

AMENDED IN ASSEMBLY MAY 6, 2010
AMENDED IN ASSEMBLY MARCH 17, 2010
CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 1889

Introduced by Assembly Member Portantino

February 16, 2010

An act to amend Sections 94809.6, 94897, 94904, 94920, and 94928 of 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, as amended, 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. ~~The~~ *The act provides transition provisions from the former Private Postsecondary and Vocational Education Reform Act of 1989, which, among other things, provide for the preservation of certain claims and remedies under the former act.*

This bill would require a remedy that could have been ordered to redress a violation of the former act to remain available for certain claims or causes of action that are commenced after June 30, 2007.

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

This bill would additionally prohibit institutions from offering a doctoral degree, unless the institution is accredited.

(2)

(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.

~~(3)~~

(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.

~~(4)~~

(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.

~~(5)~~

(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 five private postsecondary education specialist and senior specialist positions.

This bill would require those positions to be permanent, full-time positions that are located in the Sacramento office of the bureau.

Vote: majority. 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 94809.6 of the Education Code is amended*
2 *to read:*

3 94809.6. (a) Notwithstanding the inoperative status or repeal
4 of the former Private Postsecondary and Vocational Education
5 Reform Act of 1989 on or after July 1, 2007, any claim or cause
6 of action in any manner based on ~~the~~ *that* act that was commenced
7 on or before June 30, 2007, whether or not reduced to a final
8 judgment, shall be preserved, and ~~any~~ *a* remedy that was or could
9 have been ordered to redress a violation of the act on or before
10 June 30, 2007, may be ordered or maintained thereafter. If a final
11 judgment was obtained in an action commenced on or after July
12 1, 2007, under the authority of Chapter 635 of the Statutes of 2007,
13 the final judgment and ~~any~~ *a* legal remedy that was or could be
14 maintained on or after July 1, 2007, under that statute, shall be
15 preserved and maintained thereafter.

16 (b) *A remedy that could have been ordered to redress a violation*
17 *of the former Private Postsecondary and Vocational Education*
18 *Reform Act of 1989 on or before June 30, 2007, shall remain*
19 *available for all claims or causes of action described in subdivision*
20 *(a) of Section 94809.5 that are commenced after June 30, 2007,*
21 *except claims to the Student Tuition Recovery Fund.*

22 ~~(b)~~
23 (c) The rights, obligations, claims, causes of action, and
24 remedies described in ~~subdivision (a)~~ *subdivisions (a) and (b)* shall
25 be determined by the provisions of the former Private
26 Postsecondary and Vocational Education Reform Act of 1989 in
27 effect on or before June 30, 2007, notwithstanding the inoperative
28 status or repeal of the former Private Postsecondary and Vocational
29 Education Reform Act of 1989 on or after July 1, 2007.

30 **SECTION 1.**

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

33 94897. An institution shall not do any of the following:

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

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

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

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

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

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

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

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

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

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

29 (2) The institution is a public institution.

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

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

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

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

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

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

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

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

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

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

22 (n) Compensate an employee involved in recruitment,
23 enrollment, admissions, student attendance, or sales of educational
24 materials to students on the basis of a commission, commission
25 draw, bonus, quota, or other similar method related to the
26 recruitment, enrollment, admissions, student attendance, or sales
27 of educational materials to students, except as provided in
28 paragraph (1) or (2):

29 (1) If the educational program is scheduled to be completed in
30 90 days or less, the institution shall pay compensation related to
31 a particular student only if that student completes the educational
32 program.

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

39 (o) Require a prospective student to provide personal contact
40 information in order to obtain, from the institution’s Internet Web

1 site, educational program information that is required to be
2 contained in the school catalog or any information required
3 pursuant to the consumer information requirements of Title IV of
4 the federal Higher Education Act of 1965, and any amendments
5 thereto.

6 (p) Offer a doctoral degree, unless the institution is accredited.

7 ~~SEC. 2.~~

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

10 94904. Before an ability-to-benefit student may execute an
11 enrollment agreement, the institution shall have the student take
12 an independently administered examination from the list of
13 examinations prescribed by the United States Department of
14 Education pursuant to Section 484(d) of the federal Higher
15 Education Act of 1965 (20 U.S.C. Sec. 1070a et seq.) as it is, from
16 time to time, amended. The student shall not enroll unless the
17 student achieves a score, as specified by the United States
18 Department of Education, demonstrating that the student may
19 benefit from the education and training being offered. If the United
20 States Department of Education does not have a list of relevant
21 examinations that pertain to the intended occupational training,
22 the bureau may publish its own list of acceptable examinations.

23 ~~SEC. 3.~~

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

26 94920. An institution that does not participate in the federal
27 student financial aid programs shall do all of the following:

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

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

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

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

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

8 ~~SEC. 4.~~

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

11 94928. As used in this article, the following terms have the
12 following meanings:

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

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

18 (c) "Graduates" means the number of students who complete a
19 program within 100 percent of the published program length. An
20 institution may separately state completion information for students
21 completing the program within 150 percent of the original
22 contracted time, but that information shall not replace completion
23 information for students completing within the original scheduled
24 time. Completion information shall be separately stated for each
25 campus or branch of the institution.

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

29 (e) "Graduates employed in the field" means graduates who are
30 gainfully employed within six months of graduation in a position
31 for which the skills obtained through the education and training
32 provided by the institution are required.

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

1 (g) “Students available for graduation” means the cohort
2 population minus the number of students unavailable for
3 graduation.

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

6 ~~SEC. 5.~~

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

9 Sec. 8. (a) Notwithstanding any other provision of law, and
10 notwithstanding the repeal of the former Private Postsecondary
11 and Vocational Education Reform Act of 1989, the sum of five
12 hundred eighty thousand dollars (\$580,000) is hereby appropriated
13 from the Private Postsecondary and Vocational Education
14 Administration Fund to the Bureau for Private Postsecondary
15 Education, for the purpose of funding five permanent, full-time
16 private postsecondary education specialist and senior specialist
17 positions to be located in the Sacramento office of the Bureau of
18 Private Postsecondary Education.

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