

2 **ESHB 1369** - S COMM AMD  
3 By Committee on Higher Education

4

5 Strike everything after the enacting clause and insert the  
6 following:

7 "Sec. 1. 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  
30 designation, marks, appellations, series of letters, numbers, or words  
31 which signify or appear to signify enrollment, attendance, progress, or  
32 satisfactory completion of the requirements or prerequisites for any  
33 educational program.

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

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

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

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

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

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

16 (1) The agency shall establish, maintain, and administer a tuition  
17 recovery trust fund. All funds collected for the tuition recovery  
18 trust fund are payable to the state for the benefit and protection of  
19 any student or enrollee of a private vocational school licensed under  
20 this chapter, or, in the case of a minor, his or her parents or  
21 guardian, for purposes including but not limited to the settlement of  
22 claims (~~{procedures}~~) related to school closures under subsection  
23 (~~{(9)}~~) (10) of this section and the settlement of claims under RCW  
24 28C.10.120. The fund shall be liable for settlement of claims and  
25 costs of administration but shall not be liable to pay out or recover  
26 penalties assessed under RCW 28C.10.130 or 28C.10.140. No liability  
27 accrues to the state of Washington from claims made against the fund.

28 (2) By June 30, 1998, a minimum operating balance of one million  
29 dollars shall be achieved in the fund and maintained thereafter. If  
30 disbursements reduce the operating balance below two hundred thousand  
31 dollars at any time before June 30, 1998, or below one million dollars  
32 thereafter, each participating entity shall be assessed a pro rata  
33 share of the deficiency created, based upon the incremental scale  
34 created under subsection (6) of this section. The agency shall adopt  
35 schedules of times and amounts for effecting payments of assessment.

36 (3) To be and remain licensed under this chapter each entity shall,  
37 in addition to other requirements under this chapter, make cash  
38 deposits into a tuition recovery trust fund as a means to assure

1 payment of claims brought under this chapter. ~~((The fund shall be~~  
2 ~~initially capitalized at two hundred thousand dollars and shall achieve~~  
3 ~~an operating balance of at least one million dollars within five years~~  
4 ~~after May 18, 1987, as required under subsection (5) of this section.~~

5 ~~(3))~~ (4) The amount of liability that can be satisfied by this  
6 fund on behalf of each individual entity licensed under this chapter  
7 shall be established by the agency, based on an incremental scale that  
8 recognizes the average amount of unearned prepaid tuition in possession  
9 of the entity. However, the minimum amount of liability for any entity  
10 shall not be less than five thousand dollars ~~((and the maximum amount~~  
11 ~~shall not exceed two hundred thousand dollars. Such limitation on each~~  
12 ~~entity's liability remains unchanged by single or cumulative~~  
13 ~~disbursements made on behalf of the entity)).~~ The upper limit of  
14 liability is reestablished ~~((following the settlement of any claim))~~  
15 after any disbursements are made to settle an individual claim or class  
16 of claims.

17 ~~((4) Within sixty days after any entity deposits its initial~~  
18 ~~contribution into the fund, the agency shall release whatever surety~~  
19 ~~such entity had previously filed. Thereupon, the tuition recovery fund~~  
20 ~~shall be liable for a period of one year following the date such surety~~  
21 ~~is released with respect to prior claims against the surety. However,~~  
22 ~~the liability of the fund is limited to the amount of and subject to~~  
23 ~~the defenses of that released surety as though it had remained on file~~  
24 ~~with the agency.))~~

(5) The fund's liability with respect to each  
25 participating entity ((that makes an)) commences on the date of its  
26 initial deposit into the fund ((commences on that date)) and ceases one  
27 year from the date it is no longer licensed under this chapter.

28 ~~((5))~~ (6) The agency shall adopt by rule a matrix for calculating  
29 the deposits into the fund required of each entity. Proration shall be  
30 determined by factoring the entity's share of liability in proportion  
31 to the aggregated liability of all participants under the fund by  
32 grouping such prorations under the incremental scale created ~~((in))~~ by  
33 subsection ((3)) (4) of this section. Expressed as a percentage of  
34 the total liability, that figure determines the amount to be  
35 contributed when factored into a fund containing one million dollars.  
36 The total amount of its prorated share, minus the amount paid for  
37 initial capitalization, shall be payable in ~~((ten equal))~~ up to twenty  
38 increments over a ((five)) ten-year period, commencing with the sixth  
39 month after ((May 18, 1987)) the entity makes its initial

1 capitalization deposit. Additionally, the agency shall require  
2 deposits for initial capitalization, under which the amount each entity  
3 deposits is proportionate to its share of two hundred thousand dollars,  
4 employing the matrix developed under this subsection. The amount thus  
5 established shall be deposited (~~((by each licensee of record, within~~  
6 ~~thirty days after May 18, 1987, and a like amount shall be deposited))~~)  
7 by each (~~((subsequent))~~) applicant for initial licensing before the  
8 issuance of such license.

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

24 (~~((+7) The agency shall make determinations))~~) (8) Based on annual  
25 financial data supplied by the entity the agency shall determine  
26 whether the increment assigned to that entity on the incremental scale  
27 established under subsection (~~((+5+))~~) (6) of this section has changed.  
28 If an increase or decrease in gross annual tuition income has occurred,  
29 a corresponding change in its incremental position and contribution  
30 schedule shall be made before the date of its next scheduled deposit  
31 into the fund. Such adjustments shall only be calculated and applied  
32 annually.

33 (~~((+8+))~~) (9) No deposits made into the fund by an entity are  
34 transferable. If (~~((fifty one percent or more of))~~) the majority  
35 ownership interest in an entity is conveyed through sale or other means  
36 into different ownership, (~~((the contribution schedule of the prior~~  
37 ~~owner is canceled.))~~) all contributions made to the date of transfer  
38 accrue to the fund. The new owner commences contributions under  
39 provisions applying to a new applicant.

1       (~~(9)~~) (10) To settle (~~(complaints)~~) claims adjudicated under RCW  
2 28C.10.120 and claims resulting when a private vocational school ceases  
3 to provide educational services, the agency may make disbursements from  
4 the fund. Students enrolled under a training contract executed between  
5 a school and a public or private agency or business are not eligible to  
6 make a claim against the fund. In addition to the processes described  
7 for making reimbursements related to claims under RCW 28C.10.120 (~~(for~~  
8 ~~handling complaints)~~), the following (~~(additional)~~) procedures are  
9 established to deal with reimbursements related to school closures:

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

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

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

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

33       (~~(10)~~) (11) When funds are disbursed to settle claims against a  
34 current licensee, the agency shall make demand upon the licensee for  
35 recovery. The agency shall adopt schedules of times and amounts  
36 (~~(acceptable)~~) for effecting recoveries. An entity's failure to  
37 perform subjects its license to suspension or revocation under RCW  
38 28C.10.050 in addition to any other available remedies.

1       (~~((11) A minimum operating balance of two hundred thousand dollars~~  
2 ~~shall be maintained in the fund. If disbursements reduce the balance~~  
3 ~~below two hundred thousand dollars, each participating entity shall be~~  
4 ~~assessed a pro rata share of the deficiency created, based upon the~~  
5 ~~incremental scale created under subsection (5) of this section. The~~  
6 ~~agency shall promptly adopt schedules of times and amounts acceptable~~  
7 ~~for affecting payments of assessments.))~~)

8       **Sec. 3.** RCW 28C.10.120 and 1990 c 188 s 10 are each amended to  
9 read as follows:

10       (1) Complaints may be filed under this chapter only by a person  
11 claiming loss of tuition or fees as a result of an unfair business  
12 practice ((may file a complaint with the agency)). The complaint shall  
13 set forth the alleged violation and shall contain information required  
14 by the agency on forms provided for that purpose. A complaint may also  
15 be filed with the agency by an authorized staff member of the agency or  
16 by the attorney general.

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

23       (3) If, after the hearing, the agency finds that the private  
24 vocational school or its agent engaged in or is engaging in any unfair  
25 business practice, the agency shall issue and cause to be served upon  
26 the violator an order requiring the violator to cease and desist from  
27 the act or practice and may impose the penalties provided under RCW  
28 28C.10.130. If the agency finds that the complainant has suffered loss  
29 as a result of the act or practice, the agency may order the violator  
30 to pay full or partial restitution ((for the loss)) of any justified  
31 losses. The losses claimed may include any money paid for tuition,  
32 purchases of required or recommended course materials, and any  
33 reasonable costs incurred by the complainant during the time he or she  
34 was attending the school and that can be directly attributed to excess  
35 living costs, child care, and transportation.

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

1        ~~((4))~~ (5) The violator may, within twenty days of being served  
2 any order described under subsection (3) of this section, file an  
3 appeal under the administrative procedure act, chapter 34.05 RCW.  
4 Timely filing stays the agency's order during the pendency of the  
5 appeal. If the agency prevails (~~in any administrative hearing~~), the  
6 (~~private vocational school~~) appellant shall pay the costs of the  
7 administrative hearing.

8        **Sec. 4.** RCW 43.84.092 and 1992 c 235 s 4 are each amended to read  
9 as follows:

10        (1) All earnings of investments of surplus balances in the state  
11 treasury shall be deposited to the treasury income account, which  
12 account is hereby established in the state treasury.

13        (2) Monthly, the state treasurer shall distribute the earnings  
14 credited to the treasury income account. The state treasurer shall  
15 credit the general fund with all the earnings credited to the treasury  
16 income account except:

17        (a) The following accounts and funds shall receive their  
18 proportionate share of earnings based upon each account's and fund's  
19 average daily balance for the period: The capitol building  
20 construction account, the Cedar River channel construction and  
21 operation account, the Central Washington University capital projects  
22 account, the charitable, educational, penal and reformatory  
23 institutions account, the common school construction fund, the county  
24 criminal justice assistance account, the county sales and use tax  
25 equalization account, the data processing building construction  
26 account, the deferred compensation administrative account, the deferred  
27 compensation principal account, the department of retirement systems  
28 expense account, the Eastern Washington University capital projects  
29 account, the federal forest revolving account, the industrial insurance  
30 premium refund account, the judges' retirement account, the judicial  
31 retirement administrative account, the judicial retirement principal  
32 account, the local leasehold excise tax account, the local sales and  
33 use tax account, the medical aid account, the municipal criminal  
34 justice assistance account, the municipal sales and use tax  
35 equalization account, the natural resources deposit account, the  
36 perpetual surveillance and maintenance account, the public employees'  
37 retirement system plan I account, the public employees' retirement  
38 system plan II account, the Puyallup tribal settlement account, the

1 resource management cost account, the site closure account, the special  
2 wildlife account, the state employees' insurance account, the state  
3 employees' insurance reserve account, the state investment board  
4 expense account, the state investment board commingled trust fund  
5 accounts, the supplemental pension account, the teachers' retirement  
6 system plan I account, the teachers' retirement system plan II account,  
7 the tuition recovery trust fund, the University of Washington bond  
8 retirement fund, the University of Washington building account, the  
9 volunteer fire fighters' relief and pension principal account, the  
10 volunteer fire fighters' relief and pension administrative account, the  
11 Washington judicial retirement system account, the Washington law  
12 enforcement officers' and fire fighters' system plan I retirement  
13 account, the Washington law enforcement officers' and fire fighters'  
14 system plan II retirement account, the Washington state patrol  
15 retirement account, the Washington State University building account,  
16 the Washington State University bond retirement fund, and the Western  
17 Washington University capital projects account. Earnings derived from  
18 investing balances of the agricultural permanent fund, the normal  
19 school permanent fund, the permanent common school fund, the scientific  
20 permanent fund, and the state university permanent fund shall be  
21 allocated to their respective beneficiary accounts. All earnings to be  
22 distributed under this subsection (2)(a) shall first be reduced by the  
23 allocation to the state treasurer's service fund pursuant to RCW  
24 43.08.190.

25 (b) The following accounts and funds shall receive eighty percent  
26 of their proportionate share of earnings based upon each account's or  
27 fund's average daily balance for the period: The central Puget Sound  
28 public transportation account, the city hardship assistance account,  
29 the county arterial preservation account, the economic development  
30 account, the essential rail assistance account, the essential rail  
31 banking account, the ferry bond retirement fund, the grade crossing  
32 protective fund, the high capacity transportation account, the highway  
33 bond retirement fund, the highway construction stabilization account,  
34 the highway safety account, the motor vehicle fund, the motorcycle  
35 safety education account, the pilotage account, the public  
36 transportation systems account, the Puget Sound capital construction  
37 account, the Puget Sound ferry operations account, the recreational  
38 vehicle account, the rural arterial trust account, the special category  
39 C account, the state patrol highway account, the transfer relief



1 account, the transportation capital facilities account, the  
2 transportation equipment fund, the transportation fund, the  
3 transportation improvement account, and the urban arterial trust  
4 account.

5 (3) In conformance with Article II, section 37 of the state  
6 Constitution, no treasury accounts or funds shall be allocated earnings  
7 without the specific affirmative directive of this section.

8 NEW SECTION. **Sec. 5.** RCW 28C.10.910 and 1986 c 299 s 28 are each  
9 repealed."

10 **ESHB 1369** - S COMM AMD  
11 By Committee on Higher Education

12  
13 On page 1, line 1 of the title, after "education;" strike the  
14 remainder of the title and insert "amending RCW 28C.10.020, 28C.10.084,  
15 28C.10.120, and 43.84.092; and repealing RCW 28C.10.910."

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