

Date of Hearing: April 19, 2016

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 2652 (Eggman) – As Introduced February 19, 2016

SUBJECT: California Private Postsecondary Education Act of 2009: applicability

SUMMARY: Requires a private distance education provider to register with the Bureau for Private Postsecondary Education (BPPE) and participate in the Student Tuition Recovery Fund (STRF). Specifically, **this bill:**

- 1) Establishes that it is the intent of the Legislature that appropriate stakeholders work collaboratively to address how best to regulate educational programs offered to the public by means of distance education by institutions with no physical presence in California.
- 2) Requires, effective July 1, 2017, to the extent authorized by federal law, a private entity with no physical presence in this state that, if the entity was geographically located in this state, would be subject to the requirements of this act to do both of the following:
 - a) Register with BPPE; and,
 - b) Participate in STRF for its California students.
- 3) Provides that these provisions shall remain in effect only until July 1, 2018.

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. (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 (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, "this bill is seeking to establish consumer protections for Californian students enrolled in distance education. Many students are enrolled in online education programs and the number is only going to continue to increase. As a state, Governor Brown has declared he is supportive of online education and views it as a tool to

increase access to higher education. As online education continues to grow, California should ensure that we are protecting students as they are protected in brick and mortar institutions."

Background. The Act defines private postsecondary educational institutions as private entities with a *physical presence* in California offering postsecondary education programs to the public for a charge. California students enrolled in distance/online programs offered by institutions located outside of California do not benefit from the oversight provided by the Act, including access to the STRF. Additionally, some institutional owners maintain physical campuses in California as well as online campuses housed in other states. For example, the recently closed Anthem College Online and Corinthian Colleges, Inc.'s Everest Online Campus enrolled California students in online courses through campuses accredited in other states. Unlike their counterparts attending physical campuses in California, online students, despite being California residents, were not provided BPPE protections or tuition reimbursement under STRF when their campuses abruptly closed.

Recognizing the need for oversight of the growing online education field, the initial federal Title IV "program integrity" regulations by the United States Department of Education (USDE) issued in 2010 required distance education programs to have authorization in the student's state of residence. The USDE regulations specific to distance education were subsequently vacated by federal court ruling. Institutions, however, are still required to comply with the laws and regulations of the states in which they operate.

In response to concerns over the complexity and cost of navigating differing requirements in multiple states, a group of institutions, states, and policy organizations developed the State Authorization Reciprocity Agreement (SARA). SARA provides that accredited, degree-granting institutions approved by an oversight body in one participating state will be deemed automatically to have met approval requirements in other participating states. The institution's "home" state is required to respond to student complaints *only after* the student has worked through the institution's standard complaint process. As of January 2016, 36 states agreed to participate in SARA.

In California, SB 634 (Block, 2015) would have authorized state participation in SARA through the BPPE. The bill was supported by public and private higher education institutions, but was ultimately held without hearing in the Senate Education Committee at the request of the author. Several organizations representing students, veterans and consumers raised concerns that California participation in SARA would undermine the state's authority to regulate risky online for-profit colleges, and that SARA's provisions largely focused on decreasing regulation for institutions rather than providing adequate protections for students.

Legislative options. It is clear that by limiting BPPE's authority to only those institutions with a physical presence in this state, some California students are not properly protected. As discussed in the Committee Background Paper of the Sunset Review of BPPE, there are several possible approaches to rectifying this deficiency:

- 1) The Legislature could amend the Act to remove the *physical presence* requirement and task the BPPE with full regulatory powers over out-of-state private distance education providers enrolling California students. This would enhance the student protections and recourse for students in the event of a school closure. However, there may be BPPE staffing and workload issues associated with full oversight of out-of-state institutions.

- 2) The Legislature could amend the Act to provide some oversight of out-of-state distance education providers, such as disclosures to students, participation in STRF, and BPPE student complaint procedures and enforcement powers. The BPPE would not be responsible for conducting compliance inspections, for example.
- 3) The Legislature could participate in SARA. However, relying on other states' laws, regulations and enforcement may not provide these students the same protections as those attending brick and mortar schools. As such, if the BPPE is granted authority at some point in the future to enter into reciprocity agreements for purposes of regulating distance education programs, it may be necessary to clarify that the other states' regulatory structure is comparable to California and provides the same opportunities for students as the Act.

Temporary solution. This bill, as currently drafted, proposes a one-year temporary solution to require institutions with no physical presence to participate in STRF. Committee staff understands that this is intended to provide stakeholders sufficient time to identify a permanent solution to ensure students are protected in the event of a school's illegal practices and/or school closure. This model is based on previous California law. From 2010 through 2016, non-WASC regionally accredited institutions (including the California campuses of the University of Phoenix) were required to participate in STRF but not follow all other provisions of the Act.

Suggested amendment. Committee staff recommends adding language to clarify that this requirement is notwithstanding the definition of private postsecondary educational institution contained in ED Code Section 94858. Additionally, Committee staff recommends extending the sunset of this bill from 18-months to 3 years to allow additional time for stakeholders to discuss and recommend an alternative approach to regulating online colleges and universities.

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 and/or STRF coverage 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

Center for Public Interest Law
Children's Advocacy Institute
Consumer Federation of California
Consumers Union
Housing and Economic Rights Advocates
Public Advocates Inc.
Public Law Center
SEIU California
Veterans Legal Clinic

Opposition

University of Phoenix

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