

HOUSE BILL REPORT

ESHB 1949

As Passed House:
February 15, 2016

Title: 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.

Brief Description: Regulating the institutions of higher education, including for-profit institutions and private vocational schools, to protect students from unfair business practices.

Sponsors: House Committee on Higher Education (originally sponsored by Representatives Pollet, S. Hunt, Gregerson, Ortiz-Self, Moscoso, Ormsby and McBride).

Brief History:

Committee Activity:

Higher Education: 1/26/16, 1/29/16 [DPS];

Appropriations: 2/8/16 [DPS(HE)].

Floor Activity:

Passed House: 2/15/16, 52-45.

Brief Summary of Engrossed Substitute Bill

- Creates the Office of the Ombuds within the Washington Student Achievement Council to serve students of for-profit degree-granting institutions and private vocational schools and to provide mediation.
- Requires a study to examine, among other things, the data collection and reporting practices of for-profit degree-granting institutions and private vocational schools and to provide recommendations on improving oversight of the for-profit school system.
- Creates regulatory provisions for for-profit schools regarding, among other things: (1) financial conflicts of interest; (2) unfair business practices; (3) misleading or deceptive testimony and advertising; and (4) notices to students.

HOUSE COMMITTEE ON HIGHER EDUCATION

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Hansen, Chair; Pollet, Vice Chair; Zeiger, Ranking Minority Member; Frame, Hargrove, Holy, Sells, Tarleton and Van Werven.

Minority Report: Do not pass. Signed by 1 member: Representative Haler, Assistant Ranking Minority Member.

Staff: Trudes Tango (786-7384).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Higher Education be substituted therefor and the substitute bill do pass. Signed by 18 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Cody, Fitzgibbon, Hansen, Hudgins, S. Hunt, Jinkins, Kagi, Lytton, Pettigrew, Robinson, Sawyer, Senn, Springer, Sullivan, Tharinger and Walkinshaw.

Minority Report: Do not pass. Signed by 9 members: Representatives Chandler, Ranking Minority Member; Parker, Assistant Ranking Minority Member; Wilcox, Assistant Ranking Minority Member; Buys, Dent, Harris, Schmick, Taylor and Van Werven.

Minority Report: Without recommendation. Signed by 6 members: Representatives Condotta, Haler, MacEwen, Magendanz, Manweller and Stokesbary.

Staff: Catrina Lucero (786-7192).

Background:

For-profit schools are regulated by federal and state laws. The two agencies in Washington that regulate most for-profit schools are: (1) the Washington Student Achievement Council (WSAC), which regulates degree-granting institutions; and (2) the Workforce Training and Education Coordinating Board (WTB), which regulates private vocational schools.

For-profit schools must be authorized or licensed by the appropriate regulatory agency, meet certain minimum standards regarding academic standards and financial stability, and not engage in certain unfair or deceptive practices. It is an unfair business practice to, among other things, provide prospective students with misleading information regarding current practices of the school, conditions for employment opportunities, and probable earnings.

The WSAC and the WTB have authority to investigate student complaints and issue civil penalties. A person or entity that willfully violates the rules is subject to a civil penalty of not more than \$100 for each violation. Each day the violation occurs constitutes a separate violation. The statutes governing degree-granting institutions specify that a violation of the regulations constitutes an unfair or deceptive practice in violation of the Consumer Protection Act (CPA). The statutes governing private vocational schools list conduct that constitute unfair or deceptive acts, but do not specify that they are a violation of the CPA. For CPA violations, the Office of the Attorney General may take action.

Summary of Engrossed Substitute Bill:

Office of the Ombuds.

The Office of the Ombuds (Ombuds) serving students of for-profit degree-granting institutions and private vocational schools is created within the WSAC. The WSAC, in coordination with the WTB, must appoint the Ombuds. The Ombuds must assist past, currently enrolled, and future students on understanding their rights and must offer mediation between students and schools. To ensure independence. The Ombuds must report to the Director of the WSAC and may not be removed by the Director without the Director first notifying the full WSAC. The Office of the Ombuds must be created no later than September 1, 2017.

Oversight Study.

The WSAC, the WTB, and the Department of Licensing must work together to design and oversee a study, to be administered by the WSAC, that analyzes systemic overlaps and gaps in jurisdiction regarding for-profit degree-granting institutions and private vocational schools. The WSAC may contract with a neutral third-party research organization to conduct the study. The study must be done in two phases: first, an assessment of perspectives and relevant studies; and second, facilitated discussions with the agencies, regulated entities, and stakeholders.

The study must, among other things, examine the data collection and reporting practices of schools compared to the data collection and reporting practices of community and technical colleges and make recommendations on methods of collecting, analyzing, and reporting data, including what measurements to use. The study may include recommendations on improving the Office of the Ombuds. The WSAC must report on the study to the appropriate committees of the Legislature by December 1, 2018.

Prohibited Practices.

The WSAC may deny, revoke, or suspend the authorization of a for-profit degree-granting institution that is found to have engaged in a substantial number of, or in significant, unfair business practices. Conduct that constitutes an unfair business practice includes, among other things: (1) providing prospective students with testimonial or other information that a reasonable person would likely find misleading or deceptive about employment opportunities, career placement rates, probable earnings, the likelihood of obtaining financial aid or low-interest loans, or the ability to repay loans; (2) placing a student in a short-term job not relevant to the student's training in order to meet reporting requirements; and (3) using any official United States military logo in advertising or promotional materials. To the extent a for-profit school presents data on completion rates, employment, rates, postgraduation earnings, or loan metrics, the data must be consistent with the same types of information presented on the regulatory agency's Career Bridge website. In cases where the regulatory agency does not have information on a for-profit school or program for the Career Bridge website, the agency must establish procedures, methodology, and required accompanying descriptive material for alternative data. For purposes of the \$100-per-violation civil penalty for willfully violating the rules, each student is considered a separate violation. It is made explicit that engaging in an unfair business practice constitutes a violation of the CPA.

Financial Interests.

For-profit degree-granting institutions and private vocational schools may not engage in any practice regarding the sale of, or inducing of students to obtain, specific consumer student loan products that financially benefits any person or entity having an ownership interest in the school, unless the institution can demonstrate that the student has exhausted all federal aid options and has been denied noninstitutional private commercial loans. This prohibition applies to schools that have at least 150 students or more enrolled in the state in any given year or that have been operating in the state for less than two years.

Notice Requirements.

For-profit degree-granting institutions and private vocational schools must provide notice about a student's rights, including the complaint procedures available to students.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony (Higher Education):

(In support) This bill is in response to dire circumstances that have occurred across the nation with the closure of many large private colleges. Thousands of students were defrauded. Many states and the federal government filed actions against these schools. Some of the for-profit schools engaged in marketing practices that focused on people with very little financial literacy. Schools had self-interest in selling loan products to students. When schools closed, students were not notified of their rights. This bill requires consistent reporting from schools so prospective students can compare data with the community and technical colleges. The study should be done by an independent third party. Greater consistency is the goal and that will improve the students' experiences.

(Opposed) The language regarding financing student loans is overly broad and expands into other activities that can include enrolling students.

(Other) There is agreement that better oversight is needed. The components of the bill on student loans and other provisions are still being discussed. Other provisions are supported, such as the Office of the Ombuds and the study to analyze gaps, overlaps, and inconsistencies.

Staff Summary of Public Testimony (Appropriations):

(In support) The current regulations are not enough to protect low-income students from private colleges' predatory practices.

(Opposed) The bill is redundant and stifles business. The WTB and the WASC already oversee private and for-profit colleges. Washington has some of the strictest standards for private education licensure.

(Other) The creation of the Office of the Ombuds and the oversight study are important aspects of the bill. Currently there are at least three different state agencies that provide regulatory oversight to private vocational schools. There is a great deal of overlap and possibly some gaps in this system. The study will help streamline and increase the efficiency of regulatory oversight for private vocational schools.

Persons Testifying (Higher Education): (In support) Representative Pollet, prime sponsor; Andrew Brittell; Nova Gattman, Workforce Board; and Randy Spaulding, Washington Student Achievement Council.

(Opposed) Joe Gregorich, Apollo Education Group.

(Other) Amy Brackenbury, Northwest Career Colleges Federation.

Persons Testifying (Appropriations): (In support) Anna Nepomuceno, University of Washington-Tacoma.

(Opposed) Amy Anderson, Association of Washington Business.

(Other) Amy Brackenbury, Northwest Career Colleges Federation.

Persons Signed In To Testify But Not Testifying (Higher Education): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.