
HOUSE BILL 1362

State of Washington

65th Legislature

2017 Regular Session

By Representatives Manweller, Hargrove, Haler, Van Werven, Holy, Shea, and Stambaugh

Read first time 01/18/17. Referred to Committee on Higher Education.

1 AN ACT Relating to creating an academic bill of rights; adding a
2 new chapter to Title 28B RCW; creating a new section; and prescribing
3 penalties.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that free speech is
6 one of the most important values protected by the federal and state
7 Constitutions. The legislature also finds that free expression on the
8 campuses of Washington's public colleges and universities is
9 particularly important for fostering a true marketplace of ideas,
10 where students can be exposed to a variety of ideas and learn
11 tolerance for those ideas with which they disagree. The history of
12 university life has been to introduce students to ideas, concepts,
13 and values they may object to or even be offended by. The legislature
14 finds that speech on Washington's campuses has been chilled by
15 increasing regulations that are not viewpoint neutral. It is the
16 intent of the legislature to afford campus speech the highest level
17 of judicial protection.

18 NEW SECTION. **Sec. 2.** CAMPUS FREE EXPRESSION. (1) This section
19 may be known and cited as the campus free expression act.

1 (2)(a) The outdoor area of a campus of an institution of higher
2 education must be considered a traditional public forum.

3 (b) The governing board of the institution of higher education
4 may impose content-neutral and viewpoint-neutral time, place, and
5 manner restrictions on the use of the outdoor area of the campus for
6 expressive activities that are necessary to serve a compelling state
7 interest and narrowly drawn to achieve that interest. These
8 restrictions must allow members of the institution community to
9 spontaneously and contemporaneously assemble. In addition, the
10 restrictions must be well-defined and published, at a minimum, on the
11 web site of the institution and as part of any printed materials
12 covering the rules and policies of the institution.

13 (3) A person who wishes to engage in noncommercial expressive
14 activity on the campus of an institution of higher education must be
15 permitted to do so freely, as long as the person's conduct is not
16 unlawful and does not materially and substantially disrupt the
17 orderly operation of the institution.

18 (4) Nothing in this section may be construed as narrowing a
19 student's rights of expression under the First Amendment to the
20 United States Constitution or Article I, section 5 of the Washington
21 state Constitution.

22 (5)(a) The attorney general or a person whose rights under this
23 section have been violated may bring an action in a court of
24 competent jurisdiction against the institution of higher education,
25 members of the institution's governing board, deans, chairs, or
26 faculty or staff members.

27 (b) In an action brought under this section, if the court finds a
28 violation of this section, the court shall take the following
29 actions:

30 (i) For the first established violation, issue an injunction
31 against continued violation of this section; and

32 (ii) For subsequent violations, award the aggrieved person: (A)
33 Compensatory damages of no less than five hundred dollars for the
34 initial violation, plus fifty dollars for each day the violation
35 remains ongoing; (B) reasonable court costs; (C) attorneys' fees,
36 including expert fees; and (D) any other relief in equity or law
37 deemed appropriate.

38 (c) An action to enforce a right or obligation arising under this
39 section must commence within one year after the cause of action
40 accrues. A cause of action accrues when the section is violated. Each

1 day that a violation of this section persists, and each day that a
2 policy or rule in violation of the section remains in effect, is a
3 new violation of the section, and therefore, another day that a cause
4 of action accrues.

5 (6) As used in this section, "expression," "expressive activity,"
6 or "expressive activities" includes all forms of peaceful assembly,
7 protest, speech, distributing literature, carrying signs, and
8 circulating petitions. The term does not include fighting words,
9 libelous statements, or obscene material, as defined by the United
10 States supreme court.

11 NEW SECTION. **Sec. 3.** TRIGGER WARNINGS. (1) An institution of
12 higher education must allow a faculty or staff member to use trigger
13 warnings at the faculty or staff member's discretion.

14 (2) An institution of higher education may not take, or maintain
15 a policy or rule that allows it to take, punitive action against a
16 faculty or staff member, with respect to tenure, promotion, or
17 disciplinary action, for not using trigger warnings.

18 (3)(a) A person whose rights under this section have been
19 violated may bring an action in a court of competent jurisdiction
20 against the institution of higher education, members of the
21 institution's governing board, deans, chairs, or faculty or staff
22 members.

23 (b) If the court finds a violation of this section, the court
24 shall award the aggrieved person: (i) Compensatory damages of no less
25 than five hundred dollars for the initial violation, plus fifty
26 dollars for each day the violation remains ongoing; (ii) reasonable
27 court costs; (iii) attorneys' fees, including expert fees; and (iv)
28 any other relief in equity or law deemed appropriate.

29 (c) An action to enforce a right or obligation arising under this
30 section must commence within one year after the cause of action
31 accrues. A cause of action accrues when the section is violated. Each
32 day that a violation of this section persists, and each day that a
33 policy or rule in violation of the section remains in effect, is a
34 new violation of the section, and therefore, another day that a cause
35 of action accrues.

36 (4) As used in this section, "trigger warning" includes a warning
37 provided by a faculty or staff member in advance of assigning
38 material that contains content that might trigger a difficult
39 emotional response for a student.

1 NEW SECTION. **Sec. 4.** ACTIONABLE DISCRIMINATORY HARASSMENT AND
2 PROTECTING FREE SPEECH. (1) This section may be known and cited as
3 the campus antiharassment act.

4 (2) An institution of higher education may not take disciplinary
5 action against student speech that does not constitute actionable
6 discriminatory harassment as described in this section.

7 (3) As used in this section, speech constitutes actionable
8 discriminatory harassment when it is directed at an individual and:

9 (a) Is part of a pattern of targeted, unwelcome conduct that is
10 discriminatory on the basis of race, color, national origin,
11 disability, religion, age, sex, sexual orientation, gender, or gender
12 identity; and

13 (b) Is so severe, pervasive, and objectively offensive; and

14 (c) So undermines and detracts from the victim's educational
15 experience that the victim-student is effectively denied equal access
16 to the institution's resources and opportunities.

17 (4) An institution of higher education is not liable for failing
18 to take disciplinary action for speech that does not meet the
19 requirements of subsection (3) of this section.

20 (5)(a) When speech meets the requirements of actionable
21 discriminatory harassment, an institution of higher education must
22 take immediate action to eliminate the actionable discriminatory
23 harassment and address its effects.

24 (b) An institution of higher education may be held liable for
25 violations of this section if it is deliberately indifferent to known
26 acts of actionable discriminatory harassment.

27 (6)(a) The attorney general or an aggrieved person whose rights
28 were infringed upon through a violation of this section may bring an
29 action in a court of competent jurisdiction against the institution
30 of higher education, members of the institution's governing board,
31 deans, chairs, or faculty or staff members.

32 (b) If the court finds a violation of this section, the court
33 must award the aggrieved person: (i) Compensatory damages of no less
34 than one thousand dollars; (ii) reasonable court costs; (iii)
35 attorneys' fees, including expert fees; and (iv) any other relief in
36 equity or law deemed appropriate.

37 (7)(a) An action under this section must commence within one year
38 after the cause of action accrues. A cause of action accrues when
39 this section is violated.

1 (b) For the purposes of calculating the one-year limitation
2 period in cases alleging unlawful disciplinary action for expression
3 protected under this section, the cause of action is deemed to accrue
4 on the date that the student receives final notice of disciplinary
5 action from the institution of higher education.

6 (c) For purposes of calculating the one-year limitation period in
7 cases alleging deliberate indifference by the institution of higher
8 education of actionable discriminatory harassment, the cause of
9 action accrues on the date the institution of higher education
10 received actual knowledge of the actionable discriminatory
11 harassment. The statute of limitations period must be reset for each
12 instance of actionable discriminatory harassment that is known to the
13 institution and that involves the same parties to the harassment.

14 (8) This section does not apply to:

15 (a) An institution of higher education that is controlled by a
16 religious organization if the application of this section would not
17 be consistent with the religious tenets of the organization; or

18 (b) An institution of higher education whose primary purpose is
19 the training of individuals for the military services of the United
20 States or the merchant marine.

21 (9)(a) The state is not immune under the Eleventh Amendment of
22 the United States Constitution from suit in federal court for a
23 violation of this section.

24 (b) In a suit against the state for a violation of this section,
25 remedies, both at law and in equity, are available for such a
26 violation to the same extent as such remedies are available for such
27 a violation in a suit against any public or private entity other than
28 the state.

29 NEW SECTION. **Sec. 5.** ACADEMIC FREEDOM AND WHISTLEBLOWER
30 PROTECTION. (1) This section may be known and cited as the academic
31 freedom and whistleblower protection act.

32 (2) An institution of higher education may not take adverse
33 personnel action, or maintain a policy or rule that allows it to take
34 adverse personnel action, against a faculty or staff member in
35 retaliation for:

36 (a) Expression related to scholarship, academic research, or
37 teaching, including posts on social media, letters to the editor,
38 personal blogs, and memberships in private organizations; or

1 (b) Disclosure, whether formal or informal, of information the
2 faculty or staff member reasonably believes evidences:

3 (i) A violation of law, rule, or policy; or

4 (ii) Gross mismanagement, gross waste of funds, abuse of
5 authority, or substantial and specific danger to public health or
6 safety.

7 (3)(a) An institution of higher education may not take, or
8 maintain a policy or rule that allows it to take, disciplinary action
9 against a student in retaliation for expression or other
10 communication that, when engaged in outside the institution, is
11 protected from governmental restriction by the First Amendment to the
12 United States Constitution or Article I, section 5 of the Washington
13 state Constitution.

14 (b) An institution of higher education may not take adverse
15 personnel action against a faculty or staff member solely for acting
16 to protect a student engaged in conduct authorized under this
17 section, or for refusing to infringe upon conduct that is protected
18 by this section, section 2 of this act, the First Amendment to the
19 United States Constitution, or Article I, section 5 of the Washington
20 state Constitution.

21 (4)(a) A person whose rights under this section have been
22 violated may bring an action in a court of competent jurisdiction
23 against the institution of higher education, members of the
24 institution's governing board, deans, chairs, or faculty or staff
25 members.

26 (b) In an action brought under this section, if the court finds
27 that the protected expression, as defined in subsection (2) or (3) of
28 this section, was a significant motivating factor behind the
29 institution of higher education's decision to take an adverse
30 personnel action against a faculty or staff member or a disciplinary
31 action against a student, the court shall award the aggrieved person:

32 (i) Compensatory damages; (ii) reasonable court costs; (iii)
33 attorneys' fees, including expert fees; (iv) and any other relief in
34 equity or law deemed appropriate, unless the institution demonstrates
35 that it would have taken the same personnel action in the absence of
36 the protected expression.

37 (c) An action to enforce a right or obligation arising under this
38 section must commence within one year after the cause of action
39 accrues. A cause of action accrues on the date that the aggrieved
40 person receives final notice of discipline from the institution of

1 higher education or the date that the act of retaliation occurs,
2 whichever is later.

3 (5) The definitions in this subsection apply throughout this
4 section unless the context clearly requires otherwise.

5 (a) "Adverse personnel action" includes dismissal, suspension,
6 discipline, reassignment, transfer, denial of promotion, or other
7 retaliation against a student, or faculty or staff member.

8 (b) "Expression" has the definition in section 2 of this act.

9 (c) "Faculty" or "faculty member" means a person, whether or not
10 compensated by an institution of higher education, tasked with
11 providing scholarship, academic research, or teaching. The term
12 includes tenured and nontenured professors, adjunct professors,
13 visiting professors, lecturers, graduate student instructors, and
14 those in comparable positions however titled. The term does not
15 include a person whose primary responsibilities are administrative or
16 managerial.

17 NEW SECTION. **Sec. 6.** DISCIPLINARY PROCEEDINGS. (1) A student
18 enrolled at an institution of higher education who is accused of a
19 violation of the institution's disciplinary or conduct rules that
20 carries a potential penalty of expulsion has the right to be
21 represented, at the student's expense, by a licensed attorney or, if
22 the student prefers, a nonattorney advocate, who, in either case, may
23 fully participate during the disciplinary proceeding or other
24 procedure adopted and used by the institution. When disciplinary
25 proceedings subject to this section arise from a complaint by a
26 student against another student, the complaining student has the
27 right to be represented, at the student's expense, by a licensed
28 attorney, or, if the student prefers, a nonattorney advocate.

29 (2) This section does not apply to an allegation of academic
30 dishonesty as defined by the institution of higher education.

31 (3) This section does not create a right of a student to be
32 represented at public expense.

33 (4) This section does not require an institution of higher
34 education to use formal rules of evidence in a disciplinary
35 proceeding. The institution, however, must make good faith efforts to
36 include relevant evidence and exclude evidence that is neither
37 relevant nor probative.

38 (5) Before a student may be questioned by an institution of
39 higher education, or by an agent of the institution of higher

1 education, about an allegation of a violation of the institution's
2 disciplinary or conduct rules that carries a potential penalty of
3 expulsion, the institution must advise the student of the student's
4 rights under this section.

5 (6) Upon discovering exculpatory evidence related to a student
6 under investigation for a violation of the institution's disciplinary
7 or conduct rules that also constitutes a crime under Title 9A RCW,
8 the administration or the law enforcement component of the
9 institution of higher education must immediately notify, in writing,
10 the accused student of the exculpatory evidence.

11 (7)(a) A student whose rights under this section have been
12 violated may bring an action in a court of competent jurisdiction
13 against the institution of higher education, members of the
14 institution's governing board, deans, chairs, or faculty or staff
15 members.

16 (b) If the court finds a violation of this section, the court
17 shall award the aggrieved student: (i) Compensatory damages; (ii)
18 reasonable court costs; (iii) attorneys' fees, including expert fees;
19 (iv) monetary damages of not less than the cost of tuition paid by
20 the student, or on the student's behalf, to the institution of higher
21 education for the academic term during which the violation of this
22 section occurred; (v) monetary damages of not less than the amount of
23 any scholarship funding lost as a result of the disciplinary
24 proceeding; and (vi) any other relief in equity or law deemed
25 appropriate including a de novo rehearing at the institution of
26 higher education in accordance with this section.

27 (c) An action to enforce a right or obligation arising under this
28 section must commence within one year after the cause of action
29 accrues. A cause of action accrues on the date that the student or
30 student organization receives final notice of discipline from the
31 institution of higher education.

32 (8) The definitions in this subsection apply throughout this
33 section unless the context clearly requires otherwise.

34 (a) "Disciplinary proceeding" includes an investigatory interview
35 or hearing or any other procedure conducted by the institution of
36 higher education relating to the alleged violation that the student
37 or student organization reasonably believes may result in
38 disciplinary action against the student or student organization.

1 (b) "Fully participate" includes the opportunity to make opening
2 and closing statements, to examine and cross-examine witnesses, and
3 to provide the accuser or accused with support, guidance, and advice.

4 (9) This section applies to all disciplinary proceedings
5 beginning on or after the effective date of this section.

6 NEW SECTION. **Sec. 7.** CHAPTER TITLE. The chapter created in
7 section 8 of this act may be known and cited as the academic bill of
8 rights.

9 NEW SECTION. **Sec. 8.** Sections 1 through 6 of this act
10 constitute a new chapter in Title 28B RCW.

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