



## MEMORANDUM

<b>DATE</b>	April 28, 2023
<b>TO</b>	Interested Parties
<b>FROM</b>	Bureau for Private Postsecondary Education
<b>SUBJECT</b>	<b>Senate Bill 1433 Changes to the Private Postsecondary Education Act of 2009</b>

Senate Bill 1433 (Roth, Chapter 544, Statutes of 2022) extended authorization for the Bureau for Private Postsecondary Education (Bureau) through January 1, 2027 and made several changes to the Private Postsecondary Education Act of 2009 (Act), effective January 1, 2023.

This memo outlines the most significant changes in the bill as they pertain to in-state institutions subject to approval requirements, out-of-state institutions subject to registration requirements, public institutions operated by states other than California, and institutions operating without requisite approval.

Institutions are strongly encouraged to review the full bill text closely, available here: [https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill\\_id=202120220SB1433](https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=202120220SB1433)

Questions about this memo may be sent to [bppe.policy@dca.ca.gov](mailto:bppe.policy@dca.ca.gov).

### **In-State Institutions Subject to Approval Requirements**

**Expansion of Notice Requirements for Institutions Under Investigation.** Pursuant to California Education Code (CEC) section 94934.5, any institution that knows it is being investigated by an oversight entity must report information about the investigation to the Bureau within 30 days of learning of the investigation. This includes providing notice of any judgment by, regulatory action by, settlement with, or increased oversight or monitoring by any oversight entity other than the Bureau. Required notices may be filed by emailing [bppe.notice@dca.ca.gov](mailto:bppe.notice@dca.ca.gov).

**Automatic Suspension of Program Approval when Programs Lose Requisite Licensing Agency Approval.** Pursuant to CEC section 94899, institutions offering programs in fields that require licensure in California must have the approval from the appropriate state licensing agency to offer the program, if that agency's approval is required for program graduates to sit for licensure exams. Beginning in 2023, any such program that subsequently loses the approval of the relevant state licensing agency will also lose, by operation of law, the Bureau's approval to offer the program. Institutions in this

situation must notify the Bureau within 10 days and shall cease operating the program on the date required by the relevant state licensing agency or within 30 days of the loss of approval, whichever is earlier. Required notices may be filed by emailing [bppe.notice@dca.ca.gov](mailto:bppe.notice@dca.ca.gov).

**Catalog Notice about Office of Student Assistance and Relief.** Pursuant to CEC section 94909(a)(3)(D), institution catalogs must include the following notice:

“The Office of Student Assistance and Relief is available to support prospective students, current students, or past students of private postsecondary educational institutions in making informed decisions, understanding their rights, and navigating available services and relief options. The office may be reached by calling (888) 370-7589, option #5, or by visiting [osar.bppe.ca.gov](http://osar.bppe.ca.gov).”

Note that the phone number and web address provided above may be subject to change. Please subscribe to Bureau updates at [bppe.ca.gov](http://bppe.ca.gov) to receive notifications of changes.

**Additional Prohibited Business Practices.** CEC section 94897 outlines several practices in which institutions subject to approval requirements may not engage. SB 1433 adds the following prohibited practices to this section:

- Committing fraud against, or making a material untrue or misleading statement to, a student or prospective student under the institution’s authority or the pretense or appearance of the institution’s authority.
- Charging or collecting institutional charges not authorized by an executed enrollment agreement.
- Violating Civil Code section 1788.93 by refusing to provide a transcript for a current or former student because the student owes a debt, conditioning the provision of a transcript on the payment of a debt, charging a higher fee for obtaining a transcript, providing less favorable treatment of a transcript request because a student owes a debt, or using transcript issuance as a tool for debt collection.
- Requiring a student or employee to sign a nondisclosure agreement, except to protect intellectual property or trade secrets.
- Failing to maintain policies related to compliance with the Act or adhere to the institution’s stated policies.

Institutions found to have engaged in prohibited business practices are subject to discipline.

**Establishes Procedures for Institutions Experiencing Loss of Accreditation by a Recognized Agency.** Preexisting law and regulation require degree-granting institutions to be accredited by an agency recognized by the U.S. Department of Education and outlines procedures and timelines by which unaccredited degree-granting institutions must become accredited (see CEC section 94885(b)). New provisions established by SB 1433 apply a similar framework to institutions subject to loss of accreditation, whether due to the institution’s loss of accreditation or due to the accrediting agency’s loss of recognition, so

that the loss of accreditation status does not automatically trigger the loss of the institution's approval to operate in California. In brief:

- The institution's approval to operate degree programs shall become provisional as of the date the institution ceases to be accredited.
- Degree-granting institutions that lose accreditation must notify the Bureau immediately and submit to it, within six months of accreditation loss, an accreditation plan outlining how the institution will regain accreditation within established timeframes. (CEC section 94885.7)
- Institutions approved by means of accreditation whose accrediting agency loses recognition must, within six months of the agency's loss of recognition, submit to the Bureau an application for approval of a non-accredited institution. For degree-granting institutions, the application must include an accreditation plan outlining how the institution will regain accreditation within established timeframes. (CEC section 94885(c))

In both cases, institutions will be prohibited from opening new degree programs until accreditation is obtained. Institutions facing these circumstances are encouraged to read the relevant code sections carefully to ensure their approval to operate in California is not unduly jeopardized.

#### **Definition of "Physical Presence" and Establishment of "Limited Physical Presence"**

Unless exempt, private postsecondary education institutions with a physical presence in California are required to have Bureau approval to operate. CEC section 94801.7(b) newly specifies that "an institution is considered to have a physical presence in the state if it offers instruction or core academic support services from a physical location owned, operated, or rented by or on behalf of the institution in California." CEC section 94801.7 further authorizes the Bureau to establish through regulation thresholds of California-based activity that constitute "limited physical presence," which subject institutions to registration requirements rather than approval requirements. The Bureau will promulgate regulations to refine and create these standards and establish the requisite registration process. For the most up-to-date information about the Bureau's regulatory efforts, subscribe to updates on the Bureau's website and monitor the Bureau's Advisory Committee meetings.

#### **Automatic Termination of Approval Upon Closure and Establishment of Closure Date**

CEC section 94926.5 specifies that an institution's approval to operate is terminated on the date of its closure and requires the Bureau to select a closure date for an institution that has not provided one as required by CEC section 94926. The Bureau will promulgate regulations to outline the notification procedures in relevant situations. For the most up-to-date information about the Bureau's regulatory efforts, subscribe to updates on the Bureau's website and monitor the Bureau's Advisory Committee meetings.

#### **Denying Approval of Institutions with Owners or Key Personnel with Prior Discipline**

CEC section 94887 permits the Bureau to deny an application for approval to operate if owners or specified personnel of the institution had knowledge of, should have known, or

knowingly participated in any conduct that was the cause for revocation or unmitigated discipline at another institution. The Bureau is considering which aspects of this provision need clarifying regulations. For the most up-to-date information about the Bureau's regulatory efforts, subscribe to updates on the Bureau's website and monitor the Bureau's Advisory Committee meetings.

### **Substantive Change Application Needed for Changes in "Person in Control"**

CEC section 94894 specifies which changes to an approval to operate are substantive changes that require prior authorization by the Bureau (or, in the case of institutions approved by means of accreditation, notice that the pertinent accrediting agency has approved the change). SB 1433 added to this list changes in "Persons in Control," defined in CEC section 94856. The Bureau will promulgate regulations to develop an application to enable required reporting. For the most up-to-date information about the Bureau's regulatory efforts, subscribe to updates on the Bureau's website and monitor the Bureau's Advisory Committee meetings.

### **Non-California Public Institutions with California Locations**

Newly implemented CEC section 94949.8 allows public institutions of higher education operated by another state that have a physical presence in California to apply for approval to operate by the Bureau. The law allows the Bureau to issue guidance regarding the applicability of the Private Postsecondary Education Act to public institutions and requires the Bureau to amend any conflicting regulations before July 1, 2024.

A separate guidance memo pertaining to public institutions is available on the Bureau's website at: [https://bppe.ca.gov/lawsregs/public\\_institution\\_guidance\\_memo.pdf](https://bppe.ca.gov/lawsregs/public_institution_guidance_memo.pdf)

### **Out-of-State Institutions Subject to Registration Requirements**

SB 1433 clarifies in CEC section 94801.5 that unaccredited out-of-state institutions must register and report necessary information "as applicable." This change resolves confusion about whether institutions unable to submit all required information on the registration form, including but not limited to evidence of accreditation, are subject to registration requirements.

The Bureau has updated its registration form for out-of-state institutions to conform to this change as well as other law changes. A separate memo covers changes pertaining specifically to out-of-state institutions subject to registration requirements, available at: [https://bppe.ca.gov/lawsregs/out\\_of\\_state\\_institution\\_memo.pdf](https://bppe.ca.gov/lawsregs/out_of_state_institution_memo.pdf)

### **Unapproved Institutions Subject to Approval Requirements**

#### **Enforcement of Debts Incurred for Enrollment at Unapproved Institutions**

CEC section 94917, pertaining to the enforceability of debts incurred by students to attend an institution subject to approval requirements that lacked requisite approval, has been amended as follows:

A note, instrument, or other evidence of indebtedness relating to payment for an educational program is *void and* not enforceable ~~by an institution~~ unless, at the time of execution of the note, instrument, or other evidence of indebtedness, the institution held an approval to ~~operate~~ *operate or valid out-of-state registration with the bureau*.

#### **Clarification Regarding Maximum Fine for Unapproved Activity**

CEC section 94944 now specifies that the maximum fine for unapproved activity, \$100,000, is exclusive of other fines for other violations ordered by the Bureau.