

Date of Hearing: June 21, 2022

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

SB 1433 (Roth) – As Introduced February 18, 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.]**

**SENATE VOTE:** 36-1

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

**SUMMARY:** Modifies provisions that require the Bureau for Private Postsecondary Education (Bureau or BPPE) take enforcement actions based on the severity of an institution's violations to include the harm that results or may result to students from the institution's violations. It further expands provisions that authorize the Bureau to issue a citation to compensate students for harm to include the harm that results or may have resulted from an institution's violations.

Specifically, **this bill:**

- 1) Authorizes BPPE to include an order to compensate students for harm that resulted or may have resulted from an institution's violations in a citation.
- 2) Requires BPPE to take enforcement actions based on the severity of an institution's violations, and the harm that results or may result to students from the institution's violations.

**EXISTING LAW:**

- 1) Establishes the California Private Postsecondary Education Act of 2009 (Act) until January 1, 2022, and requires the Bureau to, among other things, review, investigate and approve private postsecondary institutions, programs and courses of instruction pursuant to the Act, and authorizes the Bureau 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 Bureau 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:**

- 1) According to the Senate Appropriations Committee, annual cost of approximately \$25.2 million (Private Postsecondary Education Administration Fund) and 109.0 positions to support the continued operation of BPPE's activities.

**COMMENTS:** *Need for the bill.* This bill is one of a number of "sunset bills" the author is sponsoring this year. This bill seeks to incorporate changes as outlined in the Senate Business,

Professions and Economic Development Committee (BPED Committee) background paper for the recent Bureau Sunset Hearing. According to the author, “this bill is necessary to make changes to the Act and the Bureau operations in order to improve oversight of private postsecondary education institutions.”

SB 1433 makes changes to address the issue that California law currently requires the Bureau to demonstrate that a student has already been harmed as the result of a school’s misconduct before it can place the school on probation or suspend or revoke the school’s license. However, this “harm requirement” has forced the Bureau to be reactive, rather than proactive, and prevents the Bureau from taking action until students can show that they have already suffered harm, which for many students is far too late and which, from a regulatory perspective, fails to minimize or eliminate future harm. Administration of Enforcement changes to the Act, as contained in this measure, will allow the Bureau to take necessary action.

*California Private Postsecondary Education Act.* The state's program for regulation of private postsecondary and vocational education institutions has historically been plagued with problems. During the late 1980's, California developed a reputation as the "diploma mill capital of the world." After numerous legislative attempts to remedy the laws and structure governing regulation of private postsecondary institutions, AB 48 (Portantino, Chapter 310, Statutes of 2009) was enacted to establish the California Private Postsecondary Education Act of 2009 (Act), which took effect January 1, 2010. The Act provided the regulatory framework for oversight of private postsecondary educational institutions operating with a physical presence in California.

The Act requires all unaccredited colleges in California to be approved by the Bureau, 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 while providing the Bureau with enforcement powers necessary to protect consumers.

In 2014, SB 1247 (Lieu, Chapter 840, Statutes of 2014) amended the Act to require degree-granting institutions to be accredited, prohibit an institution that participates in federal veterans’ aid funding from claiming an exemption from the Act, and expanded the use of Student Tuition Recovery Fund payments to cover economic loss.

The Act was subsequently amended in 2015, (SB 1192, Hill, Chapter, Statutes of 2015) to extend the Bureau sunset date until 2021. SB 1192, among other things, required an out-of-state online institution to register with and pay a fee to the Bureau, extended the sunset date for a degree-granting institution to obtain accreditation, increased certain institutional fees, and established the Office of Student Assistance and Relief to provide outreach and individualized assistance to students impacted by unlawful activities or closure of a Bureau-approved institution.

SB 802 (Roth, Chapter 552, Statutes of 2021) made various changes to the Act, including an extension until January 1, 2023. SB 802 also updated various definitions and exemption criteria, allowed the Bureau to extend deadlines by which approved institutions must be accredited according to certain conditions, and made various other changes intended to strengthen the Bureau’s role in protecting students.

*Ongoing issues.* On March 23, 2021, the Senate BPED Committee convened a joint hearing that included the Senate Education, Assembly Higher Education, and Assembly Business and Professions committees. The background paper prepared by the BPED Committee for the hearing identified 17 different issues for consideration at the hearing, including those related to student protection, licensing, exemptions, enforcement, approval, and accountability.

Additionally, as a follow-up to the sunset review report submitted to the Legislature in 2019 and in light of the one-year extension, the Bureau provided an addendum to its report with key developments and recommendations for the Legislature to consider. While some of those issues raised in the hearing were addressed in SB 802, there are still a number of remaining areas where statutory updates to the Act may be necessary.

- 1) *Sunset Extension.* This bill is intended to address or resolve many of the issues raised during the sunset process. While specific issues are still being explored, the Bureau's essential role in regulation and student advocacy and protection must be protected and extended.

*The bill should be amended to extend the sunset from January 1, 2023 to January 1, 2027.*

- 2) *Approval by Means of Accreditation.* Accredited institutions are almost automatically approved by the Bureau and not subject to the same review and approval process required for other institutions that operate in this state. Accreditation provides a baseline measure of institutional quality, but with federal accreditation rules and standards weakened, and in light of significant scrutiny of accrediting agencies, questions remain as to whether accreditation alone is enough, as well as whether the Bureau educational quality review adds value and assists students in making appropriate educational and training decisions when enrolling at a Bureau approved school.

*The bill should be amended to allow the Bureau to address situations where accrediting agencies lose federal recognition by the United States Department of Education, address situations where institutions lose accreditation by a recognized agency, automatically suspend approval of programs that lose approval of required licensing agencies, and terminate approvals to operate upon institutional closure and/or verification of exemption.*

- 3) *Distance Education and Out-of-State Public and Nonprofit Institutions.* The Bureau has traditionally regulated only those institutions with a "physical presence" in California. As a growing number of public and private institutions organized or incorporated outside California serve California students through online and hybrid instruction, the need for Bureau oversight has increased. The Legislature has expanded some areas of oversight, providing a registration process for out-of-state for-profit institutions and requiring their participation in the STRF. Public and nonprofit institutions, however, remain outside of the Bureau's purview and increasingly, public institutions are adopting methods of program delivery modeled after for-profit institutions. Still, it has been challenging for the Bureau to define a line of when an institution has a physical presence, and when it does not. Education Code section 94858 defines a "Private Postsecondary Educational Institution" as a private entity with a physical presence in this state that offers postsecondary education to the public for an institutional charge. The statute, however, is silent on what constitutes a physical presence.

*The bill should be amended to stipulate that an institution is considered to have a physical presence in California if it offers instruction or core academic support services from a physical location owned, operated, or rented by or on behalf of the institution in California. The bill should also be amended to authorize the Bureau to establish, through regulation, thresholds of California-based activity that constitute limited physical presence, with those institutions subject to registration requirements defined through regulation, and minimal levels of California-based activity that do not require institutional approval by nor registration with the Bureau.*

*The bill should also be amended to provide a process for out-of-state public institutions to apply for an approval to operate from the Bureau, provided an approved public institution of higher education is subject to the provisions of, and the regulations adopted pursuant to, the Act in the same manner and to the same extent as if it was a private postsecondary educational institution, including the provisions related to fees, annual reports, compliance inspections, and the STRF.*

*The bill should be amended to clarify and focus registration requirements for out-of-state institutions.*

- 4) *Government Investigations.* Current law requires that Bureau-approved institutions report to the Bureau when they are under investigation by certain government entities. However, this reporting requirement excludes some governmental agencies and oversight entities the Bureau interacts with regularly, including state agencies and city and county district attorney's offices that are conducting criminal investigations and/or pursuing criminal charges.

*The bill should be amended to expand requirements for institutions to notify the Bureau regarding government investigations from any government agency. The bill should also be amended to authorize allow virtual compliance inspections by the Bureau, when appropriate.*

- 5) *Gaps in Prohibited Business Practices.* Through its role in investigating complaints filed by private postsecondary education students, the Bureau has encountered situations in which students are being harmed by institutional conduct that is generally prohibited by California law outside of the Private Postsecondary Education Act. However, the Bureau has limited ability to independently discipline institutions for these same violations. Examples include situations when an institution misrepresents itself to the public, gathers personal information from prospective students under false pretexts, or transcripts are withheld due to debt owed.

*The bill should be amended to expand the prohibited business practices in the Act for which the Bureau is appropriately positioned to address, to include acting in any manner to commit fraud against or make an untrue or misleading statement to a student or prospective student under the institution's authority or the pretense or appearance of the institution's authority.*

*The bill should also be amended to specify that the maximum fine for unlicensed activity (\$100,000) is in addition to the fines for other violations and any refunds.*

- 6) *Office of Student Assistance and Relief (OSAR).* As noted by the Bureau in their 2022 Sunset Report Addendum, OSAR is tasked with outreach to students adversely impacted by

institutional closures yet lack of awareness about OSAR can inhibit its effectiveness at reaching harmed students.

*The bill should be amended to require institutions to add information about OSAR, its services, its website, and contact information to required school catalog disclosures.*

- 7) *Financing Agreements.* It is imperative that students who attended institutions that was operating with required registration be granted the ability to get relief from financing agreements. As requested by the Bureau in the 2022 Enforcement Recommendations:

*The bill should be amended to authorize the Bureau to declare financing arrangements entered into when the institution was operating without required registration as void and subject to institutional refund pursuant to Bureau order for schools for institutions subject to Bureau approval requirements and for out-of-state institutions subject to Bureau registration requirements.*

- 8) *Individual Responsibility.* As noted by the Bureau in their 2022 Sunset Report Addendum, unlike other boards and bureaus, the Bureau licenses, oversees, and disciplines institutions yet has very limited ability to hold accountable individuals who own, control, or manage institutions engaged in violative conduct.

*The bill should be amended to authorize the Bureau to deny an application for an approval to operate of institutions that would be owned by, have persons in control, or employ institution managers that had knowledge of, should have known, or knowingly participated in any conduct that was the cause for revocation or unmitigated discipline at another institution.*

- 9) *Exemptions.* The Act contains a number of exemptions for a variety of types of institutions. The Legislature is continuously asked to expand exemptions through legislative proposals that aim to carve out one specific school or one type of educational entity.

*The author may wish to continue discussing the appropriateness of exemptions and may wish to make relevant statutory updates that balance student interests with the regulatory approach contained in the Act that may benefit from providing flexibility to some institutions based on specified criteria.*

- 10) *Funding.* The Bureau's main source of revenue is an annual institution fee, based on a percentage of annual revenue reported by licensed institutions. Currently, the Bureau's fund has a significant structural imbalance - annual expenditures exceed annual revenue intake, which draws down the balance of the fund. The fund's balance has been declining over the last several years. The Department of Consumer Affairs (DCA) states, "this revenue source is unconventional when compared to other DCA programs, due to it being based on an institution's profitability, which can lead to unpredictable revenue collections year to year based on a multitude of economic factors including school closures." The BPED background paper suggested that in evaluating proposed fee levels, the Committees should consider the scope of the Bureau's activities and whether priorities align to Legislative intent. The background paper also requested the Bureau and DCA to inform the Committees about efficiencies that have been undertaken to ensure the Bureau is doing necessary work, including reorganization, staffing adjustments, and efforts to achieve cost savings.

*The author may wish to update the Bureau revenue authority to ensure stability based on broad stakeholder engagement and an evaluation of the Bureau's mission and opportunities to promote student success.*

- 11) *Income Share Agreements.* An Income Share Agreement (ISA) is a contract in which a person agrees to pay a fixed percentage of their income for a defined length of time, in exchange for up-front funding or services. In higher education, this contract is typically between a student and institution. An ISA differs from a loan in how the amount owed is calculated. In a loan, the individual makes payments based on an interest rate until their principal balance is reduced to zero. With an ISA, the individual pays a percentage of their income for a set period of time regardless of the total amount paid. There is no outstanding "balance." If implemented responsibly, this education funding mechanism could be a useful option for some students but may warrant greater oversight to protect consumers from bad actors or from unintentionally overly committing their repayment obligation. Recent action by the California Department of Financial Protection and Innovation subjects income share agreements services to state licensing and regulation. Effectively, this treats ISAs like student loans to protect student borrowers and provide greater oversight of the industry.

*The author may wish to consider whether statutory changes related to the ISA model are necessary within the Act to complement these efforts and provide clarity, if necessary, around how to treat a student's outstanding requirement to pay in the event of a school closure.*

- 12) *Minimum Operating Standards.* Existing statutory authority requires the Bureau to adopt by regulation minimum operating standards for institutions. Among other requirements, the Bureau must ensure that the content of each educational program can achieve its stated objective, the facilities, instructional equipment, and that materials are sufficient to enable students to achieve the educational program's goals; the institution maintains a withdrawal policy and provides refunds; the director, administrators, and faculty are properly qualified; and that adequate records and standard transcripts are maintained and are available to students. The sunset review oversight discussions asked whether the Bureau should be authorized to adopt additional minimum operating standards in the following areas:
- a) The amount the institutions charge for their educational programs to ensure the amount is fair and reasonable as compared with the average cost of similar educational programs offered by the other private postsecondary education institutions and as compared to expected student earnings upon graduation;
  - b) Ensure an acceptable number of students who enroll in the institution's educational programs complete those programs, obtain licensure, and obtain gainful employment in the field of training, as applicable;
  - c) Ensure the institution periodically evaluates its educational program offerings and institutional effectiveness and takes active measures to make improvements where warranted;
  - d) Provide an acceptable level of quality and academic rigor of an institution's educational programs;

- e) Establish a market indicator as to whether programs are of sufficient value by requiring a specific amount of revenues to come from non-publicly funded sources; and,
- f) Ensure that California students qualify for state certification, licensure, registration, or other recognized regulation upon completion of a program.

*The author may wish to consider updating the Act moving forward to increase Bureau oversight opportunities according to the above.*

13) *Student Tuition Recovery Fund.* Under current law, when the STRF balance exceeds \$25 million, the Bureau is required to temporarily stop collecting from institutions and when the STRF balance drops below \$20 million, the Bureau is to resume collecting. In 2015, the STRF fee was fifty cents per every one thousand dollars in institutional charges assessed on a student, the funds exceeded the \$25 million threshold, and the Bureau stopped collecting and amended the regulations to a collection rate of zero. In February 2021, the STRF dropped below the \$20 million threshold and the Bureau resumed collection of the fifty cents per thousand dollars in March 2021. According to the Bureau, notifications were sent to the institutions on this fee change. The Bureau also provided institutions notification at the December 2020 and February 2021 Advisory Committee Meetings that the assessment would be effective very shortly. However, some schools were unable to update enrollment agreements in time to reflect the additional charge and were out of compliance with the Act.

*The author may wish to consider requiring the Bureau to provide an adjustment period when STRF assessments change.*

*Committee comments.* Amendments to this bill will be taken in the Assembly Committee on Business and Professions in order to ensure that legislative deadlines are addressed.

*Prior legislation.* SB 802 (Roth) Chapter 552, Statutes of 2021, made various changes to the Act, including an extension until January 1, 2023. SB 802 also updated various definitions and exemption criteria, allowed the Bureau to extend deadlines by which approved institutions must be accredited according to certain conditions, and made various other changes intended to strengthen the Bureau's role in protecting students.

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.

AB 1346 (Medina), Chapter 521, Statutes of 2019, expands the definition of “economic loss” for the purposes of recovery through the STRF to include all amounts paid to the institution and amounts paid in connection with attending the institution. The bill also expands eligibility for students affected by the closure of Corinthian.

SB 1348 (Pan), Chapter 901, Statutes of 2018, requires California Community Colleges and Private Postsecondary institutions overseen by the BPPE that have educational programs that offer certificates or degrees related to allied health professionals to include specific information regarding clinical training with the Annual Report.

SB 1192 (Hill), Chapter 593, Statutes of 2016, extended the sunset for the BPPE and made numerous changes, including:

- 1) Creation of an out-of-state registration system to allow California students in distance education to be eligible for STRF;
- 2) Removal of exemptions for the “good school exemption” and any schools participation in federal Title 38 veterans’ financial aid;
- 3) Reduction of the period for verification of exemption to two years from an indefinite Verification;
- 4) Elimination of two positions from the BPPE’s advisory committee;
- 5) Granting to the BPPE the discretionary authority to extend the timelines for the accreditation requirement for degree programs;
- 6) Provision of authority for the BPPE to create an “inactive status;”
- 7) Addition of requirements for disclosures regarding both voluntary and required Licensure;
- 8) Changes to STRF eligibility and requirements;
- 9) Changes to the BPPE’s annual fee rate and structure;
- 10) Modification of law to allow evidence from an inspection to be used as part of an enforcement action;
- 11) Creation of a reporting requirement from schools under investigation by “oversight Authorities;”
- 12) Increase of the fine for operating without approval from \$50,000 to \$100,000;



13) Creation of OSAR; and,

14) Extending of the BPPE's sunset date to January 1, 2021.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

The Institute for College Access and Success

**Opposition**

None on file

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