

Senate Bill No. 1544

CHAPTER 740

An act to amend Sections 94739, 94931, and 94999 of, to add Section 94742.3 to, to add and repeal Section 94779.2 of, to repeal Section 94742.2 of, and to repeal Chapter 3 (commencing with Section 94301) of Part 59 of, the Education Code, relating to private postsecondary education, and making an appropriation therefor.

[Approved by Governor September 24, 2004. Filed with Secretary of State September 24, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1544, Figueroa. Private postsecondary education: Private Postsecondary and Vocational Education Reform Act of 1989.

(1) Existing law, known as the Private Postsecondary and Vocational Education Reform Act of 1989, generally sets minimum standards of instructional quality, ethical and business practices, health and safety, and fiscal responsibility for private postsecondary and vocational educational institutions, as defined. The act establishes the Bureau for Private Postsecondary and Vocational Education, which, among other things, is required to review and investigate all institutions, programs, and courses of instruction approved under the act. A provision of the act provides for its repeal on January 1, 2005.

The existing act establishes the Private Postsecondary and Vocational Education Administration Fund and the continuously appropriated Student Tuition Recovery Fund. The existing act specifies that certain violations of its provisions are subject to civil penalties and that certain willful violations of the act are punishable as crimes.

This bill would make a technical revision to delete obsolete provisions of a predecessor act.

The bill would revise the definition of "private postsecondary educational institution," as used in the act, to exclude institutions exclusively offering programs that cost \$500 or less. The bill would delete the definition in the act of "short-term seminar training."

The bill would require the Director of Consumer Affairs to appoint a Bureau of Private Postsecondary and Vocational Education Operations and Administrative Monitor by January 3, 2005. The bill would require the monitor to, among other things, assess the bureau's administrative operations and to submit a report to the director, the bureau, and the Legislature by October 1, 2005. Those monitor provisions would

become inoperative on April 1, 2006, and would be repealed as of January 1, 2007.

The bill would define “short-term educational programs,” and would require registration under the act to offer those programs.

The bill would appropriate \$150,000 from the Private Postsecondary and Vocational Education Administration Fund to the Director of Consumer Affairs for expenditure for the 2004–05, 2005–06, and 2006–07 fiscal years for the purpose of contracting for the employment of the monitor.

This bill would also require the act to become inoperative on July 1, 2007, and thereafter be repealed on January 1, 2008, thus extending operation of the act by 2¹/₂ years, and thereby making an appropriation by extending the existence of the continuously appropriated Student Tuition Recovery Fund.

By extending the operation of the provisions of the act that establish crimes, the bill would impose a state-mandated local program.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. Chapter 3 (commencing with Section 94301) of Part 59 of the Education Code is repealed.

SEC. 2. Section 94739 of the Education Code is amended to read:

94739. (a) “Private postsecondary educational institution” means any person doing business in California that offers to provide or provides, for a tuition, fee, or other charge, any instruction, training, or education under any of the following circumstances:

(1) A majority of the students to whom instruction, training, or education is provided during any 12-month period is obtained from, or on behalf of, students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.

(2) More than 50 percent of the revenue derived from providing instruction, training, or education during any 12-month period is obtained from, or on behalf of, students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.



(3) More than 50 percent of the hours of instruction, training, or education provided during any 12-month period is provided to students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.

(4) A substantial portion, as determined by the council, by regulation, of the instruction, training, or education provided is provided to students who have completed or terminated their secondary education or are beyond the age of compulsory high school attendance.

(b) The following are not considered to be private postsecondary educational institutions under this chapter:

(1) Institutions exclusively offering instruction at any or all levels from preschool through the 12th grade.

(2) Institutions offering education solely avocational or recreational in nature, and institutions offering this education exclusively.

(3) Institutions offering education sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.

(4) Postsecondary or vocational educational institutions established, operated, and governed by the federal government or by this state, or its political subdivisions.

(5) Institutions offering continuing education where the institution or the program is approved, certified, or sponsored by any of the following:

(A) A government agency, other than the bureau, that licenses persons in a particular profession, trade, or job category.

(B) A state-recognized professional licensing body, such as the State Bar of California, that licenses persons in a particular profession, trade, or job category.

(C) A bona fide trade, business, or professional organization.

(6) A nonprofit institution owned, controlled, and operated and maintained by a bona fide church, religious denomination, or religious organization comprised of multidenominational members of the same well-recognized religion, lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, if the education is limited to instruction in the principles of that church, religious denomination, or religious organization, or to courses offered pursuant to Section 2789 of the Business and Professions Code, and the diploma or degree is limited to evidence of completion of that education, and the meritorious recognition upon which any honorary degree is conferred is limited to the principles of that church, religious denomination, or religious organization. Institutions operating under this paragraph shall offer degrees and diplomas only in the beliefs and practices of the church, religious denomination, or religious organization. The enactment of this



paragraph expresses the legislative intent that the state shall not involve itself in the content of degree programs awarded by any institution operating under this paragraph, as long as the institution awards degrees and diplomas only in the beliefs and practices of the church, religious denomination, or religious organization. Institutions operating under this paragraph shall not award degrees in any area of physical science. Any degree or diploma granted in any area of study under these provisions 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. Degrees awarded under this paragraph shall reflect the nature of the degree title, such as "associate of religious studies," or "bachelor of religious studies," or "master of divinity" or "doctor of divinity." The use of the degree titles "associate of arts" or "associate of science," "bachelor of arts" or "bachelor of science," "master of arts" or "master of science," or "doctor of philosophy" or "Ph.D." shall only be awarded by institutions approved to operate under Article 8 (commencing with Section 94900) or meeting the requirements for an exemption under Section 94750. The enactment of this paragraph is intended to prevent any entity claiming to be a nonprofit institution owned, controlled, and operated and maintained by a bona fide church, religious denomination, or religious organization comprised of multid denominational members of the same well-recognized religion, lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, from marketing and granting degrees or diplomas that are represented as being linked to their church, religious denomination, or religious organization, but which, in reality, are degrees in secular areas of study. An institution operating under this paragraph shall file annually with the council evidence to demonstrate its status as a nonprofit religious corporation under the Corporations Code. A college or university operating under this paragraph shall file annually with the council evidence to demonstrate its status as a nonprofit religious corporation under the Corporations Code.

(7) (A) Public institutions accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges.

(B) Institutions accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges that are incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section



5110) of Division 2 of Title 1 of the Corporations Code and that are not managed by any entity for profit.

(C) For-profit institutions accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges.

(D) Institutions accredited by the Western Association of Schools and Colleges that do not meet all of the criteria in subparagraph (B) and that are incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, that have been in continuous operation since April 15, 1997, and that are not managed by any entity for profit. Notwithstanding this subdivision, institutions that meet the criteria in this subparagraph shall be subject to Section 94831, except subdivision (c) of that section, and Sections 94832, 94834, 94838, and 94985.

(8) Institutions that exclusively offer programs that cost five hundred dollars (\$500) or less.

SEC. 3. Section 94742.2 of the Education Code is repealed.

SEC. 4. Section 94742.3 is added to the Education Code, to read:

94742.3. “Short-term education program” means an educational service meeting all of the following criteria:

(a) The total charge to the student is more than five hundred dollars (\$500) and not more than two thousand dollars (\$2,000).

(b) The length of training is 250 hours or less.

(c) The service is not any of the following:

(1) Instruction leading to a degree.

(2) Instruction financed by a federal or state loan or grant.

(3) Any educational service that was originally longer than 250 hours or cost more than two thousand dollars (\$2,000), but has been structured into segments to meet the requirement of subdivision (a).

(c) The service is offered by approved institutions or institutions registered pursuant to Article 9.5 (commencing with Section 94931).

SEC. 5. Section 94779.2 is added to the Education Code, to read:

94779.2. (a) (1) The Director of Consumer Affairs shall appoint a Bureau for Private Postsecondary and Vocational Education Operations and Administrative Monitor no later than January 3, 2005. The director may retain a person for this position by a personal services contract. In this connection, the Legislature finds, pursuant to Section 19130 of the Government Code, that this is a new state function.

(2) The director shall supervise the operations monitor and may terminate or dismiss him or her from this position.



(b) The director shall advertise the availability of this position. The requirements for this position shall include experience in conducting investigations, familiarity with state laws, rules, and procedures pertaining to the bureau, and familiarity with relevant administrative procedures.

(c) (1) The operations monitor shall assess the bureau's administrative operations, including its school approval, applicant review, revenue collection, and complaint and enforcement processes and procedures with the primary goals of improving the bureau's overall efficiency, improving its effectiveness, and improving its compliance with state laws, particularly with respect to the bureau's approval, complaint, and enforcement processes.

(2) This monitoring duty shall be on a continuing basis for a period of no more than two years from the date of the operations monitor's appointment and shall include, but not necessarily be limited to, all of the following:

(A) Assessing the bureau's revenue collections and needs, and its staffing.

(B) Evaluating the relevant laws and regulations to identify revisions that would improve state regulation and maintain or improve student and public protection.

(C) Improving the quality and consistency of the bureau's processes and performance, including complaint processing and investigation, and reducing timeframes for each.

(D) Reducing any complaint backlog.

(E) Ensuring consistency in the application of sanctions or discipline imposed on regulated institutions and persons.

(F) Improving the quality and timeliness of application and approval processes for regulated institutions and persons, the collection of fees, and the collection of information from, and the ability to disseminate information regarding, those entities or persons regulated by the bureau.

(G) Improving the bureau's ability to perform outreach to prospective students of private postsecondary and vocational educational institutions.

(3) The operations monitor shall exercise no authority over the bureau's management or staff; however, the bureau and its staff shall cooperate with him or her, and shall provide data, information, and files as requested by the monitor to perform all of his or her duties.

(4) The director shall assist the operations monitor in the performance of his or her duties, and the operations monitor shall have the same investigative authority as the director.

(d) The operations monitor shall submit an initial written report of his or her findings and conclusions to the director, the bureau, and the



Legislature no later than October 1, 2005, and every six months thereafter, and shall be available to make oral reports to each if requested to do so. The operations monitor may also provide additional information to either the department or the Legislature at his or her discretion or at the request of either the department or the Legislature. The operations monitor shall make his or her reports available to the public and the media. The operations monitor shall make every effort to provide the department and the bureau with an opportunity to reply to any facts, finding, issues, or conclusions in his or her reports with which the department or the bureau may disagree.

(e) The bureau shall reimburse the department for all of the costs associated with the employment of an operations manager.

(f) This section shall become inoperative on April 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 94931 of the Education Code is amended to read:

94931. (a) No private postsecondary educational institution, except those offering degrees and approved under Article 8 (commencing with Section 94900) or offering vocational and nondegree granting programs and approved under Article 9 (commencing with Section 94915), or those that are exempt from this chapter, may offer educational services or programs or short-term educational programs unless the institution has been registered by the bureau as meeting the requirements of this article.

(b) An institution approved to offer degrees under Article 8 (commencing with Section 94900) or approved to offer vocational and nondegree granting programs under Article 9 (commencing with Section 94915) may offer registered short-term education programs without affecting its status under either of those articles so long as the registered short-term education program is disclosed in its approval to operate application or the institution completes a registration application and receives specific authorization for the program, maintains compliance for all registered programs in conformity with this article, and maintains a set of student records for registered programs separate from its approved programs. Any registered institution that offers an educational program not specified in subdivision (c) or not otherwise exempt from this chapter shall be approved under Article 8 (commencing with Section 94900) or Article 9 (commencing with Section 94915) and shall comply with this chapter.

(c) Except as otherwise provided in this article, this chapter does not apply to an educational service that qualifies for registration status and



that complies with this article. The educational services that qualify for registration status are limited to:

(1) An educational service, as defined in Section 94733, that is offered to provide an intensive English language program.

(2) An educational service, as defined in Section 94742.1, that is offered to provide short-term career training.

(3) An educational service, as defined in Section 94742.2, that is offered to provide short-term seminar training.

(4) An educational service that is offered to assist students to prepare for an examination for licensure, except as provided in Section 94787.

(5) An educational service that consists of continuing education not otherwise exempt from this chapter.

(d) An institution that qualifies under any of paragraphs (1) to (4), inclusive, of subdivision (c) shall complete a registration form provided by the bureau, including a signed declaration by the chief executive officer of the institution under penalty of perjury, and provide all of the following information for public disclosure:

(1) The owner's legal name, headquarters address, and the name of an agent for the service of process within California.

(2) All names, whether real or fictitious, under which the owner is doing and will do business.

(3) The names and addresses of the principal officers of the institution.

(4) A list of all California locations at which the institution operates, its offerings, and, if previously registered, the number of students enrolled in California during the preceding year.

(5) A copy of the registration form or agreement that enrolls the student in the educational service that contains all of the following:

(A) The name and address of the location where instruction will be provided.

(B) The title of the educational program.

(C) The total amount the student is obligated to pay for the educational service.

(D) A clear and conspicuous statement that the enrollment form or agreement is a legally binding instrument when signed by the student and accepted by the institution.

(E) The refund policy developed by the institution unless this article specifies a different refund policy.

(F) Unless this article specifies that the institution is required to participate in the Student Tuition Recovery Fund, a statement that the institution does not participate in that fund.

(G) In 10-point boldface type or larger, the following statement: "Any questions or problems concerning this school that have not been



satisfactorily answered or resolved by the school should be directed to the Bureau for Private Postsecondary and Vocational Education in the Department of Consumer Affairs (insert city, address, CA ZIP Code number, and telephone number).”

(H) Schools approved under paragraph (1) of subdivision (c) of Section 94931 shall also include with the statement required by subparagraph (G) information referring the student to a consulate of his or her country and the United States Immigration and Naturalization Service.

(6) A brochure or catalog and a sample advertisement used to promote the educational service.

(7) A copy of its certificate of completion.

(8) If the educational service offers short-term career training, the institution shall comply with the requirements of Sections 94804 and 94806.

(9) If the institution assists students in obtaining financing from a third party for the cost of the educational services at the institution, a copy of the contract or finance agreement reflecting that financing.

(e) The bureau shall establish the initial registration fee and the annual fee to be paid by institutions registered under this article. No institution shall be registered pursuant to this article unless it has paid the appropriate fees required by the bureau. Upon receipt of an institution’s initial application for registration for a program, the bureau may conduct a site visit pursuant to subdivision (c) of Section 94915.

(f) For the purposes of communication with other state agencies, any organization or individual registered to offer short-term seminar training may state that they are “authorized” by the State of California.

(g) (1) Except as provided by subdivision (f), any institution registered pursuant to this article shall be restricted to stating that their training is “registered” with the State of California and is prohibited from using the words “approval,” “approved,” “approval to operate,” “approved to operate,” “authorized,” “licensed,” or “licensed to operate.”

(2) The institution shall place the following statement in all brochures, catalogues, enrollment agreements, and registration forms, in a conspicuous location in at least 12-point boldfaced type:

“We are registered with the State of California. Registration means we have met certain minimum standards imposed by the state for registered schools on the basis of our written application to the state. Registration does not mean we have met all of the more extensive standards required by the state for schools that are approved to operate or licensed or that the state has verified the information we submitted with our registration form.”



(h) The bureau may require, at least every three years following the initial registration date, that a registered institution verify all or part of the information required to be provided with the registration form under subdivision (d).

(i) Sections 94812 and 94818, Sections 94822 to 94825, inclusive, and Sections 94829 to 94838, inclusive, and Sections 94841 and 94846 shall apply to any institution registered pursuant to this article.

(j) Article 1 (commencing with Section 94700), Article 2 (commencing with Section 94710), Article 3 (commencing with Section 94750), Article 3.5 (commencing with Section 94760), Article 4 (commencing with Section 94770), and Article 13 (commencing with Section 94950) shall apply to any institution registered pursuant to this article.

SEC. 7. Section 94999 of the Education Code is amended to read: 94999. This chapter shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. The sum of one hundred fifty thousand dollars (\$150,000) is hereby appropriated from the Private Postsecondary and Vocational Education Administration Fund, established pursuant to Section 94932 of the Education Code, to the Director of Consumer Affairs for expenditure for the 2004–05, 2005–06, and 2006–07 fiscal years for the purpose of contracting for the employment of a Bureau for Private Postsecondary and Vocational Education Operations and Administrative Monitor pursuant to Section 94779.2 of the Education Code.

SEC. 9. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

