

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1826
By: Shapleigh
Education
4-10-97
Committee Report (Substituted)

DIGEST

Currently, postsecondary institutions of education are required to obtain a certificate of authority from the Texas Higher Education Coordinating Board before being allowed to grant degrees in Texas. In 1975, the legislature passed Chapter 61G, Education Code, to prevent the deception of the public resulting from the conferring and use of fraudulent or substandard college and university degrees. This bill provides criminal penalties for violations of this requirement and prohibits the use of the terms "college" or "university" by schools that have not been granted a certificate of authority or are otherwise exempt under the statute.

PURPOSE

As proposed, C.S.S.B. 1826 provides criminal penalties for violations of the requirement that postsecondary institutions of education possess a certificate of authority from the Texas Higher Education Coordinating Board before being allowed to grant degrees and prohibits the use of the terms "college" or "university" by schools that have not been granted a certificate of authority or are otherwise exempt under the statute.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Higher Education Coordinating Board in SECTION 6 (Section 61.311, Education Code) and to the commissioner of education in SECTION 9 (Section 61.316, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 61.302, Education Code, to redefine "private postsecondary educational institution," "board," and "educational or training establishment."

SECTION 2. Amends Sections 61.303(b), (d), (f), and (g), Education Code, to provide that the exemptions provided by Subsection (a), rather than (a)(1), apply only to the degree level for which, rather than the extent that, an institution is accredited, and if an institution offers to award a degree at a level for which it is not accredited, the exemption does not apply. Provides that an exempt institution or person would continue in that status only so long as it maintained accreditation by a recognized accrediting agency or otherwise met the provisions of Subsection (a), rather than maintaining accreditation standards acceptable to the Texas College and University System board. Prohibits a private postsecondary educational institution from establishing or operating certain off-campus units in Texas, except as provided by this subsection, rather than Subsection (g) of this section, or the rules of the Texas Higher Education Coordinating Board (board). Provides that this subsection does not apply to a private or independent institution of higher education as defined by Section 61.003. Deletes provisions providing that Subsection (f) of this section does not affect the exemption under Subsection (a)(1) of this section of an accredited institution or a separately accredited branch, extension center, or off-campus unit of the institution if certain conditions apply.

SECTION 3. Amends Section 61.307(b), Education Code, to require an application for an amendment to be accompanied by a fee set by the board, rather than a fee of \$75, to cover the cost of program evaluation.

SECTION 4. Amends Section 61.308(a), Education Code, to require a private postsecondary

educational institution which desires to renew its certificate of authority to apply to the board at least 180, rather than 60, days prior to the expiration of the current certificate.

SECTION 5. Amends Section 61.310, Education Code, to authorize an institution whose application has been denied by the board to request a hearing under Chapter 2001, Government Code, rather than to request a hearing before the board. Deletes a provision requiring the board to conduct hearings, and authorizing an appeal to decisions of the board, in accordance with Chapter 2001, Government Code.

SECTION 6. Amends Section 61.311(a), Education Code, to require the board to promulgate standards, rules, and regulations governing the administration of this subchapter, rather than the issuance of certificates of authority.

SECTION 7. Amends Section 61.313, Education Code, as follows:

Sec. 61.313. New heading: **USE OF PROTECTED TERM IN NAME OF INSTITUTION.** Prohibits a person from using certain terms in the official name or title of a nonexempt private postsecondary educational institution or describing an institution using a term listed in Subdivision (1) or a term having a similar meaning. Deletes a provision regarding the use of a name established after the effective date of this subchapter unless the institution has been issued a certificate of authority to grant a degree or degrees. Requires an institution not exempt from this subchapter that has not been issued a certificate of authority, but is otherwise legally operating, and that has in its official name or title a term protected under Subsection (a) to remove the protected term from the name or title by September 1, 1999. Provides that this section does not apply to an institution of higher education or a private institution of higher education as defined by Section 61.003. Makes conforming and nonsubstantive changes.

SECTION 8. Amends Section 61.314(a), Education Code, to require the board to appoint an advisory council on private postsecondary educational institutions, composed of certain persons, three of whom must be representatives of private institutions of higher education as defined by Section 61.003, rather than 61.003(15).

SECTION 9. Amends Sections 61.316 and 61.317, Education Code, redesignated as Section 61.316, as follows:

Sec. 61.316. New heading: **ADMINISTRATIVE PENALTIES.** Authorizes the commissioner of education (commissioner) to assess an administrative penalty against the person as provided by this section, if a person violates a provision of this subchapter. Authorizes the commissioner to adopt rules relating to the imposition of administrative penalties under this section. Deletes a provision requiring the board to report certain information. Deletes a provision requiring the prosecuting attorney to immediately bring suit to enjoin any discovered violation of this subchapter. Provides that any person who represents that credits earned or granted by that person or institution are applicable for credit toward a degree to be granted by another person or institution except under conditions and in a manner specified and approved by the board is to be assessed an administrative penalty. Provides that a person who establishes a private postsecondary education educational institution that is not exempt from this subchapter and uses a term protected under this subchapter, rather than the term "college" or "university," without having first been issued a certificate of authority, rather than the authority to grant degrees, for the institution under this subchapter is to be assessed an administrative penalty. Deletes a provision establishing that a person is guilty of a misdemeanor and is subject to a fine upon conviction. Provides that each student solicited without authority constitutes a separate offense. Requires any operations which are found after due process to be in violation, rather than fraudulent violation, of this subchapter, rather than Act, are to be terminated. Provides that an institution that is assessed an administrative penalty under this section is to be entitled to written notice of the reasons for the penalty. Authorizes an institution to appeal an administrative penalty in the manner provided by Chapter 2001, Government Code. Makes conforming and nonsubstantive changes.

SECTION 10. Amends Chapter 61G, Education Code, by adding Sections 61.318 and 61.319, as follows:

Sec. 61.318. INJUNCTIONS. Authorizes the commissioner to report information concerning a possible violation of this subchapter to the attorney general. Requires the attorney general to make the necessary investigations and to bring suit to enjoin any violation of this subchapter. Requires an action for an injunction under this section to be brought in a district court in Travis County.

Sec. 61.319. CIVIL PENALTY. Provides that a person who violates this subchapter or a rule adopted under this subchapter is liable for a civil penalty in addition to any injunctive relief or any other remedy. Prohibits a civil penalty from exceeding \$1,000 a day for each violation. Requires the attorney general, at the request of the board, to bring a civil action to collect a civil penalty under this section.

SECTION 11. Effective date: September 1, 1997.
Makes application of this Act prospective.

SECTION 12. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 2.

Amends Section 61.303(d), Education Code to provide that an exempt institution or person would continue in that status only so long as it maintained accreditation by a recognized accrediting agency or otherwise met the provisions of Subsection (a).

SECTION 7.

Amends Section 61.313(b), Education Code, to authorize an institution not exempt from this subchapter that has not been issued a certificate of authority, among other requirements to remove the protected term from the name or title not later than September 1, 1999.

SECTION 9.

Amends Section 61.316(c), Education Code, to require any person who establishes a private postsecondary educational institution that is not exempt from this subchapter, and uses a term protected under this subchapter in the official name of the institution, to be assessed an administrative penalty.