

Date of Hearing: April 9, 2019

ASSEMBLY COMMITTEE ON HIGHER EDUCATION

Jose Medina, Chair

AB 1345 (McCarty) – As Introduced February 22, 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 an institution from providing financial incentives to any person, including a student, involved in student recruitment, enrollment, continued enrollment, admission, or attendance, or involved in awarding of financial aid based on the enrollment of a student, or in the sales of any education materials, based on succeeding in those activities, as specified. Specifically, **this bill**:

- 1) Defines “financial aid” to mean any loan, grant, or award that is based on the enrollment of a student, provided by a federal or state government program, provided or arranged by the institution, or provided by or arranged by an entity to which the student was referred by the institution.
- 2) Specifies that a private postsecondary institution shall not compensate, condition a contract or any benefit under a contract with, or condition the employment of any person involved in student recruitment, enrollment, continued enrollment, admissions, or attendance, or involved in awarding financial aid based on the enrollment of a student, or in sales of any educational materials to a student by means of a commission, commission draw, bonus, quota system, or other incentive payment based in any part, directly or indirectly, on success in student recruitment, enrollment, continued enrollment, admissions, or attendance, or success in awarding financial aid based on the enrollment of a student, or in sales of any educational materials to a student.
- 3) Deletes provisions authorizing an institution will to offer to compensate a student to act as an agent of the institution with regard to the solicitation, referral, or recruitment of any person for enrollment in the institution, except that an institution may award a token gift to a student for referring an individual, provided that the gift is not in the form of money, no more than one gift is provided annually to a student, and the gift’s cost is not more than one hundred dollars (\$100).
- 4) Deletes a specific reference to the compensation of employees involved in recruitment and enrollment on the basis of commission, quota, bonus, or a similar method, and removes exemptions regarding completion and federal aid.

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) Prohibits certain types of conduct by regulated for-profit institutions, including offering to compensate a student to act as an agent of the institution for the purposes of enrollment or recruitment of students, except as specified, and compensating an employee involved in recruitment and enrollment on the basis of commission, quota, bonus, or a similar method, as specified. (EDC Section 94897)

FISCAL EFFECT: Unknown

COMMENTS: *Need for the bill.* According to the author, “Almost every abuse by the highest profile for-profits originates with high-pressure sales tactics motivated by bounties paid to salespeople for enrolling students, no matter whether the student is or is not prepared to succeed in the school. These recruiters are taught to target veterans, students of color and students from underprivileged backgrounds, and then are financial rewarded for their work based on how many students they recruit, and sometimes, the amount of tuition they get students to sign-up and pay for.”

“Commission-paid salespeople in the for-profit college setting are more likely to lie to consumers in order to get the sale. Further, non-profits such as Ashford University consistently discipline and terminate admissions counselors for failing to meet enrollment quotas according to an Attorney General complaint. Punishments enacted by managers at Ashford University include forcing admissions counselors to stand at their desks until obtaining a prospective student and dangling the key cards of terminated employees collected on a key ring in front of current employees as a reminder of their prospective fates in the event that enrollment quotas are not met.”

“California law already strives to ban kickbacks, but loopholes and exemptions have weakened the law to the point of ineffectiveness. The loopholes include permitting students to be given “token gifts” for recruiting students; having anti-kickback prohibitions apply only to employees and not to independent contractors; and relying on federal bans on such compensation. Simply deleting the loopholes and exemptions will go a long way to eliminating the front-end, admissions, financial incentives that have caused so many ruined California lives.”

Background. The Center for Responsible Lending (CRL) released their college scorecard in January of 2019. The CRL’s scorecard, an update from their 2017 State of the For-Profits project, analyzed data from the fall 2018 release of the College Scorecard by the USDE. An assessment of California undergraduates found:

- 1) 54.3% low-income enrollment at for-profit colleges, compared to 33.1% for all nonprofit undergraduate institutions in the state.

- 2) 15% African American enrollment at for-profit colleges, compared to 5.4% African Americans for all nonprofit undergraduate institutions.
- 3) 63% female enrollment compared to 54% at all nonprofit institutions in California.
- 4) 36.6% completion rate in six years at for-profit colleges in California, compared to a 63.3% at public universities and a 64.4% completion rate at nonprofit institutions.
- 5) 64.8% students borrowing at for-profit colleges, compared to 38.7 percent at public universities and 53.7% at nonprofit institutions.
- 6) \$31,345 dollar median graduation debt at for-profit institutions, compared to \$16,136 dollar median debt at public institutions and \$23,565 at nonprofit institutions.
- 7) 10.1% loan default rate at for-profit, compared to a 4.2% default rate at public institutions and a 4.5% rate at nonprofit institutions.

The Brookings Institution conducted a study on student loan default in January of 2018, analyzing new data on student debt and repayment released by the USDE in October 2017. Previously available data was limited to borrowers only, followed students for a relatively short period (three to five years) after entering repayment, and had only limited information on student characteristics and experiences. The 2017 data allowed a comprehensive assessment of student debt and default from the moment first-time students enter college, to when they are repaying loans up to 20 years later, for two cohorts of first-time entrants (in 1995-96 and 2003-04). Among the report's findings were:

- 1) Trends for the 1996 entry cohort show that cumulative default rates continue to rise between 12 and 20 years after initial entry. Applying these trends to the 2004 entry cohort suggests that nearly 40 percent of borrowers may default on their student loans by 2023.
- 2) The new data show the importance of examining outcomes for all entrants, not just borrowers, since borrowing rates differ substantially across groups and over time. For example, for-profit borrowers default at twice the rate of public two-year borrowers (52 percent versus 26 percent after 12 years), the rate of default among all for-profit entrants is nearly four times that of public two-year entrants (47 percent versus 13 percent).
- 3) Trends over time are most alarming among for-profit colleges; out of 100 students who started college at a for-profit, 23 defaulted within 12 years of starting college in the 1996 cohort compared to 43 in the 2004 cohort (compared to an increase from just 8 to 11 students among entrants who never attended a for-profit).

Best practices. The National Association for College Admissions Counseling (NACAC) includes the ban on commission-paid recruiting in its mandatory Principles of Good Practice. The policy states that member institutions will not offer or accept any reward or remuneration from a secondary school, college, university, agency, or organization for placement or recruitment of students in the United States. The policy further states that members will be compensated in the form of a fixed salary, rather than commissions or bonuses based on the number of students recruited, and will not contract with secondary school personnel for remunerations for referred students

Arguments in support. A coalition representing student, veteran, civil rights, and higher education advocates jointly wrote in support of AB 1345, writing that, "...California has a troubled history with predatory programs taking advantage of students by misrepresenting student outcomes and making promises they could not keep in order to persuade them to enroll. Although perhaps the most notorious example in California's history was the now-closed Corinthian Colleges, students are still being harmed by these practices. For example, in its current case against Ashford University, the California Attorney General quotes an admissions supervisor who said, 'I had worked in the sales industry for many years. But Ashford had the most aggressive sales floor I have ever seen.' Recruiters were forced to stand at their desks if they missed their targets, and one manager 'even saved the key cards of terminated Admissions staff on a keyring, which she rattled in front of reports to remind them of their obligations to hit their metrics or else.'"

"Restrictions on the ways in which recruiters can and cannot be paid can help prevent these abuses, but current rules are not strong enough. Current California law includes an exemption for schools that are subject to the federal rule, undermining the value of a state-specific rule. California can better protect students by creating its own, broader prohibition on colleges paying marketers in ways that reward deception. AB 1345 will accomplish this by closing existing loopholes in state law."

Arguments in opposition. The California Association of Private Postsecondary Schools (CAPPS) writes that AB 1345, "...removes the federally approved non-monetary gift allowance (no more than \$100 dollars in value) which was created to resolve conflict situations such as providing lunch for students who voluntarily help with school functions such as job fairs and other functions. Striking this provision when there are no reported issues from any State or Federal oversight regarding any abuse of this section is both puzzling and illogical."

"Current California (and federal law) makes it illegal to compensate an employee based on their admission / recruitment success. This is outlined specifically in Education Code 94897... that regulates private postsecondary schools under the BPPE. It's unclear to our members why this existing law doesn't satisfy the concerns of the author and sponsors."

"AB 1345 in 94897(m) broadens the current definitions to prohibit 'any benefit' for 'any person' that is involved in the schools' 'recruitment', 'enrollment', 'continued enrollment' and 'attendance.' Using these broad definitions, a school could not compensate a third-party company who helps market a school. A school could not compensate any employee for ensuring students stay in school and graduate. A school could not provide a retirement benefit for employees who have a role in the items listed above. This bill goes on to state that no 'incentive payment' may be provided to 'any person' if that person is 'directly or indirectly' involved in 'student recruitment', 'continuing enrollment', 'attendance' and other items. Again, these definitions could capture nearly every employee and/or contractor."

Committee comments. Opposition concerns regarding the drafting of Section 94897(m) highlight problems with making elements of (m) based, "...directly or indirectly, on success..." The committee recommends the following amendments to clarify that Section 94897(m) is based upon preventing institutions from placing contingencies upon their employees. The recommended amendments read:

m) Compensate, condition a contract or any benefit under a contract with, or condition the employment of any person involved in student recruitment, enrollment, continued enrollment, admissions, or attendance, or involved in awarding financial aid based on the enrollment of a student, or in sales of any educational materials to a student, ~~directly or indirectly,~~ by means of a commission, commission draw, bonus, quota ~~system, or other incentive payment based in any part, directly or indirectly, on success in student, or other similar method contingent upon,~~ recruitment, enrollment, continued enrollment, admissions, ~~or~~ attendance, ~~or success in awarding~~ financial aid ~~based on the enrollment of a student,~~ or ~~in~~ sales of ~~any~~ educational materials to a student.

REGISTERED SUPPORT / OPPOSITION:

Support

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
 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

California Association of Private Postsecondary Schools

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