

Date of Hearing: April 5, 2022

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 2341 (Medina) – As Introduced February 16, 2022

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

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

SUMMARY: Authorizes a public institution of higher education, as defined, to contract with the Bureau for Private Postsecondary Education (BPPE or the bureau) for the bureau to review and, as appropriate, act on complaints concerning the institution, as provided, and requires a public institution of higher education that is exempt from the Private Postsecondary Education Act (Act) to comply with all applicable state and federal laws, including laws relating to fraud, abuse, and false advertising. Specifically, **this bill:**

- 1) Affirms that an independent institution of higher education, as defined, that is exempt from the Act, or a public institution of higher education, as defined, must comply with all applicable state and federal laws, including laws relating to fraud, abuse, and false advertising.
- 2) Specifies that an institution described in 1) above may execute a contract with the bureau for the bureau to review and, as appropriate, act on complaints concerning the institution, as specified.
- 3) Stipulates that the execution of a contract by the bureau with a public institution of higher education, as defined, does not, in and of itself, qualify the institution for participation in the Cal Grant Program.
- 4) Specifies that moneys paid by a public institution of higher education, as defined, will support costs incurred by the bureau to perform activities pursuant to the contract with that institution so that fees collected by the bureau from other institutions are not used to support those costs.
- 5) Makes various technical and non-substantive changes.

EXISTING LAW: *Federal law.* Specifies that an institution, as described, is legally authorized by a State if the State has a process to review and appropriately act on complaints concerning the institution including enforcing applicable State laws, and the institution meets specified provisions. (34 Code of Federal Regulations Section 600.9)

State law. Establishes the Act until January 1, 2023, and requires the BPPE within the Department of Consumer Affairs (DCA) to, in part, 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 (USDE) by 2020. The act authorizes an independent institution of higher education that is exempt from the act to execute a contract with the bureau for the bureau to review and, as appropriate, act on complaints concerning the institution, as provided, and requires an independent institution of higher education that is exempt from the act to comply with all applicable state and federal laws, including laws relating to fraud, abuse, and false advertising. (Education Code (EDC) Section 94800, et seq.)

FISCAL EFFECT: Unknown

COMMENTS: *Purpose of the bill.* According to the author, “Student access to federal financial aid programs is critical for students to achieve their educational goals. While California has a clear path for many higher education institutions to offer federal aid to their students, legislation is needed to authorize public institutions established by another state that have a physical location in California as part of their meeting the federal regulations. AB 2341 will therefore rectify the loophole in state policy, allowing California students who attend any public institutions in California to access their federal financial aid. Specifically, AB 2341 authorizes the Bureau of Private Postsecondary Education to enter a contract with a public institution of higher education established by another state. We should not deny federal financial aid to deserving students because of their decision [to attend] an accessible institution that aligns with their goals.”

State authorization. State Authorization, as noted under “Existing Law” is a legal and regulatory term that applies to a university’s compliance with individual statutes, regulations, and rules in each state in which it operates. Postsecondary institutions are required to seek individual authorization to deliver or facilitate educational services, programs, or activities from each state in which they operate. Institutions need to become authorized by a state if they have a physical presence in the state in order to be eligible for certain federal financial aid, such as the Pell Grant.

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 the 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; and,
- 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 Student Tuition Recovery Fund (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.

Confusion in the marketplace. The 2020 Century Foundation report “What States Can Do to Protect Students from Predatory For-Profit Colleges” noted that, “As federal and state law enforcement have cracked down on fraud by for-profit college chains, and media and advocacy coverage of the issue has expanded, the public has grown more aware of the risks of for-profit colleges, and their enrollment has declined. This has led a number of for-profit college chains to seek to convert to nonprofit status, but in name only. In the aftermath of massive downsizing at the Internal Revenue Service (IRS), there is almost nonexistent federal oversight of such conversions from for-profit to nonprofit status. The result is that college chains can now tell students and the public they have become nonprofit even though they remain structured in a way that sends most of the chain’s revenue directly to former owners, oftentimes via contracts or real estate deals. These arrangements run contrary to the prohibition on private inurement that is critical to the integrity of the nonprofit sector.”

Several institutions have modified their structure in recent years, creating confusion in the marketplace. Some institutions, like the University of Arizona Global Campus and Purdue University Global, Inc., previously operated as for-profit institutions under other names (Ashford University and Kaplan University, respectively). To note, on March 7, 2022 the San Diego Superior Court found that Ashford University and Zovio, Ashford’s parent company, violated the law by giving students false or misleading information about career outcomes, cost and financial aid, pace of degree programs, and transfer credits, in order to persuade them to enroll at Ashford. As part of the decision, the court ordered Ashford University and Zovio to pay more than \$22.37 million in penalties.

Other institutions, like University of Massachusetts Global, represent an existing non-profit institution that has taken on a new name and identity. Previously known as Brandman University, a part of the Chapman University system, University of Massachusetts Global has existing physical locations in California, but continues to operate as a non-profit institution.

Committee comments. Arizona State University (ASU), the sponsor of this legislation, is a public institution, and directly runs all of their distance education initiatives – including their new physical location in downtown Los Angeles. Unlike the institutions noted above, ASU is not currently eligible for State Authorization in California because current law does not have a State Authorization mechanism for public institutions that operate a physical location in California.

Additionally, while the provisions of AB 2341 would give public out-of-state institutions with a physical location in California the opportunity to receive State Authorization, and thus receive federal financial aid, this bill would not grant these institutions eligibility for the Cal Grant award.

Further, the Act is set to sunset on January 1, 2023, and that the provisions of this bill would be implemented only if the operation of the Act is extended by another measure. The Senate Business and Professions Committee, the Assembly Business and Professions Committee, the Senate Education Committee, and the Assembly Higher Education Committee anticipate holding a comprehensive BPPE sunset review hearing in 2022, and follow-on legislation has historically included the extension of BPPE's sunset.

Arguments in support. ASU wrote in support of this legislation, noting that “ASU has deep ties to California, including the more than 18,000 Californians who are ASU students in Arizona and the nearly 52,000 who are ASU alumni. We have a new home at the ASU California Center, located at the historic Herald Examiner building in downtown Los Angeles. This presence will allow California students to complete their education at ASU while staying in the state by facilitating access to top-ranked undergraduate and graduate degree programs.”

ASU also contends that “ASU’s execution of a contract with the Bureau is necessary for us to demonstrate state authorization to the United States Department of Education. Currently, California has a clear path for many higher education institutions, including private for-profit institutions and independent institutions, to meet these federal ‘state authorization’ requirements and thereby offer federal aid to their students. Because ASU, a public university, is not a private independent or for-profit institution and therefore is not within the current jurisdiction of the Bureau, students enrolling in-person at our new center in Los Angeles cannot receive federal financial aid, including Pell Grants, until this legislation is enacted. For our students, as for any student, access to federal aid is a critical support as they work to achieve their educational goals.”

Prior legislation. SB 802 (Roth), Chapter 552, Statutes of 2021, extends the sunset date for the Bureau for Private Postsecondary Education (BPPE) until January 1, 2023 and makes additional technical changes, statutory improvements, and policy reforms in response to issues raised during the BPPE’s sunset review oversight process.

AB 70 (Berman), Chapter 153, Statutes of 2020, prohibits the Bureau from approving an exemption or handling complaints for a nonprofit institution that the AG determines does not meet specified criteria of a nonprofit corporation. The BPPE should inform the Committees about efforts being undertaken with the Office of the Attorney General to implement this law.

AB 1340 (Chiu), Chapter 519, Statutes of 2019, requires the Bureau to collect loan data for all graduates and reconcile the information with wage data from Employment Development Department (EDD). The BPPE would be required to post a Labor Market report of institutions and programs, on the BPPE website. At minimum, the report would include loan and income statistics at two and five years from graduation. The BPPE would also share data with EDD for the federal Workforce Innovation and Opportunity Act compliance.

AB 1344 (Bauer-Kahan), Chapter 520, Statutes of 2019, requires that out-of-state institutions registering with the BPPE, either at the time of registration, or within 30 days if currently

registered, to notify the BPPE if specific actions are taken against the institution. Currently registered institutions will be required to submit a written statement as to why they should be allowed to continue enrolling California students. This bill allows the BPPE to take action against the institution based on consultation with the Attorney General.

REGISTERED SUPPORT / OPPOSITION:

Support

Arizona State University
Central City Association of Los Angeles
Los Angeles Latino Chamber of Commerce

Opposition

None on file.

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