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# SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2019 - 2020 Regular

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**Bill No:** AB 1341 **Hearing Date:** July 10, 2019  
**Author:** Berman, et al.  
**Version:** June 27, 2019  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Olgalilia Ramirez

**Subject:** Private postsecondary education: California Private Postsecondary Education Act of 2009.

## SUMMARY

This bill prohibits the Bureau for Private For-Profit Postsecondary Education (bureau) from verifying an exemption from bureau oversight for a nonprofit that operated as a for-profit institution unless the Attorney General makes certain determinations.

## BACKGROUND

Existing law:

- 1) Establishes the California Private Postsecondary Act of 2009 and requires the bureau to, among other things, review, investigate and approve private postsecondary institutions, programs and courses of instruction and authorizes bureau to take formal actions against an institution/school to ensure compliance with the Act, including seeking closure of an institution/school if determined necessary. The Act also provides for specified disclosures and enrollment agreements for students, requirements for cancellations, withdrawals and refunds, and that bureau shall administer the STRF to provide refunds to students affected by the possible closure of an institution/school. Existing law repeals the act on January 1, 2021. (Education Code (EC) § 94800 et seq.)
- 2) Exempts the following from oversight by the Bureau:
  - a) An institution that offers solely avocational or recreational educational programs.
  - b) An institution offering educational programs sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.
  - c) A bona fide organization, association or council that offers pre-apprenticeship training programs on behalf of one or more Division of Apprenticeship Standards-approved labor-management or apprenticeship programs that is not on the Eligible Training Provider List (ETPL) currently but has met requirements for placement on the list, that is on the ETPL and that has not been removed from the ETPL for failure to meet performance standards.

- d) A postsecondary educational institution established, operated, and governed by the federal government or by this state or its political subdivisions.
- e) An institution offering either test preparation for examinations required for admission to a postsecondary educational institution or continuing education or license examination preparation, if the institution or the program is approved, certified, or sponsored by a government agency, other than bureau, that licenses persons in a particular profession, occupation, trade, or career field, a state-recognized professional licensing body, such as the State Bar of California, that licenses persons in a particular profession, occupation, trade, or career field or a bona fide trade, business, or professional organization.
- f) An institution owned, controlled, and operated and maintained by a religious organization lawfully operating as a nonprofit religious corporation whose instruction is limited to the principles of that religious organization and the diploma or degree granted is limited to evidence of completion of that education. The institution is only eligible to offer degrees and diplomas in the beliefs and practices of the church, religious denomination, or religious organization and shall not award degrees in any area of physical science. Any degree or diploma granted by an institution owned, controlled, and operated and maintained by a religious organization lawfully operating as a nonprofit religious corporation shall contain on its face, in the written description of the title of the degree being conferred, a reference to the theological or religious aspect of the degree's subject area. The degree must reflect the nature of the degree title, such as "associate of religious studies," "bachelor of religious studies," "master of divinity," or "doctor of divinity."
- g) An institution that does not award degrees and that solely provides educational programs for total charges of two thousand five hundred dollars (\$2,500) or less when no part of the total charges is paid from state or federal student financial aid programs.
- h) A law school that is accredited by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association or a law school or law study program that is subject to the approval, regulation, and oversight of the Committee of Bar Examiners.
- i) A nonprofit public benefit corporation that is qualified under Section 501(c)(3) of the United States Internal Revenue Code, is organized specifically to provide workforce development or rehabilitation services and is accredited by an accrediting organization for workforce development or rehabilitation services recognized by the Department of Rehabilitation.
- j) An institution that is accredited by the Accrediting Commission for Senior Colleges (ACSC) and Universities, Western Association of Schools and

Colleges (WASC), or the Accrediting Commission for Community and Junior Colleges (ACCJC).

- k) Flight instruction providers or programs that provide flight instruction pursuant to Federal Aviation Administration (FAA) regulations and do not require students to enter into written or oral contracts of indebtedness and do not require or accept prepayment of instruction-related costs in excess of \$2,500.
  - L) An institution owned, controlled, operated, and maintained by a community-based organization, as specified. (EC § 94874)
- 3) Also provides an exemption from the California Private Postsecondary Education Act (Act) and oversight by bureau for an institution that is accredited by the ACSC and WASC, or ACCJC that meets all of the following:
- a) Has been accredited by a United States Department of Education (USDE) recognized accrediting agency for at least 10 years and has not been placed on probation or on monitoring or sanctioned.
  - b) Is headquartered in California and has operated continuously for at least 25 years.
  - c) Is privately held and was previously granted an approval to operate by the bureau or the former bureau and has not changed ownership since its last approval.
  - d) Has not filed for bankruptcy protection.
  - e) Maintains an equity ratio composite score of at least 1.5.
  - f) Derives at least 12.5 percent of its revenues from sources other than state or federal student assistance like Title 38 and Cal Grant monies.
  - g) Does not have a cohort default rate over 13 percent for the most recent 3 years.
  - h) Has a graduation rate that exceeds 60 percent.
  - i) Has not been subject to any legal or regulatory actions by a state Attorney General that resulted in monetary settlement, fines or other documented violations.
  - j) Provides a pro-rata refund of unearned institutional charges to students who complete 75 percent or less of the period of attendance.
  - k) Complies with other reasonable criteria established by the California State Approving Agency for Veterans Education.
  - l) Verifies its exemption with the bureau. (EC § 94947)

- 4) Requires institutions exempt from the Act to still comply with laws relating to school closure and laws relating to fraud, abuse, and false advertising. (EC § 94874.9)

## ANALYSIS

This bill:

- 1) Prohibits the bureau from verifying the exemption from the Act, or contract for the complaint handling for, a nonprofit institution that operated as a for-profit institution during any period on or after January 1, 2010, unless the Attorney General determines all of the following:
  - a) The institution acquired the institution's assets for no more than the value of the assets.
  - b) The institution has not executed agreements for goods or services exceeding the value of the goods or services.
  - c) All core functions of the institution are conducted by, under the control of, or subject to significant direction by the institution, rather than a person or entity that a public institution of higher education or a nonprofit corporation.
  - d) The institution has not committed a substantial share of the institution's assets to a joint venture with a person or entity, unless the joint venture is with an entity that is a public institution of higher education or nonprofit corporation and all core functions of the venture are conducted by, under the control of, or subject to significant direction from that entity.
- 2) Requires that "value," which includes the value of any ongoing relationship, including any contract, agreement, lease, or other arrangement between the acquiring institution and the acquired institution or assets, as described, between the procuring institution and the procured goods or services, be demonstrated through one of the following:
  - a) A third-party appraisal based on comparable assets acquired by, or goods or services procured by, nonprofit corporations.
  - b) Independent financing of the acquisition or procurement based upon the assets acquired or goods or services procured.
  - c) Full and open competition, as defined in federal regulations, in the acquisition of the assets or procurement of the goods or services.
- 3) Defines "public institution of higher education," to mean any of the following:
  - a) A campus, branch of the California Community Colleges, California State University of the University of California.
  - b) An institution operated by the United States government, a state or Indian

tribal government, as defined in federal law.

- c) An institution that is an instrumentality of a state or local government if it meets all of the following:
  - i) The institution's employees are government employees.
  - ii) The institution's liabilities are payable to the same degree as if they were liabilities of the state or local government, as specified.
  - iii) The institution is subject to the same financial oversight and open public records laws as the state or local government, as specified.
- 4) Defines a nonprofit corporation to mean an institution to which contributions have been determined by the United States Internal Revenue Service to be tax-deductible and is subject to the limitations described in the bill.
- 5) Specifies that only an institution of higher education meeting the act's definition of nonprofit corporation or public institution of higher education is exempt from the requirements imposed on an out-of-state private postsecondary educational institution.

## STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, "Some for-profit colleges are using complicated financial schemes and shell corporations to covertly pose as nonprofit or public institutions, misleading students while dodging appropriate oversight."

The author asserts, "This emerging problem is already affecting California students. For example:

Grand Canyon University. The CEO of Grand Canyon Education, Inc., a for-profit company traded on NASDAQ, also serves as the President of an affiliated nonprofit, Grand Canyon University, and about 60 percent of the tuition revenue that the "nonprofit" college receives flows through to the for-profit company. According to Georgetown Law Professor Brian Galle, an expert in nonprofit law, the nonprofit is essentially "a trustworthy-looking wrapper around a for-profit business." Grand Canyon University reported more than 7,000 California enrollments in 2016-17.

Ashford University. Owned by Bridgepoint Education, Inc., and based in San Diego, Ashford University has been sued by the California Attorney General for misleading prospective students and has been called a "poster child for the ills of the for-profit college sector." Meanwhile, the company announced in March 2018 that it would follow the Grand Canyon University approach to claiming nonprofit status. In fact, on February 15, 2019, Ashford University announced that it received determination from the Internal Revenue Service that it is exempt from federal income tax under Internal Revenue Code (IRC) Section 501 (c) (3). In 2016 Ashford University reported more than 16,000 online students. According to

a June 19th article in the San Diego Union-Tribune, “Bridgepoint/Zovio is spinning off Ashford University into an independent, not-for-profit higher education institution. Ashford has agreed to contract with Bridgepoint/Zovio to provide online education technology tools.” State-specific figures are not available for Ashford University.

Purdue University Global. While claiming to be a “public” college because of its affiliation with Indiana’s public Purdue University, Purdue University Global (PUG) is actually a limited liability corporation for which the state refuses any financial responsibility, and which is exempt from state public records laws; exempt from state audit requirements; and exempt from state open meeting laws. The institution is jointly operated by Purdue and PUG, which was formerly owned by Kaplan Higher Education. Kaplan Higher Education, which is traded on the New York Stock Exchange, has formal roles in governing PUG and gets a share of profits. Kaplan Higher Education reported more than 2,000 California enrollments in 2016-17.

Others. Several smaller chains with ground campuses, including one in California (California College San Diego), are attempting to illicitly claim nonprofit status. Their tactics include disguising profits as rent and loan payments to former owners who take on governance roles in the nonprofit entity, and installing employees and business partners as nonprofit trustees.”

This bill aims to establish an oversight mechanism to verify nonprofit status prior to deeming an institution exempt from certain regulations designed to monitor educational quality and business practices of private colleges.

- 2) ***Exemption from bureau oversight.*** The bureau has oversight of all of the non-exempt, private postsecondary institutions located in California. Current law contains exemptions to state-level oversight, including for avocational or recreational programs, educational programs offered for members of a business or professional association, pre-apprenticeship programs offered by specific types of organizations, test preparation providers, religious institutions, low-cost programs that do not receive public funds, WASC-accredited institutions, specified nationally accredited nonprofit institutions, and flight schools. An exempt institution is not regulated by the bureau. Students enrolled in exempt institutions are not protected by the Act, including access to the STRF, which provides reimbursement to students for bureau-regulated institutions that violate the law or closed abruptly. This measure specifies that prior to the bureau making the determination to exempt for its oversight a nonprofit institution that operated as a for-profit from, the AG’s office must first make certain determination.
- 3) ***Why the Attorney General?*** Opponents have raised concerns, that while the Attorney General has the responsibility of supervising charities and charitable trust in the state, the office does not make the initial determination on exempt status. The opposition asserts that it is the California Franchise Tax Board (FTB) that must determine a charity or nonprofit organization’s status and that FTB has the expertise and review process already in place to make such a determination. However, the author asserts that the Attorney General is the appropriate arbiter

for the situation outlined in the bill, as there are several circumstances under which California statutes call on the Attorney General to be the expert on what is appropriate for a nonprofit. Those circumstances include when a nonprofit wants to sell any assets (advance notice to the Attorney General is required, and the Attorney General may insist on an independent appraisal), dissolve (Attorney General review and approval required), or engage in certain types of conversions or mergers (Attorney General approval required).

Staff notes Since 1997, California law has required nonprofit health facilities that are subject to public benefit corporation law to obtain written consent from AG prior to entering into an agreement to sell, transfer, lease, exchange, option, convey, or otherwise dispose of assets, or transfer control or governance of assets. There is then a public review process in which the AG reviews the terms of the agreement, evaluates the potential impact the sale would have on the affected community, and decides whether to grant approval. Approved sales typically come with enforceable conditions to preserve standards of care and ensure that a commercial transaction involving charitably-funded assets does not occur to the detriment of the community. Arguably, it may also be appropriate to grant the AG the power to oversee transactions in which a private for-profit educational institution converts to a nonprofit, given its existing role in reviewing nonprofit status of other entities.

- 4) ***Double-referral.*** This bill was previously heard by the Senate Business, Professions and Economic Development (BPED) Committee which has jurisdiction over bills relating to business and professional practices and periodically conducts sunset review of various boards and licensing agencies, including the Bureau. The BPED analysis raised questions regarding the need for greater clarity on the process for notifying the bureau and nonprofit of the AG's determination that an institution complies with the required criteria. Senate Education Committee staff understands that the author's office is working toward providing this clarification in the bill as it moves forward.
- 5) ***Related legislation.***

AB 1342 (Low, 2019) requires a nonprofit corporation that operates or controls a private postsecondary educational institution to obtain the Attorney General's 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. This bill was approved by this committee on June 19 and is currently in the Senate Appropriations Committee.

AB 1344 (Bauer-Kahan, 2019) expands existing requirements that out-of-state private postsecondary educational institutions register with, and report information to, the bureau to include additional information regarding adverse actions and to authorize the bureau upon review to revoke an out-of-state school's ability to enroll students in California, as specified. AB 1344 is also on the committee's agenda today.

AB 1340 (Chiu, 2019) requires certain private postsecondary schools to report to the bureau information about their graduates and match that information with wage data from the Employment Development Department. It also requires the Bureau to make available on its website information regarding the earnings levels of graduates and student debt information. AB 1340 is also on the committee's agenda today.

AB 1345 (McCarty, 2019) revises existing restrictions on private postsecondary school enrollment recruitment compensation to prohibit institutions from paying a person by means of a commission, bonus, quota, or other similar method contingent upon student recruitment, enrollment, admissions, attendance, financial aid, or sales of educational materials. AB 1345 is also on the committee's agenda today.

AB 1346 (Medina, 2019) expands the definition of "economic loss," as it pertains to the Student Tuition Recovery Fund (STRF), to include all amounts paid by a student to the institution, any amounts paid in connection with attending the institution, and all principal, interest, and charges of any kind for any loan incurred by the student to pay these amounts. AB 1346 is also on the committee's agenda today.

AB 1342 (Bauer-Kahan, 2019) 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. AB 1342 was approved by this committee and is pending in Senate Appropriations Committee.

## **SUPPORT**

California Conference of the American Association of University Professors  
California Faculty Association  
California Low-Income Consumer Coalition  
Children's Advocacy Institute Center for Public Interest Law  
Consumer Federation of California  
Consumer Reports Advocacy  
Housing and Economic Rights Advocates  
National Student Legal Defense Network  
NextGen California  
Public Advocates  
Public Counsel  
Public Law Center  
SEIU California  
The Century Foundation  
The Institute for College Access and Success  
Veterans Education Success  
Veterans Legal Clinic

**OPPOSITION**

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**-- END --**