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SB-1492 The Department of Consumer Affairs. (2017-2018)

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Senate Bill No. 1492

CHAPTER 422

An act to amend Sections 5095, 5130, and 7341 of, and to add Section 5100.1 to, the Business and Professions Code, and to amend Sections 94874, 94880, 94927.5, and 94947 of the Education Code, relating to the Department of Consumer Affairs.

[Approved by Governor September 14, 2018. Filed with Secretary of State September 14, 2018.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1492, Committee on Business, Professions and Economic Development. The Department of Consumer Affairs.

(1) Existing law establishes the California Board of Accountancy in the Department of Consumer Affairs for the purpose of licensing and regulating the practice of accountancy. Existing law requires a licensee, in order to be authorized to sign reports on attest engagements, to have completed a minimum of 500 hours of experience in attest services, as specified.

This bill would delete an obsolete reference within that provision.

Existing law authorizes the board to revoke, suspend, or refuse to renew any public accountancy permit or certificate or censure a permit or certificate holder for unprofessional conduct for various causes, including, among others, discipline by any other state or country, suspension or revocation of the right to practice before any governmental body, or the imposition of discipline on a registered public accounting firm or permit, certificate, or licenseholder by the Public Company Accounting Oversight Board or the United States Securities and Exchange Commission.

This bill, for the causes identified above, would require the board to rely on findings or events stated in a certified true and correct copy of the disciplinary or other action as conclusive evidence for purposes of determining discipline.

Existing law authorizes the board to charge and collect a fee from each applicant for the certificate of certified public accountant, and requires the fee to accompany the application, as specified.

This bill would correct a reference contained in that provision.

(2) The Barbering and Cosmetology Act provides for the licensure and regulation of barbers, cosmetologists, estheticians, manicurists, electrologists, and apprentices by the State Board of Barbering and Cosmetology, which is within the Department of Consumer Affairs. Under the act, the board is required to mail or deliver to every person failing an examination the total grade received on the examination. The act also grants an unsuccessful applicant for licensure, after taking an examination and within 90 days after the results thereof have been declared, the right to inspect his or her examination paper.

This bill would delete the provision that grants an unsuccessful applicant the right to inspect his or her examination paper. The bill would also delete the option for the board to mail a person his or her total grade received on a failed examination.

(3) Existing law, the California Private Postsecondary Education Act of 2009, provides, among other things, for student protections and regulatory oversight of private postsecondary institutions in the state. The act is enforced by the Bureau for Private Postsecondary Education within the Department of Consumer Affairs.

This bill would make nonsubstantive, clarifying changes to specified provisions of the act, including updating cross-references.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 5095 of the Business and Professions Code is amended to read:

5095. (a) To be authorized to sign reports on attest engagements, a licensee shall complete a minimum of 500 hours of experience, satisfactory to the board, in attest services.

(b) To qualify under this section, attest experience shall have been performed in accordance with applicable professional standards. Experience in public accounting shall be completed under the supervision or in the employ of a person licensed or otherwise having comparable authority under the laws of any state or country to engage in the practice of public accountancy and provide attest services, and this experience shall be verified. Experience in private or governmental accounting or auditing shall be completed under the supervision of an individual licensed by a state to engage in the practice of public accountancy and perform attest services, and this experience shall be verified. An applicant may be required to present work papers or other evidence substantiating that the applicant has met the requirements of this section and any applicable regulations.

(c) The board shall adopt regulations to implement this section, including, but not limited to, a procedure for applicants under Section 5092 or Section 5093 to qualify under this section.

SEC. 2. Section 5100.1 is added to the Business and Professions Code, to read:

5100.1. Notwithstanding any other law, in causes for discipline against a licensee under subsections (d), (h), or (l) of Section 5100, the board shall rely on the findings or events stated in a certified or true and correct copy of the disciplinary or other action as conclusive evidence for the purpose of determining discipline.

SEC. 3. Section 5130 of the Business and Professions Code is amended to read:

5130. The board shall charge and collect a fee from each applicant for the certificate of certified public accountant. The fee shall accompany the application, which must be made on a form provided by the board.

SEC. 4. Section 7341 of the Business and Professions Code is amended to read:

7341. The board shall deliver to every person failing any examination provided for in this chapter the total grade received on the examination.

SEC. 5. Section 94874 of the Education Code, as amended by Chapter 260 of the Statutes of 2017, is amended to read:

94874. Except as provided in Sections 94874.2, 94874.7, and 94927.5, the following are exempt from this chapter:

(a) An institution that offers solely avocational or recreational educational programs.

(b) (1) An institution offering educational programs sponsored by a bona fide trade, business, professional, or fraternal organization, solely for that organization's membership.

(2) (A) Except as provided in subparagraph (B), a bona fide organization, association, or council that offers preapprenticeship training programs, on behalf of one or more Division of Apprenticeship Standards-approved labor-management apprenticeship programs that satisfies one of the following conditions:

(i) It is not on the Eligible Training Provider List established and maintained by the California Workforce Development Board but has met the requirements for placement on the list.

(ii) It is on the Eligible Training Provider List established and maintained by the California Workforce Development Board and meets the requirements for continued listing.

(B) If an organization, association, or council has been removed from the Eligible Training Provider List established and maintained by the California Workforce Development Board for failure to meet performance standards, it is not exempt until

it meets all applicable performance standards.

(c) A postsecondary educational institution established, operated, and governed by the federal government or by this state or its political subdivisions.

(d) An institution offering either of the following:

(1) Test preparation for examinations required for admission to a postsecondary educational institution.

(2) Continuing education or license examination preparation, if the institution or the program is approved, certified, or sponsored by any of the following:

(A) A government agency, other than the bureau, that licenses persons in a particular profession, occupation, trade, or career field.

(B) A state-recognized professional licensing body, such as the State Bar of California, that licenses persons in a particular profession, occupation, trade, or career field.

(C) A bona fide trade, business, or professional organization.

(e) (1) An institution owned, controlled, and operated and maintained by a religious organization lawfully operating as a nonprofit religious corporation pursuant to Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code, that meets all of the following requirements:

(A) The instruction is limited to the principles of that religious organization, or to courses offered pursuant to Section 2789 of the Business and Professions Code.

(B) The diploma or degree is limited to evidence of completion of that education.

(2) An institution operating under this subdivision shall offer degrees and diplomas only in the beliefs and practices of the church, religious denomination, or religious organization.

(3) An institution operating under this subdivision shall not award degrees in any area of physical science.

(4) Any degree or diploma granted under this subdivision shall contain on its face, in the written description of the title of the degree being conferred, a reference to the theological or religious aspect of the degree's subject area.

(5) A degree awarded under this subdivision shall reflect the nature of the degree title, such as "associate of religious studies," "bachelor of religious studies," "master of divinity," or "doctor of divinity."

(f) An institution that does not award degrees and that solely provides educational programs for total charges of two thousand five hundred dollars (\$2,500) or less when no part of the total charges is paid from state or federal student financial aid programs. The bureau may adjust this cost threshold based upon the California Consumer Price Index and post notification of the adjusted cost threshold on its Internet Web site, as the bureau determines, through the promulgation of regulations, that the adjustment is consistent with the intent of this chapter.

(g) A law school that is accredited by the Council of the Section of Legal Education and Admissions to the Bar of the American Bar Association or a law school or law study program that is subject to the approval, regulation, and oversight of the Committee of Bar Examiners, pursuant to Sections 6046.7 and 6060.7 of the Business and Professions Code.

(h) A nonprofit public benefit corporation that satisfies all of the following criteria:

(1) Is qualified under Section 501(c)(3) of the United States Internal Revenue Code.

(2) Is organized specifically to provide workforce development or rehabilitation services.

(3) Is accredited by an accrediting organization for workforce development or rehabilitation services recognized by the Department of Rehabilitation.

(i) An institution that is accredited by the Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges, or the Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges.

(j) Flight instruction providers or programs that provide flight instruction pursuant to Federal Aviation Administration regulations and meet both of the following criteria:

(1) The flight instruction provider or program does not require students to enter into written or oral contracts of indebtedness.

(2) The flight instruction provider or program does not require or accept prepayment of instruction-related costs in excess of two thousand five hundred dollars (\$2,500).

(k) (1) An institution owned, controlled, operated, and maintained by a community-based organization, as defined in Section 7801 of Title 20 of the United States Code, as that section exists on March 1, 2017, that satisfies all of the following criteria:

(A) The institution has programs on or is applying for some or all of their programs to be on the Eligible Training Provider List established and maintained by the California Workforce Development Board.

(B) The institution is registered as a nonprofit entity qualified under Section 501(c)(3) of the federal Internal Revenue Code.

(C) The institution does not offer degrees, as defined in Section 94830.

(D) The institution does not offer educational programs designed to lead directly or specifically to positions in a profession, occupation, trade, or career field requiring licensure, if bureau approval is required for the student to be eligible to sit for licensure.

(E) The institution would not otherwise be subject to oversight of the bureau under this chapter if it did not receive funding under the federal Workforce Innovation and Opportunity Act (29 U.S.C. Sec. 3101 et seq.). For purposes of this requirement, funds received through the federal Workforce Innovation and Opportunity Act (29 U.S.C. Sec. 3101 et seq.) do not count towards the total referenced in subdivision (f) or any other fee charge limitation condition for an exemption from this chapter.

(F) The institution can provide a letter from the local workforce development board that demonstrates the institution has met the initial criteria of that board.

(2) An institution granted an exemption pursuant to paragraph (1) shall comply with all of the following requirements:

(A) The institution shall provide to the Employment Development Department all required tracking information and data necessary to comply with performance reporting requirements under the federal Workforce Innovation and Opportunity Act, codified in Chapter 32 (commencing with Section 3101) of Title 29 of the United States Code, for programs on the Eligible Training Provider List.

(B) The institution shall comply with the Eligible Training Provider List policy developed by the California Workforce Development Board.

(C) The institution shall not charge a student who is a recipient of funding under the federal Workforce Innovation and Opportunity Act (29 U.S.C. Sec. 3101 et seq.) any institutional charges, as defined in Section 94844, for attending and participating in the program.

SEC. 6. Section 94880 of the Education Code is amended to read:

94880. (a) There is within the bureau a 12-member advisory committee. The members of the committee shall be appointed as follows:

(1) Three members, who shall have a demonstrated record of advocacy on behalf of consumers, of which the director, the Senate Committee on Rules, and the Speaker of the Assembly shall each appoint one member.

(2) Two members, who shall be current or past students of institutions, appointed by the director.

(3) Three members, who shall be representatives of institutions, appointed by the director.

(4) One public member appointed by the Senate Committee on Rules.

(5) One public member appointed by the Speaker of the Assembly.

(6) Two nonvoting, ex officio members as follows:

(A) The chair of a policy committee of the Assembly with jurisdiction over legislation relating to the bureau appointed by the Speaker of the Assembly. The chair may designate a representative for any meeting or meetings he or she is unable to attend.

(B) The chair of a policy committee of the Senate with jurisdiction over legislation relating to the bureau appointed by the Senate Committee on Rules. The chair may designate a representative for any meeting or meetings he or she is unable to attend.

(b) (1) A member appointed pursuant to paragraph (2), (4), or (5) of subdivision (a) shall not, either at the time of his or her appointment or during his or her tenure in office, have any financial interest in any organization currently or previously subject to regulation by the bureau, be a close family member of an employee, officer, or the director of any institution subject to regulation by the bureau, or currently have, or previously have had, a business relationship, in the five years preceding his or her appointment, with any institution subject to regulation by the bureau.

(2) A member appointed pursuant to paragraph (2), (4), or (5) of subdivision (a) shall not, within the five years immediately preceding his or her appointment, have engaged in pursuits on behalf of an institution or institutional accreditor or have provided representation to the postsecondary educational industry or a profession regulated by the bureau, if he or she is employed in the industry or a member of the profession, respectively, and he or she shall not engage in those pursuits or provide that representation during his or her term of office.

(c) The advisory committee shall examine the oversight functions and operational policies of the bureau and advise the bureau with respect to matters relating to private postsecondary education and the administration of this chapter, including annually reviewing the fee schedule and the equity of the schedule relative to the way institutions are structured, and the licensing and enforcement provisions of this chapter. The advisory committee shall make recommendations with respect to policies, practices, and regulations relating to private postsecondary education, and shall provide any assistance as may be requested by the bureau.

(d) The bureau shall actively seek input from, and consult with, the advisory committee regarding the development of regulations to implement this chapter prior to the adoption, amendment, or repeal of its regulations, and provide the advisory committee with sufficient time to review and comment on those regulations. The bureau shall take into consideration and respond to all feedback provided by members of the advisory committee.

(e) The bureau chief shall attend all advisory committee meetings and shall designate staff to provide ongoing administrative support to the advisory committee.

(f) Until January 1, 2017, the director shall personally attend, and testify and answer questions at, each meeting of the advisory committee.

(g) The Chief of the Office of Student Assistance and Relief established in Article 20.6 (commencing with Section 94949.7) shall attend, and testify and answer questions at, each meeting of the advisory committee.

(h) The advisory committee shall have the same access to records within the Department of Consumer Affairs related to the operation and administration of this chapter as do members of constituent boards of the department in regard to records related to their functions.

(i) Advisory committee meetings shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code). Advisory committee meeting materials shall be posted on the Internet. A majority of the voting members of the committee shall constitute a quorum for the committee's meetings.

(j) The advisory committee shall meet at least quarterly and shall appoint a member of the committee to represent the committee for purposes of communicating with the Legislature.

(k) The Department of Consumer Affairs shall review, and revise if necessary, the department's conflicts of interest regulations to ensure that each advisory committee member is required to disclose conflicts of interest to the public.

SEC. 7. Section 94927.5 of the Education Code is amended to read:

94927.5. (a) Prior to closing, an institution shall provide the bureau with the following:

(1) Copies of pertinent student records, including transcripts, in hardcopy or electronic form, as determined by the bureau, pursuant to regulations adopted by the bureau.

(2) If the institution is an accredited institution, a plan for the retention of records and transcripts, approved by the institution's accrediting agency, that provides information as to how a student may obtain a transcript or any other information about the student's coursework and degrees completed.

(b) Subdivision (a) applies to all private postsecondary institutions, including institutions that are otherwise exempt from this chapter pursuant to Article 4 (commencing with Section 94874).

SEC. 8. Section 94947 of the Education Code is amended to read:

94947. (a) Notwithstanding Section 94874.2, an institution described in subdivision (i) of Section 94874 that satisfies all of the following requirements may claim an exemption from this chapter:

(1) The institution has been accredited by an accrediting agency recognized by the United States Department of Education for at least 10 years, and has not been placed on probation or on a greater level than standard monitoring, or sanctioned, by its accrediting agency.

(2) The institution is headquartered in California and has operated continuously in this state for at least 25 years.

(3) The institution is privately held and prior to its current exemption, the institution was granted an approval to operate by the Bureau for Private Postsecondary Education, or its predecessor agency and has experienced no change of ownership since the institution was last approved.

(4) During its existence, the institution has not filed for bankruptcy protection.

(5) The institution maintains an equity ratio composite score of at least 1.5 based on the current financial stability test.

(6) At least 12.5 percent of the institution's revenues are derived from sources other than financial aid. For purposes of this requirement, financial aid includes all forms of state or federal student assistance, including, but not limited to, financial aid provided to veterans and financial aid through the Cal Grant Program.

(7) The institution's cohort default rate does not exceed 13 percent for the most recent three years, as published by the United States Department of Education.

(8) The institution has a graduation rate that exceeds 60 percent, as reported to the Integrated Postsecondary Education Data System.

(9) The institution has not been subject to any legal or regulatory actions by a state attorney general for a violation of consumer protection laws that resulted in monetary settlement, fines, or other documented violations.

(10) The institution provides a pro rata refund of unearned institutional charges to students who complete 75 percent or less of the period of attendance.

(11) The institution provides to all students the right to cancel the enrollment agreement and obtain a refund of charges paid through attendance at the second class session, or the 14th day after enrollment, whichever is later.

(12) The institution complies with all other reasonable criteria, necessary to ensure educational quality and protection of veterans, established by the California State Approving Agency for Veterans Education.

(13) The institution verifies its exemption pursuant to Section 94874.7.

(b) An institution exempt from this chapter pursuant to this section may apply to the bureau for an approval to operate pursuant to Section 94874.8.

(c) It is the intent of the Legislature that if the exemption provided in this section is declared by a court to be invalid for any reason, the requirements of this chapter shall apply to an institution that would otherwise be subject to receive this exemption.