

Date of Hearing: June 14, 2016

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

SB 1192 (Hill) – As Amended April 6, 2016

[Note: This bill is double referred to the Assembly Business and Professions Committee.]

SENATE VOTE: 37-0

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

SUMMARY: Provides for various changes to the California Private Postsecondary Education Act of 2009 (Act) and the oversight of the Act provided by the Bureau for Private Postsecondary Education (BPPE). Specifically, **this bill:**

- 1) Provides BPPE the authority to give extensions on the timeline for unaccredited degree granting institutions to become accredited according to certain evidence.
- 2) Establishes an Office of Student Assistance and Relief (Office) to serve as a primary point of contact to address the needs of private postsecondary education students. Specifies that the duties of the Office include but are not limited to providing assistance to students, conducting proactive outreach to students, administering the Student Tuition Recovery Fund (STRF) and overseeing the registration of institutions that do not have a physical presence in this state and are offering distance education to California students. Requires the Office to establish and maintain a website to provide information to students about their rights and protections available to them as well as information about free services available to students provided by a local nonprofit community service organization with demonstrated experience assisting students in areas like legal services and student loan matters.
- 3) Provides recourse through the STRF to students impacted by the abrupt closure of Corinthian Colleges, Inc. (CCI).
- 4) States the intent of the Legislature to require a private postsecondary educational 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 economic loss. Requires these institutions to register with BPPE.
- 5) Authorizes BPPE staff to issue a citation, with a fine not to exceed \$5,000, before leaving an institution when non-minor violations of the Act are detected during an inspection.
- 6) Increases the penalty for operating an institution without BPPE approval from \$50,000 to \$100,000.
- 7) Requires the Director to appoint an enforcement monitor for a period of two years to monitor the BPPE's 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 in order to protect

the public. Requires the enforcement monitor to submit reports to the Director and Legislature and be available to make oral reports to both if requested to do so.

8) Makes various technical changes.

EXISTING LAW: Establishes the Act until January 1, 2017, and requires BPPE, within the Department of Consumer Affairs (DCA) to, among other things, 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 (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 Section 94800 et. seq.)

FISCAL EFFECT: According to the Senate Appropriations Committee:

Bureau: Net increased costs of about \$410,000 in the 2016-17 fiscal year and \$360,000 ongoing. This estimate includes the Bureau's anticipated need for six positions and \$829,000 in fiscal year 2016-17 and \$781,000 annually thereafter. It also includes increased revenues of about \$420,000 (\$300,000 attributed to the fine increase from operating without a proper approval and about \$120,000 from the new authority to issue citations, as specified. To the extent there are additional fines or citations issued, increased revenues would be generated.) The Private Postsecondary Education Administration Fund has a structural imbalance and is expected to become insolvent in the 2017-18 fiscal year without accounting for the implementation of this bill. Absent a different funding source or creation of an additional fee, the fund could become insolvent sooner. (Special Funds)

Student Tuition Recovery Fund Claim Payout: Unknown payments to students enrolled at a campus or an out-of-state online program of a Corinthian Colleges Inc. institution. If 10 percent of estimated impacted students applied and were approved for a claim in a given year, costs would be \$5.8 million. Actual costs would depend upon a number of factors including the number of impacted students making a successful claim and the amount of the claim payouts. (Special Funds)

Minor costs to the California Student Aid Commission, the California Community College Chancellor's Office, and the California Department of Veterans Affairs to fulfill the consultation requirement with the Office of Student Assistance and Relief, as required by this bill. It is unknown the additional duties, and potential cost pressures, that might result from the required consultation. (General Fund)

COMMENTS: *Background on BPPE Sunset Review.* As previously outlined, existing law sunsets the Act on January 1, 2017. Legislation is necessary to extend the sunset date of the Act and the oversight provided by the BPPE. On March 28, 2016, the Assembly Higher Education Committee and the Senate Business, Professions and Economic Development Committee were joined by the Senate Education Committee and the Assembly Business and Professions Committee to conduct a Sunset Review hearing of the BPPE. This bill is intended to implement

legislative changes as discussed and recommended during the Sunset Review process. Additional information regarding the BPPE and recommended changes to the law can be found in the Background Paper prepared by Committee staff, available on the Committee website.

Background on BPPE. BPPE (or Bureau) is responsible for oversight of private postsecondary educational institutions operating with a physical presence in California. Established by AB 48 (Portantino, Chapter 310, Statutes of 2009) after numerous legislative attempts to remedy the laws and structure governing regulation of private postsecondary institutions, the bill took effect January 1, 2010, to make many substantive changes that created a foundation for oversight and gave the BPPE enforcement tools to ensure schools comply with the law. SB 1247 (Lieu, Chapter 840, Statutes of 2014) reauthorized the Act until January 1, 2017 and made a series of improvements aimed at reducing backlogs and increasing meaningful enforcement. The Act directs BPPE to, among numerous outlined activities, approve institutions and programs, establish and enforce minimum operating standards to ensure quality education, provide students a meaningful opportunity to have their complaints resolved, and ensure that institutions offer accurate information to prospective students on school and student performance. BPPE is also required to actively investigate and combat unlicensed activity, administer the STRF, and conduct outreach and education activities for students and institutions within the state.

Background on regulated industry. The landscape of schools regulated under BPPE has shifted in recent decades. Today, most students attending BPPE-regulated institutions are enrolled in multi-campus, publicly-traded institutions with a national presence. According to the 2014 Annual Report (self-reported data from BPPE-approved institutions), of the 275,624 students enrolled, 161,226 were enrolled in institutions that receive federal Title IV financial aid. These 337 institutions received about \$5.8 billion in federal Title IV financial aid. In response to high-profile state and federal investigations that revealed deceptive and illegal practices by some institutions within this sector. Federal regulators responded by increasing student outcome and institutional accountability measures. Specifically, in California, BPPE's approval can enable these institutions to access the Title IV program; USDE relies on the Bureau to provide oversight and student protection.

Major changes to the Act contained in SB 1192. The author notes that "students, the public and quality private postsecondary educational institutions are best served by a well-functioning regulatory entity that effectively enforces the Act. The Bureau has faced significant difficulties in implementing the law. It is important that California's approval and oversight of an institution assures minimum quality and student protections." To that end, this bill proposes the following major changes to the Act:

1) Definition of Licensure.

Background. Under the Act, 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.

This bill. Amends the definition of licensure to explicitly include certification and registration for purposes of BPPE approval of a program intended to lead to licensure and adds requirements for institutions to disclose voluntary certification or registration available to a student.

Staff recommendations. The University of Phoenix has expressed concern that this new definition and required disclosures could include non-governmental, voluntary licensure and certification to which an institution would not be aware. BPPE reports that the existing definition of licensure includes mandatory California certification or registration. Therefore, Committee staff recommends removing changes to the definition of licensure, and instead requiring, during the enrollment process, an institution offering educational programs designed to lead to positions in a profession, occupation, trade, or career field where voluntary licensure by a government agency is available, to provide all students seeking to enroll in those programs with a written copy of the voluntary government agency licensure requirements.

2) Unaccredited Degree Granting Programs.

Background. SB 1247 amended the Act to require that degree granting programs be accredited. Institutions offering a degree that seek BPPE approval are now required to either be accredited by an accrediting agency recognized by the USDE to offer the degree(s) or have an accreditation plan, approved by BPPE, for the institution to become fully accredited within five years of the BPPE issuance of a provisional approval to operate. For these schools, the Act requires compliance with certain student disclosures about accreditation, review by a visiting committee and degree limitation requirements. SB 1247 also outlined a process for institutions that are currently approved by BPPE and offer degrees to submit an accreditation plan to the Bureau by July 1, 2015, to obtain pre-accreditation by July 1, 2017, to obtain accreditation by July 1, 2020, and to comply with various student disclosure and visiting committee review requirements.

This bill. Due to concerns that unaccredited degree granting institutions may not be able to meet the timeframes established in the law to become accredited, but are still actively working toward the accreditation requirement, this bill provides BPPE the authority to give extensions on the timeline for unaccredited degree granting institutions to become accredited according to certain evidence provided by the institution.

Staff recommendations. Technical and clarifying amendments to this section have been requested by the BPPE and staff recommends these amendments be adopted.

3) Office of Student Assistance and Relief (OSAR).

Background. The Bureau has focused significant efforts to provide outreach to schools, including new workshops to assist with application completion and web-based tools to allow institutions to better understand how they can 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 recourse for students. For example, following the closure of Corinthian Colleges, Inc. (CCI), BPPE estimated about 6,000 students would be immediately eligible for tuition recovery under the STRF. BPPE reports that only about 300 CCI students have filed STRF applications. The chart below identifies similarly low STRF participation rates for other colleges that have closed unlawfully in recent years.

School Name	# of Students at Closure	Claims Received	Approved	Denied	Pending	% 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%

This bill. The OSAR, created by this bill, would serve as a primary point of contact to address the needs of private postsecondary education students, and would administer the STRF. The bill would also provide a student who was enrolled at a California campus of CCI, or was a California student enrolled in an online program offered by an out-of-state campus of a CCI institution, who also meets all of the other eligibility requirements, if the student was enrolled as of June 20, 2014, is eligible for STRF. The bill also states 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 economic loss.

Staff recommendations.

OSAR. Committee staff recommends the OSAR be established in its own Article of the Act (outside of STRF) and managed by an ombudsperson, which is appointed by the director of the DCA and responsible for reporting to the director and the BPPE Advisory Committee. Additionally, the OSAR, and not the BPPE, should be responsible for outreach to students, coordinating with relevant governmental and non-governmental agencies, and conducting a Pilot Program to provide grants to community-based organizations to assist students harmed by recent school closures with receiving relief under loan forgiveness and STRF.

Online Institutions. Committee staff recommends, rather than requiring institutions to file a surety bond, these institutions are required to participate in STRF for their California students.

4) Compliance and Enforcement.

Background. BPPE faces a significant backlog of complaints and investigations associated with internal referrals resulting from compliance inspections. Unlike other licensing agencies, the Bureau does not have the authority to issue citations for non-minor violations detected during a compliance inspection. Additionally, concerns have been expressed as to whether BPPE is properly identifying and responding to institutional violations of law; in 2013, the Bureau of State Audits found that the Bureau was failing to properly and consistently enforce the Act.

This bill: authorizes Bureau staff to issue a citation, with a fine not to exceed \$5,000, before leaving an institution when non-minor violations of the Act are detected during an inspection; increases the penalty for operating an institution without BPPE approval from \$50,000 to \$100,000; and, requires the Director to appoint an enforcement monitor for a period of two years to monitor the BPPE's enforcement efforts.

Staff recommendations. The California Association of Private Postsecondary Schools (CAPPS) has expressed serious concern regarding due process violations that could occur from allowing BPPE to issue citations at compliance inspections. BPPE has indicated that it believes its backlog problem could be addressed, instead, by allowing evidence collected during a compliance inspection to be used in support of issuing a citation. Staff recommends adopting BPPE's recommended amendments. Staff recommends approval of the BPPE requested amendment to require institutions to notify BPPE of investigations by other governmental agencies.

Additional issues and requested amendments. A number of organizations have requested additional amendments to the Act and this bill. What follows is a summary of those requests and Committee staff recommended actions.

- 1) **BPPE Fees.** CAPPS notes that under the current fee structure, many schools with fewer school sites, fewer students and less revenue are paying more in fees than schools with a much larger footprint. CAPPS has requested "fee fairness" be included in SB 1192.

Committee staff understands that the author is working with BPPE and DCA regarding a revised fee schedule that will more appropriately reflect the BPPE workloads and the size/revenue of BPPE-regulated institutions. This fee schedule is anticipated to be included in SB 1039 (Hill), pending in Assembly Business and Professions Committee, which contains revised fee schedules for a number of DCA Boards and Bureaus.

- 2) **Consumer Disclosures.** Ashford University has requested amendments to better align disclosures (School Performance Fact Sheet or SPFS) that are required under the Act with disclosures required by accrediting agencies and the federal government. A coalition of organizations that includes SEIU, Public Advocates, and the Veteran's Legal Clinic has also requested amendments to the SPFS, specifically regarding employment. SB 1247 required the Bureau to report to the Legislature by January 1, 2017 regarding student disclosures and possible statutory amendments to streamline and enhance the SPFS.

Committee staff recommends that changes to the SPFS be delayed until after the report required under current law is submitted to the Legislature.

- 3) **STRF Collection.** Ashford University has requested an amendment to clarify that the BPPE must notify institutions prior to beginning STRF collection. BPPE reports that altering the STRF assessment is a regulatory change that requires BPPE follow notification procedures outlined in the Administrative Procedures Act. Due to this, the change requested by Ashford does not appear necessary.
- 4) **OSAR Appropriation.** The Legal Aid Foundation of Los Angeles (LAFLA) has expressed concern that the OSAR will require an appropriation in order to effectively conduct its duties. Committee staff recommends this issue be raised in the Appropriations Committee.
- 5) **OSAR consultation.** LAFLA has requested that OSAR be required to consult with legal aid foundations in the performance of its duties. Committee staff recommends that OSAR be authorized to consult with relevant community based organizations, as OSAR determines necessary in fulfilling its duties.

- 6) STRF. A coalition of consumer organizations has requested a variety of amendments to expand STRF eligibility for students. Committee staff recommends, of those requests, the bill be amended to provide students 4-years to file a STRF claim and to require that student loans be formally discharged, rather than an agreement not to collect, before a student's STRF eligibility is reduced.
- 7) Advisory Committee. Committee staff understands that revisions to the Advisory Committee are necessary to improve the operations of the Committee, including removing positions that have remained unfilled since 2010, requiring the OSAR ombudsperson to report to the Advisory Committee, and requiring that a quorum be comprised of a majority of those appointed members.
- 8) Unintended exemption. An article by BuzzFeed, (Making the Grade, published on May 26, 2016) uncovered a series of documents that implicated a non-profit institution operating in California for manipulating student records and improperly using funds. According to the article, the college "has no full-time, permanent faculty, despite having a student body larger than the undergraduate population of Princeton." In response to the article, BPPE was asked to review the institution's compliance with California law. Committee staff understands that BPPE has no jurisdiction to review this institution because it receives an exemption from law under Education Code 94847(j). The Committee may wish to consider removing this exemption as it appears the exemption may no longer be serving its original purpose.

REGISTERED SUPPORT / OPPOSITION:

Support

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

Opposition

Professional Beauty Federation of California

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