

## **BILL ANALYSIS**

Senate Research Center

S.B. 1534  
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Economic Development  
4/4/2011  
As Filed

### **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.

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

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 132.001, Education Code, as follows:

Sec. 132.001. DEFINITIONS. Redefines, in this chapter, "career school or college," "representative," "agency administrator," "distance education," and "program" or "program of instruction," and defines "operates in this state" or is "operating in this state."

SECTION 2. Amends Section 132.002, Education Code, as follows:

Sec. 132.002. EXEMPTIONS. (a) Authorizes certain schools or educational institutions to be exempted from this chapter by the Texas Workforce Commission (TWC) under Subsection (d) (relating to certain conditions exempting as school or education institution from regulation under this chapter), including a school or educational institution that is physically located in another state, is legally authorized by the state of its physical location to offer postsecondary education and award degrees, is accredited by an

accrediting agency recognized by the U.S. Secretary of Education, and offers in the State of Texas only postsecondary distance or correspondence programs of instruction.

(b)-(g) Makes no changes to these subdivisions.

SECTION 3. Amends Section 132.021, Education Code, as follows:

Sec. 132.021. TEXAS WORKFORCE COMMISSION. (a) Requires TWC to exercise jurisdiction and control of the system of career schools and colleges operating in this state, and to carry out supervision of the provisions of this chapter, and enforce minimum standards for approval of career schools and colleges under the operating regulations and policies hereinafter set forth and as may be adopted pursuant to this chapter.

(b)-(c) Makes no changes to these subdivisions.

SECTION 4. Amends Section 132.051, Education Code, as follows:

Sec. 132.051. CERTIFICATE OF APPROVAL. (a) Prohibits a career school or college operating in this state from maintaining, or conducting a program of instruction in this state, rather than prohibits a career school or college from advertising, soliciting for, or conducting any program of instruction, until the career school or college receives a certificate of approval from TWC.

(b) Provides that any contract entered into with any person for a program of instruction by or on behalf of any person operating any career school or college in this state to which a certificate of approval has not been issued pursuant to this chapter is unenforceable in any action brought thereon. Provides that any note, other instrument of indebtedness, or contract relating to payment for educational services obtained from a career school or college operating in this state that does not hold a certificate of approval issued under this chapter is unenforceable in any action brought on the note, instrument, or contract.

SECTION 5. Amends Section 132.052, 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, to make written application to TWC for a certificate of approval.

SECTION 6. Amends Section 132.059, Education Code, as follows:

Sec. 132.059. REGISTRATION OF REPRESENTATIVES. (a) Requires all representatives employed by a career school or college operating in this state to register with TWC.

(b)-(c) Makes no changes to these subsections.

(d) Redesignates existing Subsection (e) as Subsection (d). Deletes existing Subsection (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.

SECTION 7. Amends Section 132.151, Education Code, as follows:

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 operating in this state, 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 operating in this state 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.

SECTION 8. Amends Section 132.154, Education Code, to make a conforming change.

SECTION 9. Amends Section 132.156, Education Code, to make a conforming change.

SECTION 10. Amends Section 132.242, Education Code, to make a conforming change.

SECTION 11. Amends Section 132.301, Education Code, to make a conforming change.

SECTION 12. Amends Section 132.303, Education Code, to make a conforming change.

SECTION 13. Effective date: September 1, 2011.