

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1344 (Bauer-Kahan) – As Amended April 2, 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 Act of 2009

SUMMARY: Requires out-of-state private postsecondary educational institutions, as of July 1, 2021, to provide the Bureau for Private Postsecondary Education (BPPE) with information regarding adverse actions upon registration and renewal. Authorizes the BPPE to place these out-of-state private postsecondary institutions on a probationary status and revoke authorization to enroll California students, as specified. Specifically, **this bill:**

- 1) Requires an out-of-state private postsecondary educational institution to register with the bureau, pay a fee as specified, and provide BPPE with all of the following information:
 - a) Evidence of accreditation;
 - b) Evidence that the institution is approved to operate in the state where the institution maintains its main administrative location;
 - c) The agent for service of process, as specified;
 - d) A copy of the institution's catalog and sample enrollment agreement;
 - e) Whether or not the institution, or a predecessor institution under substantially the same control or ownership, had its authorization or approval revoked, limited, or subject to conditions by a state or federal agency within five years prior to submitting the registration;
 - f) Whether or not the institution, or a controlling officer or investor in the institution, had been subject to any education, consumer protection, unfair business practice, fraud, or related enforcement action by a state or federal agency within five years prior to submitting the registration. If so, the institution shall provide the BPPE a copy of the operative complaint with the registration;
 - g) Whether or not the institution is under review or investigation by its accreditor or had its accreditation revoked or suspended within the five years prior to submitting the registration;
 - h) Whether or not the institution, within five years prior to submitting the registration, has settled, or been adjudged to have liability for, a civil complaint filed by a student or former student for more than two hundred fifty thousand dollars (\$250,000). The institution shall provide the bureau a copy of the complaint filed by the plaintiff and a copy of the judgment or settlement agreement for any such judgment or settlement.

- i) Any additional documentation the bureau deems necessary for the enforcement of these provisions.
- 2) Requires the registration to memorialize that the institution agrees, as a condition of its registration, to be bound by this section, and that its registration may be rejected or revoked for failure to comply with this section or upon any grounds that serve as the basis for revoking an approval for an institution to operate pursuant to this chapter. The agreement shall be signed by a responsible officer of the institution.
- 3) An institution that is registered with the BPPE and enrolls a student residing in California shall report in writing to the bureau, within 10 days, the occurrence of any of the following:
 - a) The institution, or a predecessor institution under substantially the same control or ownership, has its authorization or approval revoked, limited, or subjected to conditions by a state or federal agency;
 - b) The institution or a controlling officer or investor in the institution is subject to any education, consumer protection, unfair business practice, fraud, or related enforcement action by a state or federal agency. If so, the institution shall provide the bureau a copy of the operative complaint;
 - c) The institution is under review or investigation by its accreditor or the accreditation of the institution is revoked or suspended;
 - d) The institution settles, or is adjudged to have liability for, a civil complaint filed by a student or former student or students for more than two hundred fifty thousand dollars (\$250,000). The institution shall provide to the bureau a copy of the complaint filed by the plaintiff and a copy of the judgment or settlement agreement for any such judgment or settlement;
- 4) Requires institutions to comply with requirements of the STRF, and regulations adopted by the BPPE related to the fund, for its students residing in California.
- 5) Requires institutions to provide disclosures pursuant to the requirements for the Student Tuition Recovery Fund, and regulations adopted by the bureau related to the fund, for its students residing in California.
- 6) Upon receipt of any of the notifications following registration, the BPPE shall, within 10 days of receiving the notice, request the institution to explain in writing why the institution should be permitted to continue to enroll California residents. If the bureau, after reviewing the information submitted in response to the request and after consultation with the Attorney General, issues a written finding that there is no immediate risk to California residents from the institution continuing to enroll new students, the institution shall be permitted, pending completion of an investigation by the BPPE, to continue to enroll new students on a probationary status. The probationary status shall be communicated to enrolled students by the institution through emailed notifications and a clearly posted notification on the institution's internet website.
 - a) Any institution on probation, as specified, may have its registration revoked by the BPPE if, after further investigation, the BPPE issues a written finding that there is a substantial

- risk posed to California residents by the institution continuing to enroll California residents. If the BPPE does not issue such a finding within one year of placing the institution on probationary status, the probation shall lapse,
- b) If the BPPE, after its review of the information offered by the institution in response to the BPPE's request, as specified, and after consultation with the Attorney General, makes a written finding that there is a substantial risk posed to California residents from the institution continuing to enroll California residents, the BPPE shall revoke the institution's registration and order the institution to immediately cease the enrollment of California residents;
 - c) An institution may challenge a bureau order placing it on probation, limiting new student enrollment, or revoking registration under this subdivision through an action brought pursuant to Section 1085 of the Code of Civil Procedure. The institution shall prevail if the institution proves, by a preponderance of the evidence, that the bureau's order was arbitrary, capricious, or not based upon substantial evidence;
 - d) Establishes that nothing shall be construed as preventing the BPPE from revoking an institution's registration on any other grounds specified in the chapter. Nothing shall be construed as prohibiting or impairing the ability of an institution registered or eligible to register from applying to be an approved institution pursuant to the chapter.
- 7) Clarifies that the section shall not apply to nonpublic higher education institutions that grant undergraduate degrees, graduate degrees, or both, that are formed as nonprofit corporations, and that are accredited by an agency recognized by the United States Department of Education.
 - 8) Specifies that an out-of-state private postsecondary educational institution that fails to comply with this section is not authorized to operate in California.
 - 9) Specifies that a registration with the BPPE pursuant to this section shall be valid for five years.
 - 10) Requires the BPPE to develop a registration form through emergency regulations effective on and after July 1, 2021. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare for purposes of the Government Code. Specifies that these emergency regulations shall become law through the regular rulemaking process by January 1, 2022.
 - 11) Requires the BPPE to include on its internet website a list of institutions registered, as specified, through reasonable means and to disclose a designated email address for California residents to send a complaint to the bureau about an institution registered pursuant to this section. Complaints received through this email address shall be investigated in the same manner as complaints received by the BPPE for institutions approved to operate, as specified, but bureau enforcement in response to such complaints against institutions registered pursuant to the provision of this legislation shall be governed by the provisions detailed above in (6).

- 12) Establishes that the section established under the provisions of AB 1344 shall become operative on July 1, 2021, and that the current provisions of Education Code Section 94801.5 (detailed in Existing Law) shall remain in effect only until July 1, 2021, and as of January 1, 2022 be repealed.

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 an out-of-state private postsecondary educational institution to comply with specified requirements, including providing the bureau evidence of the institution's accreditation, evidence that the institution is approved to operate in the state where the institution maintains its main administrative location, the agent for service of process, and a copy of the institution's catalog and sample agreement. (EDC Section 94801.5)

FISCAL EFFECT: Unknown.

COMMENTS: *Need for the bill.* According to the author, "California has created consumer protections to safeguard students pursuing postsecondary education, but unfortunately these protections do not apply to all students within the state. California's history with predatory colleges has led to several existing state laws protecting students, but these protections only apply to students enrolled at an institution with a physical presence in the state. Currently, out of state schools which want to enroll students in California have to register with the BPPE, and to pay into the STRF, but the state lacks any authority to reject an institution or to revoke its registration if the state determines the institution poses a risk to California's students."

"This bill would ensure that all higher education students in California have the same protections, regardless of whether they enroll at a school physically located within California or not, and would require any institution that enrolls a student residing in California to comply with all state requirements."

State authorization. States have long had the authority to regulate institutions offering education within the state's boundaries, regardless of the modality (face-to-face, distance, etc.) being used. The approval process is part of consumer protection for learners in the state. States' regulations vary from having no regulation to having very strict requirements. Even if an institution teaches only at a distance in a state, many still expect their state process to be followed.

In 2010, the USDE issued a regulation tying an institution's ability to offer federal financial aid in a state to the institution being authorized in the student's state. The regulation, 34 CFR 600.9 (c), was subsequently vacated by federal court ruling and was therefore unenforceable.

In December of 2016, USDE released the new federal regulations for State Authorization of Post-secondary Distance Education, Foreign Locations. The effective date of this regulation was July 1, 2018. In July of 2018, however, a two year delay of the effective date of the regulation was announced. USDE proposed to amend the regulations through negotiated rulemaking. Institutions were required to remain compliant with state laws and regulations, and other effective Federal regulations for out-of-state activities of the institution.

On April 3rd, 2019, federal negotiators reached consensus on a new set of State Authorization regulations. These regulations will next be published in order to solicit public comment.

National Council for State Authorization Reciprocity Agreements (NC-SARA). Created following the promulgation of federal regulations tying financial aid to state authorization, NC-SARA established a network of regional state authorization reciprocity arrangements. States are required to demonstrate that they have a workable process for authorizing institutions, including at least the following:

- 1) A willingness to accept institutional accreditation by an accrediting body recognized by the U.S. Secretary of Education as sufficient, initial evidence of academic quality for approving institutions for participation in SARA.
- 2) A willingness to consider applications from degree-granting institutions of all sectors (public, private non-profit, and private for-profit) and approve institutions that meet SARA standards and agree to SARA processes and commitments.
- 3) For private institutions, a willingness by the state to accept an institutional federal financial responsibility rating of 1.5 (or 1.0 with justification) as sufficient financial stability to qualify for such participation.
- 4) A clearly articulated and comprehensive state process for consumer protection in regard to SARA activities, both with respect to initial institutional approval and on-going oversight, including the resolution of consumer complaints.
- 5) The designation of a “lead agency” to coordinate SARA matters for the state and provide a principal point of contact for resolution of student complaints.
- 6) An assurance by the state that it will work cooperatively with other SARA states to enable success of the initiative.

California participation in NC-SARA. California does not currently participate in NC-SARA, as is the only state to not participate. Past legislative efforts, like SB 634 (Block, 2014), were met with concerns from consumer advocacy organizations. The Institute for College Access and Success (TICAS) has been critical of NC-SARA, noting in their 2019 “Oversight of State Online Colleges” that NC-SARA has “...created an agreement among states to delegate state oversight authority to the state where the school is located, not the states where the students are located. This agreement makes it easier for colleges to enroll students from other states. However, while the NC-SARA agreement makes some exceptions (such as generally applicable laws for fraud), it also prohibits states from adopting additional protections against out-of-state online colleges.

Particularly in states with strong consumer protections, students could be left more vulnerable to predatory or low-quality colleges.”

TICAS goes on to write that, “. . . California is not currently part of NC-SARA, which means that out-of-state colleges must comply with the laws that California policymakers determine are appropriate to protect their residents. Existing requirements for out-of-state institutions need to be strengthened, but joining NC-SARA would actually preclude California from applying new or existing higher education laws to schools enrolling its residents. Given the robust array of online education opportunities available to Californians at in-state schools and the troubling outcomes at some out-of-state distance education providers, joining the current NC-SARA agreement would be unnecessary and unwise.”

Arguments in support. A coalition of student, veteran, civil rights, and higher education advocates jointly wrote in support of AB 1344, noting that, “While most online students in California are enrolled in a California community college, there are about 100,000 Californians enrolled at out-of-state institutions. The largest share of Californians enrolled online at schools in other states are at for-profit colleges where students are particularly likely to end up with debt they cannot repay. Out-of-state institutions that enroll Californians online have worse student loan repayment outcomes than California-based distance education providers. Three years after leaving college, 30 percent of borrowers from out-of-state schools enrolling Californians are paying down their debt, compared to 45 percent of student loan borrowers from California-based distance education providers. The share of borrowers who end up in default is also higher at out-of-state distance education providers than at in-state providers.”

“California’s history with predatory colleges has led to several existing state laws protecting students. These laws were crafted to ensure that students in California are protected from enrolling in poor quality programs, or programs which mislead or harm students. Unfortunately, these laws largely only currently apply to schools with a physical presence in California, and do not protect students who enroll online in programs at institutions located out of state. California took an important step in 2016 by requiring out-of-state colleges to register with the BPPE and to provide greater assurances of financial relief to students whose schools or programs have closed, but key protections have not been extended to students enrolled in these online programs. AB 1344 seeks to protect all California students, regardless of the location of the program in which they enroll.”

Arguments in opposition. Walden University is a for-profit distance-education university owned by Laureate Education, Inc. that primarily delivers educational programs online. Walden is based in Minneapolis, Minnesota and serves more than 50,000 students in the U.S., including approximately 2,500 students and 8,490 alumni in California. Walden writes that, “. . . state regulation is particularly complex for distance education institutions, and Walden writes to express concerns over the provisions to expand BPPE’s purview in AB 1344. Currently, out-of-state private postsecondary institutions must be approved and regulated by their home-states and accredited by an agency recognized by the U.S. Department of Education. Additionally, these institutions must also register with and pay fees to the Bureau. Further, out-of-state schools also provide copies of the institution’s catalog and a sample enrollment agreement to BPPE. In addition, out-of-state institutions must also comply with the requirements of the Student Tuition STRF, which protects California students enrolled at these institutions in the event of a school closure in which students are unable to complete their programs or transfer to another institution. Walden fully supports all of these existing requirements. In sum, California has already taken

significant and substantial steps to protect its students attending out-of-state institutions already, and this bill would have the unintended consequence of creating significant confusion and potential harm to the students it intendeds to protect.”

Committee comments. The committee recommends two amendments to clarify provisions of AB 1344.

The first amendment would clarify that BPPE explicitly has the authority to reject an application from an out-of-state for-profit institution based on the information received in the application. The amendment to Section 94801.5(a)(2) would read:

(2) The registration shall memorialize that the institution agrees, as a condition of its registration, to be bound by this section and that its registration may be rejected or revoked for failure to comply with this section, **based upon information provided pursuant to this section.** or upon any grounds that serve as the basis for revoking an approval for an institution to operate pursuant to this chapter. The agreement shall be signed by a responsible officer of the institution.

Committee staff also recommends that, pursuant to the reporting of information regarding a civil complaint filed by a student exceeding \$250,000 dollars, amendments be taken to narrow the scope to instances involving education, consumer protection, unfair business practices, and fraud.

Prior legislation. SB 634 (Block, 2014), would have, to the extent authorized by federal law, applied the Act to an accredited private entity with no physical presence in this state that offers and awards degrees to the public in this state by means of distance education for an institutional charge if the entity does not participate in a regional state authorization reciprocity agreement entered into or recognized by the state. The bill was held by the author in the Senate Education Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

California Association Of Veteran Service Agencies
California Conference of the American Association of University Professors
California Low-Income Consumer Coalition
Campaign for College Opportunity
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

Walden University

Analysis Prepared by: Kevin J. Powers / HIGHER ED. / (916) 319-3960