

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1342 (Low) – As Introduced February 22, 2019

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

**SUBJECT:** Nonprofit corporations: private postsecondary educational institutions: sale of assets: Attorney General approval

**SUMMARY:** Requires a nonprofit corporation that operates or controls a private postsecondary educational institution to obtain the Attorney General's (AG) consent before entering into certain agreements or transactions, including an agreement or transaction to sell or convey its assets to, or to transfer control, responsibility, or governance of a material amount of its assets to, a for-profit corporation or mutual benefit corporation. Specifically, **this bill:**

- 1) Requires any nonprofit corporation, as specified, that operates or controls a private postsecondary educational institution, as specified, to provide written notice to, and to obtain the written consent of, the AG before entering into any agreement or transaction to do either of the following:
  - a) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity when a material amount of the assets of the nonprofit corporation are involved in the agreement or transaction; and,
  - b) Transfer control, responsibility, or governance of a material amount of the assets or operations of the nonprofit corporation to any for-profit corporation or entity or to any mutual benefit corporation or entity.
- 2) Specifies that the substitution of a new corporate member or members that transfers the control of, responsibility for, or governance of the nonprofit corporation shall be deemed a transfer for purposes of the article established in this legislation. The substitution of one or more members of the governing body, or any arrangement, written or oral, that would transfer voting control of the members of the governing body, shall also be deemed a transfer for purposes of this article.
- 3) Requires that the notice provided to the AG contain the information the AG determines is required. The notice, including any other information provided to the AG, as specified, and that is in the public file, shall be made available by the AG to the public in written form as soon as is practicable after it is received by the AG.
- 4) Requires that the notice provided to the AG be provided to the Bureau for Private Postsecondary Education (BPPE).
- 5) Specifies that the above shall not apply to a nonprofit corporation if the agreement or transaction is in the usual and regular course of its activities or if the AG has given the corporation a written waiver of this section as to the proposed agreement or transaction.

- 6) Specifies that the above shall apply to any foreign nonprofit corporation that operates or controls a private postsecondary educational institution or an institution that provides similar educational services, regardless of whether it is currently operating or providing educational services.
- 7) Specifies that, within 90 days of the receipt of the written notice required by Section 5940, the AG shall notify the public benefit corporation in writing of the decision to consent to, give conditional consent to, or not consent to the agreement or transaction. The AG may extend this period for one additional 45-day period if any of the following conditions are satisfied:
  - a) The extension is necessary to obtain information, as specified;
  - b) The proposed agreement or transaction is substantially modified after the first public meeting conducted by the AG, as specified; and,
  - c) The proposed agreement or transaction involves a private postsecondary educational institution with a multifacility system of campuses serving multiple communities, rather than a single campus.
- 8) Requires that, before issuing any written decision, or giving a written waiver, the AG shall conduct one or more public meetings, one of which shall be in the county in which the private postsecondary educational institution is located, to hear comments from interested parties. At least 14 days before conducting the public meeting, the AG shall provide written notice of the time and place of the meeting through publication in one or more newspapers of general circulation in the affected community and to the board of supervisors of the county in which the private postsecondary educational institution is located. If a substantive change in the proposed agreement or transaction is submitted to the AG after the initial public meeting, the AG may conduct an additional public meeting to hear comments from interested parties with respect to that change.
- 9) Specifies that the AG shall have discretion to consent to, give conditional consent to, or not consent to any agreement or transaction, as specified. In making the determination, the AG shall consider any factors that the AG deems relevant, including, but not limited to, whether any of the following factors apply:
  - a) The terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit corporation;
  - b) The agreement or transaction will result in inurement to any private person or entity;
  - c) Any agreement or transaction that is subject to this article is at fair market value. In this regard, "fair market value" means the most likely price that the assets being sold would bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently, knowledgeably, and in their own best interest, and a reasonable time being allowed for exposure in the open market;
  - d) The market value has been manipulated by the actions of the parties in a manner that causes the value of the assets to decrease;

- e) The proposed use of the proceeds from the agreement or transaction is consistent with the charitable trust on which the assets are held by the educational institution;
- f) The agreement or transaction involves or constitutes any breach of trust;
- g) The AG has been provided with sufficient information and data by the nonprofit corporation to evaluate adequately the agreement or transaction or the effects thereof on the public;
- h) The agreement or transaction may create a significant effect on the availability or accessibility of educational services to the affected community; and,
- i) The proposed agreement or transaction is in the public interest.

10) Specifies that the AG may do the following, as specified:

- a) Contract with, consult, and receive advice from any state agency on those terms and conditions that the AG deems appropriate, including the BPPE; and
- b) In the AG's discretion, contract with experts or consultants to assist in reviewing the proposed agreement or transaction;

11) Requires that contract costs pursuant to "10" above shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation. Any contract entered into, as specified, shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The selling nonprofit corporation, upon request, shall pay the AG promptly for all contract costs.

12) Establishes that the AG shall be entitled to reimbursement for all actual and reasonable direct costs incurred in reviewing, evaluating, and making the determination referred to above, including administrative costs. The selling nonprofit corporation shall promptly pay the AG, upon request, for all of those costs.

13) In order to effectively monitor ongoing compliance with the terms and conditions of any sale or transfer of assets as specified, including, but not limited to, the ongoing use of the charitable assets in a manner consistent with the trust pursuant to which they are held, the AG may, in their sole discretion, contract with experts and consultants to assist in this regard.

- a) Contract costs shall not exceed an amount that is reasonable and necessary to conduct the review and evaluation. Any contract entered into under this section shall be on a noncompetitive bid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. The selling nonprofit corporation shall pay the AG promptly for all contract costs; and,
- b) The AG shall be entitled to reimbursement from either the selling or the acquiring nonprofit corporation, depending upon which one the burden of compliance falls, for all actual, reasonable, and direct costs incurred in monitoring ongoing compliance with the terms and conditions of the sale or transfer of assets, including contract and administrative costs. The AG shall be entitled to this reimbursement for a period of time not to exceed two years after any time period specified in the terms or conditions of sale

or transfer of assets. The AG may bill either the selling or the acquiring corporation and the corporation billed by the AG shall promptly pay for all of those costs.

- 14) Authorizes the AG to adopt regulations to implement the article created in AB 1342.
- 15) Authorizes the AG to enforce conditions imposed on the AG's consent to an agreement or transaction, as specified, to the fullest extent provided by law. In addition to any legal remedies the AG may have, the AG shall be entitled to specific performance, injunctive relief, and other equitable remedies a court deems appropriate for breach of any of the conditions and shall be entitled to recover its attorney's fees and costs incurred in remedying each violation.
- 16) The conditions imposed on the AG's consent to an agreement or transaction may include, but are not limited to:
  - a) A transfer of assets from the proceeds of the sale or transfer to the Student Tuition Recovery Fund, established in Section 94923 of the Education Code;
  - b) A requirement that the corporation file a surety bond to provide recovery to students who were enrolled at the private postsecondary educational institution upon subsequent closure of the institution;
  - c) Any conditions deemed by the AG to be necessary to ensure that access to certain educational courses or vocational instruction intended to be promoted by the charitable trust is not substantially and unreasonably impeded.

#### **EXISTING LAW:**

- 1) Requires a nonprofit corporation, as defined, that operates or controls a health facility, as defined, or operates or controls a facility that provides similar health care to provide written notice to, and obtain the written consent of, the AG prior to selling or otherwise disposing of a material amount of its assets to a for-profit corporation or entity, to a mutual benefit corporation or entity, or to another nonprofit corporation or entity. Existing law also provides that the AG has discretion to give consent to, give conditional consent to, or to not consent to, the agreement or transaction and requires the AG to consider any factors deemed relevant, including, but not limited to, whether the terms are fair and reasonable. (CORP Section 5914, et. seq.)
- 2) Establishes the California Private Postsecondary Education Act of 2009 (Act) until January 1, 2021, and requires BPPE, within the Department of Consumer Affairs (DCA) to, in part, 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 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 STRF to provide refunds to students affected by the possible closure of an institution/school. (Education Code (EDC) Section 94800 et. seq.)

**FISCAL EFFECT:** Unknown.

**COMMENTS:** Need for the bill. According to the author, “When a nonprofit college is sold to a for-profit company in California, there are currently very few protections in place to prevent the sale from reducing a community’s access to quality higher education. This is of particular concern given the controversial history of for-profit companies taking over successful nonprofit colleges.”

“AB 1342 ensures that nonprofit colleges are treated with similar community value as health facilities by providing for the same review by the AG when a nonprofit school is sold and turned into a for-profit institution. The AG’s approval would be required for any proposed sale, and conditions could be placed on that approval to ensure that the community’s interests are not jeopardized by the sale.”

*Background.* There are several examples of for-profit companies purchasing nonprofit colleges. In 2005, Bridgepoint Education, a for-profit higher education company, purchased the Franciscan University of the Prairies – a “brick and mortar” college located in Clinton, Iowa.

Franciscan University of the Prairies, which was founded in 1918 and had previously been known as Mount St. Clare College, maintained an enrollment of 500 students and was sponsored by the Roman Catholic Sisters of St. Francis. Renamed as Ashford University, Bridgepoint was able to utilize the existing accreditation from the North Central Association of Colleges and Schools. Bridgepoint noted to Inside Higher Ed in 2005 that they had “been seeking a university that we could acquire,” and noted that Bridgepoint was “committed absolutely” to staying in Clinton, Iowa.

Bridgepoint went on to close the Iowa campus in May of 2016. At the time, 99% percent of the 55,300 students at Bridgepoint-owned Ashford and University of the Rockies were taking classes solely online.

Heald College was originally founded in 1863 as a nonprofit headquartered in the Bay Area, growing to establish a series of successful campuses across the state. In 2007, Heald was bought by a private investor group and eventually made part of the for-profit college chain Corinthian Colleges, Inc (CCI).

On April 27, 2015, Heald shut down, along with CCI institutions like Everest College and WyoTech. In 2016 the AG secured a default judgment against CCI. In the judgment, the Court ordered restitution on behalf of students in the amount of \$820 million and civil penalties totaling \$350 million for a total of over \$1.1 billion in monetary relief.

The final court judgement found that:

- 1) From at least 2009 until the closure of its schools, many of CCI’s representations and advertisements relating to job placement were untrue and/or misleading. In numerous cases, the placement rate data in CCI’s files show that the actual placement rate was lower than the advertised rate. The placement rates that CCI published were systematically false, misleading, erroneous and/or failed to comply with applicable state and federal regulations and/or accreditor standards. In addition, many of these published placement rates could not be substantiated using CCI’s own internal placement data and files.

- 2) CCI did not offer ultrasound technician programs, x-ray technician programs, radiology technician programs, or dialysis technician programs in California. Despite this fact, from at least 2010 until the filing of this action, CCI ran millions of ads stating that they did offer those programs. CCI executives knew that these false ads misled students.
- 3) CCI unlawfully used the official seals of the US Army, the US Navy, the US Air Force, the US Marine Corps, and the US Coast Guard, respectively.
- 4) CCI's enrollment agreements contained unlawful clauses.
- 5) CCI engaged in unlawful debt collection.
- 6) CCI failed to disclose its role in the Genesis Private Student Loan Program.
- 7) CCI misrepresented the transferability of credits.
- 8) CCI misrepresented its financial stability to students.

*Committee comments.* The policy proposed AB 1342 closely parallels an existing process required for the sale of nonprofit hospitals to for-profit corporations. Such nonprofit to for-profit transactions accounted for 1330 hours of staff time in the AG's office in 2013.

*Arguments in support.* A coalition of student, veteran, civil rights, and higher education advocates jointly wrote that, "There are currently very few limitations on the sale of a nonprofit college to a for-profit company in California, and too few protections to prevent the sale from reducing students' access to quality higher education. This is of particular concern given California's troubled history with for-profit companies taking over successful nonprofit institutions."

"AB 1342 ensures that nonprofit colleges are treated with similar consideration as health facilities, by providing for the same review by the AG when a nonprofit school is sold and turned into a for-profit institution. The AG's approval would be required for any proposed sale, and conditions could be placed on that approval to ensure that the community's interests are not jeopardized by the sale. In this way, the community value of the school can be preserved, regardless of the institution's owner."

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Conference of the American Association of University Professors  
California Low-Income Consumer Coalition  
Center For Public Interest Law  
Children's Advocacy Institute  
Consumer Federation of California  
Consumer Reports Advocacy  
Housing and Economic Rights Advocates  
Public Advocates, Inc.  
Public Counsel

Public Law Center  
SEIU California  
The Century Foundation  
The Institute for College Access and Success  
Veterans Education Success  
Veterans Legal Clinic

**Opposition**

Ashford University

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