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## California Legislation Targeting For-Profits Progresses

California moves toward creating the strictest regulatory landscape for for-profit colleges in the U.S., but proposed legislation has already been weakened.

By [Lindsay McKenzie](#)

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A package of seven interrelated bills proposing tighter regulation of for-profit and private colleges in California moved closer to becoming law this week -- but not fully intact.

One of the bills, a proposal to create the nation's first state-level gainful-employment rule, was watered down to require only the collection and disclosure of data around employment outcomes of graduates at for-profit colleges.

Another bill, which proposed to toughen the 90-10 rule in California -- a regulation that allows for-profit institutions to claim up to 90 percent of their

revenue from federal financial aid -- was delayed. It is possible the bill will be considered again by the committee next year.

Robert Shireman, director of higher education excellence at the Century Foundation and a former Education Department official during the Obama administration, helped to draft the language of the seven bills. In an emailed statement, he expressed disappointment that the California Senate committees failed to adopt these “critical protections for students.”

“At a time when veterans are at significant risk of being ripped off by for-profit colleges, and just days after [Education] Secretary [Betsy] DeVos shamefully repealed the federal gainful-employment rule, these two bills in California were desperately needed to fill the void that the Trump administration is currently widening,” he said.

“Still, taken together the five bills advanced out of committee represent a positive step forward for California students and, if enacted, would be the strongest for-profit college regulations that any state has passed,” said Shireman. “It is yet another sign of the growing recognition across the country that for-profit colleges, by design, are inherently different and pose greater risks to consumers and taxpayers.”

#### **Bills Seeking Tighter Regulation of For-Profits in California**

- **AB 1340** -- California-style gainful-employment rule similar to the one developed by the Obama administration.
- **AB 1341** -- Prevents for-profit colleges from evading oversight by posing as nonprofit.
- **AB 1342** -- Requires California attorney general to review and approve all sales of nonprofit colleges to for-profit companies.
- **AB 1343** -- Would mandate that no more than 85 percent of a school’s revenue could come from federal or state sources.
- **AB 1344** -- Requires out-of-state institutions enrolling California students in online courses to comply with all California consumer protections.
- **AB 1345** -- Prohibits colleges from setting recruitment quotas and entering tuition-sharing agreements.

- **AB 1346** -- Would allow students who have been victimized by for-profit institutions that have closed to recoup costs outside of tuition.

Though most of the bills in the legislative package are still under consideration, many for-profit colleges in California will be pleased to hear that the proposed changes to the 90-10 rule have stalled.

The California Association of Private Postsecondary Schools (CAPPS), which largely represents for-profit institutions and actively opposed the package of bills, *previously told Inside Higher Ed* that proposed changes to the 90-10 rule would lead to the closure of an estimated 130 institutions in the state. The bill proposed capping taxpayer-funded revenue at 85 percent or requiring that colleges spend at least 50 percent of their revenue on instruction.

For institutions such as Ashford University, which is currently in the process of converting from for-profit to nonprofit status, the remaining bills could still represent a challenge. One bill designed to detect “covert for-profits” could give California’s attorney general the power to decide whether an institution claiming to be a nonprofit is truly a nonprofit -- potentially contradicting decisions made by the IRS and regional accreditors.

Another bill could place restrictions on private for-profit institutions’ ability to partner with academic service providers and online program management companies by prohibiting tuition-sharing arrangements.

This latter bill, known as AB 1345, is significant because it signals increasing political scrutiny of higher education institutions’ partnerships with online program management companies, though Shireman admits this was something of an unintended consequence of the bill. He does, however, believe that the legal basis on which OPM companies operate is somewhat flimsy and would benefit from a review.

In 2011, the Education Department issued a Dear Colleague letter outlining a “bundled services exception” that allows institutions to enter into tuition-sharing arrangements with third parties. AB 1345 could potentially eliminate this exception for some for-profit colleges operating in California.

Anthony Guida Jr., a lawyer and partner at Duane Morris, testified in California this week as a representative of Ashford University. He confirmed that the institution is hoping to make changes to the language of two of the bills. For example, instead of the California attorney general reviewing the nonprofit status of an institution, Ashford proposed that the California Franchise Tax Board conduct the review. Ashford is also hoping to ensure that federal and state law on the bundled services exception is aligned.

“I’m hopeful that we can work the language out,” said Guida. He added that it “didn’t seem like there was a huge gap” between the changes desired by those in support of the bill and those in opposition.

The Senate Committee on Education and the Committee on Appropriations will be re-reviewing the bills later this month.

Read more by [Lindsay McKenzie](#)

[https://www.insidehighered.com/news/2019/07/03/california-bills-targeting-profits-and-bundled-services-exception-advance?utm\\_source=Inside%20Higher%20Ed&utm\\_campaign=f057b4bb76-DNU\\_2019\\_COPY\\_01&utm\\_medium=email&utm\\_term=0\\_1fcbc04421-f057b4bb76-200040001&mc\\_cid=f057b4bb76&mc\\_eid=20a6b0e480](https://www.insidehighered.com/news/2019/07/03/california-bills-targeting-profits-and-bundled-services-exception-advance?utm_source=Inside%20Higher%20Ed&utm_campaign=f057b4bb76-DNU_2019_COPY_01&utm_medium=email&utm_term=0_1fcbc04421-f057b4bb76-200040001&mc_cid=f057b4bb76&mc_eid=20a6b0e480)