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# Chapter 585: A Renewed Effort to Restore Integrity to California's Vocational and Postsecondary Educational Institutions

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## Chapter 585: A Renewed Effort to Restore Integrity to California's Vocational and Postsecondary Educational Institutions

*Michael Coleman*

### *Code Sections Affected*

Education Code § 94913 (new), §§ 94897, 94909, 94910, 94911, 94928, 94929.5, 94929.7 (amended).  
AB 2296 (Block); 2012 STAT. Ch. 585.

### I. INTRODUCTION

California has been struggling for decades to create a suitable regulatory scheme to govern the State's private vocational and postsecondary educational institutions.<sup>1</sup> The outcry for legislative reform began in the late 1980s,<sup>2</sup> as newspapers began reporting on the proliferation of so-called "diploma mills."<sup>3</sup> Since then, the legislature has enacted a number of reforms, all of which have been criticized for failing to adequately protect students and the public from disingenuous private institutions.<sup>4</sup>

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1. *Private Postsecondary Overview*, BUREAU FOR PRIVATE POSTSECONDARY EDUC., [http://www.bppe.ca.gov/about\\_us/history.shtml](http://www.bppe.ca.gov/about_us/history.shtml) (last visited Oct. 13, 2012) (on file with the *McGeorge Law Review*) (detailing the legislature's efforts to regulate private postsecondary education since the late 1980s, and the resulting criticism of those efforts); see also CAL. EDUC. CODE § 94897(p) (amended by Chapter 585) (defining private postsecondary institutions as institutions that offer "associate, baccalaureate, master's, or doctoral degree[s]").

2. Editorial, *Bogus Education*, S.F. CHRON., Apr. 9, 1989, available at 1989 WLNR 1605588 (on file with the *McGeorge Law Review*) (calling for legislative reform that will prevent "diploma mills" from threatening the integrity of legitimate postsecondary degrees).

3. Herbert A. Sample, *Private College Regulation Gets Failing Grade*, Mar. 1, 1989, available at 1989 WLNR 2936140 (on file with the *McGeorge Law Review*) (reporting that a report to the legislature concludes that reputation of California's legitimate educational institutions suffers due to the large number of illegitimate institutions, and that regulation is necessary to protect the integrity of legitimate degrees); William Trombley, *Foes Call Legislation 'Elitist': Stricter Scrutiny Sought for Unaccredited Schools*, L.A. TIMES, Sept. 6, 1989, available at [http://articles.latimes.com/1989-09-06/news/mn-1620\\_1\\_postsecondary-schools](http://articles.latimes.com/1989-09-06/news/mn-1620_1_postsecondary-schools) (on file with the *McGeorge Law Review*) (reporting that, throughout California, institutions purporting to be schools and universities offer students advanced degrees with little-to-no instruction, after payment of a fee).

4. *Private Postsecondary Overview*, *supra* note 1 (detailing the legislature's efforts from 1989 to 2007 to enact lasting reform, and highlighting periodic government reports concluding that the original problems "continue to persist"); Jennifer Gollan, *More Than 130 Vocational Schools Are Operating Without State Approval*, N.Y. TIMES, Apr. 6, 2012, at A19, available at <http://www.nytimes.com/2012/04/06/us/california-vocational-schools-operating-without-approval.html?pagewanted=all> (on file with the *McGeorge Law Review*) (reporting that the regulatory bureau responsible for enforcing postsecondary education reforms has failed to crack down on institutions that operate illegally, thus endangering students who believe their schools to be credible, and the public who relies on the integrity of conferred degrees).

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Recently, the discussion concerning postsecondary education reform has focused on schools' reporting requirements.<sup>5</sup> The thrust of this discussion is that prospective students need to be adequately informed, prior to enrollment, of the limitations of the degree they seek and the viable employment opportunities and salaries that await them after graduation.<sup>6</sup> By passing Chapter 585, the legislature seeks to protect prospective students by closing reporting loopholes created by prior laws.<sup>7</sup> However, due in part to the limited enforcement capabilities of the State's regulatory body, it is unclear whether Chapter 585 will effectively protect students and the public from disingenuous private institutions.<sup>8</sup>

## II. LEGAL BACKGROUND

In the late 1980s, California was known as the "diploma mill capital of the world."<sup>9</sup> To combat this problem, the legislature passed the Private Postsecondary and Vocational Education Reform Act of 1989 (the 1989 Act).<sup>10</sup> This comprehensive legislation was meant to address "concerns about the integrity and value of the degrees and diplomas issued, widely varying standards, the lack of enforcement provisions, and the exemptions from oversight authorized in statute."<sup>11</sup> During the 1990s and early 2000s, the legislature enacted a series of legislative reforms to cure perceived deficiencies in the 1989 Act, including charges that it was difficult to interpret and that the regulatory bureau in charge of enforcement was merely "a passive regulator."<sup>12</sup>

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5. See generally SENATE COMMITTEE ON EDUCATION, COMMITTEE ANALYSIS OF AB 2296 (June 19, 2012) (stating that the purpose of both the Postsecondary Education Reform Act of 2009 and Chapter 585 is to expand on the reporting requirements "to be met by private postsecondary educational institutions subject to state oversight").

6. Heather W. Hines, *California Attorney General Warns Sailors Against Scams*, U.S. NAVY (Apr. 2, 2011), [http://www.navy.mil/search/print.asp?story\\_id=59528&VIRIN=84438&imagetype=1&page=1](http://www.navy.mil/search/print.asp?story_id=59528&VIRIN=84438&imagetype=1&page=1) (on file with the *McGeorge Law Review*) (reporting that many private postsecondary institutions are for-profit businesses that mislead prospective students by making "unrealistic guarantees . . . including employment following graduation"); SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 2296, at 4 (Aug. 22, 2012) (reporting that Assembly Member Marty Block authored Chapter 585 in part to address concerns that, under prior law, institutions were not required to provide prospective students with accurate statistics reflecting graduates' salaries).

7. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2296, at 3–4 (May 11, 2012).

8. Gollan, *supra* note 4.

9. BENJAMIN M. FRANK, CAL. DEP'T OF CONSUMER AFFAIRS, INITIAL REPORT, ES-3 (2005).

10. CAL. EDUC. CODE § 94700 (West 2002); *id.* § 94705(a)–(f) (stating that the legislative intent of the 1989 Act was to establish minimum standards for institutional and instructional quality, as well as to prohibit "the granting of false or misleading educational credentials" to protect "the consumer and students against fraud, misrepresentation, or other practices that may lead to an improper loss of funds paid for educational costs"); FRANK, *supra* note 9, at ES-3., 9 n.1 (noting that the 1989 Act was introduced by Senator Morgan as SB 190); Trombley, *supra* note 3 (reporting that Senator Becky Morgan introduced the legislation to protect California's legitimate educational institutions from suffering diminished reputations due to "diploma mills").

11. FRANK, *supra* note 9, at ES-3.

12. *Private Postsecondary Overview*, *supra* note 1.

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On June 30, 2007, the 1989 Act sunsetted, resulting in the dissolution of the Bureau for Private Postsecondary and Vocational Education.<sup>13</sup> The dissolution caused concern for many who feared that diploma mills would once again begin operating with impunity, resulting in scores of students receiving expensive, but worthless degrees.<sup>14</sup> In vetoing legislation that would have extended the 1989 Act's provisions, Governor Schwarzenegger stated that extending the life of the 1989 Act would simply "allow[] problems that have been well documented to continue to exist," because it did "nothing to enhance protections for students."<sup>15</sup>

From 2007 to 2009, the legislature attempted, without success, to enact new, comprehensive legislation to restore regulatory oversight over these institutions.<sup>16</sup> Finally, in 2009, the legislature passed the California Private Postsecondary Education Reform Act of 2009 (the 2009 Act), which reestablished the old regulatory body under a new name—the Bureau for Private Postsecondary Education (the Bureau).<sup>17</sup>

The 2009 Act also codified a number of reform measures, including a statutory definition of how to determine whether graduates are employed in their field of study,<sup>18</sup> minimum reporting requirements for unaccredited private

13. 1997 Cal. Stat. ch. 78, § 4, at 579 (enacting EDUC. § 94999) (extending the life of the 1989 Act until January 1, 2005, unless otherwise extended by further legislation); 2004 Cal. Stat. ch. 740, § 7, at 5785–86 (amending EDUC. § 94999) (extending the 1997 extension to June 30, 2007); Judy Lin, *Oregon Warns Governor on Loss of Schools Watchdog*, SACRAMENTO BEE, July 3, 2007, available at 2007 WLNR 12576451 (on file with the *McGeorge Law Review*) (reporting that the legislature did not extend the life of the 1989 Act by the June 30, 2007 deadline); *Students Urged to Research Carefully When Choosing Private Postsecondary or Vocational School*, U.S. ST. NEWS, July 5, 2007, available at 2007 WLNR 12879968 (on file with the *McGeorge Law Review*) (reporting that the California Legislature allowed the 1989 Act to sunset).

14. *Students Urged to Research Carefully when Choosing Private Postsecondary or Vocational School*, *supra* note 13 (reporting the California Department of Consumer Affairs' position that, with the dissolution of Bureau, students need to research especially carefully before spending thousands of dollars on educational programs); Editorial, *Failing Vocational Students: California Students Will Have Few Protections from Bogus Schools*, FRESNO BEE, July 6, 2007, available at 2007 WLNR 12840190 (on file with the *McGeorge Law Review*) (expressing opinion that closure of the Bureau "marks a return to the days when California was known for being the nation's worst center for 'diploma mills,' turning a blind eye to schools that provide neither an education nor a usable credential").

15. *Private Postsecondary Overview*, *supra* note 1 (quoting the Governor's veto message).

16. *Id.* (stating that in 2008, Governor Schwarzenegger vetoed Senate Bill 823); SB 823, 2008 Leg., 2007–2008 Sess. (Cal. 2008) (as amended on Aug. 13, 2008, but not enacted) (proposing the creation of a subsequent bureau to oversee secondary education and other comprehensive reform measures to ensure legislative oversight); *see also* EDUC. § 94801 (West Supp. 2012) (declaring that the California Private Postsecondary Education Act of 2009 was the first piece of comprehensive legislation to govern private postsecondary education since expiration of the 1989 Act).

17. EDUC. §§ 94800, 94800.5. The Bureau falls under the purview of the California Department of Consumer Affairs. *Glossary of Terms, Higher Education Systems or Segments*, CAL. POSTSECONDARY EDUC. COMM'N, <http://www.cpec.ca.gov/SecondPages/Glossary.asp?ListType=5> (last visited Mar. 30, 2013) (on file with the *McGeorge Law Review*). Private postsecondary institutions that fall within the ambit of the 2009 Act must get approval from the Bureau to operate legally within California. Gollan, *supra* note 4.

18. EDUC. § 94928(e) (defining "graduates employed in the field" as those employed "within six months of graduation" in a job where the skills acquired through obtaining the degree played a significant participating role "in obtaining the position").

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institutions,<sup>19</sup> and requirements that both accredited and unaccredited private institutions provide prospective students with graduates' salary data<sup>20</sup> and job placement statistics.<sup>21</sup> Additionally, the 2009 Act required institutions to include specific language in their student enrollment agreements informing students that they must be given, prior to enrollment, a student brochure and a School Performance Fact Sheet (Fact Sheet).<sup>22</sup> The purpose of this statement was to inform students of the types of data contained within these documents.<sup>23</sup> Finally, the 2009 Act mandated specific methods for determining the required statistical data.<sup>24</sup>

Despite reestablishment of the Bureau and the 2009 Act's new statutory reforms, oversight over California's vocational and postsecondary institutions remained lackluster.<sup>25</sup> The reestablished Bureau was understaffed and made it a practice to pursue violators only after receiving specific complaints from the public.<sup>26</sup> As a result, the Bureau allowed more than 130 schools to continue operating illegally.<sup>27</sup> Additionally, the 2009 Act's statutory reforms were also limited in scope, providing loopholes and reporting exemptions for swaths of private institutions.<sup>28</sup>

## III. CHAPTER 585

Chapter 585 amends the 2009 Act by attempting to close reporting loopholes.<sup>29</sup> This attempt may be broken into four broad categories: (A) new disclosure requirements for unaccredited institutions;<sup>30</sup> (B) new disclosure requirements for all regulated institutions;<sup>31</sup> (C) new criteria for calculating

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19. *Id.* § 94897(p).

20. *Id.* § 94910(d)(1)–(2).

21. *Id.* § 94910(b).

22. *Id.* § 94911(i)(1).

23. *Id.* (requiring institutions' enrollment agreements to inform students that the Fact Sheets must include "completion rates, placement rates, license examination passage rates, salaries or wages").

24. *Id.* § 94929.5(a), (c).

25. Gollan, *supra* note 4 (reporting that the Bureau does not make it a practice to pursue violators unless it receives complaints from the public regarding specific institutions).

26. *Id.*

27. *Id.*

28. EDUC. § 94897(p) (stating that only unaccredited *doctoral* programs—as opposed to all unaccredited postsecondary programs—must honestly report accreditation status to students); *id.* § 94910(b) (mandating that only postsecondary institutions that make claims regarding students' employment and salary potential must accurately report these figures to prospective students; institutions that do not make any such claims are exempt).

29. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 2296, at 2–3, 6 (Aug. 22, 2012).

30. EDUC. § 94897(p)(1)–(3) (amended by Chapter 585).

31. *Id.* § 94909(a)(16)(A)–(C) (amended by Chapter 585); *id.* § 94910(b), (d) (amended by Chapter 585); *id.* § 94911(i)(1)–(2) (amended by Chapter 585); *id.* § 94913 (enacted by Chapter 585).

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employment statistics;<sup>32</sup> and (D) expanded authority of the Bureau to define standards and create regulations concerning private postsecondary institutions.<sup>33</sup>

### A. *New Disclosure Requirements for Unaccredited Institutions*

Prior law mandated that only unaccredited doctoral programs inform prospective students of their accreditation status.<sup>34</sup> These programs were also required to disclose to prospective students “whether the degree issued is in a field requiring licensure in California, and any known limitations of the degree.”<sup>35</sup>

Chapter 585 expands on this provision by requiring that doctoral programs, as well as “associate, baccalaureate, [and] master’s” programs disclose their accreditation status to prospective students.<sup>36</sup> Institutions offering these programs must also disclose the accreditation status of each specific regulated program.<sup>37</sup>

Chapter 585 also expands the statutory definition of “any known limitations of the degree.”<sup>38</sup> At a minimum, schools must disclose whether a student is eligible to sit for licensure in California and other states,<sup>39</sup> disclose that unaccredited degrees are “not recognized for some employment positions,” including within California,<sup>40</sup> and disclose that students attending unaccredited institutions are ineligible for federal financial aid.<sup>41</sup>

### B. *New Disclosure Requirements for All Regulated Institutions*

Prior law required all regulated private institutions to “provide a prospective student with a School Performance Fact Sheet containing” a mandatory list of minimum disclosures.<sup>42</sup> Chapter 585 expands this list by requiring the Fact Sheets to include job placement rates for graduates of each of the institution’s programs,<sup>43</sup> if those programs are meant to lead to a “recognized career,

32. *Id.* § 94928(e)(1)–(3) (amended by Chapter 585).

33. *Id.* § 94928(e)(2)–(3) (amended by Chapter 585); *id.* § 94929.5(b) (amended by Chapter 585); *id.* § 94929.7(c) (amended by Chapter 585).

34. *Id.* § 94897(p) (West Supp. 2012).

35. *Id.*

36. *Id.* § 94897(p) (amended by Chapter 585); *id.* § 94909(a)(16) (amended by Chapter 585).

37. *Id.* § 94909(a)(16)(B)–(C) (amended by Chapter 585).

38. *Id.* § 94909(a)(16) (amended by Chapter 585).

39. *Id.* § 94897(p)(1) (amended by Chapter 585); *id.* § 94909(a)(16)(A) (amended by Chapter 585).

40. *Id.* § 94897(p)(2) (amended by Chapter 585). This provision requires that institutions provide prospective students with a written provision that reads: “A degree program that is unaccredited or a degree from an unaccredited institution is not recognized for some employment positions, including, but not limited to, positions within the State of California.” *Id.* § 94909(a)(16)(B) (amended by Chapter 585).

41. *Id.* § 94897(p)(3) (amended by Chapter 585); *id.* § 94909(a)(16)(C) (amended by Chapter 585).

42. *Id.* § 94910 (West Supp. 2012).

43. *Id.* § 94910(b) (amended by Chapter 585). This provision amends prior law by changing the requirement from “[p]lacement rates” of graduates to “placement rates [of graduates] for each educational

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occupation, vocation, job, or job title.”<sup>44</sup> Fact Sheets must now also contain statistics reflecting graduates’ salaries or wages.<sup>45</sup> In addition, if the institution participates in federal financial aid programs, Fact Sheets must include the institution’s most recent three-year cohort default rate,<sup>46</sup> as well as “the percentage of enrolled students receiving federal [loans].”<sup>47</sup>

Prior law required institutions to include a verbatim statement in their student enrollment agreements informing students that schools must provide to the student a student brochure and Fact Sheet prior to enrollment.<sup>48</sup> Chapter 585 adds to this statement by requiring institutions to provide students with the institution’s three-year cohort default rate, where applicable, the school’s three-year cohort default rate is a required disclosure within the Fact Sheet.<sup>49</sup> Immediately following this statement, enrolling students must certify by signature that they have received these documents prior to enrollment.<sup>50</sup>

Chapter 585 also amends prior law by adding a statutory provision requiring all regulated institutions “maintain[ing] an Internet Web site” to include specific information on that site.<sup>51</sup> This includes the school’s catalogue, student brochures, the Fact Sheet, and a link to the Bureau’s website.<sup>52</sup>

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program.” *Compare id.* § 94910(b) (West Supp. 2012), *with id.* § 94910(b) (amended by Chapter 585).

44. *Id.* § 94910(b) (amended by Chapter 585). This provision amends prior law by changing the requirement from “particular career, occupation,” et cetera, to a “recognized career.” *Compare id.* § 94910(b) (West Supp. 2012), *with id.* § 94910(b) (amended by Chapter 585).

45. *Id.* § 94910(d) (amended by Chapter 585). Chapter 585 amends this section by striking a provision that institutions only disclose this data if the institution makes an “express or implied claim about the salary that may be earned after” graduation. *Compare id.* § 94910(d) (West Supp. 2012), *with id.* § 94910(d) (amended by Chapter 585).

46. *Id.* § 94910(h) (amended by Chapter 585). “A cohort default rate is the percentage of a school’s borrowers who enter repayment on federal loans during a particular fiscal year and default . . . . These default rates are ‘officially’ reported by the U.S. Department of Education once per year.” SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 2296, at 3 (Aug. 22, 2012).

47. EDUC. § 94910(h) (amended by Chapter 585). As a practical matter, this provision only applies to students attending accredited institutions, because current federal law only allows students attending accredited private postsecondary and vocational institutions to receive federal student loans. *See generally* 20 U.S.C. §§ 1091(a), 1094(a) (1994) (requiring enrollment in an eligible institution for students to receive federal aid); 34 C.F.R. §§ 600.4(a)(5)(i), 600.5(a)(6)–(7), 600.6(a)(5)(i) (2012) (collectively defining institutions of higher education, proprietary institutions of higher education, and postsecondary vocational institutions). However, were federal law to be amended to extend aid to students attending unaccredited institutions, this provision would become applicable to those unaccredited institutions that choose to participate in federal aid programs. EDUC. § 94910(h) (amended by Chapter 585).

48. EDUC. § 94911(i)(1) (West Supp. 2012).

49. *Id.* (amended by Chapter 585).

50. *Id.*

51. *Id.* § 94913 (enacted by Chapter 585).

52. *Id.*

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### C. New Criteria for Calculating Employment Statistics

Prior law defined “graduates employed in the field” as those employed “within six months of graduation” in a job where the skills acquired through obtaining the degree played a significant participating role “in obtaining the position.”<sup>53</sup> Chapter 585 changes this definition by striking the significant participating role provision, instead making the deciding factor whether the graduate is employed “in a single position for which the institution represents the program prepares its graduates.”<sup>54</sup>

Chapter 585 also extends the six-month “period of employment” in situations where the graduate is attempting to obtain a position for which the state requires they must first pass an exam.<sup>55</sup> Where this extension applies, “the period of employment shall begin within six months of the announcement of the examination results for the first examination available after” graduation.<sup>56</sup>

### D. Expanded Authority of the Bureau

Under both prior and current law, institutions must provide the Bureau with an annual report containing the same statistical data published in an institution’s Fact Sheet.<sup>57</sup> Chapter 585 expands the Bureau’s authority by allowing it to define the information institutions must use to compute these statistics, and by empowering it to require institution to substantiate their reports by turning over to the Bureau the raw data used.<sup>58</sup> However, Chapter 585 limits the scope of this authority to information that is “[u]seful to students,” “[u]seful to policymakers,” “[b]ased upon the most credible and verifiable data available,” and which “[d]oes not impose undue compliance burdens on an institution.”<sup>59</sup>

## IV. ANALYSIS

Chapter 585 amends prior law by expanding the number of institutions and programs subject to certain reporting requirements,<sup>60</sup> creating new criteria to

53. *Id.* § 94928(e) (West Supp. 2012).

54. *Id.* § 94928(e)(1) (amended by Chapter 585).

55. *Id.*

56. *Id.*

57. *Id.* § 94929.5(a), (c) (West Supp. 2012) (annual report must include “job placement rate[s] . . . license examination passage rates” and “[s]alary and wage information”); *id.* § 94929.5(a)(4) (amended by Chapter 585) (in addition to disclosures required under prior law, report must also include three-year cohort default rate, if applicable).

58. *Id.* § 94929.5(b) (amended by Chapter 585); *id.* § 94929.7(c) (amended by Chapter 585).

59. *Id.* § 94929.5(b)(1)–(4) (amended by Chapter 585).

60. *Id.* § 94897(p) (amended by Chapter 585) (requiring unaccredited institutions that offer associate, baccalaureate, master’s, or doctoral degrees to report their accreditations status and all known limitations of the degree to prospective students). Prior to passage of Chapter 585, only unaccredited institutions that offer a

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calculate graduates' employment statistics,<sup>61</sup> and expanding the Bureau's authority to make new regulations.<sup>62</sup> But while this legislation may accomplish some of its goals, Chapter 585 raises several questions, including whether targeted institutions will actually comply with the new regulations,<sup>63</sup> whether the new requirements actually improve the accuracy of institutional reporting,<sup>64</sup> and whether the Bureau will be able to effectively police and punish non-compliant institutions.<sup>65</sup>

#### A. Chapter 585 Takes Aim at Unaccredited Institutions

An institution's status as "unaccredited"<sup>66</sup> is often a mark of poor educational quality.<sup>67</sup> Consequently, graduates of unaccredited institutions may be ineligible for certain civil service jobs, and may be excluded from professional licensure exams.<sup>68</sup>

The concern surrounding unaccredited private institutions harkens back to the 1980s, when California was known as the "diploma mill capital of the world."<sup>69</sup> The legislature's passage of the 1989 Act seemed to alleviate some of the problem.<sup>70</sup> However, with the rise of the Internet, diploma mills continue to thrive in California and throughout the country.<sup>71</sup>

doctoral degree were subject to this provision. *Id.* § 94897(p) (West Supp. 2012).

61. *Id.* § 94928(e)(1)–(3) (amended by Chapter 585).

62. *Id.* § 94928(e)(2)–(3) (amended by Chapter 585); *id.* § 94929.5(b) (amended by Chapter 585); *id.* § 94929.7(c) (amended by Chapter 585).

63. Tami Abdollah, *California Lawmakers Target Diploma Mills*, S. CAL. PUB. RADIO (May 10, 2012), <http://www.scpr.org/blogs/education/2012/05/10/6063/california-lawmakers-target-diploma-mills/> (on file with the *McGeorge Law Review*) (reporting that more than half of the PhDs conferred in California each year may be "fake" or "fraudulent," and that institutions granting these degrees do not seek Bureau approval to operate).

64. *Infra* Part IV.B.

65. Gollan, *supra* note 4 (reporting that "up to 10 percent of the state's approved private postsecondary schools have been allowed to operate with expired approvals," that "some schools with expired approvals are still listed as approved on the state's Web site," that the Bureau does not make it a "general enforcement practice" to track down institutions that operate illegally, and that the Bureau has not been able to effectively follow through on the disciplinary measures it metes out).

66. Accreditation is a voluntary "peer review process" undertaken by an accreditation agency that is approved by the U.S. Department of Education. EDUC. § 94813 (West Supp. 2012); SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 2296, at 3 (Aug. 22, 2012).

67. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 2296, at 3 (Aug. 22, 2012) (stating that the purpose of accreditation is to determine the quality of private postsecondary institutions and the degree programs they offer); *Accredited Institutions & Unaccredited Institutions*, U.S. DEP'T OF EDUC., <http://www2.ed.gov/students/prep/college/diplomamills/accreditation.html> (last visited Mar. 30, 2013) (on file with the *McGeorge Law Review*) (stating that the purpose of accreditation is to ensure educational quality, and that unaccredited institutions may, though do not necessarily, provide a poor quality education).

68. *Unaccredited Institutions*, U.S. DEP'T OF EDUC., <http://www2.ed.gov/students/prep/college/diplomamills/accreditation.html> (last visited Mar. 30, 2013) (on file with the *McGeorge Law Review*).

69. FRANK, *supra* note 9, at ES-3; Editorial, *Failing Vocational Students*, *supra* note 14.

70. Stephanie Grace, *Degrees of Deception*, NEW ORLEANS TIMES PICAYUNE, Aug. 9, 1998, available at 1998 WLNR 1195088 (on file with the *McGeorge Law Review*) (describing California as a "one-time safe

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### 1. Chapter 585 Attempts to Protect Students by Targeting Diploma Mills

Diploma mills fraudulently induce students to purchase fake degrees.<sup>72</sup> With the growth of the Internet, major, legitimate institutions, such as Harvard and UCLA, have begun offering online courses and degree programs.<sup>73</sup> The large number of legitimate institutions offering online degrees has created fertile ground “for diploma mills to flourish.”<sup>74</sup> Chapter 585 seeks to address this problem by requiring that all unaccredited private institutions disclose their accreditation status and the limits of the prospective degree before students commit to paying.<sup>75</sup>

Chapter 585 may induce a broader array of legitimate, unaccredited institutions to report their accreditation status and the limits of the degrees they offer.<sup>76</sup> However, Chapter 585 is unlikely to have an effect on a majority of diploma mills, because the very nature of these institutions is to “fly[] under the radar” selling “fake” degrees.<sup>77</sup> And while Chapter 585 does attempt to curb diploma mills by imposing greater statutory requirements upon them,<sup>78</sup> it seems

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haven for diploma mills,” which has since corrected the problem after passage of the 1989 Act); Judy Lin, *The Governor Says Flaws Must Be Fixed in Bureau that Regulates For-Profit Operations: Vocational Schools Face Loss of State Oversight*, FRESNO BEE, Jan. 22, 2007, available at 2007 WLNR 1279248 (on file with the *McGeorge Law Review*) (reporting that consumer advocates feared that dissolution of the Bureau would bring back the days when diploma mills openly operated).

71. Stephanie Armour, *Diploma Mills Insert Degree of Fraud into Job Market*, USA TODAY (Sept. 29, 2003, 12:48 AM), [http://usatoday30.usatoday.com/money/workplace/2003-09-28-fakedegrees\\_x.htm](http://usatoday30.usatoday.com/money/workplace/2003-09-28-fakedegrees_x.htm) (on file with the *McGeorge Law Review*) (reporting that the operator of ten-million dollar diploma mill was arrested for running sham school over the Internet from an office in San Clemente, California).

72. Grace, *supra* note 70 (reporting that diploma mills use “fraudulent advertising gimmicks” to induce students to purchase fake degrees (quoting Attorney General Richard Ieyoub)); Judy Lin, *Vocational Schools Face Loss of State Oversight*, CAL. ST. UNIV. (Jan. 22, 2007), <http://www.calstate.edu/pa/clips2007/january/22/jan/oversight.shtml> (on file with the *McGeorge Law Review*) (reporting that the purpose of governmental oversight in California is to ensure “that private colleges and universities don’t defraud their students”); Abdollah, *supra* note 63 (stating that diploma mills “offer fraudulent degrees and certificates for little to no work and an often significant fee”).

73. Armour, *supra* note 71; HARVARD EXTENSION SCH., <http://www.extension.harvard.edu/degrees-certificates> (last visited Oct. 15, 2012) (on file with the *McGeorge Law Review*); UCLA EXTENSION, <https://www.uclaextension.edu/pages/fos/ProgramLanding.aspx> (last visited Oct. 15, 2012) (on file with the *McGeorge Law Review*).

74. Armour, *supra* note 71 (reporting that many diploma mills create names similar to legitimate universities offering online extension programs, making the imposters difficult to spot).

75. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2296, at 2 (May 11, 2012); Abdollah, *supra* note 63 (stating that lawmakers sought “to determine how best to identify [diploma mills] and root them out without quashing innovation”).

76. CAL. EDUC. CODE §§ 94897(p), 94909(a)(16) (amended by Chapter 585).

77. Abdollah, *supra* note 63.

78. EDUC. § 94909(a)(16) (amended by Chapter 585) (requiring all “associate, baccalaureate, master’s, or doctoral” programs to inform students of their accreditation status and the limitations of the degree); *id.* § 94897(p) (West Supp. 2012) (requiring only unaccredited doctoral programs to accurately report their accreditations status and the limitations of the degree).

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that the Bureau is ill-equipped to track down and discipline institutions that simply choose to be noncompliant.<sup>79</sup>

2. *Chapter 585 Does Not Address the Dangers that Diploma Mills Pose to the General Public*

As the name suggests, many diploma mills serve as little more than professional counterfeiting services that, for a fee, print fake degrees that look legitimate.<sup>80</sup> The general public relies on degreed professionals for a broad range of services, including legal services, healthcare, education, and counseling.<sup>81</sup> The public views these degrees as an indicator of a professional's qualifications.<sup>82</sup>

Diploma mills endanger the public by allowing unqualified people to masquerade as qualified professionals.<sup>83</sup> While many students who turn to diploma mills do so innocently, believing that the degree they seek is legitimate, many more do so with the understanding that they will receive an advanced diploma after completing virtually no course work.<sup>84</sup> These diplomas allow "graduates" to fool prospective employers and clients by creating an air of legitimacy and competence, even though the graduate is unqualified to perform the work.<sup>85</sup> Thus, because diploma mills confer a large number of degrees to people who knowingly wish to fool the public, it is unclear what, if any, effect Chapter 585 will have in curbing the lucrative services diploma mills provide.<sup>86</sup>

B. *Chapter 585 Attempts to Improve the Accuracy of Institutional Reporting by Changing the Statutory Definition of "Graduates Employed in the Field"*

Chapter 585 changes the statutory definition of "graduates employed in the field."<sup>87</sup> The author of this provision argues this change is necessary to correct an ambiguity in the law.<sup>88</sup> For instance, law schools often create short-term, paid

79. Gollan, *supra* note 4 (reporting that, due to understaffing, the Bureau does not make it a practice to track down and discipline institutions that operate illegally).

80. Abdollah, *supra* note 63; Armour, *supra* note 71; Grace, *supra* note 70.

81. Armour, *supra* note 71 (reporting that people who have purchased degrees from diploma mills "have held jobs as sex-abuse counselors, college vice presidents, child psychologists, athletic coaches and engineers").

82. *Id.* (reporting that a mother who relied on diploma mill medical degrees that lined the walls of her daughter's doctor's office followed the doctor's medical advice, resulting in the death of her child).

83. *Id.*

84. Abdollah, *supra* note 63; Grace, *supra* note 70.

85. Armour, *supra* note 71 (reporting cases where people have knowingly purchased and used fake degrees to obtain jobs as medical doctors, "sex-abuse counselors, college vice presidents, child psychologists, athletic coaches and engineers").

86. Abdollah, *supra* note 63; Armour, *supra* note 71 (reporting that, nationwide, diploma mills make an estimated \$500 million each year).

87. CAL. EDUC. CODE § 94928(e)(1) (amended by Chapter 585).

88. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 2296, at 4 (Aug. 22, 2012).

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positions for recent graduates to boost schools' employment statistics.<sup>89</sup> Under the old definition, these graduates would be considered employed within the field, because their degree played a significant role in the acquisition of their short-term position.<sup>90</sup> Chapter 585 aims to abate this practice by changing the definitional character of "graduates employed in the field" to mean those employed in a "single position for which the institution represents the program prepare[d]" such graduates.<sup>91</sup>

However, Chapter 585 could make it more difficult for schools to receive accurate employment data.<sup>92</sup> Opponents argue that institutions attempting to determine whether a graduate's job requirements meet the statutory definition will hound employers, discouraging employers from hiring the institution's graduates.<sup>93</sup> Moreover, graduates will be discouraged from providing their alma maters with accurate information due to the stringent statutory tracking requirements.<sup>94</sup> Opponents believe that students may simply stop communicating with the school after graduation, making it difficult for schools to comply with the regulations, and potentially increasing the cohort default rate for future students.<sup>95</sup>

### C. Does Chapter 585 Accomplish What It Sets Out to Do?

Chapter 585 attempts to protect prospective students from fraud and deception by creating greater transparency.<sup>96</sup> While on paper, Chapter 585 may accomplish its goal; historically, the Bureau has had problems enforcing its regulations.<sup>97</sup> Where schools are in violation of Bureau regulations and operate without state approval, the Bureau does not make it a practice to track down

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89. *Law, Education Remain Among Nation's Best in Rankings*, WILLIAM & MARY (Mar. 17, 2012), <http://www.wm.edu/news/stories/2012/law,-education-remain-among-nations-best-in-rankings.php> (on file with the *McGeorge Law Review*).

90. EDUC. § 94928(e) (West Supp. 2012).

91. *Id.* § 94928(e)(1) (amended by Chapter 585). A short-term position stacking books in a law-school library, for instance, would likely not qualify under Chapter 585, because the law school does not represent to prepare its students to stack books professionally. *Id.*

92. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 2296, at 6 (Aug. 22, 2012).

93. *Id.*

94. *Id.*

95. *Id.*

96. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF AB 2296, at 2–4 (May 11, 2012); SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 2296, at 6 (Aug. 22, 2012); Lin, *Vocational Schools Face Loss of State Oversight*, *supra* note 72 (reporting that the purpose of governmental oversight in California is to ensure "that private colleges and universities don't defraud their students").

97. Gollan, *supra* note 4 (reporting that, due to understaffing, the Bureau is unable to proactively ensure that institutions operate in compliance); Elizabeth Redden, *California Regulation*, INSIDE HIGHER ED. (Jan. 29, 2007), <http://www.insidehighered.com/news/2007/01/29/california> (on file with the *McGeorge Law Review*) (reporting that the Bureau's enforcement capabilities have historically been hampered by understaffing and a backlog of consumer complaints).

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violators.<sup>98</sup> Chapter 585 does not include a provision providing for greater enforcement.<sup>99</sup> Thus, even if schools fail to comply with the mandates of Chapter 585, it does not appear that the Bureau is in a position to enforce these provisions.<sup>100</sup>

## V. CONCLUSION

Chapter 585 represents an attempt by the legislature to close reporting loopholes present in prior law by mandating additional disclosure requirements from private postsecondary institutions regarding accreditations status,<sup>101</sup> known limitations on degrees,<sup>102</sup> wage and employment data,<sup>103</sup> and cohort default rates.<sup>104</sup> Chapter 585 also mandates that institutions provide prospective students with this data prior to enrollment.<sup>105</sup> Additionally, the Bureau overseeing enforcement of regulated institutions is given the authority to define standards<sup>106</sup> and make regulations.<sup>107</sup> The purpose of this reform is to make California's private postsecondary and vocational institutions more transparent so that prospective students can adequately weigh their options.<sup>108</sup> However, without a statutory mechanism providing the Bureau with greater resources, the long-term effects of Chapter 585 are unknown because the Bureau does not appear to have the resources necessary to discipline institutions that are currently non-complaint.<sup>109</sup>

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98. Gollan, *supra* note 4 (reporting that, even after the Bureau was recently made aware that 137 schools are operating illegally, it "had no plans to follow up" beyond the issuance of "courtesy" notices informing the institutions of their non-complaint status).

99. *See generally* 2012 Cal. Stat. ch. 585.

100. Gollan, *supra* note 4.

101. CAL. EDUC. CODE § 94897(p)(1) (amended by Chapter 585)

102. *Id.* § 94897(p)(1)–(3) (amended by Chapter 585).

103. *Id.* § 94910(b), (d) (amended by Chapter 585).

104. *Id.* § 94910(h) (amended by Chapter 585).

105. *Id.* § 94911(i)(1)–(2) (amended by Chapter 585).

106. *Id.* § 94928(e)(2) (amended by Chapter 585).

107. *Id.* § 94929.5(b) (amended by Chapter 585).

108. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF AB 2296, at 4 (Aug. 22, 2012).

109. Gollan, *supra* note 4.