
HOUSE BILL 1369

State of Washington

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By Representatives Jacobsen, Brumsickle, Quall, Pruitt, Wood, Basich, G. Cole, Carlson, Orr, Bray, Rayburn, Finkbeiner, Flemming, Kessler, J. Kohl, Shin, Campbell, Lemmon, Johanson, Jones and L. Johnson

Read first time 01/25/93. Referred to Committee on Higher Education.

1 AN ACT Relating to vocational education; amending RCW 28C.10.020,
2 28C.10.070, 28C.10.084, and 28C.10.120; adding a new section to chapter
3 28C.10 RCW; and repealing RCW 28C.10.910.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 28C.10.020 and 1991 c 238 s 81 are each amended to
6 read as follows:

7 Unless the context clearly requires otherwise, the definitions in
8 this section apply throughout this chapter.

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

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

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

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

8 (5) "Educational credentials" means degrees, diplomas,
9 certificates, transcripts, reports, documents, or letters of
10 designation, marks, appellations, series of letters, numbers, or words
11 which signify or appear to signify enrollment, attendance, progress, or
12 satisfactory completion of the requirements or prerequisites for any
13 educational program.

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

16 (7) "Private vocational school" means any location where ((~~there~~
17 ~~is~~)) there is an entity offering postsecondary education in any form
18 or manner for the purpose of instructing, training, or preparing
19 persons for any vocation or profession.

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

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

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

29 **Sec. 2.** RCW 28C.10.070 and 1986 c 299 s 7 are each amended to read
30 as follows:

31 The agency shall establish fees by rule at a level necessary to
32 approximately recover the staffing costs incurred in administering this
33 chapter. All fees collected under this section shall be deposited in
34 the ((~~state general fund~~)) private vocational school account created in
35 section 5 of this act for the support of staffing costs incurred in
36 administering this chapter.

1 **Sec. 3.** RCW 28C.10.084 and 1990 c 188 s 8 are each amended to read
2 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~~
31 ~~disbursements made on behalf of the entity)). The upper limit of~~
32 liability is reestablished (~~following the settlement of any claim~~)
33 after any disbursements are made to settle an individual claim or class
34 of claims.

35 (4) (~~Within sixty days after any entity deposits its initial~~
36 ~~contribution into the fund, the agency shall release whatever surety~~
37 ~~such entity had previously filed. Thereupon, the tuition recovery fund~~
38 ~~shall be liable for a period of one year following the date such surety~~
39 ~~is released with respect to prior claims against the surety. However,~~

1 ~~the liability of the fund is limited to the amount of and subject to~~
2 ~~the defenses of that released surety as though it had remained on file~~
3 ~~with the agency.))~~ The fund's liability with respect to each
4 participating entity ~~((that makes an))~~ commences on the date of its
5 initial deposit into the fund ~~((commences on that date))~~ and ceases one
6 year from the date it is no longer licensed under this chapter.

7 (5) The agency shall adopt by rule a matrix for calculating the
8 deposits into the fund required of each entity. Proration shall be
9 determined by factoring the entity's share of liability in proportion
10 to the aggregated liability of all participants under the fund by
11 grouping such prorations under the incremental scale created ~~((in))~~ by
12 subsection (3) of this section. Expressed as a percentage of the total
13 liability, that figure determines the amount to be contributed when
14 factored into a fund containing one million dollars. The total amount
15 of its prorated share, minus the amount paid for initial
16 capitalization, shall be payable in ~~((ten))~~ twenty equal increments
17 over a ~~((five))~~ ten-year period, commencing with the sixth month after
18 ~~((May 18, 1987))~~ the entity makes its initial capitalization deposit.
19 Additionally, the agency shall require deposits for initial
20 capitalization, under which the amount each entity deposits is
21 proportionate to its share of two hundred thousand dollars, employing
22 the matrix developed under this subsection. The amount thus
23 established shall be deposited ~~((by each licensee of record, within~~
24 ~~thirty days after May 18, 1987, and a like amount shall be deposited))~~
25 by each ~~((subsequent))~~ applicant for initial licensing before the
26 issuance of such license.

27 (6) No vested right or interests in deposited funds is created or
28 implied for the depositor, either at any time during the operation of
29 the fund or at any such future time that the fund may be dissolved.
30 All funds deposited are payable to the state for the purposes described
31 under this section. The agency shall maintain the fund, ~~((collect~~
32 ~~deposits when due by serving))~~ serve appropriate notices to affected
33 entities when scheduled deposits are due, collect deposits, and make
34 disbursements to settle claims against the fund. When the aggregated
35 deposits total five million dollars and the history of disbursements
36 ~~((so warrants))~~ justifies such modifications, the agency may at its own
37 option reduce the schedule of deposits whether as to time, amount, or
38 both~~((. — When such level is achieved,))~~ and the agency may also

1 entertain proposals from among the licensees with regard to disbursing
2 surplus funds for such purposes as vocational scholarships.

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

12 (8) No deposits made into the fund by an entity are transferable.
13 If ~~((fifty one percent or more of))~~ the majority ownership interest in
14 an entity is conveyed through sale or other means into different
15 ownership, ~~((the contribution schedule of the prior owner is~~
16 ~~anceled.))~~ all contributions made to the date of transfer accrue to
17 the fund. The new owner commences contributions under provisions
18 applying to a new applicant.

19 (9) To settle complaints adjudicated under RCW 28C.10.120 and
20 claims resulting when a private vocational school ceases to provide
21 educational services, the agency may make disbursements from the fund.
22 Students enrolled under a training contract executed between a school
23 and a public or private agency or business are not eligible to make a
24 claim against the fund. In addition to the processes described for
25 making reimbursements related to complaints under RCW 28C.10.120 ~~((for~~
26 ~~handling complaints))~~, the following ~~((additional))~~ procedures are
27 established to deal with reimbursements related to school closures:

28 (a) The agency shall attempt to notify all potential claimants.
29 The ~~((absence))~~ unavailability of records and other circumstances
30 surrounding a school closure may make it impossible or unreasonable for
31 the agency to ascertain the names and whereabouts of each potential
32 claimant but the agency shall make reasonable inquiries to secure that
33 information from all likely sources. The agency shall then proceed to
34 settle the claims on the basis of information in its possession. The
35 agency is not responsible or liable for claims or for handling claims
36 that may subsequently appear or be discovered.

37 (b) Thirty days after identified potential claimants have been
38 notified, if a claimant refuses or neglects to file a claim

1 verification as requested in such notice, the agency shall be relieved
2 of further duty or action on behalf of the claimant under this chapter.

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

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

13 (~~(10)~~) (11) When funds are disbursed to settle claims against a
14 current licensee, the agency shall make demand upon the licensee for
15 recovery. The agency shall adopt schedules of times and amounts
16 (acceptable) for effecting recoveries. An entity's failure to
17 perform subjects its license to suspension or revocation under RCW
18 28C.10.050 in addition to any other available remedies.

19 (~~(11)~~) (12) A minimum operating balance of two hundred thousand
20 dollars shall be maintained in the fund during the first five years of
21 operation. A minimum operating balance of one million dollars shall be
22 achieved by May 1998, and maintained thereafter. If disbursements
23 reduce the operating balance below two hundred thousand dollars at any
24 time before May 1998, or below one million dollars thereafter, each
25 participating entity shall be assessed a pro rata share of the
26 deficiency created, based upon the incremental scale created under
27 subsection (5) of this section. The agency shall (~~promptly~~) adopt
28 schedules of times and amounts acceptable for affecting payments of
29 assessments.

30 **Sec. 4.** RCW 28C.10.120 and 1990 c 188 s 10 are each amended to
31 read as follows:

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

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

7 (3) If~~((, after the hearing,))~~ the agency finds that the private
8 vocational school or its agent engaged in or is engaging in any unfair
9 business practice, the agency shall issue and cause to be served upon
10 the violator an order requiring the violator to cease and desist from
11 the act or practice and may impose the penalties provided under RCW
12 28C.10.130. If the agency finds that the complainant has suffered loss
13 as a result of the act or practice, the agency may order the violator
14 to pay full or partial restitution ~~((for the loss))~~ of any amounts
15 lost. The loss may include any money paid for tuition, required or
16 recommended course materials, and any reasonable living expenses
17 incurred by the complainant during the time the complainant was
18 enrolled at the school.

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

22 ~~((+4))~~ (5) The violator may, within twenty days of being served
23 any order described under subsection (3) of this section, file an
24 appeal under the administrative procedure act, chapter 34.05 RCW.
25 Timely filing stays the agency's order during the pendency of the
26 appeal. If the agency prevails ~~((in any administrative hearing))~~, the
27 ~~((private vocational school))~~ appellant shall pay the costs of the
28 administrative hearing.

29 NEW SECTION. Sec. 5. A new section is added to chapter 28C.10 RCW
30 to read as follows:

31 The private vocational school account is created in the custody of
32 the state treasurer. All receipts from fees collected under RCW
33 28C.10.070 shall be deposited into the account. Expenditures from the
34 account may be used only for staffing costs incurred in administering
35 this chapter. Only the director of the work force training and
36 education coordinating board or the director's designee may authorize
37 expenditures from the account. Moneys in the account may be spent only
38 after appropriation.

1 NEW SECTION. **Sec. 6.** RCW 28C.10.910 and 1986 c 299 s 28 are each
2 repealed.

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