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**SUBSTITUTE HOUSE BILL 2423**

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**State of Washington**

**52nd Legislature**

**1992 Regular Session**

**By** House Committee on Higher Education (originally sponsored by Representatives Jacobsen, May, Ogden, Wood and R. Fisher)

Read first time 01/24/92.

1 AN ACT Relating to vocational schools; amending RCW 28C.10.020,  
2 28C.10.070, 28C.10.084, and 28C.10.120; adding a new section to chapter  
3 28C.10 RCW; and repealing RCW 28C.10.910.

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

5 **Sec. 1.** RCW 28C.10.020 and 1991 c 238 s 81 are each amended to  
6 read as follows:

7 Unless the context clearly requires otherwise, the definitions in  
8 this section apply throughout this chapter.

9 (1) "Agency" means the work force training and education  
10 coordinating board (~~(or its successor)~~).

11 (2) "Agent" means a person owning an interest in, employed by, or  
12 representing for remuneration a private vocational school within or  
13 without this state, who enrolls or personally attempts to secure the  
14 enrollment in a private vocational school of a resident of this state,

1 offers to award educational credentials for remuneration on behalf of  
2 a private vocational school, or holds himself or herself out to  
3 residents of this state as representing a private vocational school for  
4 any of these purposes.

5 (3) "Degree" means any designation, appellation, letters, or words  
6 including but not limited to "associate," "bachelor," "master,"  
7 "doctor," or "fellow" which signify or purport to signify satisfactory  
8 completion of an academic program of study beyond the secondary school  
9 level.

10 (4) "Education" includes but is not limited to, any class, course,  
11 or program of training, instruction, or study.

12 (5) "Educational credentials" means degrees, diplomas,  
13 certificates, transcripts, reports, documents, or letters of  
14 designation, marks, appellations, series of letters, numbers, or words  
15 which signify or appear to signify enrollment, attendance, progress, or  
16 satisfactory completion of the requirements or prerequisites for any  
17 educational program.

18 (6) "Entity" includes, but is not limited to, a person, company,  
19 firm, society, association, partnership, corporation, or trust.

20 (7) "Private vocational school" means any location where (~~{there~~  
21 ~~is}~~) there is an entity offering postsecondary education in any form  
22 or manner for the purpose of instructing, training, or preparing  
23 persons for any vocation or profession.

24 (8) "To grant" includes to award, issue, sell, confer, bestow, or  
25 give.

26 (9) "To offer" includes, in addition to its usual meanings, to  
27 advertise or publicize. "To offer" also means to solicit or encourage  
28 any person, directly or indirectly, to perform the act described.

29 (10) "To operate" means to establish, keep, or maintain any  
30 facility or location where, from, or through which education is offered

1 or educational credentials are offered or granted to residents of this  
2 state, and includes contracting for the performance of any such act.

3 **Sec. 2.** RCW 28C.10.070 and 1986 c 299 s 7 are each amended to read  
4 as follows:

5 The agency shall establish fees by rule at a level necessary to  
6 approximately recover the staffing costs incurred in administering this  
7 chapter. All fees collected under this section shall be deposited in  
8 the ~~((state general fund))~~ private vocational school account created in  
9 section 5 of this act for the support of staffing costs incurred in  
10 administering this chapter.

11 **Sec. 3.** RCW 28C.10.084 and 1990 c 188 s 8 are each amended to read  
12 as follows:

13 (1) The agency shall establish, maintain, and administer a tuition  
14 recovery fund. All funds collected for the tuition recovery fund are  
15 payable to the state for the benefit and protection of any student or  
16 enrollee of a private vocational school licensed under this chapter,  
17 or, in the case of a minor, his or her parents or guardian, for  
18 purposes including but not limited to the settlement of claims  
19 ~~((procedures))~~ related to school closures under subsection (9) of this  
20 section and the settlement of complaints under RCW 28C.10.120. The  
21 fund shall be liable for settlement of claims and costs of  
22 administration but shall not be liable to pay out or recover penalties  
23 assessed under RCW 28C.10.130 or 28C.10.140. No liability accrues to  
24 the state of Washington from claims made against the fund.

25 (2) To be and remain licensed under this chapter each entity shall,  
26 in addition to other requirements under this chapter, make cash  
27 deposits into a tuition recovery fund as a means to assure payment of  
28 claims brought under this chapter. The fund shall ~~((be initially~~

1 ~~capitalized at two hundred thousand dollars and shall))~~ achieve an  
2 operating balance of at least one million dollars within ~~((five))~~ ten  
3 years after May 18, 1987, as required under subsection (5) of this  
4 section.

5 (3) The amount of liability that can be satisfied by this fund on  
6 behalf of each individual entity licensed under this chapter shall be  
7 established by the agency, based on an incremental scale that  
8 recognizes the average amount of unearned prepaid tuition in possession  
9 of the entity. However, the minimum amount of liability for any entity  
10 shall not be less than five thousand dollars ~~((and the maximum amount  
11 shall not exceed two hundred thousand dollars. Such limitation on each  
12 entity's liability remains unchanged by single or cumulative  
13 disbursements made on behalf of the entity))~~. The upper limit of  
14 liability is reestablished ~~((following the settlement of any claim))~~  
15 after any disbursements are made to settle an individual claim or class  
16 of claims.

17 (4) ~~((Within sixty days after any entity deposits its initial  
18 contribution into the fund, the agency shall release whatever surety  
19 such entity had previously filed. Thereupon, the tuition recovery fund  
20 shall be liable for a period of one year following the date such surety  
21 is released with respect to prior claims against the surety. However,  
22 the liability of the fund is limited to the amount of and subject to  
23 the defenses of that released surety as though it had remained on file  
24 with the agency.))~~ The fund's liability with respect to each  
25 participating entity ~~((that makes an))~~ commences on the date of its  
26 initial deposit into the fund ~~((commences on that date))~~ and ceases one  
27 year from the date it is no longer licensed under this chapter.

28 (5) The agency shall adopt by rule a matrix for calculating the  
29 deposits into the fund required of each entity. Proration shall be  
30 determined by factoring the entity's share of liability in proportion

1 to the aggregated liability of all participants under the fund by  
2 grouping such prorations under the incremental scale created ~~((in))~~ by  
3 subsection (3) of this section. Expressed as a percentage of the total  
4 liability, that figure determines the amount to be contributed when  
5 factored into a fund containing one million dollars. The total amount  
6 of its prorated share, minus the amount paid for initial  
7 capitalization, shall be payable in ~~((ten))~~ twenty equal increments  
8 over a ~~((five))~~ ten-year period, commencing with the sixth month after  
9 ~~((May 18, 1987))~~ the entity makes its initial capitalization deposit.  
10 Additionally, the agency shall require deposits for initial  
11 capitalization, under which the amount each entity deposits is  
12 proportionate to its share of two hundred thousand dollars, employing  
13 the matrix developed under this subsection. The amount thus  
14 established shall be deposited ~~((by each licensee of record, within~~  
15 ~~thirty days after May 18, 1987, and a like amount shall be deposited))~~  
16 by each ~~((subsequent))~~ applicant for initial licensing before the  
17 issuance of such license.

18 (6) No vested right or interests in deposited funds is created or  
19 implied for the depositor, either at any time during the operation of  
20 the fund or at any such future time that the fund may be dissolved.  
21 All funds deposited are payable to the state for the purposes described  
22 under this section. The agency shall maintain the fund, ~~((collect~~  
23 ~~deposits when due by serving))~~ serve appropriate notices to affected  
24 entities when scheduled deposits are due, collect deposits, and make  
25 disbursements to settle claims against the fund. When the aggregated  
26 deposits total five million dollars and the history of disbursements  
27 ~~((so warrants))~~ justifies such modifications, the agency may at its own  
28 option reduce the schedule of deposits whether as to time, amount, or  
29 both~~((. — When such level is achieved,))~~ and the agency may also

1 entertain proposals from among the licensees with regard to disbursing  
2 surplus funds for such purposes as vocational scholarships.

3       (7) ~~((The agency shall make determinations))~~ Based on annual  
4 financial data supplied by the entity the agency shall determine  
5 whether the increment assigned to that entity on the incremental scale  
6 established under subsection (5) of this section has changed. If an  
7 increase or decrease in gross annual tuition income has occurred, a  
8 corresponding change in its incremental position and contribution  
9 schedule shall be made before the date of its next scheduled deposit  
10 into the fund. Such adjustments shall only be calculated and applied  
11 annually.

12       (8) No deposits made into the fund by an entity are transferable.  
13 If ~~((fifty one percent or more of))~~ the majority ownership interest in  
14 an entity is conveyed through sale or other means into different  
15 ownership, ~~((the contribution schedule of the prior owner is~~  
16 ~~canceled.))~~ all contributions made to the date of transfer accrue to  
17 the fund. ~~The new owner commences contributions under provisions~~  
18 ~~applying to a new applicant.~~

19       (9) ~~To settle complaints adjudicated under RCW 28C.10.120 and~~  
20 ~~claims resulting when a private vocational school ceases to provide~~  
21 ~~educational services, the agency may make disbursements from the fund.~~  
22 Students enrolled under a training contract executed between a school  
23 and a public or private agency or business are not eligible to make a  
24 claim against the fund. ~~In addition to the processes described for~~  
25 ~~making reimbursements related to complaints under RCW 28C.10.120 ((for~~  
26 ~~handling complaints)),~~ the following ~~((additional))~~ procedures are  
27 established to deal with reimbursements related to school closures:

28       (a) The agency shall attempt to notify all potential claimants.  
29 The ~~((absence))~~ unavailability of records and other circumstances  
30 surrounding a school closure may make it impossible or unreasonable for

1 the agency to ascertain the names and whereabouts of each potential  
2 claimant but the agency shall make reasonable inquiries to secure that  
3 information from all likely sources. The agency shall then proceed to  
4 settle the claims on the basis of information in its possession. The  
5 agency is not responsible or liable for claims or for handling claims  
6 that may subsequently appear or be discovered.

7 (b) Thirty days after identified potential claimants have been  
8 notified, if a claimant refuses or neglects to file a claim  
9 verification as requested in such notice, the agency shall be relieved  
10 of further duty or action on behalf of the claimant under this chapter.

11 (c) After verification and review, the agency may disburse funds  
12 from the tuition recovery fund to settle or compromise the claims.  
13 However, the liability of the fund for claims against the closed entity  
14 shall not exceed (~~that total amount of the contribution schedule~~) the  
15 maximum amount of liability assigned to that entity under subsection  
16 (5) of this section.

17 (~~(d)~~) (10) In the instance of claims against a closed school, the  
18 agency shall seek to recover such disbursed funds from the assets of  
19 the defaulted entity, including but not limited to asserting claims as  
20 a creditor in bankruptcy proceedings.

21 (~~(10)~~) (11) When funds are disbursed to settle claims against a  
22 current licensee, the agency shall make demand upon the licensee for  
23 recovery. The agency shall adopt schedules of times and amounts  
24 (~~acceptable~~) for effecting recoveries. An entity's failure to  
25 perform subjects its license to suspension or revocation under RCW  
26 28C.10.050 in addition to any other available remedies.

27 (~~(11)~~) (12) A minimum operating balance of two hundred thousand  
28 dollars shall be maintained in the fund during the first five years of  
29 operation. A minimum operating balance of one million dollars shall be  
30 achieved by May 1997, and maintained thereafter. If disbursements

1 reduce the operating balance below two hundred thousand dollars at any  
2 time before May 1997, or below one million dollars thereafter, each  
3 participating entity shall be assessed a prorata share of the  
4 deficiency created, based upon the incremental scale created under  
5 subsection (5) of this section. The agency shall ~~((promptly))~~ adopt  
6 schedules of times and amounts acceptable for affecting payments of  
7 assessments.

8 **Sec. 4.** RCW 28C.10.120 and 1990 c 188 s 10 are each amended to  
9 read as follows:

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

17 (2) The agency shall investigate any complaint under this section  
18 and ~~((may))~~ shall first attempt to bring about a negotiated settlement.  
19 The agency director or the director's designee may ~~((hold a hearing~~  
20 ~~pursuant to the Administrative Procedure Act, chapter 34.05 RCW,))~~  
21 conduct an informal hearing with the affected parties in order to  
22 determine whether a violation has occurred.

23 (3) If ~~((, after the hearing,))~~ the agency finds that the private  
24 vocational school or its agent engaged in or is engaging in any unfair  
25 business practice, the agency shall issue and cause to be served upon  
26 the violator an order requiring the violator to cease and desist from  
27 the act or practice and may impose the penalties provided under RCW  
28 28C.10.130. If the agency finds that the complainant has suffered loss  
29 as a result of the act or practice, the agency may order the violator

1 to pay full or partial restitution ((for the loss)) of any amounts  
2 lost. The loss may include any money paid for tuition, required or  
3 recommended course materials, and any reasonable living expenses  
4 incurred by the complainant during the time the complainant was  
5 enrolled at the school.

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

9 ((+4)) (5) The violator may, within twenty days of being served  
10 any order described under subsection (3) of this section, file an  
11 appeal under the administrative procedure act, chapter 34.05 RCW.  
12 Timely filing stays the agency's order during the pendency of the  
13 appeal. If the agency prevails ((in any administrative hearing)), the  
14 ((private vocational school)) appellant shall pay the costs of the  
15 administrative hearing.

16 NEW SECTION. Sec. 5. A new section is added to chapter 28C.10 RCW  
17 to read as follows:

18 The private vocational school account is created in the custody of  
19 the state treasurer. All receipts from fees collected under RCW  
20 28C.10.070 shall be deposited into the account. Expenditures from the  
21 account may be used only for staffing costs incurred in administering  
22 chapter 28C.10 RCW. Only the director of the work force training and  
23 education coordinating board or the director's designee may authorize  
24 expenditures from the account. Moneys in the account may be spent only  
25 after appropriation.

26 NEW SECTION. Sec. 6. RCW 28C.10.910 and 1986 c 299 s 28 are  
27 each repealed.