

Date of Hearing: April 9, 2013

ASSEMBLY COMMITTEE ON HIGHER EDUCATION
Das Williams, Chair
AB 634 (Gomez) – As Amended: April 1, 2013

SUBJECT: Private postsecondary education.

SUMMARY: Requires the Bureau for Private Postsecondary Education (BPPE) to promulgate regulations to clarify the definition of avocational education for the purpose of the statute that establishes BPPE and its authority.

EXISTING LAW:

- 1) Under the Act of 2009, establishes BPPE within the Department of Consumer Affairs (DCA) and provides for BPPE oversight and regulation of California private postsecondary institutions. (Education Code §94820)
- 2) Provides for numerous exemptions from oversight by BPPE (EC §94874), including
 - a) An institution that offers solely avocational or recreational educational programs.
 - b) An institution offering test preparation for examinations required for admission to a postsecondary educational institution or continuing education or license examination preparation, if the institution or the program is approved, certified, or sponsored by a government agency, a state-recognized professional licensing body, or a bona fide trade, business, or professional organization.
 - c) An institution that does not award degrees and that solely provides educational programs for total charges less than \$2,500, when no part of the total charges is paid from state or federal student financial aid programs.
 - d) A flight instruction provider or program that does not require the upfront payment of tuition or fees and does not require students to enter into a contract of indebtedness in order to receive training (EC § 94874.3)
- 3) Requires the Legislative Analyst's Office (LAO), by October 1, 2013, to report to the Legislature and the Governor on the appropriateness of the exemptions provided by the bill. (EC §94949)
- 4) Sunsets the provisions of the Act on January 1, 2015. (EC §94950)

FISCAL EFFECT: Unknown

COMMENTS: This bill is double-referred to the Business, Professions and Consumer Protection Committee.

Background. The state's program for regulation of private postsecondary and vocational education institutions has been plagued by problems for the past 20 years. After numerous

legislative attempts to remedy the laws and structure governing regulation of private postsecondary institutions, AB 48 (Portantino) was enacted in January 1, 2010, to make many substantive changes that both created a new, solid foundation for oversight and responded to the major problems with the statute and oversight body. The Act, as created by AB 48, requires all unaccredited colleges in California to be approved by BPPE 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, and most importantly, it gives BPPE an array of enforcement tools to ensure colleges comply with the law.

Need for the bill. According to the author, there is confusion as to whether non-vocational English language training programs for nonimmigrant students in the U.S. on a F-1 student visa are "avocational education" for the purposes of the Act. The author argues that while avocational schools are exempt from the bill, regulations adopted by BPPE have led some English language schools to believe they are subject to the Act. Since these schools do not provide degrees, do not promise employment, and do not receive federal financial aid (Title IV funds), none of the traditional consumer protection issues apply to these schools.

Regulatory process. The Administrative Procedure Act (APA) establishes rulemaking procedures and standards for state agencies in California, including BPPE, which are designed to provide the public with a meaningful opportunity to participate in the adoption of state regulations and to ensure that regulations are clear, necessary and legally valid. The APA is found in the Government Code § 11340 et seq. State regulations must also be adopted in compliance with regulations adopted by Office of Administrative Law (California Code of Regulations, Title 1, sections 1-280).

Regulations in question. Adopted in 2010, the regulations defining avocational education [California Code of Regulations, Title 5, section 7000 (k)] include categories of excluded activities as well as exceptions to those categories. The second exemption covers entities that assist students learning English as a second language unless the institution "exclusively enrolls students for an intensive English program that is touristic in nature, and provides for transportation, housing and cultural and recreational activities or enhance language skills for any business or occupational purpose."

Legislation is not needed to change state regulations. BPPE initiates and adopts regulations in accordance with existing law and regulation, described above. Currently, BPPE is implementing regulations for AB 2296 (Block), Chapter 585, Statutes of 2012. It is staff's understanding that the sponsor of this bill has been in contact with BPPE to request these regulatory changes, and these conversations are continuing.

Report on existing exemptions. The LAO will issue a report in October of this year on the appropriateness of the exemptions included in the Act. For the most part, the Legislature has refrained from approving additional exemptions before considering the LAO's recommendations.

Staff comments. It is staff's understanding that this bill is a vehicle to be used in the event that the sponsor and BPPE reach the conclusion that a statutory solution is necessary to address this issue. The sponsor has committed to staff that this bill is not intended to pressure BPPE to

exempt English language training programs from the Act but merely to facilitate a resolution in the event an agreement can be reached in a timely fashion.

Related legislation. SB 619 (Fuller), Chapter 309, Statutes of 2011, exempts flight schools that meet specified conditions from the oversight by the Bureau.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

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