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PRESENTATION OF THE
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TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Friday, February 9, 2018
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 1320, H.D. 1, RELATING TO POST-SECONDARY EDUCATION.

TO THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR, AND MEMBERS OF THE COMMITTEE:

The Office of Consumer Protection ("OCP") appreciates the opportunity to testify on H.B. 1320, H.D. 1, Relating to Post-Secondary Education. My name is Stephen Levins, and I am the Executive Director of OCP. OCP supports this bill and offers the following comments.

The purpose of this bill is to require for-profit accredited and non-accredited post-secondary educational institutions to disclose in print, electronic media, and signage that they are for-profit businesses registered in the State of Hawaii. H.D. 1 amends H.B. 1320 by: (1) deleting the requirement that disclosure must be reasonably calculated to draw the attention of the reader and deleting the specific language of the disclosure from the statutory provisions; and (2) requiring that any promotional material of a for-profit or an unaccredited educational institution, in an advertisement published in a periodical by an unaffiliated person or entity, shall disclose the educational institution is a for profit-business or an unaccredited educational institution, respectively.

OCP supports this measure because it believes that it is in the interest of consumer protection. OCP enforces Hawaii Revised Statutes chapter 446E.

For-profit schools are significantly different from non-profit schools. First and foremost, they are a business. Many are traded on major stock exchanges or owned by private equity firms. The owners and shareholders expect the school to turn a profit. They can't afford to bleed red ink. Programs that don't justify their existence will be cut so that the school can focus on courses that bring in profitable tuition fees.

During recent years, numerous for-profit schools have engaged in unfair or deceptive trade practices, including misrepresentations involving accreditation, selectivity, graduation rates, placement rates, transferability of credit, financial aid, veterans' benefits, and licensure requirements. In response, many states, including Hawaii, have initiated enforcement actions to protect their students. Recent examples involve the alleged misconduct of Corinthian Colleges, Inc. and the Education Management Corporation.

In view of the myriad nature of the problems associated with these schools, it is important to disclose to prospective students their for-profit status. Consequently, it would be in the interest of consumer protection to require for-profit schools operating in Hawaii to provide the conspicuous disclosures contemplated by H.B. 1320, H.D. 1. At the very least, this would enable Hawaii students considering enrollment in a for-profit school to be fully aware of their for-profit status.

OCP notes that page 4, lines 13-14 and page 5, lines 1-3 of the bill places the new disclosure requirements only on those unaccredited institutions that are registered in the State as a for-profit entity. OCP is concerned that this language may create a disincentive for the many out-of-state unaccredited for-profit schools operating in Hawaii to register to do business here, thereby creating an inconsistent level of disclosure by unaccredited for-profit entities. As such, the Committee may wish to consider expanding the disclosure requirement to include all unaccredited for-profit schools with a presence in the State.

Thank you for the opportunity to testify on H.B. 1320, H.D. 1.

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PRESENTATION OF THE
HAWAII POST-SECONDARY EDUCATION AUTHORIZATION PROGRAM

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-NINTH LEGISLATURE
Regular Session of 2018

Friday, February 9, 2018
2:00 p.m.

TESTIMONY ON HOUSE BILL NO. 1320, H.D. 1, RELATING TO POST-SECONDARY EDUCATION.

TO THE HONORABLE SCOTT Y. NISHIMOTO, CHAIR, AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs (“Department”), Hawaii Post-Secondary Education Program (“HPEAP”) appreciates the opportunity to testify on H.B. 1320, H.D. 1, Relating to Post-Secondary Education. My name is Bobbi Lum-Mew, HPEAP Administrator. HPEAP appreciates the intent of this measure and offers the following comments.

H.B. 1320, H.D. 1 requires accredited and non-accredited post-secondary educational institutions that are for-profit entities to disclose in print and electronic media and signage that they are for-profit businesses registered in the State. H.D. 1 amends this measure by: (1) deleting the requirement that disclosure must be reasonably calculated to draw the attention of the reader and deleting the inclusion of the specific language of the disclosure from the statutory provisions; and (2) requiring that any promotional material of a for-profit or an unaccredited educational institution, in an advertisement published in a periodical by an unaffiliated person or entity, shall disclose the educational institution is a for-profit business or an unaccredited educational institution, respectively.

HPEAP authorizes certain accredited degree-granting institutions which have a physical presence in the State and currently has 26 institutions on its authorized school list. A few of these are for-profit institutions. Although HPEAP has not had an official complaint from any students of these for-profit institutions, we appreciate the intent of H.B. 1320, H.D. 1 in the interest of consumer protection.

With regard to section 2 of the bill, HPEAP notes that the disclosure requirement applies to any private college or university and any seminary or religious training institution that is registered in the State as a for-profit entity. HPEAP is concerned that this language may create confusion as to which schools would be subject to the disclosure requirement. As such, HPEAP recommends that this section apply to any for-profit school authorized by the HPEAP program under Hawaii Revised Statutes sections 305J-8 and 305J-9, irrespective of whether the school is registered in the State as a for-profit entity. Tying the disclosure requirement to HPEAP authorization will ensure that the program has regulatory authority to enforce this provision. Limiting the disclosure requirement to schools that are registered in the State as for-profit entities would create a disincentive for out-of-state for-profit schools operating in Hawaii to register as for-profit businesses here.

HPEAP receives many inquiries from past and prospective students regarding certain unaccredited degree-granting institutions. We appreciate the effort to make these students fully aware of the for-profit status of these schools.

Thank you for the opportunity to comment on H.B. 1320, H.D. 1.

HB-1320-HD-1
Submitted on: 2/8/2018 8:16:49 AM
Testimony for JUD on 2/9/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Morgan Bonnet		Support	No

Comments:

Dear Committee Members,

People have the right to be properly informed in order to make informed choices as consumers. This is true for consumer products and it is even more important when it comes to education. With so many cases of predatory practices in higher education, with some in Hawaii, it is important for the legislature to act in different ways. This bill is a great and logical first step towards that direction.

Please vote yes to HB1320 HD1.

Mahalo,

Morgan

HB-1320-HD-1
Submitted on: 2/8/2018 9:17:28 AM
Testimony for JUD on 2/9/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Eric Schrager		Support	No

Comments:

As evidenced by the Corinthian Colleges and Trump University scandals, many students are being ripped off by businesses who prey on students with unrealistic promises and misleading advertising that makes the schools seem much more legitimate than they are.

This common sense bill simply requires that these businesses clearly inform potential students (truth in advertising) about their status as businesses, and also make it clear (not in fine print) whether they are actually accredited. Without knowing these facts, many students waste valuable money and time working toward worthless degrees or certificates. This is particularly despicable because many of these students use financial aid or loans in order to pay these businesses for services/products that are not what they believe them to be.

This is a no-brainer! For-profit colleges, that are making huge amounts of money from federal financial aid MUST be required to tell potential students exactly what they are getting for their money.

HB-1320-HD-1
Submitted on: 2/8/2018 12:43:45 PM
Testimony for JUD on 2/9/2018 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Marion McHenry		Support	No

Comments:

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This is a no-brainer! For-profit colleges, that are making huge amounts of money from federal financial aid MUST be required to tell potential students exactly what they are getting for their money.

LATE TESTIMONY

Testimony of Yan Cao, The Century Foundation

Judiciary Committee Hearing, February 2, 2018
HB 1320 - Relating to Post-Secondary Education

As a nationally recognized non-partisan think tank, The Century Foundation has extensively researched best practices in higher education as well as predatory practices that are concentrated among for-profit colleges. For-profit institutions, particularly when financed by third parties such as government grants and loans, disproportionately lead to:[1]

- **Decreased student earnings:** On average, students attending for-profit programs have a *negative* return to attending college, according to one study. In other words, they earned less after leaving college than they did prior to enrolling.
- **Growing debt balances:** Nearly three-quarters of students who borrowed federal loans to attend for-profit colleges owe more on their loans two years after leaving school than they did when they left, due to accrued interest and fees. Even among graduates, only 36 percent of federal student loan borrowers from for-profit colleges have made a dent in their debt three years after leaving college—half the rate of graduates from public or nonprofit colleges (71 and 74 percent, respectively).
- **Unmanageable debt loads:** Federal standards measure whether the debt loads of career education program graduates are reasonable given their post-college earnings. Because they typically have higher costs and lead to lower graduate earnings, virtually all (98 percent) of the programs that fail this test are at for-profit colleges. (More than a third of the rated programs were offered by nonprofit or public institutions).
- **Loan default:** For-profit colleges account for one-third of federal student loan defaults, despite enrolling just 9 percent of students. Of students who borrowed at for-profit colleges in 2003–04, more than half had defaulted during the twelve years that followed.
- **Student deception:** Borrowers who have been misled, defrauded, or otherwise wronged by their college can petition to have their federal loans discharged. Former for-profit college students accounted for 99 percent of all such discharge applications.[2]

Across Hawaii, over 2,000 students are enrolled in for-profit colleges.[3] Hawaiian students at for-profit colleges are half as likely to graduate and more than twice as likely to default on student loans compared to their counterparts at not-for-profit colleges.[4]

In the past, state policy makers may have assumed that, because for-profit colleges receive up to 90 percent of their funds through the U.S. Department of Education and additional funds for serving military and veteran students, overseeing them is primarily a federal responsibility. But

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[1] List is adapted from *Encouraging Innovation & Preventing Abuse in For-Profit Higher Education: A 2018 Toolkit for State Policy Makers*, December 2018, The Century Foundation and The Institute for College Access & Success, available with sources in footnotes at https://tcf.org/content/report/encouraging-innovation-preventing-abuses.

[2] See Yan Cao and Tariq Habash, College Complaints Unmasked, available with datafile at https://tcf.org/content/report/college-complaints-unmasked/.

[3] See Center for Responsible Lending, "The State of For-Profit Colleges," Dec. 2017 http://responsiblelending.org/research-publication/state-profit-colleges.

[4] See Center for Responsible Lending, http://responsiblelending.org/map/pdf/hi.pdf.

in fact, federal oversight has been demonstrated to be inadequate, and the Trump administration is in the process of rolling back the protections that do exist. As the U.S. Department of Education under Betsy DeVos continues to roll back student protections and accountability measures for schools, The Century Foundation is working with state lawmakers across the nation who are developing tools to address predatory colleges.[5]

Disclosure requirements such as those contained in HB 1320 are among the many tools that states can use to protect students and demand accountability from for-profit colleges and universities. States seeking to promote transparency through disclosure requirements should consider the following best practices:

1. Warn consumers about predatory recruiting
2. Publish employment-related outcomes
3. Monitor and regulate "covert" for-profit colleges

1. Warn Consumers about Predatory Recruiting

The most important step a state can take is to bolster its oversight of colleges, steering them toward consumer-friendly behavior and moving swiftly to remove predatory schools from the marketplace. But there is also room for consumer education so that prospective students are better positioned to fend off predatory school behavior and make informed choices about where to enroll.

The best example of an information campaign warning consumers about predatory recruiting was launched by New York City in 2011. *The Know Before You Enroll* campaign gave New Yorkers advice about selecting a school or training program, warned residents about scam schools, and encouraged anyone who had a negative experience to file a complaint.[6]

Information campaigns cannot replace strong oversight and effective gatekeeping in financial aid and loan programs. But making consumers aware of the dangers of the postsecondary education marketplace will prevent some abuses, and it increases the likelihood that consumers will file complaints if they do feel wronged. The data and insights from those complaints can help speed enforcement of consumer protection laws.

2. Publish Employment Outcomes for All Colleges' Programs

Students need accurate information about college outcomes to make informed choices about whether and where to enroll, and how much to pay or borrow in order to do so. For many students, attending college is the largest and most important investment of their lifetimes, and they often make it with expectations about their future careers or salaries. In most cases, the investment pays off, but expected employment outcomes vary widely from college to college, and especially from program to program. These differences should be available to prospective students, but generally aren't.

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[5] See https://tcf.org/content/report/encouraging-innovation-preventing-abuses//

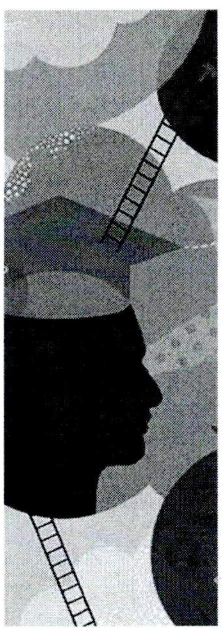
[6] The materials are available here: "Know Befre You Enroll," New York City Office of Workforce Development, http://www.nyc.gov/html/ohcd/html/policy/know_before_you_enroll.shtml.

In recent years, the U.S. Department of Education has begun publishing earnings information for colleges on the College Scorecard, a tool designed to provide information on colleges' costs, outcomes, and other details in a consumer-friendly way, but it does not include data by program. The federal government also calculates earnings information for certain college programs under the gainful employment rule, for the purpose of student disclosures, though it has apparently halted the calculations of these data as it reconsiders this rule.

States are increasingly using unemployment insurance records to publish reliable earnings information for employed graduates of particular college and universities programs. States that have created user-friendly websites that publish employment outcomes for different majors at public colleges and universities include California, Florida, Tennessee, Texas, and Virginia. However, only one state—Minnesota—includes for-profit college programs in the data it publishes at www.mnedtrends.org. This enables students to compare earnings levels across programs or schools, to determine whether there are employment outcome differences that warrant consideration.

3. Monitor and Regulate "Covert" For-Profit Colleges

Finally, disclosure requirements are most effective when they extend to "covert" for-profit colleges, or institutions that present themselves as nonprofit or public colleges but without abiding by the strict accountability requirements usually imposed upon such entities. [7] Those requirements are summarized in the chart below.



Regulatory Differences Define Whether an Entity Is Public, Nonprofit, or For-Profit

	PUBLIC	NONPROFIT	FOR-PROFIT
Who is responsible for governing the institutions, including setting tuition rates and budgets?	Elected and appointed state officials	Trustees	Owners
What are they allowed to spend money on?	Education or another public purpose	Education or a charitable purpose[19]	Anything, including distributions of profit for owners
Can top-level decision-makers personally profit from the operations of the institution?	Generally no	Generally no[33]	Yes
Do colleges have access to equity markets to invest and expand?	No	No	Yes
Is there a financial backstop if something goes wrong and the college is bankrupt?	Taxpayers	No	No

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[7] See https://tcf.org/content/commentary/can-purdue-create-public-university-controlled-investors/.

In recent years for-profit colleges have increasingly attempted to claim the "nonprofit" or even "public" label without adopting the accountability requirements and financial restrictions that go along with these designations. At "covert" for-profit schools, former owners maintain control and shift their profit taking to roles as creditors, landlords, and contractors, undermining true nonprofit trusteeship. For example, Remington Colleges, Inc. was able to convert from for-profit to nominal "nonprofit" status in 2011 despite clear indications of owners' continuing financial self-interest, and statements by school officials who described regulatory avoidance as a primary goal. By maintaining a profit-focused orientation while representing themselves as nominal nonprofit or public institutions, covert for-profits are having their cake and eating it too.

The next covert for-profit expected to be finalized soon is Purdue University Global (PUG), which is the new name for the online operations of the predatory for-profit Kaplan University. While claiming to be a "public" entity, this joint venture between Purdue and investor-owned Kaplan will not be governed or financially backed by the state of Indiana. Rather, PUG's operations and finances will operate in secret, just like at a private company. Moreover, Kaplan officials have already promised that as between for-profit Kaplan and "public" PUG, "[t]he only difference will be the school's name on the diploma."[8]

Excluding such programs from disclosure requirements would leave a loophole for unscrupulous institutions to exploit. To prevent this outcome, states can monitor the emergence of "covert" for-profits. For example, states can inquire:

- **For colleges claiming to be "public":**
    - Is the school subject to oversight and control by legislators and/or other public officials who are ultimately democratically accountable?
    - Is the school must be backed by the full faith and credit of the state to the full extent of potential liabilities in the case of institutional closure or violations of state or federal laws of general application, including consumer protection laws?
- **For colleges claiming to be "nonprofit":**
    - Does the home state have a system to assure that the college's assets are fully committed to educational and charitable purposes?
    - Does the home state have a system to assure that the college's finances (pricing, aid, and spending decisions) are under the full control of a financially disinterested board?

Hawaii can also take steps to ensure that its own public and nonprofit colleges meet these standards.

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[8] Harrad is quoted as saying of Kaplan that "The students in these schools—including the military students and veterans and their spouses—they will continue in the same programs, in the same courses earning the same degrees with the same instructors as they have now." Natalie Gross, "Purdue University acquires Kaplan, a popular vet destination," Military Times, April 28, 2017, https://www.militarytimes.com/education-transition/education/2017/04/28/purdue-university-acquires-kaplan-a-popular-vet-destination/.

Additional ideas for student protections and oversight of for-profit colleges are detailed in "Encouraging Innovation & Preventing Abuse in For-Profit Higher Education: A 2018 Toolkit for State Policy Makers," a report jointly produced by The Century Foundation and The Institute for College Access & Success.[9] Suggestions include:

- Implement Accountability Standards for State Financial Aid or Other Government Support
- Use a Market-Value Test to Protect Students and Taxpayers
- Protect Students with Tuition Recovery Funds
- Don't Let Schools Deny Students Access to Justice
- Ensure career-ready education programs.
- Ban Commission-Paid Sales in College Advising.
- Set Minimum Standards for Online-Only For-Profit Schools.
- No Taxpayer Funds for Advertising, Marketing, and Recruiting.

Thank you for your consideration of this testimony. Questions and comments about this information can be directed to:

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212-452-7705
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[9] See https://tcf.org/content/report/encouraging-innovation-preventing-abuses.