
SENATE COMMITTEE ON EDUCATION

Senator Connie Leyva, Chair

2019 - 2020 Regular

Bill No: AB 1344 **Hearing Date:** July 10, 2019
Author: Bauer-Kahan, et al.
Version: June 25, 2019
Urgency: No **Fiscal:** Yes
Consultant: Olgalilia Ramirez

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

SUMMARY

This bill expands existing requirements that out-of-state private postsecondary educational institutions register with, and report information to, the Bureau for Private Postsecondary Education (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.

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 Student Tuition Recovery Fund 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) Defines "out-of-state private postsecondary educational institution" as a private entity without a physical presence in this state that offers distance education to California students for an institutional charge, regardless of whether the institution has affiliated institutions or institutional locations in California. (EC 94850.5)
- 3) Under the Act, 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. Under existing law registration with the bureau is valid for 2 years. (EC §94801.5)

- 4) Requires institutions seeking the approval to operate from the bureau to pay an application or renewal fee, as appropriate and allows the bureau to assess a registration fee to out-of-state institution. (EC § 94930.5)

ANALYSIS

This bill:

Initial registration and reporting requirements.

- 1) Beginning July 1, 2022, requires an out-of-state private postsecondary educational to, in addition to current registration requirements, provide the bureau with all of the following information for consideration of initial registration by the bureau:
 - a) Evidence of institutional 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 with this state, as specified.
 - d) A copy of the institution's catalog and, if the institution uses enrollment agreements, a copy of a 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 or suspended by the state or by the federal government or within five years before submission of the registration, was subject to an enforcement action by the state or by the federal government that resulted in the imposition of limits on enrollment or student aid, or is subject to such an action that is not final and that was ongoing at the time of submission of the registration.
 - f) Whether or not the institution, or a controlling officer of, or a controlling interest or controlling investor in, the institution or in the parent entity, had been subject to enforcement action, as specified, by a state or federal agency with five years prior to submitting the registration. This bill requires, if it had been subject to enforcement action, the institution provides the bureau a copy of the operative complaint.
 - g) 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, as specified, filed by a student or former student, an employee or former employee, or a public official, for more than \$250,000. An institution is required to provide the bureau a copy of the complaint filed by the plaintiff and a copy of the judgment or settlement agreement and the bureau is required to consider all material terms and aspects of the settlement, as specified.

- h) Any additional documentation the bureau deems necessary for consideration in the registration process.

Review and action consideration.

- 2) Requires that the bureau, when considering whether to approve, deny, or condition initial registration based upon the information provided by an institution, do all of the following:
 - a) Consider the institution's eligibility for registration and exercise its reasonable discretion to, approve, reject, or condition registration based upon a review of all of the information provided to it by the institution.
 - b) Provide an institution with reasonable notice and opportunity to comment before the bureau regarding any determination to deny, condition, or reject initial registration before that determination becomes final. This bill allows the institution to seek review of the bureau's decision, as specified.
 - c) For each approved registration, memorialize that the institution agrees, as condition of its registration to be bound by the requirements, as specified and that its registration may be rejected, conditioned, or revoked for failure to comply with notification requirements, as specified. This bill requires the agreement be signed by a responsible officer of the institution.

Disclosure requirements for out-of- state registered institutions.

- 3) Requires an institution that is registered with the bureau and enrolls a student residing in California to report in writing to the bureau, within 30 days, the occurrence of any of the following:
 - a) The institution has its authorization or approval revoked or suspended by a state or by the federal government, or has been subject to an enforcement action by a state or by the federal government that resulted in the imposition of limits on enrollment or student aid.
 - b) The institution or controlling officer of, or a controlling interest or controlling investor in, the institution or in the parent entity of the institution is subject to any education, consumer protection, unfair business practice, fraud, or related enforcement action by a state or federal agency. The institution is to provide the bureau a copy of the operative complaint, as specified.
 - c) The institution is currently on probation, show cause, or subject to other adverse action, or the equivalent thereof, 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 alleging the institution's failure to provide educational services, including a complaint alleging a violation of title IX or a complaint alleging a violation concerning consumer protection, unfair business practice, or fraud filed by

a student or former student, an employee or former employee, or public official for more than \$250,000.

Enforcement Action

- 4) Requires that the bureau, upon receipt of the notifications that an institution has been or is subject to an enforcement action or other adverse action and within 30 days of receiving the notice, request the institution to explain in writing why it should be permitted to continue to enroll California residents.
- 5) Allows an institution to continue to enroll a new student provided that the bureau after reviewing the explanation from an institution and after consultation with the Attorney General, issues a written finding that there is no immediate risk to California residents. The bill also authorizes the bureau to limit enrollments.
- 6) Authorizes the bureau to revoke an institution's registration that is under review if, after further review the bureau issues a written finding that there is a substantial risk posed to California residents by the institution continuing to enroll California residents.
- 7) Provides an institution the right to reasonable notice and opportunity to comment to and before the bureau regarding any determination to revoke registration or to limit enrollment before that determination becomes final and allows the institution to seek review of the bureau order limiting new student enrollment or revoking registration, as specified.
- 8) States that the bureau may revoke an institution's registration on any other grounds specified in under the California Private Postsecondary Act.
- 9) States that an institution that fails to comply with specified requirements is not authorized to operate in this state and allows an institution whose registration is denied or revoked to reapply for registration after 12 months from the denial or revocation of registration.

Miscellaneous

- 10) States that registration with the bureau is valid for five years.
- 11) Requires the bureau to develop a registration form through emergency regulations effective on and after July 1, 2022.
- 12) Requires the bureau to disclose on its internet website a list of registered institutions through reasonable means and disclose a designated email address for California residents to send a complaint to the bureau about a registered institution.
- 13) Makes various technical and conforming changes.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “The US Department of Education under Secretary Betsy DeVos and President Donald Trump have undertaken an ambitious deregulatory effort that would waken oversight by both accreditors and the federal government. The State Authorization rule, which contained requirements for institutions offering educational programs online across state lines and was supposed to go into effect in 2018, was delayed and is being renegotiated yet again. In the meantime, California has no mechanism to limit bad actors operating outside of the state’s borders from enrolling Californian students online, potentially leaving the door open to student mistreatment, harm and fraud. AB 1344 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.”
- 2) ***The role of the Bureau.*** The bureau is generally responsible for protecting consumers and students against fraud, misrepresentation, or other business practices at private postsecondary institutions that may lead to loss of students’ tuition and related educational funds; establishing and enforcing minimum standards for ethical business practices and the health and safety and fiscal integrity of postsecondary education institutions; and establishing and enforcing minimum standards for instructional quality and institutional stability for all students in all types of private postsecondary educational and vocational institutions.

The United States Department of Education (USDE) establishes that states are responsible for providing primary protection of consumers and students attending postsecondary educational institutions. The bureau approval not only authorizes institutions to operate and serve students in California but also enables institutions to receive public funds through the federal Title IV financial aid programs.

The bureau is responsible for oversight of private postsecondary educational institutions operating with a physical presence in California. Established by AB 48 (Portantino, Chapter 310, Statutes of 2009) after numerous legislative attempts to remedy the laws and structure governing regulation of private postsecondary institutions, the bill took effect January 1, 2010, to make many substantive changes that created a foundation for oversight and gave the bureau enforcement tools to ensure schools comply with the law.

AB 48 established the bureau’s authority to regulate private postsecondary institutions and enforce the provisions of the new Act and to respond to the major problems with the former laws governing the industry in California. The Act provides for prohibitions on false advertising and inappropriate recruiting and requires disclosure of critical information to students such as program outlines, graduation and job placement rates, and license examination information, and ensures colleges justify those figures. The Act also provides the bureau with enforcement powers necessary to protect consumers. The Act directs the bureau to:

- Create a structure that provides an appropriate level of oversight, including approval of private postsecondary educational institutions and programs;
 - Establish minimum operating standards for California private postsecondary educational institutions to ensure quality education for students;
 - Provide students a meaningful opportunity to have their complaints resolved;
 - Ensure that private postsecondary educational institutions offer accurate information to prospective students on school and student performance; and,
 - Ensure that all stakeholders have a voice and are heard in the operations and rulemaking process of bureau.
- 3) ***Trends in online program enrollment.*** According to The Institution for College Access and Success (TICAS), over 300,000 Californians are enrolled in online college programs across more than 250 California institutions and nearly 1,000 out-of-state institutions. Additionally, the largest share of Californians enrolled online at schools in other states are at for-profit colleges. TICAS asserts that out-of-state institutions that enroll Californians online have poor student loan repayment outcomes than California-based distance providers as the amount of borrowers who end up in default is also higher at out-of-state distance education providers than in-state providers. The enrollment of California students in out-of-state distance education thus poses consumer protection concerns.
- 4) ***State protection lacking for CA students enrolled in out-of-state schools.*** In recognition of the regulatory gap for online education programs, the USDE issued federal regulations (75 FR 66831) that among other things, required distance education programs to have authorization in the student's state. However, the void remains as this specific regulation was vacated by a court ruling based on a technicality. Institutions, however, are required to comply with the laws and regulations of the states in which they operate.

To address this challenge, other states, institutions, and policy organizations developed the State Authorization Reciprocity Agreement (SARA) whereby institutions approved to operate in one participating state will be deemed automatically to have met approval requirements in other participating states. California has not chosen to participate in SARA as concerns have been raised that the agreement would undermine the state's ability to regulate online for-profit programs and provide adequate protection to California students.

In California, the bureau is authorized to regulate institutions that have a physical presence in this state and to a much lesser extent monitor the online offerings of out-of-state institutions. As such, California students enrolled in online programs offered by institutions based in other states do not benefit to the same degree of oversight provided by the Act, for students enrolled at in-state programs. Specifically, current law requires out-of-state institutions offering online programs

to California students register with the bureau and among other things, provide evidence of accreditation and that the institution is approved to operate in the state where the institution maintains administrative location and comply Student Tuition Recovery Fund (STRF) requirements.

This bill seeks to strengthen oversight of out-of-state institutions seeking to enroll California students by authorizing the bureau to take action to reject or revoke an institutions' ability to enroll California students for failure to comply with notification requirements. It further requires that institutions disclose whether it was the subject of an adverse action by a state or federal government.

Staff notes that in January of this year, Department of Education officials began to reshape state authorization rules for distance education through negotiated rulemaking, proposing to eliminate the Obama-era state authorization rules. Members of the rulemaking panel's distance learning and educational innovation subcommittee indicated that the proposed elimination was a starting point and that no decision had been made.

- 5) ***Double-referral.*** This bill was previously heard by the Senate Business, Professions and Economic Development 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.
- 6) ***Related legislation.***
AB 1341 (Berman, 2019) prohibits the 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. AB 1341 is also on the committee's agenda today.

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 Faculty Association
California Low-Income Consumer Coalition
Center for Responsible Lending
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
Student Debt Crisis
The Century Foundation
The Institute for College Access and Success (Sponsor)
Veterans Education Success
Veterans Legal Clinic

OPPOSITION

None received

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