

AMENDED IN SENATE AUGUST 30, 2010

AMENDED IN SENATE AUGUST 12, 2010

AMENDED IN SENATE JUNE 29, 2010

AMENDED IN ASSEMBLY APRIL 14, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1140

Introduced by Assembly Member Niello

(Principal coauthor: Assembly Member Torrico)

(Coauthors: Assembly Members Anderson, Cook, Fuentes, Fuller, Gaines, Garrick, Gilmore, Hagman, and Knight, *Portantino, and Villines*)

(Coauthors: Senators Cogdill, Cox, Huff, and Runner)

February 27, 2009

An act to ~~add and repeal Section 94874.3 of the Education Code~~ *amend Sections 94897, 94904, 94920, and 94928 of, and to add and repeal Section 94874.3 of, the Education Code, and to amend Section 8 of Chapter 310 of the Statutes of 2009*, relating to private postsecondary education, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1140, as amended, Niello. California Private Postsecondary Education Act of ~~2009: flight schools and aircraft maintenance programs~~. 2009.

Existing

(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 July 1, 2010, to July 1, 2011, inclusive, from enforcing the act against institutions that offer flight instruction or institutions that offer Federal Aviation Administration certified educational programs in aircraft maintenance. The bill would also require ~~the Legislature to hold public informational hearings for the purpose of reviewing the appropriateness of regulating educational programs in flight instruction and aircraft maintenance under the act~~ those institutions to notify the bureau if they operate during that 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.

This

(7) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

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

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

3 94874.3. (a) For the period July 1, 2010, to July 1, 2011,
4 inclusive, the bureau shall not enforce this chapter against an
5 institution that offers flight instruction or an institution that offers
6 Federal Aviation Administration certified educational programs
7 in aircraft maintenance.

8 ~~(b) The Legislature shall hold public informational hearings for~~
9 ~~the purpose of reviewing the appropriateness of regulating~~
10 ~~educational programs in flight instruction and aircraft maintenance~~
11 ~~under this chapter.~~

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

1 (c) This section shall remain in effect only until January 1, 2012,
2 and as of that date is repealed, unless a later enacted statute, that
3 is enacted before January 1, 2012, deletes or extends that date.

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

6 94897. An institution shall not do any of the following:

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

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

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

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

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

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

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

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

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

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

39 (2) The institution is a public institution.

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

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

8 (1) A financial report filed with the bureau.

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

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

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

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

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

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

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

32 (n) Compensate an employee involved in recruitment,
33 enrollment, admissions, student attendance, or sales of educational
34 materials to students on the basis of a commission, commission
35 draw, bonus, quota, or other similar method related to the
36 recruitment, enrollment, admissions, student attendance, or sales
37 of educational materials to students, except as provided in
38 paragraph (1) or (2):

39 (1) If the educational program is scheduled to be completed in
40 90 days or less, the institution shall pay compensation related to

1 a particular student only if that student completes the educational
2 program.

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

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

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

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

23 94904. Before an ability-to-benefit student may execute an
24 enrollment agreement, the institution shall have the student take
25 an independently administered examination from the list of
26 examinations prescribed by the United States Department of
27 Education pursuant to Section 484(d) of the federal Higher
28 Education Act of 1965 (20 U.S.C. Sec. 1070a et seq.) as it is, from
29 time to time, amended. The student ~~may~~ *shall* not enroll unless
30 the student achieves a score, as specified by the United States
31 Department of Education, demonstrating that the student may
32 benefit from the education and training being offered. *If the United*
33 *States Department of Education does not have a list of relevant*
34 *examinations that pertain to the intended occupational training,*
35 *the bureau may publish its own list of acceptable examinations.*

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

38 94920. An institution that does not participate in the federal
39 student financial aid programs shall do all of the following:

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

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

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

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

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

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

23 94928. As used in this article, the following terms have the
24 following meanings:

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

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

30 (c) "Graduates" means the number of students who complete a
31 program within 100 percent of the published program length. An
32 institution may separately state completion information for students
33 completing the program within 150 percent of the original
34 contracted time, but that information ~~may~~ *shall* not replace
35 completion information for students completing within the original
36 scheduled time. Completion information shall be separately stated
37 for each campus or branch of the institution.

38 (d) "Graduates available for employment" means the number
39 of graduates minus the number of graduates unavailable for
40 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 ~~provided a significant advantage to the graduate in obtaining the position~~ *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.

~~SEC. 2:~~

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to prevent the Bureau for Private Postsecondary Education from requiring institutions that offer flight instruction

1 and institutions that offer Federal Aviation Administration certified
2 educational programs in aircraft maintenance to file applications
3 for approval to operate on or before August 1, 2010, *and to make*
4 *further improvements in the ability of the bureau to review the*
5 *activities of the institutions subject to its oversight during the*
6 *2010–11 fiscal year*, it is necessary for this act to take effect
7 immediately.

O