

California Legislature Passes Bill Impacting Nonprofit Higher Education Institutions

September 1, 2020

Despite the pandemic and the resulting abbreviated legislative docket in 2020, the California Assembly managed to resurrect one of its stalled bills from 2019 and successfully move it through both houses. It is now “enrolled” and will head to the Governor’s desk for final action.

We [wrote](#) extensively last year about the California legislative package of seven bills impacting private postsecondary education during the 2019 cycle. Ultimately, three of those bills became law, and the other four were held up in committee and did not make it to a final vote. One of those bills, [AB1341](#), came back in similar form in 2020, as [AB70](#).

This bill amends the California Private Postsecondary Education Act of 2009 (the Act) by limiting, in certain circumstances, the authority of the Bureau for Private Postsecondary Education (BPPE) to accept an institution’s nonprofit status (as recognized by the IRS) when determining whether to verify an exemption from BPPE oversight, or entering into a contract for complaint processing. The bill adds new definitions to the Act for both “nonprofit corporation” and “public institution of higher education” and requires that the Attorney General make the determination of nonprofit status for any institution that operated for-profit on or after January 1, 2010, based on specific criteria. To verify nonprofit status for such institutions, the AG must conclude that: (1) the nonprofit acquired the for-profit institution’s assets for no more than their fair value; (2) the nonprofit has not executed agreements for goods or services exceeding the fair value of the goods or services; (3) all core functions of the nonprofit institution are conducted by, or under the direction of, the nonprofit institution; and (4) the nonprofit institution has not entered into any contracts, loans, or leases with a term of longer than three years with the former for-profit institution’s owners and managers. (Note that this paragraph does not apply to a nonprofit institution that previously operated as a for-profit institution that is owned by or controlled by a public institution of higher learning.)

The bill would also mandate that the AG provide written notification to the institution and the BPPE of its verification within 90 days of receipt of all information that the AG deems necessary for the verification.

Although somewhat limited in scope, if signed into law, this bill could impact any institution that has converted from for-profit to nonprofit status in the last decade, or institutions seeking to make that change in the future. The ability to qualify for exemption from BPPE oversight whether as a California-based institution or an out-of-state institution is impacted by this measure.

Now that the California legislative session has ended, the Governor has until September 30th to take action. If approved, the provisions of this measure would become operative on January 1, 2022.

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