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## SENATE COMMITTEE ON EDUCATION

Senator Benjamin Allen, Chair

2017 - 2018 Regular

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**Bill No:** AB 1619 **Hearing Date:** July 5, 2017  
**Author:** Berman  
**Version:** May 30, 2017  
**Urgency:** No **Fiscal:** Yes  
**Consultant:** Olgalilia Ramirez

**Subject:** Private postsecondary education

**NOTE:** This bill has been referred to the Committees on Education and *Business, Professions and Economic Development*. A "do pass" motion should include referral to the Committee on *Business, Professions and Economic Development*.

**NOTE:** This bill was previously heard by this Committee on June 28, 2017, failed passage by a vote of 3-2, and was granted reconsideration.

### SUMMARY

This bill requires the Bureau for Private Postsecondary Education (BPPE) to prohibit an institution that is subject to the provisions of the Private Postsecondary Education Act (Act) of 2009 from enrolling new students in an educational program that receives a fail rating or a combination of zone and fail ratings, based on the federal debt-to-earnings rates specified under federal gainful employment regulations.

### BACKGROUND

Existing law:

*State Law.*

- 1) Establishes the Private Postsecondary Education Act of 2009 (Act) and requires BPPE, within the Department of Consumer Affairs to, in part, review, investigate and approve private postsecondary 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.
- 2) Requires unaccredited degree-granting institutions to be accredited by an accrediting agency recognized by the United States Department of Education by 2020.
- 3) Provides for specified disclosures and enrollment agreements for students, requirements for cancellations, withdrawals and refunds, and that the BPPE shall administer the Student Tuition Recovery Fund to provide refunds to students affected by the possible closure of an institution/school. (Education Code § 94800 et. seq.)

*Federal Law.*

- 1) In order to be eligible for funding under the federal Higher Education Act Title IV student assistance programs, an educational program must lead to a degree at a nonprofit or public institution or it must prepare students for gainful employment in a recognized occupation. (20 U.S.C. 1001 et seq.)
- 2) Establishes debt-to-earnings rates to determine whether a gainful employment program prepares students for gainful employment in a recognized occupation. (34 CFR Part 668 et seq.)

## ANALYSIS

This bill:

- 1) Requires the Bureau for Private Postsecondary Education to prohibit an institution that is not exempt from the Private Postsecondary Education Act (Act) of 2009 from enrolling new students in an educational program that receives a fail rating for two out of three consecutive years, or receives a combination of zone or fail ratings for four consecutive years, based on the federal debt-to-earnings rates.
- 2) Authorizes an institution to file an alternate earnings appeal if an educational program receives a fail or zone rating under the federal debt-to-earnings rates.
- 3) Prohibits an institution from all of the following:
  - a) Reestablishing enrollment of new students in a fail or zone educational program that it discontinued voluntarily.
  - b) Reestablishing enrollment of new students in an educational program that is out-of-compliance under the federal debt-to-earnings rates.
  - c) Establish enrollment of new students in an education an educational program that is substantively similar to the discontinued or out-of-compliance program, until three years has passed.
- 4) Requires the Bureau to adopt regulations as necessary to implement the provisions in this bill, including regulations to obtain data if the United States Department of Education (USDE) no longer releases the federal debt-to-earnings rates.
- 5) Defines all of the following terms for purposes of this bill:
  - a) "Alternate earnings appeal" has the same meaning as the term is described for the purposes of federal regulations.
  - b) "Debt-to-earnings rates" are the rates established in the federal regulations.
  - c) "Fail rating" has the same meaning as the term is described for purposes of the federal regulations.

- d) "Federal regulations" mean the federal gainful employment regulations established in Part 668 of Chapter VI of Subtitle B of Title 34 of the Code of Federal Regulations, as those regulations read on January 1, 2017.
  - e) "Zone rating" has the same meaning as the term is described for purposes of the federal regulations.
  - f) "Gainful employment program" or "GE program" has the same meaning as the term is defined for purposes of the federal regulations.
- 6) States that it is the intent of the Legislature to continue the student protections in the federal regulations by applying the federal debt-to-earnings rates to California law.

### STAFF COMMENTS

- 1) ***Need for the bill.*** On July 1, 2015, the federal gainful employment regulation (established in Part 668 of Chapter VI of Subtitle B of Title 34 of the Code of Federal Regulations) took effect to protect students and increase accountability of low-performing career training programs at our higher education institutions. However, on June 14 of this year, the Trump administration announced that it will convene a negotiated rulemaking committee to rewrite the gainful employment regulation. According to the author, due to the recent actions of the current administration "there is a serious concern that poor performing programs will endure to the detriment of students. Eliminating reasonable oversight and accountability is a mistake that students should not be made to pay for again."

This bill seeks to lift the existing federal regulation and apply it to institutions operating in California for the purpose of enrolling new students in an educational program.

- 2) ***Federal gainful employment regulations.*** To qualify for federal student aid, federal law requires that most for-profit programs and certificate programs at private non-profit and public institutions prepare students for "gainful employment in a recognized occupation." These regulations distinguish programs that provide affordable training that lead to well-paying jobs from programs that leave students with poor earnings prospects and high amounts of debt. The regulations support greater accountability for colleges by requiring institutions to provide key information on program costs, whether students graduate, how much they earn, and how much debt they may accumulate. These required standard disclosures are intended to empower students to compare across career college programs when searching for and selecting a program.

As a component of the gainful employment regulations, the U.S. Department of Education established a debt-to-earnings ratio based on the typical loan debt and the earnings of students who previously completed the program. Additionally, to maintain Title IV federal financial aid eligibility, programs are required to meet minimum standards for the debt-to-earnings rates of their graduates and are provided the following three ratings:

- Pass – Programs whose graduates have annual loan payments less than or equal to 8 percent of total earnings or less than or equal to 20 percent of discretionary income.
- Zone – Programs whose graduates have annual loan payments greater than 8 percent but less than or equal to 12 percent of total earnings or greater than 20 percent but less than or equal to 30 percent of discretionary income (neither pass nor fail).
- Fail – Programs whose graduates have annual loan payments greater than 12 percent of total earnings and greater than 30 percent of discretionary income.

A program becomes ineligible for Title IV federal financial aid funding if it receives a fail rating for two out of the three consecutive years or has a combination of zone or fail ratings for four consecutive years. Consistent with the federal requirement, this bill holds the specified institutions to a similar standard—do not receive a fail rating for two out of three consecutive years, or receive a combination of zone or fail ratings for four consecutive years. However, unlike the federal rules which were established for the purpose of qualifying for federal financial aid, this bill requires institutions to meet the requirements in order to enroll new students into a program. Staff notes, for purposes of qualifying for financial aid California, has created a standard (i.e. a cohort default rate threshold) independent of the federal gainful employment rule.

- 3) ***Related action by the Trump administration.*** The U.S. Department of Education recently announced that it was delaying and renegotiating the gainful employment rule established under the Obama administration on for-profit school. The gainful employment rule, already in effect, penalizes schools when graduates' loan payments exceed a set percentage of their earnings. This rule affects both programs at private postsecondary schools and non-degree programs at many community colleges. Addressing the need to review the gainful employment regulations, the department cited the overly burdensome and confusing reporting responsibilities for schools and non-degree programs. The department will appoint a rule-making committee to renegotiate the rule, a process that can stretch out for months as federal agencies seek public input via hearings and testimony from stakeholders and advocates. The gainful employment rule, having already gone into effect, must still be enforced while under reconsideration, but it is unclear whether the department will enforce the regulation.
- 4) ***Employment information currently required by the state.*** Current law requires an institution regulated by the Bureau for Private Postsecondary Education (Bureau) to provide a prospective student with a School Performance Fact Sheet containing information on completion rates, job placement rates, license examination passage rates and salary or wage information, among other things, each rate is based on a formula outlined in statute:

- a) *Job placement rate* is calculated by dividing the number of graduates employed in the field by the number of graduates available for employment for each program.
- b) *Completion rate* is calculated by dividing the number of on-time graduates by the number of students available for graduation.
- c) License examination passage rates for the immediately preceding two years is calculated by dividing the number of graduates who pass the exam by the number of graduates who take the licensing exam the first time after completing the education program.
- d) Salary and Wage information, consisting of the total number of graduates employed in the field and the annual wages or salaries of those graduates.

In addition to disclosure of the above information to students, this bill requires institutions to meet the specified debt-to-earnings thresholds for graduates in each program.

- 7) ***Data availability?*** In the event that the United States Department of Education (USDE) fails to produce the data needed to determine the debt to earnings rates, this bill requires the Bureau for Private Postsecondary Education (Bureau) to adopt regulations as necessary to implement the provisions of this bill. However, it's unclear if the Bureau has the capacity to undertake such a task.
- 8) ***Amendments to be taken in the next committee.*** As noted at the top of the analysis, this bill was previously heard by this Committee on June 28, 2017, failed passage by a vote of 3-2, and was granted reconsideration. The author has committed to amending the bill to address concerns regarding the data collection as follows:

~~94885.6. (e) The bureau shall adopt regulations as necessary to implement this section, including regulations to obtain data if the United States Department of Education no longer releases the federal debt-to-earnings rates.~~

94885.6. (e) *This section shall be contingent upon the United States Department of Education releasing the federal debt-to-earnings rates.*

## **SUPPORT**

AMVETS-Department of California  
 California Association of County Veterans Service Officers  
 California Council of Chapters  
 CALPIRG  
 Center for Public Interest Law  
 Children's Advocacy Institute  
 Education Trust-West  
 Institute for College Access and Success  
 Military Child Education Coalition  
 Military Officers Association of America  
 Public Counsel

Public Law Center  
SEIU California  
Student Veterans of America  
Veteran's Legal Clinic  
Vietnam Veterans of America-California State Council

**OPPOSITION**

American Career College  
Bridgepoint Education  
California Association of Private Postsecondary Schools  
California Coalition of Accredited Career Schools  
Institute for Business and Technology  
Professional Beauty Federation of California  
University of Phoenix  
West Cost University

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