

**TITLE 5. BUREAU FOR PRIVATE POSTSECONDARY EDUCATION
DEPARTMENT OF CONSUMER AFFAIRS**

INITIAL STATEMENT OF REASONS

Public Institutions

Hearing Date: No hearing has been scheduled.

Subject Matter of Proposed Regulations: Public Institutions.

Section Affected: Division 7.5 of Chapter 5, of Article 2, of Title 5 of the California Code of Regulations (CCR)¹; Amend section 75020.

Background/Problem Addressed:

The Bureau for Private Postsecondary Education (Bureau) protects students and consumers through the regulatory oversight of California’s private postsecondary educational institutions (“institutions”) pursuant to the California Private Postsecondary Education Act of 2009 (“Act” – Ed. Code, §§ 94800–94950, CCR § 70000(b)), including conducting qualitative reviews of educational programs and operating standards.

Existing regulations at section 75020 authorize the Bureau to issue citations “against approved private, postsecondary institutions that have committed any acts or omissions that are in violation of the Act or any regulation adopted pursuant thereto.” Per section 75020(b), the Bureau is also authorized to issue citations containing orders of abatement or fines “against persons who are without proper approval to operate a private, postsecondary institution.”

In 2022, the legislature enacted Senate Bill (SB) 1433 (Chapter 544, Statutes of 2022), which adopted Education Code Section 94949.8 and expanded the Bureau’s jurisdiction to grant an approval to a public institution of higher education that is operated by another state and maintains a physical presence in the state of California. The legislature, in Education Code Section 94949.8(c), required that, “The bureau shall, on or before July 1, 2024, amend any regulations that conflict with this section.”

The Bureau currently does not have regulations implementing the requirements to issue citations against an approved public institution of higher education that is operated by another state and maintains a physical presence in the state of California. This regulatory proposal amends CCR section 75020 to authorize the Bureau to issue citations to approved public institutions, which would now apply to both private postsecondary institutions and institutions operated by another state that have a physical presence in California. This proposal also includes technical, non-substantive

¹ Unless otherwise noted, all references to the CCR hereafter are to Title 5.

amendments such as changing gendered pronouns and changing “and/or” to “or” and “both.” This proposal also adds “calendar” before the mention of “days.”

Anticipated benefits from regulatory action:

The proposed regulatory language benefits the welfare of Californians because it grants the Bureau enforcement power over certain approved public institutions doing business in California, which protects students by ensuring fair treatment, and shielding students from fraudulent or exploitative practices. This regulation will allow the Bureau to enforce provisions of the Act and further the Bureau’s mission of consumer protection for students seeking educational services from postsecondary institutions by helping to ensure that approved schools comply with all legal requirements for operating an approved institution in California.

Specific purpose of each adoption, amendment, or repeal:

1. Amend Section 75020(a), Article 2, Chapter 5, Division 7.5

Proposed Change: In subdivision (a), delete “his or her” and add “their” before designee.

Purpose

This amendment removes gendered pronouns when referring to person designated to the Bureau Chief or designee authorized to issue citations.

Rationale

This amendment replaces pronouns in alignment with Assembly Concurrent Resolution No. 260 of 2018 (ACR 260) encouraging elimination of gendered pronouns and incorporating gender neutral terms, and is a non-substantive change.

Proposed Change: In subdivision (a), delete “and/” and add “or both,” after “administrative fines”.

Purpose

This amendment clarifies that the Bureau Chief or designee can issue citations containing orders of abatement, or administrative fines, or both.

Rationale

This change in phrasing is to eliminate confusion from “and/or” and clarify all available options: orders of abatement, or administrative fines, or both.

Proposed Change: In subdivision (a), add “institutions” before “approved,” add “under the Act” after “approved,” and delete “private, postsecondary institutions.”

Purpose

This amendment is to ensure consistency with Education Code Section 94949.8's statutory expansion of the Bureau's jurisdiction to include public institutions of higher education operated by another state and maintaining a physical presence in the state of California.

Rationale

It is necessary to amend this section because new Education Code section 94949.8 authorizes the Bureau to grant approval to a public institution of higher education that is operated by another state and maintains a physical presence in the state of California.

Adding "institutions" before "approved," and adding "under the Act" after "approved," clarifies that the Bureau Chief or designee is authorized to issue citations to institutions under the Bureau's jurisdiction. California Education Code Section 94817.5 defines "approved" as meaning "an institution has received authorization pursuant to this chapter to offer to the public and to provide postsecondary educational programs." "Act" is defined in Ed. Code, §§ 94800–94950, CCR § 70000(b) as The California Private Postsecondary Education Act of 2009, and using the language is also consistent with the sections previous reference to the "Act."

Deleting "private, postsecondary institutions" is necessary because the Bureau now has jurisdiction over certain public institutions approved by the Bureau under Education Code section 94949.8.

2. Amend Section 75020(b)

Proposed Change: In subdivision (b), delete "his or her" and add "their" before designee.

Purpose

This amendment removes gendered pronouns when referring to person designated to the Bureau Chief or designee authorized to issue citations against persons who are without proper approval to operate as required under the Act.

Rationale

This amendment replaces pronouns in alignment with Assembly Concurrent Resolution No. 260 of 2018 (ACR 260) encouraging elimination of gendered pronouns and incorporating gender neutral terms, and is a non-substantive change.

Proposed Change: In subdivision (b), delete "and/" and add "or both," after "administrative fines".

Purpose

This amendment clarifies that the Bureau Chief or designee can issue citations containing orders of abatement, or administrative fines, or both.

Rationale

This change in phrasing is to eliminate confusion from “and/or” and clarify all available options: orders of abatement, or administrative fines, or both.

Proposed Change: In subdivision (b), delete “a private, postsecondary institution” and add “as required under the Act.”

Purpose

This amendment is to ensure consistency with Education Code Section 94949.8’s statutory update of the Bureau’s jurisdictional expansion of including public institutions of higher education operated by another state and maintaining a physical presence in the state of California.

Rationale

It is necessary to amend this section because new Education Code section 94949.8 authorizes the Bureau to grant approval to a public institution of higher education that is operated by another state and maintains a physical presence in the state of California.

Deleting “a private, postsecondary institution” is necessary because the Bureau now has jurisdiction over certain public institutions approved by the Bureau under Education Code section 94949.8.

Adding “as required under the Act” clarifies that the Bureau Chief or designee is authorized to issue citations to institutions under the Bureau’s jurisdiction. California Education Code Section 94817.5 defines “approved” as meaning “an institution has received authorization pursuant to this chapter to offer to the public and to provide postsecondary educational programs.”

3. Amend Section 75020(c)

Proposed Changes: In subsections (c)(1), (c)(2), and (c)(3), add “calendar” before “days”

Purpose

This amendment is to clarify that the deadline for fine payments and written notices is counted by calendar days.

Rationale

The addition of “calendar” is to eliminate possible confusion between “calendar” vs. “business” days and clarify that the Bureau will be counting in calendar days.

4. Amend Reference section

Proposed Change: In the Reference section, add a comma after “94936”, delete “and” between 94936 and 94944, and add “and 94949.8,” after “94944”.

Rationale: The Bureau is adding Education Code section 94949.8 to the Reference section of section 75020, as it provides the legal justification for amending the regulation so that it applies to both private and public postsecondary institutions.

Underlying Data (Technical, Theoretical, and/or Empirical Studies, Reports or Documents)

1. Bureau’s Advisory Committee meeting, meeting agenda, materials, and minutes excerpts, May 24, 2023 – Agenda Item 6b.
2. Bureau’s Advisory Committee meeting, meeting agenda, materials, and minutes excerpts, August 16, 2023 – Agenda Item 3.
3. Senate Bill (SB) 1433 (Roth, Chapter 544, Statutes of 2022)

Business Impact

The Bureau has made the initial determination that the proposed regulations will not have a significant statewide adverse economic impact directly affecting businesses including the ability of California businesses to compete with businesses in other states.

This initial determination is based on the following facts:

The proposed regulation merely extends the Bureau’s authority to issue citations to out-of-state public postsecondary institutions that the Bureau was given authority to approve in 2022. This authority will only apply to public institutions located out of state and should not affect any businesses located in California. Further, the Bureau does not anticipate that its authority to issue citations to public out-of-state postsecondary educational institutions will be used extensively as such institutions are likely to maintain compliance with the Act and the Bureau’s regulations. A public school is unlikely to have a profit motive to cut corners by not complying with legal requirements, and public institutions are subject to more scrutiny than private companies and would not want it to be known that the institution was in violation of the law in another state.

Economic Impact/Assessment analysis

The regulatory proposal will have the following effects:

- It will not create or eliminate any jobs within the State of California because it will only affect public institutions outside of California, and it will only affect them if

they violate the Act or the Bureau's regulations. This should not cause either the creation or elimination of any jobs within California.

- It will not create new businesses or eliminate businesses in the State of California because it will only affect public institutions outside of California, and it will only affect them if they violate the Act or the Bureau's regulations.
- It will not affect the expansion of businesses currently doing business in the State of California because the proposed regulations will only affect public institutions outside of California, and it will only affect them if they violate the Act or the Bureau's regulations.
- The regulatory proposal does not affect the health of California residents because it has nothing to do with health. The proposal benefits the welfare of California residents by allowing the Bureau to issue citations to public out-of-state institutions operating a physical facility in California, which will encourage them to comply with all legal requirements for operating an approved institution in California.
- The regulatory proposal does not affect the state's environment because it allows the Bureau to issue citations to public out-of-state institutions operating a physical facility in California, which should not affect the state's environment.
- The regulatory proposal would not affect worker safety because these regulations are not relevant to the enhancement of worker safety and are to conform the Bureau's regulations to statutory language.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative to the regulatory proposal would be either more effective in carrying out the purpose for which the action is proposed or would be as effective or less burdensome to affected private persons and equally effective in achieving the purposes of the regulation in a manner that ensures full compliance with the law being implemented or made specific.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected.

1. Not adopt the regulations. This alternative was rejected because it is necessary to implement the statutory changes made by the legislature by adopting regulations that authorize the Bureau to issue citations to public out-of-state institutions operating a physical facility in California.

Description of reasonable alternatives to the regulation that would lessen any adverse impact on small business:

No such alternatives have been proposed, however, the Board welcomes comments from the public.