
SENATE BILL 5457

State of Washington

57th Legislature

2001 Regular Session

By Senators Kohl-Welles, Carlson, Jacobsen and Horn; by request of Workforce Training and Education Coordinating Board

Read first time 01/23/2001. Referred to Committee on Higher Education.

1 AN ACT Relating to liability and licensure of private vocational
2 schools; and amending RCW 28C.10.050, 28C.10.084, and 28C.10.110.

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

4 **Sec. 1.** RCW 28C.10.050 and 1990 c 188 s 7 are each amended to read
5 as follows:

6 (1) The agency shall adopt by rule minimum standards for entities
7 operating private vocational schools. The minimum standards shall
8 include, but not be limited to, requirements for each school to:

9 (a) Disclose to the agency information about its ownership and
10 financial position and to demonstrate that it has sufficient financial
11 resources to fulfill its commitments to students. Financial
12 disclosures provided to the agency shall not be subject to public
13 disclosure under chapter 42.17 RCW;

14 (b) Follow a uniform state-wide cancellation and refund policy as
15 specified by the agency;

16 (c) Disclose through use of a school catalog, brochure, or other
17 written material, necessary information to students so that students
18 may make informed enrollment decisions. The agency shall specify what
19 information is required;

1 (d) Use an enrollment contract or agreement that includes: (i) The
2 cancellation and refund policy, (ii) a brief statement that the school
3 is licensed under this chapter and that inquiries may be made to the
4 agency, and (iii) other necessary information as determined by the
5 agency;

6 (e) Describe accurately and completely in writing to students
7 before their enrollment prerequisites and requirements for (i)
8 completing successfully the programs of study in which they are
9 interested and (ii) qualifying for the fields of employment for which
10 their education is designed;

11 (f) Comply with the requirements of RCW 28C.10.084;

12 (g) Assess the basic skills and relevant aptitudes of each
13 potential student to determine that a potential student has the basic
14 skills and relevant aptitudes necessary to complete and benefit from
15 the program in which the student plans to enroll. Guidelines for such
16 assessments shall be developed by the agency, in consultation with the
17 schools. The method of assessment shall be reported to the agency.
18 Assessment records shall be maintained in the student's file;

19 (h) Discuss with each potential student the potential student's
20 obligations in signing any enrollment contract and/or incurring any
21 debt for educational purposes. The discussion shall include the
22 inadvisability of acquiring an excessive educational debt burden that
23 will be difficult to repay given employment opportunities and average
24 starting salaries in the potential student's chosen occupation.

25 (2) Any enrollment contract shall have an attachment in a format
26 provided by the agency. The attachment shall be signed by both the
27 school and the student. The attachment shall stipulate that the school
28 has complied with subsection (1)(h) of this section and that the
29 student understands and accepts his or her responsibilities in signing
30 any enrollment contract or debt application. The attachment shall also
31 stipulate that the enrollment contract shall not be binding for at
32 least five days, excluding Sundays and holidays, following signature of
33 the enrollment contract by both parties.

34 (3) The agency shall deny, revoke, or suspend the license of any
35 school that does not meet or maintain the minimum standards.

36 **Sec. 2.** RCW 28C.10.084 and 1999 c 321 s 3 are each amended to read
37 as follows:

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

13 (2) By June 30, 1998, a minimum operating balance of one million
14 dollars shall be achieved in the fund and maintained thereafter. If
15 disbursements reduce the operating balance below two hundred thousand
16 dollars at any time before June 30, 1998, or below one million dollars
17 thereafter, each participating ((entity)) owner shall be assessed a pro
18 rata share of the deficiency created, based upon the incremental scale
19 created under subsection (6) of this section for each private
20 vocational school. The agency shall adopt schedules of times and
21 amounts for effecting payments of assessment.

22 (3) In order for a private vocational school to be and remain
23 licensed under this chapter each ((entity)) owner shall, in addition to
24 other requirements under this chapter, make cash deposits on behalf of
25 the school into a tuition recovery trust fund as a means to assure
26 payment of claims brought under this chapter.

27 (4) The amount of liability that can be satisfied by this fund on
28 behalf of each ((individual entity)) private vocational school licensed
29 under this chapter shall be ((established by the agency, based on an
30 incremental scale that recognizes the average)) the amount of unearned
31 prepaid tuition in possession of the ((entity. However, the minimum
32 amount of liability for any entity shall not be less than five thousand
33 dollars. The upper limit of liability is reestablished after any
34 disbursements are made to settle an individual claim or class of
35 claims)) owner.

36 (5) The fund's liability with respect to each participating
37 ((entity)) private vocational school commences on the date of ((its))
38 the initial deposit into the fund made on its behalf and ceases one

1 year from the date ~~((it))~~ the school is no longer licensed under this
2 chapter.

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

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

35 (8) Based on annual financial data supplied by the ~~((entity))~~
36 owner, the agency shall determine whether the increment assigned to
37 that ~~((entity))~~ private vocational school on the incremental scale
38 established under subsection (6) of this section has changed. If an
39 increase or decrease in gross annual tuition income has occurred, a

1 corresponding change in ~~((its))~~ the school's incremental position and
2 contribution schedule shall be made before the date of ~~((its))~~ the
3 owner's next scheduled deposit into the fund. Such adjustments shall
4 only be calculated and applied annually.

5 (9) ~~((No deposits made into the fund by an entity are~~
6 ~~transferable.))~~ If the majority ownership interest in ~~((an entity))~~ a
7 private vocational school is conveyed through sale or other means into
8 different ownership, all contributions made to the date of transfer
9 ~~((accrue to))~~ remain in the fund. The new owner ~~((commences~~
10 ~~contributions under provisions applying to a new applicant, except that~~
11 ~~if ownership of an entity is transferred to an immediate family~~
12 ~~member,))~~ shall continue to make contributions to the fund until the
13 original ten-year cycle is completed. All tuition recovery trust fund
14 contributions shall remain with the ~~((entity))~~ private vocational
15 school transferred, and no additional cash deposits may be required
16 beyond the original ten-year contribution cycle.

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

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

35 (b) Thirty days after identified potential claimants have been
36 notified, if a claimant refuses or neglects to file a claim
37 verification as requested in such notice, the agency shall be relieved
38 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 trust fund to settle or compromise the
3 claims. However, the liability of the fund for claims against the
4 closed ((entity)) school shall not exceed the ~~((maximum amount of~~
5 ~~liability assigned to that entity under subsection (6) of this~~
6 ~~section))~~ amount of unearned prepaid tuition in the possession of the
7 owner.

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

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

19 (12) For purposes of this section, "owner" includes, but is not
20 limited to, a person, company, firm, society, association, partnership,
21 corporation, or trust having a controlling ownership interest in a
22 private vocational school.

23 **Sec. 3.** RCW 28C.10.110 and 1990 c 188 s 9 are each amended to read
24 as follows:

25 It is an unfair business practice for an entity operating a private
26 vocational school or an agent employed by a private vocational school
27 to:

28 (1) Fail to comply with the terms of a student enrollment contract
29 or agreement;

30 (2) Use an enrollment contract form, catalog, brochure, or similar
31 written material affecting the terms and conditions of student
32 enrollment other than that previously submitted to the agency and
33 authorized for use;

34 (3) Advertise in the help wanted section of a newspaper or
35 otherwise represent falsely, directly or by implication, that the
36 school is an employment agency, is making an offer of employment or
37 otherwise is attempting to conceal the fact that what is being
38 represented are course offerings of a school;

1 (4) Represent falsely, directly or by implication, that an
2 educational program is approved by a particular industry or that
3 successful completion of the program qualifies a student for admission
4 to a labor union or similar organization or for the receipt of a state
5 license in any business, occupation, or profession;

6 (5) Represent falsely, directly or by implication, that a student
7 who successfully completes a course or program of instruction may
8 transfer credit for the course or program to any institution of higher
9 education;

10 (6) Represent falsely, directly or by implication, in advertising
11 or in any other manner, the school's size, location, facilities,
12 equipment, faculty qualifications, or the extent or nature of any
13 approval received from an accrediting association;

14 (7) Represent that the school is approved, recommended, or endorsed
15 by the state of Washington or by the agency, except the fact that the
16 school is authorized to operate under this chapter may be stated;

17 (8) Provide prospective students with any testimonial, endorsement,
18 or other information which has the tendency to mislead or deceive
19 prospective students or the public regarding current practices of the
20 school, current conditions for employment opportunities, or probable
21 earnings in the occupation for which the education was designed;

22 (9) Designate or refer to sales representatives as "counselors,"
23 "advisors," or similar terms which have the tendency to mislead or
24 deceive prospective students or the public regarding the authority or
25 qualifications of the sales representatives;

26 (10) Make or cause to be made any statement or representation in
27 connection with the offering of education if the school or agent knows
28 or reasonably should have known the statement or representation to be
29 false, substantially inaccurate, or misleading;

30 (11) Engage in methods of advertising, sales, collection, credit,
31 or other business practices which are false, deceptive, misleading, or
32 unfair, as determined by the agency by rule; or

33 (12) Attempt to recruit students in or within forty feet of a
34 building that contains a welfare or unemployment office. Recruiting
35 includes, but is not limited to canvassing and surveying. Recruiting
36 does not include leaving materials at or near an office for a person to
37 pick up of his or her own accord, or handing a brochure or leaflet to
38 a person provided that no attempt is made to obtain a name, address,

1 telephone number, or other data, or to otherwise actively pursue the
2 enrollment of the individual.

3 It is a violation of this chapter for an entity operating a private
4 vocational school to engage in an unfair business practice. The agency
5 may deny, revoke, or suspend the license of any entity that is found to
6 have engaged in a substantial number of unfair business practices or
7 that has engaged in significant unfair business practices.

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