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HOUSE BILL 2228

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**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) or~~  
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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