H-1389.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**HOUSE BILL 2014**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 66th Legislature 2019 Regular Session**

**By** Representatives Van Werven, Graham, Gildon, Young, Sutherland, and Rude

AN ACT Relating to implementing recommendations from the work group on private degree-granting institutions and private vocational schools and providing other procedural protections; amending RCW 28B.85.230, 28B.85.070, 18.16.310, 18.16.140, 28B.77.110, and 28C.10.084; adding a new section to chapter 28C.18 RCW; and adding a new section to chapter 82.32 RCW.

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

**Sec.**  RCW 28B.85.230 and 2018 c 203 s 11 are each amended to read as follows:

(1)(a) For the purpose of providing relief to students impacted by the voluntary or involuntary closure and other unforeseen acts of schools regulated under this chapter, the council shall establish, maintain, and administer a student achievement council tuition recovery trust fund created in RCW 28B.85.240. All funds collected for the student achievement council tuition recovery trust fund are payable to the state for the benefit and protection of any student or enrollee of a private school licensed under this chapter, for purposes including but not limited to the settlement of claims related to ((~~school~~)) institution closures, loss of accreditation, and unfair business practices. Funds in the student achievement council tuition recovery trust fund may only be used for the purposes provided for under this section and no part of the fund may be transferred or diverted to any other fund or for any other use.

(b) No liability accrues to the state from claims made against the student achievement council tuition recovery trust fund.

(2)(a) The council may impose a fee structure, set forth in rule, on ((~~schools licensed~~)) institutions authorized to operate under this chapter to fund the student achievement council tuition recovery trust fund.

(b) The council must determine an amount that would be sufficient in the student achievement council tuition recovery trust fund to provide relief to students in the event of ((~~a school~~)) an institution closure. The council shall adopt schedules of times and amounts for effecting payments of fees. To reach the amount determined, the council may phase in the collection of fees, but must achieve the amount determined to be sufficient no later than ((~~five~~)) ten years from June 7, 2018.

(3) Money from the student achievement council tuition recovery trust fund may be used only for:

(a) Providing refunds to students ((~~affected by school~~)) of tuition and fees that were paid for courses in which the student was unable to earn credits due to an institution's closures, loss of accreditation, unfair business practices, or other acts constituting an institution's failure to comply with the authorization requirements specified in this chapter;

(b) Securing and administering student records; and

(c) Any other response the council determines is necessary to mitigate impacts of a potential or actual ((~~school~~)) institution closure.

(4) In order for ((~~a school~~)) an institution to be and remain ((~~licensed~~)) authorized under this chapter, each ((~~school owner~~)) institution shall, in addition to other requirements under this chapter, make cash deposits on behalf of the ((~~school~~)) institution into a student achievement council tuition recovery trust fund.

(5) The student achievement council tuition recovery trust fund's liability with respect to each participating ((~~school~~)) institution commences on the date of the initial deposit into the student achievement council tuition recovery trust fund made on its behalf and ceases one year from the date the ((~~school~~)) institution is no longer ((~~licensed~~)) authorized to operate under this chapter.

(6) The council shall adopt by rule a matrix for calculating the deposits into the student achievement council tuition recovery trust fund on behalf of each ((~~school~~)) institution.

(7) No vested right or interest in deposited funds is created or implied for the depositor at any time during the operation of the student achievement council tuition recovery trust fund or at any such future time that the student achievement council tuition recovery trust fund may be dissolved. All funds deposited are payable to the state for the purposes described under this section. The council shall maintain the student achievement council tuition recovery trust fund, serve appropriate notices to affected ((~~owners~~)) institutions when scheduled deposits are due, collect deposits, and make disbursements to settle claims against the student achievement council tuition recovery trust fund.

(8) The council shall eliminate the surety bond requirement under RCW 28B.85.070 if the threshold amount for the student achievement council tuition recovery trust fund has been met and the council determines that students of the institution would be adequately protected without a surety bond or other security in lieu of a bond.

(9) The council shall adopt rules to address notifying potential claimants, settling claims, disbursing funds, and any other processes necessary to implement the purpose of this section.

**Sec.**  RCW 28B.85.070 and 2012 c 229 s 548 are each amended to read as follows:

(1) Except as provided under RCW 28B.85.230(8), the council may require any degree-granting institution to have on file with the council an approved surety bond or other security in lieu of a bond in an amount determined by the council.

(2) In lieu of a surety bond, an institution may deposit with the council a cash deposit or other negotiable security acceptable to the council. The security deposited with the council in lieu of the surety bond shall be returned to the institution one year after the institution's authorization has expired or been revoked if legal action has not been instituted against the institution or the security deposit at the expiration of the year. The obligations and remedies relating to surety bonds authorized by this section, including but not limited to the settlement of claims procedure in subsection (5) of this section, shall apply to deposits filed with the council, as applicable.

(3) Each bond shall:

(a) Be executed by the institution as principal and by a corporate surety licensed to do business in the state;

(b) Be payable to the state for the benefit and protection of any student or enrollee of an institution, or, in the case of a minor, his or her parents or guardian;

(c) Be conditioned on compliance with all provisions of this chapter and the council's rules adopted under this chapter;

(d) Require the surety to give written notice to the council at least thirty-five days before cancellation of the bond; and

(e) Remain in effect for one year following the effective date of its cancellation or termination as to any obligation occurring on or before the effective date of cancellation or termination.

(4) Upon receiving notice of a bond cancellation, the council shall notify the institution that the authorization will be suspended on the effective date of the bond cancellation unless the institution files with the council another approved surety bond or other security. The council may suspend or revoke the authorization at an earlier date if it has reason to believe that such action will prevent students from losing their tuition or fees.

(5) If a complaint is filed under RCW 28B.85.090(1) against an institution, the council may file a claim against the surety and settle claims against the surety by following the procedure in this subsection.

(a) The council shall attempt to notify all potential claimants. If the absence of records or other circumstances makes it impossible or unreasonable for the council to ascertain the names and addresses of all the claimants, the council after exerting due diligence and making reasonable inquiry to secure that information from all reasonable and available sources, may make a demand on a bond on the basis of information in the council's possession. The council is not liable or responsible for claims or the handling of claims that may subsequently appear or be discovered.

(b) Thirty days after notification, if a claimant fails, refuses, or neglects to file with the council a verified claim, the council shall be relieved of further duty or action under this chapter on behalf of the claimant.

(c) After reviewing the claims, the council may make demands upon the bond on behalf of those claimants whose claims have been filed. The council may settle or compromise the claims with the surety and may execute and deliver a release and discharge of the bond.

(d) If the surety refuses to pay the demand, the council may bring an action on the bond in behalf of the claimants. If an action is commenced on the bond, the council may require a new bond to be filed.

(e) Within ten days after a recovery on a bond or other posted security has occurred, the institution shall file a new bond or otherwise restore its security on file to the required amount.

(6) The liability of the surety shall not exceed the amount of the bond.

**Sec.**  RCW 18.16.310 and 2018 c 203 s 9 are each amended to read as follows:

(1)(a) For the purpose of providing relief to students impacted by the voluntary or involuntary closure and other unforeseen acts of schools regulated under this chapter, the director shall establish, maintain, and administer a department of licensing tuition recovery trust fund created in RCW 18.16.320. The department of licensing tuition recovery trust fund shall be established no later than January 1, 2019. All funds collected for the department of licensing tuition recovery trust fund are payable to the state for the benefit and protection of any student or enrollee of a private school licensed under this chapter, for purposes including but not limited to the settlement of claims related to school closures, loss of accreditation, and unfair business practices. Funds in the department of licensing tuition recovery trust fund may only be used for the purposes provided for under this section and no part of the fund may be transferred or diverted to any other fund or for any other use.

(b) No liability accrues to the state from claims made against the department of licensing tuition recovery trust fund.

(2)(a) The director may impose a fee structure, set forth in rule, on schools licensed under this chapter to fund the department of licensing tuition recovery trust fund.

(b) The director must determine an amount that would be sufficient in the department of licensing tuition recovery trust fund to provide relief to students in the event of a school closure. The director shall adopt schedules of times and amounts for effecting payments of fees. To reach the amount determined, the director may phase in the collection of fees, but must achieve the amount determined to be sufficient no later than ((~~five~~)) ten years from June 7, 2018.

(3) Money from the department of licensing tuition recovery trust fund may be used only for:

(a) Providing refunds to students ((~~affected by~~)) of tuition and fees that were paid for courses in which the student was unable to earn credits due to school closures, loss of accreditation, unfair business practices, or other acts constituting a school's failure to comply with the authorization requirements specified in this chapter;

(b) Securing and administering student records; and

(c) Any other response the director determines is necessary to mitigate impacts of a potential or actual school closure.

(4) In order for a school to be and remain licensed under this chapter, each school owner shall, in addition to other requirements under this chapter, make cash deposits on behalf of the school into the department of licensing tuition recovery trust fund.

(5) The department of licensing tuition recovery trust fund's liability with respect to each participating school commences on the date of the initial deposit into the department of licensing tuition recovery trust fund made on its behalf and ceases one year from the date the school is no longer licensed under this chapter.

(6) The director shall adopt by rule a matrix for calculating the deposits into the department of licensing tuition recovery trust fund on behalf of each school.

(7) No vested right or interest in deposited funds is created or implied for the depositor at any time during the operation of the department of licensing tuition recovery trust fund or at any such future time that the department of licensing tuition recovery trust fund may be dissolved. All funds deposited are payable to the state for the purposes described in this section. The director shall maintain the department of licensing tuition recovery trust fund, serve appropriate notices to affected owners when scheduled deposits are due, collect deposits, and make disbursements to settle claims against the department of licensing tuition recovery trust fund.

(8) The department shall eliminate the surety bond requirement under RCW 18.16.140 if the threshold amount for the department of licensing tuition recovery trust fund has been met and the department determines that students would be adequately protected without a surety bond or other security in lieu of a bond.

(9) The director shall adopt rules to address notifying potential claimants, settling claims, disbursing funds, and any other processes necessary to implement the purpose of this section.

**Sec.**  RCW 18.16.140 and 2002 c 111 s 9 are each amended to read as follows:

(1) Any person wishing to operate a school shall, before opening such a school, pay the license fee and file with the director for approval a license application containing the following information:

(a) The names and addresses of all owners, managers, and instructors;

(b) A copy of the school's curriculum satisfying the curriculum requirements established by the director;

(c) A sample copy of the school's catalog, brochure, enrollment contract, and cancellation and refund policies that will be used or distributed by the school to students and the public;

(d) Except as provided under RCW 18.16.3108), a surety bond in an amount not less than ten thousand dollars, or ten percent of the annual gross tuition collected by the school, whichever is greater. The approved security shall not exceed fifty thousand dollars and shall run to the state of Washington for the protection of unearned prepaid student tuition. The school shall attest to its gross tuition at least annually on forms provided by the department. When a new school license is being applied for, the applicant will estimate its annual gross tuition to establish a bond amount. This subsection shall not apply to community colleges and vocational technical schools.

Upon approval of the application and documents, the director shall issue a license to operate a school.

(2) Changes to the information provided by schools shall be submitted to the department within fifteen days of the implementation date.

(3) A change involving the controlling interest of the school requires a new license application and fee. The new application shall include all required documentation, proof of ownership change, and be approved prior to a license being issued.

(4) School and instructor licenses issued by the department shall be posted in the reception area of the school.

**Sec.**  RCW 28B.77.110 and 2018 c 203 s 13 are each amended to read as follows:

(1) Within existing resources, the student achievement council, the workforce training and education coordinating board, and the department of licensing shall collaborate to create a single portal for student complaints regarding issues related to consumer protection, disclosures, school or program closures, or other violations committed by institutions regulated by those three agencies. The persons staffing the portal shall refer complaints to the appropriate agency and work as a liaison between the student and relevant agency to assist in resolving the concerns or complaint. Each agency shall ensure that all students enrolled in, applying to enroll in, or obtaining loans at, institutions regulated by the agency are informed of the portal and how to file complaints. The persons staffing the portal will report to the legislature annually by November 1, 2018, the number of complaints and their resolution status.

(2) The council, the workforce training and education coordinating board, and the department of licensing shall:

(a) Work with the institutions and schools they regulate to publicize the portal and refer students to it;

(b) Collect information from the portal on the:

(i) Frequency and type of student complaints;

(ii) Number of complaints per institution; and

(iii) Number of complaints per type of institution;

(c) By January 1, 2020, assess the adequacy of the portal and existing agency resources to respond to student complaints and meet student needs; and

(d) Upon completion of the assessment under (c) of this subsection, recommend to the legislature whether to create a new ombuds position.

(3) The council, the workforce training and education coordinating board, and the department of licensing may adopt rules to implement this section.

NEW SECTION. **Sec.**  A new section is added to chapter 28C.18 RCW to read as follows:

(1) The purpose of this section is to increase transparency and accountability, improve consumer choice, strengthen protections for students, and create a level playing field among all postsecondary institutions.

(2) Beginning in the 2020 reporting cycle, all Washington postsecondary institutions shall make student-level data available to the board to allow the board to evaluate the performance of postsecondary education programs.

(3) The board shall compile, and where feasible independently verify, the employment rates and earnings of recent graduates, student completion rates, key industries where students were employed after graduating, demographic characteristics of students enrolled in individual education programs, and other indicators the board determines is useful to implement the purposes of this section.

(4) The board shall:

(a) Determine what student-level data is needed and work with postsecondary institutions to streamline data reporting; and

(b) Enter into data-sharing agreements, if necessary, with the postsecondary institutions, the student achievement council, the state board for community and technical colleges, the council of presidents, the education data center, and the department of revenue.

(5) For programs in which short-term outcomes are not sufficient to gauge long-term success, other performance measures may be used, as determined by the board.

(6)(a) Postsecondary institutions may be subject to sanctions for failing to make available student-level data to the board, as required under this section.

(b) The board may notify the regulatory agency with jurisdiction over the postsecondary institution if the postsecondary institution fails to make student-level data available to the board as required under this section.

(c) The agency regulating the postsecondary institution may take action against the postsecondary institution by first issuing a warning notice to the postsecondary institution. If the postsecondary institution fails to comply after being issued a warning notice, the regulatory agency may institute graduated sanctions, including additional warnings, monetary fines, placing the postsecondary institution on probationary status, or take other appropriate action proportionate to the postsecondary institution's noncompliance.

(7) For the purposes of this section, "postsecondary institution" means any entity that is an institution of higher education as defined in RCW 28B.10.016, a degree-granting institution as defined in RCW 28B.85.010, and a private vocational school as defined in RCW 28C.10.020.

(8) The board may adopt rules to implement this section.

**Sec.**  RCW 28C.10.084 and 2014 c 11 s 5 are each amended to read as follows:

(1) The agency shall establish, maintain, and administer a tuition recovery trust fund. All funds collected for the tuition recovery trust fund are payable to the state for the benefit and protection of any student or enrollee of a private vocational school licensed under this chapter, in the case of a minor, his or her parents or guardian, or an agency or business that paid tuition and fees on behalf of Washington state students, for purposes including but not limited to the settlement of claims related to school closures under subsection (10) of this section and the settlement of claims under RCW 28C.10.120. The fund shall be liable for settlement of claims and costs of administration but shall not be liable to pay out or recover penalties assessed under RCW 28C.10.130 or 28C.10.140. No liability accrues to the state of Washington from claims made against the fund. Funds in the tuition recovery trust fund may only be used for the purposes provided for under this section and no part of the fund may be transferred or diverted to any other fund or for any other use.

(2) By June 30, 1998, a minimum operating balance of one million dollars shall be achieved in the fund and maintained thereafter. If disbursements reduce the operating balance below two hundred thousand dollars at any time before June 30, 1998, or below one million dollars thereafter, each participating owner shall be assessed a pro rata share of the deficiency created, based upon the incremental scale created under subsection (6) of this section for each private vocational school. The agency shall adopt schedules of times and amounts for effecting payments of assessment.

(3) In order for a private vocational school to be and remain licensed under this chapter each owner shall, in addition to other requirements under this chapter, make cash deposits on behalf of the school into a tuition recovery trust fund as a means to assure payment of claims brought under this chapter.

(4) The amount of liability that can be satisfied by this fund on behalf of each private vocational school licensed under this chapter shall be the amount of unearned prepaid tuition and fees. If the claimant provides evidence to the agency of the lack of availability to continue his or her program of study at another institution, the agency's executive director or the executive director's designee has the authority to reimburse the student, agency, or business up to the full value of tuition and fees paid to date, subject to subsection (10) of this section. The agency may use the fund to pay for prior learning assessments for students who choose to attend another institution.

(5) The fund's liability with respect to each participating private vocational school commences on the date of the initial deposit into the fund made on its behalf and ceases one year from the date the school is no longer licensed under this chapter.

(6) The agency shall adopt by rule a matrix for calculating the deposits into the fund on behalf of each vocational school. Proration shall be determined by factoring the school's share of liability in proportion to the aggregated liability of all participants under the fund by grouping such prorations under the incremental scale created by subsection (4) of this section. Expressed as a percentage of the total liability, that figure determines the amount to be contributed when factored into a fund containing one million dollars. The total amount of its prorated share, minus the amount paid for initial capitalization, shall be payable in up to twenty increments over a ten-year period, commencing with the sixth month after the initial capitalization deposit has been made on behalf of the school. Additionally, the agency shall require deposits for initial capitalization, under which the amount each owner deposits is proportionate to the school's share of two hundred thousand dollars, employing the matrix developed under this subsection.

(7) No vested right or interests in deposited funds is created or implied for the depositor, either at any time during the operation of the fund or at any such future time that the fund may be dissolved. All funds deposited are payable to the state for the purposes described under this section. The agency shall maintain the fund, serve appropriate notices to affected owners when scheduled deposits are due, collect deposits, and make disbursements to settle claims against the fund. When the aggregated deposits total five million dollars and the history of disbursements justifies such modifications, the agency may at its own option reduce the schedule of deposits whether as to time, amount, or both and the agency may also entertain proposals from among the licensees with regard to disbursing surplus funds for such purposes as vocational scholarships.

(8) Based on annual financial data supplied by the owner, the agency shall determine whether the increment assigned to that private vocational school on the incremental scale established under subsection (6) of this section has changed. If an increase or decrease in gross annual tuition income has occurred, a corresponding change in the school's incremental position and contribution schedule shall be made before the date of the owner's next scheduled deposit into the fund. Such adjustments shall only be calculated and applied annually.

(9) If the majority ownership interest in a private vocational school is conveyed through sale or other means into different ownership, all contributions made to the date of transfer remain in the fund. The new owner shall continue to make contributions to the fund until the original ten-year cycle is completed. All tuition recovery trust fund contributions shall remain with the private vocational school transferred, and no additional cash deposits may be required beyond the original ten-year contribution cycle.

(10)(a) To settle claims adjudicated under RCW 28C.10.120 and claims resulting when a private vocational school ceases to provide educational services, the agency may make disbursements from the fund. Students enrolled under a training contract executed between a school and a public or private agency or business are not eligible to make a claim against the fund until January 1, 2016.

(b) In addition to the processes described for making reimbursements related to claims under RCW 28C.10.120, the following procedures are established to deal with reimbursements related to school closures:

(i) The agency shall attempt to notify all potential claimants. The unavailability of records and other circumstances surrounding a school closure may make it impossible or unreasonable for the agency to ascertain the names and whereabouts of each potential claimant but the agency shall make reasonable inquiries to secure that information from all likely sources. The agency shall then proceed to settle the claims on the basis of information in its possession. The agency is not responsible or liable for claims or for handling claims that may subsequently appear or be discovered.

(ii) Thirty days after identified potential claimants have been notified, if a claimant refuses or neglects to file a claim verification as requested in such notice, the agency may be relieved of further duty or action on behalf of the claimant under this chapter. The executive director of the agency or the executive director's designee will determine if an exemption to the thirty days shall be granted if the claimant furnishes proof of an extraordinary or exigent circumstance.

(iii) After verification and review, the agency may disburse funds from the tuition recovery trust fund to settle or compromise the claims for an amount up to the value of unearned prepaid tuition and fees. If the claimant provides evidence to the agency of the lack of availability to continue his or her program of study at another institution, the agency's executive director or the executive director's designee has the authority to reimburse the student, agency, or business up to the full value of tuition and fees paid to date, subject to (a) of this subsection. The agency may use the fund to pay for prior learning assessments for students who choose to attend another institution.

(iv) In the instance of claims against a closed school, the agency shall seek to recover such disbursed funds from the assets of the defaulted owner, including but not limited to asserting claims as a creditor in bankruptcy proceedings.

(11) When funds are disbursed to settle claims against a licensed private vocational school, the agency shall make demand upon the owner for recovery. The agency shall adopt schedules of times and amounts for effecting recoveries. An owner's failure to perform subjects the school's license to suspension or revocation under RCW 28C.10.050 in addition to any other available remedies.

(12) For purposes of this section, "owner" includes, but is not limited to, a person, company, firm, society, association, partnership, corporation, or trust having a controlling ownership interest in a private vocational school.

NEW SECTION. **Sec.**  A new section is added to chapter 82.32 RCW to read as follows:

For the purposes of the workforce training and education coordinating board implementing section 6 of this act and to improve the accuracy of other federal and state performance reporting, the department shall work with the workforce training and education coordinating board to use available tax records for addressing the gap in data for self-employed individuals. Data shared by the department under any data-sharing agreement entered into under this section remains privileged and confidential and exempt from disclosure under the public records act.

**--- END ---**