

Date of Hearing: April 12, 2016

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1916 (Irwin) – As Amended April 5, 2016

[Note: This bill is double referred to the Assembly Business and Professions Committee and will be heard as it relates to issues under its jurisdiction.]

SUBJECT: Private postsecondary education: school closure bonds

SUMMARY: Requires private postsecondary educational institutions (institutions) to maintain a surety bond, filed with the Bureau for Private Postsecondary Education (BPPE) to provide reimbursement to students in the case of school closure. Specifically, **this bill:**

- 1) Provides, effective January 1, 2019, each institution shall maintain and file with the BPPE a surety bond, with a surety bond company authorized to do business in California.
- 2) Provides the amount of the bond shall be no less than the amount of tuition and fees charged by the institution during the prior academic year, divided by four.
- 3) Provides that, in the event that an institution ceases operation, BPPE shall make demand on the surety of that institution to provide refunds due to any students who were enrolled at the time of the closure, or within 120 days prior to the closure, if the bureau determines that there was a significant decline in the quality or value of that educational program during that time period. The amount of any refund received by a student shall offset any claim that the student may make against the Student Tuition Recovery Fund (STRF).
- 4) BPPE shall use the surety to reimburse any refund received by a student through the STRF.
- 5) Provides that if BPPE fails to make such a demand within 120 days of closure, any student or group of students may make a demand directly on the surety of that institution to recover any refund to which the student or students are due. A student may, but is not required to, use such payments to pay for a teach-out or other educational services.
- 6) Provides that once an institution ceases operation, no new students shall be enrolled.
- 7) Provides that an institution's approval to operate shall be suspended by operation of law when the institution is no longer covered by a surety bond as required by this section. The institution and the surety shall give written notice to BPPE at least 45 days prior to a release of a surety.
- 8) Provides that a surety on any bond filed may be released after the surety serves written notice to BPPE at least 60 days prior to the release. The release shall not discharge or otherwise affect any claim filed by any student for loss of tuition or any fees that occurred while the bond was in effect or that occurred under any note or contract executed during any period of time when the bond was in effect, except when another bond is filed in a like amount and provides indemnification for any loss.

- 9) Provides that an “institution” means, to the extent authorized by federal law, a private postsecondary educational institution that offers postsecondary education to the public in this state for an institutional charge, but does not include an independent institution of higher education, as defined, that has operated in California as an independent academic institution for no less than 15 academic years.
- 10) Provides that all institutions shall on at least a quarterly basis provide copies of records sufficient to produce academic transcripts and to certify completion of any degree or other program offered by the institution, to a third party. The third party shall be independent of the institution, financially stable, and capable of producing transcripts and certifications, upon request, within two weeks of the closure of a school, and continuing thereafter. The third party shall charge a fee of no more than \$10 per transcript or certification, and it shall not withhold a transcript or certification based on the student’s non-payment of a debt or obligation to the school or to any other party.
- 11) Provides that the bond may be used to award punitive damages to a student of an institution that ceases operation and is found, by a court of law, to have violated state or federal law, or laws, that caused or contributed to the student's economic loss.
- 12) Defines tuition and fees as all of the following: (a) paid tuition and fees not recovered by the receipt of academic credits; interest on educational loans incurred to pay such tuition and fees recovered by the receipt of academic credits; and, (c) general fund costs associated with restoring the benefits of eligible students’ for Cal Grants, as defined in Section 69430 of the Education Code, California National Guard Education Assistance Award Program (CNG EAAP), as defined in Section 69999.10 of the Education Code, and the Post 9/11 GI Bill, as defined in Title 38, Part III, Chapter 33 of the US Code.

EXISTING LAW:

- 1) Establishes the BPPE within the Department of Consumer Affairs with the primary function of providing protection of students/consumers through the regulation and oversight of private postsecondary educational institutions. BPPE oversight activities are funded by licensing fees paid by regulated institutions. Existing law also provides for a variety of exemptions from oversight by the Bureau for specific types of institutions, including institutions accredited by the Western Association of Schools and Colleges (WASC). (Education Code Sec. 94800 et seq.)
- 2) Establishes the STRF, administered by the BPPE, to relieve or mitigate economic loss suffered by students enrolled at a non-exempt private postsecondary education institution due to the institutions' closure, the institutions' failure to pay refunds or reimburse loan proceeds, or the institutions' failure to pay students' restitution award for a violation of the Private Postsecondary Education Act. STRF is capped in statute at \$25 million. Institutions are required to assess students an amount established in regulation by the BPPE and remit fund to the BPPE for STRF. In 2010, that amount was established at \$2.50 per \$1000 of tuition charged. In 2013, that amount was reduced to \$0.50 per \$1000. In 2015, this amount was reduced to \$0.00, as the STRF had exceeded the statutory cap (STRF is currently at approximately \$28 million). (EC Sec. 94923 – 94925)

FISCAL EFFECT: Unknown.

COMMENTS: *Purpose of this bill.* According to the author, "California students of for-profit postsecondary institutions do not have adequate protection from economic loss in the event that the institution closes, which has been a frequent occurrence in recent years. California is one of only 10 states in the country that does not require for-profit institutions to maintain a surety bond. Further, California's existing policy intended to protect these students, the STRF, is entirely funded by the students with no financial interest being passed on to the institution itself. Further, some exemptions from state oversight from the BPPE means STRF is not currently available to some students at California campuses or California students enrolled in out-of-state online programs. This bill will require for-profit and new non-profit institutions to post a surety bond in the amount of tuition and fees collected for an academic term, ensuring that students receive the instruction and credits they have paid for, and if they do not, ensuring that they are made whole for what they have paid, as well as their lost benefits, or nontransferable credits."

Discussion and recommendations. An important tool to assist students harmed by BPPE-regulated institutions is the STRF. However, as currently established and administered there are significant gaps in the economic relief provided to students under STRF:

First, students enrolled in institutions that are exempt from, or not covered by the Act are not eligible for STRF. Due to these broad exemptions in the Act, over 13,000 students enrolled in Heald College, owned by Corinthian Colleges, Inc. (CCI), at the time of the institution's unlawful closure were not eligible for STRF. Due to the physical presence requirement, a number of California students enrolled in Everest Online (owned by CCI but housed outside of California) are not eligible for STRF. Several other large, publicly traded colleges are now under regulatory, financial and legal pressure similar to that facing CCI prior to closure.

Establishing a requirement for a surety bond for California students not covered by STRF would ensure that all California students are protected. However, Committee staff recommends clarifying that, for all students covered, STRF remain as the source of relief for these students.

Second, as outlined in the BPPE Sunset Review report, even for eligible students, STRF claim and approval rates are very low. Using CCI as an example, over 4,000 former WyoTech and Everest students are estimated to be eligible for STRF. BPPE estimates roughly 80 percent (3,200) met with BPPE staff in the days following CCI's closure. BPPE reports that about 300 CCI students have filed STRF applications. In light of the relatively low number of STRF applications, as further outlined in the chart below, changes to STRF appear necessary.

Student Tuition Recovery Fund Statistics

School Name	# of Students at Closure	Claims Received	Approved	Denied	Pending	% of Enrolled Students w/ STRF Claims Approved
WyoTech (CCI)	1586	100	34	11	55	2.1%
Bryman (+Bio Health)	311	89	39	31	19	12.5%
Career Colleges of America	771	127	44	73	10	5.7%
Everest (CCI)	4336	214	75	40	99	1.7%
Four D College	620	55	17	9	29	2.7%
IME	480	317	180	129	8	37.5%

**Between January 1, 2010 and February 28, 2016, 1870 STRF claims were received. The institutions above represent 60% of the total STRF claims. The remainder is divided between approximately 107 institutions.*

Based on the outlined data, BPPE is not providing adequate outreach and education to ensure students eligible for STRF are applying for and receiving relief. Additionally, STRF does not cover the administrative, enforcement or outreach costs associated with an institution's violation of the law and closure. Finally, BPPE reports significant resource costs associated with managing records (transcripts, diplomas, etc.) following a school closure.

Committee staff recommends amending this bill to require that, for all institutions, the surety bond cover costs associated with (1) administration costs associated with school closure and STRF eligibility; (2) transcript and records database and administration; and (3) student outreach activities. Additionally, amendments are necessary to clarify, consistent with current law, that BPPE is responsible for records and transcripts for all institutions.

The formula for determining the amount of the surety bond, as established in this bill, should be adjusted to reflect the aforementioned recommendations, if those recommendations are adopted by the author and Committee. However, as the Business and Professions Committee has jurisdiction over other boards and bureaus within the Department of Consumer Affairs that have surety bond requirements, this item may be more appropriately reviewed and adjusted in the Business and Professions Committee.

BPPE Sunset Review. BPPE is currently undergoing the Sunset Review process. The issue of ensuring protection for students not covered by STRF and the possibility of a surety bond requirement is raised in the BPPE Sunset Review report, prepared by Committee staff. The author and Committee may wish to raise this issue through the 2016 Sunset Review process.

REGISTERED SUPPORT / OPPOSITION:

Support

California Federation of Teachers

Opposition

American Career College/West Coast University
California Association of Private Postsecondary Schools
Education Management Corporation (EDMC)
University of Phoenix

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