

Date of Hearing: April 16, 2024

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

AB 3167 (Chen) – As Amended March 21, 2024

SUBJECT: California Private Postsecondary Education Act of 2009: highly qualified nonprofit institution

SUMMARY: Authorizes a highly qualified nonprofit institution, as defined, to register with the Bureau for Private Postsecondary Education (BPPE) by paying a registration fee and complying with specified requirements for registration, including providing the BPPE evidence of the institution's accreditation, as provided. Additionally authorizes a highly qualified nonprofit institution, as defined, that received an approval to operate by means of accreditation before July 1, 2025, to instead register with the BPPE under the bill's provisions. Specifically, **this bill:**

- 1) Authorizes a highly qualified nonprofit institution may register with the BPPE, pay a fee as specified, and comply with all of the following:
 - a) The institution shall provide the BPPE with all of the following information, as applicable, for consideration of initial registration by the BPPE as specified:
 - i) Evidence of institutional accreditation;
 - ii) Evidence that the institution is approved to operate in the state where the institution maintains its main administrative location;
 - iii) The agent for service of process, as specified;
 - iv) A copy of the institution's catalog and, if the institution uses enrollment agreements, a copy of a sample enrollment agreement;
 - v) Whether or not the institution, or a predecessor institution under substantially the same control or ownership, had its authorization or approval revoked or suspended by a state or by the federal government, or, within five years before submission of the registration, was subject to an enforcement action by a state or by the federal government that resulted in the imposition of limits on enrollment or student aid, or is subject to such an action that is not final and that was ongoing at the time of submission of the registration;
 - vi) Whether or not the institution, or a controlling officer of, or a controlling interest or controlling investor in, the institution or in the parent entity of the institution, had been subject to any education, consumer protection, unfair business practice, fraud, or related enforcement action by a state or federal agency within five years before submitting the registration. If so, the institution shall provide the BPPE a copy of the operative complaint with the registration;
 - vii) Whether or not the institution is currently on probation, show cause, or subject to other adverse action, or the equivalent thereof, by its accreditor or has had its

- accreditation revoked or suspended within the five years before submitting the registration;
- viii) Whether or not the institution, within five years before submitting the registration, has settled, or been adjudged to have liability for, a civil complaint alleging the institution's failure to provide educational services, including a complaint alleging a violation of Title IX of the Education Amendments of 1972 (20 U.S.C. Sec. 1681, et seq.) or a similar state law, or a complaint alleging a violation of a law concerning consumer protection, unfair business practice, or fraud, filed by a student or former student, an employee or former employee, or a public official, for more than two hundred fifty thousand dollars (\$250,000). The institution will provide the BPPE a copy of the complaint filed by the plaintiff and a copy of the judgment or settlement agreement for any such judgment or settlement, and the BPPE shall consider, as specified, all material terms and aspects of the settlement, including, for example, whether a student plaintiff remained enrolled or reenrolled at the institution; and,
 - ix) Any additional documentation the BPPE deems necessary for consideration in the registration process.
- b) When considering whether to approve, deny, or condition initial registration based upon the information provided by an institution pursuant to 1) in the analysis, the BPPE will do all of the following:
- i) Not consider any individual submission made, as specified, to be solely determinative of the institution's eligibility for registration but, exercising its reasonable discretion, approve, reject, or condition registration based upon a review of all of the information provided, as specified;
 - ii) Provide an institution with reasonable notice and an opportunity to comment regarding any determination to deny, condition, or reject initial registration before that determination becomes final. After the determination becomes final, the institution may seek review of the BPPE's decision through an action brought as specified; and,
 - iii) Require the initial registration, if approved, to memorialize that the institution agrees, as a condition of its registration, to be bound by this section and that its registration may be rejected, conditioned, or revoked for failure to comply with this section, as specified. The agreement shall be signed by a responsible officer of the institution.
- c) An institution that is registered with the BPPE and enrolls a student residing in California shall report in writing to the BPPE, within 30 days, the occurrence of any of the following:
- i) The institution has its authorization or approval revoked or suspended by a state or by the federal government, or has been subject to an enforcement action by a state or by the federal government that resulted in the imposition of limits on enrollment or student aid;

- ii) The institution or a controlling officer of, or a controlling interest or controlling investor in, the institution or in the parent entity of the institution is subject to any education, consumer protection, unfair business practice, fraud, or related enforcement action by a state or federal agency. If so, the institution shall provide the BPPE a copy of the operative complaint;
 - iii) The institution is currently on probation, show cause, or subject to other adverse action, or the equivalent thereof, by its accreditor or the accreditation of the institution is revoked or suspended; and,
 - iv) The institution settles, or is adjudged to have liability for, a civil complaint alleging the institution's failure to provide educational services, including a complaint alleging a violation of Title IX, or a similar state law, or a complaint alleging a violation of a law concerning consumer protection, unfair business practice, or fraud, filed by a student or former student, an employee or former employee, or a public official, for more than \$250,000. The institution will provide to the BPPE a copy of the complaint filed by the plaintiff and a copy of the judgment or settlement agreement for any such judgment or settlement, and the BPPE shall consider, pursuant to subdivision (b), all material terms and aspects of the settlement, including, for example, whether a student plaintiff remained enrolled or reenrolled at the institution.
- d) The requirements of the Student Tuition Recovery Fund (STRF), as specified, and regulations adopted by the BPPE related to the fund, for its students residing in California. These requirements may be waived if the institution places an approved surety bond, or other security in lieu of a bond, on file with the BPPE.
- e) The institution will provide disclosures pursuant to the requirements for the Student Tuition Recovery Fund, established in Article 14 (commencing with Section 94923), and regulations adopted by the BPPE related to the fund, or information related to an institutional surety bond or other security in lieu of a bond, as appropriate, for its students residing in California.
- 2) Specifies that, upon receipt of any of the notifications, as specified, the BPPE will, within 30 days of receiving the notice, request the institution to explain in writing why the institution should be permitted to continue to enroll California residents. If the BPPE, after reviewing the information submitted in response to the request and after consultation with the Attorney General, issues a written finding that there is no immediate risk to California residents from the institution continuing to enroll new students, the institution shall be permitted, pending completion of a review by the BPPE, to continue to enroll new students or the BPPE may, in its discretion, limit enrollments.
- a) Any institution under review, as specified, may have its registration revoked by the BPPE if, after further review, the BPPE issues a written finding that there is a substantial risk posed to California residents by the institution continuing to enroll California residents;
 - b) An institution will have the right to reasonable notice and an opportunity to comment regarding any determination to revoke registration or to limit enrollment before that determination becomes final. An institution may seek review of a BPPE order limiting

new student enrollment or revoking registration under this subdivision through an action as specified; and,

- c) Does not prohibit the BPPE from revoking an institution's registration on any other grounds specified in this chapter. This section shall not prohibit or impair the ability of an institution registered pursuant to this section or eligible to register pursuant to this section to apply to be an approved institution pursuant to this chapter.
- 3) Authorizes any institution whose registration is denied or revoked may reapply for registration after 12 months have elapsed from the date of the denial or revocation of registration.
 - 4) Specifies that a registration with the BPPE pursuant to this section shall be valid for 10 years.
 - 5) Requires the BPPE to develop through emergency regulations effective on and after July 1, 2025, a registration form. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare for purposes of Sections 11346.1 and 11349.6 of the Government Code. These emergency regulations shall become law through the regular rulemaking process on or before January 1, 2026.
 - 6) Requires the BPPE to disclose on its internet website a list of institutions registered pursuant to this section through reasonable means and disclose a designated email address for California residents to send a complaint to the BPPE about an institution registered pursuant to this section. Complaints received through this email address shall be investigated in the same manner as complaints received by the BPPE for institutions approved to operate pursuant to this chapter, but BPPE enforcement in response to such complaints against institutions registered pursuant to this section shall be governed as specified.
 - 7) Specifies that a highly qualified nonprofit institution that has received an approval to operate by means of accreditation before July 1, 2025, may elect to instead register with the BPPE, as specified.
 - 8) Specifies that these provisions will become operative on July 1, 2025.
 - 9) Defines "highly qualified nonprofit institution" to mean an institution that meets all of the following criteria:
 - a) The institution is a public institution of higher education, as defined in Section 94858.5, or the institution is exempt from taxation under the Internal Revenue Code and has no insider transactions within the past five years;
 - b) For the previous 20 years the institution has not operated as a for-profit institution and has awarded at least 500 degrees each year;
 - c) The institution has been accredited by an institutional accrediting agency recognized by the United States Department of Education for at least 10 years that accredits institutions, the majority of which are classified by the United States Department of Education as nonprofit or public; and,

- d) The institution is governed by a board of directors with no directors who hold an equity interest in an institution of higher education.

10) Establishes that a highly qualified nonprofit institution registration fee in an amount \$1,500 dollars.

EXISTING LAW:

- 1) The California Private Postsecondary Education Act of 2009 (CPPEA) provides, among other things, for student protections and regulatory oversight of private postsecondary institutions in the state. The act is enforced by the BPPE within the Department of Consumer Affairs (DCA). The act exempts specified private postsecondary educational institutions from all, or a portion of, its provisions, but requires those institutions that are subject to its provisions to apply for and obtain an approval to operate, including by means of accreditation, as specified. The act also requires an out-of-state private postsecondary educational institution to comply with specified requirements for registration, including providing the bureau evidence of the institution's accreditation. Existing law repeals the act on January 1, 2027. (Education Code Section 94800 et. seq.)

FISCAL EFFECT: Unknown

COMMENTS: *Purpose.* According to the author, "This bill would help high-quality nonprofit universities located in California by reducing burdens on students and colleges. In 2009, the state appropriately set consumer protection rules for vocational schools that enact safeguards for students against fraud. While these rules still make sense for such vocational schools, they now also apply to comprehensive or research schools and graduate schools that merge with California institutions. If we can be assured the schools are high-quality and committed to staying in California, it doesn't make sense to require students to choose a course of study or charge them a fee to ensure these schools don't fraudulently accept their tuition payments. This bill will address these issues while incorporating safeguards to ensure California's students are protected. Some nonprofit colleges and universities in California and nationwide are facing declining enrollment and financial strain. To address this, some have chosen to merge with other partner institutions. With this bill, both California and New York are considering legislative proposals to simplify this process."

BPPE. BPPE and the Act were established by AB 48 (Portantino, Chapter 310, Statutes of 2009) after several failed legislative attempts to remedy the Bureau for Private Postsecondary and Vocational Education (BPPVE) structural challenges. AB 48 took effect January 1, 2010, and, in part, changed the name from the BPPVE to the BPPE and provided the BPPE responsibility for oversight of private postsecondary educational institutions operating with a physical presence in California. While the Legislature has amended the Act several times since the initial passage of AB 48, it has consistently directed the BPPE to make protection of the public their highest priority in performing duties and exercising powers. Today, the Act expresses Legislative intent that the BPPE:

- 1) Ensure minimum educational quality standards and opportunities for success for California students attending private postsecondary schools in California;

- 2) Provide meaningful student protections through essential avenues of recourse for students;
- 3) Establish a regulatory structure that provides an appropriate level of oversight;
- 4) Provide a regulatory structure that ensures all stakeholders have a voice and are heard in policymaking by the BPPE;
- 5) Ensure accountability and oversight by the Legislature through program monitoring and periodic reports;
- 6) Prevent harm to students and the deception of the public that results from fraudulent or substandard educational programs and degrees.

The BPPE also actively investigates and combats unlicensed activity, administers the STRF, and conducts outreach and education activities for students and private postsecondary educational institutions within the state. Within BPPE exists the Office of Student Assistance and Relief (OSAR), established by SB 1192 (Hill, Chapter 593, Statutes of 2016), which exists to advance the rights of students at private postsecondary educational institutions and assist students who have suffered economic loss due to unlawful activities or the closure of an institution.

STRF background. The STRF is an important tool to assist harmed students. STRF, administered by the BPPE, exists to relieve or mitigate economic loss suffered by students enrolled at non-exempt private postsecondary education institutions due to the closure of an institution, the institutions' failure to pay refunds or reimburse loan proceeds, or the institutions' failure to pay students' restitution award for a violation of the Act. Students enrolled in institutions that are exempt from, or not covered by the Act are not eligible for STRF.

Over the past several years, the BPPE has experienced several precipitous closures of large institutions with sizable student populations, such as Marinello Schools of Beauty, ITT Technical Institute, ECA (Brightwood), Dream Center (Argosy), and Corinthian Colleges. Several states require private postsecondary institutions to post a surety bond as part of the state's application for approval to operate. States such as Arizona, Alaska, Florida, Georgia, Maryland, Nebraska, New Mexico, South Carolina, Tennessee, Texas, and Utah all require private postsecondary schools to have bonds. In the event of a precipitous school closure, the STRF funds may be used for several purposes, including but not limited to, the compensation of students or students' parents for lost prepaid tuition, payment of reasonable expenses related to the storage, maintenance and availability of student records, compensation for faculty to remain on a temporary basis to complete instruction through the end of a term or course, and reimbursement of former students of the closed institution for the cost of obtaining academic records.

Unlike some of the states previously mentioned, California has the STRF which can provide direct financial relief to students impacted by closures. However, STRF resources are not authorized to address a broader range of financial impacts of closures.

Currently, the STRF exceeds its statutory limit of \$25 million, and 5 California Code of Regulations Section 76120 has been modified, effective April 1, 2024 to set the assessment rate to \$0.00. For the last two years, the assessment rate has been \$2.50 dollars per \$1,000 dollars of institutional charges. As an example, for a student paying \$10,000 dollars of tuition and fees, that student would have paid \$25.00 towards the STRF.

AB 3167 would waive STRF requirements for eligible schools provided the institution places an approved surety bond, or other security in lieu of a bond, on file with the BPPE.

Highly qualified nonprofit institution. AB 3167 (Chen) creates a new institutional status under the CPPEA – that of the “highly qualified nonprofit institution.” In order to meet this definition, an institution needs to be able to meet several benchmarks, including evidence of accreditation, and must be free from specified forms of disciplinary action over the prior five years.

According to the Century Foundation, which has published extensively on issues related to for-profit institutions, notes that the provisions of AB 3167 seem to be a “reasonable solution that considerably eases the burdens on the institution, and students, while maintaining some BPPE oversight.”

Interestingly, under the bill, a registration option would be available to institutions that are public or nonprofit, and that have long been accredited by agencies that specialize in nonprofit and public institutions. This means that a public institution from another state operating a physical location in California would qualify under the provisions of this bill.

Arguments in support. Boston-based Northeastern University, which was founded in 1898 and has a network of 13 campuses, merged with Mills College in July 2022. Northeastern writes that “institutional safeguards will remain in place under [AB 3167 (Chen)]. Any nonprofit university that would use this new pathway must demonstrate that it is committed to California’s students. BPPE will retain the right to approve, deny, condition, or revoke the registration of an institution. In order to be approved to operate in the state, the institution must show BPPE that it maintains a physical presence in the state. Importantly, the bill reduces programmatic burdens on students.

Northeastern continued that, “currently, undergraduate students attending nonprofit universities regulated by BPPE must declare a major before beginning their four-year course of study. While this may make sense for short-term vocational programs, at non-profit liberal arts colleges and comprehensive research universities, academic exploration and discovery are the hallmark of an undergraduate education, particularly during the first year. Approximately one-quarter of incoming students at Northeastern University-Oakland seek to begin their undergraduate studies as undeclared. This bill corrects the practice of requiring students to enroll in a degree program before they have decided on a major by exempting highly qualified institutions from this requirement.

The Association of Independent California Colleges and Universities (AICCU) wrote that “students must pay into the [STRF], driving up their cost of attendance, even though an institution like Northeastern University is at no considerable risk of closure...As the higher education ecosystem in the state and nationally continues to evolve, it is critical that policymakers make thoughtful changes to the policies that regulate it. We believe that the policies proposed in AB 3167 make modest but important improvements that benefit students while maintaining proper consumer protection oversight by the state.”

Comments from BPPE. The registration methodology proposed in AB 3167 (Chen) mirrors an approval process of online students originally authorized in AB 1344 (Bauer-Kahan), Chapter 520, Statutes of 2019. According to correspondence with the BPPE, the registration requirement for out-of-state institutions provides greater insight into which institutions are enrolling

Californians along with a sense of scale of enrollment. The registration scheme has enabled the OSAR to support Californians impacted by closures of out-of-state institutions, including helping them file claims for the Student Tuition Recovery Fund.

However, the BPPE noted several challenges with the existing out-of-state registration process, making it challenging to use and costly for the BPPE. The Bureau has not yet denied any registrations or placed conditions on any registrations since the law was amended to allow it to do so.

According to the BPPE, the enforcement tools are powerful, but blunt, and do not always fit the situations presented. They force a choice between allowing these schools to commit minor infractions without consequence or having the BPPE take more severe measures at risk being overturned through costly litigation.

BPPE also noted that the statute outlines a series of notifications to occur between institutions and the BPPE when specified triggering events occur. The prescriptive steps include a requirement to consult with the Office of the Attorney General, which is not feasible given the office's statutory role to defend the BPPE, and a requirement in certain cases for the BPPE to declare "there is no immediate risk" for an institution to continue enrolling Californians. This latter claim is not one that the BPPE could ever state with certainty, and doing so could jeopardize later enforcement efforts of the BPPE or other agencies should additional issues come to light.

To note, the law implemented in AB 1344 requires the BPPE to investigate complaints but provides it no tools to address violations. The law specifically says that "bureau enforcement in response to such complaints against institutions registered pursuant to this section shall be governed by subdivision (b)," but subdivision (b) does not give BPPE any enforcement authority with respect to complaints.

Committee staff notes that many of the challenges experienced by BPPE with the existing out-of-state registration process would be replicated in the provisions of AB 3167 (Chen). Moving forward, the author may wish to work with the BPPE to address these challenges, as they would almost certainly would be present should AB 3167 (Chen) become law.

Prior legislation. AB 1344 (Bauer-Kahan), Chapter 520, Statutes of 2019, requires out-of-state institutions to provide information to the BPPE and also authorizes the BPPE to place these out-of-state private postsecondary institutions on a probationary status and revoke authorization to enroll California students.

REGISTERED SUPPORT / OPPOSITION:

Support

Association of Independent California Colleges & Universities (AICCU)
Century Foundation
Northeastern University

Opposition

None on file

Analysis Prepared by: Kevin J. Powers / HIGHER ED. / (916) 319-3960