

BILL ANALYSIS

Senate Research Center

S.B. 1534
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Economic Development
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law is unclear as to whether national television or Internet advertising constitutes the sort of advertising and soliciting of Texas students that would trigger state regulatory jurisdiction over certain out-of-state online educational institutions with no physical presence in Texas. The Texas Workforce Commission (TWC) interprets its regulatory jurisdiction to include out-of-Texas online educational institutions with no physical presence in Texas, but only those that enroll students in Texas to take academic programs online, otherwise known as "online institutions." TWC requires such institutions to obtain a certificate of approval from TWC before they can maintain, advertise, solicit for, or conduct any such online program of instruction in Texas. TWC interprets advertising and soliciting Texas students for such programs so as to include any sort of national television or Internet advertising, even if such solicitation or advertising is not aimed at or limited to Texas.

Under the aforementioned interpretation, all enrollment contracts between online institutions and students living in Texas are considered void and all tuition and fees paid are considered refundable. Many states are not adhering to this interpretation. In fact, a majority of states have adopted what is referred to as a physical presence test for the exercise of jurisdiction over online institutions. Additionally, TWC's current exercise of its jurisdiction may result in significant fiscal cost to TWC.

Lifting TWC's current interpretation, as S.B. 1534 does, would help facilitate student choice and access to online education, and in turn, help Texas stem its significant education costs.

S.B. 1534 amends current law relating to the operation, certification, and accountability of career schools or colleges.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Higher Education Coordinating Board in SECTION 1 (Section 61.0904, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 61.0904, Education Code, as follows:

Sec. 61.0904. REVIEW OF INSTITUTIONAL GROUPINGS. (a) Creates this subsection from existing text. Requires the Texas Higher Education Coordinating Board (THECB), at least once every 10 years, to conduct a review of the institutional groupings under THECB's higher education accountability system, including a review of the criteria for and definitions assigned to those groups.

(b) Required THECB to include within THECB's higher education accountability system any career schools and colleges in this state that offer degree programs. Requires THECB, regardless of whether THECB is conducting a periodic review of institutional groupings as required by Subsection (a), to determine whether to create one or more separate institutional groupings for entities to which this subsection applies. Requires THECB, in implementing this subsection, to:

(1) consult with affected career schools and colleges regarding the imposition of reporting requirements on those entities; and

(2) adopt rules that clearly define the types and amounts of information to be reported to THECB.

(c) Requires THECB, in advance of each regular session of the legislature, to report to each standing legislative committee with primary jurisdiction over higher education regarding any entities to which Subsection (b) applies that do not participate in the THECB's higher education accountability system as provided by that subsection.

SECTION 2. Amends Sections 132.001(1) and (4), Education Code, to redefine, in this chapter, "career school or college" and "representative."

SECTION 3. Amends Sections 132.052 and 132.151, Education Code, as follows:

Sec. 132.052. APPLICATION FOR CERTIFICATE OF APPROVAL. Requires that every career school or college desiring to operate in this state, rather than desiring to operate in this state or do business in this state, make written application to TWC for a certificate of approval.

Sec. 132.151. PROHIBITIONS. Prohibits a person from engaging in certain behaviors, including operating a career school or college without a certificate of approval issued by TWC; soliciting prospective students for or on behalf of a career school or college without being registered as a representative of the career school or college as required by this chapter; accepting contracts or enrollment applications for or on behalf of a career school or college from a representative who is not bonded as required by this chapter; failing to notify TWC of the closure, rather than discontinuance of the operation, of any career school or college within 72 hours of cessation of classes and make available accurate records as required by this chapter; negotiating any promissory instrument received as payment of tuition or other charge by a career school or college prior to completion of 75 percent of the applicable program, provided that prior to such time, the instrument may be transferred by assignment to a purchaser who shall be subject to all the defenses available against the career school or college named as payee; or violating any provision of this chapter.

SECTION 4. Amends Subchapter G, Chapter 132, Education Code, by adding Section 132.202, as follows:

Sec. 132.202. REQUIRED POSTING BY CERTAIN SCHOOLS OR EDUCATIONAL INSTITUTIONS NOT OPERATING IN THIS STATE. Requires a school or education institution described by Section 132.001(1)(B) to post a conspicuous notice on the home page of its website stating:

(1) that the career school or college is not regulated in Texas under this chapter;

(2) the name of any regulatory agencies that approve and regulate the school's programs in the state where the school is physically located and in which it has legal authorization to operate; and

(3) how to file complaints or make other contact with applicable regulatory agencies.

SECTION 5. Repealer: Section 132.059(d) (providing that career schools and colleges domiciled or having their principal place of business outside of this state that engage representatives to canvass, solicit, or contract with any person within this state, are subject to the requirements for registration of representatives), Education Code.

SECTION 6. Provides that the changes in law made by this Act apply only to a certificate of approval issued, an action filed, or any other proceeding commenced under Chapter 132 (Career Schools and Colleges), Education Code, on or after the effective date of this Act. Provides that a certificate of approval issued, an action filed, or any other proceeding commenced before the effective date of this Act is covered by the law in effect at the time the certificate of approval was issued, the action was filed, or the other proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 7. Effective date: September 1, 2011.