
SUBSTITUTE SENATE BILL 5877

State of Washington

67th Legislature

2022 Regular Session

By Senate Law & Justice (originally sponsored by Senators Conway, Lovick, Nguyen, Saldaña, and C. Wilson)

READ FIRST TIME 02/03/22.

1 AN ACT Relating to antidiscrimination policies in institutions of
2 higher education; amending RCW 28B.92.030; and adding a new section
3 to chapter 28B.92 RCW.

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

5 **Sec. 1.** RCW 28B.92.030 and 2019 c 406 s 21 are each amended to
6 read as follows:

7 As used in this chapter:

8 (1) "Council" means the student achievement council.

9 (2) (a) "Disability" means the presence of a sensory, mental, or
10 physical impairment that:

11 (i) Is medically cognizable or diagnosable;

12 (ii) Exists as a record or history; or

13 (iii) Is perceived to exist whether or not it exists in fact.

14 (b) A disability exists whether it is temporary or permanent,
15 common or uncommon, mitigated or unmitigated, or whether or not it
16 limits a person's ability to work generally or work at a particular
17 job or whether or not it limits any other activity within the scope
18 of this chapter.

19 (c) For purposes of this definition, "impairment" includes, but
20 is not limited to:

1 (i) Any physiological disorder or condition, cosmetic
2 disfigurement, or anatomical loss affecting one or more of the
3 following body systems: Neurological, musculoskeletal, special sense
4 organs, respiratory including speech organs, cardiovascular,
5 reproductive, digestive, genitourinary, hemic and lymphatic, skin,
6 and endocrine; or

7 (ii) Any mental, developmental, traumatic, or psychological
8 disorder including, but not limited to, cognitive limitations,
9 organic brain syndromes, emotional or mental illnesses, and specific
10 learning disabilities.

11 (d) Only for the purposes of qualifying for reasonable
12 accommodation in employment, an impairment must be known or shown
13 through an interactive process to exist in fact and:

14 (i) The impairment must have a substantially limiting effect upon
15 the individual's ability to perform his or her job, the individual's
16 ability to apply or be considered for a job, or the individual's
17 access to equal benefits, privileges, or terms or conditions of
18 employment; or

19 (ii) The employee must have put the employer on notice of the
20 existence of an impairment, and medical documentation must establish
21 a reasonable likelihood that engaging in job functions without an
22 accommodation would aggravate the impairment to the extent that it
23 would create a substantially limiting effect.

24 (e) For purposes of (d) of this subsection, a limitation is not
25 substantial if it has only a trivial effect.

26 (3) "Dog guide" means a dog that is trained for the purpose of
27 guiding blind persons or assisting hearing impaired persons.

28 (4) "Employer" includes any person acting in the interest of an
29 employer, directly or indirectly.

30 (5) "Financial aid" means either loans, grants, or both, to
31 students who demonstrate financial need enrolled or accepted for
32 enrollment as a student at institutions of higher education.

33 ~~((3))~~ (6) "Financial need" means a demonstrated financial
34 inability to bear the total cost of education as directed in rule by
35 the office.

36 ~~((4))~~ (7) "Institution" or "institutions of higher education"
37 means:

38 (a) Any public university, college, community college, or
39 technical college operated by the state of Washington or any
40 political subdivision thereof; or

1 (b) Any other university, college, school, or institute in the
2 state of Washington offering instruction beyond the high school level
3 that is a member institution of an accrediting association recognized
4 by rule of the council for the purposes of this section and that
5 agrees to and complies with program rules adopted pursuant to RCW
6 28B.92.150 and section 2 of this act. However, any institution,
7 branch, extension or facility operating within the state of
8 Washington that is affiliated with an institution operating in
9 another state must be:

10 (i) A separately accredited member institution of any such
11 accrediting association;

12 (ii) A branch of a member institution of an accrediting
13 association recognized by rule of the council for purposes of this
14 section, that is eligible for federal student financial aid
15 assistance and has operated as a nonprofit college or university
16 delivering on-site classroom instruction for a minimum of twenty
17 consecutive years within the state of Washington, and has an annual
18 enrollment of at least seven hundred full-time equivalent students;

19 (iii) A nonprofit institution recognized by the state of
20 Washington as provided in RCW 28B.77.240; or

21 (iv) An approved apprenticeship program under chapter 49.04 RCW.

22 ~~((+5))~~ (8) "Marital status" means the legal status of being
23 married, single, separated, divorced, or widowed.

24 (9) "Maximum Washington college grant":

25 (a) For students attending two or four-year institutions of
26 higher education as defined in RCW 28B.10.016, is tuition and
27 estimated fees for ~~((fifteen))~~ 15 quarter credit hours or the
28 equivalent, as determined by the office, including operating fees,
29 building fees, and services and activities fees.

30 (b) For students attending private four-year not-for-profit
31 institutions of higher education in Washington, ~~((in the 2019-20~~
32 ~~academic year, is nine thousand seven hundred thirty-nine dollars and~~
33 ~~may increase each year afterwards by no more than the tuition growth~~
34 ~~factor))~~ is the lesser of the maximum college grant under (a) of this
35 subsection, or the individual institution's tuition for 15 quarter
36 credit hours or the equivalent.

37 (c) For students attending two-year private not-for-profit
38 institutions of higher education in Washington, in the 2019-20
39 academic year, is ~~((three thousand six hundred ninety-four dollars))~~

1 \$3,694 and may increase each year afterwards by no more than the
2 tuition growth factor.

3 (d) For students attending four-year private for-profit
4 institutions of higher education in Washington, in the 2019-20
5 academic year, is (~~eight thousand five hundred seventeen dollars~~)
6 \$8,517 and may increase each year afterwards by no more than the
7 tuition growth factor.

8 (e) For students attending two-year private for-profit
9 institutions of higher education in Washington, in the 2019-20
10 academic year, is (~~two thousand eight hundred twenty-three dollars~~)
11 \$2,823 and may increase each year afterwards by no more than the
12 tuition growth factor.

13 (f) For students attending Western Governors University-
14 Washington, as established in RCW 28B.77.240, in the 2019-20 academic
15 year, is (~~five thousand six hundred nineteen dollars~~) \$5,619 and
16 may increase each year afterwards by no more than the tuition growth
17 factor.

18 (g) For students attending approved apprenticeship programs, is
19 tuition and fees, as determined by the office, in addition to
20 required program supplies and equipment.

21 ~~((+6))~~ (h) Maximum grants for students attending institutions in
22 (a) through (g) of this subsection, whose institution has opted out
23 of the requirements in section 2(1)(b) of this act shall be 85
24 percent of the maximum college grant award provided for the
25 applicable institution.

26 (10) "National origin" includes "ancestry."

27 (11) "Office" means the office of student financial assistance.

28 ~~((+7))~~ (12) "Person" includes one or more individuals,
29 partnerships, associations, organizations, corporations,
30 cooperatives, legal representatives, trustees, and receivers, or any
31 group of persons; it includes any owner, lessee, proprietor, manager,
32 agent, or employee, whether one or more natural persons; and further
33 includes any political or civil subdivisions of the state and any
34 agency or instrumentality of the state or of any political or civil
35 subdivision thereof.

36 (13) "Race" is inclusive of traits historically associated or
37 perceived to be associated with race including, but not limited to,
38 hair texture and protective hairstyles. For purposes of this
39 subsection, "protective hairstyles" includes, but is not limited to,
40 such hairstyles as afros, braids, locks, and twists.

1 (14) "Service animal" means any dog or miniature horse, as
2 discussed in RCW 49.60.214, that is individually trained to do work
3 or perform tasks for the benefit of an individual with a disability,
4 including a physical, sensory, psychiatric, intellectual, or other
5 mental disability. The work or tasks performed by the service animal
6 must be directly related to the individual's disability. Examples of
7 work or tasks include, but are not limited to, assisting individuals
8 who are blind or have low vision with navigation and other tasks,
9 alerting individuals who are deaf or hard of hearing to the presence
10 of people or sounds, providing nonviolent protection or rescue work,
11 pulling a wheelchair, assisting an individual during a seizure,
12 alerting individuals to the presence of allergens, retrieving items
13 such as medicine or the telephone, providing physical support and
14 assistance with balance and stability to individuals with mobility
15 disabilities, and helping persons with psychiatric and neurological
16 disabilities by preventing or interrupting impulsive or destructive
17 behaviors. The crime deterrent effects of an animal's presence and
18 the provision of emotional support, well-being, comfort, or
19 companionship do not constitute work or tasks.

20 (15) "Sex" means gender.

21 (16) "Sexual orientation" means heterosexuality, homosexuality,
22 bisexuality, and gender expression or identity. As used in this
23 definition, "gender expression or identity" means having or being
24 perceived as having a gender identity, self-image, appearance,
25 behavior, or expression, whether or not that gender identity, self-
26 image, appearance, behavior, or expression is different from that
27 traditionally associated with the sex assigned to that person at
28 birth.

29 (17) "Tuition growth factor" means an increase of no more than
30 the average annual percentage growth rate of the median hourly wage
31 for Washington for the previous fourteen years as the wage is
32 determined by the federal bureau of labor statistics.

33 NEW SECTION. Sec. 2. A new section is added to chapter 28B.92
34 RCW to read as follows:

35 (1) Every four years, institutions of higher education
36 participating in the Washington college grant program must either:

37 (a) Affirmatively opt out of compliance with (b) of this
38 subsection; or

1 (b) Sign an affidavit affirming that the institution's policies
2 and practices are in compliance with the following provisions:

3 (i) The institution prohibits discrimination on the basis of
4 race, creed, color, national origin, citizenship or immigration
5 status, sex, marital status, age, honorably discharged veteran or
6 military status, sexual orientation, or the presence of any sensory,
7 mental, or physical disability or the use of a trained dog guide or
8 service animal by a person with a disability;

9 (ii) The institution operates its education program or activity
10 in a manner free of discrimination. No student shall be excluded from
11 participation in an education program or activity, denied the
12 benefits of an education program or activity, or subjected to
13 discrimination on the basis of that student's age, sex, marital
14 status, sexual orientation, race, creed, color, national origin,
15 citizenship or immigration status, honorably discharged veteran or
16 military status, or the presence of any sensory, mental, or physical
17 disability or the use of a trained dog guide or service animal by a
18 person with a disability, unless based upon a bona fide qualification
19 of the educational program;

20 (iii) The institution, acting in its capacity as an employer,
21 must not:

22 (A) Refuse to hire, promote, or confer tenure to any person
23 because of age, sex, marital status, sexual orientation, race, creed,
24 color, national origin, citizenship or immigration status, honorably
25 discharged veteran or military status, or the presence of any
26 sensory, mental, or physical disability or the use of a trained dog
27 guide or service animal by a person with a disability, unless based
28 upon a bona fide occupational qualification. However, the prohibition
29 against discrimination because of a disability in this subsection
30 does not apply if the particular disability prevents the proper
31 performance of the particular work involved. This subsection shall
32 not be construed to require an employer to establish employment goals
33 or quotas based on sexual orientation;

34 (B) Discharge or bar any person from employment because of age,
35 sex, marital status, sexual orientation, race, creed, color, national
36 origin, citizenship or immigration status, honorably discharged
37 veteran or military status, or the presence of any sensory, mental,
38 or physical disability or the use of a trained dog guide or service
39 animal by a person with a disability;

1 (C) Discriminate against any person in compensation or in other
2 terms or conditions of employment because of age, sex, marital
3 status, sexual orientation, race, creed, color, national origin,
4 citizenship or immigration status, honorably discharged veteran or
5 military status, or the presence of any sensory, mental, or physical
6 disability or the use of a trained dog guide or service animal by a
7 person with a disability. However, this section does not prohibit an
8 employer from segregating washrooms or locker facilities on the basis
9 of sex, or basing other terms and conditions of employment on the sex
10 of employees where the Washington state human rights commission,
11 created under chapter 49.60 RCW, has by regulation or ruling in a
12 particular instance found the employment practice to be appropriate
13 for the practical realization of equality of opportunity between the
14 sexes;

15 (D) Print, or circulate, or cause to be printed or circulated any
16 statement, advertisement, or publication, or to use any form of
17 application for employment, or to make any inquiry in connection with
18 prospective employment, which expresses any limitation,
19 specification, or discrimination as to age, sex, marital status,
20 sexual orientation, race, creed, color, national origin, citizenship
21 or immigration status, honorably discharged veteran or military
22 status, or the presence of any sensory, mental, or physical
23 disability or the use of a trained dog guide or service animal by a
24 person with a disability, or any intent to make any such limitation,
25 specification, or discrimination, unless based upon a bona fide
26 occupational qualification. However, nothing in this subsection
27 prohibits advertising in a foreign language.

28 (2) Participation in theology academic programs; and employment,
29 promotion, or tenure of faculty members for courses of study in
30 theology are exempt from the requirements under this section.

31 (3) Institutions of higher education that take no action
32 regarding the signing of the affidavit shall be determined to have
33 opted out of compliance with subsection (1)(b) of this section.
34 Institutions of higher education that opt out of compliance with
35 subsection (1)(b) of this section are still eligible to participate
36 in the Washington college grant program if they maintain compliance
37 with all other requirements for participation in the program as
38 determined by the office. Institutions that opt out of compliance
39 with subsection (1)(b) of this section are eligible for maximum
40 grants as defined in RCW 28B.92.030(9)(h).

1 (4) Institutions of higher education that have signed the
2 affidavit under subsection (1)(b) of this section but are determined
3 to have engaged in an unfair practice as provided under this section,
4 are eligible for maximum grants as defined in RCW 28B.92.030(9)(h)
5 for a period of four years from the beginning of the academic year
6 immediately following the date of the decision.

7 (5) It is an unfair practice if an institution of higher
8 education which has signed an affidavit agreeing to comply with the
9 requirements under subsection (1)(b) of this section then engages in
10 the discriminatory practices prohibited under subsection (1)(b) of
11 this section.

12 (6) The attorney general may enforce this chapter. The attorney
13 general's powers to enforce this chapter include the authority to:

14 (a) Investigate violations of this chapter on its own initiative;

15 (b) Investigate violations of this chapter in response to
16 complaints;

17 (c) Bring a civil cause of action in superior court to enjoin
18 further violations, recover actual damages sustained by any person or
19 entity, recover the cost of the suit including reasonable attorneys'
20 fees, and pursue any other appropriate remedy authorized by state or
21 federal law.

22 (7) Any person believed to be injured by a violation of this
23 section has a civil cause of action in court to enjoin further
24 violations, or to recover the actual damages sustained by the person,
25 or both, together with the cost of the suit including reasonable
26 attorneys' fees or any other appropriate remedy authorized by state
27 or federal law.

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