

FINDING OF EMERGENCY

Amend Title 5 California Code of Regulations, Sections 70000-76240.

The Department of Consumer Affairs (“Department”) hereby finds that adoption of regulations on an emergency basis is required to regulate private postsecondary institutions in California. The Department specifically finds that these emergency regulations are necessary for the immediate preservation of public health and safety, and general welfare of the citizens of California, and that AB 48, Chapter 310 Statutes of 2009, requires the newly reconstituted Bureau for Private Postsecondary Education (“Bureau” or “BPPE”), within the Department, to adopt emergency regulations.

SPECIFIC FACTS DEMONSTRATING THE NEED FOR IMMEDIATE ACTION

AB 48 reestablishes, after a two and one half year absence, regulation of private postsecondary educational institutions in California. Previously the Bureau for Private Postsecondary and Vocational Education regulated these institutions. However, the law authorizing the existence of that entity and every statute and regulation related to ensuring the sound operation of these institutions, including all student protections, became inoperative on July 1, 2007, and was repealed as of January 1, 2008.

Statutory Authority to Promulgate Emergency Regulations

The Legislature specifically included a requirement, in **Section 94803 of the Education Code**, that the Bureau adopt emergency regulations to amend or repeal, as necessary, the regulations of the former Bureau for Private Postsecondary and Vocational Education located in Division 7.5 (commencing with Section 70000) of Title 5 of the California Code of Regulations to conform to Chapter 8.5 (commencing with Section 94800) of Part 59 of Division 10 of Title 3 of the Education Code *no later than February 1, 2010*. Furthermore, the statutory authority of AB 48, while covering the same general areas as the prior laws, is substantially dissimilar to the prior law. As a result, to adequately protect the nearly 400,000 students enrolled at more than 1,500 institutions, these regulations are necessary.

Need for Immediate Action

Presently, it is estimated that approximately 400,000 students are enrolled at the various private postsecondary institutions within California. Fees paid by these students are estimated to total over 4.5 billion dollars of private and public funds in order to benefit from the educational programs offered by these institutions. The sources of funds include personal funds from the students and their families, private loans issued by private lending institutions, loans guaranteed by the state and federal governments, grants issued by the state and federal governments, including rehabilitation grants and veterans grants, private employers paying for employees’ education, and numerous other sources, including loans directly from the institutions to the enrolled students. While the legislation adopted in AB 48 provides a framework for protecting this multi-billion dollar investment in these students’ education, without these emergency regulations the specific details of what is required and what is and is not permitted will remain undefined, allowing for some institutions to place these significant funds at risk by failing to provide the services and quality of education that the institutions promise prospective students.

California, along with the rest of the United States, is seeing harsh economic times unprecedented since the Great Depression of the early twentieth century. As a result, unemployment levels are at near record and record levels and are anticipated to remain at these high levels for several years to come. As industry recovers, as has occurred in the past during difficult economic times, employees will require training in new specialties, job fields, and professions. Laid off employees from traditional employers will need training in “green” employers specialties. With the passage of a national health care plan, the health care industry will see an increased number of patients and as a result, an increase in the number of trained medical lay and medical paraprofessionals will be needed. As a result, it is anticipated that a significant number of people will become postsecondary education students.

Presently, the public education opportunities for these new and returning students are limited. In necessary response to funding decreases as a result of the unprecedented economic situation facing California, the University of California (“UC”) system reduced the number of freshman enrollments by 2,300 for fall 2009. It is anticipated, based upon continuing economic stress, that the University of California will maintain or increase this reduction in entering students. The California State University (“CSU”), facing similar economic realities, reduced statewide enrollment system wide by more than 4,000 for fall 2009, 10,000 for spring 2010 and is expected to reduce admissions by 30,000 to 45,000 for fall 2010. The actions taken by the CSU system for fall 2009 marked the first time since its founding that the CSU has not admitted all eligible students. While the California Community College system is not facing similar cuts to enrollment in response to the economic crisis, the resulting cuts to class offerings essentially means that many students will not be able to enroll in any class at their local campus. In addition to the reductions in the number of students being admitted to these public institutions, the institutions are having to slash the number of classes being offered and in some cases are cutting entire educational programs. At the same time, these public institutions are seeing increases in applications above 50% over the fall 2008 admission period. Furthermore, fees and tuition at these institutions are going up significantly. In the case of the UC system, undergraduate fees will have risen approximately 32% by fall 2010 over fall 2009 fees. The CSU has implemented a 20% increase for fall 2009 and is anticipating a further increase of 10-20% for fall 2010. The community colleges’ fees were raised by the legislature by 30% for fall 2009.

As a result of the cuts being made to public institutions and fee increases, the 50% increase in the number of students desiring postsecondary education has to be absorbed somewhere. This is where private postsecondary institutions come into the picture. While private postsecondary institutions comprise everything from The Paul Mitchell School for hair design and skin care to the University of Phoenix and Stanford University, the vast majority of these students will end up at smaller, mostly vocational institutions. Without adoption of these regulations, these schools will have little guidance in interpreting and applying the new requirements of AB 48, which was passed in order to protect students and their and the public’s investment of \$4.5 billion annually in these institutions.

Consequently, while institutions that had obtained approval to operate prior to the elimination of the prior regulatory agency and institutions that have opened subsequent to the repeal of the prior Private Postsecondary and Vocational Education Reform Act of 1989 are provided limited term

approvals to continue operating under AB 48, new institutions may not commence operations until an approval to operate has been granted by the new Bureau. New approvals cannot be issued without a procedure for approving them, as well as the existence of minimum operating standards, as required by Education Code Section 94885, because in order to apply, institutions must demonstrate compliance with the minimum operating standards, as required by Section 94887. Furthermore, without the adoption of these emergency regulations, new institutions seeking to apply for approval to operate cannot even begin to compile their applications, because applications compliant with the requirements of AB 48 and the Administrative Procedure Act will not exist.

In addition, because of requirements in AB 48 pertaining to the new mandatory enrollment agreement and accompanying documents, existing institutions that are permitted temporarily to operate before obtaining a new approval under AB 48 cannot enroll new students without these emergency regulations. Nor can existing institutions make changes to their program without complying with the necessary requirements for notification to students and the Bureau, because the necessary requirements will not exist without these regulations. For institutions who had previously obtained approvals to operate and that made changes to their offerings subsequent to the repeal of the prior Act, in order to comply with the terms of their existing approval, may be required to discontinue offering programs or offering them at certain locations. Only with the adoption of these emergency regulations addressing the notification and application process can these institutions continue to operate as they have since July 1, 2007.

Finally, without the adoption of these emergency regulations, the institutions cannot begin to collect the mandatory non-institutional charge required by AB 48 to be paid by the students to the Student Tuition Recovery Fund (“STRF”). The STRF is a mandatory “insurance policy” for students, which provides for payment by the students into a Bureau maintained fund. In the event of an institutional closing, fees paid by students, including through loans, can be returned to the students in the event the institution cannot make the required refunds. The STRF operations are completely dependent upon these regulations, and absent initial emergency regulations, the schools cannot collect this fee and the students cannot benefit from the program thereby placing the students financial wellbeing at risk.

The majority of the institutions that will be subject to regulation were regulated by the former Bureau for Private Postsecondary and Vocational Education, and are therefore familiar with the scope of these regulations, and the impact upon them will not be unduly burdensome. The benefit to the public, however, is great and necessary.

AUTHORITY AND REFERENCE

Authority: Education Code sections 94803, 94874.7, 94877, 94885, 94888, 94890, 94891, 94895, 94923, 94932, 94934.

Reference: Education Code sections 94801, 94802, 94809, 94818, 94821, 94822, 94823, 94823.5, 94830, 94834, 94837, 94843, 94844, 94851, 94870, 94874.1, 94874.7, 94875, 94877, 94882, 94885, 94886, 94887, 94888, 94889, 94890, 94891, 94893, 94894, 94895, 94896, 94897, 94898, 94899, 94900, 94900.5, 94902, 94904, 94905, 94908, 94909, 94911, 94919, 94920,

94923, 94926, 94927, 94927.5, 94930.5, 94931, 94931.5, 94932, 94933, 94937, and 94943.5; Business and Professions Code sections 118, 480.

INFORMATIVE DIGEST

The Education Code sections referenced authorizes the Bureau to amend or repeal by emergency regulation no later than February 1, 2010, the regulations, as they read on June 30, 2007, in Division 7.5 (commencing with Section 70000) of Title 5 of the California Code of Regulations, to conform to the California Private Postsecondary Education Act of 2009 (Act). The Bureau is proposing the following changes:

- Chapter 1, Article 1: amend the existing regulations to define terms used in the Act
- Chapter 1, Article 2: define the process to be used for the period during which Bureau is able to review applications that have been pending since the former Bureau sunset.
- Chapter 2, Article 1: define the process by which a non-accredited institution can apply for approval to operate from the Bureau.
- Chapter 2, Article 2: define the process by which an accredited institution can apply for approval to operate from the Bureau.
- Chapter 2, Article 3: define the process by which an institution exempt from regulation can apply for verification of exempt status from the Bureau.
- Chapter 2, Article 4: define the process by which the Bureau processes and denies an application, including provisions for abandonment of an application.
- Chapter 2, Article 5: define the process for convening a visiting committee to assist the Bureau in reviewing applications.
- Chapter 2, Article 6: define the process by which an institution can apply for renewal of its approval to operate from the Bureau.
- Chapter 2, Article 7: define the process by which an institution can apply for a substantive change to its approval to operate from the Bureau.
- Chapter 3, Article 1: define the minimum operating standards for an institution applying for approval to operate, which must be established in its application.
- Chapter 3, Article 2: define the minimum academic achievement and admissions standards for an institution applying for approval to operate, which must be established in its application.
- Chapter 3, Article 3: define the minimum standards for maintaining student and institutional records for an institution applying for approval to operate, which must be established in its application.
- Chapter 4, Article 1: establish the required fees and payment schedules.
- Chapter 4, Article 2: establish the standards for the statutory reporting requirements.
- Chapter 4, Article 3: establish the standards for general provisions for compliance with the Act, including criteria for what is a substantially related conviction, rehabilitation criteria, advertising requirements, and provisions for stipulations.
- Chapter 5, Article 1: establish the general provisions for the Student Tuition Recovery Fund (STRF).
- Chapter 5, Article 2: establish the provisions for the calculating the amount of the required STRF assessments.

- Chapter 5, Article 3: outline the process for seeking recovery from STRF.
- Chapter 5, Article 4: outline the general process for continued instruction upon closure of an institution.

LOCAL MANDATE: None

SPECIFIC AGENCY STATUTORY REQUIREMENTS

Education Code section 94803 specifies that the Bureau shall, as necessary, the regulations, as they read on June 30, 2007, in Division 7.5 (commencing with Section 70000) of Title 5 of the California Code of Regulations, to conform to the California Private Postsecondary Education Act of 2009, no later than February 1, 2010. Education Code section 94875 further provides that in exercising its powers, and performing its duties, the protection of the public shall be the bureau’s highest priority. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

FISCAL IMPACT ESTIMATES

Fiscal Impact on Public Agencies Including Costs or Savings to State Agencies or Costs/Savings in Federal Funding to the State: None

Nondiscretionary Costs/Savings to Local Agencies: None

Local Mandate: None

Cost to Any Local Agency or School District for Which Government Code Sections 17500 – 17630 Require Reimbursement: None

Business Impact:

The bureau has made an initial determination that the proposed regulatory action may have significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.

Impact on Jobs/New Businesses:

The bureau has determined that this regulatory proposal may have a significant impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

Cost Impact on Representative Private Person or Business:

Economic Impact Statement

- 1. The total statewide costs that businesses and individuals may incur to comply with this regulation over its lifetime is as follows:**

- The following fee schedule has been proposed, and may be changed by regulation:
 - a. \$5,000 for a main campus application for initial approval to operate.
 - b. \$3,000 for a new branch application for an initial approval to operate.
 - c. \$750 for an application for an initial approval by means of accreditation.
 - d. \$3,500 for a main campus renewal application.
 - e. \$3,000 for a branch renewal application.
 - f. \$500 for a renewal by means of accreditation.
 - g. \$500 for an application for a substantive change to an approval.
 - h. \$250 for a substantive change to an approval by means of accreditation.

- Establish an annual institutional fee, equal to 0.75% of an institution's total annual revenue derived from students in California, but no more than a total of \$25,000 annually; establish an annual branch fee of \$1,000 for each branch or campus operating in this state.

- Individual costs will vary greatly depending on the profession being pursued, e.g., law vs. cosmetology vs. veterinary technician vs. computer software specialist vs. sale clerks, etc. The costs can obviously run the gamut give the ultimate professional objective.

Fiscal Impact

Fiscal Effect on State Government

- **Revenue:** The Bureau would be a special fund agency whose revenue is derived through licensing fees. The former Bureau of Private Postsecondary and Vocational Education (BPPVE) fund has a balance of approximately \$1 million, which will be insufficient to fund the start-up costs in FY 2009-10 (if positions are Administratively-Established) or in FY 2010-11. It is anticipated that a special fund loan via Control Section 14.00 would be required to cover these costs of initial start-up. The projected revenue is as follows:

• FY 2009-10	\$797,500
• FY 2010-11	\$9,501,875
• FY 2011-12	\$9,345,625

- **Operating Costs:** A Legislative BCP has been submitted requesting a special fund augmentation for 71.0 positions and \$8.7 million in FY 2010-11, 71.0 positions and \$8.3 million in FY 2011-12, and 60.0 positions and \$7.3 million in FY 2012-13 and ongoing to implement AB 48 (Chapter 310/Statutes of 2009), which created the California Private Postsecondary Education Act of 2009 and the BPPE.

In addition to the resources requested in the BCP, AB 48 appropriates \$580,000 to the Bureau for the purpose of funding five education specialist and senior education specialist positions. It also appropriates \$270,000 from the Bureau's baseline

operating budget to the Bureau of State Audits (BSA) to be expended in FY 2012-13 for the purposes of conducting an audit.

Effect on Housing Costs: None