

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1534
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Economic Development
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Committee Report (Substituted)

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 C.S.S.B. 1534 does, would help facilitate student choice and access to online education, and in turn, help Texas stem its significant education costs.

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

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Workforce Commission in SECTION 3 (Section 132.202, Education Code) of this bill.

SECTION BY SECTION ANALYSIS

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

SECTION 2. 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 in this state without a certificate of approval issued by TWC; soliciting prospective students for or on behalf of a career school or college operating in this state 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 operating in this state 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 3. Amends Subchapter G, Chapter 132, Education Code, by adding Section 132.202, as follows:

Sec. 132.202. REGISTRATION FEES FOR CERTAIN SCHOOLS OR EDUCATIONAL INSTITUTIONS NOT OPERATING IN THIS STATE. (a) Requires a school or educational institution described by Section 132.001(1)(B) (providing that "career school or college" does not include certain schools or educational institutions), to register with TWC before enrolling any student who, at the time of enrollment, is a resident of this state for purposes of Subchapter B (Tuition Rates), Chapter 54 (Tuition and Fees).

(b) Requires the school or education institution to pay to TWC an annual registration fee in an amount to be determined by TWC.

(c) Authorizes TWC to adopt rules to implement this section.

SECTION 4. 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 5. Provides that the changes in law made by this Act apply only to a certificate of approval issued, an action filed, or 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 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 other proceeding was commenced, and the former law is continued in effect for that purpose.

SECTION 6. Effective date: September 1, 2011.