

Date of Hearing: June 18, 2024

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Mike Fong, Chair

SB 1449 (Newman) – As Amended June 10, 2024

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

SENATE VOTE: 38-0

SUBJECT: California Private Postsecondary Education Act of 2009: complaint processing contracts

SUMMARY: Expands on the existing exemption for law schools from regulation under the California Private Postsecondary Education Act of 2009 (Act) and oversight by the Bureau for Private Postsecondary Education (BPPE) by authorizing exempt law schools to execute a contract with BPPE to handle complaints processing. Additionally sunsets this expanded authority for law schools on December 31, 2029.

EXISTING LAW:

- 1) Provides that the Board of Trustees of the State Bar of California examining committee (Committee of Bar Examiners) is responsible for the approval, regulation, and oversight of degree-granting law schools that exclusively offer bachelor's, master's, or doctorate degrees in law, such as a J.D. (Business and Professions Code (BPC) Section 6060.7)
- 2) Establishes the Act, until January 1, 2027, and requires the BPPE to, among other things, review, investigate and approve private postsecondary 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. 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 (EDC) Section 94800 et seq.)
- 3) Provides numerous exemptions from the Act and oversight by BPPE, including, but not limited to:
 - a) Law schools that are American Bar Association (ABA) accredited and State Bar accredited. (EDC Section 94874 (g))
 - b) Schools that are accredited by the Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges, or the Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges. (EDC Section 94874 (i))

- 4) Requires BPPE to establish a process through which an institution exempt from the Act may request and obtain verification that the institution is exempt. Specifies that the verification is valid for a period of up to two years, as long as the institution maintains full compliance with the requirements of the exemption. (EDC Section 94874.7)
- 5) Authorizes an institution otherwise exempt from the Act based on specified accreditation to apply to BPPE for an approval to operate according to specified requirements, including that upon issuing an approval to operate, BPPE is authorized to regulate that institution through the full set of powers granted, and duties imposed, by the Act and upon issuance of an approval to operate, the institution is no longer eligible for exemption. (EDC Section 94874.8)
- 6) Requires an independent institution of higher education that is otherwise exempt from the Act to comply with all applicable state and federal laws, including laws relating to fraud, abuse, and false advertising and authorizes these types of institutions to execute a contract with BPPE for BPPE to review and, as appropriate, act on complaints concerning the institution, according to specified requirements and subject to a fee of \$1,076. (EDC Section 94874.9)
- 7) Establishes, under Title IV of the Federal Higher Education Act of 1965, the federal student aid program, administered by the United States Department of Education (USDE) to provide grants, loans, and work-study funds from the federal government to eligible students enrolled in eligible colleges or career schools (20 U.S.C. Section 1070, et seq.) Institutional eligibility requirements for Title IV financial aid, include that institutions be “authorized” by each state in which they operate, and have an independent state-level student complaint process. (34 Code of Federal Regulations Section 600.9)

FISCAL EFFECT: According to the Senate Committee on Appropriations:

- 1) Annual revenue reduction of \$60,000, as the impacted law school would no longer have to pay bureau fees (Private Postsecondary Education Administration Fund).
- 2) Minimal decrease in administrative workload, as the impacted law school would still contract with the bureau for its complaint servicing in order to maintain federal financial aid eligibility.
- 3) Unknown fiscal impact to the Student Tuition Recovery Fund (STRF), as the impacted law school would no longer be required to participate in the program and collect an assessment from students to contribute to STRF.

COMMENTS:

Purpose. According to the author, “For more than 110 years, Southwestern Law School has provided Californians with affordable and high-quality legal instruction. Its roster of distinguished alumni includes numerous members of the Legislature, statewide constitutional officers, justices of the California Supreme Court, members of Congress, and even California’s first African American and Latina judges. SB 1449 will provide Southwestern Law School with temporary regulatory relief as it continues to work through the process of WASC accreditation,

thereby providing the same exemption from BPPE regulations that many other California law schools of the same caliber currently enjoy.

Background. AB 48 (Portantino, Chapter 310, Statutes of 2009), while establishing a foundation for regulation of private postsecondary educational institutions, contained numerous exemptions to state-level regulation, which have since been expanded and added to. The exemptions in the Act, and attempts to create additional exemptions, have been an ongoing source of consideration for the Legislature.

Action taken by the USDE in 2010 aimed at improving the integrity of programs authorized under Title IV of the Higher Education Act requires, among other things, that to remain eligible for Title IV, postsecondary education institutions must be authorized to operate in the state they are located and must ensure access to a complaint process that will permit student consumers to address alleged violations of state consumer protection laws. These changes rendered independent institutions of higher education, exempt from Bureau oversight and regulation under the Act by virtue of being accredited by a regional accrediting agency, potentially unable to meet the state authorization and complaints process requirements for Title IV. In response, the Department of Finance issued a Spring Finance Letter in May 2015 that proposed statutory changes allowing independent institutions of higher education to be recognized by the state and to enter into a contract with BPPE to establish a state-level student complaint process. The BPPE subsequently entered into contracts with over 100 institutions in 2015.

A number of institutions previously verified as exempt under the Act have now sought voluntary approval by BPPE to comply with Title IV requirements.

Entities that oversee higher education. Three entities oversee higher education in the country, the USDE, accreditors and states. The USDE sets standards for institutions participating in federal student financial aid programs. It also approves accrediting agencies. Accreditor's primary focus is educational quality and review institutions' financial administrative and business practices to varying extents, depending on type of accreditor. States main role are to protect students from unfair business practices, states are also responsible for educational quality but often rely on accreditation to certify quality, for unaccredited schools states are sole oversight bodies to ensure educational quality financial and administrative capacity, fair practices and student protection.

Arguments in support. Southwestern Law School, the sponsor of SB 1449, notes that "The ABA requires each accredited law school to submit detailed annual reports on tuition, entering student credentials, diversity, attrition, courses offered, distance education, financial aid, graduation, bar passage, employment outcome, school finances, faculty, library, technology, and more. If any information triggers a red flag, the school is subject to additional scrutiny, which can include interim fact-finding or site visits. ABA-accredited schools are also subject to a comprehensive reaccreditation process every ten years. Southwestern completed its 10-year review in 2023."

"SB 1449 exempts Southwestern from separate and conflicting reporting required by state law. It returns to the status quo that existed without any issues since at least July 2015. It also allows Southwestern's faculty and staff to focus on the program of legal education instead of diverting precious human and financial resources on implementing a second compliance regime that largely duplicates topics covered by the ABA accreditation standards but implements them in a way that requires two parallel systems that are both costly to implement, maintain and conflicting in terms of actual reporting requirements. Instead of promoting consumer protection,

the conflicting processes and reports increase the cost to students, confuse applicants attempting to compare multiple ABA-accredited law schools, increase the costs students must pay to attend Southwestern, and reduce the direct services Southwestern can offer due to the costs required to maintain BPPE compliance on top of ABA compliance.”

Arguments in opposition. The Institute for College Access and Success (TICAS) wrote in opposition, noting that “Federal rules are currently being developed that conduct a comprehensive regulatory review of accreditation and SB 1449 would precede these federal rules. Introducing state legislation before forthcoming federal rules are established puts California at risk of being out of alignment with future federal regulations. The proposed federal rules aim to address the issue of accrediting bodies allowing non-compliant institutions to remain in good standing for years, despite identifying compliance problems. Some accreditor standards are so lenient that institutions can meet them without demonstrating minimal student success, leading to persistently low-value programs and institutions that can harm students.”

“While accreditation by organizations such as the ABA and WASC is important, it is insufficient for gauging overall educational quality, as it overlooks key factors such as student outcomes. Instead, California should look towards a holistic evaluation that prioritizes student experiences and outcomes. Unfortunately, SB 1449's reliance on accreditation as a primary measure of institutional quality risks perpetuating a flawed system that does not adequately protect students or ensure educational excellence.”

Federal complaint requirements linked to student aid programs. Under state law, independent law schools accredited by the ABA are exempt from the Act and Bureau oversight. As mentioned above, exempt institutions have voluntarily sought Bureau approval to comply with federal Title IV requirements for federal student aid, which include programs like federal student loans and the Pell Grant program. Absent this bill, Southwestern Law School, being an exempt school, could voluntarily seek approval from the Bureau to have complaints addressed by them and maintain federal student aid eligibility. The sponsors argue that ABA oversight is sufficient and that Bureau reporting requirements are duplicative and at times in direct conflict with ABA requirements. This bill would provide a narrow authority for exempt law schools including those ABA accredited that previously executed a contract with the Bureau. The Act's primary goal is to provide meaningful student protection and adequate oversight for private colleges.

If future legislation should follow suit in extending this privilege to other colleges, *the committee may wish to consider whether this authority used to access public funds provides the appropriate level of state oversight.*

REGISTERED SUPPORT / OPPOSITION:

Support

Southwestern Law School

Opposition

The Institute for College Access and Success

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