
HOUSE BILL 2228

State of Washington

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2014 Regular Session

By Representatives Smith, Wylie, Seaquist, Ormsby, Haler, Moscoso, Johnson, Ryu, and Pollet; by request of Workforce Training and Education Coordinating Board

Read first time 01/14/14. Referred to Committee on Higher Education.

1 AN ACT Relating to providing parity of consumer protection
2 procedures for all students attending licensed private vocational
3 schools; and amending RCW 28C.10.030, 28C.10.050, 28C.10.060,
4 28C.10.082, 28C.10.084, 28C.10.110, and 28C.10.120.

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

6 **Sec. 1.** RCW 28C.10.030 and 2012 c 229 s 576 are each amended to
7 read as follows:

8 This chapter does not apply to:

9 (1) Bona fide trade, business, professional, or fraternal
10 organizations (~~sponsoring~~) conducting educational programs primarily
11 for that organization's membership or offered by that organization on
12 a no-fee basis;

13 (2) Entities offering education that is exclusively avocational or
14 recreational;

15 (3) Education not requiring payment of money or other consideration
16 if this education is not advertised or promoted as leading toward
17 educational credentials;

18 (4) Entities that are established, operated, and governed by this

1 state or its political subdivisions under Title 28A((7)) or 28B(~~7~~
2 ~~28C~~) RCW or this title;

3 (5) Degree-granting programs in compliance with the rules of the
4 student achievement council;

5 (6) Any other entity to the extent that it has been exempted from
6 some or all of the provisions of this chapter under RCW 28C.10.100;

7 (7) Entities not otherwise exempt that are of a religious
8 character, but only as to those educational programs exclusively
9 devoted to religious or theological objectives and represented
10 accurately in institutional catalogs or other official publications;

11 (8) Entities offering only courses certified by the federal
12 aviation administration;

13 (9) Barber and cosmetology schools licensed under chapter 18.16
14 RCW;

15 (10) Entities which only offer courses approved to meet the
16 continuing education requirements for licensure under chapter 18.04,
17 18.79, or 48.17 RCW; and

18 (11) Entities not otherwise exempt offering only workshops or
19 seminars lasting no longer than three calendar days.

20 **Sec. 2.** RCW 28C.10.050 and 2013 c 39 s 15 are each amended to read
21 as follows:

22 (1) The agency shall adopt by rule minimum standards for entities
23 operating private vocational schools. The minimum standards shall
24 include, but not be limited to, requirements to assess whether a
25 private vocational school is eligible to obtain and maintain a license
26 in this state.

27 (2) The requirements adopted by the agency shall, at a minimum,
28 require a private vocational school to:

29 (a) Disclose to the agency information about its ownership and
30 financial position and to demonstrate to the agency that the school is
31 financially viable and responsible and that it has sufficient financial
32 resources to fulfill its commitments to students. Financial
33 disclosures provided to the agency shall not be subject to public
34 disclosure under chapter 42.56 RCW;

35 (b) Follow a uniform statewide cancellation and refund policy as
36 specified by the agency;

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

5 (d) Use an enrollment contract or agreement that includes: (i) The
6 school's cancellation and refund policy, (ii) a brief statement that
7 the school is licensed under this chapter and that inquiries, concerns,
8 or complaints may be made to the agency, and (iii) other necessary
9 information as determined by the agency;

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

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

16 (g) Assess the basic skills and relevant aptitudes of each
17 potential student to determine that a potential student has the basic
18 skills and relevant aptitudes necessary to complete and benefit from
19 the program in which the student plans to enroll, including but not
20 limited to administering a United States department of education-
21 approved English as a second language exam before enrolling students
22 for whom English is a second language unless the students provide proof
23 of graduation from a United States high school or proof of completion
24 of a high school equivalency certificate as provided in RCW 28B.50.536
25 in English or results of another academic assessment determined
26 appropriate by the agency. Guidelines for such assessments shall be
27 developed by the agency, in consultation with the schools;

28 (h) Discuss with each potential student the potential student's
29 obligations in signing any enrollment contract and/or incurring any
30 debt for educational purposes. The discussion shall include the
31 inadvisability of acquiring an excessive educational debt burden that
32 will be difficult to repay given employment opportunities and average
33 starting salaries in the potential student's chosen occupation;

34 (i) Ensure that any enrollment contract between the private
35 vocational school and its students has an attachment in a format
36 provided by the agency. The attachment shall be signed by both the
37 school and the student. The attachment shall stipulate that the school
38 has complied with (h) of this subsection and that the student

1 understands and accepts his or her responsibilities in signing any
2 enrollment contract or debt application. The attachment shall also
3 stipulate that the enrollment contract shall not be binding for at
4 least five days, excluding Sundays and holidays, following signature of
5 the enrollment contract by both parties; and

6 (j) Comply with the requirements related to qualifications of
7 administrators and instructors.

8 (3) The agency may deny a private vocational school's application
9 for licensure if the school fails to meet the requirements in this
10 section.

11 (4) The agency may determine that a licensed private vocational
12 school or a particular program of a private vocational school is at
13 risk of closure or termination if:

14 (a) There is a pattern or history of substantiated student
15 complaints filed with the agency pursuant to RCW 28C.10.120; or

16 (b) The private vocational school fails to meet minimum licensing
17 requirements and has a pattern or history of failing to meet the
18 minimum requirements.

19 (5) If the agency determines that a private vocational school or a
20 particular program is at risk of closure or termination, the agency
21 shall require the school to take corrective action.

22 **Sec. 3.** RCW 28C.10.060 and 1987 c 459 s 4 are each amended to read
23 as follows:

24 Any entity desiring to operate a private vocational school shall
25 apply for a license to the agency on a form provided by the agency.
26 The agency shall issue a license if the school:

27 (1) Files a completed application with information satisfactory to
28 the agency. Misrepresentation by an applicant shall be grounds for the
29 agency, at its discretion, to deny or revoke a license.

30 (2) Complies with the requirements for the tuition recovery trust
31 fund under RCW 28C.10.084.

32 (3) Pays the required fees.

33 (4) Meets the minimum standards adopted by the agency under RCW
34 28C.10.050.

35 Licenses shall be valid for one year from the date of issue unless
36 revoked or suspended. If a school fails to file a completed renewal

1 application at least thirty days before the expiration date of its
2 current license the school shall be subject to payment of a late filing
3 fee fixed by the agency.

4 **Sec. 4.** RCW 28C.10.082 and 2013 2nd sp.s. c 4 s 965 are each
5 amended to read as follows:

6 The tuition recovery trust fund is hereby established in the
7 custody of the state treasurer. The agency shall deposit in the fund
8 all moneys received under RCW 28C.10.084. Moneys in the fund may be
9 spent only for the purposes under RCW 28C.10.084. Disbursements from
10 the fund shall be on authorization of the agency. Disbursements from
11 the fund shall only be used to reimburse students who are Washington
12 state residents, or agencies or businesses that pay tuition and fees on
13 behalf of Washington students. During the 2013-2015 fiscal biennium,
14 the legislature may transfer from the tuition recovery trust fund to
15 the state general fund such amounts as reflect the excess fund balance
16 in the fund. The fund is subject to the allotment procedure provided
17 under chapter 43.88 RCW, but no appropriation is required for
18 disbursements.

19 **Sec. 5.** RCW 28C.10.084 and 2001 c 23 s 2 are each amended to read
20 as follows:

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

34 (2) By June 30, 1998, a minimum operating balance of one million
35 dollars shall be achieved in the fund and maintained thereafter. If
36 disbursements reduce the operating balance below two hundred thousand

1 dollars at any time before June 30, 1998, or below one million dollars
2 thereafter, each participating owner shall be assessed a pro rata share
3 of the deficiency created, based upon the incremental scale created
4 under subsection (6) of this section for each private vocational
5 school. The agency shall adopt schedules of times and amounts for
6 effecting payments of assessment.

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

12 (4) The amount of liability that can be satisfied by this fund on
13 behalf of each private vocational school licensed under this chapter
14 shall be the amount of unearned prepaid tuition (~~in possession of the~~
15 ~~owner~~) and fees. If the claimant provides evidence to the agency of
16 the lack of availability to continue his or her program of study at
17 another institution, the agency's executive director or the executive
18 director's designee has the authority to reimburse the student, agency,
19 or business up to the full value of tuition and fees paid to date,
20 subject to subsection (10) of this section. The agency may use the
21 fund to pay for prior learning assessments for students who choose to
22 attend another institution.

23 (5) The fund's liability with respect to each participating private
24 vocational school commences on the date of the initial deposit into the
25 fund made on its behalf and ceases one year from the date the school is
26 no longer licensed under this chapter.

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

1 Additionally, the agency shall require deposits for initial
2 capitalization, under which the amount each owner deposits is
3 proportionate to the school's share of two hundred thousand dollars,
4 employing the matrix developed under this subsection.

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

18 (8) Based on annual financial data supplied by the owner, the
19 agency shall determine whether the increment assigned to that private
20 vocational school on the incremental scale established under subsection
21 (6) of this section has changed. If an increase or decrease in gross
22 annual tuition income has occurred, a corresponding change in the
23 school's incremental position and contribution schedule shall be made
24 before the date of the owner's next scheduled deposit into the fund.
25 Such adjustments shall only be calculated and applied annually.

26 (9) If the majority ownership interest in a private vocational
27 school is conveyed through sale or other means into different
28 ownership, all contributions made to the date of transfer remain in the
29 fund. The new owner shall continue to make contributions to the fund
30 until the original ten-year cycle is completed. All tuition recovery
31 trust fund contributions shall remain with the private vocational
32 school transferred, and no additional cash deposits may be required
33 beyond the original ten-year contribution cycle.

34 (10)(a) To settle claims adjudicated under RCW 28C.10.120 and
35 claims resulting when a private vocational school ceases to provide
36 educational services, the agency may make disbursements from the fund.
37 Students enrolled under a training contract executed between a school

1 and a public or private agency or business are not eligible to make a
2 claim against the fund until January 1, 2016.

3 (b) In addition to the processes described for making
4 reimbursements related to claims under RCW 28C.10.120, the following
5 procedures are established to deal with reimbursements related to
6 school closures:

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

16 ~~((b))~~ (ii) Thirty days after identified potential claimants have
17 been notified, if a claimant refuses or neglects to file a claim
18 verification as requested in such notice, the agency ~~((shall))~~ may be
19 relieved of further duty or action on behalf of the claimant under this
20 chapter. The executive director of the agency or the executive
21 director's designee will determine if an exemption to the thirty days
22 shall be granted if the claimant furnishes proof of an extraordinary or
23 exigent circumstance.

24 ~~((c))~~ (iii) After verification and review, the agency may
25 disburse funds from the tuition recovery trust fund to settle or
26 compromise the claims for an amount up to the value of unearned prepaid
27 tuition and fees. If the claimant provides evidence to the agency of
28 the lack of availability to continue his or her program of study at
29 another institution, the agency's executive director or the executive
30 director's designee has the authority to reimburse the student, agency,
31 or business up to the full value of tuition and fees paid to date,
32 subject to (a) of this subsection. The agency may use the fund to pay
33 for prior learning assessments for students who choose to attend
34 another institution. ((However, the liability of the fund for claims
35 against the closed school shall not exceed the amount of unearned
36 prepaid tuition in the possession of the owner.

37 ~~((d))~~ (iv) In the instance of claims against a closed school, the

1 agency shall seek to recover such disbursed funds from the assets of
2 the defaulted owner, including but not limited to asserting claims as
3 a creditor in bankruptcy proceedings.

4 (11) When funds are disbursed to settle claims against a licensed
5 private vocational school, the agency shall make demand upon the owner
6 for recovery. The agency shall adopt schedules of times and amounts
7 for effecting recoveries. An owner's failure to perform subjects the
8 school's license to suspension or revocation under RCW 28C.10.050 in
9 addition to any other available remedies.

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

14 **Sec. 6.** RCW 28C.10.110 and 2001 c 23 s 3 are each amended to read
15 as follows:

16 (1) It is a violation of this chapter for an entity operating a
17 private vocational school to engage in an unfair business practice.
18 The agency may deny, revoke, or suspend the license of any entity that
19 is found to have engaged in a substantial number of unfair business
20 practices or that has engaged in significant unfair business practices.

21 (2) It is an unfair business practice for an entity operating a
22 private vocational school or an agent employed by a private vocational
23 school to:

24 ~~((1))~~ (a) Fail to comply with the terms of a student enrollment
25 contract or agreement;

26 ~~((2))~~ (b) Use an enrollment contract form, catalog, brochure, or
27 similar written material affecting the terms and conditions of student
28 enrollment other than that previously submitted to the agency and
29 authorized for use;

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

35 ~~((4))~~ (d) Represent falsely, directly or by implication, that an
36 educational program is approved by a particular industry or that

1 successful completion of the program qualifies a student for admission
2 to a labor union or similar organization or for the receipt of a state
3 license in any business, occupation, or profession;

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

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

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

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

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

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

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

34 ~~((+12))~~ (l) Attempt to recruit students in or within forty feet of
35 a building that contains a welfare or unemployment office. Recruiting
36 includes, but is not limited to canvassing and surveying. Recruiting
37 does not include leaving materials at or near an office for a person to
38 pick up of his or her own accord, or handing a brochure or leaflet to

1 a person provided that no attempt is made to obtain a name, address,
2 telephone number, or other data, or to otherwise actively pursue the
3 enrollment of the individual.

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

10 **Sec. 7.** RCW 28C.10.120 and 2007 c 462 s 3 are each amended to read
11 as follows:

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

19 (2) The agency shall investigate any complaint under this section
20 and shall first attempt to bring about a negotiated settlement. The
21 agency director or the director's designee may conduct an informal
22 hearing with the affected parties in order to determine whether a
23 violation has occurred.

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

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

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

7 (6) If a private vocational school closes without providing
8 adequate notice to its enrolled students, the agency shall provide
9 transition assistance to the school's students including, but not
10 limited to, information regarding: (a) Transfer options available to
11 students; (b) financial aid discharge eligibility and procedures; (c)
12 the labor market, job search strategies, and placement assistance
13 services; and (d) other support services available to students.

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