

# House Bill 2197

Sponsored by Representative WILDE (Presession filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires Higher Education Coordinating Commission to adopt by rule additional minimum standards regarding source of tuition revenue for licensing of career schools and schools authorized to confer degrees.

Establishes penalty for violation of standards as Class B misdemeanor, punishable by maximum of six months' imprisonment, \$2,500 fine, or both, and civil penalty.

## A BILL FOR AN ACT

1  
2 Relating to regulation of post-secondary institutions of education; creating new provisions; and  
3 amending ORS 341.455, 345.015, 345.030, 345.330, 345.340, 345.990, 345.992 and 348.992.

4 Whereas 314,000 veterans live in Oregon; and

5 Whereas the Servicemen's Readjustment Act of 1944 (G.I. Bill) provided tuition and living ex-  
6 penses to veterans for a college or vocational school; and

7 Whereas the Post-9/11 G.I. Bill expanded benefits for college and living expenses for veterans  
8 who served in Iraq or Afghanistan; and

9 Whereas the 90/10 rule in the Higher Education Act of 1965 (HEA) was established as a market  
10 viability test to protect taxpayers from artificially propping up failing institutions incapable of at-  
11 tracting at least 10 percent of their revenue from a private source; and

12 Whereas the 90/10 rule in the HEA contains a loophole that excludes Department of Veterans  
13 Affairs and Department of Defense funds in the cap on federal funds that institutions of higher ed-  
14 ucation otherwise collect; and

15 Whereas predatory for-profit colleges are incentivized by this 90/10 loophole to aggressively re-  
16 cruit veterans; and

17 Whereas predatory for-profit colleges have been investigated by federal law enforcement and  
18 every state Attorney General in the nation on charges of defrauding veterans; now, therefore,

19 **Be It Enacted by the People of the State of Oregon:**

20 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 345.010 to**  
21 **345.450.**

22 **SECTION 2. (1) As used in this section:**

23 (a) "Annual revenue" means the gross tuition revenue received by each career school  
24 during the school's fiscal year, as reported by the school to the Internal Revenue Service.

25 (b)(A) "Federal funds for education" means any federal financial assistance provided  
26 through a grant, contract, subsidy, loan, guarantee, insurance or other means to a career  
27 school described in subsection (3) of this section, including any federal financial assistance  
28 that is disbursed or delivered to a career school on behalf of a student or to a student to be  
29 used to attend the school.

30 (B) "Federal funds for education" does not include any monthly housing stipend or books

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.  
New sections are in **boldfaced** type.

1 and supplies stipend provided under federal law to a veteran.

2 (c) "Institutional loan" means:

3 (A) The obligation or alleged obligation of a student to pay money to a career school for  
4 course credit or other educational services, regardless of whether the obligation has been  
5 reduced to judgment or whether the career school classifies the obligation as a loan; or

6 (B) A loan or other debt arrangement for course credit or other educational services that  
7 is received by a student at a career school and that is made by any entity affiliated with the  
8 school.

9 (d) "Veteran" has the meaning given that term in ORS 408.225.

10 (2) The Higher Education Coordinating Commission shall adopt by rule minimum stan-  
11 dards for the licensing under ORS 345.010 to 345.450 of a career school. The standards  
12 adopted under this section apply in addition to the requirements of ORS 345.325 and must  
13 be reasonably calculated to ensure that at least 10 percent of the annual revenue received  
14 by each career school comes from a source other than:

15 (a) Institutional loans; or

16 (b) Federal funds for education.

17 (3) Subsection (2) of this section applies only to a career school that:

18 (a) Does not qualify as a not-for-profit corporation that is tax exempt under section  
19 501(c)(3) of the Internal Revenue Code;

20 (b) During the previous academic year received funds to pay for students' tuition, fees  
21 or other institutional charges under Title IV of the Higher Education Act of 1965, as  
22 amended;

23 (c) Charges tuition and mandatory enrollment fees that, for a student enrolled on a  
24 full-time basis during the prior enrollment year, exceed the maximum amount of the largest  
25 source of federally funded student aid grants, including the federal Pell Grant, as determined  
26 by the commission by rule; and

27 (d) Is approved to receive federal funds for education provided to veterans for educational  
28 purposes, as determined by the commission by rule.

29 **SECTION 3.** ORS 345.990 is amended to read:

30 345.990. (1) Violation of any provision of ORS 345.020, 345.030, 345.070, 345.115 or 345.325 is a  
31 Class B misdemeanor.

32 (2) Violation of any rule adopted under section 2 of this 2021 Act is a Class B  
33 misdemeanor.

34 **SECTION 4.** ORS 345.992 is amended to read:

35 345.992. (1) In addition to any other penalty provided by law, any person who violates any pro-  
36 vision of ORS 345.020, 345.030, 345.070, 345.115 or 345.117, or who engages in an unlawful trade  
37 practice as defined by ORS 646.608, shall incur a civil penalty for each violation in the amount  
38 prescribed by the schedule adopted under ORS 345.995.

39 (2) Notwithstanding ORS 345.995 and in addition to any criminal penalties incurred under  
40 ORS 345.990, a person who violates any rule adopted under section 2 of this 2021 Act shall  
41 incur a civil penalty in the amount of \$5,000 for each violation.

42 [(2)] (3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

43 **SECTION 5.** ORS 341.455 is amended to read:

44 341.455. (1) A community college may give credit for courses or programs taken in a career  
45 school. The courses or programs for which credit may be given must meet the standards adopted

1 by the Higher Education Coordinating Commission under ORS 345.325 **and section 2 of this 2021**  
 2 **Act**, must be taken at a career school domiciled in this state and must be approved for credit by  
 3 the Director of the Office of Community Colleges and Workforce Development.

4 (2) A community college board may charge a transcribing fee to a student for courses taken  
 5 at a career school and accepted by the community college under subsection (1) of this section. Such  
 6 a fee is to be set by the board and is to be consistent with other student fees.

7 (3) Time spent by students on such courses shall not be considered as clock hours of instruction  
 8 in determining full-time equivalency for purposes of ORS 341.626.

9 **SECTION 6.** ORS 345.015 is amended to read:

10 345.015. ORS 345.010 to 345.450 do not apply to:

11 (1) Instruction or training solely avocational or recreational in nature or to institutions offering  
 12 such education exclusively.

13 (2) Instruction or training sponsored or offered by a bona fide trade, business, professional or  
 14 fraternal organization or by a business primarily for the organization's membership or the business's  
 15 employees.

16 (3) Instruction or training sponsored, offered or contracted by organizations, institutions or  
 17 agencies, if the instruction or training is advertised or promoted to be in the nature of professional  
 18 self-improvement or personal self-improvement and the instruction or training is not:

19 (a) Advertised or promoted as leading to or fulfilling the requirements for licensing, certifica-  
 20 tion, accreditation or education credentials; or

21 (b) Leading to an occupation, employment or other activity for which a person may reasonably  
 22 expect financial compensation.

23 (4) Courses offered in hospitals that meet standards prescribed by the American Medical Asso-  
 24 ciation or national accrediting associations for nursing.

25 (5) Courses, instruction or training offered for a limited number of hours, as defined by rule of  
 26 the Higher Education Coordinating Commission.

27 (6) Schools offering only courses of an advanced training or continuing educational nature when  
 28 offered solely to licensed practitioners and people previously qualified or employed in the profession  
 29 for which a course is being offered.

30 (7) Courses, instruction or training offered to prepare a student to become certified as a nursing  
 31 assistant or a medication aide in compliance with standards prescribed by the Oregon State Board  
 32 of Nursing.

33 (8) Schools that the Higher Education Coordinating Commission:

34 (a) Determines are adequately regulated by other means that guarantee the school meets the  
 35 standards described in ORS 345.325 **and section 2 of this 2021 Act**; and

36 (b) As a result of the determination described in paragraph (a) of this subsection, grants an ex-  
 37 emption from the licensure requirements of ORS 345.010 to 345.450.

38 (9) Schools offering only review instruction to prepare a student to take an examination to enter  
 39 a profession, where the student has completed prior training related to the profession.

40 (10) Schools described in ORS 348.597 and, except as provided in ORS 345.017, schools approved  
 41 by the Higher Education Coordinating Commission to confer or offer to confer academic degrees  
 42 under ORS 348.606.

43 (11) Any parochial or denominational institution providing instruction or training relating solely  
 44 to religion and that does not grant degrees.

45 **SECTION 7.** ORS 345.030 is amended to read:

1 345.030. (1) A person may not open, conduct or do business as a career school in this state  
2 without obtaining a license under ORS 345.010 to 345.450.

3 (2) Except as provided in subsection (8) of this section, the Higher Education Coordinating  
4 Commission may issue a license to conduct a career school only after the applicant has presented  
5 proof satisfactory to the commission that the applicant complies with applicable standards adopted  
6 under ORS 345.325 and 670.280 **and section 2 of this 2021 Act**. For the purpose of this subsection,  
7 ORS 670.280 applies to individuals who hold positions of authority or control in the operation of the  
8 school and to its faculty members and agents.

9 (3) A career school licensed in any other state must be licensed in this state before establishing  
10 a physical presence in this state such as offices or agents, or both, for the purpose of solicitation  
11 of students.

12 (4) In determining whether to issue a license to a career school, the commission may consider  
13 the prior history of the applicant in operating other career schools. The prior history of operating  
14 other career schools includes, but is not limited to:

15 (a) Conduct by the applicant that is cause for a notice of corrective action or for suspension  
16 or revocation of a license as provided in ORS 345.120 (3);

17 (b) Failure to comply with ORS 345.010 to 345.450 or rules adopted under ORS 345.010 to  
18 345.450; and

19 (c) The history of the applicant in operating career schools in other states.

20 (5) The commission may not issue a license to or renew the license of a career school until the  
21 applicant provides all of the following to the commission:

22 (a) A financial statement, certified true and accurate and signed by the owner of the school;

23 (b) Proof of compliance with the tuition protection policy established by the commission pursu-  
24 ant to ORS 345.110; and

25 (c) Fingerprints of individuals as described in subsection (6) of this section.

26 (6)(a) Except as provided in paragraph (c) of this subsection, an applicant for an initial issuance  
27 of a license or a renewal of a license must provide to the commission the fingerprints of faculty  
28 members and agents of the school and individuals who hold positions of authority or control in the  
29 operation of the school if the career school will be enrolling or does enroll persons under 18 years  
30 of age.

31 (b) In addition to requirements provided under paragraph (a) of this subsection, the commission  
32 may require a career school to provide the fingerprints of any agents of the school who will have  
33 contact with persons under 18 years of age on behalf of the career school.

34 (c) An applicant is not required to provide fingerprints under paragraph (a) or (b) of this sub-  
35 section if the commission has conducted a state or nationwide criminal records check on the person  
36 within the three years preceding the date of the application.

37 (d) The commission shall request a state or nationwide criminal records check under ORS  
38 181A.195. Fingerprints acquired under this subsection may be used only for the purpose of obtaining  
39 a criminal records check under this section.

40 (7) Notwithstanding ORS 345.325 (10), the commission may issue a notice for corrective action  
41 or deny, suspend or revoke a license if the commission finds that an individual who holds a position  
42 of authority or control in the operation of the school was convicted of a crime listed in ORS 342.143.

43 (8) The commission may issue a conditional license to a career school that meets the require-  
44 ments of subsection (5) of this section but that does not comply with the applicable standards  
45 adopted by rule under ORS 345.325 **and section 2 of this 2021 Act**. A conditional license issued

1 under this subsection is effective for a period prescribed by the commission, which may not exceed  
 2 90 days.

3 (9)(a) Except as provided in paragraph (b) of this subsection, a career school license is  
 4 nontransferable. The licensee must give 30 days of notice to the commission when transferring  
 5 ownership of a career school.

6 (b) The commission may transfer a career school license or allow the ownership of a career  
 7 school to transfer with less than 30 days of notice if:

8 (A) The owner of the school dies, is incapacitated or is incarcerated; or

9 (B) Other circumstances render the owner unable to operate the career school.

10 (10) Each career school shall display its license in a prominent place.

11 **SECTION 8.** ORS 345.330 is amended to read:

12 345.330. (1) The Higher Education Coordinating Commission shall appoint a representative ad-  
 13 visory committee consisting of 11 members who shall serve for terms of three years ending June 30.  
 14 Of the membership of the committee:

15 (a) Seven members shall be persons affiliated with career schools as owners, directors, admin-  
 16 istrators, instructors or representatives, but not more than one member shall represent an out-of-  
 17 state career school.

18 (b) Four members shall be persons who are not eligible under paragraph (a) of this subsection.  
 19 At least one of these members shall have graduated from a career school.

20 (2) The advisory committee appointed under subsection (1) of this section shall:

21 (a) Make recommendations to the commission concerning the need for professional and technical  
 22 instructional and training facilities, the types of instruction and training needed and by whom these  
 23 can best be provided.

24 (b) Recommend standards for career schools as provided in ORS 345.325 **and section 2 of this**  
 25 **2021 Act that** *[which]* are consistent with the purposes of such schools.

26 (c) Investigate and present findings to the commission on the administration and operation of  
 27 laws relating to career schools. However, the investigations and findings of the advisory committee  
 28 do not affect the authority of the commission to issue, deny, suspend or revoke the license of any  
 29 career school.

30 (d) Consult with the commission in determining the refund schedule under ORS 345.115.

31 (e) Make recommendations to the commission concerning rules to be adopted by the commission  
 32 for ORS 345.010 to 345.450 and 345.992 to 345.997.

33 (3) Members of the advisory committee are entitled to compensation and expenses as provided  
 34 in ORS 292.495 from funds appropriated to the commission for purposes of administering ORS 345.010  
 35 to 345.450.

36 **SECTION 9.** ORS 345.340 is amended to read:

37 345.340. Consistent with the requirements of ORS 345.325 **and section 2 of this 2021 Act**, the  
 38 advisory committee shall recommend to the Higher Education Coordinating Commission minimum  
 39 standards for the operation of career schools. In making its recommendations, the committee shall  
 40 consider changes in technological, economic and social conditions *[which]* **that** affect employment  
 41 needs, opportunities and skills.

42 **SECTION 10.** Section 11 of this 2021 Act is added to and made a part of ORS 348.594 to  
 43 348.615.

44 **SECTION 11.** (1) As used in this section:

45 (a) "Annual revenue" means the gross tuition revenue received by each school during the

1 school's fiscal year, as reported by the school to the Internal Revenue Service.

2 (b)(A) "Federal funds for education" means any federal financial assistance provided  
3 through a grant, contract, subsidy, loan, guarantee, insurance or other means to a school  
4 described in subsection (3) of this section, including any federal financial assistance that is  
5 disbursed or delivered to a school on behalf of a student or to a student to be used to attend  
6 the school.

7 (B) "Federal funds for education" does not include any monthly housing stipend or books  
8 and supplies stipend provided under federal law to a veteran.

9 (c) "Institutional loan" means:

10 (A) The obligation or alleged obligation of a student to pay money to a school for course  
11 credit or other educational services, regardless of whether the obligation has been reduced  
12 to judgment or whether the school classifies the obligation as a loan; or

13 (B) A loan or other debt arrangement for course credit or other educational services that  
14 is received by a student at a school and that is made by any entity affiliated with the school.

15 (d) "Veteran" has the meaning given that term in ORS 408.225.

16 (2) The Higher Education Coordinating Commission shall adopt by rule minimum stan-  
17 dards for the authorization of school programs under ORS 348.594 to 348.615. The standards  
18 adopted under this section apply in addition to the standards and procedures adopted under  
19 ORS 348.606 and must be reasonably calculated to ensure that at least 10 percent of the an-  
20 nual revenue received by each school comes from a source other than:

21 (a) Institutional loans; or

22 (b) Federal funds for education.

23 (3) Subsection (2) of this section applies only to a school that:

24 (a) Does not qualify as a not-for-profit corporation that is tax exempt under section  
25 501(c)(3) of the Internal Revenue Code;

26 (b) During the previous academic year received funds to pay for students' tuition, fees  
27 or other institutional charges under Title IV of the Higher Education Act of 1965, as  
28 amended;

29 (c) Charges tuition and mandatory enrollment fees that, for a student enrolled on a  
30 full-time basis during the prior enrollment year, exceed the maximum amount of the largest  
31 source of federally funded student aid grants, including the federal Pell Grant, as determined  
32 by the commission by rule; and

33 (d) Is approved to receive federal funds for education provided to veterans for educational  
34 purposes, as determined by the commission by rule.

35 **SECTION 12.** ORS 348.992 is amended to read:

36 348.992. (1) Violation of any of the provisions of ORS 348.594 to 348.615 by any person individ-  
37 ually or on behalf of an organization or group is a Class B misdemeanor.

38 (2) In addition to the criminal penalty set forth in subsection (1) of this section, any  
39 person who violates any rule adopted under section 11 of this 2021 Act shall incur a civil  
40 penalty in the amount of \$5,000 for each violation.

41