

CERTIFICATION OF ENROLLMENT

SENATE BILL 5828

53rd Legislature
1993 Regular Session

Passed by the Senate March 16, 1993
YEAS 45 NAYS 0

President of the Senate

Passed by the House April 22, 1993
YEAS 97 NAYS 0

**Speaker of the
House of Representatives**

Approved

CERTIFICATE

I, Marty Brown, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SENATE BILL 5828** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

Governor of the State of Washington

**Secretary of State
State of Washington**

SENATE BILL 5828

Passed Legislature - 1993 Regular Session

State of Washington 53rd Legislature 1993 Regular Session

By Senators Bauer, Prince, Sheldon and Wojahn

Read first time 02/16/93. Referred to Committee on Higher Education.

1 AN ACT Relating to vocational education; amending RCW 28C.10.020,
2 28C.10.084, 28C.10.120, and 43.84.092; and repealing RCW 28C.10.910.

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

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

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

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

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

18 (3) "Degree" means any designation, appellation, letters, or words
19 including but not limited to "associate," "bachelor," "master,"

1 "doctor," or "fellow" which signify or purport to signify satisfactory
2 completion of an academic program of study beyond the secondary school
3 level.

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

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

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

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

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

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

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

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

29 (1) The agency shall establish, maintain, and administer a tuition
30 recovery trust fund. All funds collected for the tuition recovery
31 trust fund are payable to the state for the benefit and protection of
32 any student or enrollee of a private vocational school licensed under
33 this chapter, or, in the case of a minor, his or her parents or
34 guardian, for purposes including but not limited to the settlement of
35 claims (~~{procedures}~~) related to school closures under subsection
36 (~~{(9)}~~) (10) of this section and the settlement of claims under RCW
37 28C.10.120. The fund shall be liable for settlement of claims and
38 costs of administration but shall not be liable to pay out or recover

1 penalties assessed under RCW 28C.10.130 or 28C.10.140. No liability
2 accrues to the state of Washington from claims made against the fund.

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

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

18 ~~(3))~~ (4) The amount of liability that can be satisfied by this
19 fund on behalf of each individual entity licensed under this chapter
20 shall be established by the agency, based on an incremental scale that
21 recognizes the average amount of unearned prepaid tuition in possession
22 of the entity. However, the minimum amount of liability for any entity
23 shall not be less than five thousand dollars ~~((and the maximum amount~~
24 ~~shall not exceed two hundred thousand dollars. Such limitation on each~~
25 ~~entity's liability remains unchanged by single or cumulative~~
26 ~~disbursements made on behalf of the entity)). The upper limit of~~
27 ~~liability is reestablished ((following the settlement of any claim))~~
28 after any disbursements are made to settle an individual claim or class
29 of claims.

30 ~~((4) Within sixty days after any entity deposits its initial~~
31 ~~contribution into the fund, the agency shall release whatever surety~~
32 ~~such entity had previously filed. Thereupon, the tuition recovery fund~~
33 ~~shall be liable for a period of one year following the date such surety~~
34 ~~is released with respect to prior claims against the surety. However,~~
35 ~~the liability of the fund is limited to the amount of and subject to~~
36 ~~the defenses of that released surety as though it had remained on file~~
37 ~~with the agency.)) (5) The fund's liability with respect to each~~
38 participating entity ((that makes an)) commences on the date of its

1 initial deposit into the fund (~~((commences on that date))~~) and ceases one
2 year from the date it is no longer licensed under this chapter.

3 ~~((+5))~~ (6) The agency shall adopt by rule a matrix for calculating
4 the deposits into the fund required of each entity. Proration shall be
5 determined by factoring the entity's share of liability in proportion
6 to the aggregated liability of all participants under the fund by
7 grouping such prorations under the incremental scale created (~~((in))~~) by
8 subsection ~~((+3))~~ (4) of this section. Expressed as a percentage of
9 the total liability, that figure determines the amount to be
10 contributed when factored into a fund containing one million dollars.
11 The total amount of its prorated share, minus the amount paid for
12 initial capitalization, shall be payable in ~~((ten equal))~~ up to twenty
13 increments over a ~~((five))~~ ten-year period, commencing with the sixth
14 month after ~~((May 18, 1987))~~ the entity makes its initial
15 capitalization deposit. Additionally, the agency shall require
16 deposits for initial capitalization, under which the amount each entity
17 deposits is proportionate to its share of two hundred thousand dollars,
18 employing the matrix developed under this subsection. The amount thus
19 established shall be deposited (~~((by each licensee of record, within~~
20 ~~thirty days after May 18, 1987, and a like amount shall be deposited))~~)
21 by each ~~((subsequent))~~ applicant for initial licensing before the
22 issuance of such license.

23 ~~((+6))~~ (7) No vested right or interests in deposited funds is
24 created or implied for the depositor, either at any time during the
25 operation of the fund or at any such future time that the fund may be
26 dissolved. All funds deposited are payable to the state for the
27 purposes described under this section. The agency shall maintain the
28 fund, (~~((collect deposits when due by serving))~~) serve appropriate
29 notices to affected entities when scheduled deposits are due, collect
30 deposits, and make disbursements to settle claims against the fund.
31 When the aggregated deposits total five million dollars and the history
32 of disbursements (~~((so warrants))~~) justifies such modifications, the
33 agency may at its own option reduce the schedule of deposits whether as
34 to time, amount, or both(~~((When such level is achieved,))~~) and the
35 agency may also entertain proposals from among the licensees with
36 regard to disbursing surplus funds for such purposes as vocational
37 scholarships.

38 ~~((+7) The agency shall make determinations))~~ (8) Based on annual
39 financial data supplied by the entity the agency shall determine

1 whether the increment assigned to that entity on the incremental scale
2 established under subsection ~~((+5))~~ (6) of this section has changed.
3 If an increase or decrease in gross annual tuition income has occurred,
4 a corresponding change in its incremental position and contribution
5 schedule shall be made before the date of its next scheduled deposit
6 into the fund. Such adjustments shall only be calculated and applied
7 annually.

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

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

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

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

37 (c) After verification and review, the agency may disburse funds
38 from the tuition recovery trust fund to settle or compromise the
39 claims. However, the liability of the fund for claims against the

1 closed entity shall not exceed (~~(that total amount of the contribution~~
2 ~~schedule))~~ the maximum amount of liability assigned to that entity
3 under subsection (~~((+5))~~) (6) of this section.

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

8 (~~((+10))~~) (11) When funds are disbursed to settle claims against a
9 current licensee, the agency shall make demand upon the licensee for
10 recovery. The agency shall adopt schedules of times and amounts
11 (~~(acceptable)~~) for effecting recoveries. An entity's failure to
12 perform subjects its license to suspension or revocation under RCW
13 28C.10.050 in addition to any other available remedies.

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

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

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

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

36 (3) If (~~(, after the hearing,))~~ the agency finds that the private
37 vocational school or its agent engaged in or is engaging in any unfair
38 business practice, the agency shall issue and cause to be served upon

1 the violator an order requiring the violator to cease and desist from
2 the act or practice and may impose the penalties provided under RCW
3 28C.10.130. If the agency finds that the complainant has suffered loss
4 as a result of the act or practice, the agency may order the violator
5 to pay full or partial restitution ((for the loss)) of any amounts
6 lost. The loss may include any money paid for tuition, required or
7 recommended course materials, and any reasonable living expenses
8 incurred by the complainant during the time the complainant was
9 enrolled at the school.

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

13 ((4)) (5) The violator may, within twenty days of being served
14 any order described under subsection (3) of this section, file an
15 appeal under the administrative procedure act, chapter 34.05 RCW.
16 Timely filing stays the agency's order during the pendency of the
17 appeal. If the agency prevails ((in any administrative hearing)), the
18 ((private vocational school)) appellant shall pay the costs of the
19 administrative hearing.

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

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

25 (2) Monthly, the state treasurer shall distribute the earnings
26 credited to the treasury income account. The state treasurer shall
27 credit the general fund with all the earnings credited to the treasury
28 income account except:

29 (a) The following accounts and funds shall receive their
30 proportionate share of earnings based upon each account's and fund's
31 average daily balance for the period: The capitol building
32 construction account, the Cedar River channel construction and
33 operation account, the Central Washington University capital projects
34 account, the charitable, educational, penal and reformatory
35 institutions account, the common school construction fund, the county
36 criminal justice assistance account, the county sales and use tax
37 equalization account, the data processing building construction
38 account, the deferred compensation administrative account, the deferred

1 compensation principal account, the department of retirement systems
2 expense account, the Eastern Washington University capital projects
3 account, the federal forest revolving account, the industrial insurance
4 premium refund account, the judges' retirement account, the judicial
5 retirement administrative account, the judicial retirement principal
6 account, the local leasehold excise tax account, the local sales and
7 use tax account, the medical aid account, the municipal criminal
8 justice assistance account, the municipal sales and use tax
9 equalization account, the natural resources deposit account, the
10 perpetual surveillance and maintenance account, the public employees'
11 retirement system plan I account, the public employees' retirement
12 system plan II account, the Puyallup tribal settlement account, the
13 resource management cost account, the site closure account, the special
14 wildlife account, the state employees' insurance account, the state
15 employees' insurance reserve account, the state investment board
16 expense account, the state investment board commingled trust fund
17 accounts, the supplemental pension account, the teachers' retirement
18 system plan I account, the teachers' retirement system plan II account,
19 the tuition recovery trust fund, the University of Washington bond
20 retirement fund, the University of Washington building account, the
21 volunteer fire fighters' relief and pension principal account, the
22 volunteer fire fighters' relief and pension administrative account, the
23 Washington judicial retirement system account, the Washington law
24 enforcement officers' and fire fighters' system plan I retirement
25 account, the Washington law enforcement officers' and fire fighters'
26 system plan II retirement account, the Washington state patrol
27 retirement account, the Washington State University building account,
28 the Washington State University bond retirement fund, and the Western
29 Washington University capital projects account. Earnings derived from
30 investing balances of the agricultural permanent fund, the normal
31 school permanent fund, the permanent common school fund, the scientific
32 permanent fund, and the state university permanent fund shall be
33 allocated to their respective beneficiary accounts. All earnings to be
34 distributed under this subsection (2)(a) shall first be reduced by the
35 allocation to the state treasurer's service fund pursuant to RCW
36 43.08.190.

37 (b) The following accounts and funds shall receive eighty percent
38 of their proportionate share of earnings based upon each account's or
39 fund's average daily balance for the period: The central Puget Sound

1 public transportation account, the city hardship assistance account,
2 the county arterial preservation account, the economic development
3 account, the essential rail assistance account, the essential rail
4 banking account, the ferry bond retirement fund, the grade crossing
5 protective fund, the high capacity transportation account, the highway
6 bond retirement fund, the highway construction stabilization account,
7 the highway safety account, the motor vehicle fund, the motorcycle
8 safety education account, the pilotage account, the public
9 transportation systems account, the Puget Sound capital construction
10 account, the Puget Sound ferry operations account, the recreational
11 vehicle account, the rural arterial trust account, the special category
12 C account, the state patrol highway account, the transfer relief
13 account, the transportation capital facilities account, the
14 transportation equipment fund, the transportation fund, the
15 transportation improvement account, and the urban arterial trust
16 account.

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

20 NEW SECTION. **Sec. 5.** RCW 28C.10.910 and 1986 c 299 s 28 are each
21 repealed.

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