
SUBSTITUTE HOUSE BILL 1949

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)

READ FIRST TIME 02/02/16.

1 AN ACT Relating to regulating the institutions of higher
2 education, including for-profit institutions and private vocational
3 schools, to protect students from unfair business practices; amending
4 RCW 28B.85.020, 28B.85.090, 28B.85.100, 28C.10.050, 28C.10.110, and
5 28C.10.130; adding new sections to chapter 28B.85 RCW; adding a new
6 section to chapter 28C.10 RCW; creating a new section; prescribing
7 penalties; and providing an expiration date.

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

9 NEW SECTION. **Sec. 1.** The legislature intends that students
10 enrolled in for-profit higher education institutions and private
11 vocational schools should be protected from documented practices that
12 have jeopardized students' investments in obtaining higher education
13 or vocational training, including marketing of loans at
14 extraordinarily high interest rates by institutions with a financial
15 interest in the students' debt; inflation of data regarding
16 postgraduation employment or earning levels to induce students to
17 enroll; exaggeration of the likelihood of student's ability to obtain
18 financial aid or low-interest loans for tuition; and overstatement
19 about the ability of graduates to repay loans.

20 The legislature finds that it is necessary to protect (1)
21 students who are enrolled in for-profit higher education institutions

1 or private vocational schools, and (2) the state's interest in the
2 integrity of its grant and aid programs, from private decisions to
3 close schools or programs under circumstances that may prevent
4 students from obtaining the degree or certificate and career services
5 that the students expected upon enrollment.

6 NEW SECTION. **Sec. 2.** A new section is added to chapter 28B.85
7 RCW to read as follows:

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

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

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

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

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

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

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

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 28B.85
2 RCW to read as follows:

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

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

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

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

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

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

1 recommendations for improving the operation and scope of the office
2 of the ombuds.

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

7 (4) This section expires July 1, 2019.

8 **Sec. 4.** RCW 28B.85.020 and 2013 c 218 s 3 are each amended to
9 read as follows:

10 (1) The council:

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

18 (i) Be accredited;

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

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

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

25 (b) Shall require that a degree-granting institution that
26 operates on a for-profit basis and any agent of the institution,
27 shall not engage in any practice regarding student loan products to
28 fund education that benefits any person or entity having an ownership
29 interest in the institution, or in any practice from which the
30 institution benefits financially on the sale of, or enrollment of
31 students in, loan products to fund education. The prohibition in this
32 subsection (1)(b) applies to any degree-granting institution that
33 operates on a for-profit basis, and any agent of the institution,
34 that has at least one hundred fifty students or more enrolled in the
35 state in any given year or that has been operating in the state for
36 less than two consecutive years. A financial benefit for purposes of
37 this subsection (1)(b) does not include merely having an interest in
38 students with loans enrolling in the institution.

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

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

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

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

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

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

37 **Sec. 5.** RCW 28B.85.090 and 2012 c 229 s 550 are each amended to
38 read as follows:

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

8 (2) The council shall investigate any complaint under this
9 section and may attempt to bring about a settlement. The council may
10 hold a hearing pursuant to the Administrative Procedure Act, chapter
11 34.05 RCW, in order to determine whether a violation has occurred. If
12 the council prevails, the degree-granting institution shall pay the
13 costs of the administrative hearing.

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

25 **Sec. 6.** RCW 28B.85.100 and 2012 c 229 s 551 are each amended to
26 read as follows:

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

35 (2) In addition to the penalties authorized under subsection (1)
36 of this section, any violation of any provision of this chapter under
37 RCW 28B.85.180 is also a violation of RCW 19.86.020 of the consumer
38 protection act. The penalties authorized pursuant to subsection (1)

1 of this section do not preclude remedies available under the
2 provisions of the consumer protection act.

3 NEW SECTION. **Sec. 7.** A new section is added to chapter 28B.85
4 RCW to read as follows:

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

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

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

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

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

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

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

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

32 (3) It is a violation of this chapter for a degree-granting
33 institution that operates on a for-profit basis or an agent of the
34 institution to engage in any practice regarding student loan products
35 to fund education that benefits any person or entity having an
36 ownership interest in the institution, or in any practice from which
37 the institution benefits financially on the sale of, or enrollment of
38 students in, loan products to fund education. The prohibition in this
39 subsection (3) applies to any degree-granting institution that

1 operates on a for-profit basis, and any agent of the institution,
2 that has at least one hundred fifty students or more enrolled in the
3 state in any given year or that has been operating in the state for
4 less than two consecutive years.

5 NEW SECTION. **Sec. 8.** A new section is added to chapter 28B.85
6 RCW to read as follows:

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

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

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

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

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

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

28 **Sec. 9.** RCW 28C.10.050 and 2014 c 11 s 2 are each amended to
29 read as follows:

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

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

37 (a) Disclose to the agency information about its ownership and
38 financial position and ((~~to~~)) demonstrate to the agency that the

1 school is financially viable and responsible and that it has
2 sufficient financial resources to fulfill its commitments to
3 students. Financial disclosures provided to the agency shall not be
4 subject to public disclosure under chapter 42.56 RCW;

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

7 (c) Disclose through use of a school catalog, web site, brochure,
8 or other written material, necessary information to students so that
9 students may make informed enrollment decisions. The agency shall
10 specify what data and information ((is)) are required. To the extent
11 that these web sites or materials present any data on the completion
12 rates, employment rates, loan or indebtedness metrics, and median
13 hourly and annual earnings for any of the private vocational schools
14 or its programs, this information must be consistent with, or
15 accompanied by, the same types of information as currently presented
16 on the agency's career bridge web site, or calculated using the same
17 methods as the data prescribed at that time by the agency for posting
18 on its career bridge web site;

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

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

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

30 (g) Assess the basic skills and relevant aptitudes of each
31 potential student to determine that a potential student has the basic
32 skills and relevant aptitudes necessary to complete and benefit from
33 the program in which the student plans to enroll, including but not
34 limited to administering a United States department of education-
35 approved English as a second language exam before enrolling students
36 for whom English is a second language unless the students provide
37 proof of graduation from a United States high school or proof of
38 completion of a high school equivalency certificate as provided in
39 RCW 28B.50.536 in English or results of another academic assessment

1 determined appropriate by the agency. Guidelines for such assessments
2 shall be developed by the agency, in consultation with the schools;

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

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

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

21 (3) A private vocational school that has at least one hundred
22 fifty students or more in the state during any given year, or that
23 has been operating in the state for less than two consecutive years,
24 or that has not been recognized by the agency as an eligible training
25 provider for at least two consecutive years, may not engage in any
26 practice regarding student loan products to fund education that
27 benefits any person or entity having an ownership in the institution,
28 or in any practice from which the institution benefits financially
29 on the sale of, or enrollment of students in, loan products to fund
30 education.

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

34 ~~((+4))~~ (5) The agency may determine that a licensed private
35 vocational school or a particular program of a private vocational
36 school is at risk of closure or termination if:

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

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

4 ((+5)) (6) If the agency determines that a private vocational
5 school or a particular program is at risk of closure or termination,
6 the agency shall require the school to take corrective action.

7 **Sec. 10.** RCW 28C.10.110 and 2014 c 11 s 6 are each amended to
8 read as follows:

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

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

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

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

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

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

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

38 (f) Represent falsely, directly or by implication, in advertising
39 or in any other manner, the school's size, location, facilities,

1 equipment, faculty qualifications, number of faculty, or the extent
2 or nature of any approval received from an accrediting association;

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

7 (h) Provide prospective students with: Any testimonial,
8 endorsement, or other information ((which has the tendency)) that a
9 reasonable person would find likely to mislead or deceive prospective
10 students or the public, including those regarding current practices
11 of the school((τ)); information regarding rates of completion or
12 postgraduation employment programs, or postgraduation median hourly
13 or annual earnings, that are not consistent with, or calculated using
14 the same methodology as the data posted by the agency on its career
15 bridge web site; current conditions for employment
16 opportunities((τ)); postgraduation career placement rates or probable
17 earnings in the occupation for which the education was designed;
18 total cost to obtain a degree or certificate; the acceptance of a
19 degree or certificate by employers as a qualification for employment;
20 the acceptance of courses, a degree, or certificate by higher
21 education institutions; the likelihood of obtaining financial aid or
22 low-interest loans for tuition; and the ability of graduates to repay
23 loans;

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

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

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

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

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

3 (m) Engage in any practice regarding student loan products to
4 fund education that benefits any person or entity having an ownership
5 interest in the institution, or in any practice from which the
6 institution benefits financially on the sale of, or enrollment of
7 students in, loan products to fund education, if the prohibition
8 under RCW 28C.10.050(3) applies;

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

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

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

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

18 **Sec. 11.** RCW 28C.10.130 and 1986 c 299 s 13 are each amended to
19 read as follows:

20 (1) Any private vocational school or agent violating RCW
21 28C.10.060, 28C.10.090, or 28C.10.110 or the applicable agency rules
22 is subject to a civil penalty of not more than one hundred dollars
23 for each separate violation. Each day on which a violation occurs,
24 and each student injured by an unfair business practice, constitutes
25 a separate violation. Multiple violations on a single day may be
26 considered separate violations. The fine may be imposed by the agency
27 under RCW 28C.10.120, or in any court of competent jurisdiction.

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

34 NEW SECTION. **Sec. 12.** A new section is added to chapter 28C.10
35 RCW to read as follows:

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

1 (a) In writing to current students and exiters of a program;
2 (b) On the web site of the institution; and
3 (c) In all communications regarding the sale or the closing of a
4 program, facility, or site, and those communications must be mailed,
5 posted on the institution's web site, and distributed in any meeting
6 between students and the institution.

7 (2) The agency must provide the form and content of the notice
8 required in this section. The notice must inform students how to
9 contact the office of the ombuds for advice and mediation regarding
10 concerns, and inform students that claims may be pursued by filing a
11 complaint with the agency or by filing a complaint pursuant to RCW
12 19.86.020.

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

--- END ---