

AMENDED IN SENATE AUGUST 17, 2010
AMENDED IN SENATE AUGUST 2, 2010
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

Introduced by Assembly Member Portantino

February 16, 2010

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, 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.

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~~ *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 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.

(7) This bill would provide that it would become operative only if AB 1140 of the 2009–10 Regular Session is enacted and becomes effective on or before January 1, 2011.

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 94874.3 is added to the Education Code,
2 to read:

3 94874.3. (a) For the period of July 1, 2010, to July 1, 2011,
4 inclusive, the bureau shall not enforce this chapter against
5 institutions certified to offer educational programs in flight
6 instruction and aircraft maintenance by the Federal Aviation
7 Administration.

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.

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

17 94897. An institution shall not do any of the following:

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

- 1 (b) Promise or guarantee employment, or otherwise overstate
2 the availability of jobs upon graduation.
- 3 (c) Advertise concerning job availability, degree of skill, or
4 length of time required to learn a trade or skill unless the
5 information is accurate and not misleading.
- 6 (d) Advertise, or indicate in promotional material, without
7 including the fact that the educational programs are delivered by
8 means of distance education if the educational programs are so
9 delivered.
- 10 (e) Advertise, or indicate in promotional material, that the
11 institution is accredited, unless the institution has been accredited
12 by an accrediting agency.
- 13 (f) Solicit students for enrollment by causing an advertisement
14 to be published in “help wanted” columns in a magazine,
15 newspaper, or publication, or use “blind” advertising that fails to
16 identify the institution.
- 17 (g) Offer to compensate a student to act as an agent of the
18 institution with regard to the solicitation, referral, or recruitment
19 of any person for enrollment in the institution, except that an
20 institution may award a token gift to a student for referring an
21 individual, provided that the gift is not in the form of money, no
22 more than one gift is provided annually to a student, and the gift’s
23 cost is not more than one hundred dollars (\$100).
- 24 (h) Pay any consideration to a person to induce that person to
25 sign an enrollment agreement for an educational program.
- 26 (i) Use a name in any manner improperly implying any of the
27 following:
- 28 (1) The institution is affiliated with any government agency,
29 public or private corporation, agency, or association if it is not, in
30 fact, thus affiliated.
- 31 (2) The institution is a public institution.
- 32 (3) The institution grants degrees, if the institution does not
33 grant degrees.
- 34 (j) In any manner make an untrue or misleading change in, or
35 untrue or misleading statement related to, a test score, grade or
36 record of grades, attendance record, record indicating student
37 completion, placement, employment, salaries, or financial
38 information, including any of the following:
- 39 (1) A financial report filed with the bureau.

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

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

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

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

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

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

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

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

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

35 (2) For institutions participating in the federal student financial
36 aid programs, this subdivision shall not prevent the payment of
37 compensation to those involved in recruitment, admissions, or the
38 award of financial aid if those payments are in conformity with
39 federal regulations governing an institution's participation in the
40 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

1 cancellation is made through attendance at the first class session,
2 or the seventh day after enrollment, whichever is later.

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

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

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

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

15 94928. As used in this article, the following terms have the
16 following meanings:

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

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

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

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

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

39 (f) "Graduates unavailable for employment" means graduates
40 who, after graduation, die, become incarcerated, are called to active

1 military duty, are international students that leave the United States
2 or do not have a visa allowing employment in the United States,
3 or are continuing their education at an accredited or
4 bureau-approved postsecondary institution.

5 (g) “Students available for graduation” means the cohort
6 population minus the number of students unavailable for
7 graduation.

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

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

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

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

25 SEC. 7. This bill shall become operative only if Assembly Bill
26 1140 of the 2009–10 Regular Session is enacted and becomes
27 operative on or before January 1, 2011.