

services or facilities, whether or not the charge for such services and facilities is in fact included in the rental. This income limitation does not apply to housing projects designated for senior citizens.

Nothing contained in this section or RCW 35.82.080 shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this section or RCW 35.82.080.

NEW SECTION. Sec. 4. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed the Senate May 8, 1979.

Passed the House May 7, 1979.

Approved by the Governor May 17, 1979.

Filed in Office of Secretary of State May 17, 1979.

CHAPTER 188

[Substitute Senate Bill No. 2434]

EDUCATIONAL SERVICES REGISTRATION ACT

AN ACT Regulating certain educational institutions; adding a new chapter to Title 28B RCW; creating new sections; providing civil and criminal penalties; and making an effective date.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. This chapter may be cited as the Educational Services Registration Act.

NEW SECTION. Sec. 2. It is the intent of the legislature that a system be established to encourage the fair practice of educational institutions operating in the state of Washington. It is further intended that educational institutions develop and maintain standards of high quality and integrity in their service to students. This chapter:

(1) Requires certain educational institutions to register, submit a statement of organization and file a surety bond on an annual basis.

(2) Requires from registering institutions a statement of compliance with minimum standards concerning the quality of educational services and related activities to protect against substandard, transient, or deceptive educational institutions and practices.

(3) Prohibits the granting of false or misleading educational credentials.

(4) Prohibits the use of inaccurate or misleading literature, advertising, solicitation, or representation by educational institutions.

(5) Establishes means by which individuals may seek redress for violations of this chapter.

NEW SECTION. Sec. 3. The definitions set forth in this section apply throughout this chapter, unless the context clearly indicates to the contrary:

(1) "Educational institution" includes, but is not limited to, an academic, vocational, technical, home study, business, professional, or other school, institution, college, or university, or other organization or person not exempted under section 4 of this act, offering educational credentials, instruction, or services primarily to persons who have completed or terminated their secondary education, or who are beyond the age of compulsory high school attendance, for attainment of educational, professional, or vocational objectives.

(2) "To operate", means to establish, keep, or maintain any facility or location in this state where, from, or through which education is offered or educational credentials are offered or granted, and includes contracting for the performance of any such act.

(3) "To offer" includes, in addition to its usual meanings, to advertise, or publicize. "To offer" shall also mean to solicit or encourage any person, directly or indirectly, to perform the act described.

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

(5) "Education" or "educational services" includes but is not limited to, any class, course, or program of training, instruction, or study.

(6) "Chief administrative officer" means the person designated by the institution under section 7 of this act.

(7) "Agent" means a person owning an interest in, employed by, or representing for remuneration an educational institution within or without this state, who enrolls or personally attempts to secure the enrollment in such school of a resident of this state, offers to award educational credentials for remuneration on behalf of any such school, or holds himself or herself out to residents of this state as representing an educational institution for any such purpose.

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

(9) "Entity" includes but is not limited to a person, company, firm, society, association, partnership, corporation, and trust.

(10) "Degree granting institution" shall mean an educational institution, which offers educational credentials, instruction, or services prerequisite to or indicative of an academic or professional degree beyond the secondary level. "Degree granting institution" shall also include any other educational institution which is not a "private vocational school".

(11) "Private vocational school" shall mean an educational institution, the objective of which is to prepare persons to enter, continue in, or upgrade

themselves in gainful employment in recognized occupations which are not designated as professional or requiring a baccalaureate or higher degree.

(12) "Dual purpose institution" shall mean any educational institution which satisfies the definitions of both "degree-granting institution" and "private vocational school". Either the council for postsecondary education or the commission for vocational education may be selected by the "dual purpose institution" for purposes of complying with the requirements of sections 8, 9, 10 and 11 of this chapter.

(13) "Agency" shall mean the council for postsecondary education in the case of degree granting institutions and the commission for vocational education in the case of private vocational schools.

NEW SECTION. Sec. 4. The following education and institutions are exempted from the provisions of this chapter:

(1) Education sponsored by bona fide trade, business, professional, or fraternal organizations primarily for that organization's membership or offered by that organization on a no-fee basis;

(2) Education solely avocational or recreational in nature and institutions offering such education exclusively;

(3) Education offered by charitable institutions, organizations, or agencies: PROVIDED, That such education is not advertised or promoted as leading toward educational credentials;

(4) Institutions that are established, operated, and governed by this state or its political subdivisions under the provisions of Titles 28A, 28B and 28C RCW;

(5) Institutions that have been accredited by any accrediting association recognized by the agency for the purposes of this act: PROVIDED, That an institution, branch, extension or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of any such accrediting association to qualify for this exemption.

(6) Any other institution to the extent that it has been exempted from some or all of the provisions of this chapter in accordance with the hardship exemption procedure in section 13 of this act.

NEW SECTION. Sec. 5. The commission for vocational education with respect to private vocational schools, the council for postsecondary education with respect to degree granting institutions, shall:

(1) Establish more detailed criteria to implement the standards set forth in section 6 of this act;

(2) Maintain a list of educational institutions registered in this state under this chapter, which list shall separately identify dual purpose institutions and be available to the public; upon the registration of a "dual purpose institution" insure that such registration is communicated to the council for postsecondary education and the commission for vocational education;

(3) Adopt reasonable rules and regulations in accordance with chapter 34.04 RCW, the administrative procedure act, for enforcing and carrying out the provisions and purposes of this chapter;

(4) Investigate on its own initiative or in response to any complaint filed with it, any person, group, or entity subject to, or reasonably believed by the agency to be subject to, the jurisdiction of this chapter; and in connection therewith, to administer oaths and affirmations, issue subpoenas, and compel attendance, take evidence and require the production of any books, papers, correspondence, memorandums, or other records which the agency deems relevant or material to such investigation;

(5) Coordinate the policies and rules developed under subsections (1) and (3) of this section so as to develop where possible consistent procedures and standards applicable to degree-granting institutions, private vocational school, and dual purpose institutions.

NEW SECTION. Sec. 6. An educational institution shall be maintained and operated in compliance with the following standards:

(1) The quality and content of each program shall be such as may reasonably and adequately achieve the program objective;

(2) The institution shall have adequate space, equipment, instructional and library materials, and personnel such as may reasonably and adequately achieve program and institutional objectives;

(3) The qualifications of directors, administrators, supervisors, and instructors shall reasonably insure that the students will receive education consistent with institutional objectives;

(4) The institution shall provide students and other interested persons with a catalog or brochure containing information describing enrollment qualifications; programs offered; program objectives; length of program; schedule of tuition, fees, and all other charges and expenses necessary for completion of the course of study; and cancellation and refund policies, all such information to be provided prospective students prior to enrollment. The institution shall also provide such other material facts concerning the institution and the program as are reasonably likely to affect the decision of the student to enroll in the institution, together with any other disclosures specified by the agency and defined in the agency rules;

(5) Upon satisfactory completion of education or training, the student shall be given appropriate educational credentials by the institution indicating that the course or courses of instruction or study have been satisfactorily completed by the student;

(6) Adequate records shall be maintained by the institution to document student performance and progress;

(7) The institution shall be financially sound and capable of meeting its legal financial obligations and fulfilling its commitments to students;

(8) Neither the institution nor its agents shall engage in methods of advertising, sales, collection, credit, or other business practices which are false, deceptive, misleading, or unfair;

(9) Consistent with guidelines adopted by the agency, the institution shall establish a fair and equitable cancellation and refund policy that includes provisions for a cooling-off period, and shall not make unilateral changes in scheduled times for course instruction unless provision is made for an equitable refund of tuition and fees; and

(10) The institution shall not discriminate on the basis of race, religion, sex, handicap, or national origin as prohibited by state or federal law.

NEW SECTION. Sec. 7. Every educational institution must designate an individual as a "chief administrative officer". It will be the responsibility of the chief administrative officer to insure that the institution complies with the registration and other requirements of this chapter.

NEW SECTION. Sec. 8. (1) All educational institutions must initially register with the agency no later than one month prior to the date on which it first offers educational credentials, instruction or services, whichever is sooner: PROVIDED, That institutions which are offering such services at the time of the effective date of this act or which commence such activity within forty-five days after such effective date, shall file their initial registration no later than thirty days after such effective date.

(2) Subsequent to its initial registration an educational institution shall renew its registration annually.

NEW SECTION. Sec. 9. At the time of its initial registration each educational institution shall pay the agency an initial registration fee of two hundred dollars. At each annual renewal of registration each such institution shall pay a renewal fee of one hundred dollars to the agency. All fees collected pursuant to this section shall be deposited in the state general fund.

NEW SECTION. Sec. 10. At the time an educational institution initially registers it shall file with the agency a statement of organization, in a form determined by the agency, which shall include the following information:

(1) Name and address of the institution and a statement of whether it is a "degree-granting institution", "private vocational school" or "dual purpose institution".

(2) Name and address of the owners of the institution, if the institution is incorporated then the names and addresses of the directors and of any shareholders holding more than a ten percent interest shall be listed.

(3) Name and address of the chief administrative officer of the institution and all agents of the institution as defined in section 3 (6) and (7), respectively, of this act.

(4) A copy of each of the materials that the institution is required to supply prospective students prior to enrollment in accordance with section 6(4) of this act.

(5) Any other information which the agency determines to be necessary for adequate public disclosure of the institution.

(6) A signed written statement from the chief administrative officer of the institution attesting to the truth and accuracy of the information provided in the statement of organization and any amendments thereto and pledging that the institution will comply with all of the requirements of this chapter and any rules adopted pursuant to section 5 (1) and (3) of this act.

At the time of each annual renewal the institution shall file an amended statement of organization indicating any changes from the information previously submitted. Additionally, the institution must file an amended statement within thirty days of any change of circumstances which would require amendment of the information provided in subsections (1), (2) or (3) of this section.

All amended statements must be filed with the agency and include a statement as required in subsection (6) of this section.

NEW SECTION. Sec. 11. (1) At the time of its registration each educational institution shall file a surety bond with the agency in a form acceptable to the agency. The bond may be continuous or renewable at the time of annual renewal of registration: PROVIDED, That the bond shall cover the full period during which an institution is registered unless the surety has been released as provided in subsection (4) of this section.

In the event that any final judgment shall impair the liability of the surety upon the bond so furnished that there shall not be in effect a bond undertaking in the full amount prescribed in this section, the agency shall suspend the registration of the institution until the bond liability in the required amount unimpaired by unsatisfied judgment claims shall have been furnished.

(2) The amount of the bond shall be determined by the agency. In fixing the amount the agency shall adopt rules setting bond amounts on a sliding scale based upon the size of the institution, and the maximum amount of the bond required may not exceed seventy-five thousand dollars.

The bond shall be executed by the registering institution as principal and by a surety company authorized to do business in this state as surety. The bond shall run to the state of Washington, for the benefit and protection of any student or enrollee, or, in the case of a minor, his or her parents or guardian, determined to have suffered loss or damage as a result of an act or practice by such institution which is a violation of this chapter or rules adopted under this chapter alleged to have occurred while the bond was in effect or as a result of the institution's failure to meet its obligations to a student or enrollee during the term for which tuition has been paid.

(3) In lieu of the surety bond provided for herein, the institution may furnish, file and deposit with the agency, cash or other negotiable security acceptable to the executive officer of the agency. If the institution has filed a cash deposit, the agency shall deposit such funds in a special trust savings account in a commercial bank, mutual savings bank, or savings and loan association and shall pay annually to the depositor the interest derived from such account. The security deposited with the agency in lieu of the surety bond shall be returned to the institution at the expiration of one year after the institution's registration has expired or been revoked if no legal action has been instituted against the institution or on said security deposit at the expiration of said one year.

Any person having an unsatisfied final judgment against the registrant based on any claims arising under this section may execute upon the security held by the agency by serving a certified copy of the unsatisfied final judgment together with any findings and conclusions by registered or certified mail upon the agency within one year of the date of entry of such judgment. Upon the receipt of service of such certified copy the agency shall pay or order paid from the deposit, through the registry of the superior court which rendered judgment, towards the amount of the unsatisfied judgment. The priority of payment by the agency shall be the order of receipt by the agency of the unsatisfied judgment and claim against the deposit, but the agency shall have no liability for payment in excess of the amount of the deposit.

(4) A surety on a bond may be released by serving written notice thereof to the agency at least thirty-five days prior to the release, but the release shall not discharge or otherwise affect any claim theretofore or thereafter filed by a student or enrollee, or, in the case of a minor, his or her parents or guardian, for loss or damage resulting from any act or practice which is a violation of this chapter or rules adopted under this chapter alleged to have occurred while the bond was in effect, or resulting from the institution's failure to meet its obligations to a student or enrollee during the term for which tuition has been paid.

The agency shall give the institution at least thirty days written notice prior to the release of the surety to the effect that registration will be suspended by operation of law until a sufficient surety bond is filed in the same manner and amount as the bond being terminated.

(5) In addition to all other legal remedies, an action may be brought upon the bond or cash deposit or security in lieu thereof by any beneficiary covered thereunder, in the superior court of Thurston county or the county in which the educational services were offered by the institution: PROVIDED, That the aggregate liability of the surety to all such persons shall in no event exceed the sum of such bond.

An action upon such bond or security shall be commenced by serving and filing of the complaint within one year from the date of the cancellation

of the bond or, in the case of a cash deposit or other security deposited in lieu of the surety bond, within one year of the date of expiration or revocation of registration: PROVIDED, That no action shall be maintained upon such bond or such cash deposit or other security for any claim which has been barred by any nonclaim statute or statute of limitations of this state. Two copies of the complaint shall be served by registered or certified mail upon the executive officer of the agency at the time the suit is started. Such service shall constitute service on the surety. The executive officer of the agency shall transmit one of said copies of the complaint served on him to the surety within forty-eight hours after it shall have been received.

The executive officer of the agency shall maintain a record, available for public inspection, of all suits commenced under this chapter upon surety bonds, or the cash or other security deposited in lieu thereof.

NEW SECTION. Sec. 12. No educational institution nor any of its agents shall instruct or offer to instruct, including advertising or soliciting for such purpose, enroll or offer to enroll, contract or offer to contract with any person for such purpose, or offer or grant any educational credential, or contract with any school to perform any such act in this state whether such institution is located within or without this state unless such institution is registered and in compliance with the requirements set forth in sections 8, 9, 10 and 11 of this act.

NEW SECTION. Sec. 13. The agency, after hearing, by order approved and ratified by a majority of the membership of the agency, may suspend or modify any of the registration or other requirements contained in this chapter in a particular case if it finds that literal application of this chapter works a manifestly unreasonable hardship and if it also finds that such suspension or modification will not frustrate the purposes of this chapter.

NEW SECTION. Sec. 14. (1) A person claiming damage or loss as a result of any act or practice by an educational institution, its agent, or any person which is a violation of this chapter or of the rules adopted under this chapter, may file a complaint with the agency. The complaint shall set forth the alleged violation and shall contain such other information as may be required by the agency. A complaint may also be filed with the agency by the executive officer of the agency or by the attorney general.

(2) The agency shall investigate any complaint and may attempt to bring about a settlement by persuasion and conciliation. The agency may hold a contested case hearing pursuant to the administrative procedure act, chapter 34.04 RCW, in order to determine whether a violation has occurred.

(3) If, upon all the evidence at the hearing, the agency finds that the educational institution, its agent, or any person has engaged in or is engaging in any act or practice which violates this chapter or rules adopted under

this chapter, the agency shall issue and cause to be served upon the violator an order requiring it to cease and desist from the act or practice and may impose the penalties provided for in section 15 of this act. If the agency finds that the complainant has suffered loss or damage as a result of the act or practice, it may order full or partial restitution for the damage or loss: **PROVIDED**, That the complainant is not bound by the agency's determination of restitution and may pursue any other legal remedy.

NEW SECTION. Sec. 15. Any person, group, or entity or any owner, officer, agent, or employee of such entity who violates any provision of this chapter shall be subject to a civil penalty of not more than two thousand dollars for each separate violation. Each day on which a violation occurs constitutes a separate violation. Multiple violations on a single day may be considered separate violations. The fine may be imposed by the agency in accordance with the procedures set forth in section 14 of this act, or in any court of competent jurisdiction.

NEW SECTION. Sec. 16. Any person, group, or entity or any owner, officer, agent, or employee of such entity who wilfully violates section 8, 9, 10, 11 or 12 of this act shall be guilty of a gross misdemeanor and, upon conviction, shall be punished by a fine of not to exceed one thousand dollars or by imprisonment in the county jail for not to exceed one year, or by both such fine and imprisonment.

Each day on which a violation occurs constitutes a separate violation. The criminal sanctions may be imposed by a court of competent jurisdiction in an action brought by the attorney general of this state.

NEW SECTION. Sec. 17. Any educational institution, whether or not situated in or having a place of business in this state, whose personnel or agent instructs or educates or offers to instruct or educate, enrolls or offers to enroll, or contracts or offers to contract to provide instructional or educational services in this state, whether the instruction or services are provided in person or by correspondence to a resident of this state, or whose personnel or agent awards or offers to award any educational credentials to a resident of this state, submits to the jurisdiction of the courts of this state, and submits any such personnel or agent thereto, for the purpose of any cause of action arising from such acts.

NEW SECTION. Sec. 18. The records and accounts pertaining to each period of enrollment of each student shall be kept intact and in good condition by the educational institution for at least three years following the termination of such enrollment period.

NEW SECTION. Sec. 19. If any educational institution proposes to discontinue its operation, the chief administrative officer of the institution shall file with the agency the original or legible true copies of all such educational records of the institution as may be specified by the agency. The

records shall include, but not be limited to, such information as is customarily required by colleges when considering students for transfer or advance study and, as a separate document, the academic record of each former student. In the event it appears to the agency that any such records of an educational institution discontinuing its operations are in danger of being destroyed, secreted, mislaid, or otherwise made unavailable to the agency, the agency may seek a court order to protect and if necessary take possession of the records. The agency shall maintain or cause to be maintained a permanent file of educational records coming into its possession.

NEW SECTION. Sec. 20. If the person to whom educational services are to be rendered or furnished by an educational institution is a resident of this state at the time any contract relating to payment for such services or any note, instrument, or other evidence of indebtedness relating thereto is entered into, the provisions of section 21 of this act shall govern the rights of the parties to the contract or evidence of indebtedness. In such event, a contract or evidence of indebtedness containing any of the following agreements shall render the contract voidable at the option of the person to whom educational services are to be rendered or furnished:

- (1) That the law of another state shall apply;
- (2) That the maker or any person liable on the contract or evidence of indebtedness consents to the jurisdiction of another state;
- (3) That another person is authorized to confess judgment on the contract or evidence of indebtedness; or
- (4) That fixes venue.

NEW SECTION. Sec. 21. No note, instrument, or other evidence of indebtedness or contract relating to payment for education or educational services shall be enforceable in the courts of this state by an educational institution or holder of the instrument unless the institution was registered in compliance with the requirements of sections 8, 9, 10 and 11 of this act at the time the note, instrument or other evidence of indebtedness or contract was entered into.

NEW SECTION. Sec. 22. (1) The attorney general of this state or the prosecuting attorney of any county in which an educational institution or an agent thereof is found may, at the request of the agency or on their own motion, bring any appropriate action or proceeding, including injunctive proceedings under subsection (2) of this section or criminal proceedings under section 16 of this act, in any court of competent jurisdiction for the enforcement of this chapter and the rules adopted under this chapter.

(2) Whenever it appears to the agency that a person, agent, group, or entity is violating, or has been violating this chapter or the rules or orders of the agency, the agency may, on its own motion or on the written complaint of any person and after giving notice to the person, group, or entity affected,

file a petition for injunction in the name of the agency in a court of competent jurisdiction in this state against such person, group, or entity for the purpose of enjoining the violation or for an order directing compliance with this chapter and the rules or orders issued under this chapter. It is not necessary that the agency allege or prove that the agency has no adequate remedy at law. The right of injunction provided in this section is in addition to any other legal remedy which the agency has and is in addition to any right of criminal prosecution provided by law. The existence of agency action with respect to alleged violations of this chapter and rules adopted under this chapter does not operate as a bar to an action for injunctive relief under this section.

NEW SECTION. Sec. 23. A violation of a provision of this chapter or the rules adopted under this chapter, shall be considered a violation of RCW 19.86.020, as now or hereafter amended, of the consumer protection act.

NEW SECTION. Sec. 24. The remedies and penalties provided for in this chapter are nonexclusive and cumulative and do not affect any other actions or proceedings.

NEW SECTION. Sec. 25. (1) All reports, documents, surveys, books, records, files, papers, or other writings in the possession of the department of licensing pertaining to the regulation of proprietary schools shall be delivered to the custody of the commission for vocational education. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed in the regulation of proprietary schools shall be made available to the commission. All funds, credits, or other assets held in connection with this function shall be assigned to the commission.

(2) Any appropriations made to the department of licensing for the purpose of regulating proprietary schools shall, on the effective date of this act, be transferred and credited to the commission for the purpose of carrying out this act.

(3) Whenever any question arises as to the transfer of any funds, including unexpended balances within any accounts, books, documents, records, papers, files, equipment, or any other tangible property used or held by the department of licensing in regulating proprietary schools, the director of financial management shall make a determination as to the proper allocation and certify the same to the state departments and agencies concerned.

NEW SECTION. Sec. 26. Sections 1 through 24 of this act shall constitute a new chapter in Title 28B RCW.

NEW SECTION. Sec. 27. This act shall be effective January 1, 1980.

NEW SECTION. Sec. 28. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or

the application of the provision to other persons or circumstances is not affected.

Passed the Senate May 10, 1979.

Passed the House May 9, 1979.

Approved by the Governor May 17, 1979.

Filed in Office of Secretary of State May 17, 1979.

CHAPTER 189

[Substitute Senate Bill No. 2957]

DEPARTMENT OF TRANSPORTATION—PROPERTY SALES, EXCHANGE AGREEMENTS

AN ACT Relating to transportation; amending section 2, chapter 177, Laws of 1973 1st ex. sess. as amended by section 6, chapter 96, Laws of 1975 1st ex. sess. and RCW 47.12.290; amending section 3, chapter 257, Laws of 1961 as last amended by section 72, chapter 151, Laws of 1977 ex. sess. and RCW 47.56.254; amending section 6, chapter 257, Laws of 1961 and RCW 47.56.257; amending section 47.60.130, chapter 13, Laws of 1961 as amended by section 5, chapter 177, Laws of 1973 1st ex. sess. and RCW 47.60.130; adding new sections to chapter 47.12 RCW; repealing section 1, chapter 177, Laws of 1973 1st ex. sess., section 1, chapter 37, Laws of 1977 ex. sess. and RCW 47.12.280; repealing section 6, chapter 177, Laws of 1973 1st ex. sess. and RCW 47.12.310; repealing section 1, chapter 25, Laws of 1961 and RCW 47.56.252; providing an effective date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Section 1. There is added to chapter 47.12 RCW a new section to read as follows:

(1) Whenever the department of transportation determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for highway purposes and that it is in the public interest to do so, the department may, in its discretion, sell the property under RCW 47.12.063 or under subsections (2) through (6) of this section.

(2) Whenever the department determines to sell real property under its jurisdiction at public auction, the department shall first give notice thereof by publication on the same day of the week for two consecutive weeks, with the first publication at least two weeks prior to the date of the auction, in a legal newspaper of general circulation in the area where the property to be sold is located. The notice shall be placed in both the legal notices section and the real estate classified section of the newspaper. The notice shall contain a description of the property, the time and place of the auction, and the terms of the sale. The sale may be for cash or by real estate contract.

(3) The department shall sell the property at the public auction, in accordance with the terms set forth in the notice, to the highest and best bidder providing the bid is equal to or higher than the appraised fair market value of the property.