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THIRD READING

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Bill No: AB 70  
Author: Berman (D), Bauer-Kahan (D), Chiu (D), Eggman (D), McCarty (D)  
and Medina (D), et al.  
Amended: 8/20/20 in Senate  
Vote: 21

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SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 8-0, 8/8/20  
AYES: Glazer, Chang, Archuleta, Dodd, Galgiani, Hill, Leyva, Wilk  
NO VOTE RECORDED: Pan

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 4-3, 8/8/20 (FAIL)  
AYES: Glazer, Hill, Leyva, Pan  
NOES: Dodd, Galgiani, Wilk  
NO VOTE RECORDED: Chang, Archuleta

SENATE APPROPRIATIONS COMMITTEE: 7-0, 8/20/20  
AYES: Portantino, Bates, Bradford, Hill, Jones, Leyva, Wieckowski

ASSEMBLY FLOOR: 78-0, 1/27/20 - See last page for vote

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**SUBJECT:** Private postsecondary education: California Private Postsecondary  
Education Act of 2009

**SOURCE:** Author

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**DIGEST:** This bill prohibits the Bureau for Private Postsecondary Education (BPPE) from approving an exemption or handling complaints for a nonprofit institution that the Attorney General (AG) determines does not meet specified criteria of a nonprofit corporation.

**ANALYSIS:**

Existing law:

- 1) Establishes the California Private Postsecondary Education Act of 2009 (Act), until January 1, 2021, and requires the BPPE to, among other things, review,

investigate and approve private postsecondary institutions, programs and courses of instruction pursuant to the Act and authorizes BPPE to take formal actions against an institution/school to ensure compliance with the Act to include closure of an institution/school, if determined necessary. The Act provides for specified disclosures and enrollment agreements for students, requirements for cancellations, withdrawals and refunds, and the BPPE is required to administer the Student Tuition Recovery Fund (STRF) to provide refunds to students affected by the possible closure of an institution/school. (Education Code (EC) § 94800 *et seq.*)

- 2) Requires an out-of-state private postsecondary educational institution (other than a nonpublic higher education institution that grants undergraduate degrees, graduate degrees, or both, formed as nonprofit corporation and accredited by an agency recognized by the United States Department of Education) to register with the BPPE, pay a fee and provide evidence of accreditation; evidence that the institution is approved to operate in the state where the institution maintains its main administrative location and; a copy of the institution's catalog and sample enrollment agreement. Requires these institutions to comply with STRF requirements and disclosures. Prohibits an institution from operating in California for failure to comply with the registration requirements. Establishes the validity of a BPPE registration for two years. (EC § 94801.5)
- 3) Exempts a number of types of institutions from the Act and BPPE oversight.

This bill:

- 1) Prohibits BPPE, beginning January 1, 2022, from verifying the exemption of, or contracting for the complaint handling for, a nonprofit institution that operated as a for-profit institution during any period on or after January 1, 2010, unless the AG determines all of the following:
  - a) The institution acquired the institution's assets for no more than the value of the assets.
  - b) The institution has not executed agreements for goods or services exceeding the value of the goods or services.
  - c) All core functions of the institution are conducted are conducted by, or under the direction of, the nonprofit institution.
  - d) For institutions other than those that previously operated as a for-profit and are now a nonprofit owned or controlled by a public institution of higher

learning, the institution has not entered into any contracts, loans, or leases with a term of longer than three years with the former for-profit institution's owners and managers.

- 2) States that "fair value" shall be demonstrated through one of the following:
  - a) A third-party appraisal based on comparable assets acquired by, or goods or services procured by, nonprofit corporations.
  - b) Independent financing of the acquisition or procurement based upon the asset acquired or goods or services procured.
  - c) Full and open competition in the acquisition of the assets or procurement of the goods and services.
- 3) Specifies that a verification may be appealed to the superior court.
- 4) Requires the AG to, within 90 days of the receipt of all information necessary for its verification, to notify the institution and the BPPE in writing of the verification.

## **Background**

BPPE is generally responsible for protecting consumers and students against fraud, misrepresentation, or other business practices at private postsecondary institutions that may lead to loss of students' tuition and related educational funds; establishing and enforcing minimum standards for ethical business practices and the health and safety and fiscal integrity of postsecondary education institutions; and establishing and enforcing minimum standards for instructional quality and institutional stability for all students in all types of private postsecondary educational and vocational institutions. BPPE approval not only authorizes institutions to operate and serve students in California but also enables institutions to receive public funds through the federal Title IV financial aid programs.

The Act provides for prohibitions on false advertising and inappropriate recruiting and requires disclosure of critical information to students such as program outlines, graduation and job placement rates, and license examination information, and ensures colleges justify those figures. The Act also provides BPPE with enforcement powers necessary to protect consumers. The Act directs BPPE to:

- Create a structure that provides an appropriate level of oversight, including approval of private postsecondary educational institutions and programs;
- Establish minimum operating standards for California private postsecondary educational institutions to ensure quality education for students;
- Provide students a meaningful opportunity to have their complaints resolved;
- Ensure that private postsecondary educational institutions offer accurate information to prospective students on school and student performance; and,
- Ensure that all stakeholders have a voice and are heard in the operations and rulemaking process of BPPE.

BPPE is also tasked with actively investigating and combatting unlicensed activity, administering the STRF, and conducting outreach and education activities for students and private postsecondary educational institutions within the state. The STRF is an important tool to assist harmed students. STRF exists to relieve or mitigate economic loss suffered by students enrolled at non-exempt private postsecondary education institutions due to the institutions' closure, the institutions' failure to pay refunds or reimburse loan proceeds, or the institutions' failure to pay students' restitution award for a violation of the Act.

*AG review of conversions.* Since 1997, California law has required nonprofit health facilities that are subject to public benefit corporation law to obtain written consent from AG prior to entering into an agreement to sell, transfer, lease, exchange, option, convey, or otherwise dispose of assets, or transfer control or governance of assets. Additionally, the AG is required to conduct at least one public meeting in the county where the health facility is located before issuing a written opinion making the determination whether to consent to, give conditional consent to, or not consent to any elimination or reduction of emergency medical services. The AG has also had the ability to contract with experts regarding information needed to make this determination and obtain reimbursement for the costs of this contract from the health facilities being reviewed since 1997.

*Civil actions.* This bill authorizes an appeal of the Attorney General's verification to the superior court. The bill does not specify what standard of review will be used to review an appeal. Existing law in Section 1094.5 of the Code of Civil Procedure provides a specific standard of review in cases inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. It is unclear from the language of the bill if the verification of the Attorney General is to be considered a final administrative order or decision to be reviewed pursuant to the standard under Section 1094.5 of the Code of Civil Procedure or if it is to be reviewed under a different standard when appealed to the superior court. The Legislature may wish to clarify what standard of review the superior court is to use for an appeal of the Attorney General's verification.

**FISCAL EFFECT:** Appropriation: No Fiscal Com.:Yes Local:Yes

According to the Senate Appropriations Committee, this bill will result in estimated ongoing fiscal impact to the Department of Justice in the hundreds of thousands of dollars.

**SUPPORT:** (Verified 8/21/20)

California Low-Income Consumer Coalition  
Center for Public Interest Law  
Children's Advocacy Institute  
Consumer Federation of California  
Consumer Reports Advocacy  
Housing and Economic Rights Advocates  
Nextgen California  
Public Advocates  
Public Counsel  
Public Law Center  
SEIU California  
Student Defense  
The Century Foundation  
The Institute for College Access and Success  
Veterans Education Success  
Veterans Legal Clinic

**OPPOSITION:** (Verified 8/21/20)

None received

**ARGUMENTS IN SUPPORT:** Supporters state that some for-profit colleges are using complicated financial schemes and shell corporations to covertly pose as nonprofit or public institutions, misleading students while dodging appropriate oversight. Supporters believe AB 70 would prevent these covert for-profit colleges from evading state oversight and deceiving students; a problem even more paramount in light of the current pandemic. “Unfortunately, California cannot rely on the U.S. Department of Education to solve this problem. Despite the poor record of some federally-funded for-profit colleges and scandals that have plagued the for-profit industry, the federal government refuses to admit that investor control of colleges is hazardous to students and taxpayers and require greater oversight and scrutiny. Therefore, California must step up and step in to protect our students and ensure that appropriate oversight remains.”

**ASSEMBLY FLOOR:** 78-0, 1/27/20

**AYES:** Aguiar-Curry, Arambula, Bauer-Kahan, Berman, Bigelow, Bloom, Boerner Horvath, Bonta, Brough, Burke, Calderon, Carrillo, Chau, Chen, Chiu, Choi, Chu, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Diep, Eggman, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gloria, Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Kamlager, Kiley, Lackey, Levine, Limón, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Melendez, Mullin, Muratsuchi, Nazarian, Obernolte, O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Smith, Mark Stone, Ting, Voepel, Waldron, Weber, Wicks, Wood

**NO VOTE RECORDED:** Cervantes, Rendon

Prepared by: Sarah Mason / B., P. & E.D. /  
8/25/20 12:36:11

\*\*\*\* **END** \*\*\*\*