

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1343 (Eggman) – As Amended April 1, 2019

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

**SUMMARY:** Prohibits, beginning January 1, 2021, a private postsecondary educational institution from enrolling residents of California, unless the institution meets either the requirement that no more than 85% of the institution's tuition revenue, determined as specified, is derived from student financial aid and loans, or not less than 50% of the institution's revenue is dedicated to student instruction. Specifically, **this bill:**

- 1) Establishes that a private postsecondary educational institution shall not enroll residents of California, except those already enrolled on or before January 1, 2021, in any program unless the institution meets one of the following:
  - a) No more than 85 percent of the institution's tuition revenue, as documented in the most recent audited financial statement for a fiscal year within the prior two years, is derived from student financial aid provided by a federal or state agency, and from loans arranged or guaranteed by a federal or state agency; or,
  - b) Not less than 50 percent of the institution's revenue is dedicated to student instruction.
- 2) Establishes that the above requirements do not apply to an institution with annual revenues, in the most recent audited financial statement for a fiscal year within the prior two years, of less than \$2.5 million.
- 3) Establishes that submission to the Bureau for Private Postsecondary Education (BPPE) of an audit or audited financial statement by a certified public accountant that is lawfully permitted to practice in California attesting that an institution is in compliance with the provision listed above presumptively constitutes proof of compliance with this section. This language shall not be construed as limiting the bureau's authority to investigate and take appropriate action if the bureau concludes that an institution is not in compliance with this section, notwithstanding the attestation.
- 4) Establishes the following definitions:
  - a) "Loans" means any contract for future payment, whether or not conditioned on future income or other factors;
  - b) "Tuition revenues" means revenues from all tuition and fees assessed against students net refunds; and,

- c) “Instruction” means the communication of knowledge or skills directly to students as described under the federal Integrated Postsecondary Education Data System (IPEDS) as it existed on January 1, 2019, established pursuant to the federal Higher Education Act of 1965 and any amendments to that act.

5) Make various findings and declarations.

**EXISTING LAW:**

- 1) 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 U.S. 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 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.)
- 2) Requires that 50% of each community college district’s current expense of education, as defined, be expended for payment of salaries of classroom instructors, as defined. (EDC Section 84362)
- 3) Specifies that, in the case of a proprietary institution of higher education, such institution will derive not less than 10 percent of such institution's revenues from sources other than funds provided, as defined. (20 U.S. Code Section 1094(a)(24))

**FISCAL EFFECT:** Unknown.

**COMMENTS:** *Need for the bill.* The author indicated that the purpose of AB 1343 is to protect students from predatory school programs and to protect from wasteful spending on education using taxpayer money. The author contends that the 90/10 rule (see below) been weakened over time, and a loophole exists that allows predatory programs to target veterans and Servicemembers. AB 1343 will close this loophole in California by requiring no more than 85 percent of a for-profit institution’s tuition revenue can be derived from student financial aid provided by a federal or state agency, and from loans arranged or guaranteed by a federal or state agency – eliminating revenue sources that are currently open for exploitation under federal law.

*Background.* An 85 percent cap on revenue at for-profit schools from federal Title IV student aid funds was enacted in 1992 to address significant default rates by students attending such institutions. In 1998, the cap was raised to 90 percent, resulting in the so-called 90/10 rule. The idea behind the Title IV revenue cap was a market viability test: that taxpayers should not prop up low-quality schools that could not survive in the open market. Institutions offering a quality education at a competitive price should be able to attract at least 10 percent of their revenue from employers, scholarship providers, or students who are willing to pay the tuition.

In 2009, Congressional staff told Bloomberg News that GI Bill and DOD funds were not included by Congressional staff in the 1992 cap on Title IV revenue because there was no

generous GI Bill at the time and, as a result, for-profit colleges were not yet aggressively targeting military students.

The 85 percent cap, which subsequently became a 90 percent cap, was modeled after the 85/15 requirement enacted by the 1952 Korean War era GI Bill. While the 1992 rule focused on revenue, the 85/15 rule requires the U.S. Veteran's Administration (USVA) to stop the enrollment-approval process when more than 85 percent of the students enrolled in an approved program have all or part of their tuition, fees, or other charges paid for by the educational institution or the USVA. As chronicled in a recent Century Foundation report, USVA's 85/15 rule was a response to the repeated targeting of veterans by proprietary schools using aggressive and deceptive recruiting tactics.

Following the enactment of the post-WWII GI Bill, "fly-by-night" proprietary schools proliferated. In a special message to Congress in 1950, President Truman noted that "[I]n a good many instances veterans have been trained for occupations for which they are not suited or for occupations in which they will be unable to find jobs when they finish their training." Truman's statement followed a 200-page report by VA which found "irregularity or questionable practices" at the majority of proprietary schools receiving GI Bill funds. Two other reports released in 1952 reached similar conclusions. First, the U.S. General Accounting Office found that proprietary schools were targeting veterans with "extensive advertising campaigns, which were often misleading and laden with extravagant, unjustifiable claims . . . conducted for the express purpose of attracting veterans." Second, a House Select Committee report concluded that "exploitation by private schools has been widespread" and that there was "no doubt that hundreds of millions of dollars [had] been frittered away on worthless training."

Because of the 90/10 loophole, many for-profit colleges target veterans and service members with aggressive and deceptive recruiting to collect as much GI Bill and DOD revenue as possible. For every dollar a for-profit school receives from the GI Bill or DOD, that school can receive \$9 more from federal student aid funds. In 2011, Holly Petraeus, then the Assistant Director for Service Member Affairs at the Consumer Financial Protection Bureau (CFPB), wrote that this loophole "gives for-profit colleges an incentive to see service members as nothing more than dollar signs in uniform, and to use aggressive marketing to draw them in."

*Arguments in support.* A coalition of veterans and military service organizations wrote that "Veterans and military service organizations nationwide are calling for the closure of the 90/10 loophole. By exploiting this loophole, for-profit colleges count GI Bill benefits as private funds, offsetting the 90 percent cap they otherwise face on their access to federal student aid – an accounting practice that nearly two dozen state attorneys general have said 'violates the intent of the law.'"

"The impact on veterans is real: Thousands of veterans have filed complaints with the US Department of Veterans Affairs, including many from California. Taxpayers also suffer. According to the US Education Department, hundreds of for-profit schools are almost entirely dependent on federal revenue, and, if the 90/10 loophole were closed, they would be in violation of the federal cap. Taxpayers, in other words, are propping up otherwise failing schools."

The Century Foundation writes that "...hoarding financial aid and enrolling only federally-aided students is largely a for-profit phenomenon. According to new research from the Brookings Institution, more than 97 percent of public and nonprofit institutions would comply with a

version of the 90/10 rule that included all types of federal aid, compared to only 82 percent of for-profit institutions. Further, legitimate nonprofit schools must commit all of their revenues to education, making aid hoarding less likely to result in poor value for the student.”

“Adopting a California 85/15 rule, as proposed by AB 1343, will help better align the actions of colleges with the needs of students: quality programs that prepare students for good jobs. While the 8/15 requirement would be a good policy on its own, AB 1343 takes the additional step of providing schools with a second option. If a school spends a bare majority of its tuition revenue on instruction of enrolled students, then the school does not need to meet the 15 percent requirement.”

“Spending on instruction is strongly linked to college completion, career success, and student loan repayment. The more resources spent per student, the more likely the student is to complete college within a shorter period of time. The 50 percent requirement would provide an incentive to colleges to reduce spending in other categories - those that fall outside of supporting student success - that contribute to overcharging students. Because instructional spending is a fairly clean measure that is currently tracked by the federal government, it serves a good basic indicator of how much of a student’s tuition funds go directly into the student’s education. In the future, California could consider a higher requirement that would incorporate student support services, a category that is currently not well tracked in federal data.”

*Arguments in opposition.* The Enlisted Association of the National Guard of the United States (EANGUS) wrote that, “...this legislation is detrimental to the members of EANGUS and the Soldiers and Airmen it represents. It restricts educational choice based on past performance of non-Veterans and is a step in the wrong direction. If enacted, the legislation would limit Student Veterans’ ability to use their benefits at a school of their choice, since schools that are approved by regional and nationally recognized accrediting bodies that meet all the necessary federal requirements would be forced to turn away Student Veterans. Legal analysis indicates that a reviewing court likely would view California’s legislation as undermining the purposes and objectives of Congress in offering educational benefits to veterans—which purposes include extending the benefits of higher education to men and women who otherwise might not be able to afford it, restoring lost educational opportunities to veterans, and aiding in the recruitment and retention of personnel for the All-Volunteer Force—a court would probably hold that California’s proposed legislation conflicts with federal law.”

The University of Phoenix (UOPX) wrote that, “...student veterans have a right to utilize their earned benefits as they see fit and counting these benefits as financial aid mis-categorizes and, therefore, misappropriates the meaning of these earned benefits. Moreover, the proposed changes to the current 90/10 rule would harm veteran students, in that, not only will their school choices become fewer, in a scenario where 85/15...would render ceasing of UOPX operations in California the proposed changes to the current rule would eliminate an institution that has historically been a resource for veteran students and their families’ specific educational and transitional needs. Not only would this measure severely curtail high-quality, accredited educational opportunities, but to the extent that there are not sufficient options available, these veterans would also lose critical living expenses.”

“Lastly, it must be noted that as drafted the bill would prohibit institutions that are in full compliance with federal law, as it exists today, from enrolling any additional students effective January 1, 2021, based on a retroactive application of the new 85/15 operating requirements.

Specifically, AB 1343 would establish new requirements for private postsecondary institutions effective January 1, 2020 when the bill takes effect, but also provides that if said institutions did not meet those requirements effective January 1, 2019 when they were not in existence, then they must cease enrollment in 2021. Institutions of higher education cannot retroactively disenroll based on how they paid tuition.”

*Committee comments.* Committee staff recommends the following amendments to clarify the provisions of AB 1443:

- 1) Strike the current definition of “Instruction” detailed in 94918.5(a)(3).
- 2) Require the BPPE to promulgate regulations that define “Instruction” for the purposes of the provisions of this bill by January 1, 2021 that take into consideration the IPEDS definition as it existed on January 1, 2019 and the current provisions of EDC Section 84362.
- 3) Implement the provisions of this bill on a rolling timeline, where cohorts can only be assessed following the implementation of the regulations referenced above.
- 4) Amend 94918.5(b)(2) to read “Not less than 50 percent of the institution’s tuition revenue is dedicated to student instruction.”

*Exemption of certain institutions.* AB 1343 specifies that the provisions of this bill do not apply to an institution with annual revenues below \$2.5 million dollars. The Legislative Analyst’s Office provided an assessment of for-profit revenue based on reporting from the USDE Office of Federal Student Aid. The total annual revenue for for-profit institutions for the fiscal year ending July 2016-July 2017 is detailed below:

|                 |                 |
|-----------------|-----------------|
| Lowest value    | \$25,478        |
| 25th percentile | 652,079         |
| Median          | 1,623,085       |
| 75th percentile | 4,539,281       |
| Highest value   | \$1,525,187,000 |

Nationally, 62 percent of for-profit schools have annual revenues of less than \$2.5 million.

**REGISTERED SUPPORT / OPPOSITION:**

**Support**

Air Force Sergeants Association  
 Air Force Women Officers Associated  
 American Legion, Department of California  
 Association of the U.S. Navy  
 Blue Star Families  
 California Association of Veteran Service Agencies  
 California Conference of the American Association of University Professors  
 California Low-Income Consumer Coalition  
 Center For Public Interest Law

Center for Public Interest Law/Children's Advocacy Institute/University of San Diego  
Children's Advocacy Institute  
Consumer Federation of California  
Consumer Reports Advocacy  
High Ground Veterans Advocacy  
Housing And Economic Rights Advocates  
Iraq and Afghanistan Veterans of America  
Military Child Education Coalition  
National Military Family Association  
Non Commissioned Officers Association of the United States of America  
Public Advocates, Inc.  
Public Counsel  
Public Law Center  
SEIU California  
Student Veterans of America  
Swords To Plowshares - Vets Helping Vets  
The Century Foundation  
The Institute for College Access and Success  
The Retired Enlisted Association  
U.S. Coast Guard Chief Petty Officers Association and Enlisted Association  
Veterans Education Success  
Veterans for Common Sense  
Veterans Legal Clinic  
Vietnam Veterans of America

**Opposition**

Ashford University  
Ember Education  
Enlisted Association of the National Guard of the United States  
Professional Beauty Federation of California  
University of Phoenix  
Walden University

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