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**SENATE BILL 5877**

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**State of Washington**

**67th Legislature**

**2022 Regular Session**

**By** Senators Conway, Lovick, Nguyen, Saldaña, and C. Wilson

Read first time 01/17/22. Referred to Committee on Law & Justice.

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, veteran or military status, sexual orientation, or the  
6 presence of any sensory, mental, or physical disability or the use of  
7 a trained dog guide or service animal by a person with a disability;

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

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

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

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

39 (C) Discriminate against any person in compensation or in other  
40 terms or conditions of employment because of age, sex, marital

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

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

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

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

38 (4) Institutions of higher education that have signed the  
39 affidavit under subsection (1)(b) of this section but are determined  
40 to have engaged in an unfair practice as provided under this section,

1 are eligible for maximum grants as defined in RCW 28B.92.030(9)(h)  
2 for a period of four years from the beginning of the academic year  
3 immediately following the date of the decision.

4 (5) It is an unfair practice if an institution of higher  
5 education which has signed an affidavit agreeing to comply with the  
6 requirements under subsection (1)(b) of this section then engages in  
7 the discriminatory practices prohibited under subsection (1)(b) of  
8 this section. The attorney general may bring an action in the name of  
9 the state, against any institution of higher education, to restrain  
10 and prevent the doing of any act or practice prohibited by this  
11 section.

12 (6) The attorney general shall investigate complaints and enforce  
13 this section, including by conference and conciliation. In addition  
14 to the complaint process with the attorney general, any person  
15 believed to be injured by a violation of this section has a civil  
16 cause of action in court to enjoin further violations, or to recover  
17 the actual damages sustained by the person, or both, together with  
18 the cost of suit and reasonable attorneys' fees or any other  
19 appropriate remedy authorized by state or federal law.

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