

AMENDED IN SENATE JUNE 30, 2010

AMENDED IN SENATE JUNE 22, 2010

AMENDED IN ASSEMBLY MAY 6, 2010

AMENDED IN ASSEMBLY MARCH 17, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

## ASSEMBLY BILL

**No. 1889**

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**Introduced by Assembly Member Portantino**

February 16, 2010

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An act to amend Sections ~~94809.6~~, 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, 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 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)~~

(1) 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 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.

(3)

(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.

(4)

(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.

(5)

(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.

(6)

(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.

(7)

(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~~  
2     ~~amended 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 that act that was commenced on~~  
7     ~~or before June 30, 2007, whether or not reduced to a final~~  
8     ~~judgment, shall be preserved, and a remedy that was or could have~~  
9     ~~been ordered to redress a violation of the act on or before June 30,~~  
10    ~~2007, may be ordered or maintained thereafter. If a final judgment~~  
11    ~~was obtained in an action commenced on or after July 1, 2007,~~  
12    ~~under the authority of Chapter 635 of the Statutes of 2007, the~~  
13    ~~final judgment and a legal remedy that was or could be maintained~~  
14    ~~on or after July 1, 2007, under that statute, shall be preserved and~~  
15    ~~maintained thereafter.~~  
16    ~~(b) A remedy that could have been ordered to redress a violation~~  
17    ~~of the former Private Postsecondary and Vocational Education~~

~~Reform Act of 1989 on or before June 30, 2007, shall remain available for all claims or causes of action described in subdivision (a) of Section 94809.5 that are commenced after June 30, 2007, except claims to the Student Tuition Recovery Fund.~~

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

~~SEC. 2.~~

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

~~SEC. 3.~~

~~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.

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

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

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

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

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

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

22 (2) The institution is a public institution.

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

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

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

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

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

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

38 (l) Use the terms “approval,” “approved,” “approval to operate,”  
39 or “approved to operate” without stating clearly and conspicuously  
40 that approval to operate means compliance with state standards as

1 set forth in this chapter. If the bureau has granted an institution  
2 approval to operate, the institution may indicate that the institution  
3 is “licensed” or “licensed to operate,” but shall not state or imply  
4 either of the following:

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

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

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

14 (n) Compensate an employee involved in recruitment,  
15 enrollment, admissions, student attendance, or sales of educational  
16 materials to students on the basis of a commission, commission  
17 draw, bonus, quota, or other similar method related to the  
18 recruitment, enrollment, admissions, student attendance, or sales  
19 of educational materials to students, except as provided in  
20 paragraph (1) or (2):

21 (1) If the educational program is scheduled to be completed in  
22 90 days or less, the institution shall pay compensation related to  
23 a particular student only if that student completes the educational  
24 program.

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

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

38 (p) Offer an unaccredited doctoral degree program without  
39 disclosing to prospective students that the degree program is  
40 unaccredited, and any known limitation of the unaccredited degree,

1 including, but not limited to, whether the degree is recognized for  
2 licensure or certification in other states.

3 ~~SEC. 4.~~

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

6 94904. Before an ability-to-benefit student may execute an  
7 enrollment agreement, the institution shall have the student take  
8 an independently administered examination from the list of  
9 examinations prescribed by the United States Department of  
10 Education pursuant to Section 484(d) of the federal Higher  
11 Education Act of 1965 (20 U.S.C. Sec. 1070a et seq.) as it is, from  
12 time to time, amended. The student shall not enroll unless the  
13 student achieves a score, as specified by the United States  
14 Department of Education, demonstrating that the student may  
15 benefit from the education and training being offered. If the United  
16 States Department of Education does not have a list of relevant  
17 examinations that pertain to the intended occupational training,  
18 the bureau may publish its own list of acceptable examinations.

19 ~~SEC. 5.~~

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

22 94920. An institution that does not participate in the federal  
23 student financial aid programs shall do all of the following:

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

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

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

37 (d) The institution shall have a refund policy for the return of  
38 unearned institutional charges if the student cancels an enrollment  
39 agreement or withdraws during a period of attendance. The refund

1 policy for students who have completed 60 percent or less of the  
2 period of attendance shall be a pro rata refund.

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

5 ~~SEC. 6.~~

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

8 94928. As used in this article, the following terms have the  
9 following meanings:

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

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

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

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

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

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

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

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

3 ~~SEC. 7.~~

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

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

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