## SENATE COMMITTEE ON EDUCATION
**Senator Connie Leyva, Chair**
**2019 - 2020 Regular**

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| **Bill No:** | AB 1342 | **Hearing Date:** | June 19, 2019 |
| **Author:** | Low | | |
| **Version:** | February 22, 2019 | | |
| **Urgency:** | No | **Fiscal:** | Yes |
| **Consultant:** | Olgalilia Ramirez | | |

**Subject:** Nonprofit corporations: private postsecondary educational institutions: sale of assets: Attorney General approval.

**NOTE:** This bill has been referred to the Committees on Education and Judiciary. A "do pass" motion should include referral to the Committee on Judiciary.

### SUMMARY

This bill requires a nonprofit corporation that operates or controls a private postsecondary educational institution to obtain the Attorney General's (AG) consent before entering into certain agreements or transactions, including an agreement or transaction to sell or convey its assets to, or to transfer control, responsibility, or governance of a material amount of its assets to, a for-profit corporation or mutual benefit corporation.

### BACKGROUND

Existing law:

1) Requires a nonprofit corporation, as defined, that operates or controls a health facility, as defined, or operates or controls a facility that provides similar health care to provide written notice to, and obtain the written consent of, the AG prior to selling or otherwise disposing of a material amount of its assets to a for-profit corporation or entity, to a mutual benefit corporation or entity, or to another nonprofit corporation or entity. Existing law also provides that the AG has discretion to give consent to, give conditional consent to, or to not consent to, the agreement or transaction and requires the AG to consider any factors deemed relevant, including, but not limited to, whether the terms are fair and reasonable. (CORP Section 5914, et. seq.)

2) Establishes the California Private Postsecondary Education Act of 2009 (Act) until January 1, 2021, and requires Bureau for Private Postsecondary Education (BPPE), within the Department of Consumer Affairs to, in part, review, investigate and approve private postsecondary institutions (or institutions), programs and courses of instruction pursuant to the Act and authorizes BPPE to take formal actions against an institution/school to ensure compliance with the Act and even seek closure of an institution/school if determined necessary. The Act requires unaccredited degree granting institutions to be accredited by an accrediting agency recognized by the United States Department of Education by 2020. The Act also provides for specified disclosures and enrollment agreements for students, requirements for cancellations, withdrawals and refunds, and that the

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

**ANALYSIS**

This bill:

1) Requires a nonprofit corporation, as defined, that operates or controls a private postsecondary educational institution provide written notice to and to obtain the written consent of, the Attorney General (AG) before entering into any agreement or transaction to do with either of the following:

   a) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of its assets to a for-profit cooperation or entity or to a mutual benefit corporation or entity when a material amount of the assets of the nonprofit corporation are involved in the agreement or transaction.

   b) Transfer control, responsibility, or governance of a material amount of the assets or operations of the nonprofit corporation to any for-profit corporation or entity or to any mutual benefit corporation or entity.

2) Provides that the substitution of a new corporate member or members that transfers the control of, responsibility for or governance of the nonprofit corporation be deemed a transfer for purposes of the bill, as specified.

3) Requires that the notice provided to the AG be made public and that it include and contain information required by the AG, as specified.

4) Requires that the notice be provided to the Bureau for Private Postsecondary Education.

5) Specifies that the bill's provisions do not apply to:

   a) A nonprofit corporation if the agreement or transaction is in the usual and regular course of its activities or if the AG waives the requirement for that corporation.

   b) Any foreign nonprofit corporation that operates or controls a private postsecondary educational institution.

6) Requires, within 90 days of receipt of notification, the AG to notify a public benefit corporation in writing of the decision to consent to, give conditional consent to, or not consent to the agreement or transaction. This bill authorizes the AG to provide on additional 45- day period provided that the specified conditions are satisfied.

7) Requires, prior to issuances of a decision or waiver the AG to conduct one or more public meetings, as specified.

8) Grants the Attorney General (AG) discretion to consent to, give conditional consent to, or not consent to any agreement or transaction entered into by the specified nonprofits based on factors the AG deems relevant including whether any of the following apply:

   a) The terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit corporation.

   b) The agreement or transaction will result in inurement to any private person or entity.

   c) Any agreement or transaction is at fair market value, as described.

   d) The market value has been manipulated by the actions of the parties in a manner that causes the value of the assets to decrease.

   e) The proposed use of the proceeds from the agreement or transaction is consistent with the charitable trust on which the assets are held by the educational institutions.

   f) The agreement or transaction involves or constitutes any breach of trust.

   g) The AG has been provided, with sufficient information and Data to evaluate adequately the agreement or transaction or the effects thereof on the public.

   h) The agreement or transaction may create a significant effect on the availability or accessibility of educational services to the affected community.

   i) The proposed agreement or transaction is in the public interest.

9) Requires, within 90 days of receipt of notification and in relation to terms and conditions used to determine consent, conditional consent or not consent, that the AG do all of the following:

   a) Contract with, consult and receive advice from any state agency, including the Bureau for Private Postsecondary Education, on those terms and conditions.

   b) Contract with experts or consultants to assist in reviewing the proposed agreement or transaction within the limits specified relative to contract costs.

10) Provides that the AG is entitled to reimbursement for all actual and reasonable direct costs incurred in reviewing, evaluating, and making the determination regarding agreements and transactions, including administrative costs. This bill requires that the selling nonprofit corporation pay the Attorney General for all those costs upon request.

11) Authorizes the Attorney General (AG) to contract, within the specified cost limits, with experts and consultants to assist with monitoring ongoing compliance with the terms and conditions of the sale or transfer, as specified.

12) Provides that the AG is entitled to reimbursement for a period of two years from either the selling or the acquiring nonprofit corporation, depending upon which on the burden of compliance falls for costs incurred in monitoring ongoing compliance, as specified.

13) Authorizes the adoption of regulations to implement the bill's provisions.

14) Authorizes the AG to enforce conditions imposed on the AG's consent to an agreement or transaction to the fullest extent provided by law, as specified. The conditions imposed on the AG's consent to an agreement or transaction may include, but are not limited to:

    a) A transfer of assets from the proceeds of the sale or transfer to the Student Tuition Recovery Fund, established by current law.

    b) A requirement that the corporation file a surety bond to provide recovery to students who were enrolled at the private postsecondary educational institution upon subsequent closure of the institution.

    c) Any conditions deemed by the AG to be necessary to ensure that the access to certain educational courses or vocational instruction intended to be promoted by the charitable trust is not substantially and unreasonable impeded.

**STAFF COMMENTS**

1) ***Need for the bill.*** According to the author, "The bill expands oversight over the sale of charitable nonprofit assets dedicated toward nonprofit higher education.

   The California Department of Justice is generally responsible for regulating nonprofits in California through its Charitable Trusts Section. Under existing law, nonprofit hospitals and other health facilities must notify the AG whenever they intend to sell their assets to a for-profit company. There is then a public review process in which the Charitable Trusts Section reviews the terms of the agreement, evaluates the potential impact the sale would have on the affected community, and decides whether to grant approval. Approved sales typically come with enforceable conditions to preserve standards of care and ensure that a commercial transaction involving charitably-funded assets does not occur to the detriment of the community.

   There is no similar review and approval process for when a nonprofit college is sold to a for-profit company in California. This means there are currently very few protections in place to prevent the sale from reducing a community's access to quality higher education. This is of particular concern given the controversial history of for-profit companies taking over successful nonprofit colleges.

For example, Heald College was originally founded in 1863 as a nonprofit headquartered in the Bay Area, growing to establish a series of successful campuses across the state. In 2007, Heald was bought by a private investor group and eventually made part of the for-profit college chain Corinthian Colleges. In 2017, Heald was shut down and the state secured a $1.1 billion judgment when it was revealed that Corinthian Colleges intentionally targeted low-income, vulnerable Californians through deceptive and false advertisements and aggressive marketing campaigns that misrepresented job placement rates and school programs. As a result, students who had trusted Heald's reputation for quality education were left with nothing to show for their time there except for often staggering student loan debt.

AB 1342 ensures that nonprofit colleges are treated with similar community value as health facilities by providing for the same review by the Attorney General when a nonprofit school is sold and turned into a for-profit institution. The AG's approval would be required for any proposed sale, and conditions could be placed on that approval to ensure that the community's interests are not jeopardized by the sale."

2) ***For-profit companies purchases of non-profit institutions.*** There are several instances where a nonprofit college is sold to a for-profit company notably Bridgepoint and Heald have garnered the most attention. According to the Assembly Higher Education committee analysis, "In 2005, Bridgepoint Education, a for-profit higher education company, purchased the Franciscan University of the Prairies – a "brick and mortar" college located in Clinton, Iowa.

Franciscan University of the Prairies, which was founded in 1918 and had previously been known as Mount St. Clare College, maintained an enrollment of 500 students and was sponsored by the Roman Catholic Sisters of St. Francis.

Renamed as Ashford University, Bridgepoint was able to utilize the existing accreditation from the North Central Association of Colleges and Schools. Bridgepoint went on to close the Iowa campus in May of 2016. At the time, 99 percent of the 55,300 students at Bridgepoint-owned Ashford and University of the Rockies were taking classes solely online."

Heald College was originally founded in 1863 as a nonprofit headquartered in the Bay Area, growing to establish a series of successful campuses across the state. In 2007, Heald was bought by a private investor group and eventually made part of the for-profit college chain Corinthian Colleges, Inc (CCI).

On April 27, 2015, Heald shut down, along with CCI institutions like Everest College and WyoTech. In 2016, the AG secured a default judgment against CCI. In the judgment, the Court ordered restitution on behalf of students in the amount of $820 million and civil penalties totaling $350 million for a total of over $1.1 billion in monetary relief.

The final court judgement found, among other things, that: 1) from at least 2009 until the closure of its schools, many of CCI's representations and advertisements relating to job placement were untrue and/or misleading; 2) CCI's enrollment agreements contained unlawful clauses; 3) Corinthian College Inc. (CCI) engaged in unlawful debt collection; 4) CI misrepresented the transferability of credits and; 5) CCI misrepresented its financial stability to students.

3) ***Related activity with nonprofit hospitals***. This bill's provisions closely parallel an existing process required for the sale of nonprofit hospitals to for-profit corporations. Such nonprofit to for-profit transactions accounted for 1330 hours of staff time in the Attorney General's (AG) office in 2013.

4) ***Enforceable conditions may include Student Tuition Recovery Fund (STRF) contribution or surety bond.*** The bill specifies conditions imposed on the AG's consent to an agreement or transaction of which may include proceeds of the sale to be transferred to STRF or a requirement that the corporation file a surety bond to provide recovery to students who were enrolled at the institution upon subsequent closure of the institution. 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 charges. It does not include supplies, living expenses, or damages such as emotional distress. The STRF is traditionally supported by fees collected from each student at regulated schools. The amount of this fee was reduced to zero effective January 1, 2015 as the current balance exceeds the statutory cap of $25 million.

Lastly, 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.

5) ***Related legislation***. This bills is a part of an Assembly bill package designed to provide more accountability and state oversight of private postsecondary institutions.

AB 1340 (Chiu) recodifies in state law the federal Gainful Employment rule so that it may be enforced by the BPPE. The bill is pending in Senate Business Professions, and Economic Development committee.

AB 1341 (Berman) clarifies an institution of higher education is exempt only from the requirements imposed on out-of-state institutions if it meets the definition of a nonprofit corporation or public institution. The bill is pending in Senate Business and Economic Development committee.

AB 1343 (Eggman) prohibits a private postsecondary educational institution from enrolling residents of California, unless the institution meets either the requirement that no more than 85% of the institution's tuition revenue is derived from student financial aid and loans, or not less than 50% of the institution's tuition revenue is dedicated to student instruction. The bill is pending in Senate Business, Profession and Economic Development committee.

AB 1344 (Bauer-Kahan) increases the BPPE's oversight over out-of-state private postsecondary institutions operating online. The bill is pending in Senate Business, Profession and Economic Development committee.

AB 1345 (McCarty) prohibits a private postsecondary school from providing financial incentives or compensation to their employees, directly or indirectly, for student recruitment, enrollment, admissions, attendance, financial aid or sales of educational materials. The bill is pending in Senate Business, Profession and Economic Development committee.

**SUPPORT**

California Association of Nonprofits
California Faculty Association
The Institute for College Access and Success
National Student Legal Defense Network
Housing and Economic Rights Advocates
Children's Advocacy Institute Center for Public Interest Law
Public Law Center
Consumer Federation of California
Public Advocates
Consumer Reports Advocacy

**OPPOSITION**

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