

California Senate Appropriations Committee Sends Three Postsecondary Bills for Further Action, Shelves Three Others

September 3, 2019

After returning from recess on August 12, the California Senate Appropriations Committee took up the [package](#) of six remaining higher education bills intended to address concerns about private postsecondary education providers in the state, sending three forward for floor action and holding three bills under submission in committee, meaning they will not be considered for further action in 2019. Note that AB 1343, which would have created a California version of the federal 90/10 rule, did not pass the Senate Business, Professions and Economic Development committee, so it too is not moving forward.

All but one of the proposed bills would have amended the California Private Postsecondary Education Act (CPPEA). The CPPEA, which is enforced by the Bureau for Private Postsecondary Education (BPPE), governs the operations of private postsecondary providers in California. Contrary to popular belief, that does not mean CPPEA is limited to for-profit institutions, although many nonprofit institutions are eligible for exemption from the CPPEA and therefore outside of the BPPE's jurisdiction. Institutions that are subject to some level of BPPE oversight, fall into one of three categories: (1) BPPE authorized (whether full approval, or approved by means of accreditation) and thus subject to the entirety of the CPPEA; (2) an exempt California "independent institution" with a contract for BPPE complaint processing; or (3) a registered out-of-state institution that offers online education to California residents. (Please review our recent posts on CooleyED ([here](#), [here](#) and [here](#)) regarding the curious effects of California being the sole holdout from the State Authorization Reciprocity Agreement.) Exempt and out-of-state institutions are subject to only limited sections of the law specifically addressing their category of operations. These distinctions are important because while the pending bills primarily impact BPPE authorized institutions, they also expand the BPPE's authority over out-of-state institutions as well.

Below is a summary of the bills, who they will impact, and how.

Bills Held under Submission and Not Proceeding in 2019

Three bills were held under submission, meaning *they will not proceed to a floor session or further voting in 2019*. Further, unless these bills are placed into "two year" status by the Senate Appropriations Committee, the bills will not be considered in their current form for the remainder of the legislative session, which runs through 2020, requiring them to be introduced anew after the end of this year. As these three bills contained the proposals that created the greatest concern, we discuss them first.

[AB 1341 – Nonprofit conversions](#)

The intent of AB 1341 had been clear from its introduction: increase scrutiny of institutions (including but not limited to those that formerly were for-profit) that operate as, or have plans to convert to, nonprofit status. The bill would have added a new definition of "nonprofit corporation" that would have granted the California Attorney General discretion to determine that an institution is *not* a nonprofit entity for California education regulatory purposes, even if it is recognized by the Internal Revenue Service as such. The bill would also have prohibited BPPE from verifying an institution's exemption from the CPPEA (including the registration process) based on its IRS-determined nonprofit status, or from contracting to handle complaints for a nonprofit institution located in California, if the institution previously operated as a for-profit institution during any period on or after January 1, 2010, unless the AG determines, with considerable discretion, that the institution meets a new state definition of "nonprofit corporation."

Particularly problematic was the risk that existing nonprofit institutions could have been required to undergo a new determination, at the discretion of the AG, of their status under California law, potentially requiring the BPPE to treat them as for-profit, and therefore ineligible for exemption from the CPPEA.

[AB 1342 – Nonprofit transaction approval](#)

AB 1342 would have explicitly required a nonprofit corporation that operates or controls a private postsecondary educational institution to obtain the AG's consent before entering into certain agreements or transactions, including an

agreement or transaction to sell or convey its assets to, or to transfer control, responsibility, or governance of a material amount of its assets to, a for-profit corporation or mutual benefit corporation. This was clearly targeted at nonprofit institutions that have broad service or other agreements with for-profit entities with which they were once affiliated, but as drafted could have had substantially wider impact on nonprofit educational institutions' operational flexibility.

AB 1345 – Incentive compensation

Originally, AB 1345 would have broadened BPPE's existing language prohibiting schools authorized to operate by that agency from providing any incentive compensation payments to any employee or third party for success in securing enrollments, continued enrollment, attendance, packaging financial aid and/or selling educational supplies and removed language that harmonized state law with the federal incentive compensation regulations. Importantly, the bill could have significantly impacted the relationship between schools regulated by BPPE and OPMs and other service providers because it did not include the federal exception for bundled services, among other variances from the federal standards.

This bill had substantial opposition throughout and was amended numerous times prior to stalling in the Senate Appropriations Committee.

Bills Voted Off Suspense and Proceeding to Floor Session

The following three bills will proceed to a floor vote.

AB 1340 – Gainful employment

AB 1340 was amended prior to being voted out of the suspense file. Originally, this bill would have imposed state-level gainful employment (GE) requirements and sanctions, similar to those under the Obama-era GE rules, on institutions approved by the BPPE and subject to the CPPEA. The newly amended draft removes this requirement. Instead, it imposes primarily a data-gathering-and-disclosure requirement: institutions must collect and retain certain information regarding the institutions' graduates after January 1, 2020, for later reporting, including the student's social security or federal tax identification number, program in which the student was enrolled, and his/her student loan debt. Once the BPPE can certify that it has in place an appropriate information technology system to properly manage the receipt and processing of sensitive (and in California, highly protected) personally identifiable information, affected institutions will be required to provide the information to the BPPE, and the BPPE will then publish program- and institution-level statistics regarding the earnings levels of graduates and student debt information on its own website.

AB 1344 – Out-of-state registration

As originally drafted, AB 1344 would have substantially altered the compliance obligations for out-of-state (primarily proprietary) institutions that register with BPPE by subjecting those institutions to the entirety of the CPPEA. Significantly, this would mean registered institutions would also have to comply with any new requirements implemented by other bills in this legislative package; however, the bill was amended early on to eliminate compliance with the entirety of the CPPEA. Instead, the amended bill would increase the submission requirements for initial registration and provides the BPPE additional discretion in approving registration. Our [last update](#) provided a detailed overview of the registration requirements to which out-of-state institutions would be subject, but the more interesting current news is which schools will apparently *not* be affected, now that AB 1341 and AB 1342 have been held under submission.

Under current law, out-of-state public institutions, and nonprofit, accredited, degree granting institutions, that offer online education to California residents, are not subject to state registration requirements. However, as AB 1341 and 1342 would have allowed the AG to override an institution's nonprofit status for purposes of the registration limits, an indeterminate number of out-of-state institutions, that are not required to register under current law, would have become subject to the registration requirement based on the AG determining that (despite a non-profit designation from the IRS, and recognition of that status by the US Department of Education and the institution's accreditor) the institution was not a nonprofit *under California education law*.

Without AB 1341 and 1342, the expanded scope of AB 1344 will be limited in application to only for-profit accredited institutions, the same institutions that had been subject to the original registration law.

AB 1346 – Student Tuition Recovery Fund (STRF)

AB 1346 broadens the scope of student eligibility for relief from the STRF to include additional former students of the long-defunct Corinthian Colleges system, and also expands the type of relief available to any covered student by expanding

the definition of “economic loss” to include any amounts paid in connection with attending the institution and all principal, interest and charges of any kind for a loan incurred by a student to pay those amounts.

What Now?

Having already cleared the State Assembly, the three still-surviving bills will now move to the full Senate, where we will be watching closely for possible further amendments. As each bill has been amended from the versions which passed the Assembly, when and if they pass in the Senate they will go back for a conference to reconcile differences between the Assembly and Senate versions. The last day to amend bills on the Senate floor is September 6 and all bills must be reconciled and passed out of both houses by September 13, so the timeline for action is very short. If the bills do clear both houses they will be sent to the Governor for signature or veto, which he must exercise by October 13. California does not have a “pocket veto,” so even if the Governor does not sign a bill, as long as it is not vetoed by the deadline, it will become law.

We are continuing to closely track the package of bills, and we will provide updates as these final bills move through the California legislative process.

Kate Lee Carey focuses on the legal, accreditation, administrative and regulatory aspects of regionally and nationally accredited higher education institutions and companies that provide services to the education industry.

Caitlyn Shelby advises postsecondary institutions, K-12 schools and education companies on matters involving accreditation, state authorization and the provision of online education, and monitors legislative and regulatory developments in these areas.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as “Cooley”). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our [AI Principles](#), may be considered Attorney Advertising and is subject to our [legal notices](#). Copyright © 2026