institutions offering online programs to California students to register with the Bureau and file a surety bond to provide recourse for students who have suffered economic loss as a result of a school closure.

Several states require for-profit institutions to maintain a surety bond. Surety bonds, which schools maintain, will typically refund a student's tuition if the school closes or if the school fails to uphold the contract it signed with the student.

- d) *Reduce complaints backlog associated with internal referrals resulting from compliance inspections and authorize the Bureau for Private Postsecondary Education (Bureau) to issue citations for non-minor violations.* In the last few years, a number of postsecondary educational corporations have been cited by federal and state regulators for engaging in various forms of fraudulent misrepresentation. Often, these actions originate from public complaints. Concerns have been raised regarding the Bureau's growing complaint and investigation backlog. The Bureau reports 1,045 pending complaints, taking on average one year to resolve (372 days).

In order to reduce the complaints backlog associated with internal referrals resulting from compliance inspections, this bill authorizes the Bureau to issue citations not to exceed \$5,000 for non-minor violations, which are those that have the potential to cause student harm.

Additionally, in an attempt to respond to backlog issues, this bill provides for an Enforcement Monitor to evaluate the Bureau's handling and processing of student complaints and timely application of issued sanctions. The Enforcement Monitor is required to submit several written reports specifying its findings to the Department of Consumer Affairs and the Legislature.

The Enforcement Monitor is appointed by and reports to the Director of Consumer Affairs which is the agency that currently oversees the Bureau. The committee may want to consider whether this structure creates an opportunity for an objective review of the Bureau.

- e) *Remove the requirements that the Bureau establish regulations implementing the Student Tuition Recovery Fund (STRF) reforms.* STRF reimburses "economic loss" for California residents enrolled in eligible institutions at the time of closure. Economic loss includes a student's tuition, cost of required equipment and materials, and interest on student loan debt used to pay those costs. It does not include supplies, living expenses, or consequential damages such as emotional distress. Although the Act requires the Bureau to establish regulations providing relief for a student whose charges were paid by a third party, (such as an employer or a financial aid program) the Bureau has not yet adopted those regulations.

As a result, this bill relieves the Bureau of any requirement to establish regulations related to STRF. This will allow the Bureau, without further delay, to begin administering these provisions of the program as provided by current law.

- f) *Clarify the definition of licensure and enhance disclosures to students.* The Act provides that if an institution offers an educational program in a profession, occupation, trade, or career field that requires licensure in

California, the institution must have educational program approval from the appropriate state licensing agency for any student who completes that program to sit for any required licensure exam. The definition of “licensure” under the Act does not specify certification or registration programs that may also be required for some professions.

This bill expands licensure to include required certification or registration that a person must hold to engage in certain professions and requires institutions offering an educational program in certain professions that require a certificate or registration to have approval from the appropriate agency.

- 4) *Corinthian Colleges, Incorporated (CCI) students.* The Student Tuition Recovery Fund (STRF) is supported by fees collected from each student at regulated schools. STRF payments are available to California Wyotech and Everest students who have suffered economic losses. However, as a Western Association of Schools and Colleges (WASC) accredited school, Heald Colleges were exempt from Bureau for Private Postsecondary Education (Bureau) oversight, and as such STRF payments are not available to Heald students nor are they available to students enrolled in out-of-state online programs.

This bill would provide these additional sources of relief to students who were enrolled in an online program offered by an out-of-state campus of a CCI institution, if the student was enrolled or withdrew from enrollment within 120 days of the date of the Corinthian closures. The net effect is that Heald students and certain CCI students enrolled in out-of-state online programs would become eligible for STRF payments. Prior proposed legislation, AB 573 (Medina, 2015) provided similar provisions but was vetoed by the Governor.

- 5) ***Related legislation.***

SB 1281 (Block) requires law schools that are not ABA approved to publicly disclose on its website, with a link on its home page under “Admissions” information about the institution, including, among other items, outcomes for graduates and bar passage data. Requires the information to be complete, accurate and not misleading. SB 1281 is currently pending in the Senate Committee on Judiciary.

AB 1916 (Irwin) requires a private postsecondary institution to file a surety bond with the Bureau before January 1, 2019, in an amount no less than the total amount of tuition and fees charged by the institution for the immediately preceding academic year, divided by 4. AB 1916 is currently pending in the Assembly Committee on Business and Professions.

AB 1996 (Gordon) exempts a nonprofit institution that is accredited by WASC, that does not award degrees or diplomas, and is paid from state or federal student financial aid programs for fewer than 20 percent of its students who receive vocational training from the Act. AB 1996 is currently pending in the Assembly floor.

AB 2581 (Medina) provides financial and other assistance to students of Heald, Everest, and WyoTech campuses in California, which were owned by Corinthian Colleges, Incorporated and closed unlawfully on April 27, 2015. AB 2581 is currently pending in the Assembly floor.

AB 1835 (Holden) exempts institutions that grant doctoral degrees in psychoanalysis from the provisions of the Act requiring unaccredited degree granting institutions to be accredited if all of the institution's students hold master's or doctoral degrees before enrollment in the institution. AB 1835 is currently pending in the Assembly Committee on Business and Professions.

AB 2652 (Eggman) requires a private entity with no physical presence in this state, that would be subject to the requirements of the Act if the entity was located in this state, to register with the Bureau for Private Postsecondary Education (Bureau) and participate in Student Tuition Recovery Fund (STRF). AB 2652 is currently pending in the Assembly Committee on Higher Education.

6) ***Prior legislation.***

SB 81 (Committee on Budget and Fiscal Review, Chapter 22, Statutes of 2015) included numerous statutory changes intended to implement the Budget Act of 2015 related to postsecondary education. Among those changes is a provision that allows the Bureau to enter into a contract with any independent institution of higher education, as defined, to review and act on student complaints against the institution.

SB 634 (Block, 2015) would have authorized the Department of Consumer Affairs to enter into a multistate regional reciprocity agreement on behalf of this state for interstate offering of distance education courses and oversight of postsecondary institutions in states which they maintain no physical presence. SB 634 was held at the request of the author in the Senate Committee on Education.

AB 573 (Medina, 2015) would have extended Cal Grant eligibility for former students of Heald College and create a grant program within the Attorney General's office to fund nonprofit organizations providing free legal services to former students of Corinthian Colleges. AB 573 was vetoed by Governor Brown whose veto message read in part:

I am sympathetic to the many students who were enrolled at Corinthian Colleges when the company abruptly shuttered its doors earlier this year. The USDE has taken the matter of loan discharge seriously. In recent months, it has greatly eased the burden of filings for many students, and its work to provide a simple, swift and fair process for students continues. As such, it appears premature to create an attorney grant program, especially one that provides little direction on how funds should be used.

While the bill's provisions to extend Cal Grant eligibility for Heald students are well-intentioned, I am not comfortable creating new General Fund costs outside of the budget process, particularly given the Cal Grant augmentations already included in this year's budget. For these reasons, I am returning this bill without my signature.

AB 2099 (Frazier, Chapter 676, Statutes of 2014) stipulated new Title 38 veterans funding eligibility standards for postsecondary institutions in California. The bill also provided that, in order for a postsecondary institution to be determined eligible to accept Title 38 monies, determined by California State Approving Agency for Veterans Education, the postsecondary institution, whether it offers degrees or not, must either be a public school, a nonprofit school, approved by the Bureau for Private Postsecondary Education (Bureau) or be regionally accredited.

SB 1247 (Lieu, Chapter 840, Statutes of 2014) extended the sunset date for the Bureau and the Act until January 1, 2017 and made statutory changes to the protections provided to students and the requirements placed on private postsecondary educational institutions, including prohibiting an institution from claiming an exemption from the Act if the institution is approved to participate in Title 38 programs.

AB 2296 (Block, Chapter 585, Statutes of 2012) expanded the disclosure requirements for institutions under the Bureau related to unaccredited programs; expanded disclosure requirements for all regulated institutions; established more stringent criteria for determining gainful employment and calculating job placement rates; and increased institutional documentation and reporting requirements around completion rates, job placement/license exam passage rates, and salary/wage information for graduates.

SB 498 (Liu, 2011) would have abolished the Bureau and transferred the Bureau's powers and duties under the Act to the California Postsecondary Education Commission. SB 498 was held in the Senate Committee on Business, Professions and Economic Development.

AB 611 (Gordon, Chapter 103, Statutes of 2011) set forth certain disclosure requirements pertaining to accreditation status, licensure, and related limitations for unaccredited doctoral programs.

AB 773 (Block, 2011) would have allowed the Bureau to revoke an exemption of an institution which was exempt based on accreditation, but still required to comply with the Student Tuition Recovery Fund requirements, if it determined that the institution had not in fact complied with those requirements. AB 773 was never heard in a policy committee.)

AB 1013 (Assembly Committee on Higher Education, Chapter 167, Statutes of 2011) made clarifying changes to the Act and related Bureau oversight.

AB 1889 (Portantino, 2010) contained provisions regarding doctoral degrees offered by unaccredited institutions, the calculation of placement rates, and Bureau employment requirements. AB 1889 was vetoed by Governor Brown whose veto message read in part:

This bill would require an Executive Branch agency to follow specific Staffing requirements prescribed by the Legislature. This is both an inappropriate and unacceptable action to micro-manage and burden the implementation of regulatory policy.

AB 48 (Portantino, Chapter 310, Statutes of 2009) established the California Private Postsecondary Education Act of 2009.

SB 1568 (Dunn, Chapter 534, Statutes of 2006) transferred regulation and oversight of unaccredited law schools and correspondence law schools from the California Bureau for Private Postsecondary and Vocational Education to the State Bar Committee of Bar Examiners. SB 1568 also required correspondence law schools to be required to disclose their faculty-to-student ratio and their Baby Bar and general bar exam passage rates to prospective students in the same manner required of unaccredited schools.

SB 1544 (Figueroa, Chapter 740, Statutes of 2004) extended the operation of the former Bureau for Private Postsecondary Education to 2007 and directed the Department of Consumer Affairs to appoint an Education Operations and Administrative Monitor to assess the administrative operations and enforcement processes and procedures of that Bureau with the primary goal of improving the Bureau's overall efficiency and compliance with state laws.

SUPPORT

Center for Public Interest Law
Children's Advocacy Institute
Consumer Federation of California
East Bay Community Law Center
Housing and Economic Rights Advocates
Public Advocates
Veterans Legal Clinic

OPPOSITION

California Association of Private Postsecondary Schools.

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