

2 SHB 2671 - S AMD

3 By Senators Saling, Jesernig, Pattersonm, Stratton, Bluechel and
4 Bauer

5

6 On page 2, after line 27, insert the following:

7 "Sec. 2. RCW 28C.10.020 and 1991 c 238 s 81 are each amended to
8 read as follows:

9 Unless the context clearly requires otherwise, the definitions in
10 this section apply throughout this chapter.

11 (1) "Agency" means the work force training and education
12 coordinating board (~~(or its successor)~~).

13 (2) "Agent" means a person owning an interest in, employed by, or
14 representing for remuneration a private vocational school within or
15 without this state, who enrolls or personally attempts to secure the
16 enrollment in a private vocational school of a resident of this state,
17 offers to award educational credentials for remuneration on behalf of
18 a private vocational school, or holds himself or herself out to
19 residents of this state as representing a private vocational school for
20 any of these purposes.

21 (3) "Degree" means any designation, appellation, letters, or words
22 including but not limited to "associate," "bachelor," "master,"
23 "doctor," or "fellow" which signify or purport to signify satisfactory
24 completion of an academic program of study beyond the secondary school
25 level.

26 (4) "Education" includes but is not limited to, any class, course,
27 or program of training, instruction, or study.

28 (5) "Educational credentials" means degrees, diplomas,
29 certificates, transcripts, reports, documents, or letters of

1 designation, marks, appellations, series of letters, numbers, or words
2 which signify or appear to signify enrollment, attendance, progress, or
3 satisfactory completion of the requirements or prerequisites for any
4 educational program.

5 (6) "Entity" includes, but is not limited to, a person, company,
6 firm, society, association, partnership, corporation, or trust.

7 (7) "Private vocational school" means any location where (~~{there~~
8 ~~is}~~) there is an entity offering postsecondary education in any form
9 or manner for the purpose of instructing, training, or preparing
10 persons for any vocation or profession.

11 (8) "To grant" includes to award, issue, sell, confer, bestow, or
12 give.

13 (9) "To offer" includes, in addition to its usual meanings, to
14 advertise or publicize. "To offer" also means to solicit or encourage
15 any person, directly or indirectly, to perform the act described.

16 (10) "To operate" means to establish, keep, or maintain any
17 facility or location where, from, or through which education is offered
18 or educational credentials are offered or granted to residents of this
19 state, and includes contracting for the performance of any such act."

20 "**Sec. 3.** RCW 28C.10.070 and 1986 c 299 s 7 are each amended to
21 read as follows:

22 The agency shall establish fees by rule at a level necessary to
23 approximately recover the staffing costs incurred in administering this
24 chapter. All fees collected under this section shall be deposited in
25 the (~~state general fund~~) private vocational school account created in
26 section 6 of this act for the support of staffing costs incurred in
27 administering this chapter."

1 **"Sec. 4.** RCW 28C.10.084 and 1990 c 188 s 8 are each amended to
2 read as follows:

3 (1) The agency shall establish, maintain, and administer a tuition
4 recovery fund. All funds collected for the tuition recovery fund are
5 payable to the state for the benefit and protection of any student or
6 enrollee of a private vocational school licensed under this chapter,
7 or, in the case of a minor, his or her parents or guardian, for
8 purposes including but not limited to the settlement of claims
9 (~~procedures~~) related to school closures under subsection (9) of this
10 section and the settlement of complaints under RCW 28C.10.120. The
11 fund shall be liable for settlement of claims and costs of
12 administration but shall not be liable to pay out or recover penalties
13 assessed under RCW 28C.10.130 or 28C.10.140. No liability accrues to
14 the state of Washington from claims made against the fund.

15 (2) To be and remain licensed under this chapter each entity shall,
16 in addition to other requirements under this chapter, make cash
17 deposits into a tuition recovery fund as a means to assure payment of
18 claims brought under this chapter. The fund shall (~~be initially~~
19 ~~capitalized at two hundred thousand dollars and shall~~) achieve an
20 operating balance of at least one million dollars within (~~five~~) ten
21 years after May 18, 1987, as required under subsection (5) of this
22 section.

23 (3) The amount of liability that can be satisfied by this fund on
24 behalf of each individual entity licensed under this chapter shall be
25 established by the agency, based on an incremental scale that
26 recognizes the average amount of unearned prepaid tuition in possession
27 of the entity. However, the minimum amount of liability for any entity
28 shall not be less than five thousand dollars (~~and the maximum amount~~
29 ~~shall not exceed two hundred thousand dollars. Such limitation on each~~
30 ~~entity's liability remains unchanged by single or cumulative~~

1 ~~disbursements made on behalf of the entity~~). The upper limit of
2 liability is reestablished (~~following the settlement of any claim~~)
3 after any disbursements are made to settle an individual claim or class
4 of claims.

5 (4) (~~Within sixty days after any entity deposits its initial~~
6 ~~contribution into the fund, the agency shall release whatever surety~~
7 ~~such entity had previously filed. Thereupon, the tuition recovery fund~~
8 ~~shall be liable for a period of one year following the date such surety~~
9 ~~is released with respect to prior claims against the surety. However,~~
10 ~~the liability of the fund is limited to the amount of and subject to~~
11 ~~the defenses of that released surety as though it had remained on file~~
12 ~~with the agency.~~) The fund's liability with respect to each
13 participating entity (~~that makes an~~) commences on the date of its
14 initial deposit into the fund (~~commences on that date~~) and ceases one
15 year from the date it is no longer licensed under this chapter.

16 (5) The agency shall adopt by rule a matrix for calculating the
17 deposits into the fund required of each entity. Proration shall be
18 determined by factoring the entity's share of liability in proportion
19 to the aggregated liability of all participants under the fund by
20 grouping such prorations under the incremental scale created (~~in~~) by
21 subsection (3) of this section. Expressed as a percentage of the total
22 liability, that figure determines the amount to be contributed when
23 factored into a fund containing one million dollars. The total amount
24 of its prorated share, minus the amount paid for initial
25 capitalization, shall be payable in (~~ten~~) twenty equal increments
26 over a (~~five~~) ten-year period, commencing with the sixth month after
27 (~~May 18, 1987~~) the entity makes its initial capitalization deposit.
28 Additionally, the agency shall require deposits for initial
29 capitalization, under which the amount each entity deposits is
30 proportionate to its share of two hundred thousand dollars, employing

1 the matrix developed under this subsection. The amount thus
2 established shall be deposited (~~by each licensee of record, within~~
3 ~~thirty days after May 18, 1987, and a like amount shall be deposited~~)
4 by each (~~subsequent~~) applicant for initial licensing before the
5 issuance of such license.

6 (6) No vested right or interests in deposited funds is created or
7 implied for the depositor, either at any time during the operation of
8 the fund or at any such future time that the fund may be dissolved.
9 All funds deposited are payable to the state for the purposes described
10 under this section. The agency shall maintain the fund, (~~collect~~
11 ~~deposits when due by serving~~) serve appropriate notices to affected
12 entities when scheduled deposits are due, collect deposits, and make
13 disbursements to settle claims against the fund. When the (~~deposits~~
14 ~~total~~) operating balance exceeds five million dollars and the history
15 of disbursements (~~so warrants~~) justifies such modifications, the
16 agency may at its own option reduce the schedule of deposits whether as
17 to time, amount, or both(~~. When such level is achieved,~~) and the
18 agency may also entertain proposals from among the licensees with
19 regard to disbursing surplus funds for such purposes as vocational
20 scholarships.

21 (7) (~~The agency shall make determinations~~) Based on annual
22 financial data supplied by the entity the agency shall determine
23 whether the increment assigned to that entity on the incremental scale
24 established under subsection (5) of this section has changed. If an
25 increase or decrease in gross annual tuition income has occurred, a
26 corresponding change in its incremental position and contribution
27 schedule shall be made before the date of its next scheduled deposit
28 into the fund. Such adjustments shall only be calculated and applied
29 annually.

1 (8) No deposits made into the fund by an entity are transferable.
2 If (~~fifty one percent or more of~~) the majority ownership interest in
3 an entity is conveyed through sale or other means into different
4 ownership, (~~the contribution schedule of the prior owner is~~
5 ~~anceled.~~) all contributions made to the date of transfer accrue to
6 the fund. The new owner commences contributions under provisions
7 applying to a new applicant.

8 (9) To settle complaints adjudicated under RCW 28C.10.120 and
9 claims resulting when a private vocational school ceases to provide
10 educational services, the agency may make disbursements from the fund.
11 Students enrolled under a training contract executed between a school
12 and a public or private agency or business are not eligible to make a
13 claim against the fund. In addition to the processes described for
14 making reimbursements related to complaints under RCW 28C.10.120 (~~for~~
15 ~~handling complaints~~), the following (~~additional~~) procedures are
16 established to deal with reimbursements related to school closures:

17 (a) The agency shall attempt to notify all potential claimants.
18 The (~~absence~~) unavailability of records and other circumstances
19 surrounding a school closure may make it impossible or unreasonable for
20 the agency to ascertain the names and whereabouts of each potential
21 claimant but the agency shall make reasonable inquiries to secure that
22 information from all likely sources. The agency shall then proceed to
23 settle the claims on the basis of information in its possession. The
24 agency is not responsible or liable for claims or for handling claims
25 that may subsequently appear or be discovered.

26 (b) Thirty days after identified potential claimants have been
27 notified, if a claimant refuses or neglects to file a claim
28 verification as requested in such notice, the agency shall be relieved
29 of further duty or action on behalf of the claimant under this chapter.

1 (c) After verification and review, the agency may disburse funds
2 from the tuition recovery fund to settle or compromise the claims.
3 However, the liability of the fund for claims against the closed entity
4 shall not exceed (~~that total amount of the contribution schedule~~) the
5 maximum amount of liability assigned to that entity under subsection
6 (5) of this section.

7 (~~(d)~~) (10) In the instance of claims against a closed school, the
8 agency shall seek to recover such disbursed funds from the assets of
9 the defaulted entity, including but not limited to asserting claims as
10 a creditor in bankruptcy proceedings.

11 (~~(10)~~) (11) When funds are disbursed to settle claims against a
12 current licensee, the agency shall make demand upon the licensee for
13 recovery. The agency shall adopt schedules of times and amounts
14 (~~acceptable~~) for effecting recoveries. An entity's failure to
15 perform subjects its license to suspension or revocation under RCW
16 28C.10.050 in addition to any other available remedies.

17 (~~(11)~~) (12) A minimum operating balance of two hundred thousand
18 dollars shall be maintained in the fund during the first five years of
19 operation. A minimum operating balance of one million dollars shall be
20 achieved by May 1997, and maintained thereafter. If disbursements
21 reduce the operating balance below two hundred thousand dollars at any
22 time before May 1997, or below one million dollars thereafter, each
23 participating entity shall be assessed a prorata share of the
24 deficiency created, based upon the incremental scale created under
25 subsection (5) of this section. The agency shall (~~promptly~~) adopt
26 schedules of times and amounts acceptable for affecting payments of
27 assessments."

28 "Sec. 5. RCW 28C.10.120 and 1990 c 188 s 10 are each amended to
29 read as follows:

1 (1) Complaints may be filed under this chapter only by a person or
2 persons claiming loss of tuition or fees as a result of an unfair
3 business practice (~~may file a complaint with the agency~~). The
4 complaint shall set forth the alleged violation and shall contain
5 information required by the agency on forms provided for that purpose.
6 A complaint may also be filed with the agency by an authorized staff
7 member of the agency or by the attorney general.

8 (2) The agency shall investigate any complaint under this section
9 and (~~may~~) shall first attempt to bring about a negotiated settlement.
10 The agency director or the director's designee may (~~hold a hearing~~
11 ~~pursuant to the Administrative Procedure Act, chapter 34.05 RCW,~~)
12 conduct an informal hearing with the affected parties in order to
13 determine whether a violation has occurred.

14 (3) If(~~, after the hearing,~~) the agency finds that the private
15 vocational school or its agent engaged in or is engaging in any unfair
16 business practice, the agency shall issue and cause to be served upon
17 the violator an order requiring the violator to cease and desist from
18 the act or practice and may impose the penalties provided under RCW
19 28C.10.130. If the agency finds that the complainant has suffered loss
20 as a result of the act or practice, the agency may order the violator
21 to pay full or partial restitution (~~for the loss~~) of any amounts
22 lost. The loss may include any money paid for tuition, required or
23 recommended course materials, and any reasonable living expenses
24 incurred by the complainant during the time the complainant was
25 enrolled at the school.

26 (4) The complainant is not bound by the agency's determination of
27 restitution. The complainant may reject that determination and may
28 pursue any other legal remedy.

29 (~~(4)~~) (5) The violator may, within twenty days of being served
30 any order described under subsection (3) of this section, file an

1 appeal under the administrative procedure act, chapter 34.05 RCW.
2 Timely filing stays the agency's order during the pendency of the
3 appeal. If the agency prevails (~~((in any administrative hearing))~~), the
4 (~~((private vocational school))~~) appellant shall pay the costs of the
5 administrative hearing."

6 "NEW SECTION. Sec. 6. A new section is added to chapter 28C.10
7 RCW to read as follows:

8 The private vocational school account is created in the custody of
9 the state treasurer. All receipts from fees collected under RCW
10 28C.10.070 shall be deposited into the account. Expenditures from the
11 account may be used only for staffing costs incurred in administering
12 chapter 28C.10 RCW. Only the director of the work force training and
13 education coordinating board or the director's designee may authorize
14 expenditures from the account. Moneys in the account may be spent only
15 after appropriation."

16 "NEW SECTION. Sec. 7. RCW 28C.10.910 and 1986 c 299 s 28 are
17 each repealed."

18 **SHB 2671** - S AMD
19 By Senators Saling, Jesernig, Patterson, Stratton, Bluechel and
20 Bauer

21
22 On page 1, line 1 of the title, after "education;" strike the
23 remainder of the title and insert "amending RCW 28C.10.020, 28C.10.070,
24 28C.10.084, and 28C.10.120; adding a new section to chapter 28B.10 RCW;
25 adding a new section to chapter 28C.10 RCW; and repealing RCW
26 28C.10.910."