



Nonprofit Publisher
of Consumer Reports

September 23, 2009

The Honorable Arnold Schwarzenegger
Governor of the State of California
State Capitol Building
Sacramento, CA 95814

RE: AB 48 (Portantino-Niello) —Request For Veto

Via Facsimile

Dear Governor Schwarzenegger:

Consumers Union, nonprofit publisher of *Consumer Reports*, writes to urge you to veto AB 48, a bill that will create more problems for California's proprietary school students and businesses than it will solve.

A May 1992 article in *Consumer Reports* on trade school fraud, "Schools for Scandal," highlighted the serious consumer fraud problems faced by trade schools students in that era. Our California office has worked on the issue since the mid-1990s. The California Private Postsecondary Reform Act of 1989, reauthorized and shifted to the Department of Consumer Affairs in 1997, was a national model for student protection and trade school standards and oversight. The Act, however, was allowed to sunset in 2007.

Abuses in the career training sector have a long history, starting with enactment of the original GI bill after World War II and the infusion of government funds that created. Notwithstanding the positive contributions of the GI Bill to the lives of so many veterans, abuses by unscrupulous training providers grew as this government program created a funding stream for a pool of institutions. Thus, and as other financial aid programs grew over time, stronger program and institutional eligibility standards and consumer protection safeguards were needed and enacted to ensure that vulnerable prospective students and government dollars were protected.

This is the premise of the federal financial aid standards which require 3 layers of review before approval for federal grants and loans: by the state, an accreditor, and federal Department of Education. This "triad" of review reflects a recognition that no single body can adequately assure quality. The potential for—and history of—abuse of government programs is too great to leave oversight to any one body, particularly to accreditors which are self-regulatory bodies composed of and funded by the schools themselves.

Regrettably, the problems with many—though not all—career training programs have continued. The current economic crisis will only exacerbate the situation as workers lose jobs and become more desperate for re-training and thus susceptible to high-pressure sales pitches that prey on hopes and dreams. And now the stakes for consumers are ever higher, with short term programs running in the tens of thousands of dollars.

At this critical juncture, to restore consumer and marketplace confidence in California's proprietary sector, the state needs to enact a strong oversight and consumer protection system to ensure that proprietary school students receive a benefit commensurate to their

investment of time and money in job training; employers can rely on the quality of California proprietary school graduates; and taxpayers get good value from the grant funds they invest in training under these programs.

The elements of such a system are:

- Statutory school and program eligibility thresholds for operating in the state, including state-prescribed criteria, e.g. for fiscal responsibility;
- Authorization only for school programs and credentials (degree, certificate, diploma) that have been reviewed for and met minimum quality standards;
- Licensing fees adequate to run a reliable state oversight operation;
- Consumer protections including meaningfully defined disclosures of comparative information on graduation, placement, exam pass rates, salaries, transferability of credits/credentials;
- A meaningful enforcement system.

Unfortunately, this bill does not embody those elements adequately. Set forth below are some of the key problems in the bill.

High-Risk Delegation of Authority to the Department of Consumer Affairs (DCA)

No state except California, to our knowledge, lodges regulation of trade schools and vocational programs in a consumer/business agency rather than an education one. Placing it in DCA in California was a trade-off made ten years which has proven to be a serious error. Rather than shift that responsibility to a more appropriate agency, this bill seeks to accommodate the Department's limited capacity by diminishing the oversight role at every turn.

If regulation remains in the DCA, however, we had urged addition of an Enforcement Monitor to closely oversee the reconstituted Bureau for the next few years, such as was appointed to oversee the DCA Medical Board. Another alternative Consumers Union had suggested was creating a Bureau with significant consumer representation for greater public accountability, rather than re-instituting a Bureau.

Large-scale Exemptions and School Eligibility Based Solely on Accreditation

This bill provides a far less rigorous regulatory framework than other states, notwithstanding California's long history of proprietary school deceptive practices. This bill exempts from coverage all institutions accredited by any regional accreditor. That means that these schools, which have a large student population, have no consumer protection (e.g. disclosure and refund) requirements—and they pay no licensing fees to the state.

In addition, other accredited institutions are granted automatic approval to operate with no state review. Accredited institutions are those that receive federal financial aid. These are the schools with the largest revenues, the largest number of students, and severe problems of abuse. Having them automatically approved with no state review will have huge adverse consequences, affecting a huge proportion of students. Furthermore, once the privilege of state approval is given, it is very difficult to remove if problems are uncovered.

Accreditation alone has been shown over and over again to be wholly inadequate as an indicator of minimal quality. Accreditation is basically self-regulation with schools paying to

have themselves evaluated by groups comprised of schools. There is no sound policy basis for allowing either total exemption or automatic eligibility for accredited schools.

Inadequate Student Disclosures

Misrepresentations are common in high pressure sales tactics used to enroll students at many career schools driven by “incentive compensation”—salary based upon the number of students enrolled. A threshold to counter these deceptions is well defined disclosures of graduation, job placement and exam pass rates, and credit transfer information. Only these uniform disclosures would allow students to attempt to make apples-to-apples comparisons before investing tens of thousands of dollars for job training—and the devil is in the details.

The disclosure definitions within this bill are inadequate. For example, the job placement definition in this bill broadly allows schools to count as a successful placement “graduates employed in the field” for whom the training may have “provided a “significant advantage...in obtaining the position”—substantially looser than prior law which required “employment in the job trained for” with minimum employment period required. Another serious weakness in the bill is the weakened content and placement of a notice to warn prospective students that their credits and credentials will likely not be transferable to other institutions—a major deception problem.

Confused, Weak Enforcement Authority

Notices to comply, infractions and citations appropriate for other DCA-licensed businesses will not discourage unscrupulous school operators from violating the law. In fact, Article 18 appears to circumscribe the Bureau’s authority, rather than leaving flexibility for the agency to use the most appropriate and necessary means to protect the public interest. While DCA’s performance to date has been problematic for students, the problem has been too little assertion of authority, not too much. Thus, for the students’ interest, the enforcement powers of the Bureau need to be maintained or strengthened, or clearly shared with another agency such as the Attorney General’s Office—and then exercised, not circumscribed.

For the foregoing reasons, Consumers Union urges you to veto AB 48, and to work inclusively with consumer groups and all stakeholders to create a bill that will establish a strong regulatory framework to ensure consumer and taxpayer protection, as well as the quality of California proprietary school credentials.



Elizabeth M. Imholz
Special Projects Director
Consumers Union of U.S., Inc.

cc: Honorable Anthony Portantino
Honorable Roger Niello