

# HOUSE BILL REPORT

## HB 1439

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### As Reported by House Committee On: Higher Education

**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:** Representatives Pollet, Haler, Tarleton, Fey, Sells, Orwall, Ryu, Stanford and Dolan.

#### **Brief History:**

##### **Committee Activity:**

Higher Education: 2/1/17, 2/17/17 [DPS].

#### **Brief Summary of Substitute Bill**

- Creates regulatory provisions for certain degree-granting institutions and private vocational schools regarding, among other things: (1) selling student loan products if the institution or school has a financial interest in the product; (2) engaging in unfair business practices; (3) prohibiting misleading or deceptive testimony and advertising; (4) failing to continue job placement services; (5) presenting performance data using certain methodologies; and (6) providing notices to students, including notices about student loans.

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### HOUSE COMMITTEE ON HIGHER EDUCATION

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 5 members: Representatives Hansen, Chair; Pollet, Vice Chair; Orwall, Sells and Tarleton.

**Minority Report:** Do not pass. Signed by 4 members: Representatives Holy, Ranking Minority Member; Van Werven, Assistant Ranking Minority Member; Haler and Stambaugh.

**Staff:** Trudes Tango (786-7384).

#### **Background:**

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*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.*

For-profit post secondary institutions 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.

Degree-granting institutions, which includes for-profit schools, must be authorized or licensed by the appropriate regulating agency, meet certain minimum standards regarding academic standards and financial stability, and not engage in unfair or deceptive practices set forth in the statutes. Certain degree-granting institutions, such as the public universities and private institutions that meet specific criteria from the WSAC, are exempt from the regulatory statutes. For private vocational schools, it is an unfair practice to, among other things, provide prospective students with information that has a tendency to mislead or deceive regarding the school's current practices.

The WSAC and the WTB have authority to investigate student complaints and issue civil penalties. A person or entity that violates the regulations is subject to a civil penalty of not more than \$100 for each violation. Each day a violation occurs constitutes a separate violation. A violation of the regulations constitutes an unfair or deceptive practice in violation of the Consumer Protection Act (CPA). Under the CPA, an aggrieved person may bring a private cause of action for damages or the Office of the Attorney General (AGO) may take action.

In the 2016 Supplemental Operating Budget, money was appropriated for the WSAC, the WTB, and the Department of Licensing to design and oversee a study that objectively analyzes and makes recommendations about systemic overlaps and gaps in jurisdiction over for-profit degree-granting institutions and private vocational schools. The WSAC contracted with the William D. Ruckelshaus Center (Center) to conduct the study, and the Center issued a report in December 2016.

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### **Summary of Substitute Bill:**

Various regulatory provisions are created that apply to degree-granting institutions that are not exempt from the statutes and to private vocational schools.

#### Unfair Practices and Civil Penalties for Violations.

The WSAC may deny, revoke, or suspend the authorization of a degree-granting institution that has engaged in a significant number of unfair business practices. Degree-granting institutions may not: (1) provide prospective students with testimonial or other information that a reasonable person would find is likely 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) fail to continue job placement services promised if the institution is sold, closed, or reduces programs; (3) place a student in a short-term job not relevant to the student's training in order to meet reporting requirements; and (4) use any official United States military logo in advertising or promotional materials.

For private vocational schools, it is an unfair practice to provide students with testimonials or other information that a reasonable person would find likely to mislead or deceive regarding, among other things, rates of completion, post graduation employment programs, and post graduation median hourly or annual earnings, that are inconsistent with the data reporting requirements established by the bill.

For purposes of the \$100-per-violation civil penalty, each student that is injured by an unfair business practice is considered a separate violation. It is made explicit that engaging in an unfair business practice constitutes a violation of the CPA.

#### Restrictions Related to Financial Interests.

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 to fund education that financially benefit any person or entity having an ownership interest in the school, unless the institution demonstrates that the student has exhausted all federal aid options and has been denied noninstitutional private commercial loan products.

This prohibition applies to institutions 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.

#### Data Reporting.

If a degree-granting institution presents data about its completion rates, employment rates, loan or indebtedness metrics, or its graduates' median hourly and annual earnings, the presentation of the data must be consistent with the methodology and procedures used by schools presenting data on the WTB's Career Bridge website, the United States Department of Education, or other means to assure consistent and accurate reporting, as determined by the WSAC. Parallel requirements are imposed on private vocational schools presenting their data.

The WSAC and the WTB must establish by rule consistent definitions for the following terms: "short-term job," "part-time employment," "self-employment," and "under-reported earnings."

#### Notice Requirements.

Degree-granting institutions and private vocational schools must provide notice to students about a student's state and federal rights, including the complaint procedures available to students. The regulating agency must establish the form and content of the notice.

In addition, degree-granting institutions and private vocational schools that receive education loan information for an enrolled student must provide the student with a notification about the education loans the institution or school has certified. The notification must include, among other things, an estimate of the total amount of education loans taken out by the student; potential total payoff amount or a range of the total payoff amount; monthly repayment amounts based on the federal loan repayment plan borrowers are automatically enrolled in; and percentage of the aggregate federal direct loan borrowing limit the student has reached as applied to the student's program of study. The notification must also provide other information, such as the differences between federal and private student loans and the availability of income-based repayment options for federal loans.

Provisions are established regarding when the notices must be provided and in what form. Notices are required each time a student is offered a new financial aid package including loans. The institutions and schools do not incur liability for any good faith representations made in the notifications.

The regulating agencies must begin providing notices to students about their educational loans by July 1, 2018. In addition, the agencies must develop a form for reporting compliance by July 1, 2018, and the institutions and schools must report compliance with the regulating agency at least annually beginning January 1, 2019. Beginning December 1, 2019, and biannually thereafter until December 25, 2025, the regulating agencies must submit a report to the Legislature regarding compliance.

Study.

Subject to the availability of amounts appropriated for this specific purpose, the WSAC must continue administering the study that was authorized in the 2016 Supplemental Operating Budget bill. The study must contain findings and recommendations regarding the creation of an ombuds to serve students of degree-granting institutions and private vocational schools, including a recommendation on which state agency should house an Office of the Ombuds.

**Substitute Bill Compared to Original Bill:**

The substitute bill: (1) replaces the intent section; (2) applies the bill to institutions authorized to operate under the degree-granting institution act (not just for-profit institutions); (3) removes the creation of the Ombuds office; (4) requires the WSAC, subject to appropriated funds, to continue administering the study authorized in the 2016 Supplemental Operating Budget, and requires the study to contain recommendations on the creation of an Ombuds office; (5) makes it explicit that the WSAC may deny, revoke, or suspend the authorization of a degree-granting institution for violations under the chapter; (6) authorizes the WSAC to deny, revoke, or suspend authorization if the institution has engaged in a significant number of unfair business practices (as opposed to a substantial number of unfair business practices or a significant unfair business practice); (7) provides that, for purposes of presenting data on completion rates and other similar data, the presentation must be consistent with how data is presented on the Career Bridge website, the United States Department of Education, or other means to assure consistent and accurate reporting; (8) requires the WSAC and the WTB to establish consistent definitions by rule for the terms: "short-term job," "part-time employment," "self-employment," and "under-reported earnings;" (9) makes changes to the requirement that degree-granting institutions and private vocational schools send notifications to students with educational loan information, including estimated total payoff and monthly repayment amounts; and (10) makes other clarifying and technical changes.

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**Appropriation:** None.

**Fiscal Note:** Available.

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

**Staff Summary of Public Testimony:**

(In support) There are some great career and private degree-granting institutions, and because of the actions of a few high-profile bad actors, there is a need for a "Good Housekeeping Seal" of approval. One such actor sold private loans with interests rates as high as 16 percent. It is important to ban the practice of selling loans to students when the school has a self-interest in those loans. The Center's report recommended unified data collection with consistent definitions and metrics. This bill will provide more information to students and provide consumer protection for students who are investing in their education. Students of schools that have been investigated are left not knowing if they will get their degrees. For-profit schools target the most vulnerable students. They look at students through a "for-profit" lens. Students do not know who regulates their school and where to turn to. The bill has the same disclosures for student financial aid as in the transparency bill.

(Opposed) This bill is an attack on private businesses. There are already multiple agencies that oversee these schools. This bill creates another way to report data, but there already exists ways to report data.

(Other) Some clarifying technical corrections are needed. There are some long-standing for-profit schools that have been operating in Washington for more than 15 years and they are exempt from the degree-granting institution statutes. The WSAC looks at the financial status and other factors when authorizing schools. The WSAC receives student complaints and refers them to the AGO when appropriate.

**Persons Testifying:** (In support) Representative Pollet, prime sponsor; Benjamin Rowe, Associated Students of Eastern Washington University; Anna Nepomuceno, University of Washington-Tacoma; and Ariel Speser, Northwest Justice Project.

(Opposed) Dion McNeeley, Northwest Career Colleges Federation.

(Other) Maddy Thompson, Student Achievement Council; and Jim Parker, Workforce Training and Education Coordinating Board.

**Persons Signed In To Testify But Not Testifying:** None.