
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-3442.3/16 3rd draft

ATTY/TYPIST: AA:akl

BRIEF DESCRIPTION: Creating the campus antiharassment act.

1 AN ACT Relating to campus antiharassment; adding a new section to
2 chapter 4.16 RCW; adding a new chapter to Title 28B RCW; and
3 prescribing penalties.

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

5 NEW SECTION. **Sec. 1.** This act may be known and cited as the
6 "campus antiharassment act."

7 NEW SECTION. **Sec. 2.** The legislature finds that:

8 (1) Institutions of higher education should facilitate the free
9 and open exchange of ideas.

10 (2) All public institutions of higher education are required by
11 the First Amendment to the United States Constitution to protect and
12 honor students' freedom of speech.

13 (3) Private institutions of higher education are not bound by the
14 First Amendment to the Constitution. Nevertheless, many private
15 institutions of higher education explicitly promise students freedom
16 of speech.

17 (4) All public institutions of higher education and private
18 institutions of higher education that accept federal funding are
19 obligated under Title VI of the Civil Rights Act of 1964, 42 U.S.C.
20 2000d et seq., Title IX of the Education Amendments of 1972, 20

1 U.S.C. Sec. 1681 et seq., Section 504 of the Rehabilitation Act of
2 1973, 29 U.S.C. Sec. 794, and the Age Discrimination Act of 1975, 42
3 U.S.C. Sec. 6101 et seq., to take immediate action to eliminate
4 discriminatory harassment, prevent its recurrence, and address its
5 effects.

6 (5) In *Davis v. Monroe County Board of Education*, 526 U.S. 629
7 (1999), the supreme court of the United States provided a clear
8 definition of peer harassment in the educational context that
9 simultaneously prohibits harassment and protects speech.

10 (6) The court determined that schools must respond to targeted,
11 discriminatory conduct "that is so severe, pervasive, and objectively
12 offensive, and that so undermines and detracts from the victims'
13 educational experience, that the victim-students are effectively
14 denied equal access to an institution's resources and opportunities."

15 (7) Despite this clear definition, many institutions of higher
16 education maintain overly broad or vague harassment policies that
17 threaten students' right to freedom of expression.

18 NEW SECTION. **Sec. 3.** For the purposes of this chapter,
19 institutions of higher education has the same meaning as in RCW
20 28B.10.016.

21 NEW SECTION. **Sec. 4.** (1) Institutions of higher education are
22 prohibited from punishing as discriminatory harassment speech that
23 does not constitute actionable discriminatory harassment as described
24 in this section.

25 (2) Speech only constitutes actionable discriminatory harassment
26 when it is directed at an individual and:

27 (a) Part of a pattern of unwelcome conduct that is discriminatory
28 on the basis of race, color, national origin, disability, religion,
29 age, sex, sexual orientation, or gender;

30 (b) Severe, pervasive, and objectively offensive; and

31 (c) So undermines and detracts from the victim's educational
32 experience that the victim-student is effectively denied equal access
33 to an institution's resources and opportunities.

34 (3) An institution of higher education is not liable under this
35 chapter for failing to punish speech that does not satisfy subsection
36 (2) of this section.

37 (4) Nothing in this chapter prohibits an institution of higher
38 education from being held liable for deliberate indifference to known

1 acts of actionable discriminatory harassment in the educational
2 context.

3 (5) Institutions of higher education must take immediate steps to
4 eliminate actionable discriminatory harassment and eliminate its
5 effects in the educational context.

6 NEW SECTION. **Sec. 5.** (1) The following persons may bring an
7 action in any state court of competent jurisdiction to enjoin a
8 violation of this chapter:

- 9 (a) The attorney general; and
10 (b) Any aggrieved person whose expressive rights were infringed
11 upon through violation of this chapter.

12 (2) In an action brought under this section, if the court finds a
13 violation of this chapter, the court shall award the aggrieved person
14 not less than one thousand dollars. The court may award compensatory
15 damages, reasonable court costs, and attorneys' fees, including
16 expert fees, or any other relief in equity or law as deemed
17 appropriate.

18 (3) The state is not immune under the Eleventh Amendment of the
19 Constitution of the United States from suit in federal court for a
20 violation of this chapter.

21 (4) In a suit against the state for a violation of this chapter,
22 remedies, including remedies both at law and in equity, are available
23 for such a violation to the same extent as such remedies are
24 available for such a violation in a suit against any public or
25 private entity other than the state.

26 NEW SECTION. **Sec. 6.** A new section is added to chapter 4.16 RCW
27 to read as follows:

28 (1) All claims or causes of action for a violation of section 4
29 of this act must be commenced within one year from the date the
30 action accrues.

31 (2) For purposes of calculating the one-year limitation period,
32 the cause of action is deemed accrued on the date that the student
33 receives final notice of discipline from the institution of higher
34 education for the speech described in section 4(2) of this act.

35 (3) For purposes of calculating the one-year limitation period in
36 cases alleging deliberate indifference to known acts of actionable
37 discriminatory harassment under section 4(5) of this act, the cause
38 of action accrues on the date the institution of higher education

1 receives actual knowledge of the actionable discriminatory
2 harassment. The statute of limitations is reset for each instance of
3 conduct that is known to the institution of higher education that
4 constitutes actionable discriminatory harassment as defined in
5 section 4 of this act and that involves the same parties to the
6 harassment.

7 NEW SECTION. **Sec. 7.** This chapter does not apply to:

8 (1) An institution of higher education which is controlled by a
9 religious organization if the application of this subsection would
10 not be consistent with the religious tenets of such organization; or

11 (2) An institution of higher education whose primary purpose is
12 the training of individuals for the military services of the United
13 States, or the merchant marine.

14 NEW SECTION. **Sec. 8.** Sections 1 through 5 and 7 of this act
15 constitute a new chapter in Title 28B RCW.

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