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SB-1433 Private postsecondary education: California Private Postsecondary Education Act of 2009.
(2021-2022)

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Senate Bill No. 1433

CHAPTER 544

An act to amend Sections 94801.5, 94869, 94885, 94887, 94894, 94897, 94899, 94909, 94917, 94933, 94934.5, 94935, 94936, 94944, and 94950 of, and to add Sections 94801.7, 94885.7, 94918.5, 94926.5, and 94949.8 to, the Education Code, relating to private postsecondary education, and making an appropriation therefor.

[Approved by Governor September 25, 2022. Filed with Secretary of State September 25, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1433, Roth. Private postsecondary education: California Private Postsecondary Education Act of 2009.

(1) Existing law establishes the California Private Postsecondary Education Act of 2009, which provides for student protections and regulatory oversight of private postsecondary educational institutions, as defined, in the state. The act is enforced by the Bureau for Private Postsecondary Education within the Department of Consumer Affairs.

Existing law, among other things, requires an out-of-state private postsecondary educational institution, as defined, to comply with specified requirements, including, among others, providing the bureau with certain information required for initial registration.

This bill would exempt from this requirement a higher education institution that does not award degrees and that solely provides educational programs for total charges of \$2,500 or less when no part of the total charges is paid from state or federal student financial aid programs, as specified.

The bill would authorize the bureau to establish through regulation thresholds of California-based activity that constitute limited physical presence, with those institutions subject to registration requirements defined through regulation, as provided.

(2) The act exempts specified private postsecondary educational institutions from all, or a portion of, its provisions, but requires those institutions that are subject to its provisions to apply for and obtain an approval to operate, as specified. Existing law defines "to operate" as establishing, keeping, or maintaining any facility or location in this state where, or from which, or through which, postsecondary educational programs are provided. Existing law requires prior authorization for certain changes to an approval to operate, including, among others, a change in ownership.

This bill would also include in the definition of "to operate" enrolling California residents in postsecondary educational programs in an institution based outside of California via distance education. The bill would authorize the bureau to deny an application for an approval to operate institutions that would be owned by, have persons in control of, or employ institution managers that had knowledge of, should have known, or knowingly participated in any conduct that was the cause for revocation or unmitigated discipline at another institution. The bill would additionally require prior bureau authorization for a change of the person in control, as defined.

The bill would authorize an institution that qualifies as a public institution of higher education, that is operated by another state, and that maintains a physical presence in this state to apply for an approval to operate from the bureau, as provided.

(3) The act requires, except as provided, institutions covered by the act that offer a degree to receive accreditation by an accreditation agency recognized by the United States Department of Education or have an accreditation plan, approved by the bureau, for the institution to become fully accredited within 5 years of the bureau's issuance of a provisional approval to operate to the institution, as specified.

For institutions that are approved by means of accreditation and accredited by an agency that loses recognition by the United States Department of Education, this bill would require an application for approval to operate an institution unaccredited to be submitted to the bureau within 6 months of the agency's loss of recognition, as provided.

When an institution offering at least one degree program has ceased to be accredited by an accrediting agency recognized by the United States Department of Education, the bill would require the institution to notify the bureau immediately, and would require the institution's approval to operate degree programs to become provisional as of the date that the institution ceases to be accredited, as provided. The bill would require an institution with a provisional approval to operate degree programs to, among other things, submit an accreditation plan, to be approved by the bureau, for the institution to become fully accredited within 5 years of the date of its provisional approval to operate degree programs, as specified.

(4) Existing law prohibits an institution that is subject to the act from, among other things, promising or guaranteeing employment, or otherwise overstating the availability of jobs upon graduation.

This bill would additionally prohibit these institutions from, among other things, committing fraud against, or making a material untrue or misleading statement to, a student or prospective student under the institution's authority or the pretense or appearance of the institution's authority. The bill would prohibit a prospective, current, or former student or employee from signing a nondisclosure agreement pertaining to their relationship to, or experience with, the institution, but would authorize an institution to use a nondisclosure agreement to protect the institution's intellectual property and trade secrets. The bill would specify that a nondisclosure agreement that violates the prohibition is void and not enforceable.

(5) If an institution offers an educational program in a profession, occupation, trade, or career field that requires licensure in this state, existing law requires the institution to have an educational program approval from the appropriate state licensing agency to conduct that educational program in order that a student who completes the educational program, except as provided, is eligible to sit for any required licensure examination.

This bill would require an institution offering an educational program requiring approval from another licensing agency in this state that subsequently loses that approval to have their approval to operate the program automatically suspended by the bureau. The bill would require the institution to notify the bureau within 10 days of its loss of approval and to cease offering the program within 30 days of the loss of the approval, except as specified.

(6) Under existing law, a note, instrument, or other evidence of indebtedness relating to payment for an educational program is not enforceable by an institution unless, at the time of execution of the note, instrument, or other evidence of indebtedness, the institution held an approval to operate.

This bill instead would make a note, instrument, or other evidence of indebtedness relating to payment for an educational program void and not enforceable unless, at the time of execution of the note, instrument, or other evidence of indebtedness, the institution held an approval to operate or a valid out-of-state registration with the bureau, as provided.

(7) Existing law requires an institution to notify the bureau in writing of its intention to close at least 30 days before closing and requires the notice to be accompanied by a closure plan, as specified.

The bill would automatically terminate an institution's approval to operate on the date of closure or when the bureau verifies its exemption from the act. The bill would require the bureau to select a date of closure when an institution does not identify a date of closure. The bill would prohibit a terminated license from being reinstated.

(8) The act requires the bureau to investigate and conduct site inspections of institutions, as provided. If the bureau finds after an investigation that an institution has violated the act or the bureau's regulations, existing law requires the bureau to issue a citation to the institution, and to take other actions, including providing the institution with the opportunity to remedy noncompliance or revoking the institution's approval to operate, as the bureau deems appropriate based on the severity of the institution's violations, and the harm caused to students. The act authorizes the bureau to include an order to compensate students for harm in a citation.

This bill would instead authorize the bureau to include in a citation to an institution an order to compensate students for harm that resulted or may have resulted from an institution's violations. The bill would also require the bureau to take those other

enforcement actions as the bureau deems appropriate based on the severity of the institution's violations, and the harm that results or may result to students from the institution's violations.

Existing law requires bureau staff who, during an inspection of an institution, detect a violation of the act or regulations adopted pursuant to the act, that are a minor violation as determined by the bureau, to issue a notice to comply before leaving the institution. Existing law prohibits issuing a notice to comply for any minor violation that is corrected immediately in the presence of bureau staff.

This bill instead would require bureau staff to issue the notice to comply at the conclusion of the inspection and would prohibit issuing a notice to comply for any minor violation that is corrected before the conclusion of the inspection.

(9) Existing law requires the bureau to cite any person, and subjects that person to a fine of up to \$100,000, for operating an institution without proper approval to operate issued by the bureau.

This bill would specify that the maximum fine for unlicensed activity is separate and does not include fines for other violations or refunds ordered.

(10) The act establishes the Student Tuition Recovery Fund, requires the bureau to adopt regulations governing the administration and maintenance of the fund, and continuously appropriates moneys in the fund to the bureau for specified purposes. Existing law repeals the act on January 1, 2023.

This bill would extend the act until January 1, 2027. By extending the operation of a continuously appropriated fund, the bill would make an appropriation.

(11) Under existing law, the act specifies conduct by regulated institutions that, if undertaken, is a crime.

Because this bill would extend the application of those criminal provisions, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: yes Fiscal Committee: yes Local Program: yes

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

SECTION 1. Section 94801.5 of the Education Code, as amended by Section 2 of Chapter 153 of the Statutes of 2020, is amended to read:

94801.5. (a) An out-of-state private postsecondary educational institution shall register with the bureau, pay a fee pursuant to Section 94930.5, and comply with all of the following:

(1) The institution shall provide the bureau with all of the following information, as applicable, for consideration of initial registration by the bureau pursuant to paragraph (2).

(A) Evidence of institutional accreditation.

(B) Evidence that the institution is approved to operate in the state where the institution maintains its main administrative location.

(C) The agent for service of process consistent with Section 94943.5.

(D) A copy of the institution's catalog and, if the institution uses enrollment agreements, a copy of a sample enrollment agreement.

(E) Whether or not the institution, or a predecessor institution under substantially the same control or ownership, had its authorization or approval revoked or suspended by a state or by the federal government, or, within five years before submission of the registration, was subject to an enforcement action by a state or by the federal government that resulted in the imposition of limits on enrollment or student aid, or is subject to such an action that is not final and that was ongoing at the time of submission of the registration.

(F) Whether or not the institution, or a controlling officer of, or a controlling interest or controlling investor in, the institution or in the parent entity of the institution, had been subject to any education, consumer protection, unfair business practice, fraud, or related enforcement action by a state or federal agency within five years before submitting the registration. If so, the institution shall provide the bureau a copy of the operative complaint with the registration.

(G) Whether or not the institution is currently on probation, show cause, or subject to other adverse action, or the equivalent thereof, by its accreditor or has had its accreditation revoked or suspended within the five years before submitting the registration.

(H) Whether or not the institution, within five years before submitting the registration, has settled, or been adjudged to have liability for, a civil complaint alleging the institution's failure to provide educational services, including a complaint alleging a violation of Title IX of the federal Education Amendments of 1972 (Public Law 92-318) or a similar state law, or a complaint alleging a violation of a law concerning consumer protection, unfair business practice, or fraud, filed by a student or former student, an employee or former employee, or a public official, for more than two hundred fifty thousand dollars (\$250,000). The institution shall provide the bureau a copy of the complaint filed by the plaintiff and a copy of the judgment or settlement agreement for any such judgment or settlement, and the bureau shall consider, pursuant to paragraph (2), all material terms and aspects of the settlement, including, for example, whether a student plaintiff remained enrolled or reenrolled at the institution.

(I) Any additional documentation the bureau deems necessary for consideration in the registration process.

(2) When considering whether to approve, deny, or condition initial registration based upon the information provided by an institution pursuant to paragraph (1), the bureau shall do all of the following:

(A) Not consider any individual submission made under paragraph (1) to be solely determinative of the institution's eligibility for registration but, exercising its reasonable discretion, approve, reject, or condition registration based upon a review of all of the information provided to it under paragraph (1).

(B) Provide an institution with reasonable notice and opportunity to comment before the bureau regarding any determination to deny, condition, or reject initial registration before that determination becomes final. After the determination becomes final, the institution may seek review of the bureau's decision through an action brought pursuant to Section 1085 of the Code of Civil Procedure.

(C) Require the initial registration, if approved, to memorialize that the institution agrees, as a condition of its registration, to be bound by this section and that its registration may be rejected, conditioned, or revoked for failure to comply with this section, as provided by subdivision (b). The agreement shall be signed by a responsible officer of the institution.

(3) An institution that is registered with the bureau and enrolls a student residing in California shall report in writing to the bureau, within 30 days, the occurrence of any of the following:

(A) The institution has its authorization or approval revoked or suspended by a state or by the federal government, or has been subject to an enforcement action by a state or by the federal government that resulted in the imposition of limits on enrollment or student aid.

(B) The institution or a controlling officer of, or a controlling interest or controlling investor in, the institution or in the parent entity of the institution is subject to any education, consumer protection, unfair business practice, fraud, or related enforcement action by a state or federal agency. If so, the institution shall provide the bureau a copy of the operative complaint.

(C) The institution is currently on probation, show cause, or subject to other adverse action, or the equivalent thereof, by its accreditor or the accreditation of the institution is revoked or suspended.

(D) The institution settles, or is adjudged to have liability for, a civil complaint alleging the institution's failure to provide educational services, including a complaint alleging a violation of Title IX of the federal Education Amendments of 1972 (Public Law 92-318) or a similar state law, or a complaint alleging a violation of a law concerning consumer protection, unfair business practice, or fraud, filed by a student or former student, an employee or former employee, or a public official, for more than two hundred fifty thousand dollars (\$250,000). The institution shall provide to the bureau a copy of the complaint filed by the plaintiff and a copy of the judgment or settlement agreement for any such judgment or settlement, and the bureau shall consider, pursuant to subdivision (b), all material terms and aspects of the settlement, including, for example, whether a student plaintiff remained enrolled or reenrolled at the institution.

(4) The requirements of the Student Tuition Recovery Fund, established in Article 14 (commencing with Section 94923), and regulations adopted by the bureau related to the fund, for its students residing in California.

(5) The institution shall provide disclosures pursuant to the requirements for the Student Tuition Recovery Fund, established in Article 14 (commencing with Section 94923), and regulations adopted by the bureau related to the fund, for its students residing in California.

(b) (1) Upon receipt of any of the notifications in paragraph (3) of subdivision (a), the bureau shall, within 30 days of receiving the notice, request the institution to explain in writing why the institution should be permitted to continue to enroll California residents. If the bureau, after reviewing the information submitted in response to the request and after consultation with the Attorney General, issues a written finding that there is no immediate risk to California residents from the institution continuing to enroll new students, the institution shall be permitted, pending completion of a review by the bureau, to continue to enroll new students or the bureau may, in its discretion, limit enrollments.

(2) Any institution under review pursuant to paragraph (1) may have its registration revoked by the bureau if, after further review, the bureau issues a written finding that there is a substantial risk posed to California residents by the institution continuing to enroll California residents.

(3) An institution shall have the right to reasonable notice and opportunity to comment to and before the bureau regarding any determination to revoke registration or to limit enrollment before that determination becomes final. An institution may seek review of a bureau order limiting new student enrollment or revoking registration under this subdivision through an action brought pursuant to Section 1085 of the Code of Civil Procedure.

(4) Nothing in this subdivision shall be construed as preventing the bureau from revoking an institution's registration on any other grounds specified in this chapter. Nothing in this section shall be construed as prohibiting or impairing the ability of an institution registered pursuant to this section or eligible to register pursuant to this section from applying to be an approved institution pursuant to this chapter.

(c) (1) This section does not apply to a higher education institution that grants undergraduate degrees, graduate degrees, or both, and that is either formed as a nonprofit corporation and is accredited by an agency recognized by the United States Department of Education, or is a public institution of higher education.

(2) This section does not apply to a higher education 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 charge threshold based upon the California Consumer Price Index and post notification of the adjusted charge threshold on its internet website as the bureau determines, through the promulgation of regulations, that the adjustment is consistent with the intent of this chapter.

(d) An institution described in subdivision (a) that fails to comply with this section is not authorized to operate in this state. Any institution whose registration is denied or revoked is authorized to reapply for registration after 12 months have elapsed from the date of the denial or revocation of registration.

(e) A registration with the bureau pursuant to this section shall be valid for five years.

(f) The bureau shall develop through emergency regulations effective on and after July 1, 2021, a registration form. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare for purposes of Sections 11346.1 and 11349.6 of the Government Code. These emergency regulations shall become law through the regular rulemaking process by January 1, 2022.

(g) The bureau shall disclose on its internet website a list of institutions registered pursuant to this section through reasonable means and disclose a designated email address for California residents to send a complaint to the bureau about an institution registered pursuant to this section. Complaints received through this email address shall be investigated in the same manner as complaints received by the bureau for institutions approved to operate pursuant to this chapter, but bureau enforcement in response to such complaints against institutions registered pursuant to this section shall be governed by subdivision (b).

(h) This section shall become operative on July 1, 2022.

SEC. 2. Section 94801.7 is added to the Education Code, immediately following Section 94801.5, to read:

94801.7. (a) The bureau may establish through regulation thresholds of California-based activity that constitute limited physical presence, with those institutions subject to registration requirements defined through regulation, and minimal levels of California-based activity that do not require institutional approval by, nor registration with, the bureau. All institutions operating in the state and subject to approval or registration requirements shall comply with Section 94897.

(b) An institution is considered to have a physical presence in the state if it offers instruction or core academic support services from a physical location owned, operated, or rented by or on behalf of the institution in California.

SEC. 3. Section 94869 of the Education Code is amended to read:

94869. "To operate" means to establish, keep, or maintain any facility or location in this state where, or from which, or through which, postsecondary educational programs are provided, or to enroll California residents in postsecondary educational programs

in an institution based outside of the state via distance education.

SEC. 4. Section 94885 of the Education Code is amended to read:

94885. (a) The bureau shall adopt by regulation minimum operating standards for an institution that shall reasonably ensure that all of the following occur:

- (1) The content of each educational program can achieve its stated objective.
- (2) The institution maintains specific written standards for student admissions for each educational program and those standards are related to the particular educational program.
- (3) The facilities, instructional equipment, and materials are sufficient to enable students to achieve the educational program's goals.
- (4) The institution maintains a withdrawal policy and provides refunds.
- (5) The directors, administrators, and faculty are properly qualified.
- (6) The institution is financially sound and capable of fulfilling its commitments to students.
- (7) That, upon satisfactory completion of an educational program, the institution gives students a document signifying the degree or diploma awarded.
- (8) Adequate records and standard transcripts are maintained and are available to students.
- (9) The institution is maintained and operated in compliance with this chapter and all other applicable ordinances and laws.

(b) Except as provided in Section 94885.1, an institution offering a degree must satisfy one of the following requirements:

- (1) Accreditation by an accrediting agency recognized by the United States Department of Education, with the scope of that accreditation covering the offering of at least one degree program by the institution.
- (2) An accreditation plan, approved by the bureau, for the institution to become fully accredited within five years of the bureau's issuance of a provisional approval to operate to the institution's degree programs. The provisional approval for the unaccredited institution to operate degree programs shall be in compliance with Section 94885.5.

(c) For institutions that are approved by means of accreditation and accredited by an agency that loses recognition by the United States Department of Education, an application for approval to operate an institution unaccredited shall be submitted to the bureau within six months of the agency's loss of recognition. The application shall include an accreditation plan for the institution to become fully accredited by an accrediting agency recognized by the United States Department of Education within five years of the bureau's issuance to the institution of a provisional approval to operate degree programs. If the institution fails to submit the required application and accreditation plan within six months of its accreditor's loss of recognition, the institution shall cease to hold a valid approval to operate. The bureau shall review the submitted application and accreditation plan and issue the institution a provisional approval to operate degree programs within 18 months of the accreditor's loss of recognition or deny the application, at which time the institution shall cease to hold a valid approval to operate. An unaccredited institution with a provisional approval to operate degree programs shall comply with Section 94885.5, except for paragraph (1) of subdivision (a) of Section 94885.5. The institution shall not seek bureau approval for additional degree programs until the institution regains accreditation.

SEC. 5. Section 94885.7 is added to the Education Code, to read:

94885.7. (a) When an institution offering at least one degree program has ceased to be accredited by an accrediting agency recognized by the United States Department of Education, the institution shall notify the bureau immediately, but no more than seven days after it ceases to be accredited. The institution's approval to operate degree programs shall become provisional as of the date that the institution ceases to be accredited.

(b) An institution that has had its approval to operate degree programs become provisional shall satisfy the following requirements in order to maintain its provisional approval to operate degree programs from the bureau:

- (1) The institution shall not seek bureau approval for additional degree programs until the institution regains accreditation.
- (2) Within six months of its approval to operate degree programs becoming provisional, the institution shall submit an accreditation plan, to be approved by the bureau, for the institution to become fully accredited within five years of the date of its provisional approval to operate degree programs. The plan shall include, at a minimum, identification of an accreditation agency recognized by the United States Department of Education, from which the institution plans to seek accreditation, and

outline the process by which the institution will achieve accreditation candidacy or pre-accreditation within two years, and full accreditation within five years, of its provisional approval to operate degree programs.

(3) The institution shall submit to the bureau all additional documentation the bureau deems necessary to determine if the institution will become fully accredited within five years of its approval to operate degree programs being deemed provisional.

(c) An institution that satisfies the requirements of subdivision (b) shall comply with both of the following:

(1) Notify students seeking to enroll in the institution, in writing, before the execution of the student's enrollment agreement, that the institution's approval to operate a degree program is contingent upon the institution being subsequently accredited.

(2) Within the first two years of the institution's approval to operate degree programs being deemed provisional, a visiting committee, empaneled by the bureau pursuant to Section 94882, shall review the institution's documentation of provisional approval and its accreditation plan, and make a recommendation to the bureau regarding the institution's progress toward achieving full accreditation.

(d) (1) The bureau shall, upon the timely submission of sufficient evidence that an unaccredited institution is making strong progress toward obtaining accreditation, grant an institution's request for an extension of time, not to exceed five years in total, to meet the requirements of this section.

(2) Evidence submitted to the bureau pursuant to paragraph (1) shall include, but is not limited to, an amended accreditation plan adequately identifying why pre-accreditation, accreditation candidacy, or accreditation outlined in the original plan submitted to the bureau was not achieved, active steps the institution is taking to comply with this section, and documentation from an accrediting agency demonstrating the institution's likely ability to meet the requirements of this section.

(3) The bureau may establish policies and procedures to comply with the requirements of this subdivision. Establishment of these policies and procedures are exempt from Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) Any institution that fails to comply with the requirements of this section by the dates provided shall have its provisional approval to operate degree programs automatically suspended on the applicable date. The bureau shall issue an order suspending the institution's provisional approval to operate degree programs and that suspension shall not be lifted until the institution complies with the requirements of this section or has its accreditation reinstated. An institution with a suspended provisional approval to operate degree programs shall not enroll new students in any of its degree programs and shall execute a teach-out plan for its enrolled students.

(f) (1) This section does not prohibit an institution from voluntarily ceasing to pursue accreditation. An institution that voluntarily ceases to pursue accreditation shall immediately notify the bureau in writing of the institution's intent to stop offering its degree programs and shall comply with all other applicable laws and regulations. Upon the bureau's receipt of the notification, the institution's approval to operate degree programs is deemed voluntarily surrendered.

(2) An institution offering both degree and nondegree programs that has its provisional approval to operate degree programs suspended or that voluntarily ceases to pursue accreditation may continue to offer its nondegree programs and is subject to all other laws and regulations.

(3) An institution that is pursuing accreditation under this section shall not make a change in ownership, change in control, or change in business organization form pursuant to Sections 94893 and 94894 until the institution obtains full accreditation.

SEC. 6. Section 94887 of the Education Code is amended to read:

94887. An approval to operate shall be granted only after an applicant has presented sufficient evidence to the bureau, and the bureau has independently verified the information provided by the applicant through site visits or other methods deemed appropriate by the bureau, that the applicant has the capacity to satisfy the minimum operating standards. The bureau shall deny an application for an approval to operate if the application does not satisfy those standards. The bureau may deny an application for an approval to operate institutions that would be owned by, have persons in control of, or employ institution managers that had knowledge of, should have known, or knowingly participated in any conduct that was the cause for revocation or unmitigated discipline at another institution.

SEC. 7. Section 94894 of the Education Code is amended to read:

94894. The following changes to an approval to operate are considered substantive changes and require prior authorization:

- (a) A change in educational objectives, including an addition of a new diploma or a degree educational program unrelated to the approved educational programs offered by the institution.
- (b) A change in ownership or person in control.
- (c) A change in control.
- (d) A change in business organization form.
- (e) A change of location.
- (f) A change of name.
- (g) A significant change in the method of instructional delivery.
- (h) An addition of a separate branch more than five miles from the main or branch campus.
- (i) An increase or decrease of 25 percent or more in the number of clock hours or credit hours required for successful completion of the program.
- (j) Participation in federal student financial aid programs authorized by Title IV of the federal Higher Education Act of 1965, as amended (20 U.S.C. Sec. 1070 et seq.).
- (k) A change in the academic measurement of an educational program from clock hours to credit hours.
- (l) A change in the distance education learning management system.

SEC. 8. 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.
- (e) Advertise, or indicate in promotional material, that the institution is accredited, unless the institution has been accredited by an accrediting agency.
- (f) Solicit students for enrollment by causing an advertisement to be published in "help wanted" columns in a magazine, newspaper, or publication, or use "blind" advertising that fails to identify the institution.
- (g) Offer to compensate a student to act as an agent of the institution with regard to the solicitation, referral, or recruitment of any person for enrollment in the institution, except that an institution may award a token gift to a student for referring an individual, provided that the gift is not in the form of money, no more than one gift is provided annually to a student, and the gift's cost is not more than one hundred dollars (\$100).
- (h) Pay any consideration to a person to induce that person to sign an enrollment agreement for an educational program.
- (i) Use a name in any manner improperly implying any of the following:
 - (1) The institution is affiliated with any government agency, public or private corporation, agency, or association if it is not, in fact, thus affiliated.
 - (2) The institution is a public institution.
 - (3) The institution grants degrees, if the institution does not grant degrees.
- (j) In any manner make an untrue or misleading change in, or untrue or misleading statement related to, a test score, grade or record of grades, attendance record, record indicating student completion, placement, employment, salaries, or financial information, including any of the following:
 - (1) A financial report filed with the bureau.

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

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

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

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

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

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

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

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

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

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

(o) Require a prospective student to provide personal contact information in order to obtain, from the institution's internet website, 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 associate, baccalaureate, master's, or doctoral degree without disclosing to prospective students before enrollment whether the institution or the degree program is unaccredited and any known limitation of the degree, including, but not limited to, all of the following:

(1) Whether a graduate of the degree program will be eligible to sit for the applicable licensure exam in California and other states.

(2) A statement that reads: "A degree program that is unaccredited or a degree from an unaccredited institution is not recognized for some employment positions, including, but not limited to, positions with the State of California."

(3) That a student enrolled in an unaccredited institution is not eligible for federal financial aid programs.

(q) In any manner commit fraud against, or make a material untrue or misleading statement to, a student or prospective student under the institution's authority or the pretense or appearance of the institution's authority.

(r) Charge or collect any payment for institutional charges that are not authorized by an executed enrollment agreement.

(s) Violate Section 1788.93 of the Civil Code.

(t) Require a prospective, current, or former student or employee to sign a nondisclosure agreement pertaining to their relationship to, or experience with, the institution, except that an institution may use a nondisclosure agreement to protect the institution's intellectual property and trade secrets. Any nondisclosure agreement in violation of this section is void and not enforceable at law or in equity.

(u) Fail to maintain policies related to compliance with this chapter or adhere to the institution's stated policies.

SEC. 9. Section 94899 of the Education Code is amended to read:

94899. (a) If an institution offers an educational program in a profession, occupation, trade, or career field that requires licensure in this state, the institution shall have an educational program approval from the appropriate state licensing agency to conduct

that educational program in order that a student who completes the educational program, except as provided in Section 94905, is eligible to sit for any required licensure examination.

(b) An institution offering an educational program requiring approval from another licensing agency in this state that subsequently loses that approval shall have their approval to operate the program automatically suspended by the bureau by operation of law. The institution shall notify the bureau within 10 days of its loss of approval to offer the educational program, and shall cease offering the program within 30 days of the loss of the approval to offer the educational program, or by an earlier date as required by the other state licensing agency. Reinstatement of the approval to operate may be made at any time following the suspension by providing proof satisfactory to the bureau that the license is properly approved and in compliance with all bureau requirements.

SEC. 10. Section 94909 of the Education Code is amended to read:

94909. (a) Except as provided in subdivision (d), before enrollment, an institution shall provide a prospective student, either in writing or electronically, with a school catalog containing, at a minimum, all of the following:

(1) The name, address, telephone number, and, if applicable, internet website address of the institution.

(2) Except as specified in Article 2 (commencing with Section 94802), a statement that the institution is a private institution and that it is approved to operate by the bureau.

(3) The following statements:

(A) "Any questions a student may have regarding this catalog that have not been satisfactorily answered by the institution may be directed to the Bureau for Private Postsecondary Education at (address), Sacramento, CA (ZIP Code), (internet website address), (telephone and fax numbers)."

(B) "As a prospective student, you are encouraged to review this catalog before signing an enrollment agreement. You are also encouraged to review the School Performance Fact Sheet, which must be provided to you before signing an enrollment agreement."

(C) "A student or any member of the public may file a complaint about this institution with the Bureau for Private Postsecondary Education by calling (toll-free telephone number) or by completing a complaint form, which can be obtained on the bureau's internet website (internet website address)."

(D) "The Office of Student Assistance and Relief is available to support prospective students, current students, or past students of private postsecondary educational institutions in making informed decisions, understanding their rights, and navigating available services and relief options. The office may be reached by calling (toll-free telephone number) or by visiting (internet website address)."

(4) The address or addresses where class sessions will be held.

(5) A description of the programs offered and a description of the instruction provided in each of the courses offered by the institution, the requirements for completion of each program, including required courses, any final tests or examinations, any required internships or externships, and the total number of credit hours, clock hours, or other increments required for completion.

(6) If the educational program is designed to lead to positions in a profession, occupation, trade, or career field requiring licensure in this state, a notice to that effect and a list of the requirements for eligibility for licensure.

(7) Information regarding the faculty and their qualifications.

(8) A detailed description of institutional policies in the following areas:

(A) Admissions policies, including the institution's policies regarding the acceptance of credits earned at other institutions or through challenge examinations and achievement tests, and a list describing any transfer or articulation agreements between the institution and any other college or university that provides for the transfer of credits earned in the program of instruction. If the institution has not entered into an articulation or transfer agreement with any other college or university, the institution shall disclose that fact.

(B) Cancellation, withdrawal, and refund policies, including an explanation that the student has the right to cancel the enrollment agreement and obtain a refund of charges paid through attendance at the first class session, or the seventh day after enrollment, whichever is later. The text shall also include a description of the procedures that a student is required to follow to cancel the enrollment agreement or withdraw from the institution and obtain a refund consistent with the requirements of Article 13 (commencing with Section 94919).

(C) Probation and dismissal policies.

(D) Attendance policies.

(E) Leave-of-absence policies.

(9) The schedule of total charges for a period of attendance and an estimated schedule of total charges for the entire educational program.

(10) A statement reporting whether the institution participates in federal and state financial aid programs, and if so, all consumer information that is required to be disclosed to the student pursuant to the applicable federal and state financial aid programs.

(11) A statement specifying that, if a student obtains a loan to pay for an educational program, the student will have the responsibility to repay the full amount of the loan plus interest, less the amount of any refund, and that, if the student has received federal student financial aid funds, the student is entitled to a refund of the moneys not paid from federal student financial aid program funds.

(12) A statement specifying whether the institution has a pending petition in bankruptcy, is operating as a debtor in possession, has filed a petition within the preceding five years, or has had a petition in bankruptcy filed against it within the preceding five years that resulted in reorganization under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. Sec. 1101 et seq.).

(13) If the institution provides placement services, a description of the nature and extent of the placement services.

(14) A description of the student's rights and responsibilities with respect to the Student Tuition Recovery Fund. This statement shall specify that it is a state requirement that a student who pays the student's tuition is required to pay a state-imposed assessment for the Student Tuition Recovery Fund. This statement shall also describe the purpose and operation of the Student Tuition Recovery Fund and the requirements for filing a claim against the Student Tuition Recovery Fund.

(15) The following statement:

"NOTICE CONCERNING TRANSFERABILITY OF CREDITS AND CREDENTIALS EARNED AT OUR INSTITUTION

The transferability of credits you earn at (name of institution) is at the complete discretion of an institution to which you may seek to transfer. Acceptance of the (degree, diploma, or certificate) you earn in (name of educational program) is also at the complete discretion of the institution to which you may seek to transfer. If the (credits or degree, diploma, or certificate) that you earn at this institution are not accepted at the institution to which you seek to transfer, you may be required to repeat some or all of your coursework at that institution. For this reason you should make certain that your attendance at this institution will meet your educational goals. This may include contacting an institution to which you may seek to transfer after attending (name of institution) to determine if your (credits or degree, diploma, or certificate) will transfer."

(16) A statement specifying whether the institution, or any of its degree programs, are accredited by an accrediting agency recognized by the United States Department of Education. If the institution is unaccredited and offers an associate, baccalaureate, master's, or doctoral degree, or is accredited and offers an unaccredited program for an associate, baccalaureate, master's, or doctoral degree, the statement shall disclose the known limitations of the degree program, including, but not limited to, all of the following:

(A) Whether a graduate of the degree program will be eligible to sit for the applicable licensure exam in California and other states or become certified or registered as required for the applicable profession, occupation, trade, or career field in California.

(B) A degree program that is unaccredited or a degree from an unaccredited institution is not recognized for some employment positions, including, but not limited to, positions with the State of California.

(C) That a student enrolled in an unaccredited institution is not eligible for federal financial aid programs.

(b) If the institution has a general student brochure, the institution shall provide that brochure to the prospective student before enrollment. In addition, if the institution has a program-specific student brochure for the program in which the prospective student seeks to enroll, the institution shall provide the program-specific student brochure to the prospective student before enrollment.

(c) An institution shall provide the school catalog to any person upon request. In addition, if the institution has student brochures, the institution shall disclose the requested brochures to any interested person upon request.

(d) An accredited institution is not required to provide a School Performance Fact Sheet to a prospective student who is not a California resident, not residing in California at the time of the student's enrollment, and enrolling in an accredited distance learning degree program offered by the institution, if the institution complies with all federal laws, the applicable laws of the state where the student is located, and other appropriate laws, including, but not limited to, consumer protection and student disclosure requirements.

SEC. 11. Section 94917 of the Education Code is amended to read:

94917. A note, instrument, or other evidence of indebtedness relating to payment for an educational program is void and not enforceable unless, at the time of execution of the note, instrument, or other evidence of indebtedness, the institution held an approval to operate or valid out-of-state registration with the bureau.

SEC. 12. Section 94918.5 is added to the Education Code, immediately following Section 94918, to read:

94918.5. (a) The bureau's administration of this article or Article 13 (commencing with Section 94919) shall not preclude the authority of the Department of Financial Protection and Innovation over, and application of the California Consumer Financial Protection Law to, any "covered persons" as defined by subdivision (f) of Section 90005 of the Financial Code, including, but not limited to, private postsecondary educational institutions.

(b) Nothing in this chapter shall constitute regulation of an institution's financial product or service pursuant to subparagraph (B) of paragraph (2) of subdivision (a) of Section 90009 of the Financial Code, or shall otherwise be construed to limit the Department of Financial Protection and Innovation's jurisdiction with respect to an institution's financial product or service.

(c) An institution subject to this chapter shall not be considered "acting under the authority" of its status with the bureau pursuant to subdivision (a) of Section 90002 of the Financial Code when offering financial products or services.

SEC. 13. Section 94926.5 is added to the Education Code, to read:

94926.5. (a) An institution's approval to operate is automatically terminated on the date of closure or when its exemption from this chapter has been verified by the bureau.

(b) An institution that does not identify a date of closure shall have one selected by the bureau.

(c) A terminated license shall not be reinstated.

SEC. 14. Section 94933 of the Education Code is amended to read:

94933. The bureau shall provide an institution with the opportunity to remedy noncompliance, impose fines, place the institution on probation, or suspend or revoke the institution's approval to operate, in accordance with this article, as it deems appropriate based on the severity of an institution's violations of this chapter, and the harm that results or may result to students.

SEC. 15. Section 94934.5 of the Education Code is amended to read:

94934.5. (a) An institution with an approval to operate that knows that it is being investigated by an oversight entity other than the bureau shall report that investigation, including the nature of that investigation, to the bureau in writing within 30 days of the institution's first knowledge of the investigation. An institution with an approval to operate that is the subject of a judgment by, a regulatory action by, increased oversight or monitoring by, or a settlement with, any oversight entity other than the bureau shall report it to the bureau within 30 days. Failure to comply with this section may subject the institution to an administrative citation pursuant to Section 94936.

(b) For the purposes of this section, "investigation" means any inquiry into possible violations of any applicable laws or accreditation standards.

(c) For the purposes of this section, "oversight entity" means all of the following:

(1) Any governmental agency.

(2) Any accrediting agency.

(3) Any professional licensing entity that exercises any programmatic or institutional approval over the institution.

SEC. 16. Section 94935 of the Education Code is amended to read:

94935. (a) Bureau staff who, during an inspection of an institution, detect a violation of this chapter, or regulations adopted pursuant to this chapter, that is a minor violation as determined by the bureau, pursuant to regulations adopted by January 1, 2011, shall issue a notice to comply at the conclusion of the inspection. The bureau shall establish a voluntary informal appeal process, by regulation, within one year of the enactment of this chapter.

(b) An institution that receives a notice to comply shall have no more than 30 days from the date of inspection to remedy the noncompliance.

(c) Upon achieving compliance, the institution shall sign and return the notice to comply to the bureau.

(d) A single notice to comply shall be issued listing separately all the minor violations cited during the inspection.

(e) A notice to comply shall not be issued for any minor violation that is corrected before the conclusion of the inspection. Immediate compliance may be noted in the inspection report, but the institution shall not be subject to any further action by the bureau.

(f) A notice to comply shall be the only means the bureau shall use to cite a minor violation discovered during an inspection. The bureau shall not take any other enforcement action specified in this chapter against an institution that has received a notice to comply if the institution remedies the violation within 30 days from the date of the inspection.

(g) If an institution that receives a notice to comply pursuant to subdivision (a) disagrees with one or more of the alleged minor violations listed in the notice to comply, an institution shall send the bureau a written notice of disagreement. The agency may take administrative enforcement action to seek compliance with the requirements of the notice to comply.

(h) If an institution fails to comply with a notice to comply within the prescribed time, the bureau shall take appropriate administrative enforcement action.

SEC. 17. Section 94936 of the Education Code is amended to read:

94936. (a) As a consequence of an investigation, which may incorporate any materials obtained or produced in connection with a compliance inspection, and upon a finding that the institution has committed a violation of this chapter or that the institution has failed to comply with a notice to comply pursuant to Section 94935, the bureau shall issue a citation to an institution for violation of this chapter, or regulations adopted pursuant to this chapter.

(b) The citation may contain any of the following:

(1) An order of abatement that may require an institution to demonstrate how future compliance with this chapter or regulations adopted pursuant to this chapter will be accomplished.

(2) Notwithstanding Section 125.9 of the Business and Professions Code, an administrative fine not to exceed five thousand dollars (\$5,000) for each violation. The bureau shall base its assessment of the administrative fine on:

(A) The nature and seriousness of the violation.

(B) The persistence of the violation.

(C) The good faith of the institution.

(D) The history of previous violations.

(E) The purposes of this chapter.

(F) The potential harm to students.

(3) An order to compensate students for harm that resulted or may have resulted, including a refund of moneys paid to the institution by or on behalf of the student, as determined by the bureau.

(c) (1) The citation shall be in writing and describe the nature of the violation and the specific provision of law or regulation that is alleged to have been violated.

(2) The citation shall inform the institution of its right to request a hearing in writing within 30 days from service of the citation.

(3) If a hearing is requested, the bureau shall select an informal hearing pursuant to Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code or a formal hearing pursuant to Chapter 5

(commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(4) If a hearing is not requested, payment of the administrative fine is due 30 days from the date of service, and shall not constitute an admission of the violation charged.

(5) If a hearing is conducted and payment of an administrative fine is ordered, the administrative fine is due 30 days from when the final order is entered.

(6) The bureau may enforce the administrative fine as if it were a money judgment pursuant to Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure.

(d) All administrative fines shall be deposited in the Private Postsecondary Education Administration Fund.

SEC. 18. Section 94944 of the Education Code is amended to read:

94944. Notwithstanding any other law, the bureau shall cite any person, and that person shall be subject to a fine not to exceed one hundred thousand dollars (\$100,000), for operating an institution without proper approval to operate issued by the bureau pursuant to this chapter. The maximum fine for unlicensed activity is separate and not inclusive of fines for other violations or refunds ordered.

SEC. 19. Section 94949.8 is added to the Education Code, immediately following Section 94949.73, to read:

94949.8. (a) An institution that qualifies as a public institution of higher education pursuant to subdivision (b) of Section 94858.5, that is operated by another state, and that maintains a physical presence in this state may apply for an approval to operate from the bureau.

(b) (1) With regard to a public institution of higher education approved pursuant to this section, the bureau shall administer and enforce this chapter, and the regulations adopted pursuant to this chapter, in the same manner and to the same extent as if such institutions were private postsecondary educational institutions, as defined in Section 94858.

(2) A public institution of higher education approved pursuant to this section is subject to the provisions of, and the regulations adopted pursuant to, this chapter in the same manner and to the same extent as if it was a private postsecondary educational institution, as defined in Section 94858, including the provisions related to fees, annual reports, compliance inspections, and the Student Tuition Recovery Fund.

(3) Approval of a public institution of higher education pursuant to this section does not, in and of itself, qualify the institution for participation in the Cal Grant Program established pursuant to Chapter 1.7 (commencing with Section 69430) of Part 42 of Division 5.

(c) As necessary or appropriate, the bureau shall publish public guidance regarding the application of this chapter and the regulations adopted pursuant to this chapter to a public institution of higher education approved pursuant to this section. The bureau's development and publication of any such guidance is exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The bureau shall, on or before July 1, 2024, amend any regulations that conflict with this section.

SEC. 20. Section 94950 of the Education Code is amended to read:

94950. This chapter shall remain in effect only until January 1, 2027, and as of that date is repealed.

SEC. 21. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.