Assembly Bill No. 1889

Passed the Assembly August 31, 2010

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Chief Clerk of the Assembly

Passed the Senate August 24, 2010

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Secretary of the Senate

This bill was received by the Governor this _____ day of _____, 2010, at _____ o'clock ____M.

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Private Secretary of the Governor

CHAPTER _____

An act to amend Sections 94897, 94904, 94920, and 94928 of, and to add Section 94874.3 to, the Education Code, and to amend Section 8 of Chapter 310 of the Statutes of 2009, relating to private postsecondary education.

LEGISLATIVE COUNSEL'S DIGEST

AB 1889, Portantino. Private postsecondary education: California Private Postsecondary Education Act of 2009.

(1) Existing law establishes the California Private Postsecondary Education Act of 2009, which, among other things, provides for student protections and regulatory oversight of private postsecondary schools in the state.

Existing law establishes the Bureau for Private Postsecondary Education to regulate private postsecondary institutions through the powers granted, and the duties imposed, by the act.

This bill would prohibit the bureau, for the period of July 1, 2010, to July 1, 2011, inclusive, from enforcing the act against institutions certified to offer educational programs in flight instruction and aircraft maintenance by the Federal Aviation Administration. The bill would also require those institutions to notify the bureau if they operate during that time period.

(2) The act prohibits institutions, as defined, from performing various actions.

This bill would prohibit an institution from offering an unaccredited doctoral degree program without disclosing to prospective students that the degree program is unaccredited, and any known limitation of the unaccredited degree, including, but not limited to, whether the degree is recognized for licensure or certification in other states.

(3) The act prohibits an ability-to-benefit student, defined as a student who does not have a certificate of graduation from a school providing secondary education, or a recognized equivalent of that certificate, from enrolling in an institution unless the student achieves a specified score on an independently administered examination from a specified list of examinations prescribed by the United States Department of Education that demonstrates that

the student may benefit from the education and training being offered.

This bill would authorize the Bureau for Private Postsecondary Education to publish its own list of acceptable examinations if the United States Department of Education does not have a list of relevant examinations that pertain to the intended occupational training.

(4) The act requires specified private postsecondary institutions to refund 100% of the amount paid for institutional charges, less specified expenses, if notice of cancellation is made through attendance at the first class session, or the 7th class day after enrollment, whichever is later.

This bill would change the 2nd deadline for notice of cancellation from the 7th class day after enrollment, to the 7th day after enrollment.

(5) Existing law defines "graduates employed in the field," for purposes of the act, as graduates who are gainfully employed within 6 months of graduation in a position for which the skills obtained through the education and training provided by the institution are required or provided a significant advantage to the graduate in obtaining the position.

This bill would revise this definition to remove skills obtained that have provided a significant advantage to the graduate in obtaining the position, and include skills that are utilized to perform the purpose or objective of the position or the major responsibilities of the position.

(6) Existing law appropriates $580,000 from the Private Postsecondary and Vocational Education Administration Fund to the Bureau for Private Postsecondary Education, for the purpose of funding 5 private postsecondary education specialist and senior specialist positions.

This bill would require those positions to be permanent, full-time positions to perform work in conformity with the classification specifications as directed by the bureau chief.

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

SECTION 1. Section 94874.3 is added to the Education Code, to read:

94874.3. (a) For the period of July 1, 2010, to July 1, 2011, inclusive, the bureau shall not enforce this chapter against institutions certified to offer educational programs in flight instruction and aircraft maintenance by the Federal Aviation Administration.

(b) An institution identified in subdivision (a) shall notify the bureau if the institution operates during the period of July 1, 2010, to July 1, 2011, inclusive.

SEC. 2. Section 94897 of the Education Code is amended to read:

94897. An institution shall not do any of the following:

(a) Use, or allow the use of, any reproduction or facsimile of the Great Seal of the State of California on a diploma.

(b) Promise or guarantee employment, or otherwise overstate the availability of jobs upon graduation.

(c) Advertise concerning job availability, degree of skill, or length of time required to learn a trade or skill unless the information is accurate and not misleading.

(d) Advertise, or indicate in promotional material, without including the fact that the educational programs are delivered by means of distance education if the educational programs are so delivered.

(e) Advertise, or indicate in promotional material, that the institution is accredited, unless the institution has been accredited by an accrediting agency.

(f) Solicit students for enrollment by causing an advertisement to be published in “help wanted” columns in a magazine, newspaper, or publication, or use “blind” advertising that fails to identify the institution.

(g) Offer to compensate a student to act as an agent of the institution with regard to the solicitation, referral, or recruitment of any person for enrollment in the institution, except that an institution may award a token gift to a student for referring an individual, provided that the gift is not in the form of money, no more than one gift is provided annually to a student, and the gift’s cost is not more than one hundred dollars ($100).

(h) Pay any consideration to a person to induce that person to sign an enrollment agreement for an educational program.

(i) Use a name in any manner improperly implying any of the following:

(1) The institution is affiliated with any government agency, public or private corporation, agency, or association if it is not, in fact, thus affiliated.

(2) The institution is a public institution.

(3) The institution grants degrees, if the institution does not grant degrees.

(j) In any manner make an untrue or misleading change in, or untrue or misleading statement related to, a test score, grade or record of grades, attendance record, record indicating student completion, placement, employment, salaries, or financial information, including any of the following:

(1) A financial report filed with the bureau.

(2) Information or records relating to the student's eligibility for student financial aid at the institution.

(3) Any other record or document required by this chapter or by the bureau.

(k) Willfully falsify, destroy, or conceal any document of record while that document of record is required to be maintained by this chapter.

(*l*) Use the terms "approval," "approved," "approval to operate," or "approved to operate" without stating clearly and conspicuously that approval to operate means compliance with state standards as set forth in this chapter. If the bureau has granted an institution approval to operate, the institution may indicate that the institution is "licensed" or "licensed to operate," but shall not state or imply either of the following:

(1) The institution or its educational programs are endorsed or recommended by the state or by the bureau.

(2) The approval to operate indicates that the institution exceeds minimum state standards as set forth in this chapter.

(m) Direct any individual to perform an act that violates this chapter, to refrain from reporting unlawful conduct to the bureau or another government agency, or to engage in any unfair act to persuade a student not to complain to the bureau or another governmental agency.

(n) Compensate an employee involved in recruitment, enrollment, admissions, student attendance, or sales of educational materials to students on the basis of a commission, commission draw, bonus, quota, or other similar method related to the recruitment, enrollment, admissions, student attendance, or sales

of educational materials to students, except as provided in paragraph (1) or (2):

(1) If the educational program is scheduled to be completed in 90 days or less, the institution shall pay compensation related to a particular student only if that student completes the educational program.

(2) For institutions participating in the federal student financial aid programs, this subdivision shall not prevent the payment of compensation to those involved in recruitment, admissions, or the award of financial aid if those payments are in conformity with federal regulations governing an institution's participation in the federal student financial aid programs.

(o) Require a prospective student to provide personal contact information in order to obtain, from the institution's Internet Web site, educational program information that is required to be contained in the school catalog or any information required pursuant to the consumer information requirements of Title IV of the federal Higher Education Act of 1965, and any amendments thereto.

(p) Offer an unaccredited doctoral degree program without disclosing to prospective students that the degree program is unaccredited, and any known limitation of the unaccredited degree, including, but not limited to, whether the degree is recognized for licensure or certification in other states.

SEC. 3. Section 94904 of the Education Code is amended to read:

94904. Before an ability-to-benefit student may execute an enrollment agreement, the institution shall have the student take an independently administered examination from the list of examinations prescribed by the United States Department of Education pursuant to Section 484(d) of the federal Higher Education Act of 1965 (20 U.S.C. Sec. 1070a et seq.) as it is, from time to time, amended. The student shall not enroll unless the student achieves a score, as specified by the United States Department of Education, demonstrating that the student may benefit from the education and training being offered. If the United States Department of Education does not have a list of relevant examinations that pertain to the intended occupational training, the bureau may publish its own list of acceptable examinations.

SEC. 4. Section 94920 of the Education Code is amended to read:

94920. An institution that does not participate in the federal student financial aid programs shall do all of the following:

(a) The institution shall advise each student that a notice of cancellation shall be in writing, and that a withdrawal may be effectuated by the student's written notice or by the student's conduct, including, but not necessarily limited to, a student's lack of attendance.

(b) Institutions shall refund 100 percent of the amount paid for institutional charges, less a reasonable deposit or application fee not to exceed two hundred fifty dollars ($250), if notice of cancellation is made through attendance at the first class session, or the seventh day after enrollment, whichever is later.

(c) The bureau may adopt by regulation a different method of calculation for instruction delivered by other means, including, but not necessarily limited to, distance education.

(d) The institution shall have a refund policy for the return of unearned institutional charges if the student cancels an enrollment agreement or withdraws during a period of attendance. The refund policy for students who have completed 60 percent or less of the period of attendance shall be a pro rata refund.

(e) The institution shall pay or credit refunds within 45 days of a student's cancellation or withdrawal.

SEC. 5. Section 94928 of the Education Code is amended to read:

94928. As used in this article, the following terms have the following meanings:

(a) "Cohort population" means the number of students that began a program on a cohort start date.

(b) "Cohort start date" means the first class day after the cancellation period during which a cohort of students attends class for a specific program.

(c) "Graduates" means the number of students who complete a program within 100 percent of the published program length. An institution may separately state completion information for students completing the program within 150 percent of the original contracted time, but that information shall not replace completion information for students completing within the original scheduled

time. Completion information shall be separately stated for each campus or branch of the institution.

(d) "Graduates available for employment" means the number of graduates minus the number of graduates unavailable for employment.

(e) "Graduates employed in the field" means graduates who are gainfully employed within six months of graduation in a position for which the skills obtained through the education and training provided by the institution are required or are utilized to perform the purpose or objective of the position or the major responsibilities of the position.

(f) "Graduates unavailable for employment" means graduates who, after graduation, die, become incarcerated, are called to active military duty, are international students that leave the United States or do not have a visa allowing employment in the United States, or are continuing their education at an accredited or bureau-approved postsecondary institution.

(g) "Students available for graduation" means the cohort population minus the number of students unavailable for graduation.

(h) "Students unavailable for graduation" means students who have died, been incarcerated, or called to active military duty.

SEC. 6. Section 8 of Chapter 310 of the Statutes of 2009 is amended to read:

Sec. 8. (a) Notwithstanding any other provision of law, and notwithstanding the repeal of the former Private Postsecondary and Vocational Education Reform Act of 1989, the sum of five hundred eighty thousand dollars ($580,000) is hereby appropriated from the Private Postsecondary and Vocational Education Administration Fund to the Bureau for Private Postsecondary Education, for the purpose of funding five permanent, full-time private postsecondary education specialist and senior specialist positions to perform work in conformity with the classification specifications as directed by the bureau chief.

(b) The education specialist and senior specialist positions described in subdivision (a) shall be included in the annual budget for the Bureau for Private Postsecondary Education.

Approved _____, 2010

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Governor