

Date of Hearing: June 28, 2016

ASSEMBLY COMMITTEE ON BUSINESS AND PROFESSIONS

Rudy Salas, Chair

SB 1192(Hill) – As Amended June 16, 2016

SENATE VOTE: 37-0

NOTE: This bill was double-referred to the Assembly Committee on Higher Education and passed on a 10-0 vote.

SUBJECT: Private postsecondary education: California Private Postsecondary Education Act of 2009

SUMMARY: Provides for various changes to the California Private Postsecondary Education Act of 2009 (Act) and the oversight of the Act provided by the Bureau for Private Postsecondary Education (BPPE).

EXISTING LAW:

- 1) Establishes the Act until January 1, 2017, and requires BPPE, within the Department of Consumer Affairs (DCA) to, among other things, 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 United States 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 Student Tuition Recovery Fund (STRF) to provide refunds to students affected by the possible closure of an institution/school. (Education Code (EDC) Section 94800, *et. seq.*)

THIS BILL:

- 1) Requires a private entity with no physical presence in this state that provides postsecondary education to California students for an institutional charge to comply with specified provisions, including registering with the BPPE; requires the BPPE to adopt regulations for the process and procedure whereby an institution can apply for and obtain registration; specifies that an institution that fails to comply is not authorized to operate in this state.
- 2) Removes two positions from the Advisory Committee and specifies that a quorum be comprised of a majority of those appointed members; authorizes the chairs of policy committees of the Senate and Assembly with jurisdiction over legislation relating to the BPPE to designate a representative to attend the Advisory Committee meetings if he or she is unable to attend.
- 3) Extends the sunset date for an institution that is not accredited by an accrediting agency recognized by the United States Department of Education, but is *approved by the BPPE*, to obtain accreditation or have an accreditation plan that outlines the process by which the

institution will achieve accreditation candidacy, pre-accreditation, or full accreditation, by specified dates.

- 4) Extends the sunset date for an institution that is not accredited by an accrediting agency recognized by the United States Department of Education, and is *seeking approval by the BPPE*, to obtain accreditation or have an accreditation plan that outlines the process by which the institution will achieve accreditation candidacy, pre-accreditation, or full accreditation, by specified dates.
- 5) Provides BPPE the authority to give extensions on the timeline for unaccredited degree granting institutions to become accredited according to certain evidence.
- 6) Requires during the enrollment process that an institution offering educational programs designed to lead to positions in a profession, occupation, trade, or career field where voluntary licensure by a government agency is available, to provide all students seeking to enroll in those programs with a written copy of the voluntary government agency licensure requirements.
- 7) Increases the penalty for operating an institution without BPPE approval from \$50,000 to \$100,000.
- 8) Provides that any representation or agreement by a person or entity to not collect a student loan obligation does not reduce a student's eligibility for recovery from the STRF or reduce the student's economic loss, unless the student loan obligation is forgiven, discharged, or canceled.
- 9) Limits the timeframe for a written application that to be received by the BPPE to four years after the date of the action that made the student eligible for recovery from the STRF.
- 10) Authorizes the BPPE to use evidence collected during a compliance inspection in support of issuing a citation.
- 11) Require institutions to notify BPPE of investigations by other governmental agencies.
- 12) Requires the Director to appoint an enforcement monitor for a period of two years to monitor the BPPE's enforcement efforts, with a specific concentration on the adequacy of bureau compliance inspections, handling and processing of student complaints and timely application of sanctions or discipline imposed on institutions and persons in order to protect the public. Requires the enforcement monitor to submit reports to the Director and Legislature and be available to make oral reports to both if requested to do so.
- 13) Establishes an Office of Student Assistance and Relief (OSAR) to serve as a primary point of contact to address the needs of private postsecondary education students. Specifies that the duties of the Office include, but are not limited to, providing assistance to students, conducting proactive outreach to students, administering the Student Tuition Recovery Fund (STRF) and overseeing the registration of institutions that do not have a physical presence in this state and are offering distance education to California students. Requires the Office to establish and maintain a website to provide information to students about their rights and protections available to them as well as information about free services available to students

provided by a local nonprofit community service organization with demonstrated experience assisting students in areas like legal services and student loan matters.

- 14) Specifies that an ombudsperson will be appointed by the director of DCA and is responsible for reporting to the director and the BPPE Advisory Committee.
- 15) Establishes a Pilot Program, to be administered by the OSAR, to provide grants to community-based organizations to assist students harmed by recent school closures with receiving relief under loan forgiveness and STRF.
- 16) Provides that a student who was enrolled at a California campus of Corinthian Colleges, Inc. (CCI), or was a California student enrolled in an online program offered by an out-of-state campus of a CCI institution, who also meets all of the other eligibility requirements, if the student was enrolled as of June 20, 2014, is eligible for STRF.
- 17) Makes various technical changes.

FISCAL EFFECT: According to the Senate Committee on Appropriations, this bill will result in:

- 1) BPPE: Net increased costs of about \$410,000 in the 2016-17 fiscal year and \$360,000 ongoing. This estimate includes the BPPE's anticipated need for six positions and \$829,000 in fiscal year 2016-17 and \$781,000 annually thereafter. It also includes increased revenues of about \$420,000 (\$300,000 attributed to the fine increase from operating without a proper approval and about \$120,000 from the new authority to issue citations, as specified. To the extent there are additional fines or citations issued, increased revenues would be generated.) Staff notes that the Private Postsecondary Education Administration Fund has a structural imbalance and is expected to become insolvent in the 2017-18 fiscal year without accounting for the implementation of this bill. Absent a different funding source or creation of an additional fee, the fund could become insolvent sooner.
- 2) Student Tuition Recovery Fund Claim Payout: Unknown payments to students enrolled at a campus or an out-of-state online program of a Corinthian Colleges Inc. institution. If 10 percent of estimated impacted students applied and were approved for a claim in a given year, costs would be \$5.8 million. Actual costs would depend upon a number of factors including the number of impacted students making a successful claim and the amount of the claim payouts.
- 3) Minor costs to the California Student Aid Commission, the California Community College Chancellor's Office, and the California Department of Veterans Affairs to fulfill the consultation requirement with the Office of Student Assistance and Relief, as required by this bill. It is unknown the additional duties, and potential cost pressures, that might result from the required consultation.

COMMENTS:

Purpose. This bill provides for various changes to the Act and its oversight provided by the BPPE. This bill is author-sponsored. According to the author, "students, the public and quality private postsecondary educational institutions are best served by a well-functioning regulatory entity that effectively enforces the Act. The Bureau has faced significant difficulties in

implementing the law. It is important that California's approval and oversight of an institution assures minimum quality and student protections."

Joint Oversight Hearings and Sunset Review of the DCA Licensing Boards. In March of 2016, the Assembly Committee on Business and Professions and the Senate Committee on Business, Professions and Economic Development (Committees) conducted multiple joint oversight hearings to review 11 regulatory boards within the DCA and one regulatory entity outside of the DCA. The sunset bills are intended to implement legislative changes recommended in the respective background reports drafted by the Committees for the agencies reviewed this year.

The Sunset Review Process. The sunset review process provides a formal mechanism for the DCA; the Legislature; the regulatory boards, bureaus and committees; interested parties; and stakeholders to make recommendations for improvements to the authority of consumer protection boards and bureaus. This is performed on a standard four-year cycle and was mandated by SB 2036 (McCorquodale), Chapter 908, Statutes of 1994. Each eligible agency is required to submit to the Committees a report covering the entire period since last reviewed that includes, among other things, the purpose and necessity of the agency and any recommendations of the agency for changes or reorganization in order to better fulfill its purpose. During the sunset review hearings, the Committees take public testimony and evaluate the eligible agency prior to the date the agency is scheduled to be repealed. An eligible agency is allowed to sunset unless the Legislature enacts a law to extend, consolidate, or reorganize the eligible agency.

Background on BPPE. The BPPE is responsible for oversight of private postsecondary educational institutions operating with a physical presence in California. After numerous legislative attempts to remedy the laws and structure governing regulation of private postsecondary institutions, AB 48 (Portantino), Chapter 310, Statutes of 2009 was enacted to make many substantive changes that created a foundation for oversight and gave the BPPE enforcement tools to ensure schools comply with the law. SB 1247 (Lieu), Chapter 840, Statutes of 2014 reauthorized the Act until January 1, 2017 and made a series of improvements aimed at reducing backlogs and increasing meaningful enforcement. The Act directs BPPE to, among numerous outlined activities, approve institutions and programs, establish and enforce minimum operating standards to ensure quality education, provide students a meaningful opportunity to have their complaints resolved, and ensure that institutions offer accurate information to prospective students on school and student performance. The BPPE is also required to actively investigate and combat unlicensed activity, administer the STRF, and conduct outreach and education activities for students and institutions within the state.

Background on Regulated Industry. The landscape of schools regulated under BPPE has shifted in recent decades. Today, most students attending BPPE-regulated institutions are enrolled in multi-campus, publicly-traded institutions with a national presence. According to the 2014 Annual Report (self-reported data from BPPE-approved institutions), of the 275,624 students enrolled, 161,226 were enrolled in institutions that receive federal Title IV financial aid. These 337 institutions received about \$5.8 billion in federal Title IV financial aid. In response to high-profile state and federal investigations that revealed deceptive and illegal practices by some institutions within this sector. Federal regulators responded by increasing student outcome and institutional accountability measures. Specifically, in California, BPPE's approval can enable these institutions to access the Title IV program; USDE relies on the Bureau to provide oversight and student protection.

This bill proposes the following major changes to the Act:

- 1) *Definition of Licensure.* Under the Act, if an institution offers an educational program in a profession, occupation, trade, or career field that requires licensure in California, the institution must have educational program approval from the appropriate state licensing agency for any student who completes that program to sit for any required licensure exam. Rather than redefining licensure, this bill requires during the enrollment process that an institution offering educational programs designed to lead to positions in a profession, occupation, trade, or career field where voluntary licensure by a government agency is available, to provide all students seeking to enroll in those programs with a written copy of the voluntary government agency licensure requirements.
- 2) *Unaccredited Degree Granting Programs.* SB 1247 amended the Act to require that degree granting programs be accredited. Institutions offering a degree that seek BPPE approval are now required to either be accredited by an accrediting agency recognized by the USDE to offer the degree(s) or have an accreditation plan, approved by BPPE, for the institution to become fully accredited within five years of the BPPE issuance of a provisional approval to operate. For these schools, the Act requires compliance with certain student disclosures about accreditation, review by a visiting committee, and degree limitation requirements. SB 1247 also outlined a process for institutions that are currently approved by BPPE and offer degrees to submit an accreditation plan to the Bureau by July 1, 2015, to obtain pre-accreditation by July 1, 2017, to obtain accreditation by July 1, 2020, and to comply with various student disclosure and visiting committee review requirements. This bill provides BPPE the authority to give extensions on the timeline for unaccredited degree granting institutions to become accredited according to certain evidence provided by the institution.
- 3) *Office of Student Assistance and Relief (OSAR).* The BPPE has focused significant efforts to provide outreach to schools, including new workshops to assist with application completion and web-based tools to allow institutions to better understand how they can be compliant with the Act and BPPE regulations. The BPPE does not appear to focus similar efforts on student outreach to inform students about the Bureau's work and available recourse for students.

This bill establishes the OSAR (as its own Article within the Act) to be managed by an ombudsperson and to serve as a primary point of contact to address the needs of private postsecondary education students, including outreach to students, coordinating with relevant governmental and non-governmental agencies, and conducting a Pilot Program to provide grants to community-based organizations to assist students harmed by recent school closures with receiving relief under loan forgiveness and the STRF. The ombudsperson will be appointed by the director of the DCA and is responsible for reporting to the director and the BPPE Advisory Committee. The bill would also provide a student who was enrolled at a California campus of CCI, or was a California student enrolled in an online program offered by an out-of-state campus of a CCI institution, who also meets all of the other eligibility requirements, if the student was enrolled as of June 20, 2014, is eligible for STRF.

- 4) *Online Institutions.* This bill requires a private postsecondary education institution that does not maintain a physical presence in this state and offers distance education to California students to participate in the STRF for their California students.

- 5) *Compliance and Enforcement.* BPPE faces a significant backlog of complaints and investigations associated with internal referrals resulting from compliance inspections. Unlike other licensing agencies, the BPPE does not have the authority to issue citations for non-minor violations detected during a compliance inspection. Additionally, concerns have been expressed as to whether BPPE is properly identifying and responding to institutional violations of law; in 2013, the Bureau of State Audits found that the BPPE was failing to properly and consistently enforce the Act. BPPE has indicated that it believes its backlog problem could be addressed, instead, by allowing evidence collected during a compliance inspection to be used in support of issuing a citation. This bill implements those recommendations and additionally implements the BPPE's request to require institutions to notify the BPPE of investigations by other governmental agencies.
- 6) *BPPE Fees.* The California Association of Private Postsecondary Schools (CAPPS) notes that under the current fee structure, many schools with fewer school sites, fewer students, and less revenue are paying more in fees than schools with a much larger footprint. The CAPPS has requested "fee fairness" be included in SB 1192. A revised fee schedule that will more appropriately reflect the BPPE workloads and the size/revenue of BPPE-regulated institutions is anticipated to be included in SB 1039 (Hill), pending in Assembly Business and Professions Committee, which contains revised fee schedules for a number of DCA Boards and Bureaus.
- 7) *OSAR consultation.* The Legal Aid Foundation of Los Angeles (LAFLA) has requested that OSAR be required to consult with legal aid foundations in the performance of its duties. Committee staff recommends that the OSAR be authorized to consult with relevant community based organizations, as the OSAR determines necessary in fulfilling its duties.
- 8) *STRF.* A coalition of consumer organizations has requested a variety of amendments to expand the STRF eligibility for students. This bill provides students 4-years to file a STRF claim and to require that student loans be formally discharged, rather than an agreement not to collect, before a student's STRF eligibility is reduced.
- 9) *Advisory Committee.* This bill removes two positions from the Advisory Committee that are necessary to improve the operations of the Committee. These two positions have remained unfilled since 2010. Additionally, this bill requires the OSAR ombudsperson to report to the Advisory Committee and requires that a quorum be comprised of a majority of those appointed members.
- 10) *Unintended exemption.* An article by BuzzFeed, (*Making the Grade*, published on May 26, 2016) uncovered a series of documents that implicated a non-profit institution operating in California for manipulating student records and improperly using funds. According to the article, the college "has no full-time, permanent faculty, despite having a student body larger than the undergraduate population of Princeton." In response to the article, the BPPE was asked to review the institution's compliance with California law. However, the BPPE has no jurisdiction to review this institution because it receives an exemption from law under Education Code 94847(j). The Committee may wish to consider removing this exemption as it appears the exemption may no longer be serving its original purpose.
- 11) *OSAR Appropriation.* LAFLA has expressed concern that the OSAR will require an appropriation in order to effectively conduct its duties. This issue is anticipated to be raised in the Appropriations Committee.

- 12) *Consumer Disclosures.* Ashford University has requested amendments to better align disclosures (School Performance Fact Sheet, or SPFS) that are required under the Act with disclosures required by accrediting agencies and the federal government. A coalition of organizations that includes SEIU, Public Advocates, and the Veteran's Legal Clinic has also requested amendments to the SPFS, specifically regarding employment. SB 1247 required the Bureau to report to the Legislature by January 1, 2017 regarding student disclosures and possible statutory amendments to streamline and enhance the SPFS. The Assembly Committee on Higher Education staff recommended that changes to the SPFS be delayed until after the report required under current law is submitted to the Legislature.
- 13) *STRF Collection.* Ashford University has requested an amendment to clarify that the BPPE must notify institutions prior to beginning STRF collection. The BPPE reports that altering the STRF assessment is a regulatory change that requires the BPPE to follow notification procedures outlined in the Administrative Procedures Act. Due to this, the change requested by Ashford does not appear necessary.

Current Related Legislation. AB 1835 (Holden) of the current Legislative Session, exempts institutions that grant doctoral degrees in psychoanalysis from the provisions of the Act requiring unaccredited degree granting institutions to be accredited if all of the institution's students hold master's or doctoral degrees before enrollment in the institution and the institution has obtained accreditation from, or has submitted a self-study application to, the Accreditation Council for Psychoanalytic Education on or before July 1, 2017. *STATUS: The bill is currently pending in the Senate Committee on Education.*)

AB 1916 (Irwin) of the current Legislative Session, requires a private postsecondary institution to file a surety bond with the BPPE before January 1, 2019, as specified. *STATUS: This bill failed passage in the Assembly Committee on Business and Professions.*

AB 2581 (Medina) of the current Legislative Session, provides financial and other assistance to students of Heald, Everest, and WyoTech campuses in California, which were owned by CCI and closed unlawfully on April 27, 2015. *STATUS: This bill is pending in the Senate Committee on Business, Professions and Economic Development.*

AB 2652 (Eggman) of the current Legislative Session requires a private entity with no physical presence in this state, that would be subject to the requirements of the Act if the entity was located in this state, to register with the BPPE and participate in the STRF. *STATUS: This bill is pending in the Senate Committee on Business, Professions and Economic Development.*

Prior Related Legislation. AB 573 (Medina) of 2015, included a number of components contained in AB 2581. *NOTE: The bill was vetoed by Governor Brown who noted in his veto message: "I am sympathetic to the many students who were enrolled at Corinthian Colleges when the company abruptly shuttered its doors earlier this year...[USDE] has taken the matter of loan discharge seriously. In recent months, it has greatly eased the burden of filings for many students, and its work to provide a simple, swift and fair process for students continues. As such, it appears premature to create an attorney grant program, especially one that provides little direction on how funds should be used. While the bill's provisions to extend Cal Grant eligibility for Heald students are well-intentioned, I am not comfortable creating new General Fund costs outside of the budget process, particularly given the Cal Grant augmentations already included in this year's budget."*

SB 1247 (Lieu), Chapter 840, Statutes of 2014, extended the sunset date for the BPPE and the Act until January 1, 2017 and made statutory changes to the protections provided to students and the requirements placed on private postsecondary educational institutions, including prohibiting an institution from claiming an exemption from the Act if the institution is approved to participate in Title 38 programs. The bill also contained an exemption for an institution that meets a series of criteria including being accredited by WASC for at least 10 years, headquartered in California, operated continuously for at least 25 years, previously held approval to operate by the former Bureau and derives at least 12.5 percent of its revenues from sources other than state or federal student assistance like Title 38 and CalGrant monies. One institution is currently claiming an exemption pursuant to this provision in SB 1247.

ARGUMENTS IN SUPPORT:

A coalition of organizations* write in support, “We believe this bill will strengthen existing law, and will improve the [BPPE’s] ability to address the needs of students.”

ARGUMENTS IN OPPOSITION:

The California Association of Private Postsecondary Schools (CAPPS) is opposed unless amended and writes, “This challenging state environment coupled with aggressive Federal actions have made it very difficult to operate a private postsecondary school, which is highlighted by the number of schools that have closed in recent years. Despite these challenges our members support the extension of the BPPE because we know it’s important for students and schools to have strong yet fair regulator. We, however, can’t simply support a bill that extends the BPPE and ignore the changes that create a more burdensome and costly Act.”

The University of Phoenix (UOPX) is opposed unless amended and writes “UOPX previously had a ‘support if amended’ position on the bill however recent amendments necessitate a change in that position.”

REGISTERED SUPPORT:

Center for Public Interest Law*
Children's Advocacy Institute*
Public Advocates*
Public Law Center*
SEIU California*
Veterans Legal Clinic*

REGISTERED OPPOSITION:

California Association of Private Postsecondary Schools (CAPPS)
University of Phoenix

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