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**ENGROSSED SUBSTITUTE HOUSE BILL 1949**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** House Higher Education (originally sponsored by Representatives Pollet, S. Hunt, Gregerson, Ortiz-Self, Moscoso, Ormsby, and McBride)

AN ACT Relating to regulating the institutions of higher education, including for-profit institutions and private vocational schools, to protect students from unfair business practices; amending RCW 28B.85.020, 28B.85.090, 28B.85.100, 28C.10.050, 28C.10.110, and 28C.10.130; adding new sections to chapter 28B.85 RCW; adding a new section to chapter 28C.10 RCW; creating a new section; prescribing penalties; and providing an expiration date.

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

NEW SECTION. **Sec.**  The legislature intends that students enrolled in for-profit higher education institutions and private vocational schools should be protected from documented practices that have jeopardized students' investments in obtaining higher education or vocational training, including marketing of loans at extraordinarily high interest rates by institutions with a financial interest in the students' debt; inflation of data regarding postgraduation employment or earning levels to induce students to enroll; exaggeration of the likelihood of student's ability to obtain financial aid or low-interest loans for tuition; and overstatement about the ability of graduates to repay loans.

The legislature finds that it is necessary to protect (1) students who are enrolled in for-profit higher education institutions or private vocational schools, and (2) the state's interest in the integrity of its grant and aid programs, from private decisions to close schools or programs under circumstances that may prevent students from obtaining the degree or certificate and career services that the students expected upon enrollment.

NEW SECTION. **Sec.**  A new section is added to chapter 28B.85 RCW to read as follows:

(1) There is created the office of the ombuds serving students of for-profit degree granting institutions and private vocational schools. The office is created within the council to provide assistance to students of for-profit postsecondary institutions and private vocational schools.

(2) The council, in coordination with the workforce training and education coordinating board, must appoint an ombuds, who must be a person of recognized judgment, independence, objectivity, and integrity and must be qualified by training and experience in the area of higher education.

(3)(a) The office of the ombuds must assist past, currently enrolled, and prospective students on understanding their rights with respect to for-profit postsecondary institutions and private vocational schools, including the disclosures required of the institutions and schools and the student's rights if the institution or school terminates programs or closes.

(b) The office of the ombuds must offer mediation between students and for-profit degree granting institutions regulated by the council or private vocational schools regulated by the workforce training and education coordinating board or the department of licensing.

(4) The office of the ombuds must track the number of student inquiries it receives and the types of questions and concerns raised by the students.

(5) To ensure independence, the ombuds, or the office of the ombuds' director, if there is a director, shall report to the director of the council and may not be removed or replaced from office by the director of the council without the council's director first notifying the full council and being advised by the full council.

(6) The office of the ombuds must be created no later than September 1, 2017.

NEW SECTION. **Sec.**  A new section is added to chapter 28B.85 RCW to read as follows:

(1) The council, board, and department of licensing must work together to design and oversee a study, to be administered by the council, that objectively analyzes and makes recommendations about systemic overlaps and gaps in jurisdiction regarding for-profit degree granting institutions and private vocational schools in the state. The council may contract with a neutral third-party research organization to conduct the study. The study must be conducted in two phases, starting with an assessment of perspectives and relevant studies. A second phase, if deemed appropriate by the council, the workforce training and education coordinating board, and other stakeholders, may consist of facilitated discussions amongst agencies, regulated entities, and stakeholders, to reach agreed-upon recommendations.

(2) The study must include recommendations to improve oversight and accountability of these institutions and schools, and a review of whether, and how, different standards are applied to the institutions and schools by different agencies. Specifically, the study must:

(a) Examine the data collection and reporting practices of for-profit degree granting institutions and private vocational schools compared to the data collection and reporting of the community and technical colleges. The study must determine if there are inconsistencies and discrepancies in the practices of the for-profit degree granting institutions and private vocational schools. The study must also make recommendations on the methods of collecting, analyzing, and reporting data, including what measurements to use, to ensure that data from for-profit degree granting institutions and private vocational schools could be accurately compared to data from the community and technical colleges;

(b) Study the current regulations governing these institutions and schools and recommend necessary changes to achieve consistent regulatory oversight of the entire system;

(c) Recommend ways to implement a cohesive method for guiding and assisting current and prospective students who have questions and concerns; and

(d) Review whether the office of the ombuds serving students of for-profit degree granting institutions and private vocational schools should remain housed in the council. The study may include recommendations for improving the operation and scope of the office of the ombuds.

(3) The assessment phase of the study may begin July 1, 2017. The council must issue a final report, including the result of any facilitated agreed-upon recommendations, to the appropriate committees of the legislature by December 1, 2018.

(4) This section expires July 1, 2019.

**Sec.**  RCW 28B.85.020 and 2013 c 218 s 3 are each amended to read as follows:

(1) The council:

(a) Shall adopt by rule, in accordance with chapter 34.05 RCW, minimum standards for degree-granting institutions concerning granting of degrees, quality of education, unfair business practices, financial stability, and other necessary measures to protect citizens of this state against substandard, fraudulent, or deceptive practices. The rules shall require that an institution operating in Washington:

(i) Be accredited;

(ii) Have applied for accreditation and such application is pending before the accrediting agency;

(iii) Have been granted a waiver by the council waiving the requirement of accreditation; or

(iv) Have been granted an exemption by the council from the requirements of this subsection (1)(a);

(b) Shall require that a degree-granting institution that operates on a for-profit basis and any agent of the institution, shall not engage in any practice regarding the sale of, or inducing of students to obtain, specific consumer student loan products to fund education that financially benefits any person or entity that has an ownership interest in the institution, unless the institution can demonstrate to the council that the student has exhausted all federal aid options and has been denied noninstitutional private commercial loan products. The prohibition in this subsection (1)(b) applies to any degree-granting institution that operates on a for-profit basis, and any agent of the institution, that has at least one hundred fifty students or more enrolled in the state in any given year or that has been operating in the state for less than two consecutive years. A financial benefit for purposes of this subsection (1)(b) does not include merely having an interest in students with loans enrolling in the institution or assisting students with financial aid matters. For purposes of this subsection (1)(b), "agent" means any employee, officer, or contractor working on behalf of the institution.

(c) May investigate any entity the council reasonably believes to be subject to the jurisdiction of this chapter. In connection with the investigation, the council may administer oaths and affirmations, issue subpoenas and compel attendance, take evidence, and require the production of any books, papers, correspondence, memorandums, or other records which the council deems relevant or material to the investigation. The council, including its staff and any other authorized persons, may conduct site inspections, the cost of which shall be borne by the institution, and examine records of all institutions subject to this chapter;

((~~(c)~~)) (d) May negotiate and enter into interstate reciprocity agreements with other state or multistate entities if the agreements are consistent with the purposes in this chapter as determined by the council;

((~~(d)~~)) (e) May enter into agreements with degree-granting institutions of higher education based in this state, that are otherwise exempt under the provisions of (a) of this subsection ((~~(1)(a) of this section~~)), for the purpose of ensuring consistent consumer protection in interstate distance delivery of higher education;

((~~(e)~~)) (f) Shall develop an interagency agreement with the workforce training and education coordinating board to regulate degree-granting private vocational schools with respect to degree and nondegree programs; and

((~~(f)~~)) (g) Shall develop and disseminate information to the public about entities that sell or award degrees without requiring appropriate academic achievement at the postsecondary level, including but not limited to, a description of the substandard and potentially fraudulent practices of these entities, and advice about how the public can recognize and avoid the entities. To the extent feasible, the information shall include links to additional resources that may assist the public in identifying specific institutions offering substandard or fraudulent degree programs.

(2) Financial disclosures provided to the council by degree-granting private vocational schools are not subject to public disclosure under chapter 42.56 RCW.

**Sec.**  RCW 28B.85.090 and 2012 c 229 s 550 are each amended to read as follows:

(1) Complaints may be filed with the council under this chapter by a person claiming loss of tuition or fees as a result of an unfair business practice ((~~may file a complaint with the council~~)). The complaint shall set forth the alleged violation and shall contain information required by the council. A complaint may also be filed with the council by an authorized staff member of the council or by the attorney general.

(2) The council shall investigate any complaint under this section and may attempt to bring about a settlement. The council may hold a hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW, in order to determine whether a violation has occurred. If the council prevails, the degree-granting institution shall pay the costs of the administrative hearing.

(3) If, after the hearing, the council finds that the institution or its agent engaged in or is engaging in any unfair business practice, the council shall issue and cause to be served upon the violator an order requiring the violator to cease and desist from the act or practice and may impose the penalties under RCW 28B.85.100. If the council finds that the complainant has suffered loss as a result of the act or practice, the council may order full or partial restitution for the loss. The complainant is not bound by the council's determination of restitution and may pursue any other legal remedy, including an action pursuant to RCW 19.86.020 of the consumer protection act.

**Sec.**  RCW 28B.85.100 and 2012 c 229 s 551 are each amended to read as follows:

(1) Any person, group, or entity or any owner, officer, agent, or employee of such entity who willfully violates any provision of this chapter or the rules adopted under this chapter shall be subject to a civil penalty of not more than one hundred dollars for each violation. Each day on which a violation occurs, and each student injured by an unfair business practice, constitutes a separate violation. The fine may be imposed by the council or by any court of competent jurisdiction.

(2) In addition to the penalties authorized under subsection (1) of this section, any violation of any provision of this chapter under RCW 28B.85.180 is also a violation of RCW 19.86.020 of the consumer protection act. The penalties authorized pursuant to subsection (1) of this section do not preclude remedies available under the provisions of the consumer protection act.

NEW SECTION. **Sec.**  A new section is added to chapter 28B.85 RCW to read as follows:

(1) The council may deny, revoke, or suspend the authorization of any institution that is found to have engaged in a substantial number of unfair business practices or that has engaged in significant unfair business practices.

(2) It is a violation of this chapter for a degree-granting institution that operates on a for-profit basis or an agent employed by such a degree-granting institution to:

(a) Provide prospective students with any testimonial, endorsement, or other information that a reasonable person would find was likely to mislead or deceive prospective students or the public regarding current practices of the school, current conditions for employment opportunities, postgraduation career placement rates or probable earnings in the occupation for which the education was designed, the likelihood of obtaining financial aid or low-interest loans for tuition, or the ability of graduates to repay loans;

(b) Fail to continue job placement services promised to enrollees or graduates in the event the institution is sold or reduces any programs or services;

(c) Place a current student or exiter of a program in a short‑term job:

(i) That is not relevant to the student's training, in order to meet reporting requirements under state law; or

(ii) Where the placement is done for the purpose of reporting the current student or an exiter of a program as employed, in order to meet reporting requirements under state law; or

(d) Use any official United States military logo in advertising or promotional materials.

(3) It is a violation of this chapter for a degree-granting institution that operates on a for-profit basis or an agent of the institution to engage in any practice regarding student loan products to fund education that benefits any person or entity having an ownership interest in the institution, or in any practice from which the institution benefits financially on the sale of, or enrollment of students in, loan products to fund education. The prohibition in this subsection (3) applies to any degree-granting institution that operates on a for-profit basis, and any agent of the institution, that has at least one hundred fifty students or more enrolled in the state in any given year or that has been operating in the state for less than two consecutive years.

NEW SECTION. **Sec.**  A new section is added to chapter 28B.85 RCW to read as follows:

(1) A degree-granting institution that operates on a for-profit basis must provide notice regarding student's rights under this chapter, any applicable federal law, and the complaint procedures in RCW 28B.85.090:

(a) In writing to current students and exiters of a program;

(b) On the web site of the institution; and

(c) In all communications regarding the sale or the closing of a program, facility, or site, and those communications must be mailed, posted on the institution's web site, and distributed in any meeting between students and the institution.

(2) The council must provide the form and content of the notice required in this section. The notice must inform students that claims may be pursued by filing a complaint with the council or by filing a complaint pursuant to RCW 19.86.020 and of the availability of the office of the ombuds serving students of for-profit degree granting institutions and private vocational schools to assist students in resolving concerns.

(3) The council may direct institutions to post the notice in a conspicuous location within the institution and on any web site maintained by the institution and to send the notices by mail to students.

**Sec.**  RCW 28C.10.050 and 2014 c 11 s 2 are each amended to read as follows:

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

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

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

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

(c) Disclose through use of a school catalog, web site, brochure, or other written material, necessary information to students so that students may make informed enrollment decisions. The agency shall specify what data and information ((~~is~~)) are required. To the extent that these web sites or materials present any data on the completion rates, employment rates, loan or indebtedness metrics, and median hourly and annual earnings for any of the private vocational schools or its programs, this information must be consistent with the same types of information as currently presented on the agency's career bridge web site. In those cases where the agency does not have information calculated for the career bridge web site on a school or program, the agency shall establish procedures and methodology and required accompanying descriptive material for any alternative data posted;

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

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

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

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

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

(i) Ensure that any enrollment contract between the private vocational school and its students has an attachment in a format provided by the agency. The attachment shall be signed by both the school and the student. The attachment shall stipulate that the school has complied with (h) of this subsection and that the student understands and accepts his or her responsibilities in signing any enrollment contract or debt application. The attachment shall also stipulate that the enrollment contract shall not be binding for at least five days, excluding Sundays and holidays, following signature of the enrollment contract by both parties; ((~~and~~))

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

(3) A private vocational school that has at least one hundred fifty students or more in the state during any given year, or that has been operating in the state for less than two consecutive years, or that has not been recognized by the agency as an eligible training provider for at least two consecutive years, may not engage in any practice regarding the sale of, or inducing of students to obtain, specific consumer student loan products to fund education that financially benefits any person or entity that has an ownership interest in the institution, unless the institution can demonstrate to the agency that the student has exhausted all federal aid options and has been denied noninstitutional private commercial loan products. A financial benefit for purposes of this subsection (3) does not include merely having an interest in students with loans enrolling in the institution or assisting students with financial aid matters. For purposes of this subsection (3), "agent" means any employee, officer, or contractor working on behalf of the institution.

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

((~~(4)~~)) (5) The agency may determine that a licensed private vocational school or a particular program of a private vocational school is at risk of closure or termination if:

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

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

((~~(5)~~)) (6) If the agency determines that a private vocational school or a particular program is at risk of closure or termination, the agency shall require the school to take corrective action.

**Sec.**  RCW 28C.10.110 and 2014 c 11 s 6 are each amended to read as follows:

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

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

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

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

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

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

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

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

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

(h) Provide prospective students with: Any testimonial, endorsement, or other information ((~~which has the tendency~~)) that a reasonable person would find likely to mislead or deceive prospective students or the public, including those regarding current practices of the school((~~,~~)); information regarding rates of completion or postgraduation employment programs, or postgraduation median hourly or annual earnings, that are not consistent with either the data posted by the agency on its career bridge web site or alternative data the agency has required in cases where the agency does not have information calculated for the career bridge web site; current conditions for employment opportunities((~~,~~)); postgraduation career placement rates or probable earnings in the occupation for which the education was designed; total cost to obtain a degree or certificate; the acceptance of a degree or certificate by employers as a qualification for employment; the acceptance of courses, a degree, or certificate by higher education institutions; the likelihood of obtaining financial aid or low-interest loans for tuition; and the ability of graduates to repay loans;

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

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

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

(l) Attempt to recruit students in or within forty feet of a building that contains a welfare or unemployment office. Recruiting includes, but is not limited to canvassing and surveying. Recruiting does not include leaving materials at or near an office for a person to pick up of his or her own accord, or handing a brochure or leaflet to a person provided that no attempt is made to obtain a name, address, telephone number, or other data, or to otherwise actively pursue the enrollment of the individual;

(m) Engage in any practice regarding the sale of, or inducing of students to obtain, specific consumer student loan products to fund education that financially benefits any person or entity that has an ownership interest in the institution, unless the institution can demonstrate to the agency that the student has exhausted all federal aid options and has been denied noninstitutional private commercial loan products, if the prohibition under RCW 28C.10.050(3) applies;

(n) Place a current student or exiter of a program in a short-term job:

(i) That is not relevant to the student's training in order to meet reporting requirements under state or federal law; or

(ii) Where the placement is done for the purpose of reporting the current student or an exiter of a program as employed, in order to meet reporting requirements under state or federal law; or

(o) Use any official United States military logos in advertising or promotional materials.

**Sec.**  RCW 28C.10.130 and 1986 c 299 s 13 are each amended to read as follows:

(1) Any private vocational school or agent violating RCW 28C.10.060, 28C.10.090, or 28C.10.110 or the applicable agency rules is subject to a civil penalty of not more than one hundred dollars for each separate violation. Each day on which a violation occurs, and each student injured by an unfair business practice, constitutes a separate violation. Multiple violations on a single day may be considered separate violations. The fine may be imposed by the agency under RCW 28C.10.120, or in any court of competent jurisdiction.

(2) In addition to the penalties authorized pursuant to subsection (1) of this section, any violation of any provision of this chapter is also a violation of RCW 19.86.020 of the consumer protection act, pursuant to RCW 28C.10.210. The penalties authorized under subsection (1) of this section do not preclude remedies available under the provisions of the consumer protection act.

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

(1) Private vocational schools shall provide notices regarding students' rights under this chapter, any applicable federal law, and the complaint procedures in RCW 28B.85.090:

(a) In writing to current students and exiters of a program;

(b) On the web site of the institution; and

(c) In all communications regarding the sale or the closing of a program, facility, or site, and those communications must be mailed, posted on the institution's web site, and distributed in any meeting between students and the institution.

(2) The agency must provide the form and content of the notice required in this section. The notice must inform students how to contact the office of the ombuds for advice and mediation regarding concerns, and inform students that claims may be pursued by filing a complaint with the agency or by filing a complaint pursuant to RCW 19.86.020.

(3) The agency may direct institutions to post the notices in a conspicuous location within the institution and on its web sites and to send the notices by mail to students.

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