

California Higher Education Bill AB70 Signed into Law by Governor Newsom (and Why it Matters)

October 1, 2020

Following up on our [blog post](#) of September 1, Governor Newsom has signed [AB70](#) into law. This bill impacts how nonprofit and public institutions will be recognized under the California Private Postsecondary Education Act of 2009 (the Act) as enforced by the Bureau for Private Postsecondary Education (BPPE), and, now, the California Attorney General (AG).

As a refresher, this bill amends the Act by limiting, in certain circumstances, the authority of the BPPE to accept an institution's nonprofit status when determining whether to verify an exemption from BPPE oversight (whether for an in-state institution or an out-of-state institution that might otherwise be required to register), or entering into a contract for complaint processing through the "independent institution" pathway provided for in [SB81](#), a bill passed in 2015. AB70 adds new definitions to the Act for both "nonprofit corporation" and "public institution of higher education" and requires that the AG make the determination of nonprofit status for any institution that operated for-profit on or after January 1, 2010, based on specific criteria. (See the [September 1st blog post](#) for more details on the criteria.)

Under the new definitions, institutions that have been operating under a BPPE exemption for years might now have their status as a nonprofit questioned and put in the position of having to either prove to the AG that they are truly nonprofit, or face the task of applying for the applicable BPPE approval or registration. Anyone operating an institution in California can tell you how complex and expensive the regulatory structure is in the state, so a sudden loss of exemption may be particularly challenging for in-state institutions. But out-of-state institutions should also be aware of how AB70, in conjunction with a new law from last year, could impact them.

AB70 made additions to a section of the Act that had been updated in 2019 with [AB1344](#), which added numerous additional requirements, effective on July 1, 2022, for out-of-state institutions subject to California's registration mandate. Note that, under the Act, nonprofit, accredited, degree-granting institutions are exempt from the registration requirements, so the new AB70 definitions could impact an institution's status and its ability to avoid the more onerous application and compliance requirements of AB1344. For an institution that is (or will be) subject to out-of-state registration, in addition to the current requirements to provide proof of an agent for process, state authorization, accreditation, and compliance with the Student Tuition Recovery Fund, it will also need to provide the following information:

- 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 is ongoing at the time of submission of the registration.
- 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 prior to submitting the registration.
- 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 prior to submitting the registration.
- Whether or not the institution, within five years prior to 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 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).

In the second and fourth instances above, the institution must also submit relevant complaints, court filings and other applicable documents relating to events that meet those definitions. If an applicant institution reports any of these elements, the BPPE may approve for registration, deny or conditionally register the institution. An institution will have the opportunity to comment before the BPPE takes final action and may appeal the final determination, but that process will likely be time-consuming and expensive and might limit the institution's ability to enroll California residents in the

meantime. Additionally, registered institutions must report the occurrence of any of these events if they happen after registration has been granted, and the BPPE will confer with the AG to determine whether action should be taken to limit the registration or the enrollment of students in California.

It is not entirely clear how the BPPE plans to implement the requirements of AB70 for out-of-state institutions, given the number that are currently not registered based on their nonprofit status; however, any institution that converted to nonprofit status in the past decade, whether out-of-state or in-state, should be prepared to provide information to the BPPE and California AG to verify its status or face the challenge of demonstrating compliance with California law.

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